

CITATION: *Christopher Tencate v CB (a Youth)* [2025] NTYC 1

PARTIES: Christopher Tencate (NT Police)

v

CB (a Youth)

TITLE OF COURT: CHILDRENS COURT

JURISDICTION: CRIMINAL

FILE NO(s): 22522129

DELIVERED ON: 21 May 2025

DELIVERED AT: Alice Springs

HEARING DATE(s): 29 & 30 April 2025, 20 & 21 May 2025

DECISION OF: Judge Woodroffe

CATCHWORDS:

CRIMINAL LAW – electronic monitoring devices – circumstantial evidence of damage to the device – Aboriginal English - ‘forcing’ – reasonable belief as to ‘forcing’ - self defence – s 43BD *Criminal Code Act 1983* – complicity and common purpose – s 43BG *Criminal Code Act 1983*

Criminal Code Act 1983 ss 1, 43BG, 43BD, 238, 240

Macquarie Dictionary

Alex Bowen, ‘What you’ve got is a right to silence’: paraphrasing the right to silence and the meaning of rights. (2021) *The International Journal of Speech, Language and the Law*

REPRESENTATION:

<i>Counsel:</i>	Prosecutor:	Ms Houston
	Defendant:	Ms Laudner

<i>Solicitors:</i>	Prosecutor:	DPP
	Defendant:	NTLAC

Decision category classification:	B
Decision ID number:	[2025] NTYC 1
Number of paragraphs:	53

IN THE CHILDRENS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22522129

BETWEEN:

CHRISTOPHER TENCATE
Prosecutor

AND:

CB (a Youth)
Defendant

REASONS FOR DECISION
(Delivered 20 May 2025)

Introduction

1. A hearing commenced on the 29 and 30 April 2025 and continued 20 and 22 May 2025 concerning the criminal prosecution on file 22522129. The single contested charge was intentionally or recklessly causing damage to an electronic monitoring device, property of the Community Youth Justice Office, contrary to s. 241 of the *Criminal Code Act 1983*. The youth also contested breach proceedings that would arise out of the same facts and circumstances of the alleged conduct.
2. The hearing was a matter of small compass on whether CB (hereinafter the Youth) who while being subject to supervised conditions of staying at BushMob and to wear an electronic monitoring device did on 14 March 2025 leave BusMob with another youth [redacted] at approximately 11.20 pm by jumping the surrounding fence, and further at location near the Head Street and Dixon Road removed his tracker and in doing so damaged it.
3. The fully contested breach proceedings of a Supreme Court order 22336608 is also for determination of the Childrens Court as to whether there had been any breach and if so, whether any such breach was lawful and justified conduct of the youth.
4. The prosecution bears the onus of proof to prove the charge and its fault elements beyond a reasonable doubt. Its case initially consisted of evidence of an agreed set of facts in Exhibit P1, as well as the testimony of Senior Community Justice Officer Jared Saenea, and Senior Sergeant Matthew Hall as well as the body worn footage of the arrest of the youth and conversation.

5. The Body Worn Footage of the arrest was initially Marked For Identification as MFI P5 concerning a question as to its admissibility and ruled admissible on the hearing as Exhibit P5.
6. The relevant portion of the agreed facts concerning both of these proceedings was that the youth, entered an Order on 14 February 2025 concerning a Supreme Court Suspended Sentence of Detention with supervised conditions;
 - (a) To immediately go to BushMob, 26 Priest Street, Ciccone;
 - (b) To follow the rules at BushMob, participate in the program and noted exited from the program;

....

 - (d) To follow a curfew if directed by CYJO;
 - (e) To wear Electronic Monitoring Device (EMD) if directed to do so by a CYJO.

