*MCT v McKinney & Ors* [2006] NTCA 10

| | |
|---|---|
| PARTIES: | MCT<br><br>v<br><br>McKINNEY, Tanya Louise<br>LITTMAN, Andrew Kevyn<br>MCGARVIE, Renae Moana |
| TITLE OF COURT: | COURT OF APPEAL OF THE NORTHERN TERRITORY |
| JURISDICTION: | CIVIL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION |
| FILE NO: | AP 7 OF 2006 (20601730) |
| DELIVERED: | 20 October 2006 |
| HEARING DATES: | 19 September 2006 |
| JUDGMENT OF: | MARTIN (BR) CJ, MILDREN & THOMAS JJ |
| APPEAL FROM: | The Supreme Court of the Northern Territory, judgment delivered 3 May 2006 – *MCT v McKinney & Ors; McGarvie v MCT* [2006] NTSC 35 |

**CATCHWORDS:**

CRIMINAL LAW – Juvenile offender – power of Court to suppress name of offender – exercise of discretion – relevant factors

**Legislation:**
Child Welfare Ordinance (Amendment No 27/1965) (NT), s 12
Child Welfare Ordinance 1958 (NT), s 21, s 29(1), s 30
Children and Young Persons Act 1933 (UK) s 39(1)
Community Welfare Act (NT)
Evidence Act (NT), s 5, s 57
Juvenile Justice Act (NT), s 22, s 23, s 23(1)
The State Children Act 1895-1909 (SA), s 31, s 114

The State Children Ordinances 1934 and 1952 (SA)

**Other:**
United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), cl 8
The Convention on the Rights of the Child (adopted 20 November 1989) Article 40.2(b)(vii)

**Citations:**
**Applied:**
*R v Lee* (1993) 1 WLR 103

**Referred to:**
*ABC v L & Tudor-Stack* (2005) 16 NTLR 186
*G v Bourne* (1991) 105 FLR 52
*House v The King* (1936) 55 CLR 499
*M v Hill & Anor* (1993) 114 FLR 59
*M v Waldron* (1988) 56 NTR 1
*McKerry v Teesdale & Wear Valley Justices* [2001] EMLR 5
*P (A Minor) v Hill* (1992) 110 FLR 42
*R v Crown Court at Leicester, ex parte S (a minor)* (1992) 2 All ER 659
*R v H (a juvenile)*, unreported 9 October 2001
*R v Williams* (1992) 109 FLR 1
*R v MJM & Ors* (2000) 24 SR (WA) 253
*Re Southam Inc and the Queen* (1984) 14 DLR ($4^{th}$) 683
*Re Robins SM; ex parte Western Australian Newspapers Ltd* (1999) 105 A Crim R 554
*Simmonds v Hill* (1986) 38 NTR 31
*Smith v Daily Mail Publishing Co* (1979) 443 US 97; 61 L Ed 2d 399

**REPRESENTATION:**

*Counsel:*

| | |
|---|---|
| Appellant: | L Carter with P Dwyer |
| Respondent: | T Pauling QC with E Armitage |

*Solicitors:*

| | |
|---|---|
| Appellant: | North Australian Aboriginal Justice Agency |
| Respondent: | Office of the Director of Public Prosecutions |

| | |
|---|---|
| Judgment category classification: | A |
| Judgment ID Number: | Mil06387 |
| Number of pages: | 20 |

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*MCT v McKinney & Ors* [2006] NTCA 10
No. AP 7 of 2006 (20601730)

BETWEEN:

**MCT**
Appellant

AND:

**TANYA LOUISE McKINNEY**
**ANDREW KEVYN LITTMAN**
**RENAE MOANA McGARVIE**
Respondent

CORAM: MARTIN (BR) CJ, MILDREN & THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 20 October 2006)

**The Court:**

[1] This appeal involves the interpretation of s 23(1) of the Juvenile Justice Act which provides as follows:

> "23. Restriction of publication of proceedings
>
> (1) A magistrate may, either by a separate order or in an order under section 22, direct that a report of or information relating to proceedings in, or the result of proceedings against a juvenile before the Court, be not published except by a person in the performance of his duties under this Act.
>
> (2) Subject to subsection (3), a person who publishes a report or information in contravention of a direction under subsection (1) is guilty of an offence.
>
> Penalty: $200 or imprisonment for 3 months.

