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NORTHERN TERRITORY OF AUSTRALIA

COURT OF SUMMARY JURISDICTIONS

Nos 20215305, 20215299, 20215305
and 20215301

POLICE

and

GARY WILLIAM MEYERHOFF,
MICHAEL JOHN BARRY,
NICOLETTE ESTELLE BURROWS and
STUART HIGHWAY

MR D. LOADMAN, SM

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 16 SEPTEMBER 2003

Certified true transcript of a
Record produced out of the
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Transcribed by:
Court Recording Services (NT) Pty Ltd

B2/ms
Meyerhoff &Ors

HIS WORSHIP: A one-sided contest.

MS NOBBS: We hope so.

HIS WORSHIP: Please call all the defendants names please, Kathleen.

I'm not sure how we are going to organise this, anyway I'll call formally then the matters of Barry, and I use the last four digits of the file number 5299, Burrow 5303, Highway 5301 and Meyerhoff 5305.

DISCUSSION RE THE DEFENDANTS ACCESS TO MICROPHONES.

DISCUSSION RE VIDEO LINK WITH MR PETER BENNETT.

DISCUSSION RE NAMING ALL DEFENDANTS EACH TIME.

DISCUSSION RE PRELIMINARY ISSUE

DISCUSSION RE SUPREME COURT HEARING

PETER GRAHAM BENNETT, sworn:

MS NOBBS: Could you state your full name and address?---Yep, Peter Graham Bennett, 11 Taifalos St, Wanguri.

And what is your occupation, Mr Bennett?---Press photographer for the NT News.

And how long have you been doing that for?---About 28 years.

And on the 12 October last year, what was your occupation?---The same, press photographer.

And can you tell the court what you were doing on the 12 October last year at approximately 2 pm?---Oh, I'd just been up buying lunch and - - -

Where was that?---At Subway, came back down into - past Raintree Park where I parked, and I just noticed that there was something happening in the park.

So, what did you do?---Put my lunch in the car and got my camera out.

And then what did you?---Things started happening there, people were being pushed and shoved and basically I just started taking photographs.

If I could show you first this bundle.

HIS WORSHIP: I'd assumed each one of you defendants that didn't exercise such as is - is now taking place that you have already been supplied with copies of what is referred to the witness. If that's not the case then will you please say so?

MR MEYERHOFF: Between us, Your Worship, we've got two copies here.

MS NOBBS: If you could have a look at that bundle. If I could show the witness?

In relation to the first group of photos, are those the photos that you took on that day?---Yes, they are.

In relation to the second - the binded copy are those enlargements of those photos? ---Yes, they are the same.

And what sort of camera do you use?---A Nikon F5.

And the film?---The film is Fuji 800.

And did you take any other photos apart from those that are before you?---No, that was it.

And did you provide those to the police?---Yes, we had them printed for them.

Do you know when that was?---No, it was quite a while after the event.

And have those photos been published in any other forum, or any of those photos? ---A couple of them were published a day after from my recollection, probably two or three.

And where was that?---Sorry?

Where was that?---In the Sunday Territorian.

I seek to tender those photos.

HIS WORSHIP: Now, the first booklet of - I think you got a blue cover - and are they numbered?

MS NOBBS: No, Your Worship, we've enlarged them to the enlargement they have numbered.

HIS WORSHIP: I think the witness can write consecutive numbers on the back and then that other collation - is that the collation which is numbered?

MS NOBBS: Yes, it is, Your Worship.

HIS WORSHIP: It is. Well, how do you want me to - what do you want me to call them? Booklets of photographs when Mr Bennett's finished, numbered 1 through whatever - - -

MS NOBBS: 41.

HIS WORSHIP: And then the second lot - what do you want to call that?

MS NOBBS: That would be the original prints.

HIS WORSHIP: The original prints, right?

THE WITNESS: On the back?

MS NOBBS: Yes.

HIS WORSHIP: Is there any objection in relation to those photographs being exhibited in the committal hearing? Can't conceive that there would be.

MR MEYERHOFF: No, Your Worship.

MR BARRY: I make one point that the numbering in there is not - I mean it is pretty obvious that the photos is not in the actual order of events, the order that they are in here is not - - -

HIS WORSHIP: The order in which they were taken - - -

MR BARRY: In chronological order that they were taken.

MS NOBBS: Yes.

HIS WORSHIP: That doesn't matter really as long as each photograph has some means of identification so that when it comes to you or any of you asking questions, you can be able to say turn to photograph number 18 or whatever it is. The fact that they are not sequential or consecutive it doesn't matter. So P1 is a booklet of photographs and I will get the numbering when Mr Bennett's finished and P2 is the original prints. Taken on what day?, the day of the event 12/10.

EXHIBIT P1 Photos/Booklet 1-41

EXHIBIT P2 Photos/Original Prints (12/10)

MS NOBBS: Yes, Your Worship.

Your Worship, I also have a copy for you for use on the bench.

HIS WORSHIP: Yes, if you do, it would be of great assistance undoubtedly. I will mark this as an aide-memoire - do you understand what that means each of you?

Prosecution is seeking to allow me a copy of what will be exhibits, obviously when questions are asked of Mr Bennett, he will have to have the documents or the photographs as they are in front of him. The prosecution simply seeking to assist me by allowing me to having a duplicate set so that I can follow what is going on.

They are not exhibits they are marked as what's called an aide-memoire. Do you have a problem with that anyone?

A PERSON UNKNOWN: No, Your Worship.

HIS WORSHIP: Have you got a copy of the booklet as well?

MS NOBBS: Yes, Your Worship, it was provided yesterday to the defendants.

HIS WORSHIP: All right. You haven't provided me with a booklet, do I need them - are they the same, are they?

MS NOBBS: They are the same.

HIS WORSHIP: Oh, okay.

Well Mr Bennett, what is the count?---1 to 41, 1 to 41.