Jared Saenea's evidence

7. Jared Saena gave evidence for the prosecution, that he works for the Community Youth Justice Office in Alice Springs as a Senior Community Youth Justice Officer and knew the youth was at BushMob in accordance with his Court order. That he was on conditions to wear and EMD; and to adhere to the curfew and the rules for an EMD are not to remove it or tamper with it, or damage it. The youth was wearing an EMD of 14 March 2025 and the rules had been explained concerning removal and tampering. The youth was aware of the rules as he 'was provided a written direction in accordance with the order that he agreed to and signed'¹.
8. He had received the first call around 11.00 pm at night from the Buddi Electronic Monitoring Unit that the youth was leaving the facility and this was during the period of the curfew hours.² He produced to the Court a Buddi system generated document titled 'ALERT: Strap Alert' that was tendered as Exhibit P2. He said that a 'Strap Alert' means 'that a strap is protected (sic) to the smart tag'³. Were someone's either tampered with it or completely removed it. The time of the Strap Alert concerning the youth was 2348 on 14 March 2025.
9. A closer examination of the exhibit shows the time of non-detection was 23.44.32 reporting call was 23.46.00. The witness indicated on receiving the alert he telephoned the police.
10. The witness also produced a second generated Buddi document tendered as Exhibit P3 ALERT: Tracker Static (10 hours Nil Movement) and explained 'when there's no movement on the device for ten hours we get a phone call about it. And then that usually is a sure indication that the Smart tag's been removed off the wearer'⁴. The document shows a fixing time of 09.50.18 on 15 March 2025. The witness said that the electronic monitoring

¹ Transcript page 14.7

² Transcript page 12.4

³ Transcript page 13.1

⁴ Transcript page 14.3

device was recovered by other staff. Speaking to its possible recovery location 70 Dixon Road was the closest address to it.

11. In removing an electronic monitoring device, he said the proper way for its removal is with a special removal tool⁵ that is stored in a locked safe at the office. The youth had no access to the safe or was there any report of any of the tools missing. The cost of a smart tag of about a \$1000 though there are kept records of the exact cost and are owned by the department. He had not given permission for the youth to leave BushMob, or to remove or damage the electronic monitoring device.
12. The Senior Community Justice Officer during cross examination that he had not seen the ankle bracelet when it was recovered or the state that it was in at that time. He did not agree that taking off of an ankle bracelet with the key could not damage it, though he had no firsthand experience of ever taking of the device without the special key. He was certain it was damaged.
13. On re-examination concerning not having firsthand experience in seeing non tool removal resulting in damage, he stated in his experience he had seen instances of injuries or damaged smart tags or straps with the use of screwdrivers, knives sharp stuff or if the wearer's strong enough to rip it⁶.

Senior Sergeant Matthew Hall's evidence

14. The Senior Sergeant was given leave to read into evidence his statutory declaration of 15 March 2025. He was on rostered shift of 14 March 2025 when received radio communication of the defendant and [redacted] had absconded from BushMob at 11.50 pm who were both subject to electronic monitoring devices that had be cut off in Dixon-Head Street and sighting them near the Stuart Highway was chased into bushland for 200 metres on foot where the youth was arrested and identity confirmed.
15. The officer's body worn camera footage was played and subsequently admitted into evidence. The footage does not show that the defendant at that time was wearing any electronic monitoring device. The youth engaged in a general and affable conversation that was wholly in English. During the officer's escort back to the main road the youth said, "how the fuck did we get caught?", with the officer saying "How did you get found? (Indistinct) Because you cut off your EMD and it tells us where you were. Then we saw you running". There was a further conversation concerning the wellbeing of a police dog.
16. The Senior Sergeant's testimony was that he did not see the defendant wearing an electronic monitoring device and that is why he had made comment that he's cut it off. He made no comment surrounding it and made small talk. He didn't seem too concerned at all or even remotely stressed or worried that he was arrested⁷.
17. He was asked by the prosecutor the following questions⁸, 'So when you say he ducked down, what was your perception of' ? 'that he was attempting to avoid apprehension'. 'Did he appear frightened at all to you?' 'No not at all...there was a large amount of time where

⁵ Transcript page 12.

⁶ Transcript page 20.