(3) It is not an offence against subsection (1) for a member of the Police Force, acting in the course of his duties, to send to the Police Force of a State or another Territory of the Commonwealth, in pursuance of an arrangement for the exchange of such information, information relating to the conviction of a juvenile for an offence.

[2] The judge at first instance held at paragraphs 20 and 21 of his reasons for judgment:

> "In my view s 23(1) Juvenile Justice Act is directed to a report of or information relating to what has happened in court and the result of proceedings against a juvenile before the court, not to the names of the parties in proceedings before the Juvenile Court. It seems to me the relevant statutory provision is s 57 Evidence Act (NT) not s 23(1) Juvenile Justice Act (NT).
>
> In *Nine Network Pty Ltd v McGregor & Ors* (2004) 14 NTLR 24 at para [40] the Full Court held there was no power to suppress publication of a photo or image of a party either pursuant to s 58 Evidence Act (NT) or at common law nor is any such power to be implied. The reason for this, plainly enough, is that the publication of an image or photograph of a party is covered by s 57(2) Evidence Act (NT) and there is simply no need for any order beyond that of forbidding publication of the name of a party pursuant to s 57(1)(iii). It is for this reason also that I consider s 57 Evidence Act (NT) to be the applicable provision rather than s 23(1) Juvenile Justice Act (NT). It seems to me that s 57 Evidence Act (NT) covers the field in relation to suppression orders in relation to the names of parties or witnesses to proceedings whether in the juvenile court or any other court as defined in the Evidence Act (NT). Statutory derogations from the principle of open justice are to be strictly and narrowly construed: *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47 at 55; *Herald & Weekly Times v The Magistrates Court* [1999] 2 VR 672 at 677; *Nine Network Pty Ltd v McGregor & Ors* (2004) 14 NTLR 24 at [31]–[32]; and in my view s 23(1) Juvenile Justice Act (NT) did not enable the Chief Magistrate to make the order he did."

[3] The grounds of appeal are as follows:

> "1. The learned trial judge erred in holding that section 23(1) of the *Juvenile Justice Act* (NT) does not allow for the making of

orders suppressing the identity of offenders in the Juvenile Court (reasons at [20] and [21]).

2. The learned trial judge erred by failing to:–

   (a) dismiss the Crown's appeal against the making of the order by the Chief Magistrate pursuant to section 23(1) of the *Juvenile Justice Act* (NT) on file 20523908; and

   (b) allow the appellant's appeal against the refusal of the Chief Magistrate to make orders pursuant to section 23(1) of the Juvenile Justice Act (NT) on files 20507728, 20507714, 20500683 and 20428204.

3. Alternatively to grounds 1 and 2, the learned trial judge erred in failing to determine that it was desirable in the interests of justice that the identity of the appellant be suppressed in relation to all files pursuant to section 57 of the *Evidence Act* (NT).

4. The learned trial judge erred in failing to have any or sufficient regard to the fact that appellant was a child offender.

5. The learned trial judge erred in determining that 'embarrassment, fear of exposure, feelings of shame in the face of family members, even damage by publicity are not relevant considerations' (reasons at [32]).

[4] The background to the application for suppression of the appellant's name before the Chief Magistrate is set out in the judgment of the judge at first instance as follows:

> "[1] On 17 January 2006 the appellant pleaded guilty in the Juvenile Court to a number of charges. He was found guilty of the charges and was sentenced.
>
> [2] On file 20428204, in respect of a charge of stealing on 4 October 2004 contrary to s 210 Criminal Code (NT) he was placed on a good behaviour bond for six months without conviction.
>
> [3] On file 20500683, in respect of a charge of assault on 25 October 2005 contrary to s 188 Criminal Code (NT) he was convicted and placed on a good behaviour bond for six months.

[4] On file 20507714, in respect of a charge of stealing on 1 April 2005 contrary to s 210 Criminal Code (NT) he was convicted and placed on a good behaviour bond for six months.

[5] On file 20507728, in respect of a charge of aggravated assault (bodily harm) on 2 April 2005 contrary to s 188(2)(a) Criminal Code (NT) he was convicted and sentenced to one month's detention backdated to commence 7 October 2005.

