



DPP

Commonwealth Director of Public Prosecutions

FAXED
5-7-07

4 September 2007

Your Reference:
H30654943

Our Reference:

Dean Mayr

Tel: REDACTED

Fax: REDACTED

Email: REDACTED

REDACTED

By facsimile: REDACTED
No of pages: 6

Senior Constable Jason Madsen
Parramatta JIRT
DX 8250 Parramatta

ADVICE BRIEF: "RG DANCE JOB"

I refer to the brief of evidence in this matter which was forwarded to this office under cover of letter dated 21 June 2007.

The brief was referred for consideration to laying Commonwealth charges. The commonwealth nexus in this matter comes from the use of the internet (as well as telephone services) by Grant Davies (GD) in communicating with students at RG Dance Studio, where he is a Dance Instructor.

Each of the two complainants to which Commonwealth charges could be appropriate also make complaints of contact offences.

This advice should be read on the basis that it focuses on Commonwealth offences only. Each complaint (and they are certainly numerous- particularly for victim one) of a contact offence could conceivably be the basis for an Aggravated Indecent Assault charge under the NSW Crimes Act, section 61M (circumstances of aggravation being the ages of the victims), **however, this office does not give advice in this regard**. This aspect is important is assessing how the matter should proceed.

It may be that the contact offences are regarded as being more serious and the matters should therefore all be run by the office of the NSW DPP. However, the Commonwealth charges

\\syd\dpdata\Wgroups\dfs\syd\Prosecutions3\Matters\NANGLE,Paul William (SC07101804)\DG DANCE JOB.doc

SYDNEY OFFICE

Level 7, Civic Tower, 66-68 Goulburn Street, Sydney NSW 2000
Locked Bag A4020 Sydney South NSW 1235
Telephone 02 9321 1100 Facsimile 02 9264 8241 DX 11497 Sydney Downtown

- 2 -

discussed below are relevant to those charges for a forensic purpose and the matters would best be run together.

The complaints

Victim One ^{BZP} - now 15 years of age) alleges:

- Where GD places his hands along the seams of the costume bottom to "fix the costume" – or playing with the elastic of underpants while sitting on his lap (numerous occasions- over several years starting at age 9)
- Where GD places his hands inside the costume and lifts the breasts of the victim- at the 2005 RG Dance concert
- Online discussion (MSN Messenger) with the accused about masturbating (2006)
- Online discussion of the description of his "dream" (around September 2006)- and GD describing himself masturbating

Victim Two ^{BZM} – 14 years of age) alleges:

- An incident at the end of the 2005 concert when GD put his "hand down the front of my leotard and started to move it down the inside of my leotard".
- A late night SMS message (in early 2005) whereby she ^{BZM} received a message from "Mr G" saying:

"I can't go to bed until you tell me you love me."

and in online conversation in 2005 where he asks of a friend of ^{BZM}

"where else does she have hair".

Evidence

- There are no records of online or telephone conversations contained within the brief of evidence provided.
- It is generally the case in these types of matters that the allegations can be corroborated by evidence retrieved (sometimes by the victim at the time of the offending) from the computers of either the victim or the accused.
- However, there is some significant evidence of complaint in this case.

- ^{CAG} said to be the first complained to- however it is not mentioned in her statement.

- Sleepover 28 January 2007- (^{BZP} says six girls present) – ^{REDACTED} recalls the complaint made at the sleepover. It is clear there are rumours circulating about GD.
- There is also the direct admissions made by the accused to the parents of ^{BZP}
- A further witness Seipel (another dance instructor), also had a former relationship with RD. Her statement is riddled with general complaints about the treatment of children at RG Dance, however, specifically notes a complaint made by ^{BZP} on 7 February 2007 whereby ^{BZP} is asked by her mother in Seipel's presence what (Grant) had said to her during an on-line conversation and replied:

" he asked us if we felt sexy..." and...

"he asked if I masturbated. He also asked how often I masturbated and told me I should do it more because its fun".

- 3 -

- BZP also complained that GD had described his dream to her:

"he had a dream that I was in a red leotard and that he had taken it off me and that we did things together...he said we had sex and told me all the positions we had had it in".

POSSIBLE CHARGES

The commonwealth charges for consideration would come under Division 474 of the Commonwealth Criminal Code.

The charges that should be considered are **Grooming** a person under 16 years for sexual activity, Using a Carriage service to **Transmit Child Pornography Material** and **Using a Carriage Service to Menace/ Threaten or Harrass**.

THE ELEMENTS OF THE THREE CHARGES TO BE CONSIDERED

Grooming charge

Section 474.27 Using a carriage service to groom persons under 16 years of age

- (1) A person (the sender) commits an offence if:
- the sender uses a carriage service to transmit a communication to another person (the recipient); and
 - the communication includes material that is indecent; and
 - the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with the sender; and
 - the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
 - the sender is at least 18 years of age.

