

IN THE CHILDREN'S COURT OF VICTORIA

AT MELBOURNE

CRIMINAL DIVISION

Court References: H10195506
H10195641
H10195776
H10195765
H10195958
H10445398

Director of Public Prosecutions

Applicant

v

D, E, A, B and P (Child Respondents)

Respondents

JUDGE: HER HONOUR JUDGE CHAMBERS

DATE OF HEARING: 7 MARCH, 2017

DATE OF JUDGEMENT: 14 MARCH, 2017

CASE MAY BE CITED AS: DPP v A & Ors

MEDIUM NEUTRAL CITATION: [2017] VChC 1

REASONS FOR DECISION

Catchwords: Accused respondents charged with armed robbery and other offences on jewellery store – application by DPP pursuant to s.356(3)(b) of the *Children, Youth and Families Act (Vic) 2005* to uplift matter – consideration of whether there are exceptional circumstances that warrant the Court refusing to hear the matters summarily – Application granted in respect of one accused with the remaining applications refused.

APPEARANCES:

Counsel

Solicitors

For the Applicant:

Mr J McWilliams

John Cain, Solicitor for OPP

For the Respondents:

Ms S Clancy (D)
Mr McGregor (E)
Ms Cannon (A)
Ms Wong (B)
Ms C Woodward (P)

Her Honour:

1. Each of the accused, with the exception of P, is charged with offences arising from an armed robbery committed on a [location removed] jewellery store at 12.40pm on 14 January, 2017. Jewellery valued at approximately \$100,000.00 was stolen during the course of that armed robbery. One accused, A, is charged with offences relating to the armed robbery on the [location removed] store and with offences arising from a separate armed robbery on a [location removed] jewellery store at 1.05pm on 12 January, 2017 where jewellery valued at approximately \$526,000.00 was stolen. P is charged with offences arising from the armed robbery at the [location removed] store only.
2. The Director of Public Prosecutions applies pursuant to s356(3)(b) of the *Children, Youth and Families Act (Vic) 2005* ("the Act") for the charges arising from the incidents on 12 January and 14 January, 2017 to proceed by way of committal hearing. The application to uplift the charges is opposed by each of the respondents.
3. The issue to be determined in respect of each of the respondents is whether the charges are unsuitable by reason of exceptional circumstances to be determined summarily in the Children's Court.

CIRCUMSTANCES OF THE ALLEGED OFFENDING

4. The allegations against the accused can be briefly summarised.

Armed Robbery: [location removed] jewellery store – 12 January, 2017

5. On 12 January, 2017 the prosecution allege that five co-accused, including A, drove to the [location removed] jewellery store at 1.05pm in a blue Holden Commodore with no registration plates attached. Armed with a sledgehammer and axes, the co-accused entered the store by smashing through the front doors and then proceeded to smash the glass cabinets in the store, stealing a large quantity of jewellery and placing it into gym bags, before running out of the store. Each of the co-accused had their faces covered with cloth to prevent them from being identified.
6. At the time of the armed robbery, there were four staff members in the store, with one staff member serving two customers, aged in their 70s. When the offenders entered the store, the staff and customers ran into the back room and barricaded themselves in the 'strong room', moving a fridge over the door fearing they would be assaulted.
7. Following the armed robbery, witnesses saw four co-accused get into another car parked nearby: a black Lexus sedan, registration [number removed], that the prosecution allege was driven by P. That vehicle drove south on the Monash Freeway, with the blue Holden Commodore driven by another co-accused towards Collingwood, and then to Caroline

Springs. On 12 January, 2017 police located and seized the black Lexus sedan in Dandenong South. The Holden Commodore was also seized following the arrest of an adult co-accused. Fingerprints for A, P and other co-accused were located in the Lexus sedan.

8. When interviewed by police, A denied any involvement in the armed robbery. P made partial “no comment” interview and denied any involvement in the armed robbery. Another co-accused AS, made full admissions and identified A as one of the co-accused.
9. The stolen jewellery has not been recovered.