[6] On file 20523908, in respect of a charge of unlawfully damaging property on 5 October 2005 contrary to s 251 Criminal Code (NT) and a further charge of stealing and using violence on 5 October 2005 contrary to s 211(1) Criminal Code (NT) he was convicted and sentenced to six months detention fully suspended immediately on condition that he be of good behaviour for 18 months and that he accept supervision and follow the directions of the Department of Community Services for a period of 12 months and that he reside with his aunt. The appellant's aunt… lives in Tennant Creek and whilst the order does not specify a particular residential address the terms of the order require him to live with his aunt… at Tennant Creek.

[7] Following disposition of the matters an application was made by counsel for the appellant, expressed to be pursuant to s 23 Juvenile Justice Act (NT), for suppression of the appellant's name and image from publication. Counsel submitted that the appellant was still a very young man – he was 15 years of age – that the offences that he had been convicted of were "extremely serious", "that one of the reporters from the local newspaper has been here", "that the impact upon his name being published would be extremely detrimental and in fact he has already been named in the paper twice previously in relation to the most serious matter" and " … I submit to you that you ought … exercise your discretion to ensure that rehabilitation is assisted and that his job prospects in Tennant Creek are not harmed". It was further submitted that the appellant "ought to be given the opportunity to get back onto his feet given the fantastic opportunities that he has now ahead of him". It was further submitted as follows "Well, we don't have a problem with the court being open, we don't have a problem with there being reporting on the circumstances and on the disposition. In terms of it having an impact upon the interest of justice, I submit that it has absolutely no – it serves no purpose in addressing the interests of justice by naming young juvenile offenders, who are first time offenders, who have just had their first convictions recorded against their name, who have put up plausible arguments for rehabilitation and that the naming of

such juveniles will only be detrimental to the future prospects of rehabilitation. And specifically in respect of MCT, he is going to Tennant Creek, he's looking for work, this newspaper is published and circulated in that region and it will only have a detrimental impact, and that cannot be in the interests of justice or in the interests of rehabilitation."

[8] The application was opposed by the prosecution. The prosecution submitted, inter alia, that the appellant was no different to any other offender that comes before the Court, the hearing was in open court and there was no reason why such an order should be made.

[9] The Chief Magistrate said:

"I am reluctant to make such orders and there is nothing which makes this young man a great deal different from anybody else, but MCT just stand up for a moment.

Are you going to give this a real shot? Well, what I am going to do is this, and I want this to act as an extra incentive for you. I make an order that your name and image not be published in relation to the serious charge, that last charge, whilst you comply with the terms of the suspended sentence.

OK?

The Defendant: Yes.

Counsel for the accused: Can I just clarify that it's only in relation to the last of the files?

Chief Magistrate: The other ones are nothing out of the ordinary, every kid who comes through here is in relation to the same thing. The last one is the one which might cause, in my view unreasoning (sic) and shall I say headline grabbing publications which don't do justice to the truth of the matter. I know it's not the reporter's fault. It's always the sub–editor's fault."

[10] The appellant appeals against the failure of the Chief Magistrate to prohibit publication of his name and image in respect of the remaining four files. The prosecutor cross–appeals against the order made in respect of file 20523908 prohibiting publication of the appellant's name and image.

[11] The contested order was made in purported pursuance of s 23(1) Juvenile Justice Act (NT) towards the conclusion of a

> hearing in open court. In Australia elsewhere there are statutory prohibitions against publication of the names of juvenile offenders. In the Northern Territory this is not so.

[5] The Juvenile Justice Act commenced on 20 April 1984. At the time of the Second Reading Speech on 1 September 1983 the Minister stated inter alia:

> "The bill establishes a Juvenile Court to deal with offences by juveniles. This replaces the present Children's Court but does not include its civil jurisdiction which will be exercised by the Family Matters Court established under the Community Welfare Act. The Juvenile Court will be a court of summary jurisdiction and will be concerned with the dispensation of justice to young offenders. Unlike the existing Children's Court, it will not be closed automatically to the public but the magistrate will have the full discretion regarding the opening or closing of the court and the publication of its proceedings. …"