MS NOBBS: I have no further questions, Your Worship.

HIS WORSHIP: In the order that you - each of you defendants are perceived as it were from left to right. So, Ms Burrows do you have any questions?

MS BURROWS: No, not at this stage.

HIS WORSHIP: Mr Meyerhoff?

MR MEYERHOFF: No, Your Worship.

HIS WORSHIP: Mr Highway?

MR HIGHWAY: No questions, Your Worship.

HIS WORSHIP: Mr Barry?

MR BARRY: Just one quick one.

Mr Bennett was this - the photos taken here one roll of film or more than one?---Two rolls - - -

Two rolls?---Well, one was part of another film.

Right so you had to replace the film part way through, how long does that take? ---What, to put in a roll of film?

Yeah, yeah as a professional - a minute?---A few seconds.

Right so quick, I was just wondering if there was any gap between the two rolls of film or any break.

You said you was at - you weren't sent down by the paper to take photos?---No, I was buying my lunch.

Right, so it was just coincidence that you were passing by?---Yes.

But you might have been taking them to supply to the paper for publication?---Well, possibly I didn't know what was going to happen at that stage.

I'm just thinking that as you were taking them you are - in your head you would have been thinking that - you know, hopefully to get good photos for the paper, that would have been the things you were targeting on?---Just photographs of the event as it happens, is all.

Okay, thank you.

HIS WORSHIP: I doubt whether you would generate a re-examination other than that.

MS NOBBS: No thanks, Your Worship.

DISCUSSION RE WITNESS PROTOCOL

HIS WORSHIP: Thank you Mr Bennett, you are excused.

WITNESS WITHDREW

ADJOURNED

MS NOBBS: Your Worship, we have Sergeant Christopher Lyndon on the screen.

HIS WORSHIP: Yes.

DISCUSSION RE SWEARING IN OF WITNESS

CHRISTOPHER JAMES LYNDON, sworn:

HIS WORSHIP: He is alone in that room?, is nobody with him?

MS NOBBS: Your Worship, we are missing a few defendants.

A PERSON UNKNOWN: No, they are right behind me.

HIS WORSHIP: Yes.

All you have missed was the administration of the oath, which I think is not going to be of any consequence.

Yes, all right, Ms Nobbs.

MS NOBBS: Could you state your full name, rank and station?---My full name is Christopher James Lyndon, I'm the Sergeant at the police station at Darwin Police Station.

And you are currently on recreation leave, is that correct?---That is correct, yes.

And on the 12 October last year, where were you stationed?---I was stationed at the Darwin Police Station.

And what was your position there?---My position there was a supervisor and one of two supervisor sergeants, I was running the patrol group from Darwin station. On that particular day I was on duty from 7 o'clock in the morning until 4 o'clock in the afternoon.

Now you say you were supervising patrols - what does that entail?---I had four members that were operating from Darwin station and I had direct responsibility for, getting involved in MEGs(?) for the day and supervising their activities during the term of their shift.

And can you tell the court, what happened, what involvement you had on the 12 October with the charges before the court?---Yes, Your Worship, one of the activities that we knew was taking place that day, there was advertised as a smoke-in in Raintree Park and - - -

HIS WORSHIP: Sorry, just before you go on - hold on. Ms Nobbs what's he got in front of him?

MS NOBBS: He's got photos, Your Worship.

HIS WORSHIP: Do you know what they are, are they counterparts of things?

MS NOBBS: I will cover that, Your Worship.

HIS WORSHIP: Yes, right.

It's all right I just see there's - the people that - the defendants are representing themselves and you've got a book open in front you, I couldn't see what it was? ---Yes, Your Worship, on the table at the moment, what this folder contains a faxed photographs that were that were given to me this morning when I arrived in this room.

From here on, Ms Nobbs, will deal with what's in front of you, yes. Better just to identify what it is.

MS NOBBS: So you say you have faxed photographs?---Yes.

And they were faxed to you this morning?---Yes.

Isn't it the case that I faxed those to you?---Yes, I had a cover sheet that indicates that they were faxed through from Amanda Nobbs from the prosecution section in Darwin.

And how many photographs do you have in front of you?---There's a total of 41 photographs that came on 21 sheets of paper.

And have you seen those photographs before?---Yes, I have.

And when was that?---I don't know exactly when, but two or three months ago when the photographs were made available from the Northern Territory News.

And what do those photographs depict?---These photographs depict people purported to be seen at Raintree Park, a number of people depicted in those photographs including myself, the - some of the defendants that are seated at the bench that I can see on the screen in front of me, and also Constable Sheppard and Constable Cottier are also shown in the first few photographs. Toward the end there are other police members who are depicted in those photographs including Constable Dalrymple and others.

Your Worship, I seek leave that the witness be able to refer to those photographs those 41 - - -

HIS WORSHIP: What do you want?

MS NOBBS: Seek leave, that he will be able to refer to those photographs.

HIS WORSHIP: I'm not really sure you need leave, but, I don't think prosecution need to have leave for a witness to look at the exhibits, but anyway, is there anything that either one of you people wanted to say about this police officer looking at the photographs, of course which you have counterparts of?

MR BARRY: No, Your Worship.

HIS WORSHIP: Yes, all right, I don't think he needs leave - - -

MS NOBBS: Yes.

HIS WORSHIP: - - - but anyway there is no objection, so he is at liberty to refer to them.

MS NOBBS: If you could just leave the photographs aside for the moment. On the 12 October, you said you were supervising, you were directly responsible for four members - - -?---Yes, Your Worship.

- - - and then you were going to tell us what involvement you had, what was your involvement?---At the start of the shift being aware of the smoke-in that was going to take place that afternoon - - -

Okay, if I could just stop you there, how were you aware of it - the smoke-in?---It had been advertised and it was made - it was mentioned to me by the officer in charge at Darwin station, and I was asked to make sure that someone attended there during the shift just to make sure things were in order, and I tasked Constables Sheppard and Cottier to make some regular foot patrols through Raintree Park and in all areas to ensure that public order was being maintained.

