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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22335683

THE KING

and

DIGBY PAUL GORDON BARROW

(Sentence)

SOUTHWOOD J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON MONDAY 4 NOVEMBER 2024

Transcribed by:
EPIQ

HIS HONOUR: The offender is charged with a single count on an indictment dated 1 November 2024. The count charges that contrary to subs 188(1) and (2)(c) and (k) of the *Criminal Code* on or about 23 October 2023 at Darwin the offender unlawfully assaulted RF.

And that the unlawful assault involved the following circumstances of aggravation, namely:

- 1) That RF was then under the age of 16 years and the offender was an adult;
and
- 2) That RF was indecently assaulted.

That maximum penalty for this offence is imprisonment for five years. The offender has pleaded guilty to that count on the indictment.

The facts of the offending are as follows

The offender is Digby Paul Gordon Barrow, a 68-year-old man who resided or resides in Darwin.

The complainant is RF, a 13-year-old boy who also resides in Darwin.

The offender and the complainant are known to each other, with the complainant regularly attending piano theory lessons taught by the offender for approximately the last four to five years and practical piano lessons taught by the offender for the last two years.

Practical piano lessons occurred on Monday afternoon at Charles Darwin University ('CDU') [redacted]. They initially commenced for a duration of 30 minutes but later progressed to 45 minute sessions in the middle of 2023. The sessions were one on one between the offender and complainant with parents not allowed to enter while the lesson was being conducted.

During one of the first practical piano lessons with the offender the complainant had been feeling nervous. The offender noticed and asked the complainant if he wanted a hug to which he replied, "All right." The offender then hugged the complainant and the lesson continued as usual.

From then on, the offender would regularly request hugs from the complainant increasing in frequency until it got to a point where he no longer asked permission but just gestured he wanted to hug and proceeded to do so.

On one of these occasions, approximately one year ago, the complainant had played a song on the piano and the offender then said he had played it beautifully, before giving him a hug. The lesson continued and when the complainant was playing another song the offender hugged him again.

At about 2:30 pm on Monday 23 October 2023 the complainant was in attendance at his piano lesson with the offender at CDU [redacted]. The complainant was sitting on the bench seat at the piano. The offender was sitting next to him on a swivel office chair. No one else was present in the room.

The complainant was wearing his [redacted] uniform consisting of shorts and a polo shirt.

Near the end of the lesson the complainant was playing the piano when the offender became unusually quiet and was giving the complainant funny looks or funny side eyes.

While the complainant was still playing the offender reached over and placed his left hand under the complainant's right thigh before lightly squeezing the complainant's testicles twice over his clothing.

The complainant turned and looked at the offender who then pulled his hand away.

The complainant felt scared and uncomfortable and continued playing the piano without speaking until the end of the lesson. He was then collected by his father and his 12-year-old sister who had been waiting on a chair just outside the room.

The complainant was 13 years old at the time of the offending and did not give the offender consent to assault him in any way.

On Tuesday 26 October 2023 the complainant's mother had noticed a change in the complainant's behaviour which included avoiding piano practice. This was out of character for the complainant.

By Saturday 28 October 2023 the complainant was becoming anxious at the thought of his next scheduled piano lesson due to occur on Monday 30 October 2023 and was "Wondering what [the accused] was going to do to [him]." Throughout the day he contemplated whether he should have told his family earlier about what had happened. Later that evening the complainant told his parents what had occurred. He told his parents that, "Digby groped me and he touched my testicles." The complainant's mother later reported the matter to police.

At 4:40 pm on Friday 3 November 2023 police arrested the offender.

Later he voluntarily participated in an electronic record of interview with police. During that record of interview the offender stated the following:

- a. Nothing unusual occurred on that day;
- b. RF has ADHD;
- c. He plays while I'm talking;
- d. I removed his hands from the keys and put them on his lap;
- e. It happens every lesson; and

f. Other teachers didn't want to teach him.

The matter progressed from the Local Court via a committal on the papers and no witnesses were required to give evidence. The offender was granted bail on 9 November 2023, spending a total of six days in custody.

I note that while he was or has been on bail he has been subject to electronic monitoring.

A victim impact statement was tendered in evidence. In it the victim states:

"For a while after the incident, each time I passed Digby's old practice room I felt my heart beat faster and flashes of the incident showed in my head. There was one time where I had to use the same room for a lesson (no other rooms were available), and the whole time I felt very uncomfortable. The room was practically in the same condition as the last time I was there even though any traces of the man himself were gone. Despite this, I could still sense his eerie presence and was reminded of what happened.

"Around three months ago I was having a lesson with my new piano teacher. They stood up to stand behind me which startled me as it reminded me of how Digby moved behind me like that before as well."

It is apparent that there has been an ongoing mental affect as a result of the offending on the young victim.

As to the seriousness of the offending the following factors need to be taken into account:

1. The age difference between the offender and the victim;
2. The fact that the victim was under the tutelage of the offender who was obviously in a position of power and influence and the offending involved a serious breach of trust; and
3. The offender only desisted by the victim pushing him away once the offending had commenced.

As to the offender's antecedents they are as follows:

The offender is currently 68 years of age. He was born in India. He came to Australia 37 years ago. He has completed a Bachelor degree at Charles Darwin University.

He has studied music, English and German. He has worked as a music teacher his entire adult life. He is a single man with no children of his own. He plays and conducts the Darwin Symphony Orchestra from time to time. He was part of the Darwin Chorale Society or Darwin Chorale and he has played in all major musical productions for decades including Brown's Mart Christmas Carol, Darwin

Entertainment Centre, school productions and performed in India Day at Mindil Beach.

The offender has no prior criminal record. Indeed, up until this offending he was obviously a person of good standing in the community. A number of character references have been tendered in evidence. Those character reference depose or state that the offender, up until he committed this offence, was a person of good standing and of high regard in the Darwin community.

In all of the circumstances I have taken into account the offender's prior good character. He has also been on bail for an extended period of time and has complied with the conditions of his bail.

Nonetheless, he must be punished for the offence that he has committed. Children of such a young age in the care and custody of tutors such as music tutors must remain safe at all times and free from harm.

I sentence the offender in the circumstances to 18 months' imprisonment. The sentence I otherwise would have imposed on him has been reduced by 25 per cent to reflect the plea of guilty in this case.

That sentence of imprisonment is backdated to 28 October 2024 to reflect the time that the offender has been in custody for this offending. The sentence of imprisonment is suspended today on the following conditions:

- 1) He is to be of good behaviour.
- 2) He is not to contact directly or indirectly the victim in this matter.

HIS HONOUR: So it is important that you are of good behaviour. Do you understand that?

THE ACCUSED: Yes, sir.

HIS HONOUR: And you are not to contact directly or indirectly the victim in this matter. Do you understand that?

THE ACCUSED: Yes, sir.

HIS HONOUR: Now, it is important that you remain of good behaviour because if you breach the conditions of your bail or re-offend it is likely you will end up back before this court and in those circumstances it is unlikely that the court would be able to take into account to the same degree the occasions on which you have been of prior good behaviour. Do you understand that?

THE ACCUSED: Yes, your Honour.

HIS HONOUR: Nothing further?

MS MCLEAN: No, your Honour.

HIS HONOUR: I fix an operational period of 18 months from today.

Please adjourn the court.