[6] There is nothing to indicate that s 23 of the Juvenile Justice Act was connected with or in anyway subject to s 57 of the Evidence Act. Section 57 of the Evidence Act had been in existence since its commencement on 2 August 1939. At that time offences against children were dealt with by the Courts of Summary Jurisdiction and by the Supreme Court in accordance with the provisions of The State Children Act 1895-1909 (SA) as amended by The State Children Ordinances 1934 and 1952. Under those provisions hearings of summary offences were required to take place either in a special room approved for that purpose or, if in a court room, outside of the Court's usual hours (s 31). Although the legislation did not then enable the courts to order the non-publication of the name of child defendants or other information relating to the charge, the courts had a general power to order

that the proceedings be held in camera (s 114). An order in relation to the name of a child could have been made only under s 57 of the Evidence Act.

[7] In 1958 The State Children Act and The State Children Ordinances were repealed by the Child Welfare Ordinance 1958 which established special courts to be called Children's Courts (s 21). Under s 29(1) the Children's Courts was required to sit in camera. Section 30 provided that it was an offence for any person to publish a report of proceedings or the result of proceedings before a Children's Court without the Court's authorisation.

[8] An amendment to the Child Welfare Ordinance (No 27/1965, s 12) removed the Court's power to authorise publication.

[9] The Child Welfare Ordinance 1958 (as amended) was repealed by the Community Welfare Act which came into force on 20 April 1984 (the back note to the latest consolidation incorrectly states 20/4/1983 – see NT Government Gazette No 514 dated 30 March 1984). The Juvenile Justice Act came into force on the same date. In addition to the powers contained in s 23, s 22 provided as follows:

> "22. Proceedings to be in open Court
>
> (1) Proceedings under this Act against a juvenile shall be held in open court, but the magistrate before whom the proceedings are taken may, if it appears to him that the ends of justice will be best served by him so doing, order that the Court be closed and, subject to subsection (2), that no persons remain in or enter a room or place in which the Court is being held, or remain within the hearing of the Court, without his permission.

(2) Subsection (1) does not authorize a magistrate to exclude from the Court during proceedings against a juvenile a legal practitioner representing the juvenile or the prosecution or the Minister or his delegate.

(3) Where a magistrate has made an order under subsection (1), a person shall not remain in or enter a room or place, or remain within the hearing of the Court, in contravention of the order.

Penalty: $50 or imprisonment for 10 days."

[10] The effect of the changes brought about by the Juvenile Justice Act removed the statutory requirement for proceedings against children to be heard in camera, provided for a power to exclude persons from the Court where the ends of justice were best served by doing so and removed the automatic prohibition on the publication of proceedings and instead conferred a power on the courts to make a non-publication order under s 23. It is clear that the power under s 23 is not subject to s 57 of the Evidence Act for two reasons. First, the plain ordinary meaning of the words "information relating to proceedings" is wide enough to encompass the name of a party to the proceedings. Secondly, s 23 is a special provision relating to the powers of the Juvenile Court and it is well established that, to the extent that there is any conflict between the provisions of a special Act and a general Act, the provisions of the special Act prevail. However, if the two provisions are not in conflict then both provisions apply. This is clearly the case here because s 5 of the Evidence Act specifically provides that the provisions of that Act are "in addition to, and not in derogation of, any rules of evidence, or any

power, right or duty in relation to procedure or evidence, whether existing at common law or provided for by any law for the time being in force in the Territory". Clearly the reference to "for the time being" is meant to include any power relating to evidence in an Act whether passed before or after the commencement of the Evidence Act.

[11] We therefore accept the submission made by Mr Carter for the appellant, that the trial judge erred in holding that s 23(1) of the Juvenile Justice Act (NT) does not allow for the making of orders suppressing the identity of offenders in the Juvenile Court.

[12] We would therefore allow Ground 1 of the appeal.

[13] The next issue in the appeal essentially involves whether or not the Chief Magistrate correctly exercised his discretion when he ordered the suppression of the appellant's name with respect to the offence he described as "No 5 a serious charge of assault" and correctly exercised his discretion not to suppress the appellant's name on the other four less serious charges.