And what was your next involvement?---My next involvement was about 20 past 2 that afternoon, when I received a radio message from Constable Cottier - he asked me to attend at Raintree Park because of some incident that was occurring there. He didn't elaborate over the radio what the incident was, I drove to Raintree Park and parked in the mall down Knuckey Street end. I arrived there at about 25 past 2, when I got out of my vehicle, I could see there were about 100 or so people in the immediate vicinity of Raintree Park. I also noticed a distinct smell of cannabis in the air when I got out of the car. I looked towards to see the raintree, and I could see the seat in the park there and noticed that there was some tables set up. Around the table there were a number of people - about six to eight people standing around the table. On the table there was a plastic drum, a 10 litre capacity round drum that had a number of hoses protruding from the side of it.

If I could just refer you to photograph 1?---Yes, I can see that.

Is that the drum that you are referring to?---That is correct, that is the photograph 1 and 2 that depict that time was the plastic hose coming out from the side of it. The drum was about two-thirds full of a greenish liquid and protruding from the top of the

drum was a metal funnel with a conical shape on the top of it. Around that - that cone was a plastic shroud, I noticed that there were about half a dozen people placing the ends of the hoses in their mouths and appeared to be sucking through those hoses. I noticed that there was smoke travelling up the plastic hoses and that there was smoke emanating through the top of the conical shroud - the plastic shroud on top of the cone. I formed the opinion, because of that and also because of the smoke cannabis in the air that these people were smoking cannabis using that implement and decided that I would seize that because it would provide evidence of the commission of an offence. I had a short conversation with Constables Sheppard and Cottier and informed them of my intention, I then moved towards the table and took the drum in my hands and said to the people around the table: 'I'm seizing this', there was immediate resistance provided by some of the people around that table, I
- - -

Okay, if I could just stop you there, who were they?---There was some people included Gary Meyerhoff who I can see seated in the seat second to your left; there was Robert Inder-Smith, he was with the crew as well and others, some of the people I knew and some of the people I didn't know. But, they provided resistance to me taking the container by holding onto the plastic tubes and by physically taking hold of the container itself. There was a bit of a struggle that ensued and during the course of that struggle, I felt an arm come around my neck from behind and I was dragged backwards to the ground. I landed on top of a person who had his arm around my neck and as I turned my head I noticed that person was Gary Meyerhoff - who is seated second to your left - - -

Okay, if I could just stop you there, so we can refer to the photographs. In regards to photographs 3 and 4?---Yes.

What do they depict?---They depict me still with that container in my hand. The photographs are not absolutely clear on this faxed copy, but I see one person that is standing immediately to my left and that person is Nicolette Burrows who I didn't know at the time but I was subsequently made aware of her name, she is seated immediately to your left. There are others in photograph 3, I tell you this it's unfair, but from the photo - from the faxed photocopy I think it is Michael Barry in what appears to be a white shirt in my photograph anyway, I'm looking at a photo of Michael Barry - I think he might be seated at the end of that row, I can't quite see him clearly, but I see Nicolette Burrows, Gary Meyerhoff, Stuart Highway and Michael Barry, seated to your left. I believe that is Michael Barry just depicted in photograph 3 and 4 with his back to the camera.

And in photograph 5, if I could refer you to that?---Yes, photograph 5 shows that there's a struggle on the ground, I believe it's an Aboriginal female that is asleep on the ground, who stayed asleep for the duration of the struggle, in spite of bodies falling over her, probably it is Constable Cottier that I can see with a person on the ground, I honestly can't identify that person from this photograph, because of the lack of clarity of it, but - - -

And the other police officer on the ground, is that you?---Yes, that is, I've got (inaudible 10:52:29) hat on my head and I'm wearing sunglasses, but that is me on the ground. I'm not sure exactly when this photograph was taken in terms of whether it was immediately at the start of the confrontation or whether it was a minute or two later, but I believe that's Gary Meyerhoff on the ground with Constable Cottier standing over him and me in a half sitting position attempting to get off the ground.

Okay, now you said that you were dragged backwards to the ground?---Yes, that is correct.

And it was with an arm around your neck?---Yes, that is correct. As I hit the ground on top of the person that had his arm around my neck I recognised the person as being Gary Meyerhoff, I immediately said to him: 'You are under arrest'. I was unable to obviously explain why, but it would have been obvious that I arrested him for the assault on myself and that was explained to him later, but because of the volatility of the situation it wasn't prudent to go into details of the recent arrest at the time, but nevertheless I had informed him that he was under arrest. Immediately after that I felt someone else with an arm around my neck, attempting to drag me away, but the situation then got heated with Constable Sheppard and Cottier trying to get the people away from me, that were attacking me. I eventually got to my feet and determined that we would take no further action at that stage until we got further members in to help us with some arrests. I instructed Constable Sheppard to move away from that area and we moved towards the buildings that is situated at Raintree Park, there is a small brick wall there about probably half a metre high. We stood adjacent to that wall and I got onto communications on my radio and requested that they send some other members there to assist us (inaudible). The next members that arrived were Constable - Constable Curtin and Senior Constable Sanders.

Okay, just at that point, where was Mr Meyerhoff at that stage?---He was still in the middle of Raintree Park in the vicinity of that table with the rest, we left them there and moved away from that situation. They remained on the grassed area near the actual raintree in the park.

And the plastic container with the hoses protruding out of it, was that still there? ---That disappeared. During the struggle it was taken out of our hands, Constable Sheppard was - also had his hands on it at one stage and during the struggle it was - when I was dragged backwards, the container was removed from Constable Sheppard, but in the process the plastic shroud that was around the top was dislodged and there was smouldering green vegetable matter that was spilt over Constable Sheppard's shirt.

