



memo

PROMIS: 9021716

To: Superintendent, Crime Division

From: Jakson Evans, Detective Acting Senior Sergeant,
2630

Date: 21 Feb 2020

Subject: Allegation of Perjury

This memorandum is submitted in continuance to previous correspondence relating to investigations conducted by the Special References Unit in response to allegations of perjury raised by Local Court Judge Greg Borchers against Constables Zachary Rolfe and Xenita Zendeli during a hearing in the Alice Springs Local Court on 9 May 2019.

On 12 December 2019, two files were submitted to Judicial Operations Section for forwarding to the Office of the Director of Public Prosecutions (ODPP) for an independent assessment of the available material. On 23 December 2019, Superintendent Judicial Operations Section, Richard Bryson, returned the files citing insufficient evidence to seek an official opinion from the ODPP. In his memo Supt Bryson sought further information, specifically a particularisation of the material fact that was alleged to be the subject of the allegation. He also sought further information from the attending members and an opportunity to respond to the allegations from the subject officers.

Detective Sergeant Sonia Kennon conducted further investigations as requested by Supt Bryson namely;

- Statutory declaration of Patricia Multa
- Obtaining mobile telephone footage taken by Rebecca Hayes
- Medical information of Malcolm Ryder
- St Johns Ambulance case card for attendance to the initial incident and the injuries receive by Malcolm Ryder
- House plans for [REDACTED] Street, Larapinta, Alice Springs.

Further statutory declarations were requested from Constable's Lehrain, Chatterton, Geranios and Bonney, who all declined to provide them after seeking advice from the NTPA.

Further information in the form of a statutory declaration from Judge Borchers was requested however was also declined with his honour referring the investigating officer back to the original transcript.

A record of interview was offered to Constable Zendeli however Mr Ray Murphy, acting as her legal counsel declined the opportunity.

A record of interview has not been offered to Constable Zachary Rolfe as he is currently before the courts and residing interstate.

At the conclusion of the further investigation conducted by Detective Sergeant Kennon, the file is not able to progress to a standard beyond its initial submission. No particularisation of the material fact is furthered due to a lack of assistance from Judge Borchers. No significant discrepancy between the testimonies of the police has been identified. There remains, no reasonable prospect of conviction.

A review of material provided to the investigating officer of enquiries conducted by the Complaints Management Division of the Professional Standards Command was also conducted. This material, along with the evidence obtained in this investigation give rise to potential disciplinary breaches and unprofessional behaviour. It is therefore the recommendation of this office is that these files be returned to Professional Standards Command for further review.



Jakson Evans
Detective Acting Senior Sergeant
Officer in Charge
Serious Crime Squad



memo

To: COMMANDER DAVID PROCTOR

PROMIS:

TRM file:

TRM doc:

From: SUPERINTENDENT RICHARD BRYSON

Date: 23/12/2019

Subject: OPINION FILES – ROLFE 21944804 & ZENDELI 21944805

The above 2 files turned up at JOS last week as opinion files. As per the usual process where the files involve serving members or complex or sensitive matters this office reviews the files. After that initial review, if the files are in order and if it is deemed warranted the files are forwarded to the DPP for formal opinion.

In relation to these particular files I make the following observations. The original incident occurs 11 January 2018. Statutory declarations were made by the members that same date. Whilst statutory declarations were clearly made contemporaneous to the incident in question, it also appears on the material before me that they were made in haste (*probably just prior to the end of their shift*) and without the opportunity to review the body worn footage which was the subject of much discussion during the subsequent criminal hearing.

When I read the statement of facts as currently drafted in the opinion files the investigating member is asking for an opinion in relation to 2 separate and specific offences pursuant to the Northern Territory Criminal Code being, Part IV Division 5 s96 perjury and Part IV Division 7 s118 make false statement.

The files that have been presented to me present as a gathering up of the material which was on the original prosecution brief along with the transcript of proceedings and subsequent decision of Local Court Judge Borchers where he criticises the members for the discrepancies in their evidence. The offence of perjury requires the prosecution to prove beyond a reasonable doubt the mental element of "knowledge" and the offence of making false statement requires "actual knowledge that the statement is false in a material particular". There is no evidence on the files that assist the prosecution in that regard. On my reading of the statement of facts I cannot establish exactly what the false statements are that are being attributed to the members.

The members have not been spoken to or been given an opportunity to explain any perceived inconsistencies in their evidence, or what they knew or didn't know at the time of making their respective statements. I'm not sure on what basis the files are now put to this office for forwarding to the DPP for an opinion. In my view

it is unhelpful to present the files at their current standard. Anybody can find a prima facie case on most material in that it only requires some evidence of each element of the offence which may be no more no less than the defendant said "A" in the statutory declaration but the body worn footage shows "B". What is more important here is the member's knowledge and motivation for saying "A" in circumstances where the true situation appears to have been "B". We don't know anything about that knowledge or motivation because the members have never been asked since the incident in question almost 2 years ago. Whilst it is true that some of the issues were ventilated during the criminal hearing (which itself took place an extended period of time after the incident itself) by way of focused adversarial cross-examination which was more focused on the interests of that particular defendant and the defence obtaining a not guilty verdict rather than establishing the truth of the matters at hand.

Undue reliance appears to be being placed on the transcript and the findings of Local Court Judge Borchers. On my reading of the material whilst he may have been right to have not been satisfied as to the relevant elements of the offence to which was being heard to the requisite threshold that being "beyond a reasonable doubt" in my view there was no evidence before him to make findings that the members "lied" or "fabricated" their evidence. In order to do that there would need to be cogent independent evidence to be relied upon. In the absence of such evidence there are alternative hypothesis's consistent with explaining the discrepancies, that is that the members were mistaken, that is their interpretation and recollection of their personal observations was at odds with the interpretations and observations of others who were present etc but that does not amount to knowledge of falsehoods or intention to give false evidence in the proceedings.

My reading of the material on file more properly demonstrates that the members actions as being unprofessional, not criminal. The members at the time were extremely junior and inexperienced. I query if this was in fact the first time they had given evidence in a contested hearing. More properly the material demonstrates that the members don't know their powers, their evidence was poorly given and they do not appear to have been properly briefed by the prosecutor. All of which appears to have led to the inevitable outcome.

We prosecute people where there has been a full and proper investigation and applying all of the relevant DPP guidelines there can be said to be a reasonable prospect of conviction. The files as presented demonstrate little in the way of actual investigation and little in the way of cogent admissible evidence.

The resources of this office and that of the DPP to provide considered opinions are finite and should not be wasted reviewing material that clearly is short of the benchmark. Such factual circumstances need to be called out for what they are and not merely formalised into an opinion file for some sort of arm's-length consideration. Such arm's-length consideration is valuable and proper in some circumstances but these are not those.

I am not minded to forward the files for opinion at this time unless the investigation is furthered and some admissible and persuasive evidence is evident on the briefs.



Richard Bryson

Superintendent

Custody & Judicial Services Division

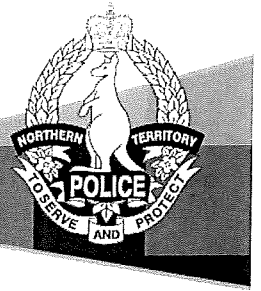
Acting Commander Dole .

As discussed, the files have been reviewed by Supt Bryson, and as clearly stated in the memo, some additional investigation is required to bring them to a standard for an opinion to be provided.

The files are returned for re-allocation.



U 24/12/19 .



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] 1917
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

Original

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 checked="" 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): Sonia Kennon	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): Jakson Evans	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 Malogordh</i>	Rank / Registered number: <i>D/A/Supt 1918</i>
Phone number: [REDACTED]	Email: [REDACTED]
Signature: [REDACTED]	Station/Section: <i>Crime Diversion</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



Folio Index

Case File No. 21944804

Zachary Brian Rolfe

Folio No	FOLIO ITEM
1	Memorandum
2	Statement of Facts
3	Apprehension Report
4	Statement – Rolfe
5	Statement - Zendeli
6	Statement - Lehrain
7	Statement - Bonney
8	Statement - Chatterton
9	Statement – Geranios x 2
10	Statement - Ryder
11	Statement - Hayes
12	Statement - Multa
13	ASP Prosecution File – Ryder – Case No. 21801980
14	Use of Force – Promis No. 89391540
15	Medical Information - Ryder
16	Roster – Patrol Group No. 3
17	House Plan – [REDACTED] Street, Alice Springs
18	Transcript – Hayes – Mobile Phone – Front of [REDACTED] St
19	Transcript – Hayes – Mobile Phone – Inside of [REDACTED] St

20	Transcript of proceedings – Case No. 21801980 – 3 Sept 2018
21	Transcript of proceedings – Case No. 21801980 – 2 April 2019
22	Transcript of proceedings – Case No. 21801980 – 3 April 2019
23	Transcript of proceedings – Case No. 21801980 – 9 May 2019
24	USB – (Orange and Black) – BWV & Mobile Phone footage



Note to Prosecutor Adult

IJIS CASE NO:	21944804	IJIS ID:	633863
DEFENDANT'S LAST NAME:	ROLFE		
DEFENDANT'S GIVEN NAME:	Zachary Brian		
Include: <ul style="list-style-type: none"> • Telephone contact details for victim and <u>all</u> witnesses <i>(N.B. – DPP do not have access to police indices to obtain elsewhere)</i> • Home Community / Residence • File deficiencies • Outstanding follow up requirements • CCTV status – whereabouts or estimated date of acquisition • Any reason(s) why Victim Impact Statement unable to be obtained • Any reason(s) why Medical Release Form unable to be obtained • Any Forensics – timeframes? • Co-Offenders? <ul style="list-style-type: none"> ➢ File No# ➢ View on joint charging? • Other files for this defendant • Any other relevant information the Prosecutor should be aware of including: sentencing, conditional release, alcohol, protected persons, home community and/or reporting. 	<p style="text-align: center;"><u>NOTES</u></p> <ul style="list-style-type: none"> • The defendant is a current serving Constable located in the Southern Command, Alice Springs. The investigation was initiated after the Northern Territory Police were made aware of the adverse findings made in relation to the evidence provided by the Constable both orally and written, Case File No. 21801980 refers. • Further explanation is provided in the Memorandum requesting a review of the evidence. • I as the IO have not yet provided a statement. If this matter is to progress to Prosecution then I will provide one at that time. • There are two files, six members attended at the incident, Judge Borchers made adverse statements in relation to the evidence of Zachary Rolfe (Rolfe) and Xhenita Zendeli (Zendeli). A separate file is provided for Zendeli. • Only one USB containing footage has been provided, this is contained on the file of Rolfe. • The member was not interviewed or spoken to in relation to these allegations. 		
Name:	Sonia Kennon	Reg. No:	2164
Station:	Special References Unit	Contact No:	██████████
Email Address:	██████████@pfes.nt.gov.au		

IJIS CASE NO:

21944805

IJIS ID:

384203

JIM1056

CASE(s) FOR A PERSON

IJIS ID: 633863 - ROLFE, Zachary

Sex: M Race: CA DO

FILE NO.	JUR	VEN	CASE TYPE	SUPREME COURT NO	LAST/TODAY SCHEDULE	FUTURE SCHEDULE
1	21942050	LR	NP	Criminal		
2	21942050	LR	AS	Criminal		12/12/19

Select line or enter File No

Mark entries below to proceed with (A)dd, (U)pdate or (Q)uery

Case Detail	Jurisdictn/Venue	Parties in Case	Court
Documents	Offences	Orders	Case
Warrants	Case Notes	Title Text	Payme
Diary	Exhibits	File Movement	Appea
Bail History	Witness	Print Form	Relat
Alert Advising	Civil Adjournment		

JIED0009I All data is displayed.