[14] Mr Gumbleton who appeared before the Chief Magistrate in the Juvenile Court applied for an order suppressing the name of the appellant with respect to all five sets of charges of which the appellant had been convicted and sentenced.

[15] Before this Court interferes with the discretionary decision of the Chief Magistrate, it is necessary for the appellant to demonstrate error (*House v The King* (1936) 55 CLR 499).

[16] We consider that the Chief Magistrate erred because he did not give reasons for not making an order suppressing the appellant's name on four of the five charges, other than to indicate that he was reluctant to make such orders and the case was "nothing out of the ordinary". In our opinion, this was not the correct test. Further, he was in error because the reason for ordering a suppression of the appellant's name on the fifth charge was "to act as an extra incentive for you". This would appear to be confusing the issue of an appropriate penalty for the offence with the issue of whether or not the offender's name should be suppressed.

[17] Subsection 23(1) does not provide any statutory guidance as to the circumstances under which a suppression order of this kind should be made. The Court has a complete and unfettered discretion, but, like any discretion, it must be exercised judicially. If the Court, in the exercise of its discretion fails to take into account relevant factors, or takes into account irrelevant factors, then it will have fallen into error.

[18] It is not the case (as was submitted by Mr Pauling QC for the respondents) that because the Court is open to the public unless otherwise ordered, there is presumption in favour of the defendant's name being published which can only be displaced if the circumstances are exceptional. This may be a correct

statement of principle with respect to orders under s 57 of the Evidence Act relating to adult offenders (see, for example, the cases referred to in *Re Robins SM; ex parte Western Australian Newspapers Ltd* (1999) 105 A Crim R 554 at 557-558), but the same principle does not apply where the Court has an unfettered discretion to suppress the name of a juvenile. In *R v Crown Court at Leicester, ex parte S (a minor)* (1992) 2 All ER 659, the Court of Queen's Bench considered the circumstances under which a similar power to suppress publication under the Children and Young Persons Act 1933 (UK) s 39(1) should be exercised. Watkins LJ, who delivered the judgment of the Court consisting of Roch J and himself, said at 662:

> "In our judgment, the correct approach to the exercise of the power given by s 39 is that reports of proceedings should not be restricted unless there are reasons to do so which outweigh the legitimate interest of the public in receiving fair and accurate reports of criminal proceedings and knowing the identity of those in the community who have been guilty of criminal conduct and who may, therefore, present a danger or threat to the community in which they live. The mere fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the ways permitted by s 39 and it will, in our opinion, only be in rare and exceptional cases that directions under s 39 will not be given or having been given will be discharged."

[19] Subsequently, in *R v Lee* (1993) 1 WLR 103 at 110, the Court of Appeal, Lloyd LJ, Tudor Evans and Latham JJ, said:

> "Before leaving *Reg. v. Leicester Crown Court, Ex parte S. (A Minor)*, we would add this comment. At the conclusion of the passage… the court said that the mere fact that the person before the court is a child will normally be a good reason for restricting reports of the proceedings. It will, the court said, only be in rare and exceptional cases that a direction will not be given or having been given will be discharged. For our part, we would not wish to see the

court's discretion fettered so strictly. There is nothing in section 39 about rare or exceptional cases. There must of course be a good reason for making an order under section 39…"

[20] We think this passage in *Lee* correctly encapsulates the approach to be taken to s 23 of the Juvenile Justice Act. The Legislature has chosen not to suppress automatically the identity of children who appear before the court and, recognising "the legitimate interest of the public" in knowing the identities of offenders, good reason must be demonstrated to justify suppressing the identity of a child offender. However, when a court is asked to exercise its discretion, it is important to weigh in the balance the fact now almost universally acknowledged by international conventions, State legislatures and experts in child psychiatry, psychology and criminology, that the publication of a child offender's identity often serves no legitimate criminal justice objective, is usually psychologically harmful to the adolescents involved and acts negatively towards their rehabilitation. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by General Assembly resolution 40/33 of 29 November 1985, to which Australia is a party, states in clause 8, as follows:

> "8. Protection of privacy
>
> 8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.
>
> 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

> Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal"."