You saw that, did you?---I saw that, yes. That was as I was being dragged to the ground that that happened. That shirt we later exhibited and had it tested forensically to see what the substance was that had been spilt on it.

I don't need you to give me the evidence of that, we will be calling forensics for that. So you stood over, the plastic container had disappeared and Mr Meyerhoff was still in the centre of Raintree Park?---That is correct, yes.

What happened next?---When Senior Constable Sanders and Constable Curtin arrived, I informed them as to what had happened and said that there were people that we would arrest but there we would wait - sorry, we would wait for some further units to arrive because we were expecting a further confrontation during the arrests. Just as the couple units started to arrive I saw Sanders and Curtin move away from where Sheppard, Cottier and myself were standing, towards a person who I had requested be arrested. That person then had moved down the footpath of Knuckey Street towards Austin Lane who was followed by Sanders and Curtin. That person then turned around and walked up the footpath towards Mitchell Street - - -

That person's not one of the defendants before the court at the moment, are they?
---That is correct.

Yes, okay, so we won't hear evidence on that, if we can ignore that part, what was your next involvement?---Yes, my next involvement was trying to prevent people from - I'm sorry, you will have to correct me or stop me if I say something that is out of order, that is I can't go on with too much more evidence without making reference to that initial person.

Well, okay, maybe if we hear the evidence and Your Worship can - - -?---Yes, Your Worship, that person was being followed by Senior Constable Sanders and Constable Curtin. I saw being moved by them towards the rear of the van. I believe at that time that person had been arrested and was being placed in the rear of the cage. I then saw Meyerhoff move towards those members along with a number of other people and there was then a confrontation at the rear of the van where the two members concerned were prevented from placing that person in the rear of the cage. I then moved across with Sheppard and Cottier towards the rear of the van to control those people so that person that was in the custody of Sanders and Curtin could be placed in the rear of the cage. The cage door was then secured behind that person and I then looked up and saw Meyerhoff on the roof of the cage jumping up and down on it. I then instructed him to remove himself from the vehicle and he refused to do so and then jumped from the top of the cage onto the roof of the cabin of the vehicle. That caused a substantial dent in the roof, in fact the whole roof was caved inwards. He then jumped down onto the bonnet, causing further damage to the bonnet and then off the vehicle. He then moved around the other side of the vehicle and members attempted to apprehend him. I was one of those and there were other members there that attempted to apprehend Meyerhoff, but he broke free, he ran around the other side and then jumped onto the second van that was parked just a few metres from the first one. Jumped on the - - -

If I could just stop you there, do you know what van number was, the first one?---The registration number or - - -

Yes, is there a certain code that you use or car - - -?---No, there was numbers, I honestly can't remember which was which now. But I think they are depicted in the photographs at some stage, there are photographs I can identify which van - - -

So it was on the first van and then he went to the second van?---The second van, Meyerhoff then jumped onto the bonnet and the roof of that van causing damage to both of those panels, he then jumped from one van to the other and after getting down from the van the second time he was placed under arrest and was taken to the rear of the second cage and placed in that vehicle. When I turned around I saw that on the roof of the first cage there were two persons, one was Nicolette Burrows and the other was Michael Barry. They seated themselves on the roof of the van and hung onto the light bar. I then instructed Constable Dalrymple to - sorry, Constable Dalrymple actually got onto the roof of the first van to try and remove Meyerhoff, and it was after he was removed the van the first time that he got onto the second van.

If I could just stop you there, you said that Nicolette Burrows and another - were they on the first van or the second?---On the first van, the one that contained the person that was initially placed in custody.

Thank you. You said Dalrymple got onto the roof of the first van and then the second van?---I'm sorry?

Constable Dalrymple?---Yeah, he - he got on there whilst Meyerhoff was still on the roof in an attempt to remove him from the - from the roof of the van.

And then what happened?---He - he was placed in custody. He was arrested and placed into the second van and that was when I saw Burrows and Michael Barry on the roof of the first van. They were at different times both standing on the roof and also sitting on it with their arms or hands holding onto the light bar. I instructed Constable Sanders to get into the van that contained Meyerhoff to remove from the area and take him to the watchhouse. As he got into the van I saw Stuart Highway who I know, run around to the front - front left-hand side of that van that contained Senior Constable Sanders and with the side of his clenched right fist he punched the windscreen on three occasions and on the third occasion it shattered the windscreen. He then moved to the passenger door and punched that side window on six or seven occasions in an attempt to break the window, but the window didn't break. Then a number of members including myself chased him from the vehicle. He ran around to the back of the cage onto the footpath and roadway area of Knuckey Street where he was placed under arrest. He then - he was then placed in the cage and myself and Constable Sheppard moved back to the first van that still had Burrows and Barry on the roof. Constable Sheppard took hold of one of Burrow's legs and I took hold of the other in an attempt to remove her from the roof. And we - she was actually hanging onto the light bar at that stage. We managed to dislodge her and she was placed in custody. Michael Barry was still on the roof and was holding onto the light bar and refusing to let go. At that stage I actually gripped my baton and informed him that if he did not let go of the light bar then I may have to use the baton for the effect his - his release from the light bar and to place in custody. He then either let go or his grip was loosened from the light bar and he was removed from the roof and placed in custody.

Did you give permission for Mr Meyerhoff to assault you?---No.

Now you say that in the - earlier in time you were on - you are on the ground and you turn to Mr Meyerhoff and you told him he was under arrest?---That is correct.

Thank you, I have no further questions.

HIS WORSHIP: Yes, well all right.

Ms Burrows, as I've said I proceed along the Bar table, do you want to ask any questions of this witness?

MS BURROWS: Mr Lyndon, you know me as Nicolette Burrows. When did you - were you aware of me before the 12 October, have you had any prior dealings with me?---No, I hadn't, I hadn't seen you before that time, to the best of my knowledge and I certainly did not know your name before that incident.

