

**IN THE SUPREME COURT
OF NEW SOUTH WALES**

INQUIRY INTO THE CONVICTIONS OF THE ‘CROATIAN SIX’

10

**OUTLINE OF SUBMISSIONS
FILED ON BEHALF OF JAMES BENNETT**

Principles

1. The statutory framework and principles to be applied in the conduct and report of an inquiry as set out in the Submissions of Counsel Assisting (CAS) at [65]- [85] are agreed.
2. The role of an Inquirer has been described as being to form an opinion on the whole
20 of the evidence as to whether there is a reasonable doubt of the guilt on any of the charges. There must be no other explanation than guilt reasonably compatible with the circumstances, and all of the circumstances must be considered and weighed in deciding whether or not there is an inference reasonably open, consistent with innocence. An inference that rests upon mere conjecture is not open: *Inquiry into the Convictions of Kathleen Megan Folbigg- Final Report* [2023] NSWBCPubInq1 (8 Nov 2023, The Hon T Bathurst AC KC) at [25]-[27].
3. There should be no treatment of evidence of those who were police officers at the
30 time of the raids as essentially a category of, or akin to, unreliable evidence.¹ Nor should there be a starting point of an assumption of the evidence of police who were based at the CIB as “suspect” evidence, unless corroborated by an independent source, as advocated by the Petitioners: cf. Petitioner’s Submissions (PS), summarised at PS [105]-[118]. As Counsel Assisting submits at CAS [193]-[199], [2953]-[2954], the appropriate approach in this Inquisitorial setting is a thorough testing of all of the evidence, taking into account any language or comprehension difficulties and due account for impact on memories of the passage of time, and after equal scrutiny, an assessment and weighing of the evidence.

¹ cf. *McKinney v The Queen* (1991) 171 CLR 468 at 478 per Mason CJ, Deane, Gaudron and McHugh JJ.

Credibility and Reliability

4. The limitations as to witnesses having passed away, being incapacitated or otherwise not available, and the impact on the memories and evidence of those available to the Inquiry of the passing of some 45 years is important to acknowledge. It is particularly relevant to the task of assessment of evidence given in 2024 as to what occurred in 1979, and weighing of all of the relevant evidence. Taking into account the necessary caution in assessing the evidence after such a passage of time, it is submitted the Inquirer would nevertheless comfortably make findings as summarised below, which are limited to addressing the interests of James Bennett, who was a Detective Senior Constable at the time of the Brajkovic raid and is referred to in these submissions, as on the Inquiry, as Mr Bennett. The detailed reasons forming the basis of the findings are set out in the body of the submission.
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5. Mr Bennett was a thoughtful, considered, credible and reliable witness and his evidence would be accepted by the Inquirer. His evidence is explored in detail below.
6. The evidence of those witnesses who corroborate the factual matters summarised at paragraph [10] below, and then addressed in further detail below, was independently credible and reliable on those key issues.
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7. The evidence of Mr Brajkovic where it conflicts with that of Mr Bennett, including his allegations against Mr Bennett on the bail application before Justice Yeldham, in his statement to Detective Sergeant (**Det Sgt**) Shepard, and in his sworn evidence on the voir dire, at trial and on the Inquiry is littered with such inconsistencies and discrepancies, is unreliable and lacks credibility, such that even taking into account any language barrier and difficulties with expression, it does not withstand scrutiny and would not be accepted. His evidence is also explored in detail below.
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8. The evidence of Mrs Brajkovic where it conflicts with that of Mr Bennett in her evidence, and her signed statement taken on 9 February 1979 would not be accepted. It is explored below at [102]-[119].
9. The evidence of Mr Hudlin is similarly unreliable in key respects and would not be accepted where it conflicts with that of Mr Bennett.

Summary of Factual Findings and Conclusions

10. There are critical factual findings that emerge from Mr Bennett's evidence. His evidence on these key aspects is also credible and reliable, and often supported by other evidence. The Inquirer would make the following factual findings (here summarised):

- 10 (a) Detective (**Det**) Krawczyk drove the lead car into the Restwell Road property and entered the home with Mr Bennett and Det Sgt Wilson, and as such was not at the front of the property at the time of the apprehension of Brajkovic;
- (b) Det Harding carried a white plastic bag into the home when, with Det Morris, he escorted Mr Brajkovic, who had been detained by them, into the house;
- (c) Mr Bennett did not search the house, and guarded Mr Brajkovic, except for two occasions- first when Mr Brajkovic was taken into the workshop room with only Det Harding and Det Sgt Wilson at which time Mr Bennett remained in the living area of the house, and second, when Mr Bennett was invited by Det Sgt Wilson to take a look in the bag in the workshop and took a cursory glance, shortly before they left the house;
- 20 (d) On the cursory glance, Mr Bennett saw that there was a white plastic bag that contained two 'half' sticks of gelignite with cut ends and red and green wires sticking out of the bag, along with other material;
- (e) Mr Bennett drove back to the CIB with Det Sgt Wilson in the front passenger seat and Det Krawczyk and Mr Brajkovic in the back seat of the car, Det Sgt Wilson having the bag and its contents with him, or at least under his custody and control;
- (f) Mr Bennett guarded Mr Brajkovic in an interview room for around ten to fifteen minutes following arrival at the CIB with Det Krawczyk, leaving on the arrival of Det Sgt Wilson and Det Harding into the interview room (Det Sgt Wilson with the plastic bag);
- 30 (g) Mr Brajkovic did not have any visible injuries at Restwell Road at any time, or at the CIB in the interview room in the first ten to fifteen minutes, as observed at close quarters, when he was under guard by Mr Bennett;
- (h) Mr Bennett did not re-enter the interview room at the CIB and had no involvement at all in any ROI or any beating of Mr Brajkovic, nor was there

any questioning by Mr Bennett or purported apology by him for the conduct of others;

- (i) The white plastic bag found at Restwell Rd and its contents were retrieved by Det Krawczyk from the third floor of the CIB, and taken to the fifth floor in the early hours of the morning of 9 February 1979, where Mr Bennett was with Mrs Brajkovic taking a statement;
- (j) Mr Bennett saw at that time that the red and green wires were attached to detonators and wrapped in newspaper, and that there were also flares and a brown paper bag in the plastic bag;
- 10 (k) Mrs Brajkovic's signed statement accurately recorded what she saw at that time at the CIB, with her own description of those items;
- (l) Mrs Brajkovic read the statement before she signed it;
- (m) Any beating of Mr Brajkovic should it be found to have occurred, could not be heard at least at or beyond 3 metres away from the room, as evidenced by other police officers and also Mr Hudlin. Mr Bennett did not hear any such beating seated approximately 20 metres away;
- (n) The items located at Restwell Road were written up by Det Sgt Wilson on 16 February 1979, and the items that were returned some months later to Mrs Brajkovic were on a later separate list;
- 20 (o) The items located at Restwell Rd which were in the plastic bag, including the gelignite, detonators with red and green wires, Croatian newspaper, paper bag, with one of the flares visible, as well as the batteries and clock, and the plastic bag, were photographed on 16 March 1979, at the CIB;
- (p) Mr Bennett conveyed the gelignite, detonators and flares located at Restwell Rd, from the CIB to Mr Weatherstone at the Dangerous Goods Branch on 28 March 1979, as directed by Det Sgt Wilson on 26 March 1979;
- (q) Mr Butt issued a certificate on 11 April 1979 in relation to the explosives received from Mr Bennett on 28 March 1979.

- 30 11. The Inquirer would also find that while Mr Bennett was present at 2.30am and again at 8.30am on 9 February 1979 during the preparation of the document titled "Timetable of Events and Notes in Relation to the Arrest of Brajkovic"² ("**the Timeline**"), he gave truthful evidence at trial in accordance with his own

² Ex 11.89, red p 1291: "Timetable of events and notes in relation to the arrest of Vjekoslav Brajkovic", 9 February 1979.

recollection in relation to those matters also referenced in the Timeline of which he had knowledge. This included in respects where his evidence diverged from the Timeline and his memory of matters even if not included in the Timeline. At the committal and trial, he consistently gave evidence that he did not search the house, that he saw the contents of the white plastic bag at the house, and that the statement of Mrs Brajkovic was taken in the early hours of the morning. He was not corruptly involved in the practice of the time described by the Royal Commission as a ‘scrumdown’, which the Royal Commission acknowledged as a practice of the time that ‘can be used innocently’ (cf. CAS [202]), nor was his evidence given corruptly. His evidence as it accorded with the Timeline was supported by other credible evidence and in many respects was largely undisputed. This is addressed further throughout these submissions, and in focus at [149]-[157] below.

12. His statement to Det Sgt Shepard of Internal Affairs (**IA**) dated 25 June 1979,³ prior to the committal hearing, also recorded that he saw the white plastic bag and its contents at the Bossley Park home, consistently with his evidence at committal and trial. This statement is referenced throughout these submissions where relevant.
13. Mr Bennett was not involved in any ‘scrumdown’ in relation to his IA statement nor is there any suggestion that he was present at the joint conference prior to committal on around 8 August 1979 as described by Det Helson and Det Krawczyk. This is addressed further at [59]-[81] below.
14. Mr Bennett’s evidence at the trial was accurate, in accordance with his honest recollection at the time, and not shaken at the Inquiry.
15. The Inquirer would reject the evidence of Mr Brajkovic, which from the time of the voir dire proceedings on 7 May 1980 attempted to attribute conduct to Mr Bennett that he had previously attributed to Det Harding in his interview of 19-20 April 1979 with Det Sgt Shepard.⁴ The Inquirer would also reject the additional allegations levelled at Mr Bennett by Mr Brajkovic in the voir dire, the trial and the

³ Ex 11.188, red pp 1552-3: Report of Detective Senior Constable (**DSC**) James Leonard Alexander Bennett, 25 June 1979, 2 [8], 2-3 [10].

⁴ Ex 5.5-3/11.156, red p 590-2/1143-5: Record of Interview between Detective Sergeant (**Det Sgt**) E S Shepherd and V Brajkovic, 20 April 1979.

Inquiry as both lacking in credibility and unreliable. His evidence is addressed below at [22]-[23], [26]-[52], [72]-[80], [107], [145], [160]-[188].

16. The Inquirer would conclude that contrary to his sworn evidence, Mr Brajkovic was in possession of the explosives at Restwell Road.

Detailed examination of evidence in support of factual findings and credibility findings and analysis

10 Det Krawczyk drove the lead car into the Restwell Road property at Bossley Park, and entered the house with Mr Bennett and Det Sgt Wilson, Mr Bennett called out when Mr Brajkovic was not there

17. The Inquirer would accept the evidence of Mr Bennett that he did not drive the lead car into the Restwell Rd property, and that Det Krawczyk was the driver. This has consistently and repeatedly been his evidence at the committal, trial and at this Inquiry.

18. Mr Bennett's written statement⁵ refers to the group of police attending the premises, and then says, "*We drove into the yard*", not "*I drove into the yard*".

- 20 19. At the committal hearing Mr Bennett gave evidence that "*we were in the lead car and we drove into the yard*".⁶ He was asked directly by Mr Goldberg in cross-examination, "*Were you driving the vehicle?*" and answered, "*No I was riding in the back*".⁷ He was then asked: "*When you arrived at Restwell Rd do you say you drove directly down Restwell Road and directly into the yard of No 16?*" and answered, "*I wasn't driving the car but... we drove directly into the driveway*".⁸ He gave evidence later "*we were the leading car*"⁹ and gave further evidence at the committal that: "*The lights were on but I didn't drive, Det Krawczyk drove*".¹⁰ Under cross-examination from Mr McCrudden, Mr Bennett repeated "...*Det Krawczyk was driving*".¹¹

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⁵ Ex 4.2-28, red p 354: Statements of DSC J Bennett, 24 March and 8 April 1979 (Committal Ex 92), [1].

⁶ Ex 2.3-16, red p 6570: Committal (13 August 1979), T950.

⁷ Ibid red p 6578: T958.

⁸ Ibid red p 6574: T954.

⁹ Ibid red p 6579: T959.

¹⁰ Ibid red p 6582: T962.

¹¹ Ibid red p 6590: T970.