[21] See also the decision of Holland J in *Re Southam Inc and the Queen* (1984) 14 DLR (4th) 683; The Convention on the Rights of the Child (adopted 20 November 1989) Article 40.2(b)(vii); the powerful dissenting judgment of Rehnquist J (as he was then) in *Smith v Daily Mail Publishing Co* (1979) 443 US 97; 61 L Ed 2d 399. Clearly "naming and shaming" is not a legitimate purpose for which the power can refuse to be exercised; *c.f. McKerry v Teesdale & Wear Valley Justices* [2001] EMLR 5 at 135, per Lord Bingham of Cornhill CJ.

[22] In our opinion it is proper to take into account in a case such as the present where the juvenile has been found guilty by a Court, the age and relative immaturity of the offender, the offender's prospects of rehabilitation and the likely impact which publicly identifying him or her as the offender will have on his or her psychological well-being and rehabilitation prospects; whether or not the offender represents a danger to the community such that the community's interests require that his or her identity becomes known (see *R v MJM & Ors* (2000) 24 SR (WA) 253); and any other relevant factors. It may be thought that the seriousness of the offence is one such factor. Whilst it is difficult to see how conviction for a single minor offence would be

relevant, conviction of a series of offences, especially of serious offences against the person or of property offences, would be relevant to an assessment of the level of danger to the community which the offender represents, as would the offender's prior criminal history (or lack of it), together with any other specific evidence relevant to such an assessment. The importance to be attached to the rehabilitation of juvenile offenders has been emphasised many times and needs no repetition: see *Simmonds v Hill* (1986) 38 NTR 31 at 33 per Maurice J; *M v Waldron* (1988) 56 NTR 1 at 6 per Kearney J; *G v Bourne* (1991) 105 FLR 52 at 54-55 per Angel J; *R v Williams* (1992) 109 FLR 1 at 7 per Mildren J; *P (A Minor) v Hill* (1992) 110 FLR 42 at 47-48 per Mildren J; *M v Hill & Anor* (1993) 114 FLR 59 at 66-67 per BF Martin CJ. In *R v H (a juvenile)*, unreported 9 October 2001, Bailey J made such an order in the case of a 17 year old juvenile convicted of armed robbery in order to prevent damage to the juvenile's future rehabilitation prospects.

[23] Accordingly, we consider that the question of the discretion to be exercised under s 23 of the Juvenile Justice Act now falls to this Court to determine – see *ABC v L & Tudor-Stack* (2005) 16 NTLR 186 at 206-7 per Southwood J.

[24] This Court was provided with copies of the material that was before the Chief Magistrate in sentencing the appellant. That material includes a précis of the facts accepted by the defence with respect to each of the offences, a victim impact statement, a record of prior matters which had been referred to the Juvenile Diversionary Scheme, a pre-sentence report dated

22 December and a supplementary pre-sentence report dated 17 January 2006.

[25] The Chief Magistrate dealt with each of the offences in the manner already outlined. The combined effect of the sentences, in which the appellant was released immediately on a suspended sentence of detention, were obviously designed to give effect to the principle of rehabilitation.

[26] The appellant was between 14 and 15 years of age at the time of the commission of the offences. He had previously been referred to the Juvenile Diversionary Scheme and on each occasion completed the requirements. He had no prior convictions for any offences. The pre-sentence report indicates he had accepted full responsibility for his offending. The pre-sentence report provides details of the unstable domestic circumstances in which the offender had been raised and his exposure to abuse and neglect. There was reference to the involvement of his aunt and the arrangement that could be put in place for him to be under her supervision. The author of the report did raise a concern about the appellant's lack of understanding of the effects of his crime upon his victim.

[27] With respect to the offences committed by the appellant the précis of the facts upon which the Chief Magistrate proceeded to sentence would indicate that two of the five charges were relatively minor matters involving:

(1) stealing 1 bottle of Bundaberg Rum valued at $30 (file 20507714);

(2) stealing property of which he retained $40 in cash (file 20428204).

The other charges were of a more serious nature and involved:

(3) A charge of assault on 25 October 2004 accompanied by a charge of unlawfully damaging property namely the window of a bus.

The appellant threw stones and rocks at the bus, one of which cracked the front window of the bus resulting in damage to the value of $836 to replace the window. The assault consisted of striking the victim who was the driver of the bus to the left side of his face with an open right hand knocking the victim's glasses off (file 20500683).