And have you had any dealings with me since that incident?---No, I haven't

No further questions, Your Worship.

HIS WORSHIP: Mr Meyerhoff?

MR MEYERHOFF: No questions, sir.

HIS WORSHIP: Mr Highway?

MR HIGHWAY: No questions, Your Worship.

HIS WORSHIP: Mr Barry?

MR BARRY: Just a brief one about the original person who attempted to arrest, this person was known to you?---That person was not known to me at the time, but was subsequently identified to me.

Was there some reason why this person was targeted originally out of the group of people - - -

MS NOBBS: Your Worship, I would have to object. That person is not on trial here.

HIS WORSHIP: Yes, I will allow as much leeway as commonsense dictates. So I will allow the question, I'd appreciate that there technical grounds upon which I might rule in your favour, but I propose to allow it. Well, that thing with the question was - was that some reason why you - the word used was targeted this person I'm not sure you - - -

MR BARRY: Was there some priority, was there some reason why this person - - -?---Your Worship, I can answer the first question. Yes, there was a reason why she was - she was targeted and that is because when I was on the ground on top of

Mr Meyerhoff, that person took hold of me around the neck and tried to drag me free of him and as such I wanted her arrested for assault on me.

I'm just wondering why it was particularly that person you seemed to be targeting or there was some priority as opposed to others or?---No, I instructed Constable Sanders, being a female police officer to effect the arrest on that female person.

That was all, thanks.

HIS WORSHIP: Anything, Ms Nobbs?

MS NOBBS: No, Your Worship.

HIS WORSHIP: Thank you, sergeant. I will terminate the connection. Obviously you are free to leave where ever you are.

WITNESS WITHDREW

HIS WORSHIP: All right, are you ready to go onto the next witness?

MS NOBBS: I hope so, Your Worship.

HIS WORSHIP: Well, just tell the orderly, we will find out soon enough.

MS NOBBS: Brendan Sheppard - Constable Brendan Sheppard.

BRENDAN JOHN SHEPPARD, sworn:

MS NOBBS: Could you state your full name, rank and station?---Brendan Sheppard, registered number 2078 of Nhulunbuy Police.

And in October - 12 October last year, where were you stationed?---Darwin city.

Are you a Senior Constable?---No, just a First Class Constable.

And what were your hours of duty of the 12 October?---It was day shift, 7 am till 3 o'clock.

And you attended the Raintree Park?---I did later on in the afternoon, yeah.

What time was that?---Approximately 2:20.

And what were your observations?---When we arrived, we arrived at the bottom end of Raintree Park, the Smith Street end, pulled up next to the Indigenous Creation, I think, shop is there and decamped the vehicle, there was a large group of people.

If I could just stop you there, which vehicle were you in?---402.

HIS WORSHIP: I think she wants the registration number?---That I wouldn't be able to tell you, sir.

MS NOBBS: And you were the driver?---I was the driver.

So you observed a number of people there?---Yeah, at the start of the shift I had been advised by the shift supervisor that there was a rally or protest organised for that day and he asked us to call in and check on it during the course of the shift.

And that's what you were doing?---Yes.

And as a result of you checking in, what did you observe?---There indeed was a rally or protest going on in the mall, mostly located on the grassed area to the left of Raintree Park there. There was a number of people sitting around in the grassed area, and there was also another group congregated around the bottle - the large water bottle.

You say a large water bottle?---Well, it's the type that you have in your office space that I think they're around 20 litres or something similar to that.

So, you've seen this 20 litre bottle, what else did you observe?---I saw Mr Meyerhoff there, he was standing around with a group of people. At that stage I indicated to him with my hand to come over towards us, he just continued with what he was doing. And then from there Cottier and I walked over to where the group were.

Yes, and you walked over there?---I approached Mr Meyerhoff and had a brief conversation with him, during which he just approached us - asked us why we were there.

And what did you say?---I just explained to him that we were just merely to check up on things make sure it was all okay, and everything was going fine.

Was everything okay?---At that stage it seemed to be fine. There was no - nothing - apart from the smell of cannabis that we smelt when we first arrived, it just seemed to be a normal congregation.

So, you say, the smell of cannabis when you first arrived, that was when you pulled up in front of - - -?---When I initially decamped from the vehicle.

So, he asked you why you were there, and you told him?---We were merely there to keep an eye on things, to make sure that it was all going to procedure, things like that, there was no trouble. During that stage I asked the permit holder, which was Nicolette Burrows - asked if I could speak to her. She came forward and I asked for some ID off her just to verify that it was her and she produced a Bankcard and gave it to me with her name on it.

And what happened next?---She was in a - asked us you know, why we were there, it was a peaceful protest, why were we there. I said to her that we're there merely again just to keep an eye on things, and make sure it was going okay, along that lines.

And what did you do next?---I walked over to the car and produced a copy of the permit that Sergeant Lyndon had given me earlier, at the start of the shift and came back over - - -

Just in relation to that permit, where - who issued that?---Sorry?

Who issued that?---City council I presume.

HIS WORSHIP: Who?---Darwin City Council

MS NOBBS: So you went and got the permit, what did you do next?---Came back over and spoke to Nicolette Burrows and she asked why were we there, and I explained to her it was just the same thing it was merely just to check up on things and at that stage I observed Sergeant Lyndon and Constable Cottier pick up the bottle from the group of people and at that stage a scuffle broke out between those two members.

If the witness could be shown exhibit 1.

Now you said you observed them pick up the bottle?---Yes,

And a scuffle broke out?---Yes.

Is that what photos 1, 2, 3 and 4 depict, to the best of your recollection?---At the time, I - yep.

And photograph 5?---That the after - oh, well during, I was off to the left of the photo, I'm not in that photo at that stage.

Did you see what's depicted in photograph 5, did you see that occurring?---At various stages, yes. At that time I had Ms Burrows and Mr Highway, or whoever it was, wrestling with me over the bottle, back to the left.

