



memo

To: Crown Practice Manager, Office of the Director
of Public Prosecutions **TRM file:** <<>>
TRM doc: <<>>

Through: Superintendent, Judicial Operations Section

Through: Superintendent, Crime Division

From: Jakson Evans, Detective Acting Senior
Sergeant, Special References Unit **Date:** 12 Dec 19

Subject: Opinion file 21944804

This memorandum is submitted seeking an independent assessment of evidence and opinion from your office in relation to allegations made against current serving police officers stemming from an arrest and subsequent judicial proceedings in Alice Springs on 11 January 2018.

A preliminary investigation has been conducted by Detective Sergeant Sonia Kennon of the Special References Unit after a complaint was made to the Ombudsman's Office by the North Australian Aboriginal Justice Agency.

The investigation included a review of the entire transcript of the judicial proceedings from 3 September 2018, 2-3 April 2019 and 9 May 2019. It further included body worn footage and mobile telephone footage obtained during the initial arrest as well as statutory declarations provided by all involved police officers and civilian witnesses. A full evidentiary analysis has been completed by Detective Sergeant Kennon and is attached to the file. No formal record of interview has been offered to Constable Rolfe or Zendeli.

The opinion sought relates to two offences, namely;

1. Perjury, contrary to section 96 Criminal Code Act, Northern Territory 1983, and;
2. False statements in statements required to be under oath, contrary to section 118 Criminal Code Act, Northern Territory 1983.

The offence of Fabricating Evidence, contrary to section 99 Criminal Code Act, Northern Territory 1983 was considered however this offence requires the fabrication to be other than perjury. Therefore it was deemed to be duplicitous to the offence of Perjury relying on the same facts.

The opinion sought with regard to the offence of perjury focuses on two areas of the offence, primarily, whether the accused "*knowingly*" provided false testimony and further, whether that testimony is in fact false with consideration to the testimony provided. The same questions are raised with regard to the offence of False Statement.

The alleged offending arose out of findings made by Judge Borchers at Alice Springs local court on 9 May 2019 with reference to file number 21801980. The entire transcript is attached to this file and found at folio 23.

His honour made a number of findings relating to the evidence of Constable Rolfe namely;

(1) I cannot accept the evidence of Constable Rolfe or Constable Zendeli when they say they saw punches thrown by Ryder. Neither Constable Lerrain (sic) (Lehrain), nor Duranis (sic) (Geranios) saw any punches thrown and both were closer to Ryder than Zendeli. A body-worn video shows no punches being thrown. Constable Rolfe and Zendeli's evidence is wrong and is a pure fabrication.

His honour later states,

"I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration about what has happened in the bedroom".

It is on the basis of these findings the investigation was conducted and it is on the identified discrepancies opinion is sought. There are a number of discrepancies between the evidence of Constable Rolfe and others present that is not easily reconcilable. Body-worn video footage did not corroborate Constable Rolfe's evidence however it did not categorically disprove it either.

Constable Rolfe has not been offered the opportunity to provide a version of events through record of interview. As such he has not offered any concessions as to the discrepancies. In his evidence he makes a concession that he completed his statement at the end of the shift and without viewing the body-worn video footage. The statutory declaration was given in evidence pursuant to section 33 Evidence (National Uniform Legislation) Act 2011.

An independent assessment is sought with respect to the circumstances of this case. The concerns of this office surround whether or not a prosecution could prove that Constable Rolfe lied in his testimony or whether simply his evidence was not witnessed by others present or captured on the single body-worn camera, or whether the discrepancies are reconcilable through any other means.

It is my opinion that the offences are *prima facie*, a case exists for the offences however, the prospect for conviction is low in being able to prove beyond reasonable doubt that Constable's Rolfe and Zendeli fabricated their testimony. It stands however in the public interest that an independent assessment of this evidence is conducted by your office.