Penalty: Imprisonment for 12 years.

- (4) In a prosecution for an offence against subsection (1), (2) or (3), whether material is indecent is a matter for the trier of fact.
- (5) In this section:
indecent means indecent according to the standards of ordinary people.

Subsection (1)

- (a) D uses a carriage service to transmit a communication to another person (the recipient) (conduct)

Fault: with the intention of making it easier to procure the recipient to engage in or submit to sexual activity with D (474.27(1)(c))

- (b) The communication includes material which is indecent (circumstance)

Fault: recklessness (s5.6 Code)

- (c) (i) The recipient is under 16 years of age
(circumstance)

Fault: absolute liability (s474.28(1))

- (d) D is at least 18 years of age (circumstance)

Fault: recklessness (s5.6 of the Code)

Transmitting Child Pornography Material Charge

Subsection 474.19 Using a carriage service for child pornography material

- (1) A person is guilty of an offence if:
- (a) the person:
 - (iii) uses a carriage service to transmit material; and
 - (b) the material is child pornography material.

Penalty: Imprisonment for 10 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
- (a) intention is the fault element for the conduct referred to in paragraph (1)(a);
 - (b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Penalty: Imprisonment for 10 years.

Elements

Subsection (1)(a)(iii)

- (a) D uses a carriage service to transmit material (conduct)

Fault: intention (s474.19(2)(a))

- (b) the material was child pornography material (circumstance)

Fault: recklessness (s474.19(2)(b))

Using a Carriage Service to Cause Offence

Section 474.17 Using a carriage service to menace, harass or cause offence

- (1) A person is guilty of an offence if:
- (a) the person uses a carriage service; and
 - (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 3 years.

- (a) D uses a carriage service (conduct)

Fault: Intention (s5.6 of Code)

- (b) Reasonable persons would regard the use of the carriage service as being menacing, harassing or offensive (circumstance)

- 5 -

Fault: Recklessness (s 5.6 of Code)

DISCUSSION OF CHARGES UNDER CONSIDERATION

GROOMING CHARGE

A usual problem in matters where everything is occurring in cyberspace is proving an intention to actually meet.

Here, GD and [BZP] are well acquainted and have an entrenched Instructor/ Student relationship. They are in regular physical contact.

The difficult then becomes proving that he had an intention to "*make it easier to procure the person for sexual activity*".

For that purpose, the long term nature of the relationship between GD and [BZP] becomes a weakness rather than a strength. He has known her for over ten years. He speaks to her in person, in one-on-one situations on an ongoing basis before and after these cyber conversations.

Clearly it *could* be inferred that his reason for doing so was to "*make it easier to procure the person for sexual activity*". However, the circumstances do not conspire to such an intention being able to be proven beyond reasonable doubt.

In my view there is insufficient material to ground a charge of Use Carriage Service to Groom a person under 16 years of age for sexual activity.

USE CARRIAGE SERVICE TO TRANSMIT CHILD PORNOGRAPHY

The brief currently contains no technical proof in support of this charge. It seems that [BZP] has a clear recollection of what was said in the "Dream" conversation. There is also complaint evidence.

The content of the conversation falls clearly within the definition of Child Pornography Material:

"Child pornography material" is defined in section 473.1 of the Criminal Code as follows:

- "(c) material that describes a person who is, or is implied to be, under 18 years of age and who:
- (i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;
- and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive"

Clearly the description by GD of his "dream" of having sex in numerous positions with a fourteen year old girl – in a conversation to that girl- clearly meets that definition.

In my view the brief as it is presently comprised sustains this charge *prima facie*, and with some further material could be regarded as having reasonable prospects of conviction.

USE CARRIAGE SERVICE TO MENACE, HARRASS OR CAUSE OFFENCE

This is the strongest charge in relation to the "Dream" conversation.

I would recommend that such a charge be laid. There is a *prima facie* case on the brief as it stands and I would request further technical investigations- in the nature of phone records, computer

- 6 -

analysis (to attempt to retrieve any of the messages) and the obtaining of telecommunications be undertaken if the matter is to proceed.

These offences in the context of the contact offences – FINAL RECOMMENDATION

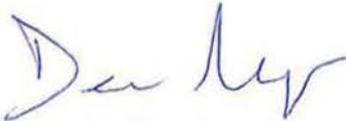
The facts surrounding the Commonwealth charges are intimately intertwined with the contact offences.

All charges should run as a single proceeding, however, they are likely to subject to a defence application for separate trials- at least as to the different victims.

It is my view that should Commonwealth charges be commenced they would best be conducted by the office of the NSW DPP as part of the proceedings for the contact offences.

In the event that the NSW DPP determined not to proceed with contact offence charges, the Commonwealth matters could then be referred to this office.

I thank you for your request for advice in this matter and should you have any further inquiries please do not hesitate to contact Dean Mayr of my Sydney office on REDACTED



for Director