⁷ Transcript page 25.3

⁸ Transcript page 26.5

there was silence between the two of us and nothing from his behaviour indicated that he was concerned about anything'. The following question was, 'And did he say anything to you about being forced to do anything'? 'No he didn't'.

18. In cross examination querying a defence request of 2 April 2025 concerning any cctv footage from BushMob and advised that had been explained to him, that their database only holds it for three weeks and then it gets deleted⁹. The only items found on the youth was a phone and charger.
19. On the prosecution closing of its case, the defence did not wish to make any submissions as to whether there was a case to answer concerning the charge and elements particularly whether the element of proof of any damage to the youth's electronic monitoring device.
20. Damage to property is set out in Part VII of the *Criminal Code Act* in s. 241(1)

'A person is guilty of an offence if the person causes damage to property belonging to another person.

Fault element

The person

(a) Intentionally causes damage to property belonging to that other person or someone else;
or

(b) Is reckless as to causing damage to property belonging to that other person or someone else.

21. Damage to property is defined in s. 238 of the Act that includes

(a) Destroying the property; and

(b) Causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and

(c) Causing any loss of a use or a function of the property by interfering with the use of the property.

Youth AB's Evidence

22. I remind myself that CB is not a professional witness as the prosecution witnesses are. Also that his evidence is no less credible because it is with the assistance of an Alywarre interpreter or due to his age. The testimony of the defendant was at transcript page 39;

Who did you climb over the fence with that night? [redacted]

Why did you climb over the fence? Forcing (inaudible)

Why did you feel forced? I don't know.

⁹ Transcript pager 27.5.

Did you want to climb over the fence? Nuh.

... transcript page 40...

Did you want to leave Bush Mob? Nuh.

Why did you leave Bush Mob that night? Forcing

Who forced you? [redacted].

Who took the ankle bracelet off your leg? [redacted].

Did you want [redacted] to take the ankle bracelet off your leg? No.

....

When the police officer stopped you, how did you feel? Sad.

What action did [redacted] do to make you feel forced? Force something¹⁰. (my emphasis)

23. At transcript pages 40-41 following the above question, interpretation and response by the youth there was an interaction that was requested to be repeated where defence counsel asked the witness the following question;

“What action did [redacted] do to make you feel forced? Language spoken and the Court requested the responses to be back interpreted into English.

The evidence in relation to the directly interpreted response to the question is set out at transcript page 41.6 “the first word that he said – I don’t know, and the second word he said “friend”.”¹¹ Following an initial dispute by defence as to what word was spoken in language by the youth being the word ‘friend’ or ‘threatened’, it was subsequently conceded by defence counsel that it was the former word ‘friend’.

24. Cross examination continued at transcript pages 41-42 he was asked [redacted] is your friend yes? Well he told me to run (inaudible) this fence. But you could have stayed where you were, yes? Yeh.
25. That [redacted] climbed the fence first and went on the other side, and that he could have gone back to BushMob. He still had on his EMD when he climbed over by himself. He didn’t stop the other youth taking off the ankle monitor and stayed very still. So as to make it easy for [redacted]. Yeah. Scissors were used to make it come off that went into the little space’. Yeah¹². He was further asked if he had permission to take it off? No. And agreed it did not belong to him.
26. He described what happened when the scissors were put into the little space, that it just clicked off¹³. When asked if he saw that it was damaged, he replied ‘little bit’.

¹⁰ The response “force something” was said by the youth in English at Transcript page 40.8 and 11.05 minutes of the audio recording of court proceedings.

¹¹ Transcript page 41.7 and the court audio recording at 12.55 – 13.01

¹² Transcript page in

¹³ Transcript page 44.1

27. In re-examination the youth's evidence was that he stayed still while [redacted] was taking off his ankle bracelet, as he told me to do that.