20. In the trial there was no deviation from this evidence, with Mr Bennett giving evidence that Det Krawczyk, Det Sgt Wilson and himself were in the lead car and “we drove into the yard”.¹²
21. Det Sgt Wilson gave evidence at the committal hearing that they knew which house to go to as Det Krawczyk drove the car to Restwell Rd,¹³ and that Det Krawczyk entered the house with them and knew what Mr Brajkovic looked like.¹⁴ Det Krawczyk gave evidence that he drove the lead car, Det Sgt Wilson’s car, from the rendezvous point into the yard, as he knew where to go, and he went straight in the back door with Det Sgt Wilson and Mr Bennett.¹⁵ All three gave consistent evidence on this point in the Inquiry.¹⁶
22. Mr Brajkovic however, gave multiple accounts of his position outside the home and the arrival of the police cars. His accounts were of such inconsistency that they cannot stand together and would not be accepted, apart from that part of his statement to Det Sgt Shepard that the column of police cars arrived and entered the yard very quickly.
23. The Inquirer would not accept the Petitioner’s submissions purporting to be a summary of the relevant evidence on this point by police witnesses nor the summary of the evidence of Brajkovic, as each is both incomplete and inaccurate (PS [333]-[340], [345], [363]), particularly as to Mr Bennett’s evidence on the committal hearing.
24. We note that at PS [345] none of the references to Mr Bennett’s evidence at committal set out above at [19] in this submission are referenced, and nor is the fact that on the committal transcript itself there is a handwritten red penned underlining of the word “Forbes” with the annotation of “?”, followed by the word “Craw.”.¹⁷ It can be inferred from this that “Forbes” was a mistranscription and the evidence is a reference to “Kraw” or Det Krawczyk, consistently with the repeated evidence

¹² Ex 2.1-13, red p 433: Trial Voir Dire (1 May 1980), T398; Ex 2.1-23, red p 794: Trial (15 May 1980), T748.

¹³ Ex 2.3-18, red pp 6691-2: Committal (15 August 1979), T1067-8.

¹⁴ Ibid red p 6700: T1076.

¹⁵ Ex 2.3-19, red pp 6809, 6840: Committal (16 August 1979), T1183, T1214; Ex 2.1-16, red p 489: Trial Voir Dire (6 May 1980), T457; Ex 2.1-21, red pp 700, 709: Trial (13 May 1980), T657, T666.

¹⁶ T1328 Inquiry (2 July 2024); T1372 Inquiry (3 July 2024); T2110 Inquiry (12 August 2024).

¹⁷ Ex 2.3-16, red p 6574; Committal (13 August 1979), T954.

of Mr Bennett in the committal that Det Krawczyk drove the car. In the questions immediately following, Mr Bennett also said he (Bennett) was not driving the car. Mr Bennett was quite right to say at the Inquiry of this committal evidence “that should be Krawczyk”. This was not a change in his evidence, but a correction of the mistranscription: cf. PS [345]-[346].

25. There is also no reference to Mr Bennett’s report to Det Sgt Shepard of 25 June 1979 where he explicitly states that he travelled to the address “*with Detective Sergeant Wilson in the lead car with Detective Senior Constable Krawczyk our driver. We drove into the yard at that address and we three went to the rear door...*”.¹⁸ Mr Bennett reported that he had no personal knowledge of what happened out the front of the house near the bushes but he “*queried his assertion that he recognised John Krawczyk’s voice in view of Krawczyk’s presence in the house with Detective Sergeant Wilson and I*”.¹⁹ Mr Bennett’s report and evidence on both points would be accepted.
26. We note that the summary by the Petitioners (at PS [333]-[350]) both neglects critical detail and attempts to forge a narrative by melding evidence and leaving out other evidence from what are in truth differing accounts. The differing accounts are examined in detail below.
27. On 5 April 1979, Mr Brajkovic told Justice Yeldham that “four, five police cars just coming to me. I hide behind the tree and the police is going in the restaurant (sic) and when they come close to my house they come slowly. I screen behind the tree. I go under the tree when the detectives come. I just been looking at what is going on. Many voices, jumping on the garage and all these things, back on the door”.²⁰
28. On 19 April 1979, Mr Brajkovic told Det Sgt Shepard that “I come out the gate...of the left hand side a tree about three metre high, so when I come behind the tree, on the sunshine of the moon I saw the contour of a car²¹, so I intend to go and see them, but *in the same time a column of cars* about four five cars have been arriving towards me *...its been driving very fast and as they coming near to me very fast entering my yard...*” (emphasis added). In the Inquiry this account was adopted as

¹⁸ Ex 11.188, red p 1552: Report of DSC J Bennett, 25 June 1979, 2 [5].

¹⁹ Ibid red p 1554: 4 [18].

²⁰ Ex 2.2-3, red p 5564: Bail (5 April 1979), T6.

²¹ This was said to be Det Helson’s car.

true,²² however Mr Brajkovic also subsequently purported to give evidence that other contradictory accounts were all the same as this account.

29. We note that in contrast with later accounts, in his complaint to Det Sgt Shepard, Mr Brajkovic only reported exiting the house once. He did not say anything about another exit with crawling, or observing a car without lights, or Det Krawczyk talking to the people in that car and then getting back into Det Helson's car, and the other car then driving towards Prairie Vale Road, all prior to the column of cars arriving.²³ On the Inquiry, in response to questions from Counsel Assisting, Mr Brajkovic said he realised that he did not say "about doing the crawl", but did not bother to get Det Sgt Shepard back on account of being told by him "We don't need this" or that he was not interested in things Mr Brajkovic had raised.²⁴ The evidence of Det Krawczyk getting back into Det Helson's car and his claims about being limited by Det Sgt Shepard would be rejected. The latter is addressed further below at [160]-[163].

30. The further significant variations in relation to Mr Brajkovic's account of his movements just before and at the time of the arrival of the column of cars are underlined in the following paragraphs which summarise his evidence on the voir dire and in the trial relevant to Mr Bennett.

31. In addition to the inserted further exit, Mr Brajkovic now said on the voir dire that when he re-exited the house he stood between the scrub type tree and the big tree from where he saw the contour of the car (Helson's car), and he looked with his binoculars "towards Prairie Vale Road and I could see nobody moving" so he went from where he was outside the fence of his house, and crossed the street coming "near to the gutter on the other side" when he saw "the lights coming from Prairie Vale Road towards me, and I run from that position and I find again a position between that scrub type tree and the big tree". He confirmed to Mr Lloyd Jones by reference to trial Exhibit 2 that he crossed over the street- "I come on this side and I went back again. I find my position here"²⁵- and indicated a position between two trees. He then gave an account that he was "observing Krawczyk's car. At that

²² T3196.25-.35 Inquiry (6 November 2024).

²³ Cf Ex 5.5-3/11.156, red p 589/1442: Record of Interview between Det Sgt E Shepherd and V Brajkovic, 20 April 1979; Ex 2.1-17, red pp 563-564: Trial Voir Dire (7 May 1980), T524-5.

²⁴ T3258-61 Inquiry (7 November 2024).

²⁵ Ex 2.1-17, red p 564: Trial Voir Dire (7 May 1980), T525.

moment his car is parked in this driveway means it is occupying the position between the gutter and the gate. As I see that car...the driver from that car which had been parked about six feet down, just protruded his hand like this (demonstrating) ...and I go like this (witness demonstrates saluting gesture). He went straight away inside...". Mr Brajkovic gave evidence the driver "proceeded deep into my yard", with other cars following, at which point Mr Brajkovic moved to the back of the scrub type tree.²⁶ His evidence in the Inquiry was that it was the driver who saluted, and he did so also.²⁷

- 10 32. Following that evidence on the voir dire, Det Krawczyk was questioned on the voir dire as follows by Mr Lloyd Jones (emphasis added):

Q. When you returned to the Brajkovic home you were in one of the, what we will call, the four additional police cars?

A. I was in Det Sgt Wilson's car, that's right.

Q What position did that have of the four?

A. The first car.

- 20 *Q. Do you know which car Det Bennett was in?*

A He was in our, the first car.

Q. There was a person standing near the gate who waved to you as you went in, wasn't there?

A. Definitely not, no.

Q. All of the cars went into the yard, that is the four, is that right?

*A. I don't know. I know I drove in the yard in the first car. How many cars were after me I don't know.*²⁸

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33. At the trial before the jury during the evidence of the Det Krawczyk it seemed to then be accepted that Det Krawczyk got into the (police observation) car and left Det Helson in Restwell Road, Det Krawczyk later returning in the first car. He was asked by Mr Lloyd Jones if he recalled seeing Mr Brajkovic standing near the gate and waving as the cars went in.²⁹

34. At the trial before the jury, when Mr Brajkovic was called to give evidence, and after giving an account of an earlier outing where he was 'crawling on the knees

²⁶ Ibid.

²⁷ T3198.22-.42 Inquiry (6 November 2024).

²⁸ Ex 2.1-16, red p 488: Trial Voir Dire (6 May 1980), T456.

²⁹ Ex 2.1-22, red p 709: Trial (14 May 1980), T666.

and elbows' to a place next to bushes alongside the car of Dets Helson and Krawczyk,³⁰ Mr Brajkovic stated after going back to the house, he went back outside to "the position between the big tree and the scrub or bush tree". He gave an account again that he "passed over the gutter, over the road", to the edge of the other side of the road. He then went back to a position between the tree and the bush when the car stopped in the driveway, and the driver signalled to him and "As he make a signal I thought somebody is using the driveway and making an excuse and is going to turn around a go back...and I signal like this. At that moment the car give the gas and went inside of the yard, drive inside the yard. I was surprised and...didn't do nothing. I just looking, the car went inside and another car followed".³¹

35. In the trial before the jury for the first time in his evidence *in cross-examination*, Mr Brajkovic said that "There was man with woolly hair which I afterwards I reckon to be Det Bennett" who signalled him from the car while he was standing there with binoculars about six to eight feet away.³² The car was "the first car" (of "a few cars coming") and had "stops (sic) on the driveway between the gate and the gutter" and he thought he was "going to use the driveway to go back".³³
36. Mr Brajkovic accepted in cross-examination at the Inquiry that this was the first time he had alleged that Mr Bennett waved to him from the car, while also claiming it was not a different account.³⁴ He also asserted that he did not see any factual difference in any of his accounts from what he told Det Sgt Shepard.³⁵
37. It is submitted that the allegation made for the first time in cross-examination at the trial, that Mr Bennett was the driver of the first car and signalled to him would not be accepted. The Inquirer would reject the assertion that Det Krawczyk was not the driver of the first car of the column, which was maintained at the Inquiry:³⁶ cf. PS [333]-[350]. It was an untruthful constructed account to assert that Mr Bennett was driving, stopped the car and signalled to him, its untruthfulness demonstrated by

³⁰ Ex 2.1-100, red p 3286: Trial (15 October 1980), T3208.

³¹ Ibid red p 3287: T3209.

³² Ex 2.1-102, red p 3369: Trial (17 October 1980), T3295.

³³ Ibid red pp 3368-9: T3294-5.

³⁴ T3201.20-.30 Inquiry (6 November 2024).

³⁵ Ibid T3198.44-.46, T3201.36-.39.

³⁶ Ibid T3194.34-.39.

the multiplying additions and changes to the narrative from the time of his lengthy account in the complaint to Det Sgt Shepard.

- 10 38. It was constructed (despite its apparent inconsistency with the inserted outing) as Mr Brajkovic knew that if Det Krawczyk was driving the first car in the column (as his evidence on the voir dire about the arrival of the column of cars in the above passage asserted, as his counsel had put to Det Krawczyk in the voir dire, and which the evidence supported), that was consistent with Det Krawczyk being at Prairie Vale Road rather than in the waiting car with Det Helson when the column of police cars arrived, and also consistent with him being in the house with Mr Bennett at the outset, not down at the scene of Mr Brajkovic's location and arrest. As Mr Brajkovic exclaimed in his evidence on the Inquiry "*...if the Krawczyk was the driver of the car...that means he was not there*"³⁷ (ie. not in Det Helson's car and not at the scene of the arrest). It was additionally an attempt by Mr Brajkovic to claim that police had seen him from the outset and knew where he was all along,³⁸ and to undermine Mr Bennett's credibility. The reasoning set out at PS [330] is, conversely, consistent with Mr Brajkovic not being where he claimed he was standing and there being no signalling. The Inquirer would reject Mr Brajkovic's evidence on this point.
- 20 39. The Inquirer would also reject the submission of the Petitioners that there was a police "device in fabricating accounts of events of switching detectives" levelled in relation to Det Krawczyk driving or being in the first car (PS [1028]).
- 30 40. While Mr Brajkovic claimed at the Inquiry that his different accounts were "the same thing"³⁹ and "I don't see any difference factual"⁴⁰ there were significant differences between each of his accounts and they cannot stand together. The claim, maintained at the Inquiry, that the driver of the lead car stopped the car and saluted him, would be rejected.⁴¹ The Inquirer would accept that Det Krawczyk drove the lead car, with Det Sgt Wilson and Mr Bennett in it, very quickly into the property at Restwell Rd, up the driveway and in through the gate without stopping until it came to close to the house when all three alighted and went to the door and then into the house.

³⁷ Ibid T3199.19-.27.

³⁸ The Petitioners accept this was a point attempted to be made by the evidence: PS [339]

³⁹ T3198.44-.46 Inquiry (6 November 2024).

⁴⁰ Ibid T3201.37-.38.

⁴¹ Ibid T3199-3201.