Armed Robbery: [location removed] jewellery store – 14 January, 2017

10. The prosecution allege that in the morning of 14 January, 2017 the co-accused, A, E, D, AS and B met at a hotel in [location removed] and while there, formulated a plan to commit an armed robbery on the [location removed] jewellery store.
11. At 12.40pm that day, it is alleged B drove the co-accused to the store in a stolen black Honda civic, registration number [number removed]. At the address, the co-accused are alleged to have disguised themselves and then E and AS armed themselves with hammers and A with a firearm.
12. The prosecution allege A entered the store first with his face covered, holding a semi-automatic pistol. He is alleged to have walked up to the store manager at the back of store, raised the firearm, pointing it directly at him and yelled “I’ll shoot you! I’ll shoot you!” A female employee heard the commotion and went to investigate. She was assisted to the rear of the store by the store manager, who said he feared for her safety.
13. D is alleged to have entered the store next, unarmed. He was followed by AS and E, both allegedly armed with hammers. The prosecution allege they used the hammers to smash the standing glass cabinets and display tables, collect up the displayed jewellery and place it into bags. The store manager approached A urging him and his co-accused to leave the store. A allegedly responded by pistol whipping the manager to the side of his face with the gun. The force of the strike caused the manager to fall to the ground, and left him bleeding to the back of the ear. A is then alleged to have stolen more jewellery from the standing display cabinets.
14. The offending was captured on the store CCTV. Within two minutes, the four co-accused exited the store and ran to the stolen Honda civic where it is alleged BY was waiting. Another vehicle, a grey Holden Commodore was also waiting and the cars were observed to drive off at speed with the co-accused. The police commenced a pursuit of the Honda civic on [location removed]. The car, allegedly driven by B, was observed to drive onto the

wrong side of [location removed], through a red light and then onto [location removed], where it was observed being driven at a speed of up to 130km/h (60 km/h zone). The police pursuit was then terminated due to safety concerns.

15. The stolen Honda civic was located by the police at 1pm, in which the police located clothing allegedly worn by A during the armed robbery, the hammers and gloves. A myki card with the name B was found in one of the jackets worn by another co-accused during the armed robbery.
16. A co-accused, AS, subsequently made a statement in which he identified A as the having had the pistol and the other co-accused allegedly involved in the [location removed] armed robbery.

LEGISLATION

17. Section 356(3) of the Act provides that if a child is charged with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, an offence against s.197A of the Crimes Act (arson causing death) or an offence against s318 of the Crimes Act (culpable driving causing death), the Children's Court must hear and determine the charge summarily unless either:
 - (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.
18. A charge that is not heard summarily by reason of s.356(3)(b) must proceed to committal and the Court must give reasons for declining to determine the charge summarily.

EXCEPTIONAL CIRCUMSTANCES UNDER S356 OF THE ACT

19. The meaning of 'exceptional circumstances' has been considered in the context of s.356 of the Act in a number of matters in the Supreme Court and the Court of Appeal, most notably in *D (a child) v White*¹, *A child v A Magistrate of the Children's Court and Ors*² and *DL (a minor by his litigation guardian) v A Magistrate of the Children's Court*³.
20. In the recent decision of *K v Children's Court of Victoria and Anor*⁴, Justice T Forrest extracted the relevant principles from these authorities, summarising them as follows at paragraph [26]:

¹ [1988] VR87

² Unreported, Supreme Court of Victoria, Cummins J, 24 February 1992

³ Unreported, Supreme Court of Victoria, Vincent J, 9 August 1994

⁴ [2015] VSC645

- (a) the Children’s Court should relinquish its embracive jurisdiction only with great reluctance;
- (b) the gravity of the conduct and the role ascribed to the accused are important matters but are not the only factors to be considered;
- (c) other factors for consideration may include the maturity of the offender, the degree of planning or its complexity, and the antecedents of the alleged offender or features particular to him or her;
- (d) the most important criterion is the overall administration of justice – that is, justice as it affects the community as well as the individual;
- (e) the nature of the evidence to be called may render a matter unsuitable for summary determination – evidence about political motivation, or forensic or scientific evidence, may fall within this class;
- (f) “exceptional” in this statutory context means more than special, it means very unusual.

21. Consistent with the authorities, Justice Forrest stated at paragraph [27] that a consideration of ‘exceptional circumstances’ must be determined on the facts of each case.

22. Moreover, when considering whether exceptional circumstances exist, the circumstances personal to the accused are also relevant, including:

- (a) the accused’s age, experience, maturity and the characteristics of his or her intelligence and personality;
- (b) his or her antecedents or features particular to him or her; and
- (c) the accused’s age relative to the categorisation of a ‘child’ as defined by the Act⁵.

23. As to the context in which exceptional circumstances must be considered, in the decision of *DL*, Justice Vincent observed as follows⁶:

“It is sufficient, I think, to state 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

⁵ *A Child v A Magistrate of the Children’s Court*, Supreme Court of Victoria, unreported 24/2/1992 at page 11-12

⁶ At page 4

involved. It is only where very special, unusual, or exceptional circumstances exist of a kind which rendered 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.”