Findings of Facts

28. It is relevant that the s. 241(1) charge is a part IIAA offence, as outlined in schedule one of the Act and that the onus of proof of the conduct and fault elements of the offence rest on the prosecution beyond a reasonable doubt.
29. The prosecutor on closing submits that there was a common agreement by the youths where the defendant aided by [redacted] in the committing of the charged offence of damage to the electronic monitoring device, by remaining present at the time of its removal and keeping his leg still when the device was removed by [redacted] in inserting a pair of scissors into the locking space and causing its damage that was seen and described by the youth as "little bit".
30. The prosecution submits in respect of the damage it is a circumstantial case that the Children's Court can find that the fact of damage to the electronic monitoring device beyond reasonable doubt only after excluding all other reasonable hypothesis consistent with innocence.
31. The evidence shows that there is no dispute that the defendant was required as a condition of his supervision to wear an electronic monitoring device that was affixed on 14 March 2025 there is nothing to suggest it was not functioning as given a Strap Alert occurred and the time of 2348 hours and generated closet location of 70 Dixon Road (that is outside of Bushmob residence) in Exhibit P2 and the subsequent Static Alert in Exhibit P3 that is generated after being static after 10 hours.
32. Though the actual device was not sighted by either prosecution witness, or produced as an exhibit, there is defendant's direct evidence of the insertion of scissors into the locking mechanism and was damaged a little bit. I can exclude any reasonable hypothesis of its coming off inadvertently given the build off the youth in comparison to minors who come before the court, or battery damage (spontaneously or not) given its non report. I will return to the issue of 'forcing' in the sense of compulsion at a later stage.
33. Counsel for the defendant submits that there is no direct prosecution evidence concerning a common intention by both of the youths to damage the electronic monitoring device in order to affect its removal by [redacted].
34. The requirements of common purpose under s. 43BG of the Act under (2)(a)(b);

For the person to be guilty;

(a) The person's conduct must have in fact aided, abetted, counselled or procured, the commission of the offence by the other person; and

(b) The offence must have been committed by the other person.

(3) For the person to be guilty, the person must have intended that;

(a) the person's conduct would aid, abet, counsel or procure of any offence (including its fault elements) that the other person committed.

35. I am to further consider any defences that would apply concerning the offence of damage¹⁴. I do consider and find to the requisite standard of proof that there was firstly a common intention by both youths to breach the conditions of their supervision to no longer be at Bushmob by 'jumping the fence' and no longer to be subject to supervision and detection in the removal of the electronic monitoring device, as a means to prevent or hinder their running away.
36. I consider that the evidence contained in Exhibit P5 of the Sergeant's body worn camera is compelling and is immediately contemporaneous to the act of removal. As it shows the flight of both youths into the Todd River and the defendant's attempt at avoiding detection in crouching down in a clump of tall grass. I consider the defendant's spontaneous question to the Sergeant "How the fuck did we get caught?", who responds, "How did you get found? (Indistinct) Because you cut off your EMD and it tells us where you were. Then we saw you running".
37. I find that this is a significant piece of evidence, as it reveals the true circumstances and shows the defendant's intention in leaving of BushMob, but also that there was a meeting of minds between the two youths to abscond or jump the fence from BushMob and prevention their capture by police or authorities. In stating 'How the fuck did we get caught?' With a special emphasis on the word 'we' by the youth.
38. Its significance is increased, given at no stage does during the defendant's arrest does he discuss being forced by [redacted], or exhibit any behaviours of being apprehensive, fearful of the recent encounter with [redacted] or being sad. The is inconsistent with his testimony, that he felt sad in not being able to go back to Bushmob.
39. Nonetheless, I must further consider defence counsel submission concerning the allegations of the offence and breach, that the jumping the fence, removal and damage of the electronic monitoring device was justified conduct.
40. S. 43BD(1) where a person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self defence.
- (2) *A person carries out that conduct in self defence only if;*
- (a) *The person believes that the conduct is necessary:*
- (i) *to defend himself or herself or another person*
- (b) *The conduct is a reasonable response in the circumstances as he or she perceives them.*
41. What we know as the defendant's belief on the 14 March 2025, that both youths were residents of Bushmob and not free to go as they were supervised and subject to an electronic monitoring device. The youth [redacted] is older than the defendant by a year, however of the two the defendant has a larger as stated by the officer. That at the time of the removal of the device that [redacted] was in possession of a sharp pair of scissors. There is no evidence of their use in the earlier conversation while watching of a movie, of the forcing, there was no evidence of whether there was a single or multiple forcings.