41. In addition to the police evidence, Mrs Brajkovic's evidence to Det Sgt Shepard supported that the cars arrived very quickly, when she said, "*Just as I got into bed the cars come very fast and after a few seconds, I hear someone banging on house at the back*" (emphasis added). While there was a dispute about the mode of entry into the house, her evidence was that three policemen came into the home and that she told them her husband may be outside.⁴² Mrs Brajkovic also gave evidence in the trial that the cars drove in "*very fast, very fast*".⁴³ Mr Hudlin said that three detectives came into the home first, followed by two detectives with Mr Brajkovic.⁴⁴

42. Mrs Brajkovic's statement that she told police on their entry to the home that her husband may be outside, and evidence of police that she said that he was not there, supports Mr Bennett's statement and evidence that he then yelled out to police outside "He's not here. Have a look around".⁴⁵ While those inside the house did not hear this (and were otherwise conversing), Det Pettiford heard this called out by Mr Bennett⁴⁶ as did Det Harding⁴⁷, and Det Morris.⁴⁸ While Det MacKenzie knows Mr Bennett's voice and heard a voice, but did not think he heard Mr Bennett call out, Det Cook did hear somebody call out these words a very short time after they arrived.⁴⁹ Det Robinson also gave evidence that he heard someone call something out⁵⁰ and while he was not able to identify the voice the words were to the effect "He's not here..."⁵¹. The Inquirer would accept that this occurred as Mr Bennett said.

⁴² Ex 11.169, red pp 1516-1517: Statement of Milena Brajkovic, 3 May 1979, [4].

⁴³ Ex 2.1-103, red p 3393: Trial (20 October 1980), T3317.48.

⁴⁴ Ex 11.170, red pp 1519-1520: Statement of Jakov Hudlin, 3 May 1979, [4].

⁴⁵ Ex 4.2-28, red p 354: Statements of DSC J Bennett, 24 March and 8 April 1979, [4]; Ex 2.3-16, red p 6571: Committal (13 August 1979), T951.

⁴⁶ Ex 2.3-18, red p 6754: Committal (15 August 1979), T1130; Ex 2.1-14, red p 459: Trial (2 May 1980), T428.

⁴⁷ Ex 11.154, red p 1434: Statement of DSC Brian Robert Harding, 18 April 1979, [2]; Ex 2.3-35, red pp 7807-7808: Committal (18 September 1979), T2139; Ex 2.3-36, red pp 7883-7884: Committal (19 September 1979), T2213; Ex 2.1-22, red p 724: Trial (14 May 1980), T681.

⁴⁸ Ex 4.2-33, red p 373: Statement of DSC Ronald Arthur Morris, 18 April 1979, [2]; Ex 2.3-18, red p 6734: Committal (15 August 1979), T1110; Ex 2.3-12, red p 439: Trial Voir Dire (1 May 1980), T408; Ex 2.1-21, red pp 683, 687: Trial (13 May 1980), T639, T643.

⁴⁹ Ex 11.90, red p 1292: Statement of DSC Kimbal Manning Cook, [2]; Ex 2.3-21, red pp 6982, 6984: Committal (29 August 1979), T1350, T1352; Ex 2.1-35, red p 999: Trial (3 June 1980), T950.

⁵⁰ Ex 11.91, red p 1293: Statement of DSC Ian Douglas Robinson, 12 February 1979, at [2]; Ex 2.3-21, red p 6997: Committal (29 August 1979), T1365 (note: typo 'sign' should be 'call').

⁵¹ Ex 2.3-21, red p 6999: Committal (29 August 1979), T1367; Ex 2.1-22, red p 750: Trial (14 May 1980), T704.

43. The above evidence, given from the outset by Mr Bennett and other credible witnesses, including the Observation police, Dets Cook and Robinson, also has the effect of undermining the accounts given by Mr Brajkovic on the voir dire and the trial and Inquiry which purported to demonstrate that Det Krawczyk was not driving the first car, and that police in the first car knew from when they arrived where Mr Brajkovic was, as they saw and acknowledged him from the driveway. The later accounts of Mr Brajkovic, given after he had obtained the depositions of the committal hearing, are significantly different in their descriptions of his movements and position.

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44. Moreover, Milena Brajkovic stated that her husband was brought into the house by two men, and was told to sit in a chair, and at that point he asked Det Krawczyk “who was searching the bookshelves...John what’s happening, what’s going on, why am I arrest...he just say we talk later”.⁵² Her evidence is to be contrasted with the account by Mr Brajkovic given on the voir dire⁵³ and at trial⁵⁴ that this conversation happened outside the house. There was also a ‘slip’ in Mr Brajkovic’s evidence at the trial where he gave evidence of entering the house and Det Krawczyk being there in the house searching the bookcase.⁵⁵

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45. This may be contrasted with the evidence of Mr Brajkovic as summarised by the Petitioners that Mr Brajkovic gave evidence that “Krawczyk took him inside the house” (PS [342]) and the attempt to fuse the accounts by Mr Brajkovic given to Det Sgt Shepard and at trial (PS [342]-[344], [348]). It is submitted that the Court would be easily satisfied that Det Krawczyk entered the house with Det Sgt Wilson and Mr Bennett, and not with Mr Brajkovic or at any time later than the original entry.

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46. The Court would accept the evidence of Mr Bennett (and others) that Det Krawczyk was the driver of the first/lead car, that the car did not stop on the driveway, that Mr Bennett did not gesture or salute to Mr Brajkovic or see him at all when he was in the car driving into the house (and nor did Det Krawczyk), that Mr Bennett entered

⁵² Ex 11.169, red p 1517: Statement of M Brajkovic, 3 May 1979, at [4]; Ex 2.1-103, red p 3395: Trial (20 October 1980), T3319.

⁵³ Ex 2.1-17, red p 565: Trial Voir Dire (7 May 1980), T526.

⁵⁴ Ex 2.1-100, red p 3289: Trial (15 October 1980), T3211.

⁵⁵ Ex 2.1-100, red p 3289: Trial (15 October 1980), T3211.

the house with Dets Krawczyk and Wilson and soon thereafter called out “He’s not here. Have a look around”.

Shortly afterwards, Dets Harding and Morris entered with Mr Brajkovic and Det Harding was carrying a white plastic bag

47. The Inquirer would also accept Mr Bennett’s consistent evidence that a short time later, Det Harding and Det Morris entered with Mr Brajkovic, and Det Harding was carrying a white plastic bag.⁵⁶

10 48. The evidence given at trial by Milena Brajkovic and Mr Hudlin and in their statements taken on 9 February 1979 and given to Det Sgt Shepard on 3 May 1979 that they had not seen the plastic bag or its contents before being shown them at the CIB, do not preclude this finding (cf. PS [350], [1879]). The fact that Mr Bennett faithfully recorded Mrs Brajkovic’s denial of seeing the items on 9 February 1979 in her statement, and supplied this statement to Det Sgt Shepard, along with his report does not support a case of police fabrication. It does support that he faithfully recorded what she told him at the CIB.

20 49. Mr Bennett’s evidence, and that of Dets Cook and Robinson, and other police present at the house that the white plastic bag was there would be accepted. There were seven, not six detectives (cf. PS [333]) outside, including Dets Harding and Morris when they walked up and into the house, the others being Det Pettiford, Det Helson, Det Robinson, Det Cook and Det MacKenzie, all of whom gave evidence as to the plastic bag being with Harding at this time: CA [2033] –[2034], [2090], [2099], [2238], [2241]-[2242], [2247], [2250].

30 50. While Det Cook’s memory 45 years later of the number of bags of fertiliser was mistaken, contrary to the submission of the Petitioners (PAS [354]), his memory was not only that there was fertilizer at the premises but also “I remember the condition of the yard and the property around it, which made me wonder why they had the superphosphate, because it obviously wasn’t being cultivated in any way”.⁵⁷

⁵⁶ Ex 4.2-28, red p 354-5: Statements of DSC J Bennett, 24 March and 8 April 1979 (Committal Ex 92), 1-2 [4]-[5]; Ex 2.3-16, red pp 6571, 6574-5, 6584, 6587: Committal (13 August 1979), T951, T954-5, T964, T967; Ex 2.1-13, red p 433: Trial Voir Dire (1 May 1980), T399; Ex 2.1-23 red p.795: Trial (15 May 1980), T749.

⁵⁷ T1276.48-1277.10 Inquiry (2 July 2024).

The photographs show this to be a reliable and accurate recollection. His clear recollection 45 years later accords with Mr Bennett's June 1979 statement (at that stage not served on the parties, and which Det Cook had no way of knowing) in relation to the fertiliser that "The house kept by Brajkovic is in poor condition with no garden. Any suggestion that it was kept to improve the property is questionable".⁵⁸

- 10 51. Det Cook did not recall Mr Bennett being there on the raid, and while they had joined the Police Cadets on the same day, 8 August 1966, he did not recall working with him again after the cadets.⁵⁹ We also note that far from protecting other officers, colluding to strap up evidence, built up camaraderie and loyalty, and other suggestions by the Petitioners drawn from the Royal Commission reports, Mr Bennett had not done much work with Wilson before, had never done any work with Det Morris other than this raid, had no memory of anybody "named MacKenzie" and did not know Det Robinson.⁶⁰
- 20 52. Mr Bennett and Det Cook would be accepted as credible and reliable witnesses on the material aspects of their evidence as to this, as would the other police witnesses, including Dets Robinson and MacKenzie as to the white plastic bag being with Det Harding and at the premises (cf. PAS [354]-[357], [359]).

Mr Bennett did not search the house

- 30 53. Mr Bennett's evidence has also consistently been that he did not make any search in the premises. There is no reference at all to him searching at the home in his statement, and also no reference in his evidence in chief at the committal to him participating in any search. There is reference to others searching. At the committal hearing Mr Bennett gave evidence in cross-examination that "*I didn't make any search*"⁶¹ and repeatedly confirmed that he had not searched the home or collected items at all, when asked again.⁶² At trial his evidence, consistently with that at committal, was that he stayed with Mr Brajkovic who was sitting in a chair, except for the times when Mr Brajkovic, and then later Mr Bennett, separately went into

⁵⁸ Ex 11.188, red pp 1554-5: Report of DSC J Bennett, 25 June 1979, 4-5 [21].

⁵⁹ T1277 Inquiry (2 July 2024).

⁶⁰ T1368-1370 Inquiry (3 July 2024).

⁶¹ Ex 2.3-16, red pp 6583, 6585: Committal (13 August 1979), T963, T965 (XX McCrudden).

⁶² Ibid red pp 6585, 6591: T965, T971 (XX McCrudden).

the front room.⁶³ That he did not put in his statement the Timeline account of searching with Det Krawczyk is one of several matters that supports Mr Bennett's evidence at the Inquiry that when he made his 1979 statement in the case he was not simply 'sticking to the script'.⁶⁴

- 10 54. Mr Bennett also gave evidence that when Mr Brajkovic was brought into the house, while Mr Brajkovic was showing signs of exertion, Mr Bennett did not see any cuts or bruises on him.⁶⁵ This was important evidence that was relied on, along with the evidence of others who did not see any such injuries at the house, in the defence case at trial⁶⁶ as Mr Bennett guarded Mr Brajkovic in the house with Det Morris, except for when, at separate times, each of Mr Brajkovic and Mr Bennett went into the front room.⁶⁷

White plastic bag with explosives, namely two 'half' sticks of gelignite with cut ends and red and green wires, (which he later saw were attached to detonators) were at the house, and Mr Bennett saw them in the workshop shortly before they left; Mr Bennett was not in the workshop at the same time as Mr Brajkovic and Mr Brajkovic's account would be rejected

- 20 55. Mr Bennett's evidence at the committal hearing was that he looked briefly inside the white plastic bag in the workshop room and saw the pieces of gelignite and the red and green wires,⁶⁸ and that he did so at the invitation of Det Sgt Wilson.⁶⁹ The bag was on a table in the workshop, Det Sgt Wilson was near it. There were two sticks of gelignite, and the ends were cut. The ends were pasty white, the cardboard neutral brown and he could see the red and green detonator fuse wires and other material in the bag. He was invited in by Wilson who said they had found explosives and invited him to look, and he looked.⁷⁰

⁶³ Ex 2.1-23, red pp 795-6: Trial (15 May 1980), T749.

⁶⁴ T1467.22-24 Inquiry (4 July 2024).

⁶⁵ Ex 2.3-16, red p 6584: Committal (13 August 1979), T964.

⁶⁶ Ex 2.1-143, red p 4618: Trial (31 December 1980), T4534 [27]-[31].

⁶⁷ Ex 2.3-16, red p 6592: Committal (13 August 1979), T972; Ex 2.1-23, red pp 795-6: Trial (15 May 1980), T749.

⁶⁸ Ex 2.3-16, red p 6575: Committal (13 August 1979), T955.

⁶⁹ Ibid red p 6576: T956.

⁷⁰ Ibid red pp 6587-9: T967-9.