CMD >

Rows: 1 To 2

PF KEYS > 1=Help 2=Fld Help 3=Exit 4=CMD 5=Refresh

JIM1115

QUERY PAYMENTS OF A PERSON

Last Name: ROLFE

IJIS ID:

Given Name: Zachary

DOB:

Address: U3/56 BARRETT DR GOLF COURSE ESTATE

Total Criminal:

Total Civil:

DOCUMENT/ORDER F/ /INF/FRU NO	P	TYPE	TOTAL ORDERED	TOTAL PAYMENT	TOTAL BALANCE	INSTALME DUE
----------------------------------	---	------	------------------	------------------	------------------	-----------------

Select line AND

Mark entries below to proceed with (A)dd, (U)pdate or (Q)uery

Receive Payments

TTP/MVR Sanctions

Payee Or

Payment Details

List Receipts

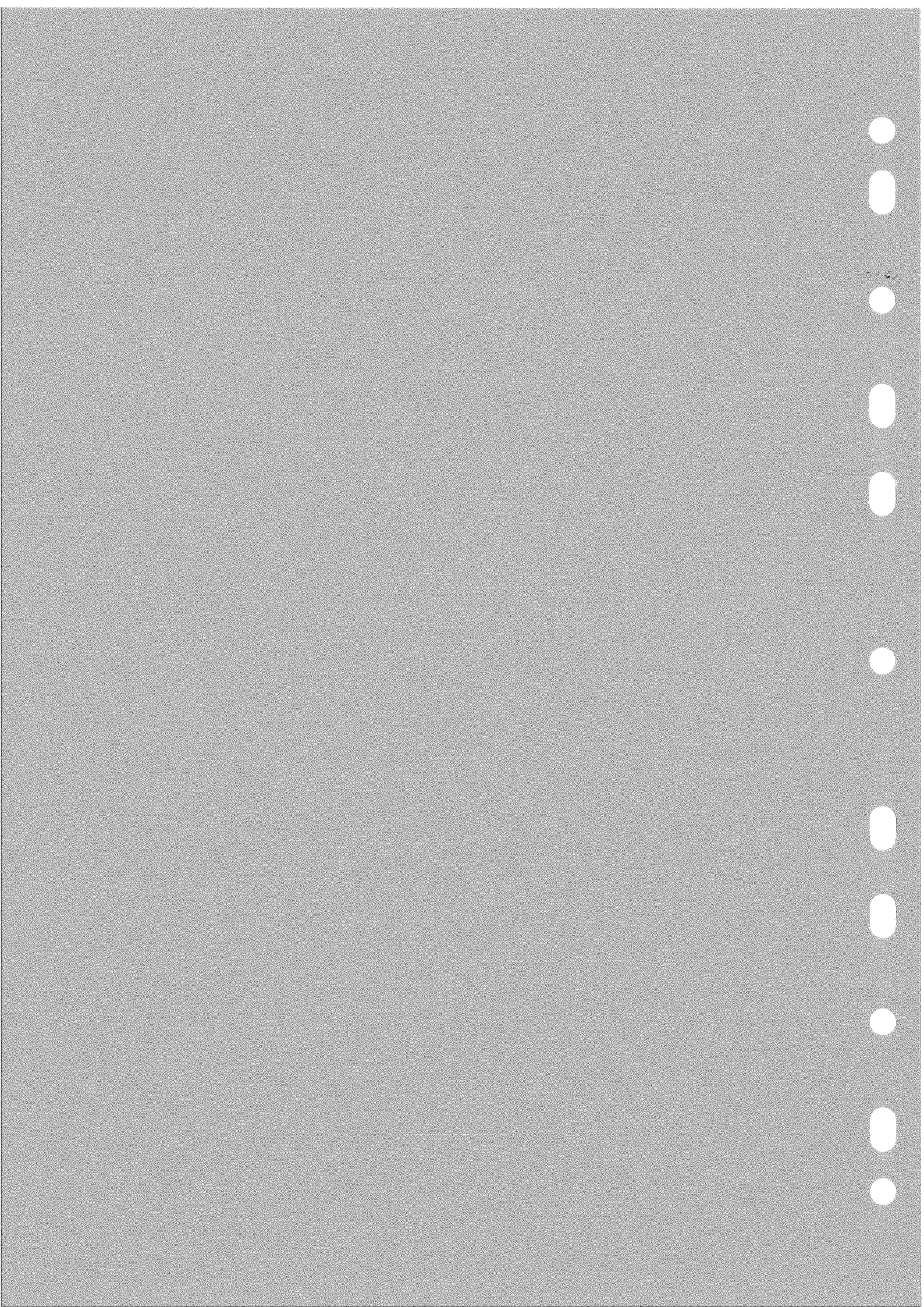
List Pay

JIED0005I There are currently no records for your request.

CMD >

Rows: 0 To

PF KEYS > 1=Help 2=Fld Help 3=Next 4=CMD 5=Refresh 9=Swap





memo

To: Superintendent Special References Unit
From: Detective Sergeant Sonia Kennon
Subject: Opinion – Perjury

PROMIS: 9021716

TRM File:

TRM Doc:

Date: 5 December 2019

1. This report is submitted in relation to the investigation of Perjury, contrary to section 96 *Criminal Code, Northern Territory*, alleged to have been committed by Constables Xhenita@Jenny Zendeli@Dzenita Zendelji, (Zendeli) and Zachary Rolfe (Rolfe).

BACKGROUND

2. The defendants; Zendeli and Rolfe at the time of the alleged incident were gazetted to Southern Command as a Frontline General Duties member on Patrol Group No. 3.

On 11 January 2018 at 13:40hrs, Alice Springs General Duties members from Patrol Group No. 3 responded to an alleged incident of Domestic Violence occurring at [REDACTED] Street, Larapinta, Promis No. 8391303 refers.

Neighbours reporting the incident to Northern Territory Police (NT Police) via Joint Emergency Services Communication Centre (JESCC) reported that; *'A pretty bad physical fight between male and female with a child witnessing the incident, male and female were on the road physically fighting and a neighbour is attempting to break up the fight'*¹.

The incident was tasked to Unit 460 which contained Constables Breanna Bonney (Bonney) and Zachary Rolfe (Rolfe). A second unit in attendance was unit 453 which contained Constables Xhenita Zendeli (Zendeli) and Brett Geranios (Geranios).

Upon arrival at the location, members identified that the parties had been separated and neighbours had taken the female; Shirleena Wilson (Dob: [REDACTED]), (Ms Wilson), into their care. The alleged offender; involved in the incident; Bentley Poulson (Dob: [REDACTED]) (Mr Poulson), had absconded from the area.

Members spoke to the lawful occupiers of the residence who are also the parents of Mr Poulson being his stepfather; Malcolm Jack Ryder (Mr Ryder) and his biological mother; Rebecca Hayes (Ms Hayes), in an attempt to gain entry to Saltwell as the front door was locked. Members Rolfe and Bonney were

¹ Allegation/Incident Description Promis No. 8391303

Opinion – Perjury

advised that there wasn't any key and that they would need to enter via the rear door.

Member Rolfe climbed over the gate into the rear of the yard and utilising the rear door, entered the house, conducted a search for Poulson who was not located and opened the front door to provide access to other members.

Poulson was not located and members were getting ready to leave the location when Rolfe sighted Poulson returning to the house via the back yard. Rolfe broadcast that he had sighted Poulson returning to [REDACTED] via the rear entrance.

Members Geranios, Rolfe and Zendeli positioned themselves in the rear of the yard, before entering the house and conducting a search for Poulson. Poulson was located in the rear bedroom of the house, placed under arrest and handcuffed. The moans emanating from Poulson caused Ryder and Hayes concerns as to the treatment of Poulson. Ryder and Hayes entered the rear bedroom and Geranios deployed OC Spray directly to their faces, this caused Ryder to leave the room and Hayes to move backwards.

Constables Rolfe and Lehrain rushed at the door, knocking Hayes into the door causing her to fall to the ground. Constables Rolfe and Lehrain pursued Ryder up the hallway, Constable Zendeli, exited the bedroom, stopped with Hayes in the hallway briefly before joining Constables Ryder and Lehrain who were handcuffing Ryder who was laying on the floor of the lounge-room. During the incident Mr Ryder sustained a large laceration to the top of his right eyebrow and was rendered unconscious. Constable Rolfe sustained a scratch to the left side of his forehead, a scratch to the inner-side of his right forearm and bruising to the underside of his left forearm.

As a result of the incident, Mr Ryder was arrested and charged as a separate incident, Promis No. 8391540 refers, with;

1. Hinder a member of the police force contrary to Section 159, *Police Administration Act*, Northern Territory and ;
2. Assault police and cause harm contrary to Section 189A (2) (a), *Criminal Code Act*, Northern Territory.

Mr Ryder was conveyed by St Johns Ambulance to Alice Springs Hospital where he underwent a Medical examination and required 13 sutures to the laceration on the right hand side of his forehead and 3 sutures to the left hand side of his forehead, he was then assessed to be deemed 'fit for custody'.

Mr Ryder participated in an Electronic Record of Interview, which was terminated due to the interviewing members deeming Mr Ryder as 'not able to understand the caution'.

With regard to the initial incident in which Bentley Poulson was arrested in relation to the assault of Ms Wilson, Constable Bonney identified that Ms Wilson was 'adamant she did not want to provide a statement. I explained that this

Opinion – Perjury

meant Poulson would be released without charge, putting her at danger and she understood this².

An arrest file appears to have been completed by Constable Rolfe, due to his name being provided as submitting officer on the Statement of Facts and Bail Consideration form, with Constable Bonney identified as the Officer in Charge (OIC) of the investigation.

3. On 7 June 2018, the Ombudsman's Office (OO) forwarded a request to investigate a complaint made as a result of the above incident to Professional Standards Command (PSC) as a Category 2 (CAT 2) complaint. The allegations at the time of initial categorisation were in relation to;
 - a. Excessive Use of Force – The issue relates to the force used on Mr Ryder resulting in injuries to his head.
 - b. Failure to activate body worn camera.
 - c. Use of weapon – This issue relates to the use of OC spray.
4. The PSC investigation was completed on 8 October 2018, The Northern Australian Aboriginal Justice Agency (NAAJA) returned to PSC and requested the matter be re-investigated based on the belief that the investigation completed by Complaints Management Division PSC was deficient. To substantiate the request for review, NAAJA provided;
 - a. The criminal proceedings transcript
 - b. Medical Evidence
 - c. Body worn footage which lead to an additional allegation.
5. A copy of the transcript of proceedings at Alice Springs on 9 May 2019 identified that Local Court Judge Borchers's made some concerning comments in relation to the arresting Members and their credibility surrounding the incident.
6. Assistant Ombudsman Cahill summarises the context of the adverse comments made by Judge Borchers against the Members as;
 - a. False Statements submitted to evidence by the arresting Members during this incident
 - b. The potential of collusion undertaken between the arresting Members during the process of submitting their evidence.
 - c. Concerns around written responses submitted as part of the CAT 2 investigation (To be reviewed by PSC Internal Investigations).
7. Reporting member was forwarded this investigation to review the incident and allegations of Criminal Offences only, having read the material provided will submit an opinion file with consideration for the *Criminal Code* Northern Territory (CCA NT) offences of;
- 8. Section 96 Perjury,**
 - (1) Any person who in any judicial proceedings, or for the purpose of instituting any judicial proceedings, knowingly gives false testimony touching any matter that is material to any question then depending in the proceedings, or intended to be raised in the proceedings, is guilty of an offence that is called perjury.
 - (2) It is immaterial whether the testimony is given on oath or under any other sanction

² Statement of Constable Breanna Bonney, Para 20

authorized by law.

(3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies actually

(4) It is immaterial whether the false testimony is given orally or in writing.

(5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the proceedings in which the testimony is given.

(6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceedings or not.

9. S 97 Punishment of perjury

(1) Any person who commits perjury is guilty of an offence and is liable to imprisonment for 14 years.

(2) If the offender commits the offence in order to procure the finding of guilt of another person for an offence punishable with imprisonment for life, he is liable to imprisonment for life.

10.S 98 Evidence on charge of perjury

A person cannot be found guilty of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

11.S 99 Fabricating evidence

Any person who, with intent to mislead in any judicial proceedings:

(a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or

(b) knowingly makes use of such fabricated evidence,

is guilty of an offence and is liable to imprisonment for 7 years.

