Manslaughter trial of 11-year-old continues in Australian Supreme Court

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Prosecution evidence in the trial of an 11-year-old boy on manslaughter charges over the drowning death of Corey Davis was completed last Friday in the New South Wales Supreme Court. The child is the youngest person to face the Supreme Court and the youngest ever to be charged with manslaughter. The defence will present its case this week.

The prosecutor, Greg Smith QC, claimed that the young boy knew what he was doing and understood the consequences of his actions when he pushed Corey Davis into the Georges River at Macquarie Fields on March 2, 1998. Only 10-years-old at the time of the incident, he was supposedly capable of "forming criminal intent" and should therefore be found guilty of manslaughter, a charge that carries a maximum sentence of 25 years jail.

The prosecution case relied heavily on evidence from the police and the unsworn testimony of three young children. It attempted to present the young boy as callous, evasive and calculating.

One of the first witnesses called was an eight-year-old boy, who was with Corey Davis and the accused at the river in Macquarie Fields on March 2. Codenamed BW2, the little boy was questioned on November 18 via closed circuit television. He was six-years-old when Davis died. He told the court that the accused picked up Corey Davis who wriggled, kicked and called out that he could not swim before he was dropped in the river.

At the previous committal hearing, Senior Children's Court Magistrate Stephen Scarlett made a number of pointed remarks about the unreliability of such young witnesses. This assessment was confirmed in last week's proceedings.

BW2 had little comprehension of the gravity of the trial, or of the events that occurred last year. His evidence took the form of short, often one or two word answers, with questioning regularly interrupted because the child would lose concentration, or interest, or become irritated by the proceedings. He squirmed in his chair, fidgeted, leant back and forth in front of the video microphone and even poked out his tongue at the prosecutor.

The following day, BW2 flatly contradicted himself. Under questioning by defence barrister, Peter Zahra QC, BW2 first said that Corey called out that he could not swim, and then said he did not. Zahra asked the little boy whether he realised that he had not said anything about Davis shouting that he could not swim in a previous police interview. BW2 said yes.

After a break from questioning, Zahra asked the eight-year-old whether anyone had spoken to him about evidence he gave at the accused boy's committal hearing in January this year. BW2 said, "I don't know" and then, when asked to think about it for a moment, said no.

Later that day, an 11-year old girl, codenamed GW1, was called to give evidence but broke down in tears within a few minutes when asked to recall the incident. Unable to resume her testimony, the court adjourned for the day.

Smith then questioned three teachers of the young accused. The teachers' evidence provided a picture of a socially-deprived young boy with poor social skills and great difficulty understanding the implications of anything he did. The child, like many others in the area, required special attention that the short-staffed and under-resourced schools could not provide.

A teacher with 20 years' experience said the young boy was two years behind in all subjects and had problems relating to others or concentrating on any task. She described him as a "social isolate, happy to be alone, not a child other children went out of their way to befriend" and someone who “did not understand the consequences of his actions".

"He could get himself into trouble and not know how to get out of it and had no idea what would happen if he did certain things,” she explained.

Another teacher taught Corey Davis as well. She described him as a child suffering similar problems to those of the boy accused of his death. His intellectual ability was at kindergarten level. She said he tended to play with younger children and that his play activity was not very sophisticated but "parallel play”. He played the same thing with other children beside him, but not with them," she said. Davis was involved in a special social skills class at the school.

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Another witness, Dr Robert Wotton, a child psychiatrist, told the court that he had interviewed the young accused and his mother in October and early November this year. He found the boy withdrawn and reluctant to speak. He said the young boy's mother had reported serious behavioural changes since Davis's death, the committal hearing and media publicity. The accused boy had been called a murderer and threatened by adults and children in the local community, suffered from nightmares and was afraid to go to sleep. He would not venture outside the house.

Police officers called by Smith reported that the young boy was questioned at his home a day after Davis drowned. Their evidence illustrated a cold determination to find a scapegoat. It raises serious questions about police methods.

Senior Constable Stephen French revealed that he and another officer arrived at the boy's house on March 3, 1998 and began questioning him in the presence of his mother, without telling the boy his legal rights. The police, who were in plain clothes and carried no visible identification, did not tell the child who they were. Within minutes of asking whether the child had seen Corey Davis, the officers accused him of "fibbing". They did not inform him that Corey Davis had drowned.

The discussion was not taped and no official record was made of the interview for several weeks. When a report was finally written by French, it contained a reference to the accused's mother having called him by the name “Corey”. This mistake was repeated in another report written by Constable Stephen Foster, the officer who had accompanied French to the house. He told the court that he had made his report by directly copying French's document word for word.

Police said that the young boy denied having seen Davis and then admitted to pushing him into the river. Prosecutor Greg Smith QC claimed that his actions proved that the boy had lied to police and was therefore conscious of the consequences of pushing Davis into the river.

French gave evidence that another child who was supposed to appear as a witness on Friday could not be located. A subpoena had been served on his mother in September instructing her to bring her son to court. The father had apparently taken off with the child during the previous week. The child had been traumatised by the committal hearing, had been having nightmares and his family disagreed with involving him any further. He suffers from attention deficit disorder and attends a special school.

The court was told that the police had obtained detailed information on phone calls made via the family's mobile telephone from the telecommunications company, and were attempting to use this private information to locate the father and compel him to the bring his child to the court.

Unable to question the child in court, the prosecution played a video-taped police interview with the eight-year-old, recorded in March 1998. The child got the accused's name wrong and claimed that Davis had stood on a car body in the river. No such car body existed. At the commital hearing in May, the child began making strange sounds and started crawling under the table during questioning. The Childrens Court Magistrate concluded that his evidence was not reliable.

The prosecution's case was a travesty—the most serious attack on the democratic and legal rights of children in recent Australian history.

Two basic facts emerged from last week's proceedings. Firstly, the young boy charged with manslaughter was utterly incapable of comprehending the consequences of pushing Corey Davis into the river. Secondly, the police, the government and the media are determined to do whatever they can to secure a guilty verdict. Any objective examination of the evidence reveals that Davis's death was a product of the impoverished conditions in which he lived. The two young children were playing unsupervised near a dangerous river because there was no affordable childcare, facilities or play activities for children in the area. The tragedy that resulted is being cynically used as an opportunity to create a new legal precedent, in which children can be convicted for adult crimes.

Another noteworthy feature of the trial to date has been its coverage—or rather, lack of it—by the mass media. In contrast to the lurid media headlines during the Children's Court committal hearing in May, the media, apart from one or two articles reporting the trial opening, has been virtually silent. News editors, and those who direct them, have adopted a softly, softly approach, for fear of provoking a public backlash and calls for the case to be dropped.

But perhaps the most revealing aspect of the Supreme Court trial is the utter silence of the liberal left and other so-called social progressives. The NSW Council of Civil Liberties has not issued a single statement or press release, nor has there been one from the child welfare agencies, civil rights lawyers and academics who claim to defend children's rights. Their refusal to take a public stand against this monstrous case has been a crucial factor in allowing it to proceed.

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