56. His evidence at the voir dire and trial was consistent with this,⁷¹ adding that he saw some newspaper, and identifying the gelignite and the wires that he had seen at the house as the items in the photograph that was trial Ex MM.⁷² At a later stage, in the early hours of the morning, when he was taking a statement from the Mrs Brajkovic, along with other items, he saw the wires were attached to detonators, along with other items.⁷³

10 57. Contrary to the propositions of Senior Counsel for the petitioners in cross-examination of Mr Bennett at the Inquiry hearing, only one of which was withdrawn before the Inquiry, he did not give new evidence at the Inquiry on 3 July 2024 about being called in to see the white plastic bag in the workshop or about this being shortly before he left the home.⁷⁴ The evidence that Mr Bennett gave at the Inquiry in both respects was honest and truthful evidence, consistent with his accounts given in 1979 and 1980.

20 58. The evidence of seeing the bag and its contents in the workshop with Det Sgt Wilson was given early in his evidence at committal on 13 August 1979,⁷⁵ and at the trial in 1980, including on the voir dire saying he went into the workshop and Det Sgt Wilson alone was in there.⁷⁶ His independent, honest and credible recollection as to what occurred, including having a cursory look at the contents of the bag at the house, given at committal, was in accordance with the process then in place in the criminal justice system of defence ‘discovery’ through committal hearing (as opposed to through service of a brief of evidence or even police statements as occurs now).⁷⁷

59. However, even prior to committal, Mr Bennett set out in his report of 25 June 1979 to Det Sgt Shepard of Internal Affairs that he saw the white plastic bag and its

⁷¹ Ex 2.1-13, red p 434: Trial Voir Dire (1 May 1980), T400; Ex 2.1-23, red pp 795-6: Trial (15 May 1980), T749-50.

⁷² Ex 2.1-23, red pp 796, 798: Trial (15 May 1980), T750, T752; Ex 4.1-MM, red p 71.

⁷³ Ex 2.1-23, red pp 796, 799: Trial (15 May 1980), T750, T753; Ex 2.1-126, red p 4190: Trial (3 December 1980), T4088.

⁷⁴ T1478.8-1480.4 Inquiry (3 July 2024); T1412-1416, 1419.9-.35 Inquiry (4 July 2024).

⁷⁵ Ex 2.3-16, red p 6574: Committal (13 August 1979), T954.

⁷⁶ Ex 2.1-13 red p 434: Trial Voir Dire (1 May 1980), T400; Ex 2.1-23 red pp 795-7, 799: Trial (15 May 1980), T749-51, T753.

⁷⁷ CAS [235]-[245]; Ex 13.34, red p 229-40: Selected pages from Chris Masters’ notebook, undated; Ex 13.56, red p 1243-67: Gordon Bradley Elkington, ‘Discovery upon indictment in New South Wales’ (1980) *Criminal law Journal* (Vol 4).

contents in the workshop of the house (cf. PS [366]-[370]).⁷⁸ There is no reference to this part of Mr Bennett's report to Internal Affairs in either the submissions of Counsel Assisting or the Petitioners submissions. The Petitioner's submissions and purported summary of "the detective's relevant evidence" on this issue (PS [366]-[369]) is again incomplete.

60. It is also important to note that the report to Det Sgt Shepard, given some 45 years earlier, was not available to Mr Bennett until after he gave evidence when it was served on 2 August 2024, before being tendered on 5 August 2024. While it had apparently been produced to those assisting the Inquiry prior to him giving his evidence, Mr Bennett had not seen it since he made it in June 1979. This prior consistent statement is further justification of Mr Bennett's adamance under cross-examination and questioning that not only did he see the white bag and its contents at the house, but also that he had said so previously, albeit as he honestly acknowledged, it was not in his brief police statement of 24 March 1979.⁷⁹

61. The prior consistent statement of Mr Bennett to Det Sgt Shepard refutes the allegations put to Mr Bennett and now maintained in submissions by the Petitioners that he corruptly 'coincidentally' gave that version along with Det Krawczyk⁸⁰ and Det MacKenzie at the committal hearing, or following a corrupt 'scrumdown'⁸¹ at a meeting on around 8 August 1979 (the Wednesday before Det Krawczyk gave his evidence at the committal): cf. PS [366]-[370], [376]-[377], [3242]. It supports Mr Bennett's evidence at the Inquiry that there had not been "some conversation about a need to strap up your evidence (at the committal hearing) about explosives at the house".⁸²

62. The evidence of Det Krawczyk at the Inquiry was that he *never* had a discussion with Mr Bennett or Det MacKenzie about their evidence and could not recall either being at the meeting.⁸³ Det Helson's evidence at the committal hearing where he

⁷⁸ Ex 11.188, red p 1552-3: Report of DSC J Bennett, 25 June 1979, [10].

⁷⁹ T1422.34-1423.8 Inquiry (3 July 2024); T1467.9-.38 Inquiry (4 July 2024) (in an exchange with the Inquirer).

⁸⁰ T1423.20-.24 Inquiry (3 July 2024).

⁸¹ Ex 2.3-19, red p 6823: Committal (16 August 1979), T1197 (DSC Krawczyk); Ex 2.3-21, red pp 6946, 6950: Committal (29 August 1979), T1314, T1318 (DSC Helson); T2067.3-2069.2 Inquiry (12 August 2024); T2668.46-50, T2669.1-11, T2671-2 Inquiry (26 September 2024).

⁸² T1423.20-.23 Inquiry (3 July 2024); T1467.29-.34 Inquiry (4 July 2024).

⁸³ T2206, T2210.16-.20 Inquiry (15 August 2024).

named those present did not include Mr Bennett.⁸⁴ There was no suggestion in any evidence that Mr Bennett was at any such meeting.

63. It was also not correct for the Petitioners to put to Mr Bennett in the Inquiry both that he did not say before his evidence on 3 July 2024 that he saw the items shortly before they left the house,⁸⁵ and that he gave this evidence in the Inquiry because he had read the evidence of Det Sgt Wilson. Mr Bennett had not seen Det Sgt Wilson's statement or evidence from 1979-1980 before Senior Counsel for the Petitioners showed it to him when Mr Bennett was in the witness box giving evidence on 3 July 2024.⁸⁶ He had also not seen the statements or evidence of Det Krawczyk.⁸⁷ Mr Bennett had in fact given evidence in the trial that he saw the items *"not too long before we left the house"*,⁸⁸ and they were in the bag.

64. Mr Bennett's evidence was frank and forthright, and he still remembered seeing the ends of the gelignite with holes and the detonator wires in the plastic bag.⁸⁹ This accorded with his committal evidence of seeing gelignite with cut ends,⁹⁰ which was in turn substantiated by the certificate of Mr Butt (Ex LLLL) and the original photograph Ex 4.1-MM when properly lit.⁹¹

65. His evidence of briefly seeing these contents of the bag with other material, in the bag in the workshop, not long before leaving the house, and that his evidence at trial accorded with his independent recollection,⁹² and his rejection of the propositions that he did not see any such items⁹³ would be accepted by the Inquirer as truthful and reliable. His assertions that he gave truthful evidence at the trial and in the Inquiry⁹⁴ would be accepted.

66. The Inquirer would reject the assertions of the Petitioners that the evidence of Mr Bennett given from committal through to trial of seeing the explosives at the house

⁸⁴ Ex 2.3-21, red p 6950: Committal (29 August 1979), T1314, T1318.

⁸⁵ T1412.28-.35, T1419.9-21 Inquiry (3 July 2024).

⁸⁶ Ibid T1418.

⁸⁷ Ibid T1423.10-.15, T1429.50-1430.4.

⁸⁸ Ex 2.1-23, red p 799: Trial (15 May 1980), T753.40-1.

⁸⁹ T1380.21-.34 Inquiry (3 July 2024).

⁹⁰ Ex 2.3-16, red pp 6587-9: Committal (13 August 1979), T967.50-969.

⁹¹ T1487.36-.46 Inquiry (4 July 2024).

⁹² Ex 2.1-23, red p 807: Trial (15 May 1980), T761.

⁹³ See, eg, T1412.16-.22, T1421.42-.47, T1423.4-.8 Inquiry (3 July 2024).

⁹⁴ T1391.30-.33, 1428.20-.22 Inquiry (3 July 2024); T1467.15-.20 Inquiry (4 July 2024).

was not credible, was fabricated, “smacked of recent invention”, was “suspect” and/or was “dubious”: cf. PS [389]-[370], [376]-[377], [906], [954]-[956], [1116], [1622]-[1623], [1628], [1654], [1656], [1812], [1956].

67. That Det Sgt Wilson and Det Harding did not give evidence about Mr Bennett being in the workshop, also spoke to Mr Bennett’s evidence not being concocted or pre-arranged evidence. Whatever discrepancies there may be between Det Sgt Wilson and Det Harding’s evidence as to where the explosives were when they were in the workshop together at an earlier time, Det Sgt Wilson’s evidence at trial was that the contents of the white plastic bag remained on top of the bag on a table in the workshop “until shortly before we left the house”.⁹⁵ Det Sgt Wilson had also given evidence at committal that he replaced all the items into the bag⁹⁶ and said at the Inquiry that he thought he did place the gelignite, detonators and flares back in the bag after they were shown to Mr Brajkovic.⁹⁷ This supports the accuracy of Mr Bennett’s evidence at trial, that he saw the contents shortly before leaving, in addition to the concessions in evidence at the Inquiry by Dets Wilson and Harding noted by Counsel Assisting: CA [2006], [2040].

68. Det Sgt Wilson’s evidence from the outset of his evidence at committal was that the two sticks of gelignite he saw on the night were taped together⁹⁸ and that they were the gelignite depicted with other items in the photograph Marked for Identification A1 in the committal (later tendered in the committal as EX 100, in the trial as exhibit EX MM and the Inquiry as EX 4.1-MM).⁹⁹ Other officers gave this evidence as noted in submissions by Counsel Assisting. This evidence, which forms the preponderance of the evidence of what the gelignite looked like, is not referred to in the Petitioner’s summary of the evidence of the length of the gelignite or as to cut sticks (PS [430]-[443]), also relied on in the closing address for Mr Brajkovich in the trial.

⁹⁵ Ex 2.3-18 Committal (15 August 1979), T6720; Ex 2.1-21, red pp 678-9: Trial (13 May 1980), T635B-635C.

⁹⁶ Ex 2.3-18, red p 6720: Committal (15 August 1979), T1096.

⁹⁷ T1337.45-49 Inquiry (2 July 2024).

⁹⁸ Ex 2.3-16, red p 6559: Committal (13 August 1979), T939; Ex 2.3-18, red p 6717: Committal (15 August 1979), T1093; Ex 2.1-21, red p 659: Trial (13 May 1980), T618.

⁹⁹ Ex 2.3-18, red p 6564: Committal (15 August 1979), T944; Ex 2.3-18, red p 7730: Committal (15 August 1979), T2067 (Committal Ex 100); Ex 2.1-21, red p 659: Trial (13 May 1980), T618; Ex 2.1, red p 662: Trial (13 May 1980), T621 (Trial Ex MM); Ex 4.1-MM.

69. The fact that there were inaccurate estimates given at trial by some police witnesses, who also identified the gelignite as being that depicted in EX MM at the trial, or at the committal, which clearly showed long sticks with open ends and holes, does not raise any doubt as to what was located at the scene and shown to Mrs Brajkovic and Mr Hudlin (cf. PS [414], [430]-[450], [454]). Indeed, the Petitioners have not included in their summary that Mr Hudlin on the voir dire in re-examination demonstrated to the trial court the length of the gelignite as just under one foot (12 inches), which accords exactly with the length of the cut sticks of gelignite certified by Mr Butt.¹⁰⁰ This is addressed further below at [118].

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70. The police prosecutor noted during the committal that the exhibits of an explosive nature were available if necessary, however he had been instructed they were not to be brought into the courtroom. Mr McCrudden was invited to make an application to inspect them and indicated that he would like to inspect them.¹⁰¹ It is a fair inference that Mr McCrudden did so, and found that the gelignite and explosives accorded with what was depicted in the photograph Ex 4.1-MM. The remaining items were tendered and there was no issue in the committal or trial as to them according with what was pictured in trial Exhibit MM or as to the visible markings on them (cf. PS [548]).

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71. The various accounts of Mr Brajkovic that Mr Bennett was in the workshop at the same time that he was there, that there was no white plastic bag with explosives at the home that night, and as to conversations Mr Bennett was said to be privy to in the workshop at the time Mr Brajkovic was there with Det Wilson and Det Harding would be rejected.

72. The different Brajkovic accounts in relation to the conversation in the workshop contain key inconsistencies and cumulating additions, and are indicative of Mr Brajkovic giving and further developing an untruthful account. The first version was before Justice Yeldham. That account was that the Detective in Charge (who Mr Brajkovic conceded that on the night of 8 February 1979, he knew was Det Sgt Wilson¹⁰²) said “Come here. What are all these things” upon finding electronics,

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¹⁰⁰ Ex 2.1-18, red p 616: Trial Voir Dire (8 May 1980), T576; Ex 4.1-LLLL, red p 260: Certificate of PL Butt dated 11 April 1979, 1.