12.S 118 False statements in statements required to be under oath or solemn declaration

Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction that may by law be substituted for an oath, or is required to verify it by solemn declaration, makes a statement touching such matter that, in any material particular, is to his knowledge false and verifies it on oath or under such other sanction or by solemn declaration, is guilty of an offence and is liable to imprisonment for 7 years.

13. EVIDENCE TO SUPPORT PROSECUTION

14. A review of Judge Borchers final summation dated 9 May 2019 provides clarification of the evidence and his concerns in relation to the allegation that members Zendeli and Rolfe fabricated evidence. The Transcript is as follows.

15. Transcript of Proceedings at Alice Springs on 9 May 2019 Case No. 21801980

On 9 May 2019, Alice Springs Local Court Judge Borchers (Borchers) delivered his findings in relation to Case File No. 21801980; defendant Malcolm Ryder, charges of Assault Police and Hinder Police¹.

HIS HONOUR: Mr Ryder may remain seated.

Malcolm Ryder has been charged; one on complaint when he hindered Constable Zachary Role in the execution of his duty as a police officer and secondly; on information that he unlawfully assaulted Zachary Role while in execution of his duties and the assault was aggravated by the harm suffered by that police officer.

These offences are alleged to have occurred on 11 January 2018 at [REDACTED] Street, Alice Springs. Mr Ryder has pleaded not guilty to both offences. The hearing of evidence took place before this court on 3 September 2018 and again on 12 and 13 April 2019.

The prosecutor called evidence from police officers, Bonny, Duranis (sic) (Geranios), Rolfe Zendeli and Lerrain (sic) (Lehrain). Each was cross-examined. The defendant gave sworn evidence, as did he partner, Rebecca Hayes. There are a number of exhibits tendered into evidence, and whilst I will refer to portions of police statutory declarations, the principal exhibits of importance are (1) body-worn video footage from a camera attached to clothing of Constable Brett Duranis. (2) Phone video footage taken by Rebecca Hayes and (3) photographs of injuries sustained by Malcolm Ryder.

In respect of the charge of hindering police, the allegations that Malcom Ryder headed Constable Rolfe whilst Rolfe was arresting Bentley Poulson, son of Rebecca Hayes in the rear bedroom of [REDACTED] Street. And, that this resulted from a threatened application of force directed towards that officer.

It is agreed that on 11 January 2018, Constable Brianne Bonney and Constable Zachary Rolfe were dispatched to attend a domestic disturbance and [REDACTED] Street and arrived at that address at approximately 2:00pm. The domestic disputed involved Sheralina Wilson and her partner, Bentley Poulson.

She alleged he had bashed her. It is worth nothing (sic) that it was never alleged that she suffered any injury and nor was Bentley Poulson ultimately charged with any offence arising out of this incident. Wilson told police that Poulson had run off and after police made an attempt to find him, they returned to [REDACTED] Street. Malcom Ryder and Rebecca Hayes also returned to [REDACTED] Street from a shopping trip, during which Malcolm Ryder had purchase a new phone.

When they arrived there were two police cars and four police in the vicinity. A second police car carrying Constable Zendeli and Duranis had arrived to assist in the search for Bentley Poulson. Constable Bonney stated in a sworn declaration at par 8, "Hayes and Ryder were very hostile when we approached them to enter the house. They advise that it was Wilson's fault and refused to let us enter the house. The front door was locked and

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when asked where the keys were, parties denied knowing their location, stating we should use the back door.”

Constable Rolfe stated in his sworn statutory declaration at par 5, “Ryder was aggressive towards police and attempted to stop police from entering the house to search for Poulson.” It is accepted that on 11 January 2018 in the early afternoon, it was very hot and the patience of all police officers present was being tested by the unsuccessful attempts to find Bentley Poulson.

However, the mobile phone video footage, taken by Rebecca Hayes, does not support the allegations made by Officers Bonney and Rolfe regarding the behavioural (sic) of Rebecca Hayes and Malcolm Ryder when they arrived back at their home that afternoon.

Both told police officers that they did not have a key to the front door and that the police should enter the house through the backyard. Rebecca Hayes did say that Poulson and Wilson were always arguing; always causing trouble and that Wilson always returned to Poulson. She also swore Malcolm Ryder’s only interaction was to demonstrate by emptying his pockets that he didn’t have a key.

He was more interested in attending to the settings on his new phone. Police Officer Bonney demonstrated ill will, irritation and her incredulity that the occupants didn’t have a key to the house. She was plainly rude and abrupt to Rebecca Hayes and Malcolm Ryder; and they were neither very hostile, which Bonney alleged, or aggressive, as Rolf alleged.

These descriptions are untrue. In fact, at one stage Rebecca Hayes told the police, “If he, Bentley Poulson, comes back, I’ll call the police. He’s very angry. She” – Wilson – “can make a statement against Bentley.” She even gave permission to the police to break the front door and enter her home.

She also told police that Poulson had stayed at House [REDACTED] Street. At no stage did either Hayes or Ryder threaten the police. At no stage did they bar entry into their home. Hayes did say that she’d throw a rock at the police car because the police were not listening to her.

Police ultimately entered the house via the back door and then opened the front door from inside. The next contact between Malcolm Ryder and those police officers present is seen on the body-worn video attached to Constable Duranis. He enters the house and constable Zendeli is seen physically pushing Malcolm Ryder in the back and screaming, “Get out. Get out of the house,”

It is to be remembered that number [REDACTED] Street is Mr Ryder’s home and there is no evidence that he was instructed that it was a crime scene and that he should not be present. It is accepted that the police officers present were looking for his stepson, Bentley Poulson, but Mr Ryder’s presence in his own home does not hinder that search, nor does it justify him being physically pushed out of his home and spoken to in a rude manner.

There was a significant amount of evidence regarding the arrest of Bentley Poulson in the rear bedroom of [REDACTED] St. He had entered the house via the rear door, but his actions were noticed by police officers who entered the house and arrested him. The evidence in relation to that arrest is relevant for two reasons:

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(1) *The behavioural of the police officers during the arrest and (2), the affect it may have had on Malcolm Ryder and determined why he'd entered the house and gone into the back bedroom.*

Neither Rebecca Hayes nor Malcolm Ryder when Bentley Poulson decided that it was a place where he would hide from police. Nor were they present when police officers entered the room and commenced handcuffing Mr Poulson. Mr Poulson had not assaulted nor threatened to assault any police officers.

The first two police officers who located Poulson were Constables Rolfe and Zendeli. In her statutory declaration, Zendeli states:

We entered the building. Rolfe found Poulson in the rear room of the location. Subsequently I assisted Rolfe and Duranis place Poulson under arrest. Constable Cameron Chatterton and Constable Max Lerrain came to assist us.

Constable Rolfe in his statutory declaration stated:

I located Poulson in the back room of the house and placed him under arrest for aggravated assault. At this point in the bedroom was myself, Duranis, Zendeli, Lerrain and Chatterton.

So, the first two police officers to see Poulson in the rear bedroom were Rolfe and Zendeli. Their statutory declarations blandly stated that Poulson was arrested for aggravated assault. But that's not what happened. Rolfe gave evidence that Poulson was lying on the floor under a mattress trying to hide between the bed and the wall. He lay face down with his arms under his body. Police tried to handcuff him. Zendeli placed her knee on his shoulder blade and pulled an arm back. Duranis entered the room and screamed at Poulson and he also placed a knee on Poulson's shoulder. This gives a suggestion as to the violence directed towards Mr Poulson hiding from the police.

Constable Duranis stated that in his statutory declaration:

I entered the room to observe Constable Rolfe and his partner, Constable Zendeli wrestling with the person I now know to be Bentley Poulson on the ground. I shouted, "Get your fucking hands behind your back." I assisted Constable Rolfe and my partner in affecting the arrest on Poulson. I continued to give him loud, verbal instructions to stop resisting. I observed Poulson tense up while my partner was attempting to secure him in handcuffs.

I observed my partner utilise a distraction punch in the form of a punch to Poulson's elbow in order to bend his arm into a position where she could secure Poulson in handcuffs. At this time I observed Constable First Class Lerrain and Constable First Class Chatterton had entered the room.

In cross-examination, Constable Duranis admitted he heard Poulson moaning and later he admitted that Poulson was saying, "I'm not resisting. Please." He also admitted that the Zendeli distraction punch looks as though it hit Poulson in the back and not in the elbow and that throughout the incident Poulson was lying face down.

Constable Lerrain, who entered the rear bedroom and gave evidence that by the time he entered the bedroom Poulson had been handcuffed. Duranis' body-worn video show him

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running into the rear bedroom. At the moment he enters he bedroom, Zendeli can be heard saying, :”Hands behind your back,” and immediately Duranis yells, “Get your fucking hands behind your back.”

He repeats this phrase, or similar words, such as, “Stop resisting,” and further three times. All the time Poulson is lying face down and he is moaning. This was a violent arrest on a man lying on the floor trying to hide. He was punched and had two police officers place their knees into his back.

He called out that he was not resisting. Duranis ultimately in cross-examination gave evidence that in his view, Poulson was possibly resisting. Rolfe said that he was resisting in a semi-passive manner. It is to be remembered that Poulson was never charged with any offence, never charged with aggravated assault or resisting arrest.

Rebecca Hayes and Malcolm Ryder did not witness any of this, however, they heard what was happening. Rebecca Hayes gave the following evidence.

I heard Bentley screaming from the back room. This is why we ran in. Bentley was trying to hide himself by the bed. We ran inside to see what the police officers were doing to him.

Malcolm Ryder heard on the police radio that Bentley was in the house. His evidence was:

Lots of police entered the house. Police found Bentley inside. They made Bentley cry and scream. I heard Bentley screaming while I was outside, a crying type of noise. I went inside because I wanted to tell the police not to get rough.

He agreed that when he ran into the house he was angry that police were hurting his stepson. As Rebecca Hayes and Malcolm Ryder entered the house, Constable Bonney who was outside the house with them broadcast over the police radio, “There’s a big group of family running into the house. Watch your back.”

Police Administration Act permits police to enter premises without a warrant if police have reasonable grounds to believe it is connected with an offence and they arrest a person if it is believed the person, on reasonable grounds, has committed an offence, ss 119 to 123.

Accordingly, there is no legal difficulty with the police entering a house and arresting Bentley Poulson. I accept that Rebecca Hayes and Malcolm Ryder having heard the police affecting arrest and having heard their son and stepson moaning and crying out, entered their home because they were concerned for his welfare.

Prior to this, their interaction with Constables Bonney, Rolfe and Zendeli had been less than civil. In fact, each had been rude towards Ms Hayes and Mr Ryder. Ryder had been physically pushed out of his own home by Zendeli without explanation.

They has (sic) reason to believe from what they’d heard and what they’d seen that Bentley Poulson was being roughly dealt with. When they entered their home and arrived at the back bedroom there were five police officers in that room and Bentley Poulson had already been handcuffed and was under control.

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back bedroom there were five police officers in that room and Bentley Poulson had already been handcuffed and was under control.

The police officers were Zendeli, Rolfe, Chatterton, Lerrain and Duranis. Duranis was armed with an OC canister. It is alleged that Malcolm Ryder hindered Constable Rolfe in the execution of his duty at this moment when he entered the room.

Rebecca Hayes and Malcolm Ryder were in the rear bedroom for a total of four seconds according to the body-worn video, exhibit P3. And, during that four seconds they were sprayed with OC Spray. Four of the five police officers gave evidence as to what happened during those four seconds.

Constable Lerrains evidence was:

A male and female raced through the bedroom door. They were aggressive and using aggressive language, which he could not identify. They moved towards Duranis and someone threw a phone in Duranis' direction. There was some yelling and Duranis has deployed the OC spray, which his (sic) Lerrain. He had moved towards the two people to protect Duranis. However, as he moved towards the door, the effect of the OC spray took over and his breathing and eyesight was compromised.

Constable Duranis' statutory declaration reads:

I could hear loud shouting coming from the entrance to the bedroom. I turned around and had an MK9 OC spray in my right hand. I observed Malcolm Ryder and Rebecca Hayes enter the room. They were both shouting loudly at myself and other police and objecting to the arrest of Poulson.