THE CONTENTIONS OF THE PARTIES IN RELATION TO THE APPLICATION

The Applicant's submissions

24. The prosecution, in its written submissions and expanded upon in oral argument, relies upon a number of factors in order to establish that the charges arising from both incidents are unsuitable to be determined summarily. The prosecution submits that a combination of factors render the case exceptional:

- The nature and gravity of the alleged offences, reflected in the maximum penalties set by Parliament, including 25 years' imprisonment for armed robbery;
- That these offences are particularly grave; violent, well-organised and sophisticated armed robberies, aggravated in the case of the [location removed] armed robbery by the presence of a firearm placing that offence in the category of “high end offending” of that type. That the armed robberies were both marked by frenetic offending accompanied by high levels of violence, both actual and threatened, gratuitous damage to property and the theft of high-value jewellery. Both armed robberies were committed in company and in a manner designed to caused terror, both to staff and in the case of the [location removed] store, the customers present at the time of the offending;
- That the sentencing power of the Children's Court, being limited to an aggregate term of three years in youth detention, would fail to reflect the objective gravity of the offending and would be wholly inadequate in light of the criminality involved. Further, that this is a case where the sentencing court would need to consider the fullest possible range of sentencing options, to give effect to the sentencing considerations of community denunciation of the conduct, just punishment, community protection and specific deterrence even when balanced against the need to maximise the prospects of rehabilitation for young offenders.

The Respondents' submissions

25. In summarising the submissions made on behalf of each of the respondents, a number of common themes emerge. Each emphasised that the Children's Court, as a specialist Court,

should only surrender its jurisdiction with “great reluctance”. Moreover, that the threshold test of ‘exceptional circumstances’ is a high one.

26. More particularly, reference was made to the sentencing considerations applicable under s362(1) of the Act, and the common law principles for sentencing young offenders, most recently discussed by the Court of Appeal in *Webster (a Pseudonym) v the Queen* [2016] VSCA 66, where the majority stated at [7]:

“What is so distinctive, and so important, about juvenile justice is that it requires a radically different balancing of the purposes of punishment. The punitive or retributive considerations which are appropriately applied to adults must be largely set to one side.

There are three reasons for this. First, the young offender’s immaturity is seen as markedly reducing his/her moral culpability; secondly, custody can be particularly criminogenic for a young person whose brain is still developing; and, thirdly, the very process of development and maturation which is underway is seen as providing a unique opportunity for rehabilitation and – hence – for minimising the risk of re-offending.”

27. In submitting that three years’ youth detention gives the Children’s Court adequate jurisdiction to sentence each of the offenders, I was referred to a table of sentencing outcomes in the County Court for the offence of armed robbery, and in particular cases where sentences of less than two years youth detention were imposed notwithstanding the application (in that jurisdiction) of the principles of general deterrence and in cases said to involve similar aggravating features.

28. Specific reliance was placed on the decision of the Court of Appeal in *Director of Public Prosecutions v Ghazi* [2015] VSCA 188 where the Director of Public Prosecutions appealed against the sentence imposed on a 20 year old sentenced in the County Court to three years’ detention in a youth justice centre on five charges of armed robbery, one charge of criminal damage, two charges of attempted armed robbery, one charge of obtaining property by deception and a summary offence of possession of a controlled weapon without excuse.

29. The offender was 17 years old at the time of the first two armed robberies and 18 years of age at the time of the commission of the remaining charges. The offending was described by the Court of Appeal in the following terms at [15], said to be analogous to the nature and gravity of the offending as characterised by the prosecution in this case:

“The gaming venue armed robberies (charges 1, 2 and 3) were well-planned and professionally executed. They ought to be characterised as serious ‘high-end’ robberies as opposed to street robberies. The offenders conducted reconnaissance of the premises and

wore gloves and balaclavas to conceal their identities. Multiple weapons, including firearms were used, with the respondent being personally armed with a firearm. Substantial quantities of money were stolen, especially in the incident the subject of charge 1. Many of the offences also involved acts of violence and threatened violence. There was little empathy shown for the victims. The offending also took place over a number of months, permitting the respondent time to reconsider and desist from such activity.”

