

IN THE CHILDREN'S COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Victoria Police

Applicant

v

CB

Respondent

JUDGE: Grant
WHERE HELD: Melbourne
DATE OF HEARING: 11 June 2010
DATE OF JUDGMENT: 24 June 2010
CASE MAY BE CITED AS: Victoria Police v CB
MEDIUM NEUTRAL CITATION: [2010] VChC 3

REASONS FOR JUDGMENT

Catchwords: Accused charged with intentionally cause serious injury and aggravated burglary – application by prosecution pursuant to s.356(3)(b) of *Children, Youth and Families Act 2005* to conduct a committal proceeding – consideration of whether there are exceptional circumstances that warrant the Court refusing to hear the matter summarily – ruling that there are exceptional circumstances – matter fixed for committal hearing.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Applicant	Sgt M Higginbotham	Victoria Police
For the Respondent	Mr S Moglia of Counsel	VLA

HIS HONOUR:

Background

1. CB is the accused. He is 17 years old. He was born on 9 July 1992. He has been charged with a large number of offences allegedly committed at (location removed) on 29 October 2009. They include charges of intentionally cause serious injury and aggravated burglary.

2. The allegations against the accused can be summarised as follows –

Sometime after midnight on 29/10/09, the accused forced entry to the (name removed) Hotel at (location removed). He was armed with a knife. The publican/owner (Mr M) and his wife (Mrs M) were not at the hotel at that time. Their daughter was. She was asleep in her room at the hotel with her boyfriend.

The accused entered the bar area and removed a large bottle of spirits and a cash charity tin.

At about 12.10am, Mr and Mrs M returned to the hotel and discovered the accused inside the premises. Mr M picked up a bar stool and demanded to know what the accused was doing in his hotel.

The accused ran at Mr M who struck him in the legs with the barstool. The two men engaged in a struggle and the accused pushed Mr M onto a table. The accused approached Mrs M, grabbed her by the throat and punched her to the face. Mr M grabbed the accused and held him from behind. The accused kicked Mrs M to the abdomen causing her to fall to the ground. Mrs M suffered bruising and swelling to the arms, throat and stomach. The accused then stabbed Mr M 13 times in the back and abdomen with the knife he had carried into the hotel. The accused continued to stab Mr M until Mr M stopped fighting. The accused then fled the scene carrying the cash tin and bottle of spirits. He threw these items into the bushes on the southeast corner of (names removed) Streets, (location removed).

Fingerprints of the accused were found at the crime scene and on the recovered

cash tin.

The accused was arrested on 30/10/09 and made a “no comment” interview.

Mr M suffered life-threatening injuries. He underwent emergency surgery. His spleen and a portion of his bowel were removed during the surgery. He had also suffered a punctured lung. Mr M spent five days in intensive care. Subsequently, he developed a severe bowel infection that required further emergency surgery. A significant portion of his bowel was removed and replaced with a colostomy bag. Mr M was seriously ill over the following four weeks. He suffered very serious life threatening injuries. His recovery has been slow. The injuries will impact profoundly on his future quality of life.

The Application before the Court

3. Section 356(3) of the Children Youth and Families Act 2005 (the Act) states –

If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, defensive homicide, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must hear and determine the charge summarily unless –

(a) before the hearing of any evidence the child objects; or

(b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be determined summarily –

and the Court must conduct a committal proceeding into the charge and, in the circumstances mentioned in paragraph (b), must give reasons for declining to determine the charge summarily.

Prosecution submissions

4. Sgt. Higginbotham representing the prosecution, makes application under section 356(3)(b) for the Court to conduct a committal proceeding into the charges against CB. He submits there are exceptional circumstances that warrant the Court’s refusal to hear the charges summarily. The authorities make it clear that the nature and gravity of the offending will be highly persuasive on the issue of exceptional circumstances. It is alleged

that the accused in this case broke into the victim's premises whilst armed a knife. He stole property and, upon being confronted by Mr and Mrs M, assaulted them both and then stabbed Mr M 13 times. The consequences for Mr M were life threatening and have profoundly changed his life. This is a case at the high end of seriousness for intentionally cause serious injury and aggravated burglary.