I observed Ryder raise his right hand and I could see he was holding a mobile phone in that hand. I immediately formed the belief I was at imminent risk of suffering harm at the hands of Ryder and Hayes and as such deployed a two-second burst of OC spray directly into the face of Ryder and Hayes.

I observed Constables Rolfe and Lerrain forcibly remove Hayes and Ryder from the room in order to stop the continuation of them hindering the arrest of Poulson.

In examination-in-chief, Duranis, after watching the body-worn video admitted it was Rebecca Hayes and not Malcolm Ryder who had her arm raised holding a phone. Although, Duranis maintained that Ryder who had her arm raised holding a phone. Although, Duranis maintained that Ryder did not throw a phone at him and that in deploying the OC spray he was acting in a pre-emptive manner.

I find that this was probably the result of being warned by Constable Bonney that a family was entering the house and that police should protect their backs. Duranis also agreed in cross-examination that he saw no punches shown and no mobile phone thrown in the bedroom.

Constable Rolfe stated in his statutory declaration:

I then observed Ryder and a female enter the bedroom aggressively. Ryder had a phone in his right hand and I observed him raise both hands in a fighting stance and throw a number of punches at Duranis. I then observed Duranis raise his MK9 OC spray and spray Ryder with it in an attempt to gain control. Concurrently, Duranis was using verbal

commands to tell Ryder to stop to comply with police directions. The spray seemed to have no effect on Ryder and he continued to attempt to strike Duranis.

In examination-in-chief Rolfe elaborated: “when Ryder walked in, he was throwing punches. They weren’t hitting Duranis. He was moving towards Duranis and throwing his arms, swinging his fists.” In cross-examinations Rolfe agreed that as soon as the OC spray was deployed, Hayes and Ryder left the room, but said, “Ryder did not appear to have been affected by the spray.”

Constable Zendeli in her statutory declaration stated:

At the same time as the arrests I observed, Malcolm Ryder and the woman ploughed through the door in a highly aggressive manner. I observed Ryder attempting to assault police by throwing a number of punches and then I saw Duranis raise and deploy his MK9 OC spray and spray Ryder to deter him from further assaulting police.

The spray did not seem to affect Ryder. At some stage I observed Ryder punch Rolfe in the face. I then observed Lerrain and Rolfe push Ryder out of the room.

In examination-in-chief, Constable Zendeli said she could see Ryder’s clenched fist, even though she was at the back of the room with Poulson and Lerrain. Rolfe and Duranis were between her and Ryder. She also conceded it was not Ryder who punched Rolfe, but rather, Rebecca Hayes punched Rolfe in the room. She agreed Ryder left the room first, followed by Hayes who was pushed out by Rolfe.

As a matter of credit she also gave evidence that Poulson, whilst lying face down was saying to the police, “Fuck you. Fuck you,” while being handcuffed and that she delivered two punches to his elbows because he was resisting. The body-worn video on the clothing of Constable Duranis does not support this allegation that Poulson was swearing.

Rebecca Hayes’ evidence regarding the room was as follows:

Me and Malcom ran inside to see what the officers were doing to him – being Poulson. I was behind Malcolm. We went down the corridor to the end room. I saw Bentley was being arrested and I saw Malcolm get pepper sprayed. We had to stay away from that, from what the police officers were doing to Bentley. I didn’t see Malcolm do anything except get pepper sprayed.

Malcom told me to stay back. He was in front of me screaming. Nothing else.

In cross-examination she was asked, “Did you interfere with police officers doing their job? ---Yes. It was wrong.” No further questions were asked as to what it was that she thought that she thought that she had specifically done that interfered with the police officers, except of course, to enter the room.

Malcom Ryder agreed that he ran into the house because he did not want the police to get too rough with his stepson, Bentley Poulson. He saw Bentley on the ground surrounded by police. He was holding his phone and he tried to say something. He yelled, “Hey,” and was going to say, “Don’t get rough with him, he’s a skinny bloke,” but he wasn’t able to, as he was sprayed with OC spray and he left the room.

In cross-examination he agreed his actions in moving in the bedroom quickly and yelling, “Hey”, were aggressive. In respect to what happened in those four seconds that Rebecca

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Hayes and Malcom Ryder were in the rear bedroom and 3 [REDACTED] Street, I make the following findings:

- (1) I cannot accept the evidence of either Constable Rolfe or Constable Zendeli when they say they saw punches thrown by Ryder. Neither Constable Lerrain, nor Duranis saw any punches being thrown. Constable Rolfe and Zendeli's evidence is wrong and is a pure fabrication.
- (2) In the rear bedroom Ryder did not throw his mobile phone at anyone. Rebecca Hayes raised her right arm with a mobile phone in the direction of Rolfe, but she did not throw it.
- (3) The police were prepared for Rebecca Hayes and Malcolm Ryder to enter the room as they had already been warned they were on their way by Constable Bonney.
- (4) Rebecca Hayes had already videoed her interaction with the police outside her home and it was highly likely that she intended to –continued to video them in the back room as a result of the arrest of her son.
- (5) Accordingly, the mere entry into a bedroom in their own home and calling out "Hey" does not within those first four second constitute a hindrance of police.

What takes place between the time Malcolm Ryder exits the bedroom and is restrained in handcuffs on the floor of the lounge room is not seen on the body-worn video. There is a gap of 27 seconds from the time constable Duranis catches Malcolm Ryder leaving the room to the time he is next seen on the body-worn video being handcuffed whilst face down by Lerrain, Zendeli and Rolfe.

This is because, (1) Duranis himself was affected by the OC spray and was slow to leave the bedroom and (2) he didn't follow the others down the hallway corridor, but took another route through the laundry and the kitchen. Accordingly, those who gave evidence as to the time that Rebecca Hayes, Malcolm Ryder and three police, - sorry. Accordingly – I'll start again.

Accordingly, what took place during that time; that is the exciting (sic) of the room and that time when Ryder was on the floor in the lounge room, the evidence is given as to that by Constable Lerrain, Zendeli and Rolfe.

Malcolm Hayes (sic) left the room first. His evidence was he had his hands on his face because his eyes were affected by OC spray. He threw his mobile phone into the bathroom, but didn't see where it went, because he couldn't see it properly. He was then tackled to the ground by a police officer. At no time did he attempt to scratch or punch the police officer.

He was not facing the police officer as he left the bedroom, but was grabbed by the collar at the back of his neck. He was then pushed onto the ground roughly. The police officer punched him to the left eyebrow. Ryder turned away and the police officer then grabbed his hair and pushed his head into the floor. He didn't remember anything after that as he was rendered unconscious.

His next memory was being decontaminated by having water poured over his face; being taken to hospital by ambulance and having three stitches applied to the cut above his left eye and 13 stitches applied to the cut above his right eye. These injuries are shown in photographs marked exhibit D2.

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Rebecca Hayes left the bedroom after Malcolm Ryder. In the hallway corridor, she tripped or was knocked over. By the time she got up and entered the lounge-room, she saw Malcolm Ryder lying on the floor unconscious. She was calling his name, but he couldn't hear. He was bleeding from two – from big cuts above his eyebrows on the lounge room floor.

She screamed that he needed water to wash the pepper spray from face. At this stage I note that in Constable Bonney's statutory declaration she saw – what she saw when she entered the lounge-room, which was, Malcolm Ryder face down, being handcuffed by three police officers, Zoray (sic), Zendeli and Rolfe. She said: "Rebecca Hayes was standing over the group yelling verbal threats and attempting to get at her husband."

The body-worn video does not support this. Mrs Hayes was standing next to where her husband was lying. She can see the blood and is obviously concerned. Bonney yells at her, "Get out." Rebecca Hayes was not issuing any verbal threats. She was concerned for her unconscious husband.

Constable Lerrain stated that when he left the bedroom he was badly affected by the OC spray. Out of a level of one to ten of affect, he said it was a seven. He tripped and fell to the ground. He kept his eyes closed because of the spray. Both Malcolm Ryder and Constable Rolfe were also on the ground close to him. He saw them.

Rolfe was on top of Ryder pushing Ryder's hands away from his face. He didn't recall any words spoken. Lerrain then remembers Ryder being face down and he, holding Ryder's arms so that he could be handcuff (sic). He did not see Constable Rolfe punch Malcolm Ryder punch Constable Rolfe.

After Malcolm Ryder was handcuffed, Lerrain staggered out of the house because he needed to be decontaminated. Constable Zendeli says she saw Malcolm Ryder throw his phone at Constable Rolfe in the bedroom. That did not happen. She could have seen Malcolm Ryder throw his phone while he was moving down the hallway, but Zendeli left the bedroom after Malcolm Ryder, Rebecca Hayes and Constable Rolfe and probably Lerrain.

Her vision, she admitted was affected also by the OC spray. She tripped over Rebecca Hayes in the hallway corridor and entered the lounge room well after Constable Rolfe and Constable Lerrain. She didn't see anything happen in the corridor.

She further stated in examination-in-chief that she next saw Ryder on the floor in the lounge room. He was non-compliant yelling, "Fuck off. Fuck off." He was resisting being handcuffed. Zendeli bent down and attempted to grab his arms and get them behind his back.

As she gave no evidence of seeing him face up, it can be inferred that when she entered the lounge room Ryder was already face down. Regardless that she says he was resisting being handcuffed and tensing his arms requiring her to punch him twice to the elbow, it is clear from the body-worn video that Malcolm Ryder at this stage is unconscious.

There is nothing that Zendeli or Lerrain did whilst handcuffing Mr Ryder that could have caused him to become unconscious. There is little weight that can be given to Constable Zendeli's evidence. It is not corroborated by the Body-worn video. In addition, she gave

evidence that Malcolm Ryder at the hospital had made and inferred a confession about throwing a phone.

This was not heard by the other police officers at the hospital and it was not recorded in her notebook. This does her no credit and her evidence, apart from what can be seen on the body-worn video cannot be relied on.

Constable Rolfe's evidence is that once Malcolm Ryder left the bed room:

Lerrain and I then approached Malcolm Ryder who threw his mobile phone at us, which missed, but then he struck me in the face with a closed fist, causing immediate pain to my forehead. Lerrain and I then tackled Malcolm Ryder to the floor and attempted to ground stabilise him. Malcolm Ryder then began to scratch my right forearm causing a laceration.

Malcolm Ryder reached towards my face and started to scratch my face with his fingernails. I was fearful that he was going to gouge my eyes and in order to defend myself I struck him once on the left side of the face with my closed right fist. This gained subject compliance and Ryder stopped fighting.

Lerrain and I then placed Ryder in handcuffs and placed him under arrest for assault of police. I noticed that Ryder had a cut over his right eye and I assumed that happened when we tackled him and he hit his head on the floor.

In examination-in-Chief Rolfe gave evidence that in the hallway, Ryder threw punches at him, "He was swinging wildly, just in the same manner as when he entered the bedroom."

When Ryder was face down on the lounge room floor, Rolfe said:

While we were placing handcuffs on him, he was resisting with his arms. It looked like he seemed to be unconscious, but I did not believe at the time he was unconscious due to the resistance he was using with his arms.

In cross-examination, Rolfe gave evidence that after Malcolm Ryder left the bedroom and while he was in the hallway corridor, he turned and faced Rolfe and assaulted him by punching him in the forehead and throwing punches. Rolfe said that Malcolm Ryder did not comply once sprayed with the OC spray.

He was told to get back and leave the bedroom and this he did. At no time did he strike Rolfe in the Bedroom and Rolfe agreed with this. But Rolfe then chased him down the hallway and nobody but Rolfe, leaving aside Zendeli's evidence, which can't be relied upon, saw what happened until Ryder was face down on the lounge room floor, bleeding from two cuts above each eyebrow and in all likelihood, unconscious.

As Rolfe said at page 84 of the transcript:

When Malcolm Ryder left the room, he needed to be dealt with because he was a threat. He now needed to be arrested and he had committed an offence and needed to be arrested.