30. The Court of Appeal, in unanimously dismissing the appeal, rejected the Director’s submission that the sentence imposed was manifestly inadequate, finding at [50]:

“Although the objective gravity of the respondent’s offending was of a high order, so were the mitigating factors competing for consideration. Undoubtedly the sentence imposed on the respondent was extremely lenient but the disposition which His Honour chose was designed to benefit both the respondent and the community. His Honour sought to maximise the likely prospect that the respondent, if kept out of an adult prison, could become a responsible member of the community. Having regard to the breadth of the discretion that must be reposed in the sentencing judge in the case of youthful offenders, the Director has not established that the sentence imposed was manifestly beyond the sound exercise of the sentencing discretion.”

31. Reference was also made in the respondents’ submissions to the decision of Justice Beale in *C (by his litigation guardian) v CCV and others* [2015] VSC 40 where, in overturning a decision of the Children’s Court to uplift a rape charge, also carrying a maximum penalty of 25 years’ imprisonment, His Honour stated, at paragraph [2]:

“Rape is a most serious offence but Parliament has decided that rape charges against children should ordinarily be heard in the Children’s Court. The two rape charges brought against the plaintiff are not at the upper end of the spectrum of rape offences: they are mid-range instances of that offence. Further, the plaintiff’s criminal history is limited. Most importantly, he has no priors for sexual offences and has never been sentenced to detention. Having regard primarily to these considerations and the principle that the Children’s Court should only surrender its jurisdiction with “great reluctance”, Her Honour’s decision to refuse a summary hearing was a jurisdictional error”.

32. Similarly, it is submitted that despite imposing a maximum penalty of 25 years, Parliament has not removed the offence of armed robbery from the jurisdiction of the Children’s Court. To the contrary, it is contended, the Children’s Court not uncommonly deals with offences of armed robbery.

33. The principle contention of the respondents is that the Children's Court has adequate sentencing power with which to deal with the charges, noting that the Children's Court can impose a sentence of two years' detention in relation to a single charge or three years' detention in the case of an aggregate sentence⁷. In making this submission, the respondents also placed reliance on *Sentencing Trends for Armed Robbery in the Higher Courts of Victoria 2010-11 to 2014-15*, published by the Sentencing Advisory Council: Snapshot 186, where the common length of imprisonment for the offence of armed robbery is reported to be from 2 to less than 3 years.

CONSIDERATION

34. These are two serious examples of armed robbery that have been correctly characterised by the prosecution as high-end instances of that kind of offence. Both were planned and coordinated, executed in broad daylight when staff and potentially customers would be present, attended by threatened and actual violence, conducted in company and with the use of weapons including, in the case of the [location removed] armed robbery, a firearm. In the manner in which they occurred, the armed robberies terrified and terrorised the victims. In respect of the offending on 14 January, 2017 the manner in which the co-accused fled the scene in the waiting vehicle was characterised by dangerous driving placing members of the public at risk. There was a modest degree of sophistication associated with the offending, including the use of gloves, clothing and cloth masks to avoid identification.
35. In both matters, the co-accused are said to be engaged in a joint criminal enterprise.
36. It is against that background that I turn to consider the uplift application in respect of each of the respondents.

A

37. A is charged in relation to both the [locations removed] store armed robberies with the following offences:
- Armed Robbery – two charges;
 - Robbery – two charges;
 - Possess an unregistered handgun;
 - Assault with a weapon;
 - Intentionally causing injury;
 - Unlawful assault – two charges;
 - Theft – two charges;
 - Make threats to kill;

⁷ Children, Youth and Families Act 2005, s. 413

- Common law assault – two charges;
- Use of a dangerous article;
- Criminal damage.