¹⁰¹ Ex 2.3-18, red pp 6717-8: Committal (15 August 1979), T1093-4.

¹⁰² T3202.3-12 Inquiry (6 November 2024).

with Mr Brajkovic responding “I am going to electronics school. They are things I need. If you need something you just ask me, I can show you the books and everything”, with Det Wilson replying “All right. After this we go to police headquarters”.¹⁰³

73. In the interview with Det Sgt Shepard, Mr Brajkovic said that he was called in (to the workshop) and while inside saw detectives there and gave an account of the conversation.¹⁰⁴ There was no mention at all of the person that in the interview he was calling ‘Harding’ being present, and no suggestion of a conversation about an oscilloscope, and no suggestion of a conversation about an FM microphone or any person being told to “Shut up, you idiot”.

74. It was never suggested to Mr Bennett in the committal hearing that he was present in the workshop at the same time as Mr Brajkovic, rather Mr McCrudden questioned Mr Bennett to suggest that Mr Brajkovic was taken into another room and Mr Bennett remained behind.¹⁰⁵ The following accounts are now underlined where there are variations from the original account of what happened in the workshop.

75. In the trial on the voir dire, Mr Brajkovic now said for the first time that Det Harding called him into the room (not Wilson). Mr Brajkovic now added in for the first time that Mr Bennett was in the workshop while Mr Brajkovic was in the workshop.¹⁰⁶ There was a completely new allegation of a further conversation with Det Sgt Wilson now being alleged to have said “What’s this?” while indicating an FM microphone and Mr Brajkovic responding saying “That’s the FM microphone” followed by a long exchange as set out in the transcript.¹⁰⁷ There was a further new alleged exchange with Det Sgt Wilson being said to ask again “What’s this?” and an added conversation about an oscilloscope ensuing, including a further story about Mr Bennett and Det Sgt Wilson where Mr Bennett was told to “Shut up, you idiot”.¹⁰⁸

¹⁰³ Ex 2.2-3, p 5564: Bail (5 April 1979), T6.

¹⁰⁴ Ex 5.5-3/11.156, red p 590/1443: Record of Interview between Det Sgt E Shepherd and V Brajkovic, 20 April 1979.

¹⁰⁵ Ex 2.3-13, red p 6595: Committal (13 August 1979), T975.

¹⁰⁶ Ex 2.1-17, red p 566: Trial Voir Dire (7 May 1980), T527/9.

¹⁰⁷ Ibid red p 566: T527/9; T3206.17-.49 Inquiry (6 November 2024).

¹⁰⁸ T3207-3208 Inquiry (6 November 2024).

76. It is submitted that Mr Brajkovic, who at that time had the depositions of the committal hearing and had heard the evidence there, now knew that Mr Bennett gave evidence of going into the workshop and there seeing the white plastic bag and its contents (as set out above), and that this new account in his evidence was an attempt to undermine not only the evidence of Det Sgt Wilson and Det Harding, but also Mr Bennett.
77. Later in the cross-examination of Mr Brajkovic, he gave a third version of who called him into the workshop (the subject of correction in his 2023 Statement at the Inquiry) where it was alleged Mr Bennett called him in there.¹⁰⁹ In his evidence in the Inquiry, Mr Brajkovic attempted to attribute this to “the interchanging name. From Harding”.¹¹⁰ However, this evidence on the voir dire that Mr Bennett called him in was simply a further example, exposed by the trial prosecutor, evidencing a willingness to attribute conduct to Mr Bennett that was not a true recall. Mr Brajkovic went on to give yet another version, in the Inquiry, namely that Mr Bennett “was inside when I arrived together with Wilson”,¹¹¹ in an attempt to revert to ‘the Shepard version’ of entering the workshop with Det Sgt Wilson.
78. In the trial, following an admission on the voir dire by Mr Brajkovic that he saw the batteries in the workshop, which were his, which he had soldered up (and a slip in his evidence in response to Justice Maxwell which is addressed below) there were two other invented twists added to this workshop conversation. In the trial Mr Brajkovic now alleged that Det Sgt Wilson “took the batteries”, which he now asserted were soldered onto the FM microphone, and that there was then a lengthy conversation about whether Mr Brajkovic could make a listening device and listen to the police car. Mr Brajkovic agreed at the Inquiry that he had “probably” or “possibly” never said any of this to Det Sgt Shepard, while denying that his evidence at the trial was not true, and asserting it was additional detail.¹¹²
79. It is submitted that Mr Brajkovic ‘slipped’ in his answer to Justice Maxwell in the trial, when Mr Brajkovic was questioned in relation to the supposed FM

¹⁰⁹ Ex 2.1-17, red pp 584: Trial Voir Dire (8 May 1980), T547.2; cf. Ex 15.4, red p 8: Statement of V Brajkovic, 26 October 2023, [25].

¹¹⁰ T3208.8-13 Inquiry (6 November 2024).

¹¹¹ T3208.27 Inquiry (6 November 2024).

¹¹² Ibid T3210.21-3211.12.

microphone: “It was on the wall when *the detective presented the batteries and alleged it was used, intended to be used in some kind of bomb*”.¹¹³

- 10 80. Prior to this slip, Mr Brajkovic had never previously admitted any kind of conversation about any items being intended to be used in a bomb. He appeared to maintain however, in the Inquiry, that there was such a conversation in the workshop about whether the batteries were intended to be used in a bomb.¹¹⁴ This did not accord at all with the ‘workshop conversation’ recounted to Yeldham J¹¹⁵ or his account to Det Sgt Shepard, or his account of the conversation on the voir dire, or his account in the trial in his evidence in chief of the conversation to his counsel thereafter,¹¹⁶ or his version in cross-examination.¹¹⁷ However, it is consistent with the evidence being a slip in his evidence, the explosive components for a bomb being in the workshop, and Mr Brajkovic trying to relate the conversation with Det Wilson about making a bomb, to the batteries rather than the explosives. It circumstantially supports the presence of items intended for use to make a bomb in the workshop which was in truth the contents of the white plastic bag, shown to him and which Mr Bennett later saw when he glanced in the bag.
- 20 81. The Inquirer would accept Mr Bennett’s evidence that he was never in the workshop at the same time as Mr Brajkovic, and would find that Mr Brajkovic’s accounts were not credible.

Batteries in the Workshop and Police Planting Items

82. Mr Bennett gave consistent evidence in this Inquiry with his evidence at committal and trial that he did not see the batteries or the clock in the workshop, supporting that he only took a cursory glance.¹¹⁸ It was never the evidence of Mr Bennett that he could see all of the contents of the bag at that time. That is not to say that there were not batteries in the workshop, indeed, there was never any issue at trial that: the taped together batteries that were in the photograph EX MM were in the

¹¹³ Ex 2.1-100, red p 3294: Trial (15 October 1980), T3217.

¹¹⁴ T3211.40-3212.10 Inquiry (6 November 2024).

¹¹⁵ Ex 2.2-3, red p 5564: Bail (5 April 1979), T6.

¹¹⁶ Ex 2.1-100, red p 3295: Trial (15 October 1980), T3218.

¹¹⁷ Ex 2.1-102, red p 3375: Trial (17 October 1980), T3299.

¹¹⁸ T1422.3-28 Inquiry (3 July 2024).

workshop; they were Mr Brajkovic's batteries; and, he had soldered them together.¹¹⁹

83. It is noted that it was put to Det Sgt Wilson by Mr McCrudden at the committal hearing that the gelignite, detonators, white plastic bag *and two batteries soldered together were not found*, and then the following exchange occurred between Mr McCrudden and Det Sgt Wilson:

Q. I put it to you that they came in some police vehicle, these items.

A. Came where?

10 Q. To the house at 16 Restwell Street that night?

A. That's not correct.¹²⁰

84. That is, at the time of committal it was put as a positive proposition that the explosives (and batteries) were brought to the house by police. This case was not the defence case at trial, either as to planting explosives – it now being the case that they were never there- or as to the batteries, where it was now accepted that the batteries belonged to Mr Brajkovic and he kept them in the workshop.

Mr Bennett did not witness any assault of Mr Hudlin with a torch at the house

- 20 85. Neither Mr Brajkovic nor Milena Brajkovic said anything about Mr Hudlin being hit with a torch in the head or being held by the hair as they were leaving the house in their statements to Internal Affairs.¹²¹ Milena Brajkovic gave no such evidence in the trial, the highest her evidence of interactions between the police and Mr Hudlin rising was that she heard talking and nothing apart from that.¹²² This was despite Mr Hudlin's account that these assaults occurred in response to him speaking to her in Croatian as she was leaving.

86. Mr Bennett's evidence that he witnessed no such assault and knew of no such assault would be accepted.¹²³

30

No injuries seen on Mr Brajkovic at the house

¹¹⁹ Ex 2.1-18, red p 584: Trial Voir Dire (8 May 1980), T547.

¹²⁰ Ex 2.3-18, red p 6727: Committal (15 August 1979), T1103.

¹²¹ Ex 11.169, red pp 1516-8: Statement of M Brajkovic, 3 May 1979, [4]-[6]; Ex 5.5-3/11.156, red p 590/1443: Record of Interview between Det Sgt E Shepherd and V Brajkovic, 20 April 1979.

¹²² Ex 2.1-103, red pp 3399-400: Trial (20 October 1980), T3323.45-3324.8.

¹²³ Ex 2.1-13, red p 426: Trial Voir Dire (1 May 1980), T402; Ex 2.1-23, red p 802: Trial (15 May 1980), T756.

87. Mr Bennett was cross-examined at the trial that while he was in the presence of Mr Brajkovic for most of the time at the house, Mr Bennett was not aware of any injuries on him, did not notice scratches on him and was only a few feet from him and did not see bruising on him.¹²⁴ It would be accepted that Mr Bennett did not observe injuries on Mr Brajkovic at the house.

White plastic bag in the car

- 10 88. Mr Bennett gave evidence at the committal that he thought Det Sgt Wilson, who was in the front passenger seat, had the gelignite in the white plastic bag with him “he hung onto it” in the car on the trip back to the CIB,¹²⁵ and in the trial that Det Sgt Wilson “had it on the way back into town” and carried it up with him.¹²⁶
- 20 89. At the Inquiry both Det Sgt Wilson and Mr Bennett were questioned about this. Both gave evidence that Det Sgt Wilson undertook the transportation of the gelignite, detonators and flares back to the CIB in the car that Mr Bennett drove back to the CIB.¹²⁷ Det Sgt Wilson had always stated the items located at the premises were taken back to the CIB. That, when asked at the Inquiry, *for the first time*, 45 years later *how* the plastic bag was transported back and gave an account of the bag being in the boot (later qualified by “*I think*”),¹²⁸ would be accepted as inaccurate recall, as would his description of separation of the items (in earlier evidence in the Inquiry he said he did not know if he did separate them or not): cf. PS [380]-[385], PS [386]-[387]. We note that at PS [380]-[385] there is again a partial and incomplete summary by the Petitioners. The qualified evidence of Det Sgt Wilson was quickly followed by him saying “*I don’t even remember putting them in the back of the car*”¹²⁹ with another incongruous assertion that he was certain he did that, then going on to reject that they were in the front with him.¹³⁰
- 30 90. He accepted later in questioning that it was possible that he kept the bag and its contents in the front with him, saying that he was confused about whether he had it in the boot of the car or the front of the car with him, that “*I just forget*”.¹³¹ He also

¹²⁴ Ex 2.1-23, red p 798: Trial (15 May 1980), T752; T1376.14-17 Inquiry (3 July 2024).

¹²⁵ Ex 2.3-16. red pp 6597-8: Committal (13 August 1979), T977-8.

¹²⁶ Ex 2.1-23 red p 804: Trial (15 May 1980), T758.

¹²⁷ T1335.38-.41 Inquiry (2 July 2024); T1386.7-9 Inquiry (3 July 2024).

¹²⁸ T1337-1338 Inquiry (2 July 2024); T1510.19-.43 Inquiry (4 July 2024).

¹²⁹ Ibid.

¹³⁰ T1510.43-1511.25 Inquiry (4 July 2024).

¹³¹ T2025 Inquiry (12 August 2024).

accepted that they were not *certainly* conveyed in the boot, again repeating that “*I don’t know one way or another whether they’re in the boot of the car or the front of the car*” and that they may well have been in the front.¹³² The admitted difficulties with his memory on this matter of detail of this nature was consistent with the effluxion of time: cf. PS [386]-[387].

91. When asked at the Inquiry for the first time how the bag got back to the CIB, Det Krawczyk simply responded “Wilson had it”.¹³³

10 92. While there may have been a failure in Det Sgt Wilson’s memory in 2024 as to where exactly the bag was, there was consistent evidence in 1979, 1980 and 2024 by both Mr Bennett and Det Sgt Wilson that Det Sgt Wilson had possession of the bag and its contents on the trip back to the CIB. The evidence of Det Krawczyk supported this.