And is that - if I could refer you to photograph 9?---Yep.

Is that you in the background?---Yes.

In the background of that photo?---Number 9, yeah, that's me.

Could you just tell the court what's occurring there?---At that stage Sergeant Lyndon's walked across - or not walked - struggled across to me. He had a number of people hanging off him and I've noticed him coming towards me, I've walked

towards him and accepted the bottle from him, he has handed it to me and at that stage a wrestle broke out between myself and Mr Highway and Ms Burrows for the bottle. During the course of that scuffle the bottle has spilt and it's gone over myself, over my shirt, pants and as well as I presume the other two as well. During the course of that, I've looked across at Sergeant Lyndon and noticed he was on the ground with a number of people laying on top of him and from there I've let the bottle go and that was the last I saw of the bottle.

So, the bottle disappeared?---Yes.

And you saw Sergeant Lyndon with a number of people on top of him?---Yes.

And I gather from that you went to his assistance?---Yes, I did.

And what happened after that?---Removed a number of people from around Sergeant Lyndon and off him and helped him to his feet. From there we stepped back around the area where the initial scuffle with myself and Highway and Burrows, until things settled down.

And did they settle down?---They did.

And what was your next involvement?---Approximately, about five minutes later back where I had initially parked the car, there was a scuffle there between some other members they were attempting to apprehend a female and place her in the rear of the van. From there - from where I was I went down to assist - there was a number of people there trying to stop them from putting her in the van and I went down to help with that, just to control people from the van.

Which van was that?---402.

That was the one you had driven to - - -?---I believe it was.

Okay, so, you assisted them in placing her in the van?---Yes.

What did you do next?---Once she was in the van, I walked to the passenger side of the van and observed Burrows climb onto the - 402 the police vehicle, walk up the bonnet onto the windscreen and onto the roof of the car. There was also Mr Meyerhoff and Mr Barry, I believe, were on top as well.

And what were they doing?---There is a light bar runs between the middle siren bar - basically jumping across back and forth from that.

If I could refer you to photograph 17, is that what you had observed?---Yep, pretty much, I was up between the cars on the left-hand side.

And what did you do next?---Mr Meyerhoff got off the car, I grabbed Nicolette Burrows by the foot and asked her to come down off the vehicle, she refused, continued to do what she was doing - - -

What was she doing?---From one side of the car to the other across the light bar, just standing up there and yelling. I asked her to come down, she refused, at that stage she laid down and grabbed hold of the light bar and siren bar. I again tried to remove her from there, asked her to come down, she refused.

Can I refer you to photographs 23 and 24, 25 and 26?---Yes.

Particularly in relation to photograph 26?---Yes.

Could you just describe to the court what is occurring there?---I let go of Ms Burrows' hand - foot, sorry, walked around to the right-hand side of the car, she was on her feet again. I grabbed her by the foot and asked her again to get down off the vehicle, She refused, just continued the same as before, and I asked her again to get down. With that again she laid down on the - across the vehicle, grabbed hold of the light bar and I asked her to come down again.

When you say the 'light bar' - is that - where is it - photograph 25 shows it - - -?---The red light, yeah.

Is that the red light and the other thing - - -?---And the siren, that's - yeah, just got the one siren bar.

So what happened next?---She laid down again, grabbed hold of the light/siren bar, I asked her to come down again, she said to me: 'If you let go of my foot, I will'. I let go of her foot and asked her to come down, and she refused again. At that stage Sergeant Lyndon came along and grabbed both her feet, I informed her that she was under arrest for criminal damage and asked her to come down again, but she didn't let go of the bar, so we removed her from the roof.

Now you said that Ms Burrows was standing up there yelling, was she doing anything else?---From one side of the light bar to the other, just jumping - stepping across.

So, you told her she was under arrest for criminal damage?---Yes.

And then what happened?---We removed her from the car Sergeant Lyndon and I, took her around to I believe to the Palmerston van and placed her in the rear of that.

And then what happened next?---Sergeant Lyndon asked us to go mobile to the watchhouse with the people that we had in custody, which we did. On the way out, around about Kerry Holden, I think it was we transferred Ms Burrows into the - actually no - we had the initial lady - Corro I think her name was, Emma Corro, we transferred - - -

And that was in your van?---Yeah, 402. And we transferred her into the Palmerston van and from there we returned to the station in Darwin city.

In relation you said you saw Ms Burrows, Mr Meyerhoff and Mr Barry on the van, at anytime did you see anyone else?---No.

Now, you've said that in the scuffle for the plastic bottle, that you - splashed over you said?---Yeah, it spilt everywhere all over my shirt, trousers.

And do you know if that shirt was exhibited?---Yes, it was, I exhibited at the forensic front counter.

That day?---Yes.

And have you had that shirt back?---It was returned to me from the forensic section.

Do you know when that was?---I don't recall the exact day, no.

Thank you, I have no further questions.

HIS WORSHIP: Ms Burrows, you first, anything to question this witness about.

MS BURROWS: In photographs 24, 25 and 26 - - -?---Yes.

- - - you may notice that my shirt was ripped open?---Yes

Do you have any idea how that happened?---I have no idea.

No further questions.

MR MEYERHOFF: No questions.

MR HIGHWAY: No questions

MR BARRY: No questions, Your Worship.

MS NOBBS: No re-examination.

HIS WORSHIP: Do you conceive of any possibility of doing that?

Yes you are excused, thank you?---Thank you, Your Worship.

WITNESS WITHDREW

DISCUSSION RE CROSS-EXAMINATION OF WITNESSES

ADJOURNED

DISCUSSION RE MATTER TO BE CONVERTED TO A HANDUP COMMITTAL
IN RELATION TO THE INDICTABLE CHARGES

DISCUSSION RE NOT TO ADJOURN SUMMARY MATTERS BUT TO FIX
DATES FOR HEARING

HIS WORSHIP: Now, what do you want to do next, Ms Nobbs?, I suggest you proceed with the indictable as it were handup committal proceedings. How physically am I going to deal with this though, I mean presumably there are X number of statements which are common to all four files - - -

MS NOBBS: There is, Your Worship.

