

Case Summary
Office of the Judge Advocate General

DEFENDANT: AC Whalley
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 16 February 2023
VENUE: RAAF Base Wagga, NSW

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 72E Threaten to capture or distribute intimate images	Not Guilty
In the First Alternative to Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 61B(1) and Criminal Code 2002 (ACT), s. 44 Attempted intimate observations or capturing visual data	Guilty
In the Second and Alternative to Charge 1	DFDA, s. 60(1) Prejudicial conduct	Withdrawn

Pre-Trial: Closed hearing and non-publication orders

Application made:	No.
Determination:	While no orders were made under the DFDA, due to the nature of First Alternative to Charge 1, it is an offence to publish the details of the complainant under the <i>Evidence (Miscellaneous) Provisions Act 1991 (ACT)</i> .

Trial: Facts and legal principles

Nil, as the case proceeded by way of a guilty plea.

Findings

	Finding
Charge 1	No finding required
In the First Alternative to Charge 1	Guilty
In the Second and Alternative to Charge 1	No finding required

Sentencing: Facts and legal principles

The complainant and defendant resided in separate rooms on the ground floor of a live-in accommodation building at RAAF Base Wagga. The ground floor contained a shared ablutions area with three shower cubicles joined in a row.

At approximately 2020hrs on 10 February 2022, the complainant and defendant were occupying adjacent shower cubicles. The defendant attempted to capture the complainant showering by positioning his mobile phone over the shower cubicle wall separating their respective showers and directing the mobile phone towards the shower occupied by the complainant.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

The DFM found that the offending conduct involved some objectively serious features and constituted a gross breach of trust.

The DFM found that there were a number of mitigating features in the defendant's favour including: the entry of a plea of guilty at the earliest opportunity, his expression of genuine remorse, the delay of nearly 12 months between offending and sentence that was not attributable to the defendant, being dealt with as a first-offender, the continuing engagement with a treating medical professional and a number of very positive character references tendered on his behalf. Relevantly, the character references from current serving members indicated a willingness to work with the defendant again, if given the opportunity, notwithstanding the conduct for which he was being dealt with. In all of the circumstances, the DFM considered that there were good prospects for rehabilitation.

Despite these mitigating features, the objective seriousness of the offending conduct and the need to satisfy the principles of general deterrence and maintenance of good order and discipline called for a period of detention to be served.

Punishments and orders

Charge 1	Not Applicable
In the First Alternative to Charge 1	To undergo detention for a period of 30 days.
In the Second and Alternative to Charge 1	Not Applicable

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 03 March 2023.

	Conviction	Punishments / Orders
Charge 1	Not Applicable	Not Applicable
In the First Alternative to Charge 1	Upheld	Upheld
In the Second Alternative to Charge 1	Not Applicable	Not Applicable

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