Only Rolfe says Malcolm Ryder turned and faced him in the hallway and punched him. Only Rolfe says both he and Lerrain tackled Ryder and brought him to the ground. Lerrain's evidence is that this did not happen and he did not tackle Malcolm Ryder.

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Only Rolfe says Ryder tried to scratch him. Lerrain only saw Ryder's hands-arms raised. Ryder said that he had his arms up to his eyes because of the OC spray.

I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration about what happened in the bedroom. Nobody can say how Malcolm Ryder was knocked out but him and he surmises that it may – that Ryder may have hit his head while he was being tackled to the ground.

If that is the case, it is highly likely that he was unconscious when Rolfe punched him in the face. It is more likely, however, that Ryder was punched first to the left eyebrow by Rolfe's right fist and then he received the injury to his right eyebrow when his head was pushed into the floor.

How it occurred and in what sequence of events is more likely – sorry. How the injuries occurred and in what sequence of events is more likely than not to be in the manner consistent with Malcolm Ryder's evidence. That is, Rolfe deliberately banged his head into the floor as he was being turned over to be handcuffed.

As I have previously indicated, I am not satisfied beyond reasonable doubt that Malcolm Ryder did anything within the four seconds he was in the rear bedroom that hindered police. They wanted him out of the bed room and he left with OC spray in his eyes.

I am not satisfied beyond reasonable doubt that (a) he punched Constable Rolfe in the forehead in the hallway corridor between the bedroom and the lounge room. I am not satisfied beyond reasonable doubt that he threw his mobile phone at Constable Rolfe in the hallway corridor. On this matter I accept Malcolm Ryder's evidence that he threw his mobile phone into the bathroom so he could use both hands to place them on his eyes, which were affected by OC spray.

I am not satisfied beyond reasonable doubt that (a) he punched Constable Rolfe in the forehead in the hallway corridor between the bedroom and the lounge room. I am not satisfied beyond reasonable doubt that he threw his mobile phone at Constable Rolfe in the hallway corridor. On this matter I accept Malcolm Ryder's evidence that he threw his mobile phone into the bathroom so he could use both hands to place them on his eyes, which were affected by OC spray.

I am not satisfied beyond reasonable doubt that he attempted to scratch Constable Rolfe's face as Rolfe was on top of him in the lounge-room. Accordingly, I am not satisfied beyond reasonable doubt that either charge is made out. Thank you.

MS COLLINS: As your Honour pleases.

MR PENMAN: May it please the court. Your Honour, there are two further breach of bail matters. In the circumstances I would seek leave of the court to withdraw both counts.

HIS HONOUR: Thank you. Anything further?

MS COLLINS: No, your Honour.

HIS HONOUR: Thank you

ADJOURNED

16. False Statements submitted to evidence by the arresting Members during this incident.

In addition to the evidence of Zendeli, highlighted by Judge Borchers, Constable Zendeli wrote in her statement in paragraph 7; *'RYDER and another woman plough through the door in a highly aggressive manner. I observed RYDER attempting to assault police by throwing numerous punches. I then saw GERANIOS raise and deploy his MK-9 OC spray and spray RYDER to deter him from further assaulting police.'* To put this into context, Constable Zendeli, according to the BWV is highly likely at that time to have been facing the window, not the door of the bedroom at the time when this incident occurred.

After viewing the footage, Constable Zendeli gave evidence that, Rebecca Hayes had actually thrown a punch at Rolfe, not Ryder *'throwing numerous punches'*³ as she initially indicated.. The BWV footage does not corroborate that version of events and Constable Zendeli maintained her version that punches were thrown.

Constable Zendeli states⁴; *'At this point, LEHRAIN and ROLFE were on the floor with RYDER, attempting to get RYDER to comply with their directions. RYDER was refusing to comply with directions, writhing and shouting abuse.'* Whilst giving evidence, Constable Zendeli was asked; *'Can you explain to court what you saw at that time to have the impression that he was not complying with police orders? ---Yes. So, Ryder was screaming. I heard words to the effect of "Fuck off". "Fuck you". I was trying to gain compliance with his hands, and I felt him resisting. He wasn't complying'*.

In cross-examination Constable Geranios was asked⁵; *'when the first arrest was occurring you actually did partially effect the arrest. You picked up the hands of the defendant when he was unconscious. Do you remember that?---Yes, and locked the handcuffs.*

Thank you. And you remember there was no tension from the defendant or resistance, was there?---No.

Slack---Totally Slack.'

Constable Rolfe gave evidence that⁶, *'while we were placing handcuffs on him what did you observe of him at that point?----While we were placing handcuffs on him I believe – he was still resisting with his arms and initially – afterwards it looked like he was unconscious, but while we were putting handcuffs on him he was still resisting with his arms. So it looked like he seemed to be unconscious, but I did not believe at the time that he was unconscious due to the resistance he was using in his arms and I also noticed that he had cuts..-'*

In relation to the statement this gives rise to the further comment that Judge Borchers made; *'There is nothing that Zendeli or Lerrain did whilst handcuffing Mr Ryder that could have caused him to become unconscious. There is little weight that can be given to Constable Zendeli's evidence'*⁷. *It is not corroborated by the Body-worn video.*

As the evidence provided identifies that Constable Zendeli arrived at the time Ryder was being handcuffed and the facts indicate that Ryder was at that time unconscious, the uncorroborated version of events provided by Constable Zendeli appear to be false.

³ Statement of Zendeli, Para 7

⁴ Statement of Zendeli, Para 8

⁵ Transcript Court File No. 21801980, Const Geranios, Dated 03/09/2018, Pg 54

⁶ Transcript Court File No. 21801980, Const Ryder, Dated 03/09/2018, Pg 61

⁷ Court File Transcript No. 21801980, Dated 09/05/2019, Pg11

The additional evidence provided by Constable Zendeli, not included in her statement; *'In addition, she gave evidence that Malcolm Ryder at the hospital had made and inferred a confession about throwing a phone. 'So we got to the hospital and Graniose, (sic) and I were monitoring Ryder. And, then it's not in my statements – in my statement but I recall Ryder stating that he shouldn't have thrown a telephone and that he's gonna get in trouble for that. And, he apologised to me for his actions. And, that he's going to seek legal assistance from CAALAS.'*⁸ This evidence was provided in court when Mr Ryder was providing evidence he was asked; *'Mr Ryder said to the police at the hospital that he threw the phone at the police officers?---No'*⁹. Geranios' was nominated as a witness to the incident, his evidence had already been heard and the IO is unable to find that the question was ever put to him to provide a response. The evidence was never corroborated during court proceedings and bore no weight on the outcome of the court matter. Judge Borchers stating; *'This was not heard by the other police officers at the hospital and it was not recorded in her notebook. This does her no credit and her evidence, apart from what can be seen on the body-worn video cannot be relied on*

Judge Borchers makes the following statement in his findings in relation to the evidence provided by the attending members and the evidence of Rolfe;

*'I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration about what happened in the bedroom. Nobody can say how Malcolm Ryder was knocked out but him and he surmises that it may – that Ryder may have hit his head while he was being tackled to the ground'*¹⁰.

17. Brett Geranios – Additional statement

Constable Geranios was asked to provide an additional statement with regards to the alleged comments made in evidence by Constable Zendeli in which she alleges that Ryder had shaken her hand and said; 'he threw the phone and that's what's going to get him in trouble. And, that he's sorry and that he's going to seek legal advice from CAALA because the officer should have never arrested him'¹¹. Geranios is not able to recall this conversation, citing, the length since the incident and that he had not recorded any information regarding that conversation.

18. Patricia Multa – Statement

A statement obtained from Patricia Naparrula Multa (Multa) confirmed that she was present at the front of [REDACTED] street, when police were present and Hayes was recording the conversation. Multa was not an eye witness to what occurred or how Ryder was rendered unconscious. Multa identified that she had come in through the front door, walked through the kitchen to stand at the laundry door looking back into the hallway. Multa corroborates Constable Lehrains version in which the members and Ryder fell in the hallway. Multa was of the belief that Ryder was unconscious and carried into the lounge area.

⁸ Court File Transcript No. 21801980, Dated 02/04/2019, Pg 13, last para

⁹ Court File Transcript No. 21801980, Dated 03/04/2019, Pg 102

¹⁰ Court File Transcript No. 21801980, Dated 09/05/2019, Pg12

¹¹ Court File Transcript No. 21801980, Dated 02/04/2019, Pg 46

19. Patrick Nolan – Statement

A statement was not obtained from Patrick Nolan, the defacto husband of Patricia Naparrula Multa as he told the IO that he had just got out of the Watch-house and stayed outside, because Police had told him to. He did see Ryder lying down inside, but had no further evidence to offer as he *'saw nothing else.'*

20. Review of Promis Incident No. 8391540 – Falsification of Registers

A review of Promis Incident No. 8391540 and the Use of Force information provided by Rolfe as required in accordance with Northern Territory Police Policy, Rolfe submitted the following information as justification for the 'Use of Force' utilised during the arrest of Ryder; *'Ryder has attempted to strike Geranios multiple times with closed fists before being sprayed with MK-9 OC Spray by Geranios in an attempt to gain subject control.'*

*'The spray has had no effect on Ryder who then threw is mobile phone at Rolfe who had to duck in order to avoid being struck in the face. Ryder has then punched Rolfe once in the face with a closed fist.'*¹²

BWV confirms that this version of events provided by Rolfe is incorrect with Judge Borchers stating that; 'I cannot accept the evidence of either Constable Rolfe or Constable Zendeli when they say they saw punches thrown by Ryder.'¹³

IO has previously investigated allegations of Falsification of Registers, contrary to section 265 *Criminal Code, Northern Territory*. To support that allegation a statement was obtained from Misty Leavold, the Assistant Director Information Management for Northern Territory Police, Fire and Emergency Services, (NTPFES), which identified PROMIS *'as a system approved to hold and maintain official police case management records for the purpose of crime prevention and detection. PROMIS itself is not considered a record, because it is a system. The information contained within PROMIS are individual records within their own right'*.

¹² Opinion File – Folio 13

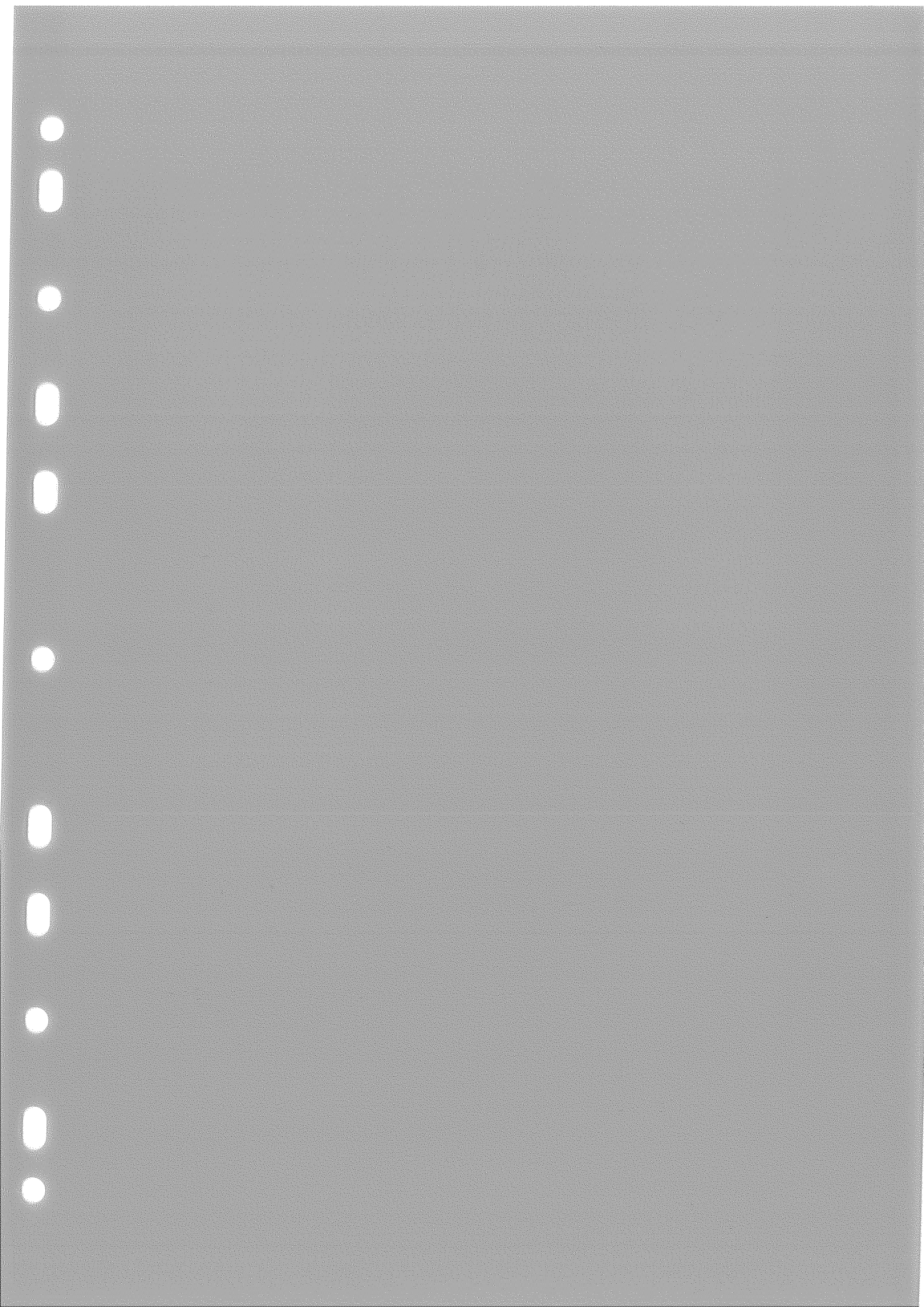
¹³ Transcript Court File No. 21801980, Dated 09/05/2019, Pg 8

