

Case Summary
Office of the Judge Advocate General

DEFENDANT: AC Oh
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 19 October 2023
VENUE: RAAF Base Williamtown, NSW

Charges and plea

	Statement of Offence	Plea
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
Alternative to Charge 1	DFDA, s. 60(1) Prejudicial conduct	Not Applicable

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 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	Guilty
Alternative to Charge 1	Not Applicable

Sentencing: Facts and legal principles

On 01 Mar 23, the defendant and complainant were staying at RAAF Williams. The complainant was taking a shower inside the shared, unisex bathroom situated in the Live in Accommodation. Whilst the complainant was in the shower cubicle, she saw a person's hand holding an iPhone in the gap between the cubicle partition and the floor. Shortly afterwards, the complainant left the cubicle and told a SNCO what had happened. The SNCO told her to go to her room and he would wait outside the bathroom to see who came out. The defendant then walked out. The SNCO asked the defendant if he could see the photos on his iPhone and the defendant consented. There were no photos or recordings of the complainant. On 03 Mar 23, the defendant participated in a Record of Interview (ROI) with ADF investigators during which he made wide ranging admissions concerning his behaviour.

The Defending Officer informed the DFM that the defendant was a first offender, had pleaded guilty at the first available opportunity, co-operated with the administration of justice and was

- *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.*

genuinely remorseful for having engaged in this form of conduct. The defendant had been suspended from duty shortly after participating in the ROI, had returned to his undergraduate studies interstate and had made application through his chain of command to separate from service. Such application had been held in abeyance pending the outcome of this proceeding. Taking those matters into account, the Defending Officer candidly submitted that the appropriate punishment was dismissal.

The DFM held that if the defendant had expressed a strong desire to continue serving, he would have carefully considered imposing the punishment of detention to be served. This would have been consistent with the manner in which the DFM had dealt with other members convicted of similar conduct and who had the benefit of many of the same mitigating features. However, in the circumstances of this case, the DFM agreed with the submissions made by the Defending Officer and dismissed the defendant from the Defence Force.

Punishments and orders

Charge 1	Dismissal from the Defence Force
Alternative to Charge 1	Not Applicable

Outcome on automatic review

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

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Alternative to Charge 1	Not Applicable	Not Applicable

- *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.*