93. Mr Bennett’s consistent evidence in 1979, 1980 and again in 2024 that the white plastic bag and its contents were in the possession of Det Sgt Wilson on the way back to the CIB would be accepted. The Inquirer would reject the Petitioner’s allegations of making up this evidence: PS [383].

20

No injuries to Mr Brajkovic on return to the CIB, Mr Bennett and Det Krawczyk guarding Mr Brajkovic in the interview room

94. In a series of questions about the look of Mr Brajkovic when he “got back to CIB HQs”, Mr Bennett gave evidence that he could not recall “noticing any differences in his facial characteristics” and that he thought if there were any substantial injuries, he would have noticed them.¹³⁴

95. On return to the CIB, he guarded Mr Brajkovic for a short time with Det Krawczyk, for around ten minutes, until Det Harding and Det Sgt Wilson joined them, at which
30 time Mr Bennett left.¹³⁵ His consistent evidence was also that he did not interview Mr Brajkovic at all.¹³⁶ Det Sgt Wilson gave evidence that Mr Brajkovic was left in

¹³² Ibid T2023.23-2024.6.

¹³³ Ibid T2119.28-.29.

¹³⁴ Ex 2.3-16, red p 6598: Committal (13 August 1979), T978.

¹³⁵ Ex 2.3-16, red pp 6590-1: Committal (13 August 1979), T970-1; Ex 2.1- 13 red pp 433, 437-8 Trial Voir Dire (1 May 1980), T399, T403-4; Ex 2.1-23, red pp 803, 804: Trial (15 May 1980), T757, T758.15.

¹³⁶ Ex 2.3-16, red pp 6575, 6591: Committal (13 August 1979), T955, T991; Ex 2.1-13, red pp 433, 437-438: Trial Voir Dire (1 May 1980), T399, T403-404/407.

the custody of Mr Bennett and Det Krawczyk for some ten to fifteen minutes,¹³⁷ and maintained that Mr Brajkovic was not on his own.¹³⁸ This was also in Det Sgt Wilson's report to Internal Affairs and his evidence at the Inquiry.¹³⁹ Det Krawczyk gave evidence that he and Mr Bennett were with Mr Brajkovic in the interview room until Det Sgt Wilson and Det Harding came in, and that Mr Brajkovic was not alone in the room.¹⁴⁰

- 10 96. Mr Bennett gave evidence that Det Sgt Wilson brought the plastic bag with him into the room, and maintained at the Inquiry that he saw the white plastic bag at that time: cf. PS [411].¹⁴¹ Other witnesses, such as Det MacKenzie gave evidence that while he did not remember what happened, Mr Brajkovic would have been 'immediately put into the interview room', and he would expect an officer to be with Mr Brajkovic, who would not have been left alone.¹⁴²
- 20 97. The evidence of Det MacKenzie that he saw the plastic bag on the floor of the CIB when he first arrived back at the CIB is consistent with the time between Det Sgt Wilson arriving and entering the interview room (a ten to fifteen minute period).¹⁴³ This was not at odds with the evidence of Det Sgt Wilson at the trial and committal as claimed by the Petitioners, with there being ample time for Wilson to place it down, Det MacKenzie to see it and Det Sgt Wilson to either show it to Inspector Morey or describe it: cf. PS [388]-[390].
98. This was the only time that Mr Bennett was in that interview room that night.¹⁴⁴ It was Det Krawczyk who retrieved the white plastic bag from Level 3 at CIB and brought it up to Milena Brajkovic: cf. PS [407]-[423]. At the Inquiry, Mr Bennett candidly corrected his committal evidence where he had mistakenly said he saw Mr Brajkovic when he went to get the white plastic bag and its contents to show to Mr

¹³⁷ Ex 2.3-16, red p 6561: Committal (13 August 1979), T941; Ex 2.3-18, red p 6684: Committal (15 August 1979), T1060; Ex 2.1-13, red p 404: Trial Voir Dire (1 May 1980), T371.

¹³⁸ Ex 2.1-13, red pp 409-10: Trial Voir Dire (1 May 1980), T376-7.

¹³⁹ Ex 11.150, red p 1415: Statement of Detective Sergeant John Francis Wilson, undated, 3 [7]-[8]; T1758.14-5, T1771.10-7 Inquiry (6 August 2024).

¹⁴⁰ Ex 2.3-52, red p 8964: Committal (15 October 1979), T3251; Ex 2.1-16, red p 496: Trial Voir Dire (6 May 1980), T461; Ex 2.1-22, red p 712: Trial (14 May 1980), T669; T2120-2 Inquiry (12 August 2024).

¹⁴¹ T1431.3-.32, T1432.4-.10 Inquiry (3 July 2024).

¹⁴² T1563.30-.37, T1561.43-.48 Inquiry (5 July 2024).

¹⁴³ Ex 2.1-16, red p 504: Trial Voir Dire (6 May 1980), T469; Ex 2.1-24, red p 823: Trial (16 May 1980), T777.45.

¹⁴⁴ T2024.11-.14 Inquiry (12 August 2024); T1351-2, T1389-1390.36, T1392.43-1394.37 Inquiry (3 July 2024).

Brajkovic's wife.¹⁴⁵ His evidence on the trial voir dire when he gave evidence of his whereabouts at the CIB that evening, and at the trial before the jury had also corrected that evidence, as he gave evidence there that it was Det Krawczyk who brought the explosives up to Level 5,¹⁴⁶ and that it was on Level 5 that he saw the contents of the bag again. The Petitioners again give a selective summary that neglects these accounts at trial in 1980: PS [407]-[423].

99. Mr Bennett repeatedly accepted in the Inquiry that this evidence in the committal was not a correct recollection.¹⁴⁷ He properly rejected the assertion that he changed his evidence on 3 July 2024 and that his accurate recollection was 44 years later,¹⁴⁸ given he gave correct evidence in 1980 at the trial. His evidence at trial and on the Inquiry that his recollection was that it was Det Krawczyk who went and retrieved the items as he was the typist¹⁴⁹ would be accepted. The submissions of the Petitioners at [407]-[423] would be rejected. The Petitioners in truth appear to accept that it was Det Krawczyk who retrieved the plastic bag, relying on an assertion that while doing that he saw Det Morris: PS [414].

100. Det Krawczyk's evidence at the committal hearing and trial that it was him who took the explosives upstairs to Mr Bennett when he was with Mrs Brajkovic supports that this is what occurred,¹⁵⁰ as does the evidence of Mrs Brajkovic at the trial that one man brought the white plastic bag, and one was taking the statement from her.¹⁵¹ There is no issue that Mr Bennett took the statement. This is examined further below.

101. Mr Bennett's evidence that the only time he was in the interview room was when he guarded Mr Brajkovic for ten to fifteen minutes at the outset of arrival at the CIB and his evidence at trial that it was Det Krawczyk who retrieved the white plastic bag would be accepted by the Inquirer.

¹⁴⁵ T1352.27-.47 Inquiry (3 July 2024).

¹⁴⁶ Ex 2.1-13, red p 437: Trial Voir Dire (1 May 1980), T403; Ex 2.1-23, red p 799: Trial (15 May 1980), T753.

¹⁴⁷ T1352 Inquiry (3 July 2024).

¹⁴⁸ Ibid T1429.26-1430.21, T1430.40-.44.

¹⁴⁹ Ibid T1352.27-.47, T1390.22-.36.

¹⁵⁰ Ex 2.3-52, red pp 8983-4: Committal (15 October 1979), T3270; Ex 2.1-16, red p 485: Trial Voir Dire (6 May 1980), T453.

¹⁵¹ Ex 2.1-103, red p 3420: Trial (20 October 1980), T3342B.

Taking the statement from Mrs Brajkovic in the early hours of the morning

102. Mr Bennett's evidence at the committal hearing, repeatedly, was that he interviewed Mrs Brajkovic at the CIB, on Level 5, "in the early hours of the morning", he did not know the precise time.¹⁵² This was in accordance with Mr Bennett's evidence from the outset in his police statement¹⁵³ that he interviewed her at the CIB. His evidence at committal is another example of Mr Bennett not "sticking to the script". It did not accord with the Timeline which referred to a "later taken to Woman Police Office and statement obtained by Bennett" against the time 11.35pm and before the time 11.55pm.¹⁵⁴ This was another clear example of Mr Bennett giving evidence in accordance with his independent (accurate) recollection. He had also reported to Det Sgt Shepard in his 25 June 1979 report that he showed the contents of the white plastic bag to Mrs Brajkovic after she was taken to the 5th Floor.¹⁵⁵
103. It is unsurprising that there was no dispute and there was never an issue in the trial, that despite any ambiguous wording in Mrs Brajkovic's statement, it was taken at the CIB, in the early hours of the morning: cf. PS [395], [403]. That this was agreed in the trial is not disputed: cf. PS [395], [403].
104. He attested to taking a statement from the accused's wife on the 5th Floor both in his evidence on the voir dire and in his trial evidence, before the jury confirming that this was in early hours of the following morning and that the plastic bag and its contents, as depicted in EX MM, apart from the clock and batteries, were shown to her.¹⁵⁶ In his evidence in reply, he gave further detailed evidence about taking the statement, including that she read it before she signed it and maintained, contrary to the Timeline, that he took the statement in the early hours of the morning.¹⁵⁷ Mr Bennett gave consistent evidence on this at the Inquiry.¹⁵⁸

¹⁵² Ex 2.3-16, red pp 6590, 6597: Committal (13 August 1979), T970, T977.

¹⁵³ Ex 4.2-28, red p 355: Statement of DSC J Bennett, 24 March 1979 (Committal Ex 92), 2 [8]- [9]; Ex 2.3-16, red p 6590: Committal (13 August 1979), T970.

¹⁵⁴ Ex 11.89, red pp 1289-90: Timetable of events and notes in relation to the arrest of V Brajkovic, 9 February 1979.

¹⁵⁵ Ex 11.188, red p 1553: Report of DSC J Bennett, 25 June 1979, 3 [13].

¹⁵⁶ Ex 2.1-13 red p 437; Trial Voir Dire (1 May 1980), T403; Ex 2.1-23 red pp 796, 758: Trial (15 May 1980), T750, T804; Ex 2.1-126, red p 4190: Trial (3 December 1980), T4088; T1483 Inquiry (4 July 2024).

¹⁵⁷ Ex 2.1-126, red p 4187: Trial (3 December 1980), T4085; T1484.26-.31 Inquiry (4 July 2024).

¹⁵⁸ Ex 2.1-126, red p 4187-9: Trial (3 December 1980), T4085-6; T1483-4 Inquiry (4 July 2024).

105. Notably, this reply evidence, given on 1 September 1980, seven months later, was from his memory listing the items that he had shown her, at a time when he had “not had a copy of her statement for sometime”.¹⁵⁹ He also was not working at the CIB as he had been transferred without prior notice.¹⁶⁰ This was powerful evidence of his independent recollection of what in fact occurred.
106. As for timing, Det MacKenzie’s evidence was that he took Mrs Brajkovic and Hudlin to the train station, leaving at about 2am.¹⁶¹ This accords with Mr Bennett’s evidence that he was back down on Level 3 at the time that Mr Brajkovic left the CIB, which must have been before 2am, as Mr Brajkovic was charged at around 2am. Mrs Brajkovic’s estimate in her statement to Shepherd¹⁶² that the statement was taken at 2am, was clearly incorrect.
107. Det MacKenzie’s evidence that he took Mrs Brajkovic to the train station, and Mrs Brajkovic’s statement confirming this,¹⁶³ directly contradicted Mr Brajkovic’s false assertion to the Premier that his wife, their child and Mr Hudlin “*were thrown out of the police station and forced to look for transport themselves to the house (Bossley Park)*”.¹⁶⁴
- 20 108. In her statement dated 9 February 1979, Mrs Brajkovic stated that she was shown a white plastic bag that contained a brown paper bag with shiny metal tubes which had red and green wires on them. This was clearly a description of the detonators. She then described the two sticks of gelignite as “two cardboard tubes with red printing wrapped in newspaper” and also described “some yellow and orange tubes with writing”, which it can be inferred were the flares.¹⁶⁵
109. The Petitioners summary of the trial evidence of Mrs Brajkovic is incomplete: PS [396]-[398]. In her evidence at trial she also agreed that she made a statement at the CIB on Level 5, that she told the truth in the statement and that it was her signature

¹⁵⁹ Ex 2.1-126, red p 4190: Trial (3 December 1980), T4088.

¹⁶⁰ T1348.40-.47 Inquiry (3 July 2024).

¹⁶¹ Ex 2.1-24, red p 823: Trial (16 May 1980), T777.

¹⁶² Ex 11.169, red p 1517: Statement of M Brajkovic, 3 May 1979, 2 [6].

¹⁶³ Ibid.