HIS WORSHIP: Which file do you want to nominate as the carriage file - for want of a better label?

MS NOBBS: It would probably be Mr Meyerhoff's file, Your Worship.

HIS WORSHIP: I will just explain what I just said in - in a pedantic world of course every file would have a copy of each one of these statements put upon it, and that would be simply duplicitas and a waste of paper, apart from anything else, and so what is it admitted then in relation to the matter where you the defendant, Mr Meyeroff, will also be admitted into evidence in relation to each one of the other defendants. Physically the paperwork will simply be in Mr Meyerhoff's file.

I don't think there is anything for you to say, I'm just taking the trouble to explain to you what is indeed happening.

Yes, all right. Well then go on, you are going next presumably going to give me a bundle of statements, are you?

MS NOBBS: Your Worship, there is 11 statements.

EXHIBIT P3 11 statements.

HIS WORSHIP: When you - - -

MS NOBBS: I went through them earlier - - -

HIS WORSHIP: When you get the bundle just read it onto the transcript, there will be a bundle of statements, P3 comprising statements by - - -

MS NOBBS: Constable Megan Blackwell, Constable Simon Neely, Constable Steven Dalrymple, Senior Constable Gillian Sanders, Constable Daniel Curtin, Constable Damien O'Brien - - -

HIS WORSHIP: He's not even on my list, anyway, yes.

MS NOBBS: Civilian Sandra Thomas, Constable Brett Cottier, Constable Brendan Sheppard, Senior Constable Patrick Egan and Sergeant Chris Lyndon.

HIS WORSHIP: Well that will be exhibit P3, then. Now clearly I won't have read all of those, nor, as I said before do see that any point would be served on my doing so, but if, first you the prosecution want me to specifically refer to any one of those statements, then direct me to it and I will look.

And/or if you plural, the defendants, bearing in mind what I said to you before that the test of committal is in essence so light in relation to the indictable matters with one possible exception, there obviously is sufficient evidence upon which I would be obliged to commit you, but in the event that any of you want me all believe it's necessary that I should look at any one of these statements which now comprise part of exhibit 3, you can tell me in a minute.

I will ask the prosecution first, do you want me to look at anything specifically, Ms Nobbs?

MS NOBBS: No, I don't think it is necessary, Your Worship.

HIS WORSHIP: Yes. Ms Burrows, do you understand what I've asked you to tell me about? Do you want me to explain some more - - -

MS BURROWS: I understand, thanks.

HIS WORSHIP: Do you want me to look at anything explicitly?

MS BURROWS: I don't think it will be necessary at this point.

HIS WORSHIP: Mr Meyerhoff?

MR MEYERHOFF: No, Your Worship.

HIS WORSHIP: Mr Highway?

MR HIGHWAY: No, Your Worship.

HIS WORSHIP: Mr Barry?

MR BARRY: No, sir.

HIS WORSHIP: Yes, all right. The matter in relation to which I alluded, Ms Nobbs, which I wouldn't do this if they weren't self-represented, where of the evidence in any description of all, which would justifying the defendant Meyerhoff to an escape from custody charge?

MS NOBBS: Your Worship - - -

HIS WORSHIP: As I recall the evidence of Lyndon, he was on the ground and he said to Meyerhoff: 'You are under arrest', but there's no evidence that I'm able to recall, anyway, that Mr Meyerhoff ever escaped - assuming the arrest was complete - from custody. I can't - so if there is evidence in this bundle of statements, that you should direct me to it, because I can't - in the state of the evidence these people I have heard see that there's evidence sufficient to commit him on charge 2.

MS NOBBS: No, Your Worship, that's conceded by submission - - -

HIS WORSHIP: Concede that? I don't know whether you - do you understand what I'm on about Mr Meyerhoff?

MR MEYERHOFF: Yes, Your Worship.

DISMISS CHARGE 2 - MR MEYERHOFF

HIS WORSHIP: In relation to the defendant Highway, I have no difficulty in relation to the criminal damage 6, there is in relation to this defendant. However separate information relating to an assault on Constable Gillian Sanders, I don't recall any evidence in relation to such an assault. If there is something, you will direct me to it, because I can't now recall my recollection of Sanders' involvement, was that she ultimately became involved for reason of her sex, with attempting to or assisting in or effecting the arrest of the defendant Burrows.

I don't recall any evidence which Mr Highway, I think, ran around allegedly from one part of the car to the other and I don't recall any evidence which would justify me committing him on an assault charge.

MS NOBBS: Not at the moment, Your Worship, that's fine.

HIS WORSHIP: I'd normally ask you, Mr Highway, if you would like to make any submissions, but I see little point, when I self perceive the deficiencies that I highlighted as I did with Mr Meyerhoff in the escape charge, it may be that some response will come back to you if there is.

MS NOBBS: Your Worship, I can refer you to Ms Sanders' statement.

HIS WORSHIP: Don't forget, I haven't looked at any of these. There is no evidence from Lyndon or from Sheppard as to such an event. Anyway, you say that I'll find something in Sanders' statement, then I will have a look.

Have you got that statement, Mr Highway? Look at it while I'm looking at it please.

MS NOBBS: Your Worship, paragraph 11.

HIS WORSHIP: Mm mm.

MS NOBBS: Sorry, Your Worship, I have misled you.

HIS WORSHIP: All right.

MS NOBBS: Paragraph 10.