[Redacted]
Jakson Evans
D/A/S/Sgt 2630
Special References Unit

[Redacted] 19.1
Mark Malogorski ✓
D/A/ Superintendent
Crime Division
16 December 2019

Comments:

Richard Bryson
Superintendent
Judicial Operations Section
December 2019

Comments:

~~Recommended~~ / Not recommended



Approved / not approved



Northern Territory Police

Brief Adjudication Sheet

Opinion

NTA <input type="checkbox"/>	SUMMONS <input type="checkbox"/>	BAIL <input type="checkbox"/>	ADULT <input checked="" type="checkbox"/>	YOUTH PROSECUTION <input checked="" type="checkbox"/>
				YOUTH DIVERSION <input type="checkbox"/>
				REMAND <input type="checkbox"/>

PART A: TO BE COMPLETED BY CASE OFFICER		IJIS Case Number	21944804
Defendant Name	Zachary Rolfe	Court Date	N/A
Offences	S96 Perjury and others		
Body Worn Video	Yes <input type="checkbox"/> No <input type="checkbox"/>	Attached: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
CCTV attached	Yes <input type="checkbox"/> No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>	
Medical Release Form	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	N/A <input type="checkbox"/>	
EROI conducted	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>	
Victim Impact Statement	Yes <input type="checkbox"/> No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>	
Criminal History	NT - Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>	Interstate - Yes <input type="checkbox"/> / No <input type="checkbox"/>	<i>Not Working</i>

Firearms Act offence, offence of violence, disq offence Yes No
If yes, any Firearms licence must be suspended by s 42 notice.

WHERE INTERSTATE CRIMINAL HISTORY EXISTS IT MUST BE REQUESTED

Informant / OIC of Case:		
Name (print): <i>Sonia Kennon</i>	Rank / Registered number: D/Sgt 2164	Date: 05/12/2019
Phone number: [REDACTED]	Email: [REDACTED]@pfes.nt.gov.au	
Signature: [REDACTED]	Station/Section: Special References Unit	
2 nd Contact (must be a different member):		
Name (print): <i>Jakson Evans</i>	Rank / Registered number: D/A/Snr Sgt	Date: 06/12/2019
Phone number: [REDACTED]	Email: [REDACTED]@pfes.nt.gov.au	

PART B: TO BE COMPLETED BY THE BRIEF ADJUDICATOR (Supervisor)	
Endorsement of this file indicates that –	
<ul style="list-style-type: none"> <i>A prima facie case exists.</i> <i>Reasonable prospect of a finding of guilt exists.</i> <i>It is in the Public interest to proceed.</i> <i>The mandatory documents as per the Prosecution File Order are attached.</i> 	
Adjudicating Sergeant's Endorsement:	
Name (print): <i>Mark Malogosh</i>	Rank / Registered number: <i>D/A/Supt 1910</i>
Phone number: <i>0401116597</i>	Email:
Signature: [REDACTED]	Station/Section: <i>Crime Division</i>
Has the file been tracked in IJIS?	Yes <input checked="" type="checkbox"/>



A NOTE TO PROSECUTOR MUST BE COMPLETED

Prosecution File Order - Aide Memoir

<u>Document</u>	<u>Nr of Copies</u>
• Brief Adjudication Sheet (mandatory)	1
• Apprehension Report.....	1
• Note to Prosecutor (mandatory)	1
• IJIS screen print of all current court matters (mandatory)	1
• IJIS screen print of all unpaid fines (mandatory)	1
• BDO (if issued).....	3
• Statement of Facts.....	3
• Victim Statements.....	3
• Witness Statements.....	3
• Members Statements.....	3
• Members Notebook entries (completely blackout unrelated entries).....	3
• Photographs (colour).....	3
• Victim Impact Statement(s).....	3
• Receipts/Invoices (support restitution request).....	3
• Other Tenderable Documents (<i>if relevant</i>)	
▪ Drink driving forms.....	2
▪ Trespass Act/ notice.....	2
▪ DV Orders/proof of service.....	2
▪ Alcohol Protection Orders.....	2
▪ MVR certificates (Unreg/Unins/Unlic).....	2
▪ Financial Statements (if available).....	2
▪ Medical Report (if available).....	2
• Master Log Record.....	1
• EROI Discs (defence copy & working copy within sleeve).....	2
• CCTV discs (defence copy & working copy within sleeve).....	2
• Body Worn discs (defence copy & working copy within sleeve).....	2
• Chronology of events (S138).....	1
• Miscellaneous Correspondence (<i>if relevant</i>)	
▪ Immediate Suspension Notice – S29AAN.....	1
▪ Request for Information - Interstate history.....	1
▪ IJIS printouts.....	1
▪ MVR printouts.....	1
▪ Medical release form.....	1
• Charge Sheet.....	2
• Bail Consideration.....	1
○ Bail Agreement/ Remand Warrant.....	3 OR
○ Summons Docs (worksheet/proof of service).....	1 OR
○ Notice to Appear (white & yellow copies).....	1
• NT Criminal History - Information for Courts.....	3
• NT Criminal History - Antecedents Report.....	3
• Interstate Criminal History.....	3