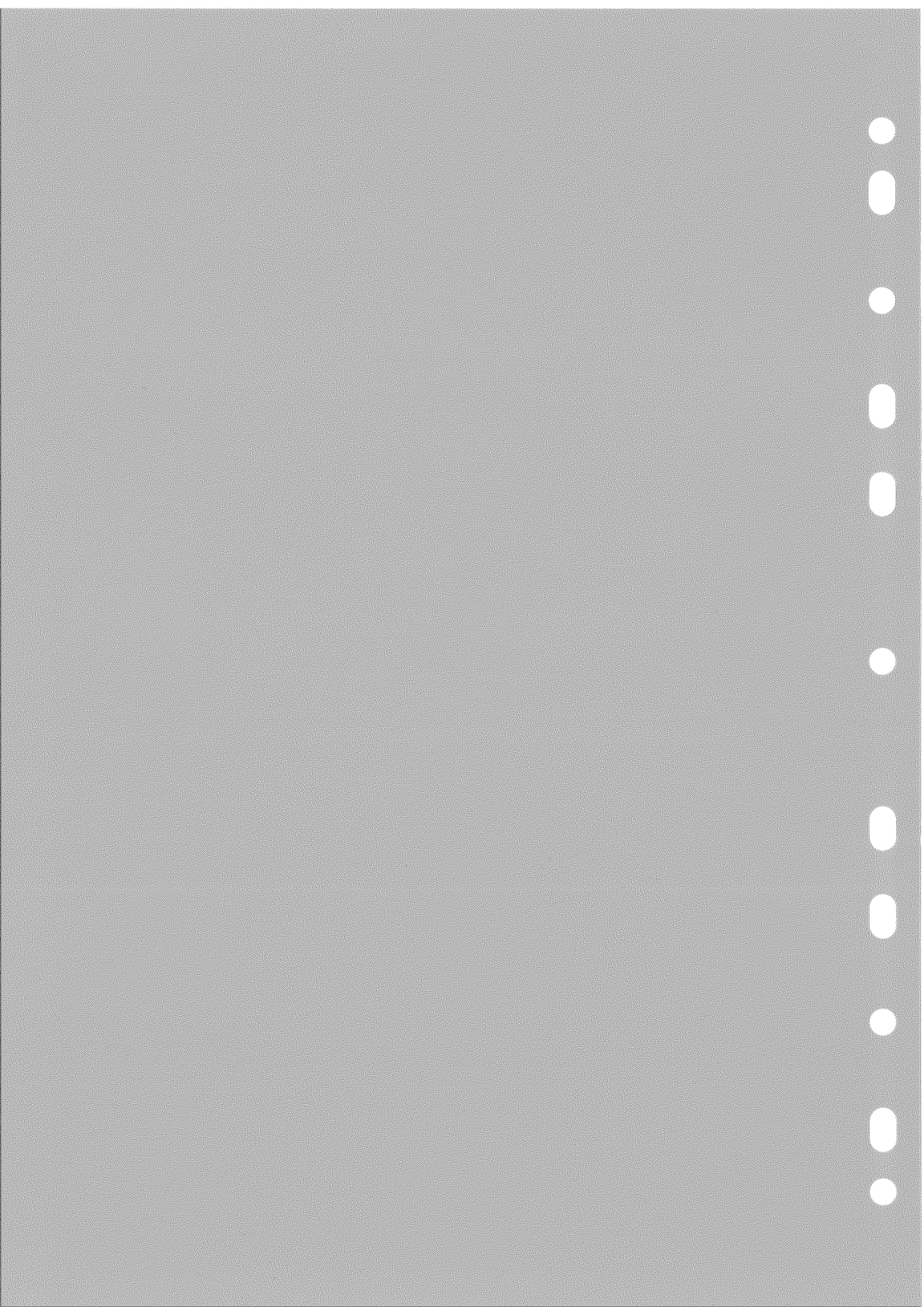
RECOMMENDATION

21. It is requested that the attached file is submitted to ODPP for legal opinion, to identify if there is sufficient evidence to support a prosecution.

Sonia Kennon
D/Sergeant 2164

ⁱ Transcript of Proceedings at Alice Springs on 9 May 2019, Judge Borchers, Case No. 21801980, Police and Malcolm Ryder







Statement of Facts (Adult)

IJIS CASE NO:	
DEFENDANT'S LAST NAME:	ROLFE
DEFENDANT'S GIVEN NAME:	ZACHARY
CO-OFFENDERS INVOLVED:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
CCTV FOOTAGE OF INCIDENT:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Co-offender details:		
NAME:	ADULT/ YOUTH:	IJIS CASE NO.
ZENDELI, XHENITA@JENNY@ZENDELJI, DZENITA	<input checked="" type="checkbox"/> Adult <input type="checkbox"/> Youth	
	<input type="checkbox"/> Adult <input type="checkbox"/> Youth	
	<input type="checkbox"/> Adult <input type="checkbox"/> Youth	
	<input type="checkbox"/> Adult <input type="checkbox"/> Youth	

Victim details:	
FULL NAME:	CROWN
BUSINESS NAME (if applicable):	

Statement of alleged facts:

1. The defendant Zachary Brian Rolfe (Dob: ██████████991) is a 28 year old male who was recruited to the Northern Territory Police Force on 30 May 2016, graduated from the Police, Fire and Emergency Services College on 8 December 2016 and was transferred to Alice Springs General Duties as a Probationary Constable where he has been working as a Front line Police Officer in General Duties.
2. On Thursday 11 January 2018, he was rostered on day shift from 7:00am and to conclude at 3.00pm. His partner for the shift was Constable Breanna Bonney (Bonney). At the beginning of the shift, Bonney and Rolfe were allocated to the marked police vehicle, call sign 460 (Unit 460). Both members were in police uniform, wearing their accoutrements which included Body Worn Video (BWV).
3. At about 1.40pm Police Vehicle Unit 460 Rolfe and Bonney were tasked to ██████████ Street, Alice Springs in relation to an allegation of a male and female physically fighting in the street and loud screaming could be heard. Unit 453 containing Constables Brett Geranios (Geranios and Xhenita Zendeli (Zendeli) identified that they would also attend. Unit 460 arrived at 1:40pm and Unit 453 arrived at 1:43pm. Promis No. 8391303 refers.
4. Upon the arrival of Constables Zendeli and Geranios, they were advised by member Bonney that the alleged offender involved in the Domestic assault; Bentley Poulson (Poulson) had gone back inside the house and then seen by a neighbour jumping the rear fence onto an open rocky outcrop, the female victim and partner; Shirleena Wilson (Wilson) had been left crying and distressed with an unknown female/neighbour. Constable Rolfe was chasing Poulson. Constables Zendeli and Geranios ran off to assist Rolfe locating Poulson. Bonney remained at the front of ██████████ Street with Wilson, and obtained a description of Poulson which she broadcast.
5. Zendeli broadcast that Poulson was running back towards Lyndavale Drive, so she left Wilson to assist the other members in locating Poulson. Poulson was not located and the members returned to ██████████.
6. Rolfe, Zendeli and Geranios returned to ██████████. At that time the lawful occupants of the house being the biological mother and stepfather of Poulson; Rebecca Hayes (Hayes), and her husband Malcolm Ryder (Ryder) had arrived back at ██████████ with relatives Patricia Napurrula Multa (Multa) and her husband Patrick Nolan (Nolan).
7. Wilson confirmed to Bonney that she did not wish to remain at the location and wanted to collect her personal items. Constables Rolfe and Bonney

attempted to access the house through the front door, which was locked. Hayes and Ryder identified that they did not have a key. At that time, Hayes activated her audio-visual recording and began recording the interaction between themselves and the attending police officers. Hayes and Ryder both say to the police, *'Break the door if you want to'* and later telling the police that they should use the back door.

8. Rolfe climbed over the rear gate and entered the house through the unlocked rear door, opening the front door to enable entry into the house. Constable Bonney and Wilson entered the house, Wilson packed a small bag of clothes for herself and her 5 year old nephew. Rolfe and Bonney walked Wilson back to the police vehicle. As Rolfe was returning to [REDACTED] he could see Poulson returning to the house by the rear entry, he broadcast his observation over the radio and ran to the rear of the house. Geranios and Zendeli also went to the rear of the house. Geranios activated his BWV.
9. Rolfe and Zendeli entered the rear door through the laundry of [REDACTED] Street. Geranios remained in the rear of the yard until he heard Poulson crying out from the rear bedroom. Geranios ran inside the house.
10. Constables Lehrain and Chatterton entered through the front door, Bonney heard Ryder, Patrick Nolan (Nolan) and Bonney broadcast over the radio, *'There's a big group of family running in the house, watch your back.'*
11. When Geranios ran into the rear bedroom Poulson was laying face down on the bedroom floor between the bed and the window. Rolfe was standing at Poulson's feet, Zendeli was conducting a three point hold with her knee on Poulson's left scapula, yelling, *'Hands behind your back'*, her back was to the bedroom door. Geranios ran into the room shouting, *'Get your fucken hands behind your back, get your hands behind your back, stop resisting'*. Poulson said, *'I'm not resisting'*. Rolfe put handcuffs on his wrists, Constables Lehrain and Chatterton had also entered the room at that time.
12. Hayes and Ryder entered the bedroom door, Hayes yelled out, both of them had a mobile phone in their hands, Hayes' arm was extended up in the air, Geranios said, *'Oi get out'* then deployed a 2 second burst from the MK9 OC spray at Hayes and Ryder. Ryder retreated into the hallway, Hayes was pushed against the door as Rolfe and Lehrain rushed at them, knocking Hayes over into the hallway as they exited to get Ryder.
13. Zendeli stated; *'I observed Malcolm Ryder and another woman plough through the door in a highly aggressive manner. I observed Ryder attempting to assault police by throwing numerous punches. I then saw Geranios raise and deploy his MK-9 OC spray and spray Ryder to deter him from further assaulting police.'*
14. Rolfe states, *'I then tackled Ryder to the floor and attempted to ground*

stabilise him. Ryder then began to scratch my right forearm, causing a laceration. Ryder reached towards my face and started to scratch my face with his fingernails. I was fearful that he was trying to gouge my eyes and in order to defend myself I struck him once on the left side of his face with my closed right fist. This gained subject compliance and Ryder stopped fighting.

