

APK11

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Vanessa,

I have read the "evidence" of the children, parents, grand-parents, teacher re: disclosures by the children.

I note no admissions by the accused.

I will proceed on the basis that s34CA applies and all the "evidence" otherwise "hearsay" of offending would be admitted for the truth of the matter and I proceed on the basis that none of the children would be called or cross-examined.

(I make it plain that I do not think either of those scenarios is likely as I have real concerns re: the "availability of some of the witnesses in line with R v Byerley, and their capacity to be called esp. to be cross-examined, as I am sure that any such application to cross-examine the children would have a high degree of likelihood with permission to be granted).

That said I proceed on the basis that the "hearsay" evidence is admissible.

The difficulty, in my view, then becomes the quality of that evidence. In my view there are simply too many inconsistencies between what the children say occur on the bus, there are non-disclosures to CPS, there are disclosures to the parents which are not consistent with what is said in the CPS interviews, and indeed to other parents and indeed to the teacher for their

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to be a RPOC.

Even the framing of appropriate charges is problematic. For instance, you suggest:

1 x USI (digital) re:  however,

1.  says to CPS he was touched inside bum with hands;
2. Pen inserted in his bum (trying to get it out)
3. Rock put in his bum (trying to get it out)

These are different acts and it is not clear to me what we should charge, given the inconsistencies. Further, he says that this - inside butt with hands, occurred 4 times. (p4 of his interview) the interviewer does not methodically go through 4 occasions, but clearly he does not describe 4 occasions to the interviewer

Further on the issue of his credit. He says no-one touched his willy - P10; however, tells mother  touched his willy and what he says to his father that  touched his willy and  played with his own willy (in front of  I assume?).

Then of course none of the other children say anything about a pen or rock - but whatever touching of butt was occurring -  was crying

was looking

was looking at .

doesn't say anything in his CPS interview about  being "touched on the butt". Says  was punched on the willy - which  says didn't happen.

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CEK [redacted] discloses for 1st time that CDF [redacted] weed and pooped on us to teacher REDAC TED [redacted] - no such disclosures to CPS or parents (and indeed no such disclosures by the other children in their CPS interviews disclosures to children).

I do not intend to go through all of the inconsistencies, non-disclosures and late disclosures in this brief which obviously go to the credit/reliability of the children and to proving this case BRD. You have mentioned them in your memo which is, of course, very helpful, and I have summarised them in my notes.

I am of the view that they are fatal to any prosecution. Having said that I take the view that something has occurred on the bus, I am simply unsure what it is.

The problem arises also where a child is largely consistent as in CED [redacted]'s description of having his hair pulled. Whilst that may be sufficient to found a charge of aggravated assault, any prosecution would be faced with the difficulty of his [other] inconsistencies. Doesn't mention hair pulling to his parents. If this is incident where his glasses are broken, he initially blames CDI [redacted] (see mother and father) and tells father that this happened when CDF [redacted] hit him in the head (which is not hair pulling). If it's a different incident he doesn't mention it to his parents.

These issues are further clouded by the very real risk that the evidence and disclosures have been

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contaminated along the way by discussions between the parents about various allegations, between parents and police - I cannot believe a "conference" was held about these matters between SAPOL and all the parents and the ongoing discussions in the classroom between the children and **REDACTED** in which the children make disclosures in front of each other, appear to give demonstrations on toys in front of each other - it is little wonder that every day brings about a fresh round of revelations.

Just this issue alone would, in my view, open the children up to a successful application to have them cross-examined.

And of course the children are not only witnesses to acts allegedly committed against themselves but also against each other.

I note your advice reL proofings. I note that **CEQ** and **CDI** were problematic in proofing and I would think ar [are] "unavailable" in the sense of their capacity to give evidence.

I note the others were able to be proofed but **CET** didn't make sense - his interview is in any case completely inconsistent with allegations others make and fanciful to say the least. I note **CEH**'s proofing, that she did not come up to proof.

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I note accused's denials re [CDI]. I note that police interviewed him on basis of what [REDACTED] told them ie they did not speak to [CDI] themselves or interview him and I note that there are difficulties with this as they put to accused [REDACTED] interpretation of what [CDI] said - which is not consistent with the "allegation" [CDI] made to his parents that his "bum" was sore

I have already noted the inconsistencies re: others and the allegations they have made and difficulties with their interviews and things they say to [REDACTED] and to their parents and issues of what individuals say happened in front of the other kids, about which the others say nothing or say something different.

I note issues with "magic toilet" - I have no idea what this is and I don't think anyone else does from what I have read on the brief.

I note no Crime Scene examination - esp re: bus and previous bus / ie: semen ?? I note no photos from accused's camera/computer which may bear out, at least, the photos side of it

I note previous bus driver (that was sacked from the route for taking photos) has not been spoken to (I note police in ROI say that it is because it's not relevant to their investigation ??? - put aside that children may be mistaken who they are talking about !!!!)

In my view there are simply too many issues in this matter for me to be able to say there

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is a RPOC. I suspect if cross-examination were permitted those issues would only get worse in that inconsistencies / new allegations would surface given the way things have fallen in this matter.

I am of the view that the prosecution cannot, as presently advised by the brief, continue and it is my view that the Information should be TNE'd and I would not recommend the laying of even the charges you have suggested.

I know this will be difficult for the parents of the children but that is my view. I am happy to partake of your meeting with them, if that is deemed appropriate and I am happy to have my decision reviewed by another manager if that is what they would wish.

Thanks for this brief and your memo and table. You have clearly put a lot of work into this matter and your work and views were of great assistance in helping me navigate through this matter.

Thanks

Dom

14/6/11