¹⁴ see s. 43BG(7) of the Criminal Code Act.

42. There is no evidence of any relationship between the defendant and [redacted] through family, kinship or culture. We know that [redacted] was only described as a friend who was also a resident at BushMob and subject also to electronic monitoring.

Forcing

43. The Macquarie Dictionary gives the definition of the word 'force' to mean 'to compel; constrain, or oblige, (oneself or someone else) to do something. The word 'forcing' is an Aboriginal English word, commonly stated in everyday usage, and included in legal vernacular, even extending into police cautions of the Northern Territory 'I'm not forcing you to speak to police'¹⁵.
44. It is a word that can have varied meaning dependant on its context and intended usage. It may also require the examination of the nature of the relationship between the person who is making of the exerted or implied threat such as whether the relationship is one of violence, abuse or intimidation, whether it is of a stranger, whether it is a person of authority or control such as police over an individual or through obligation due to kinship or ceremonial obligation. Or with social inclusion or social exclusion through a peer or peer group.
45. It is therefore necessary to understand its usage in these proceedings by the defendant in his interactions with the other youth and his immediate actions on the night of the 14 March 2025. The defendant in his testimony in chief was asked open ended questions that were put in the Alywarre language and interpreted and provided response in English and through interpreted responses.
46. To the an open ended question as to 'why did he feel forced' he replied 'I don't know' and later, and whether could explain what was the forcing. He couldn't. He responses where What action did [redacted] do to make you feel forced? Force something¹⁶. (my emphasis)
47. I am satisfied to the requisite standard and as a finding of fact, that the defendant's the use of the word 'forcing' occurred in the context of 'forcing by peer pressure' and not through any demonstrative act or verbal threat of harm or violence as to compel the defendant to abscond from BushMob and to remove and damage the electronic device he was wearing.
48. I am not satisfied that the defendant has raised in his evidence, that he had a belief even on the balance of probabilities that he needed to defend himself from [redacted] and his conduct of permitting the removal and damage of the electronic monitoring device and being a reasonable response as he believed it.
49. Further, I can exclude as a reasonable hypothesis any forcing by threat, intimidation, cultural connection or obligation as to the circumstantial nature of the damage as to the mental elements and having excluded open defences to the accused.
50. I am satisfied that the prosecution has proved the charge beyond a reasonable doubt and the defendant is found guilty to having committed causing damage to the property of the

¹⁵ The use of 'forcing' in this context is the refraining of the use of authoritative power in order to not to compel a person to speak.

¹⁶ The response "force something" was said by the youth in English at Transcript page 40.8 and 11.05 minutes of the audio recording of court proceedings.

electronic monitoring device which belonged to the Community Youth Justice Office on 14 March 2025.

File 22336608

51. Further I am satisfied that the prosecution has proved the following facts beyond a reasonable doubt on the Breach hearing on 222336608;
 52. That the defendant was a resident of Bushmob and subject to supervised conditions and to wear an electronic monitoring. With the youth [redacted] agreed through 'forcing' of peer pressure, jumped the perimeter fence at 11.40 pm on 14 March 2025 and approximately 11.48 a Strap Alert indicated it had been tampered or removed by the other youth using sharp scissors into the lock clicking it open resulting in a little bit of damage. The youth ran from police and was shortly arrested in nearby bushland.
 53. I find that the breach has been proven in respect of the following conditions.
 - A. To follow the rules at BushMob, participate in the program and noted exited from the program;
 - B. To follow a curfew if directed by CYJO;
 - C. To wear Electronic Monitoring Device (EMD) if directed to do so by a CYJO.
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