15. Multa entered through the front door and walked through the lounge-room to the kitchen and stood in the doorway of the laundry watching Rolfe and Lehrain move Ryder from the hallway into the lounge-room. Ryder had been rendered unconscious, sustaining a laceration to the left and right eyebrow area.
16. Rolfe stated, *'Lehrain and I placed Ryder in handcuffs and placed him under arrest for assault police. I noticed that Ryder had a cut over his right eye that I assumed that had happened when we tackled him and he hit his head on the floor.'* Rolfe informed Ryder that he was under arrest.
17. As Zendeli was attempting to place handcuffs on Ryder was being handcuffed, Zendeli punched Ryder twice in the arm saying, 'you fucking get...'. Geranios was yelling at Hayes to; *'Get out, get out'*. After he was handcuffed, Geranios grabbed Ryders t-shirt and pulled it so that Ryder laying on his left side. Geranios kept hold of Ryders t-shirt and then went to get a first aid kit.
18. Bonney requested the assistance of St Johns Ambulance for Ryder. Hayes began recording the incident using her mobile phone. Bonney squatted in front of Ryder with the left side of her leg against his chest, to assist with him remaining on his left side. Geranios administered saline water to Ryders right eyebrow laceration, Ryder regained consciousness and members attempted to decontaminate him due to being sprayed with OC spray. Hayes concluded the recording.
19. A medical examination identified that Ryder had sustained capsaisin spray to his eyes and a 4cm long laceration to his right eye, a 1 cm laceration to his left eye and a small contusion on his scalp of the temple on the left side.
20. After the medical examination, Ryder was deemed 'fit for custody' and conveyed to the Alice Springs Watch-house. Ryder participated in an Electronic Record of Interview, however this was ceased as the interviewing members deemed that he did not understand the caution. Ryder was charged with Assault Police and Hinder Police.
21. As a result of the incident Rolfe identified that he sustained a laceration on his right forearm, his forehead and swelling and bruising to his left arm. Rolfe did not obtain a medical examination.
22. To comply with Policy and General Orders, Rolfe submitted a 'Use of Force' Case Note Entry. Within the narrative of the incident, Rolfe wrote; *'Ryder*

has attempted to strike Geranios multiple times with closed fists before being sprayed with MK-9 OC Spray by Geranios in an attempt to gain subject control.'

23. *'The spray has had no effect on Ryder who then threw his mobile phone at Rolfe who had to duck in order to avoid being struck in the face. Ryder has then punched Rolfe once in the face with a closed fist.'*

24. The matter was heard in court between the 3 September 2018 to 9 May 2019. Case File No. 21801980 refers. On the 9 May 2019 Judge Borchers cited that, he was *'not satisfied beyond reasonable doubt that either charge is made out.'* Ryder was acquitted.

25. Judge Borchers stated that, *'I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration.'*

Defendant's account:

(e.g. admissions, confessions, version of events, etc.)

- Allegations have not been put to the Defendant. Opinion sought.



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(e.g. admissions, confessions, version of events, etc.)

- Allegations have not been put to the Defendant. Opinion sought.

POLICE WITNESS INDEX

Please ensure all Officers and leave dates are on the AP

Witness List	Summary of Evidence	Exhibit(s) etc. to introduce	Statement Attached
Name: D/Sgt Sonia Kennon Station: SRU Mob: [REDACTED]	<ul style="list-style-type: none"> OIC of Investigation 	<ul style="list-style-type: none"> 536571/001 – Arrest File CN1818613 – Alice Spring Prosecutions File. 536571/002 – CD – Call Recordings P18011811/18011813/18011 815 536571/003 – ASP DSP Recording 13:39Hrs – 17:35Hrs on 11/01/2018 536571/004 – ASP DSP Recording 17:35Hrs – 18:07Hrs 11/01/2018 536571/005 – Hayes Footage – Mobile Phone 	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Name: Const B Geranios Station: Southern Crime	<ul style="list-style-type: none"> Initial responding member Arresting member 	<ul style="list-style-type: none"> Police Statement Body worn video footage 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

Name: Const B Bonney Station: Alice Springs	<ul style="list-style-type: none"> Arresting member 	<ul style="list-style-type: none"> Police Statement 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const M Lehrain Station: Alice Springs Station	<ul style="list-style-type: none"> Arresting member 	<ul style="list-style-type: none"> Nil 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const X Zendeli Station: Alice Springs	<ul style="list-style-type: none"> Arresting member 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const C Chatteron Station: Alice Springs	<ul style="list-style-type: none"> Arresting member 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const Z Rolfe Station: Alice Springs	<ul style="list-style-type: none"> Arresting member 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

CIVILIAN WITNESS INDEX

Please ensure all witnesses and unavailability dates are on the AP

Witness List	Summary of Evidence	Exhibit(s) etc. to introduce	Statement Attached
Name: Rebecca Hayes	<ul style="list-style-type: none"> Present during the arrest of Malcolm Ryder 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Malcolm Ryder	<ul style="list-style-type: none"> Initial alleged defendant - acquitted 	<ul style="list-style-type: none"> 	<input type="checkbox"/> YES <input type="checkbox"/> NO
Name: Patricia Multa	<ul style="list-style-type: none"> Present during the arrest of Malcolm Ryder 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name:	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> 	<input type="checkbox"/> YES <input type="checkbox"/> NO



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Co-offender details:		
NAME:	ADULT/ YOUTH:	IJIS CASE NO.
ZENDELI, XHENITA@JENNY@ZENDELJI, DZENITA	<input checked="" type="checkbox"/> Adult <input type="checkbox"/> Youth	
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Victim details:	
FULL NAME:	CROWN
BUSINESS NAME (if applicable):	

Statement of alleged facts:

1. The defendant Zachary Brian Rolfe (Dob: 1 [REDACTED]/1991) is a 28 year old male who was recruited to the Northern Territory Police Force on 30 May 2016, graduated from the Police, Fire and Emergency Services College on 8 December 2016 and was transferred to Alice Springs General Duties as a Probationary Constable where he has been working as a Front line Police Officer in General Duties.
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4. Upon the arrival of Constables Zendeli and Geranios, they were advised by member Bonney that the alleged offender involved in the Domestic assault; Bentley Poulson (Poulson) had gone back inside the house and then seen by a neighbour jumping the rear fence onto an open rocky outcrop, the female victim and partner; Shirleena Wilson (Wilson) had been left crying and distressed with an unknown female/neighbour. Constable Rolfe was chasing Poulson. Constables Zendeli and Geranios ran off to assist Rolfe locating Poulson. Bonney remained at the front of [REDACTED] Street with Wilson, and obtained a description of Poulson which she broadcast.
5. Zendeli broadcast that Poulson was running back towards Lyndavale Drive, so she left Wilson to assist the other members in locating Poulson. Poulson was not located and the members returned to [REDACTED].
6. Rolfe, Zendeli and Geranios returned to [REDACTED]. At that time the lawful occupants of the house being the biological mother and stepfather of Poulson; Rebecca Hayes (Hayes), and her husband Malcolm Ryder (Ryder) had arrived back at [REDACTED] with relatives Patricia Napurrula Multa (Multa) and her husband Patrick Nolan (Nolan).
7. Wilson confirmed to Bonney that she did not wish to remain at the location and wanted to collect her personal items. Constables Rolfe and Bonney

attempted to access the house through the front door, which was locked. Hayes and Ryder identified that they did not have a key. At that time, Hayes activated her audio-visual recording and began recording the interaction between themselves and the attending police officers. Hayes and Ryder both say to the police, *'Break the door if you want to'* and later telling the police that they should use the back door.

8. Rolfe climbed over the rear gate and entered the house through the unlocked rear door, opening the front door to enable entry into the house. Constable Bonney and Wilson entered the house, Wilson packed a small bag of clothes for herself and her 5 year old nephew. Rolfe and Bonney walked Wilson back to the police vehicle. As Rolfe was returning to [REDACTED], he could see Poulson returning to the house by the rear entry, he broadcast his observation over the radio and ran to the rear of the house. Geranios and Zendeli also went to the rear of the house. Geranios activated his BWV.
9. Rolfe and Zendeli entered the rear door through the laundry of [REDACTED] Street. Geranios remained in the rear of the yard until he heard Poulson crying out from the rear bedroom. Geranios ran inside the house.
10. Constables Lehrain and Chatterton entered through the front door, Bonney heard Ryder, Patrick Nolan (Nolan) and Bonney broadcast over the radio, *'There's a big group of family running in the house, watch your back.'*
11. When Geranios ran into the rear bedroom Poulson was laying face down on the bedroom floor between the bed and the window. Rolfe was standing at Poulson's feet, Zendeli was conducting a three point hold with her knee on Poulson's left scapula, yelling, *'Hands behind your back'*, her back was to the bedroom door. Geranios ran into the room shouting, *'Get your fucken hands behind your back, get your hands behind your back, stop resisting'*. Poulson said, *'I'm not resisting'*. Rolfe put handcuffs on his wrists, Constables Lehrain and Chatterton had also entered the room at that time.
12. Hayes and Ryder entered the bedroom door, Hayes yelled out, both of them had a mobile phone in their hands, Hayes' arm was extended up in the air, Geranios said, *'Oi get out'* then deployed a 2 second burst from the MK9 OC spray at Hayes and Ryder. Ryder retreated into the hallway, Hayes was pushed against the door as Rolfe and Lehrain rushed at them, knocking Hayes over into the hallway as they exited to get Ryder.
13. Zendeli stated; *'I observed Malcolm Ryder and another woman plough through the door in a highly aggressive manner. I observed Ryder attempting to assault police by throwing numerous punches. I then saw Geranios raise and deploy his MK-9 OC spray and spray Ryder to deter him from further assaulting police.'*
14. Rolfe states, *'I then tackled Ryder to the floor and attempted to ground*

stabilise him. Ryder then began to scratch my right forearm, causing a laceration. Ryder reached towards my face and started to scratch my face with his fingernails. I was fearful that he was trying to gouge my eyes and in order to defend myself I struck him once on the left side of his face with my closed right fist. This gained subject compliance and Ryder stopped fighting.

15. Multa entered through the front door and walked through the lounge-room to the kitchen and stood in the doorway of the laundry watching Rolfe and Lehrain move Ryder from the hallway into the lounge-room. Ryder had been rendered unconscious, sustaining a laceration to the left and right eyebrow area.
16. *Rolfe stated, 'Lehrain and I placed Ryder in handcuffs and placed him under arrest for assault police. I noticed that Ryder had a cut over his right eye that I assumed that had happened when we tackled him and he hit his head on the floor.'* Rolfe informed Ryder that he was under arrest.
17. As Zendeli was attempting to place handcuffs on Ryder was being handcuffed, Zendeli punched Ryder twice in the arm saying, 'you fucking get...'. Geranios was yelling at Hayes to; 'Get out, get out'. After he was handcuffed, Geranios grabbed Ryders t-shirt and pulled it so that Ryder laying on his left side. Geranios kept hold of Ryders t-shirt and then went to get a first aid kit.
18. Bonney requested the assistance of St Johns Ambulance for Ryder. Hayes began recording the incident using her mobile phone. Bonney squatted in front of Ryder with the left side of her leg against his chest, to assist with him remaining on his left side. Geranios administered saline water to Ryders right eyebrow laceration, Ryder regained consciousness and members attempted to decontaminate him due to being sprayed with OC spray. Hayes concluded the recording.
19. A medical examination identified that Ryder had sustained capsaicin spray to his eyes and a 4cm long laceration to his right eye, a 1 cm laceration to his left eye and a small contusion on his scalp of the temple on the left side.
20. After the medical examination, Ryder was deemed 'fit for custody' and conveyed to the Alice Springs Watch-house. Ryder participated in an Electronic Record of Interview, however this was ceased as the interviewing members deemed that he did not understand the caution. Ryder was charged with Assault Police and Hinder Police.
21. As a result of the incident Rolfe identified that he sustained a laceration on his right forearm, his forehead and swelling and bruising to his left arm. Rolfe did not obtain a medical examination.
22. To comply with Policy and General Orders, Rolfe submitted a 'Use of Force' Case Note Entry. Within the narrative of the incident, Rolfe wrote; 'Ryder

has attempted to strike Geranios multiple times with closed fists before being sprayed with MK-9 OC Spray by Geranios in an attempt to gain subject control.'