(4) Unlawful assault upon a male victim who suffered bodily harm. This offence occurred on 2 April 2005. The appellant punched the victim with a clenched fist to the right side of his face. The victim immediately fell to the ground and was unconscious for 2-3 minutes. The agreed facts are that the victim and another male were "humbugging the defendant for cigarettes". The victim suffered grazes and a laceration to his face with swelling and bruising around his right eye. For a number of days after the assault the victim suffered pain and stiffness in the neck (file 20507728).

(5) The appellant was convicted of robbery and criminal damage. These were the most serious offences and were the subject of the suppression order made by the Chief Magistrate. The appellant

followed the male victim along Daly Street through a gateway into the Sentinel Apartments at 1 Daly Street. The offender hit the victim twice in the face with the back of his hand. The victim removed his wallet from his right hip pocket and removed a fifty dollar note in Australian currency and handed it to the offender. As the victim was trying to reach the safety of the building, the offender repeatedly asked for a cigarette. The victim handed the offender two twenty dollar notes. The offender followed the victim up the stairs from the car park to the front door of the apartments through the front door and into the foyer. The offender assaulted the victim in the foyer. The victim ran for the lift. The offender stuck his foot in the door of the lift to prevent it closing. The victim managed to get the front door of the apartment block open and push the defendant out the front door locking the door behind him. As a consequence of the assault, the victim suffered cuts and severe bruising to his face, particularly in the area of his eyes.

[28] The further offence of unlawfully damaging property occurred at the same date and place. The damage totalling $2,500 occurred when the offender kicked in the front glass door of the block, destroyed the security screen and did extensive damage to the louvre frames. These last two offences were on file 20523908.

[29] The two offences of assault are serious offences particularly the sustained attack in the course of the robbery.

[30] In addition to the offences themselves, other matters to which we should have regard are as follows:

(1) The appellant was very young at the time of the commission of the offences being 14 to 15 years of age.

(2) The appellant does not have prior convictions.

(3) The appellant pleaded guilty to each of the offences and accepted responsibility for his offending. He expressed remorse for what he had done and this is set out in his affidavit sworn 18 January 2006 (AB 37-39).

(4) There are now controls in place to ensure the appellant undergoes a period of supervision.

(5) The appellant has positive plans for his rehabilitation which include obtaining employment as an apprentice. The sentences that were imposed and the arrangements made for his subsequent supervision were all conducive to his rehabilitation.

(6) The appellant has a history of abuse and neglect as a child. However, he does have an aunt who is prepared to be involved in his supervision and to provide him with a supportive environment. As stated in the pre-sentence report "his living arrangements appeared to have improved dramatically which may decrease many risk factors".

(7) Publication of the appellant's name or any identifying material, even with respect to the less serious offences, has the potential to be detrimental to his employment prospects and to adversely affect his rehabilitation. There is also a risk that such publication may have psychological consequences. There is no specific material enabling the Court to quantify the level of risk, except to say that the appellant will be living in a small town where he is likely to become known very quickly.

(8) There is no material to support a finding that the appellant continues to be a danger to the community or that it would otherwise be in the interests of the community to have him publicly identified.

(9) The best interests of the community lies in the rehabilitation of the appellant. His rehabilitation could be adversely affected by publication of his identity.

[31] In these circumstances, we consider that the proper exercise of the discretion under s 23(1) of the Juvenile Justice Act is to make an order prohibiting the publication of the appellant's name and of any material that would lead to his identification. We agree with the learned Judge at first instance that it is unnecessary to make an order prohibiting the publication of his image as this is already covered by the terms of this order.

[32] Such an order does not in any way prevent the media from publishing the details of the offending and every other aspect of the offences. This is

sufficient to balance the very important requirements that Court proceedings be open to the scrutiny of the public and that justice is not administered behind closed doors with the public interest to protect the privacy of children.

[33] Accordingly:

1. The appeal by MCT is allowed.

2. Order setting aside the orders made by the Supreme Court dated 3 May 2006.

3. The cross appeal to the Supreme Court by the respondent is dismissed.

4. Order with respect to each of the offences for which the appellant was dealt with in the Juvenile Court that there be no publication of his name or of any material that would lead to his identification.

_____