38. A is 16 years and 6 months old. He was 16 years of age at the time of the alleged offending. His prior criminal history dates back to January, 2015 when he was 14 years old. On 19 January, 2015 he was sentenced, without conviction to a six month probation order for offences which included seven charges of burglary, two charges of attempted burglary, six charges of theft, and one charge of robbery. On 10 August, 2015 he was sentenced, without conviction to a 12 month Youth Supervision Order for offences including four charges of burglary, six charges of theft and other dishonesty offences, committed in breach of his probation order. On 2 November, 2015 he was sentenced, without conviction, to a further three month Youth Supervision Order, on charges of entering a building with intent to steal and theft. On 15 August, 2016 he was again placed on a probation order, without conviction, for offences including one charge of burglary.
39. On 2 November, 2016 he was sentenced to a further 12 month Youth Supervision Order, without conviction, on five charges of burglary, a charge of attempted burglary, two charges of theft and two charges of theft of a motor vehicle. A was subject to this 12 month Youth Supervision Order at the time of the alleged offending on 12 and 14 January, 2017. Subsequent to the alleged offending, A was sentenced to a further 12 month Youth Supervision Order on 19 January, 2017 for offences including burglary, attempted aggravated burglary, theft of a motor vehicle and theft.
40. A is the youngest male of five siblings of his parents [names deleted]. His family arrived in Australia from Sudan when he was four years of age. A previous psychological report prepared by Chris Drake, Children’s Court Clinic dated 1 August, 2015 outlines his family and personal history. At that time, A and his three younger sisters were living with their parents in [location removed] and attending school. His oldest sister attended university, but his older brother had become involved in criminal offending and served time in prison.
41. In his assessment report, Mr Drake found no evidence of developmental or educational delay. He was unable to verify the reported diagnosis of ADHD. Mr Drake expressed the opinion that A’s presentation was *“consistent with someone who feels deprived in comparison to others, who he perceives as having more opportunity than he, as well as feeling significantly socially outcast as a result of his cultural background. Theft, for him, provides a means to avoid this consequence and achieve the opposite, that is, social acceptance and material possessions, which he equated to personal importance and increasing his value in the eyes of others.”*

42. Through his Counsel, the Court was advised that the issue of A's identity is not disputed in respect of the [location removed] armed robbery, but that the charges relating to the [location removed] incident remain in dispute.
43. Ms Cannon submits that the Children's Court has adequate sentencing power when proper regard is given to A's age, the fact he has not previously served a sentence of detention and the primacy to be given to the rehabilitation of young offenders in sentencing. Specific reliance was placed on sentences of less than 2 years imposed in the County Court for the offence of armed robbery in cases of youthful offenders and in particular, to the case of *Ghazi*. Further, parity is said to be a relevant consideration where another co-accused, AS, is also charged with offences arising from both armed robberies and in respect of whom the uplift application was not pursued by the prosecution.
44. There are features of the matters raised that differ from A's current situation, making any meaningful comparison difficult. In the case of AS, I am informed that he entered an early plea to both matters, having made full admissions in his initial interview with police. He has also assisted in the investigation by providing a statement relevant to both incidents. His frank admissions, in the absence of other evidence identifying him, is a very significant mitigating feature. In the case of *Ghazi*, the sentence was imposed after the accused entered an early plea, in the absence of prior convictions or subsequent offending, leading the sentencing judge to conclude that, despite his immaturity and limited intellect, he had good prospects of rehabilitation. Whilst these matters are not determinative of an uplift application, they are relevant to the issue of whether the Children's Court has adequate sentencing range.
45. Whilst I accept there is force in Ms Cannon's submission that significant weight should attach to the accused's age, there are other matters relevant to this uplift application. These include the nature and gravity of the offending, the role alleged against the accused in respect of the [location removed] armed robbery, including possession of a firearm and threats to kill, the prior findings of the Children's Court for relevant offences and notably, the fact both incidents are said to occur whilst A was under a 12 month Youth Supervision Order.
46. I am satisfied that exceptional circumstances exist within the meaning of s356(3) of the Act and that the charges should be fixed for committal hearing in respect of A. In so deciding, I consider the sentencing court needs to be able to consider the fullest possible range of sentencing options available, not limited to two years' detention on the single charge of armed robbery, in determining an appropriate sentence. Although an aggregate term of three years' detention could be imposed by the Children's Court for all offences, the Court is nonetheless restricted to an individual term of two years for the specific charge of armed

robbery where the accused was in possession of a firearm. Given the objective gravity of the two incidents of armed robbery, A's prior criminal history and the fact the alleged offences were committed within two days of each other whilst A was under a Youth Supervision Order of the Court, I do not consider such a limitation on sentencing powers, including the power to make appropriate orders for cumulation (if necessary) to be appropriate.

