

Australian jury unmoved by government campaign

Young boy acquitted of manslaughter

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Last Friday, after less than three hours of deliberations, a New South Wales Supreme Court jury in Sydney acquitted a young boy of manslaughter charges over the death of six-year-old Corey Davis. The youngster, who was 10 years and three months when Davis drowned in the Georges River, was the youngest person to face the Supreme Court and the youngest person in Australia to be charged with manslaughter.

The young boy's mother and grandmother greeted the verdict, which was announced at midday, with tears of relief. Despite an explanation from one of his lawyers, the youngster, who turned 12 in the course of the 14-day trial, did not seem to understand the significance of the verdict and sat expressionless until Justice Timothy Studdert dismissed the court.

The not-guilty decision by the jury of ten men and two women brought to an end the 18-month effort by the Director of Public Prosecutions and the NSW Labor government, with the assistance of the media, to prosecute the young child on the adult charges.

Crown prosecutor, Greg Smith QC, argued that the young boy on trial was capable of forming criminal intent and should be found guilty of manslaughter, a crime that carries a maximum penalty of 25 years jail. The prosecutor claimed that the youngster understood the consequences of pushing Davis in the river on March 2, 1998, and attempted to present him as a scheming bully who lied to police and other children after the incident. Smith's case rested heavily on the unsworn evidence of children, two of whom were six years old at the time of the incident, and a doorstop interview with police at the accused boy's home.

Smith was particularly cruel and constantly referred to the accused child in language used to describe hardened criminals. Smith said pushing Corey Davis into the river was not a prank but a boy "acting the tough guy" whose actions involved "malice" and "deception". Smith claimed that the young child had a "tendency towards telling lies" and was a "bully" who had "street cunning" and "knew the law of the jungle".

At one point in the trial Smith attempted to introduce subjective and highly prejudicial evidence from a clinical psychiatrist, Dr Robert Wotten. Some of Wotten's evidence, which was reviewed without the jury present, claimed that the young boy had "talked excitedly" about the murder of Tupac Shakur, a US rap singer, was attracted to cards showing frightened animals and chose Star Wars combat characters from a selection of toys presented by the psychiatrist.

Justice Studdert disallowed this evidence after objections from Peter Zahra QC, the defence barrister. Zahra said these sections of Wotten's clinical assessment were unscientific, could be applied to millions of children and inferred that the young boy was inherently violent.

In his summary to the jury the prosecutor attempted to twist teachers' evidence that the boy had been quiet and well behaved. He argued that the young boy "knew the difference between right and wrong" at school and was therefore conscious that pushing Corey Davis into the river was "seriously wrong".

"The accused followed school rules, inside and outside class. If he knew the little things that were wrong then he would know about the bigger ones. I submit that the teachers' evidence doesn't take us very far," Smith said.

Smith urged the jury to put aside medical evidence from defence witnesses—Dr Pauline Langeluddecke, a leading Sydney psychologist, and Dr Brent Waters, a well-known clinical psychiatrist and former convenor of the Film and Literature Review Board—proving that the child was academically, intellectually and socially at least two years behind children his own age.

"They weren't there [at the river]," Smith, referring to the doctors, told the jury. "They are only reflecting on what happened in the past. Your knowledge of the evidence is more in depth."

The prosecutor then said, "People can be developmentally behind and still have a considerable degree of street cunning... The accused was only mildly behind with no marked inability to recognise the difference between right

and wrong. He might have been behind but he is going forward, it's not as if he stopped developing at three."

In fact, Dr Langeluddecke, using the internationally recognised Wechsler Intelligence Test to assess the young boy, concluded that he had a mental age of 7 years and 9 months when the incident took place and was on the borderline between below average intelligence and mental retardation.

Defence barrister, Peter Zahra, QC, whose case relied on medical evidence on the child's academic and intellectual development, described the incident at Georges River as "mischief by a boy that went tragically wrong".

He reminded the jury that there had been no fighting or hostility between the boys prior to the incident and said they had to determine their verdict, not on whether the child had a "general understanding of right and wrong", but whether he understood that what he did was "seriously wrong" and "could lead to serious injury".

Zahra exposed the prosecution's melodramatic exaggeration of events at the river. Corey Davis drowned, not in some "dark or evil place," he said, but at the local swimming hole, a place frequented by children and adults of all ages. "According to the Crown, pranks are available only to those with swimming pools—urban dwellers—but if someone is pushed in the river in the country it is evil."

The barrister pointed out several contradictions in the unsworn evidence of the child witnesses and, using the testimony of Dr Langeluddecke and Dr Brent Waters, explained that the accused youngster's response to police questioning was that of an unsophisticated child caught out being naughty. He also cited evidence from Dr Waters, who told the court that the intellectual development of the young boy was such that he was incapable of understanding that throwing someone in the river was a life and death issue.

Zahra urged the jury not to be swayed by the media coverage. "Don't let some backroom editor, trying to sensationalise the case, to make people larger than life, to sell newspapers or compel people to watch television, influence you in your deliberations," Zahra said.

The trial concluded and the jury began considering the evidence after a lengthy summation and explanation of the *doli incapax* principle by Justice Timothy Studdert. Under *doli incapax* the law presumes that children between the ages of 10 and 14 are incapable of forming the necessary intent to commit a crime. In order to gain a conviction the prosecutor has to rebut this presumption and prove that the boy knew what he was doing was not just naughty or mischievous but seriously wrong.

The jury's not-guilty verdict, which was taken in defiance of an unprecedented "law and order" campaign and other attacks on the democratic rights of children by the media and

the government, is a blow against the state Labor government's attempts to convict a child of adult crimes. In fact, the first jury assembled to hear the Supreme Court trial was dismissed on the first day, and another selected, after one juror said he was overwhelmed by the case and could not serve.

Last May Stephen Scarlett, the state's Senior Childrens Court Magistrate, dismissed manslaughter charges against the young boy, declaring that the prosecution's child witnesses were unreliable and that a jury would not convict a child so young. Determined to establish a legal precedent, Nicholas Cowdery QC, the state's Director of Public Prosecutions (DPP) overruled the Childrens Court ruling and through an *ex officio* indictment took the case to the Supreme Court. Cowdery's decision came after Jeff Shaw, the state Labor government's Attorney-General, told the media that the DPP had the power to overturn the magistrate's decision.

Last week's Supreme Court trial officially concluded last Friday with Justice Studdert formally dismissing the jury and declaring that the child was free to go. And while the barristers, lawyers and journalists relaxed over the weekend or began preparing for future trials, nothing has changed, or will be done, to alleviate the poverty, lack of decent childcare or education facilities that led to the tragedy at Georges River. The young boy and his family, together with the grandparents and guardians of Corey Davis, are left to try and rebuild their shattered lives in Macquarie Fields, one of the poorest working class suburbs in Australia.

Last Saturday, in one of the few objections raised by a member of the legal fraternity, an anonymous senior criminal barrister told the *Sydney Morning Herald*: "Pushing ahead with this trial is a shift back to a vindictive, barbaric past, where children were harshly punished as adults. It's shameful. Manslaughter carries a long prison sentence, and charging a child with such an offence is a step backwards for our so-called civilised society and its legal system."

By contrast, Nicholas Cowdery, the DPP, made clear that trials of children in adult courts would continue. In a chilling reminder that there will be no let up in the government's campaign against the democratic and legal rights of children, Cowdery told the media last Friday: "With the benefit of hindsight, I do not consider that the incorrect course was taken. I would make the same decisions again if presented with the same circumstances."



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