5. In addition, the accused has significant prior history in the Children's Court. In July 2007, he received a good behaviour bond for a number of offences including criminal damage. In March 2008, he was sentenced to a nine-month probation order for a number of offences including, offences of robbery, recklessly cause injury and attempted robbery. The order had special conditions that required participation in counselling and participation in a day program. In August 2009, the accused was placed on two concurrent youth supervision orders for a large number of offences including robbery, burglary, assaults and escape from police custody. One of the orders had special conditions including a condition to participate in drug and alcohol counselling. The alleged current offending, if proved, would be in breach of the youth supervision orders.

6. Given the seriousness of the offending and the matters personal to the accused, it is submitted that the Court would not be able to exercise appropriate sentencing powers should the accused be found guilty of the offending.

Defence submissions

7. The defence opposes the application. The authorities make it clear that the Children's Court should only surrender its jurisdiction with "great reluctance". In the case of *DL* (see paragraph 10), Justice Vincent said –

“...that for very good reasons, our society has adopted a very different approach to both the ascertainment of and response to criminality on the part of young persons to that which is regarded as appropriate where adults are involved. It is only where very special, unusual, or exceptional, circumstances exist of a kind which render unsuitable the determination of a case in the jurisdiction specifically established with this difference in mind, that the matter should be removed from that jurisdiction to the adult courts. “

8. The Children's Court regularly deals with serious assault matters. If the accused were

dealt with summarily and found guilty, the Court would be able to impose an appropriate penalty. The offence of intentionally cause serious injury does not stand-alone. There are a number of related charges and, were the accused to be found guilty of two or more of the charges, the Court would have the power to impose a sentence of up to three years detention. That is an appropriate upper limit for this offending. The accused is currently undergoing his first sentence at YJC for offences that occurred prior to 29 October 2009 but heard after that date. The fact he is now undergoing his first sentence is an important matter and the Court should still maintain a focus on his rehabilitation. Given these matters, the court should not find there are any exceptional circumstances.

Ruling

9. I agree with the submissions made by the prosecution.

10. There are three main authorities on the issue of exceptional circumstances –

- D (a Child) v White (1988) VR 87 (a decision of Nathan J)
- A Child v A Magistrate of the Children's Court & Ors (unreported) per Cummins J, 24/2/1992.
- DL. (A Minor by his Litigation Guardian) and a Magistrate of the Children's Court Duncan Reynolds and a Magistrate of the Children's Court Susan Adele Blashki and Detective Constable John Cordell Barbour (unreported) per Vincent J, 9/8/1994

11. The authorities make it clear that the following propositions will be central in determining whether there are exceptional circumstances that justify a refusal to exercise summary jurisdiction –

- The Children's Court should only relinquish its jurisdiction reluctantly.
- Considerations to do with the nature, significance and gravity of the alleged offence(s) will be critical in determining the issue but not necessarily conclusive. Circumstances personal to the offender must also be considered.
- Matters concerning the proper administration of justice are important. However, "ordinarily questions of consideration of joint trials with adults should not be a consideration justifying the removal of a matter from the Children's Court to an adult court and ordinarily would not constitute an exceptional circumstance". (per Cummins J).

12. The case against the accused involves allegations of extremely serious offending. It is said that the accused was armed with a knife when he broke into the premises. He entered the premises with the intent to steal property and, when he did so, was reckless as to whether someone may have been present in the building. Upon being challenged by Mr and Mrs M, he assaulted Mrs M. He then stabbed Mr M 13 times in the back and abdomen. As a result, Mr M suffered life threatening, and life changing, injuries.

13. The accused was over 17 years old at the time of the alleged offending and has prior findings of guilt in the Children's Court for offences of violence. If proved, the offending would be in breach of two youth supervision orders and demonstrate an alarming escalation in violent offending behaviour.

14. The circumstances, severity and viciousness of the knife attack, the significant injuries suffered by the victim, the age of the accused at the time and his prior criminal history, all combine to establish exceptional circumstances within the meaning of section 356(3) of the Act. It is these matters that have persuaded me that the Children's Court may not have the appropriate sentencing powers to deal with the accused if he were found guilty after contest. This is a case where the circumstances of the alleged offending and the prior history of the accused, would justify the imposition of a significant sentence. This is a grave example of the offences of intentionally cause serious injury and aggravated burglary. The sentencing court needs to be able to consider the fullest possible range of sentencing options, not be limited to a maximum period of three years detention in a youth justice centre.

15. The matter will be fixed for committal hearing in this court.

Judge Paul Grant

President

Children's Court of Victoria.

24 June 2010