D & E

47. D is currently 17 years and 10 months old. This is the first time he has been charged with a criminal offence. He is the eldest son of his parents [names deleted]. He is said to have a close relationship with his older sister, W (20 years of age) and his younger brother, and co-accused, E (16 years). He is also close to his younger siblings, aged 11, 6 and 2 years. D came to Australia from South Sudan in 2004, when he was 5 years old. In 2007 he and his family moved and settled in [location removed], where he attended high school until December, 2016. The family moved to Melbourne, to avoid the brothers associating with negative peers, in late December, 2016. The alleged offending at the [location removed] store occurred three weeks later.
48. D is presently on supervised bail and attending Year 12 at [name removed] Vocational College.
49. No further offending is alleged against him.
50. Moreover, when interviewed by police, D made full admissions and assisted in the investigation of the offending by the making of a statement. Whilst the matter is yet to resolve to a plea on agreed charges, D does not dispute his involvement in the armed robbery.
51. E is 16 years of age and also has no prior criminal history. He continues on supervised bail and is attending Year 11 at [name removed] Secondary school. As with D, when interviewed by police, E made full admissions and a statement to assist in the investigation of the incident. Again, E does not dispute the fact of his involvement in the armed robbery although the matter is yet to resolve to a plea on agreed charges.
52. Having regard to these significant mitigating circumstances, notwithstanding the objective gravity of the [location removed] armed robbery, I am not satisfied that exceptional circumstances exist to make the charges against D and E unsuitable to be heard and determined summarily. In reaching this conclusion, I have had regard to their absence of priors, the admissions made when first interviewed by police and their assistance in the investigation. I have also had regard to their positive participation in the bail support

program and the importance attached to the rehabilitation of young offenders. I have also taken into account the position of the prosecution that, although the charges are brought on the basis each of the accused was engaged in a joint criminal enterprise, there is no reason why the administration of justice would be prejudiced if some, but not all matters proceed in this jurisdiction.

B

53. B is aged 16 years and 3 months of age. He was 16 years of age when these offences were allegedly committed. He has a minor criminal history. On 25 October, 2016 B was discharged in respect of offences of theft of motor vehicle, unlicensed driving, commit an offence whilst on bail and resist an emergency worker on duty, having completed a diversionary program. He is presently remanded on these charges and in respect of other outstanding matters but these other matters do not form part of the uplift application.
54. B is the youngest and only son of a family of five children. He lives with his mother, [name deleted] and his 19 year old twin sisters in [location removed]. B and his family were referred to Foundation House (the Victorian Foundation for Survivors of Torture) when they arrived in Australia from South Sudan in 2006. According to the report of Foundation House dated 1 August, 2016 the family were homeless for the first six months, moving from distant relatives to hotels in that period. In May 2016 Foundation House received a referral for B from [name removed] College due to school absences. B then engaged in counselling with the Counsellor Advocate at Foundation House prior to being remanded.
55. The prosecution submits that at 16 years, B is towards the upper end of the age jurisdiction of the Children's Court. However, he is also some two years short of the age limit imposed on the jurisdiction of the Children's Court under s3 of the Act. This is of significance in my consideration of this application. Although the charges are made on the basis that he, with the co-accused, engaged in a joint criminal enterprise, on the prosecution case he did not enter the premises. The prosecution case is that he drove the vehicle that fled the scene, with the co-accused, engaging in dangerous driving to avoid a police pursuit. The charges, whilst clearly serious, are not uncommonly dealt with in this jurisdiction and, having regard to B's age and limited priors, I am not satisfied exceptional circumstances exist making these charges unsuitable to be dealt with summarily. Significantly, I consider the Children's Court has adequate sentencing powers to deal with the charges if found proved against B.

P

56. As with B, P's involvement in the armed robbery relates to driving the vehicle that fled the [location removed] store following the armed robbery, including a charge of failing to stop

when directed by police. It is not alleged by the prosecution that he entered the store although the charges are, similarly, put on the basis he was participating in a joint criminal enterprise with the co-accused. The gravity of the offending also relates to the value of the property stolen which is significant.

57. P, aged 17 years, has limited priors. On 13 April 2016 he was placed on a good behaviour bond, without conviction, for charges of shop theft, criminal damage and unlicensed driving. The charges were dismissed due to compliance with the bond on 10 January, 2017, two days prior to the alleged offence. He has no other prior convictions.
58. Since being charged, P has been bailed and is due to commence a pre-apprenticeship in April, 2017. No other charges are pending.
59. Whilst I accept that P is at the upper end of the age limit for the jurisdiction of the Children's Court, I am not satisfied exceptional circumstances exist making the charges unsuitable to be determined summarily notwithstanding the significant value of the property allegedly stolen during the [location removed] armed robbery. Significantly, I consider the Children's Court has adequate sentencing powers to deal with the charges if found proved against P.

Orders

60. The application for uplift pursuant to s 356 (3) of the Act is granted in respect of A and his charges listed for committal hearing in this Court. The remaining applications for uplift of the charges against each of the co-accused are refused.

Judge A Chambers
President
Children's Court of Victoria