23. *'The spray has had no effect on Ryder who then threw his mobile phone at Rolfe who had to duck in order to avoid being struck in the face. Ryder has then punched Rolfe once in the face with a closed fist.'*

24. The matter was heard in court between the 3 September 2018 to 9 May 2019. Case File No. 21801980 refers. On the 9 May 2019 Judge Borchers cited that, he was *'not satisfied beyond reasonable doubt that either charge is made out.'* Ryder was acquitted.

25. Judge Borchers stated that, *'I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration.'*

Defendant's account:

(e.g. admissions, confessions, version of events, etc.)

- Allegations have not been put to the Defendant. Opinion sought.

IJIS CASE NO:

21944804

IJIS ID:

633863

POLICE WITNESS INDEX

Please ensure all Officers and leave dates are on the AP

Witness List	Summary of Evidence	Exhibit(s) etc. to introduce	Statement Attached
Name: D/Sgt Sonia Kennon Station: SRU Mob: [REDACTED]	<ul style="list-style-type: none"> OIC of Investigation 	<ul style="list-style-type: none"> 536571/001 – Arrest File CN1818613 – Alice Spring Prosecutions File. 536571/002 – CD – Call Recordings P18011811/18011813/18011815 536571/003 – ASP DSP Recording 13:39Hrs – 17:35Hrs on 11/01/2018 536571/004 – ASP DSP Recording 17:35Hrs – 18:07Hrs 11/01/2018 536571/005 – Hayes Footage – Mobile Phone 	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Name: Const B Geranios Station: Southern Crime	<ul style="list-style-type: none"> Initial responding member Arresting member 	<ul style="list-style-type: none"> Police Statement Body worn video footage 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

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633863

Name: Const B Bonney Station: Alice Springs	<ul style="list-style-type: none"> • Arresting member 	<ul style="list-style-type: none"> • Police Statement 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const M Lehrain Station: Alice Springs Station	<ul style="list-style-type: none"> • Arresting member 	<ul style="list-style-type: none"> • Nil 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const X Zendeli Station: Alice Springs	<ul style="list-style-type: none"> • Arresting member 	<ul style="list-style-type: none"> • 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const C Chatteron Station: Alice Springs	<ul style="list-style-type: none"> • Arresting member 	<ul style="list-style-type: none"> • 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Const Z Rolfe Station: Alice Springs	<ul style="list-style-type: none"> • Arresting member 	<ul style="list-style-type: none"> • 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

IJS CASE NO:

21944804

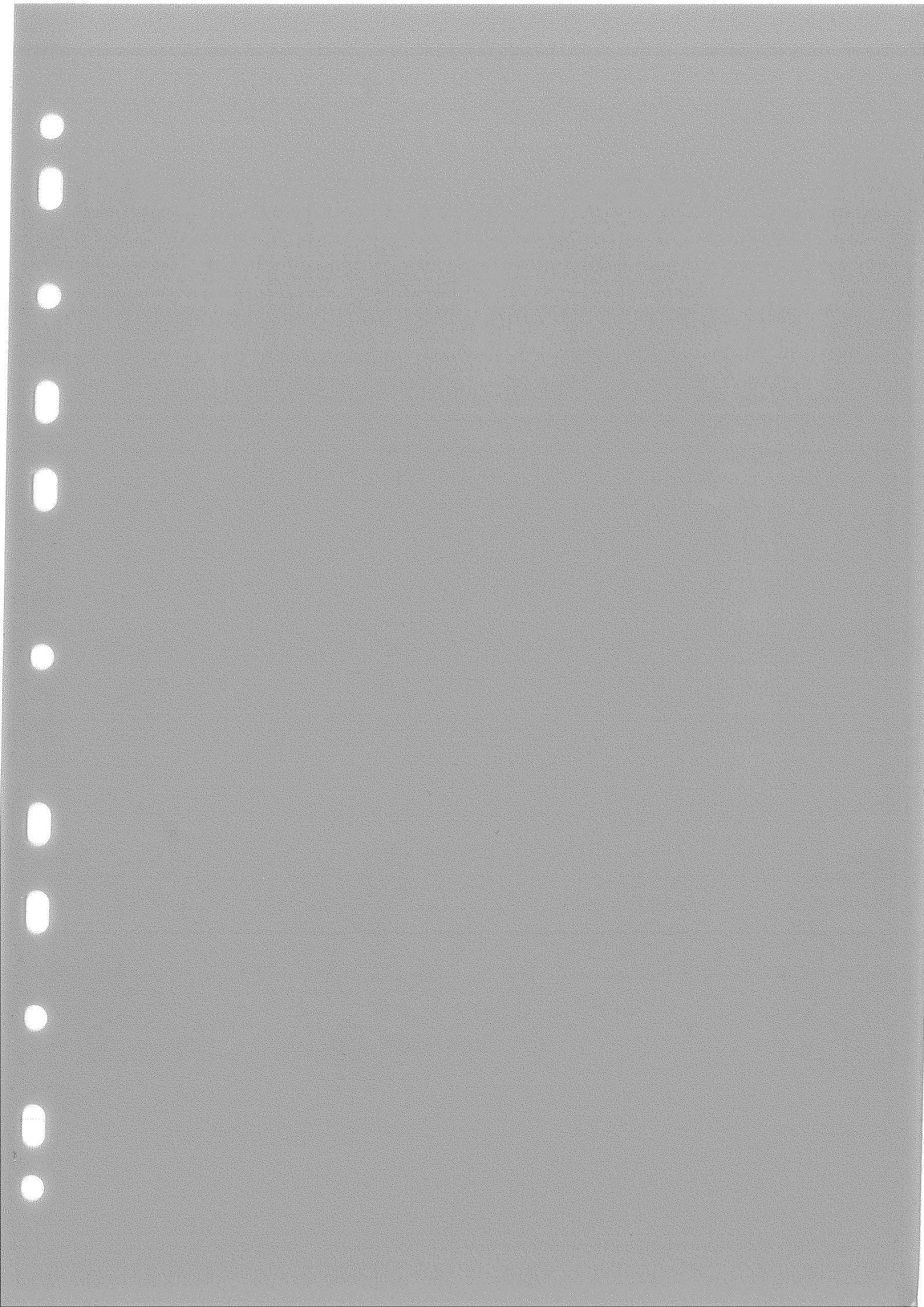
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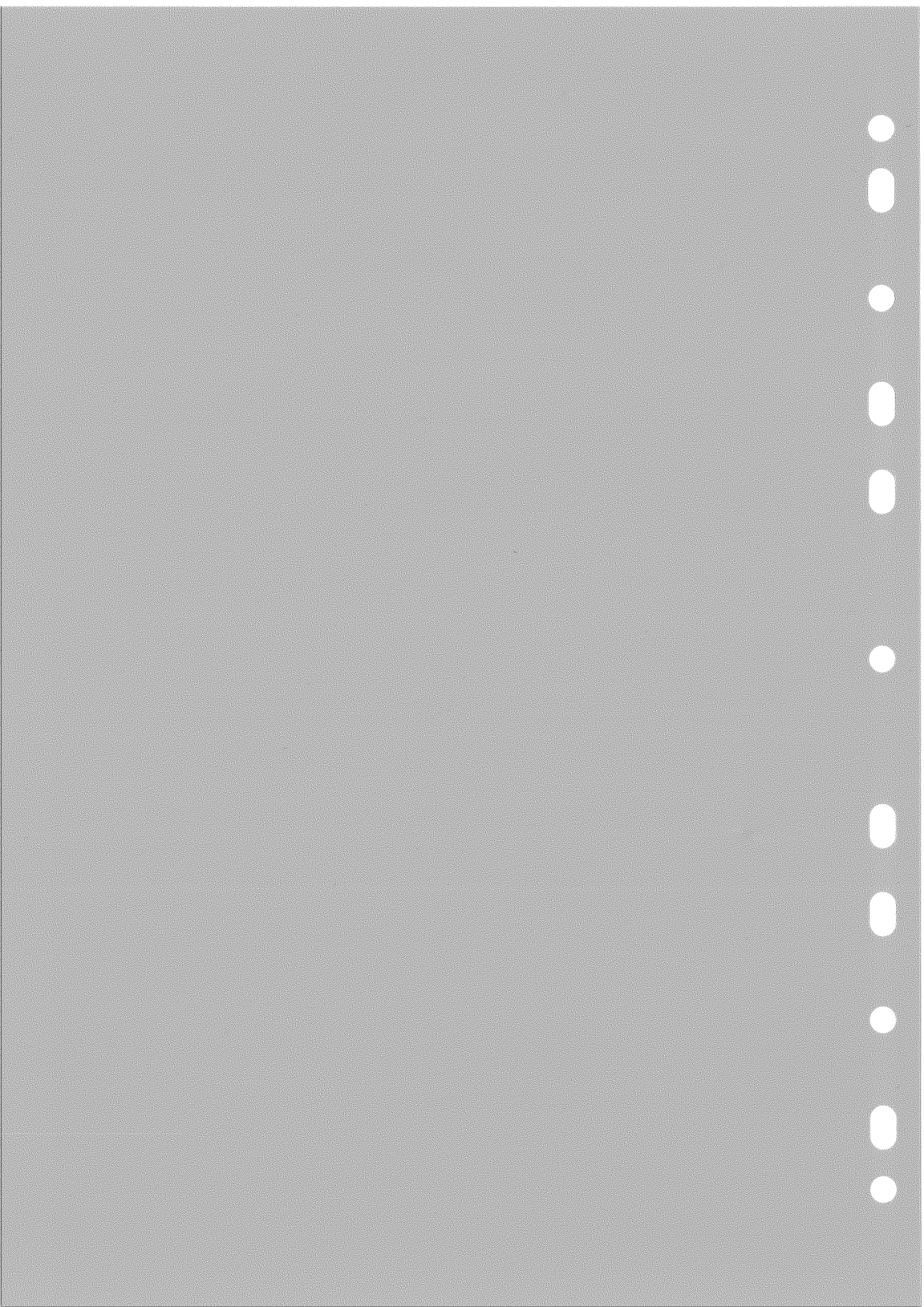
633863

CIVILIAN WITNESS INDEX

Please ensure all witnesses and unavailability dates are on the AP

Witness List	Summary of Evidence	Exhibit(s) etc. to introduce	Statement Attached
Name: Rebecca Hayes	<ul style="list-style-type: none"> Present during the arrest of Malcolm Ryder 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name: Malcolm Ryder	<ul style="list-style-type: none"> Initial alleged defendant - acquitted 	<ul style="list-style-type: none"> 	<input type="checkbox"/> YES <input type="checkbox"/> NO
Name: Patricia Multa	<ul style="list-style-type: none"> Present during the arrest of Malcolm Ryder 	<ul style="list-style-type: none"> 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name:	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> 	<input type="checkbox"/> YES <input type="checkbox"/> NO





NORTHERN TERRITORY POLICE

AR No : 359872
IJIS ID : 633863
Case No : 21944804
PROMIS ID : 0

APPREHENSION REPORT

11. REPORT COMPLETED BY :

No : 2164 Name : KENNON Sonia Michell Rank : SGT Station : SPRU

Signature : _____ Date: _____

OFFENDER DESCRIPTION

PHYSICAL Height : 178 Weight : 85
BUILD MUSCULAR
FEATURES CAUCASIAN
COMPLEXION TANNED
EYES BLUE
HAIR - Color BLACK
 - Style WAVY

TATTOO / SCAR / BIRTHMARK / MOLE : NO

TYPE LOCATION POSITION SIZE REGN DESCRIPTION

VICTIM IMPACT STATEMENT INFORMATION

Victim Impact Statement Forthcoming : No

WITNESSES

Witnesses to be called and Dates when Unavailable for Court:

	NAMES	DATE FROM	DATE TO
P	KENNON Sonia Michell		