



Director of Public Prosecutions

Memorandum

To: Vanessa Burrows

From: Ian Press

Date: 4 November 2011

Subject: CDF

Vanessa

I have read the new declarations provided. I note the police have not yet provided all of the information that we have sought.

I confirm you have received information to the effect that all of the parents are willing for their children to give evidence if required.

From the new information I have noted the following relevant facts:

1. [CEH] has previously indicated that she has seen the defendant's penis (see [CEJ] [REDACTED] 6/12/10 at page 6) and her comment to the effect the defendant put his penis into [CEN]'s mouth would also tend to suggest that she has seen the defendant's penis. I appreciate this assumes that she saw this incident as distinct from being told about it by one of the children. In the notes of the psychologist, [REDACTED] I note that on 1/8/11 [CEH] told the psychologist that she has not seen an erect penis before.

Neither [CEN] nor [CEH] have ever said whether the defendant's penis was erect when it was placed into [CEN]'s mouth. Is it possible that the defendant placed his flaccid penis into the mouth of [CEN]? Does this undermine the Crown assertion that [CEH] saw the defendant put his penis into [CEN]'s mouth? Does it make it more likely that she simply heard this from some other person? [CEH] also suggests that the defendant had intercourse with her. (See [CEI] 7/8/11 at page 4). I query how this statement to the psychologist undermines that assertion. Whilst it is entirely possible that [CEH] was embarrassed when speaking with the psychologist and I suppose it is feasible that the defendant placed his flaccid penis into her mouth and [CEN]'s mouth, her assertion that she has not seen an erect penis is somewhat surprising given all the other circumstances. I also note the statement of [REDACTED] and the comments by the children, including [CEN], wherein the children describe what must be an act of ejaculation by the defendant. (See page 47-48). I acknowledge that [REDACTED] does not refer to [CEH] being present during that conversation.

The effect of all this is that it is yet one more inconsistency and this inconsistency is directly relevant to the subject of the charge.

INSTRUCTIONS

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2. In the original statement of CEO [redacted] she states that CEN [redacted] said "I bit him" (page 3), however, in her second statement she states that CEN [redacted] said "I bit it" (see page 4). I was originally concerned that CEH [redacted] alleged CEN [redacted] bit the defendant's penis but CEN [redacted] only said he bit "him". This left open the possibility that they were not describing the same incident due to the lack of particularity in CEN [redacted]'s comment to his mother. Whilst the new statement assists the Crown case insofar as it makes it a stronger inference that CEN [redacted] and CEH [redacted] are talking about the same incident, it is of some concern that CEO [redacted]'s recollection of the conversation has changed - even to a minor degree. We must satisfy the Court that the comment has sufficient probative value to justify its admission. Inconsistencies in the details of the alleged statement will clearly affect the weight to be placed on the evidence and more importantly, whether it has "sufficient probative value to justify its admission".
3. The previous bus driver indicates the route took about 20 minutes (this doesn't indicate whether his route and the number of children he picked up was exactly the same, however, I assume for present purposes it was. The trip details recorded by the defendant suggest that:

a) On most occasions the afternoon run is recorded as taking 30 minutes. On a number of occasions however, the finish time is recorded as the bus trip taking 40, 45 and 50 minutes - see the following dates: (4/5/10, 3/5/10, 5/5/10, 6/5/10, 18/5/10, 19/5/10, 30/7/10, 19/8/10, 18/8/10). On numerous occasions no finish time is recorded.

b)The morning run appears to take somewhere between 50 minutes and 1 hour. I have nothing from the police to indicate whether these are proper estimates, however, I note that any run may take slightly longer in the morning due to traffic and delays in relation to the children being ready.

c)I note that there are some different fares notes (\$74.75 v \$84.75 - it is not clear to me why some of the fares are \$10 more.

d)There are only 2 days when the only trips done by the bus are the school runs. See the page referring to 5/5/10 and 6/5/10- on these days there is a difference of 7 km between the two days. Why this would be the case is obviously not clear.

e)Of greatest concern in relation to the invoices is the start time and finish times recorded are clearly only estimates. It simply cannot be that every single trip began at exactly 3:00 p.m. and ended exactly at 3:30, 3:35, 3:45 or 3:50. A few minutes here or there could easily be lost in relation to the start time being different or the finish time being rounded off. Nonetheless, the evidence of the witnesses does support that on some occasions the defendant has taken longer to transport the children than would be otherwise be expected.

4. I note there is a little more information in relation to the children being rough with each other. I query whether this may explain some of the bruising seen on the children. See REDACTED [redacted] at page 4 and page 5.

The matters raised in points 1 and 2 have caused me considerable concern. I am concerned that these aspects may well have tipped the scales against there being a reasonable prospect of conviction. I appreciate both CEN [redacted] and CEH [redacted] have previously been proofed however this occurred prior to the decision to proceed with the present charges. I therefore think it is necessary for them both to be proofed again. This is unfortunate but unavoidable. My concerns are such that I want to give the children a chance to answer questions before I make the final decision.

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Please advise court we are, as matters stand, proceeding , but advise parents we (you and I) must proof and .

I am happy to meet the children twice if there are concerns that they will not feel comfortable talking to me on the first occasion. I am prepared to go to CB if this makes things easier.

Please also ask them whether talking to a male is going to be a problem. If it is then we may need to consider an alternative.

Depending on how long defence need to do whatever they must do we can try to do it between now and the next court date but let us see how long the adjournment is.

In the meantime can police provide the outstanding material. Has a police officer driven the route yet. I could not see a statement to that effect.

I note has seen doctors- can her parents please be asked whether she underwent a genital exam.

What extra info did provide in the proofing?

REDACTED

IAN PRESS
Managing Prosecutor