

Australia: New South Wales Supreme Court begins manslaughter trial of 11-year-old child

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In the same week that a US court in Michigan found a 13-year old boy, Nathaniel Abraham, guilty of second-degree murder, halfway round the globe the judicial system in Australia began trying an 11-year-old child on manslaughter charges. The child, who is standing trial in the NSW Supreme Court, was charged following the drowning death of six-year-old Corey Davis on March 2, 1998.

The little boy, who cannot be named, is the youngest person to face the Supreme Court, the highest court in the state, and the youngest-ever in Australia to be charged with manslaughter. The offence, an adult crime, carries a maximum sentence of 25 years jail.

The Department of Public Prosecutions, which is bringing the charges, alleges that the young boy was responsible for the "felonious slaying" of Davis, who drowned in the Georges River at Macquarie Fields, an outer-Sydney working class suburb. The prosecution claims that the child dropped Davis into the river, thus causing his death.

Last May Stephen Scarlett, the state's Senior Childrens Court Magistrate, dismissed manslaughter charges against the boy, not because he disagreed with the prosecution's allegations, but because he believed that a Supreme Court jury would be unlikely to convict an 11-year-old child.

A week later in an extraordinary ruling, the Childrens Court decision was overturned by Nicholas Cowdery, NSW's Director of Public Prosecutions. Cowdery's ruling came after Jeff Shaw, the state Labor government's Attorney General, publicly declared that the DPP had the power to reverse the magistrate's decision.

Shaw's statement was designed to ensure that the case proceeded. The main thrust of the Labor government's program has been a "law and order" campaign attacking democratic and legal rights, including the abolition of the right of accused to remain silent, and new laws which give police the power to arrest or detain children on

loitering and other charges. The social climate created by the government and the media is one in which virtually all young people are regarded as latent criminals.

To gain a conviction, the prosecutor has to rebut the principle of *doli incapax*, which presumes that children between the age of 10 and 14 are incapable of understanding the difference between right and wrong and therefore cannot form the necessary intent to commit a crime. To rebut this principle the prosecutor must prove that the boy knew what he was doing, was not just naughty or mischievous but criminally wrong.

If the prosecution has its way and persuades the jury to find the 11-year-old child guilty of manslaughter, it will open the way for countless other children to be arrested, tried and jailed on adult criminal charges—a return to the dark days when children had no legal rights whatsoever.

An old sandstone building in which the NSW Supreme Court is sitting in judgment provides the setting for this terrible legal and social reversal. The intimidating building is reminiscent of Victorian England or Australia in the 1800's, when the country was a convict settlement.

The court is a cavernous room with dark wooden benches and a double-storey public gallery. The judge sits in red robes, long white collar and legal wig; the barristers, also wearing wigs, are donned out in dark vests and long black robes.

The young boy, who was only 10 years old when Corey drowned, sits quietly between his lawyers. In the previous committal hearing he was able to sit with his mother and grandparents. Now he must sit in front of the dock, unable to see any of his relatives. Each time the jury enters or leaves the court, the child must stand to attention. No one else in the courtroom is required to do this. Even when he stands, he cannot see his mother or grandparents.

Apart from the legal officials, the jury, the young boy's mother and grandparents, and three of Cory Davis's immediate family, the only other people in court are

media representatives. The proceedings echo eerily through the scores of empty seats.

One can only guess at the terrible psychological effect the case, and the last 18 months, have had on this working class child, who should be running around, playing with friends, climbing trees and engaging in other boyhood activities.

How does the state try a child charged with the second most serious offence on the books? One of the basic tenets of the English-based legal system is that someone accused of a crime can only be judged by his or her peers. But most of the jurors are 30 years his senior, some of them in their late 50s or early 60s. Three are middle-aged businessmen. Significantly, there are only two women amongst the 12 jurors who will decide his fate.

A considerable portion of the day is taken up with legal argument, difficult to follow for an adult, let alone a young child. Day after day the Crown prosecutor attempts to portray the boy as a calculating individual who knew full well that Corey Davis would drown if pushed into the water that day.

Young children—aged between eight and 11-years-old—are examined and cross-examined. They are asked to retrace the events leading up to Corey's death. While these children are the prosecution's key witnesses, their evidence is unsworn because of their age. At the time Corey Davis drowned they were six and eight years old.

In opening the trial on November 17, Justice Timothy Studdert told the jury that although evidence presented in the case would raise emotions in them, they had to consider the issues "calmly and dispassionately".

However, at no time during the previous committal hearing or the current trial has anyone attempted to explain or discuss the real issues involved. Why were these young children roaming free, without adult supervision, near a dangerous river? Macquarie Fields, where all the children live is one of the most oppressed areas in Sydney. The suburb has one of the highest unemployment rates in the city and a large percentage of single parents, unemployed or low-income families. There are few facilities for children, the schools are officially classified as disadvantaged, and parents simply cannot afford regular childcare.

Evidence has been given by teachers at the young boy's school that he was at least two years behind the academic level of his peers. He could barely construct a sentence and had problems with concentration. He had great difficulty interacting with children of his own age and tended to gravitate towards the infants. He had attended

three different schools in little over a year, but no reason was given as to why. One teacher described him as a "social isolate", who did not "understand the consequences of his actions." Another described him as "very shy" and "child-like", with language skills "well below average". She said his behaviour was "perfect", but he needed considerable support.

The court was informed that the child had been referred to a counsellor for testing to establish whether he should attend a special education class. But the waiting list was lengthy, and he was transferred to another school before seeing the counsellor.

Heart-wrenching testimony was given about the boy's lack of self-esteem. One teacher explained that he had volunteered for detention at lunchtime each day, because he had misbehaved at home, and his mother had told him he was "on detention". He was very naïve, the teacher said, and simply could not understand if he had done something wrong, or what the consequences would be.

It is this child who is being portrayed by the prosecutor and the media as a criminal.

More than 200 years ago in 1789, English poet William Blake wrote "On Another's Sorrow"—a simple appeal for humanity to open up its heart and care for society's victims. It read in part:

*Can I see another's woe
And not be in sorrow too?
Can I see another's grief,
And not seek for kind relief?*

The official response to the death of Corey Davis is not "kind relief"—social programs and resources to eliminate the conditions that created this tragedy and assist all those affected—but a legal process, aimed at establishing the juridical mechanisms to put more children on trial and, ultimately, behind bars.

The trial, which is expected to hear evidence from medical experts in the next few days, will continue for another week.



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