HIS WORSHIP: I was going to say I don't see paragraph 11 were - paragraph 11 even bearing in mind the section - - -

MS NOBBS: The third last line - - -

HIS WORSHIP: The section 31 of the Crimes Act and then here surely all I deduce from this, if I can deduce anything is that his intention is to break the window. There's no evidence from Lyndon or from Sheppard as to Sanders being in the car, my recollection from Lyndon's evidence is that he said I think, three or four blows on windscreen, where he eventually broke the glass as I think is obvious in the one of the photographs, and that Mr Highway then rained six or seven blows on the passenger window, which however, didn't - well, the fact the window broke and showered her with glass, which is what is in paragraph 11, surely not enough to establish there's an intention in relation to an assault.

Is there anything else you would like to direct my attention to?

MS NOBBS: I'm just having a look, Your Worship.

Your Worship, there is no evidence as to an assault.

HIS WORSHIP: Thank you.

DISMISS CHARGE 3 - MR HIGHWAY

DISCUSSION RE CRIMINAL DAMAGE TO VEHICLES

DISCUSSION RE PLEADING GUILTY TO CHARGES

DISCUSSION RE CHARGES

DISCUSSION RE CONDITIONAL BAIL FOR EACH DEFENDANT

MS NOBBS: Your Worship - - -

HIS WORSHIP: Okay, yes, Ms Nobbs?

MS NOBBS: Just in relation to the summary matters and the bail, I did earlier ask that they be set for hearing, I'm going to ask Your Worship if you could put them off for a mention so we can get - - -

HIS WORSHIP: What I - what I said before that to me or it seemed to be a sensible thing to do.

MS NOBBS: Just as - Your Worship - - -

HIS WORSHIP: As it is it involves the concurrence of the defendants, I will endeavour to then explain what you just raised.

As you know each of you originally when it was anticipated that in relation to such charges as you are capable being properly permitted in my perception to trial, there remained - can't remember whether for all of you, but anyway there remain charges which are just discipline in this jurisdiction - Summary Jurisdiction and I was told that they were to be fixed for hearing - that is that it was the wish of each of you that that be done.

Seems to me that's simply clogging up the system and you might also find that you have a hearing in relation to the summary matters which precedes the matter being dealt with in the Supreme Court. That's why I said I didn't think it was appropriate but you've said that you wanted me to do it.

Prosecutor now raises that propriety or sense of doing that and I understand and I believe that it doesn't do you any harm. Perhaps the converse that it would be to your benefit if I simply fixed any summary charges which remain against any of you to be mentioned on some date, which would be generally I suppose what in January - yes, and then of course if you haven't had your matters disposed of in the Supreme Court by then you can revisit the matter. It can be put off for some further date in 2004, all sorts of things can happen, you may ultimately not indeed have to deal with the contest in relation to the summary matters for all sorts of reasons.

Unless anyone objects that's what I propose to do, the only thing that would remain is for you or all of you is to find a day say in the middle of January which is suitable for the purposes of a mention. Obviously each of you has got bail so you would be bailed until that date. Can I ask you to do that, while I - - -

MS BURROWS: Perhaps the end of January would be suitable.

HIS WORSHIP: I don't really care frankly. Doesn't matter, I don't think it is significant.

Do you care, Ms Nobbs?

MS NOBBS: No, Your Worship.

HIS WORSHIP: End of January, just as long as the date suits all four of you, that's fine.

Well, in relation however, then to formal matters concerning those issues where there is a need to commit to trial, in relation to - you didn't give that back to me, Ms Nobbs, that being the charge 6 for Mr Meyerhoff. If you haven't got a copy available, I don't really care that then I'd ask you to undertake to make sure the file did get one.

I'm not going to go through this for each of you. What will happen is, that in respect to those charges that I specify each of you in relation to the charge that I mention is committed for trial on a basis that there is sufficient evidence to require me to do that, for the first criminal sittings of the Supreme Court on 6 October 2002.

I record that an alibi notice has been delivered to you and of course in the case of each of you the appeal bail will be \$1000.

Now, in relation to you, Mr Meyerhoff, it's charge 1 the assault charge on Lyndon and the criminal damage to the police vehicle or vehicles.

Or in relation to you, Mr Highway, it's only in relation to the damage of the police vehicles.

And in relation to you, Mr Barry similarly.

And you - in relation to you, Ms Burrow, similarly I believe - yes. Now, starting then from you - because you are the last one I mentioned, Ms Burrows, charges 1 and 2 of the summary matters what day at the end of January have you nominated?

MR BURROWS: Friday 30 January.

HIS WORSHIP: 30?

MS BURROWS: 30th - yes.

HIS WORSHIP: Is that a problem for the prosecution?

MS NOBBS: No, Your Worship.

HIS WORSHIP: Well, those charges 1 and 2 are then adjourned until 30 January for mention and your existing bail is to continue. Is the 30 January a date that suits all the rest of you?

THE DEFENDANTS: Yes, sir.

HIS WORSHIP: In relation to you, Mr Barry, charge 1 is adjourned to 30 January 2004, 10 o'clock for mention, your bail is to continue.

Mr Highway's got three charges on - that is 1, 2 and 4, is that right? Well, 3 is being dismissed - - -

MS NOBBS: No, Your Worship, 4 was withdrawn.

HIS WORSHIP: Sorry, 4 was withdrawn, so it is 1 and 2?

MS NOBBS: Yes, Your Worship.

HIS WORSHIP: In relation to you, Mr Highway, charges 1 and 2 intender and damage charge to the vehicle 815.797 are adjourned until 30 Jan at 10 o'clock for mention, your bail is to continue.

And then Ms Nobbs, Mr Meyerhoff is 3 and 5, are they?

MS NOBBS: That is correct, Your Worship.

HIS WORSHIP: It doesn't matter what your bail is - that is I don't have to concern myself with that, Mr Meyerhoff, whatever it is continues, 3 and 5 are adjourned until 30 January next year, 10 o'clock for mention and your magistrates court bail continues, and that disposes of these matters then.

ADJOURNED