¹⁶⁴ Ex 11.151/11.168, red p 1419/1512: Letter of complaint from V Brajkovic to Premier, 24 February 1979, 1.

¹⁶⁵ Ex 4.1-JJJJ, red p 257: Statement of M Brajkovic, 9 February 1979, [5].

on the statement (Ex 4.1-JJJJ in the Inquiry).¹⁶⁶ Her evidence was that the white plastic bag, Ex HH in the trial, looked like the bag.¹⁶⁷ She did not take much notice of what she was shown and was not interested in it,¹⁶⁸ however agreed that she was shown green and red wires, attached to some shiny silvery tubes.¹⁶⁹ She gave evidence that there were three sticks of gelignite, however added that she was very tired.¹⁷⁰ She thought they were longer, separated not taped and around the same width as those in EX MM in the trial.¹⁷¹ When taken to the gelignite in the photograph EX MM in the trial and asked “What about the length of them, what do you say about the length of them, are they about that length?” and “Are they the length that you remember seeing?” Mrs Brajkovic replied: “*Very long. I don’t remember*”. When the clock was pointed out as a scale reference and she was asked again, she then replied, “*They were longer than that*”.¹⁷² In re-examination, she accepted that she told the police that there were two sticks,¹⁷³ although she maintained later that it was three not two.¹⁷⁴ They were brown but she did not remember if there was writing on the outside.¹⁷⁵

110. Mrs Brajkovic gave evidence when shown EX LL that she was shown a Croatian paper and she could read it, however claimed it was a paper called Spremnost, not Hrvatska,¹⁷⁶ while later agreeing she was shown the newspaper,¹⁷⁷ then saying it was Spremnost, and it was not wrapped around the sticks. She denied seeing flares.¹⁷⁸

111. Mrs Brajkovic did not dispute in her IA statement that two detectives showed her a Croatian newspaper, a white plastic bag, “something sticks in the bag you now, long yellow, and they also show me some wires”, and that she had not seen them before.¹⁷⁹ The 3 May 1979 statement to Det Sgt Shepard by Mrs Brajkovic¹⁸⁰ was,

¹⁶⁶ Ex 2.1-103, red p 3418: Trial (20 October 1980), T3342.

¹⁶⁷ Ibid red p 3420: T3342B.

¹⁶⁸ Ibid red p 3422: T3342D.

¹⁶⁹ Ibid red pp 3422, 3424: T3342D, T3343.

¹⁷⁰ Ibid red p 3424: T3343.

¹⁷¹ Ibid red p 3426: T3345.

¹⁷² Ibid red p 3245: T3344.

¹⁷³ Ibid red p 3426: T3345.

¹⁷⁴ Ibid red p 3428: T3347.

¹⁷⁵ Ibid red p 3426: T3345.

¹⁷⁶ Ibid red p 3425: T3344.

¹⁷⁷ Ibid red p 3428: T3347.

¹⁷⁸ Ibid red p 3427: T3346.

¹⁷⁹ Ex 11.169, red p 1517: Statement of M Brajkovic 3 May 1979, [6].

¹⁸⁰ Ibid.

on her own admission at trial of what she saw, incomplete. However, even in rejecting at trial that she ever saw flares, it confirmed that the “something sticks in the bag” she was shown referred to in that statement were sticks of gelignite and that the first time she asserted that there were three sticks was in her evidence at the trial.

10 112. It may be inferred that her trial evidence of three sticks was the result of conversations with Mr Hudlin, who erroneously nominated three sticks in his interview with Det Sgt Shepard, after having correctly said that there were two on 9 February 1979 when they were in front of him. Hudlin did attest to being shown flares at the CIB,¹⁸¹ and the Inquirer would accept that Mrs Brajkovic was likewise shown flares at the CIB as in her signed 9 February 1979 statement.

113. Det Krawczyk gave evidence at the Inquiry that he had a memory of Mrs Brajkovic reading her statement aloud and signing it.¹⁸² He gave evidence that his memory was clear, and his evidence in the trial in 1980 correct as to: trial Ex HH looking like the white plastic bag, trial Ex MM depicting the sticks of gelignite and trial Ex LL looking like the paper and Ex KK the flares that Mrs Brajkovic was shown in 1980.¹⁸³

20 114. It would not be accepted that Mr Bennett’s evidence did not accurately record the explosives that she was shown in the early hours of the morning, or that they were not the same sticks produced to the Dangerous Goods Branch: cf. PS [443], [448], [450]-[457]. Mrs Brajkovic’s 9 February 1979 statement also corroborated that she was shown two sticks, and described in her words the items she was shown. It faithfully recorded her evidence not only in this respect, but that she had never previously seen the items at the home.

30 115. This was important evidence for many reasons including eliminating her, a joint occupant of the home, as potentially being in joint possession of the item, and as evidence that in the early hours of the morning of 9th February 1979 there was corroboration from a non-police source of the description by police of the items

¹⁸¹ Ex 11.170, red p 1520: Statement of J Hudlin, 3 May 1979, 2 [5]; Ex 4.1-KKKK, red p 259: Statement of J Hudlin, 9 February 1979.

¹⁸² T2254.33-38 Inquiry (16 August 2024).

¹⁸³ Ibid T2246.16-2254.7.

found at the home, that is, it was evidence demonstrative in its descriptions, of non-fabrication of the possession of the gelignite at the home (cf. PS [330], [391]-[457]). This is particularly so given that none of the explosives could have come from Lithgow- a source posited at trial as the source for the explosives at the CIB- and the lack of evidence of any accessible ‘stash or cache’ of explosives at the CIB: cf. PS [414], [433], [443], [451]-[457]. The ‘hypothesis’ advanced by the Petitioners at [454]-[455] surrounding Mr Nekic’s evidence is pure speculation.

- 10 116. The statement of Mrs Brajkovic taken in the early hours of the morning by Mr Bennett, was also a further element contradicting Mr Brajkovic’s own various allegations about Mr Bennett being in the room with him and others at the CIB, following Mr Brajkovic abandoning an account which despite not naming him, apparently had Mr Bennett as “his assailant at the CIB” (cf. PS [946]). This is addressed further below at [167]-[188].
- 20 117. Mr Hudlin’s trial evidence as to what he was shown, where it contradicted police evidence, was internally inconsistent and unreliable, and it was properly rejected by the jury. Under cross-examination on the voir dire he gave evidence that when he signed his statement on 9 February 1979, he was satisfied that it was a truthful statement, and then when shown the statement, he affirmed that it was correct and truthful,¹⁸⁴ and later attempted to resile from this as to the number of gelignite sticks and asserting they were separate. The description of the detonators and the number of detonators was correct.¹⁸⁵
- 30 118. After initially saying the gelignite was about 15 inches long, when re-examined on the voir dire about the description “long”, Mr Hudlin indicated a length, which was approximated by Mr Lloyd-Jones as “about a foot” and corrected by Mr Hudlin to: “*Less than one foot*”.¹⁸⁶ We note that one foot is 12 inches long and that the gelignite, as examined by Butt was 290mm/11.42 inches long.¹⁸⁷ We note both that Mr Hudlin’s evidence at trial again contradicted this length, and that the summary in PS [399]-[406], [435]-[440] leaves out key details of this evidence. The evidence of Mr Hudlin as to the explosives, which contained discrepancies and was

¹⁸⁴ Ex 2.1-18, red p 607: Trial Voir Dire (8 May 1980), T567.39-40.

¹⁸⁵ Ibid red p 611: T571.

¹⁸⁶ Ibid red p 616: T576.

¹⁸⁷ Ex 4.1-LLLL, red p 260: Certificate of PL Butt dated 11 April 1979, 1.

unreliable, would be rejected insofar as it is relied on to contradict the evidence of Mr Bennett.

119. The trial evidence of Mrs Brajkovic, where it conflicted with that of Mr Bennett would also be rejected, given the discrepancies and the unreliability of her evidence, even in her own various accounts.

No reasonable doubt that gelignite and detonators were at the house as opposed to only present at the CIB sourced from a ‘stash’ or from Lithgow

- 10 120. Insofar as allegations of a stash or cache of gelignite, there was no evidence that there was such a stash at the CIB that night. The evidence contradicted this. Mr Bennett gave evidence at the Inquiry that he was not aware of any stash at the CIB,¹⁸⁸ and all officers rejected that there was such a ‘stash’.¹⁸⁹ There is no reasonable possibility that the gelignite viewed by Mr Bennett and others at Restwell Road, shown to Mrs Brajkovic at the CIB, and later taken to the Dangerous Goods Branch, was from any such source.
121. Relevant officers, including Mr Bennett, adamantly denied being involved in and never witnessed or heard of any discussion or word by police about Mr Brajkovic or other of the accused being “loaded up” with gelignite.¹⁹⁰
- 20 122. Mr Bennett gave evidence that during his time as a police officer, there were rumours of “load ups” but he never witnessed such conduct in other investigations or matters by police.¹⁹¹

¹⁸⁸ T1432.44-1433.7 Inquiry (3 July 2024); T1468.19-1469.18 Inquiry (4 July 2024).

¹⁸⁹ T490.25-491.11 Inquiry (3 April 2024) (Musgrave); T824.47-825.3 Inquiry (14 May 2024) (Jameson); T900.34-.39, T901.30-.45 Inquiry (15 May 2024) (Burke); T1001.34-.35 Inquiry (16 May 2024) (Howard); T1574.49-1575.1 Inquiry (5 July 2024) (Mackenzie); T1677.23-.48 Inquiry (5 August 2024) (Harding); T2220.42-.44 Inquiry (16 August 2024) (Krawczyk); T2636.27-.36 Inquiry (26 September 2024) (Wick).

¹⁹⁰ T235.5-.22 Inquiry (27 March 2024) (Kennedy); T248.24-.26 Inquiry (27 March 2024) (Milroy); T482.48-T484.35 Inquiry (3 April 2024) (Musgrave); T760.20-.23, T760.26-.28, T766.40-.44 Inquiry (13 May 2024) (Simmons); T793.23-.45, T793.47-T794.4 Inquiry (14 May 2024) (Jameson); T884.18-.23 Inquiry (15 May 2024) (Burke); T921.21-.27 Inquiry (15 May 2024) (Carroll); T1250.22-.32 Inquiry (1 July 2024) (Grady); T1290.21-T1291.20 Inquiry (2 July 2024) (Cook); T1404.28-.34 Inquiry (3 July 2024) (Bennett); T1558.25-.49 Inquiry (5 July 2024) (MacKenzie); T1776.6-T1777.5 Inquiry (6 August 2024) (Wilson); T2236.10-.25 Inquiry (16 August 2024) (Krawczyk); T2523.44-T2524.18 Inquiry (25 September 2024) (Jefferies); CAS [472], [475]-[476], [478], [480], [482], [488]-[491], [494]-[495], [498], [502], [505].

¹⁹¹ T1404.36-.47 Inquiry (3 July 2024).

123. The findings of the Wood Royal Commission do not suggest that all police officers were corrupt. There is no suggestion that Mr Bennett was ever investigated or named as a corrupt officer or knowing of and not disclosing such conduct. The evidence is the opposite.

124. When he read the Wood Royal Commission Report, Mr Bennett “*did not think it was rubbish at all. I was disappointed and dismayed at the extent of the findings that were, as I read, based upon evidence given by those who participated in the misconduct*”, and accepted that “*on the findings of Wood J, one could conclude that there was a pattern amongst some police who engaged upon such behaviour but I can tell you my experience was that not all police were corrupt- not all police were corrupt or engaged upon violent behaviour, but clearly some did*”.¹⁹²

125. Mr Bennett himself was Counsel Assisting investigating AFP misconduct in an Inquiry headed by the Hon. Justice Ian Harrison (then Harrison SC), during which they had access to some material from the work of the Royal Commission, he had also while at the bar represented police accused of misconduct and a defendant at trial who alleged misconduct, namely that he was beaten, where the participant subsequently, in the Royal Commission owned up to the misconduct.¹⁹³ The “Harrison Inquiry” is referred to as being on foot in the Wood Royal Commission report, immediately after reference to the fact that where evidence was collected in relation to members of NSW police, it was disseminated to the relevant authorities.¹⁹⁴

126. In relation to knowledge of police violence while Mr Bennett was a police officer, he gave evidence that he was an undesignated¹⁹⁵ detective where a person died in custody, and two police officers were charged with the death.¹⁹⁶ There was a general awareness that some in the police force would engage in “verbals”, and while at the CIB it was Mr Bennett who provided a report strongly advocating for the introduction of electronic interviews, and was out of the job the following

¹⁹² T1446.4-.6, T1446.14-.17 Inquiry (4 July 2024).

¹⁹³ T1405.3-.9 Inquiry (3 July 2024); T1446.6-.10 Inquiry (4 July 2024).

¹⁹⁴ Ex 13.13(a), red p 76: Royal Commission into the NSW Police Service Final Report: Volume 1 (Corruption) (Wood Royal Commission), 15 May 1997, [1.49]-[1.50].

