



CROWN PROSECUTORS' CHAMBERS

New South Wales

PRE-TRIAL UNIT

ARRAIGNMENT NOTE

R v CDM

CASES: 201016539; SYDDC: 2010/00416351

SUITABLE FOR TA: No

TRIAL ESTIMATE: 10 days

WAS ISSUES: Yes. Three complainants of tender years and their parents.

IT NEEDS: Yes...Kindergarten sexual assaults - several interviews of children and an ERISP. No child has been to counselling, so court preparation is essential.

REQUISITIONS:**For Police:**

1. Is the annexure to the statement dated 15 December 2010 of CEZ a transcript of a recording, or notes made by CEZ at a time after her discussion with CEY?
2. Please obtain a statement from CDN as to the taping of her conversation with her daughter CDO. The original recording should be available for tender at court.
3. Please provide statements as to the charging of the accused in respect of CDO and CEY, and whether the accused was given the opportunity of being interviewed about the allegations.

For SPP:

1. Please ensure that the annexures to the statement of CDN dated 4 March 2011 (Including the recording of her conversation with her daughter CDO) are attached. The original recording should be available for tender at court.

2. Please prepare and issue tendency notices in respect of:

- a. the alleged conduct of the accused toward
CEW – “CDM gives me massages”;
 and
- b. the alleged conduct of the accused toward the three complainants regarding inappropriate physical contact with the children at the pre-school whilst he performs the role of carer.

THE BILL:

Bill found for Indecent assault child 2 – 4 years x 3 alt. Indecent assault while under authority x 3 as follows:

CEW – Rub tummy and fondle vagina in corner.

CEY – touched genital area.

CDO – kissed (or attempted to kiss) her.

Committal charge	Three Counts on Indictment – I merged the two counts relating to CEW , as it would seem that the “tummy tickling and the fondling of her vagina were part of the same transaction.
-------------------------	--

COMMENTS:

The primary charges on the indictment are pursuant to section 61M (2) and in the alternative section 61M (1) as a matter of precaution only. The reason for this is that section 61M(2) was amended as from 1 January 2009 by increasing the age of the victim from 10 years to 16 years. The section remains the same in all other respects. There is no authority on the point. As the children are all under the age of ten years, it is my view that the charges can be pleaded as an indecent assault on a child then ages 2-4 years.

I do not believe it is appropriate for me to confer with the children; the interviews with the children are such that the dates cannot be narrowed.

The trial CP may wish to amend the indictment by deleting the alternative counts.

The preliminary matter of the competency of the children to give evidence is expected to be challenging. Further, as the children are not attending counselling, preparation for court will fall to WAS.

The manner of interviewing the complainants is a cause for concern.

It may well be that cross-examination of the children will be impossible if they have forgotten the incidents with the effluxion of time.

The allegation in respect of CEW may well be deficient in that it is difficult to particularise the incident (see A 161, interview).

The ERISP of CEW appears to disclose an act of indecency by the accused in the presence of the complainant (see A 207).

Ar

The complaint made by ^{CEY} to her mother (para. 6 of her statement) also discloses an act of indecency by the accused in the presence of that complainant. In the circumstances, I am of the view that an ex-officio bill of indictment is not warranted.

The allegation concerning ^{CEY} is problematic, given her initial denial of inappropriate touching of her by the accused.

The allegation concerning ^{CDO} is problematic, given her denial of inappropriate touching of her by the accused, then her assertion that the accused kissed her, which was varied later in the interview that the accused attempted to kiss her. It may be prudent to open to the jury on the alternative of attempt.

I agree with Ms. Sharwood that the evidence based on the disclosures of the children ^{CDQ}, ^{REDACTED} and ^{REDACTED} does not advance the case appreciably, given the evidence of the mothers of the three complainants and the employees of the Centre.

BRIEF QUALITY FEEDBACK:

Excellent. Careful attention must be paid by all solicitors to amendments to legislation during the period in which the alleged offences are said to have been committed.

^{REDACTED}

Phillip Calvert
Crown Prosecutor
Dated: 12 July 2011