¹⁹⁵ We note that there is a transcription error and that where it reads “a-a designated detective”, it should read “an undesignated detective”.

¹⁹⁶ T1402.39-1403.9 Inquiry (3 July 2024).

August.¹⁹⁷ Mr Bennett's conduct in these respects is also the opposite of that of a corrupt officer.

127. To the extent that accounts of Roger Rogerson (**Rogerson**) as to conduct of other police is relied on, he is a person of no credibility. To the extent that Rogerson told reporters of corrupt conduct at the CIB, Rogerson played no part in the Brajkovic raid. It is also relevant that Mr Bennett was on the Special Breaking Squad, not with Armed Robbery, and had not worked closely with Det Sgt Wilson and not at all, or at all recently, with several others on the raid that night, as outlined above at [51].
10 In addition, Mr Bennett left the CIB during the Croatian Six proceedings, and left the NSW Police Force not long after this, commencing a career as a barrister.

128. In any case, Rogerson was specifically asked about this case by Hamish McDonald and did not accept that there were plants or fabrication of evidence in the case of the Croatian Six. Mr McDonald records:

20 *"Rogerson said it was highly unlikely evidence could have been planted. 'The evidence was factual' he said. 'If you were going to do something really corrupt and expose yourself to a criminal charge of conspiring to pervert the course of justice, or perjury or any other pretty serious associated charge, you'd want to have guys with you whom you trusted implicitly, who you'd worked with before, knew them as friends, knew them as co-conspirators'*

On this night, the raiding party included officers from the Breakers and a Special Branch officer with whom he had never worked before. 'If you were looking at a conspiracy theory, you say at least you put a gang of blokes together who's worked together for years'".¹⁹⁸

30 129. In relation to supposed discrepancies with the source of the gelignite, we note that the Petitioner's summary of the evidence of Richard Whitehead as to the missing gelignite from the Wallerawang power station is in error where it describes the 'first theft' referred to in his statement at PS [133]. The first theft was between 16-20 November 1978 and was one box of TNC of 2 inch diameter.¹⁹⁹ The *second* was that summarised at PS [133] and the *third* that at PS [134]. His trial evidence was not different: cf. PS [135]. Moreover, as for the second theft, he gave evidence that

¹⁹⁷ Ibid T1403.11-.25.

¹⁹⁸ Ex 13.20, red p 152: Hamish McDonald, "Reasonable Doubt: Spies, Police and the Croatian Six", 151.

¹⁹⁹ Ex 11.53, red p 233: Statement of Richard Whitehead, Civil Engineer, Wallerawang Power Station, 2 April 1979, [3].

gelignite in various size cartridges and cortex were also kept in the magazines that were found unlocked, and he had only done a visual check for missing items. The gelignite kept in his store was only AN 60 gelignite, it looked like those in trial Ex H, and was exactly the same type as that Captain (Cpt) Barkley showed him in the store at Marangaroo.²⁰⁰ When the evidence is examined, there is no mismatch of his evidence with the gelignite recovered on 8 February 1979. In any case, as the Petitioners acknowledge later in their submissions, Mr Bebic confessed to stealing the explosives in his letter to the Attorney-General.²⁰¹ This admission must be a reference that included the AN60 found in the Lithgow raid, and this gelignite was not the source of any cache or ‘load up’.

130. Insofar as the reliance at trial on the detonators and gelignite from Lithgow as the source of a “load-up”,²⁰² the evidence of Cpt Barkley and Det Musgrave is important: cf. CAS [1451]-[1462], [1687]-[1691], [1695]-[1696], [1733]-[1749]. It is submitted that there are no missing detonators at any relevant time, and no remaining discrepancy, rather Cpt Barkley accepted that he may have made a mistake in his evidence as to the count *at the time of the trial*, as summarised below: cf. CAS [1736], [1748]-[1750], [1802]. The summary of the Petitioners in this respect, including tables, is again incomplete, the Petitioners confuse “detonating relay connectors” with detonators, and their submissions as to “*unaccounted for*” gelignite and detonators, and as to Det Musgrave taking possession of “*the detonators in the car*”, insofar as it is suggested that any apart from the four in the glovebox returned to Sydney, would not be accepted: cf. PS [187] – [207], [242], [519]-[527], [532]-[543], [549]-[550], [552], [571].

131. Briefly stated, it is clear that none of the gelignite or detonators discovered in Lithgow left Lithgow until around midday on 9 February 1979 when Det Musgrave returned to Sydney with the 4 detonators from the glovebox and the 11 ‘half’ sticks of gelignite, leaving the remainder of gelignite and detonators at Marangaroo. The 11 half sticks of gelignite were packed in sawdust in a hessian bag by Cpt

²⁰⁰ Ex 2.1-11, red p 337-8: Trial (29 April 1980), T305-6.

²⁰¹ Ex 5.3-1, red pp 44: Letter from Maksim Bebic to Attorney General, undated, 1.

²⁰² Mr Lloyd-Jones put in his closing address, insofar as gelignite, that “...there was ample time for the explosives to have been brought back from Lithgow.”: Ex 2.1-149, red p 4777: Trial (12 January 1981), T4692.

Barclay.²⁰³ The return of the 11 half sticks of gelignite to Sydney was well after the statements of 9 February 1979 had been taken from Mrs Brajkovic and Mr Hudlin.

10 132. Those 11 half sticks of gelignite were kept by Det Musgrave in a secure area of the old CIB Scientific and Technical building which itself was kept under heavy security,²⁰⁴ until their return to Cpt Barkley in a plastic bag on 3 April 1979, and still had sawdust on the cut half part when returned.²⁰⁵ There is no suggestion that the two half sticks of gelignite located and shown to Mrs Brajkovic in the early hours of 9 February, as listed on 16 February by Det Sgt Wilson (Ex 4.2-39/Committal Ex 97) and as later photographed in Ex 2.1- MM on 16 March 1979, certified by Mr Butt on 11 April 1979 and produced to the Court in the trial by Mr Butt on 29 August 1980,²⁰⁶ had sawdust on them.²⁰⁷

133. On 12 February 1979, Cpt Barkley at the Marangaroo store made a full check and filled out a document headed “Explosive Ordnance Incident Report”, the full check being in relation to the items listed in that document.²⁰⁸ Cpt Barkley gave evidence that the reference on red p. 37 at Section # 37 [10] to “Explosives” from the “raid” being “stored at 223 Sup Coy” in that document, was to gelignite and detonators, and included those from Hassan’s Wall.²⁰⁹

20 134. The reference to 15 “detonating relay connectors” at the end of the document, is what was referred to on the page before in Section # 37 [10] where it also said “detonating relay connectors”, denoting that as at 12 February 1979 the *delay relay connectors* were held by the NSW Police Ballistics Section.²¹⁰ Contrary to the Petitioner’s submissions, detonating relay connectors are not to be mistaken for detonators: cf. PS [187]. The difference can be clearly seen in the July 1979 Australian Bomb Data Centre document (Ex 20.60) where at red p.118 Figure 1, a

²⁰³ Ex 2.1-13, red p 395: Trial (1 May 1980), T362 (Barkley); Ex 2.1-9, red p 297: Trial (24 April 1980), T246 (Musgrave).

²⁰⁴ Ex 2.1-9, red p 297: Trial (24 April 1980), T246 (Musgrave).

²⁰⁵ Ex 2.1-37, red pp 1040-1: Trial (5 June 1980), T990-1.

²⁰⁶ Ex 2.1-89, red p 3052: Trial (29 August 1980), T2977.

²⁰⁷ Mr Lloyd-Jones did not cross-examine Butt.

²⁰⁸ Ex 15.12, red p 34-8: Ordnance Report and Transcription of Explosive Ordnance Incident Report produced by Captain Gary Barkley, 8 February 1979; Ex 2.1-13, red p 394: Trial (1 May 1980), T361; T2862.36-2863.15 Inquiry (1 October 2024).

²⁰⁹ T2863.36-.50, T2864.1 Inquiry (1 October 2024); Ex 15.12, red p 37: Explosive Ordnance Incident Report and transcription produced by Captain Gary Barkley, 8 February 1979, 2 Item 37 [10].

²¹⁰ Ex 15.12, red pp 37-8: Explosive Ordnance Incident Report and transcription produced by Captain Gary Barkley, 8 February 1979, 2-3.

typical “L” series detonator is depicted, as opposed to red p. 120 Figure 4, where the two designs of detonating/delay relay connectors are depicted.

- 10 135. That the eight detonators were in Cpt Barclay’s store was substantiated by the Report of Major Smith dated 27 February 1979, which referenced the source of the document as a teleconference with Cpt Barclay of the same date, also noting on the first page in handwriting “This detail is excellent. The technical details provided by Cpt Barclay are just what we want for the (undecipherable)”.²¹¹ The Running Sheet in relation to the Lithgow explosives also noted against the date 27 February 1979 at 9am: “Long telecon with Cpt Barclay confirming items recovered and sequence of events”.²¹² Barclay confirmed that he was the source of the information²¹³ and noted some errors in the document Ex 20.64, namely there should be a reference to found in “the remainder of the car” (ie. not in the glovebox), rather than “car boot” on red p 149, and that the first item listed as found in the glove box on red p 148 was not found in that location.²¹⁴
- 20 136. As at 27 February 1979, as noted by Major Smith, Cpt Barclay was holding most of the AN60, the six TNC cartridges, cortex and “all detonators except the four found in the glovebox” (emphasis added).²¹⁵ That was, as at 27 February 1979, Barclay held: 20 number 6 detonators with yellow wires; 8 L-series detonators with delay numbers not known; 69 sticks of gelignite; six complete TNC cartridges; the Cortex, and all of the other detonators “except the four found in the glovebox”.²¹⁶ Cpt Barclay confirmed that as at 27 February 1979, what was recorded by Major Smith was correct.²¹⁷
137. Cpt Barclay agreed that Det Musgrave’s evidence in relation to detonators, namely that Det Musgrave only had the 4 detonators from the glovebox (depicted in Ex 4.1-

²¹¹ Ex 20.64, red p 148: Commonwealth Police Minute titled ‘Explosives Recovery – Lithgow’, see “Reference” and also the handwritten note.

²¹² Ex 20.53, red p 128: Running Sheet titled ‘Explosives Recovery – Lithgow 8 Feb 79’, 8 February 1979, 3.

²¹³ T2844 Inquiry (1 October 2024).

²¹⁴ Ibid T2864.24-.33; Ex 20.64, red pp 148-9: Commonwealth Police Minute titled ‘Explosives Recovery – Lithgow’.

²¹⁵ Ex 15.12, red pp 34-8: Transcription of Explosive Ordinance Incident Report produced by Captain Gary Barkley, 8 February 1979; Ex 2.1-6, red p 150: Trial (12 April 1980), T126; T2865.12-.17 Inquiry (1 October 2024).

²¹⁶ Ex 20.64, red pp 148-150: Commonwealth Police Minute titled ‘Explosives Recovery – Lithgow’, 27 February 1979; T2865.12-.17 Inquiry (1 October 2024).

²¹⁷ T2863.27-.34 Inquiry (1 October 2024).

Y), accorded with this accurate report of 27 February 1979,²¹⁸ and further, that it was possible on reflection that he/Cpt Barclay was mistaken in his evidence at trial²¹⁹ where he said that at that time the only detonators he had from the car were the four detonators from the glovebox. This was reinforced by the fact that, as at 27 February 1979, he still had the eight detonators in his custody but did not have the four. In any case, his evidence that, as at the time of *trial*, he had the four detonators does nothing to dislodge the evidence as to the certain situation that the eight detonators were in his custody from 8 February 1979, and the four were not, with no reference to any change in custody of the eight detonators in Cpt Barkley's police statement of 3 April 1979, a statement which does refer to the return of the 11 half-cartridges that day.²²⁰

138. We also note that Counsel Assisting and the parties did not have the 27 February 1979 report when cross-examining Det Musgrave on 2 April 2024 where he repeatedly asserted that he did not have the 8 detonators, they had been taken to Marangaroo and that as at 3 April 1979 they remained in the store at Marangaroo.

139. The evidence soundly demonstrates that all of the detonators from the Valiant were held overnight on 8 February 1979 at Lithgow police station, and the eight detonators were still with Barkley as at 27 February 1979, and on 3 April 1979. The four detonators from the glove box did not return to Sydney until after midday on 9 February 1979. This all eliminates any reasonable possibility that Mrs Brajkovic was shown detonators or gelignite from the items seized at Lithgow. While Mr Bennett's submissions are that the Inquirer would find there were not "missing detonators" (cf. CA [3240]), he otherwise adopts the submissions as to there being no reasonable possibility of a cache of explosives being used to 'load up' Mr Brajkovic: CA [3239]-[3241].

140. There is likewise no suggestion in the evidence supporting any reasonable possibility that the explosives listed on 16 February 1979, photographed on 16 March 1979 and submitted to the Dangerous Goods Branch on 28 March 1979 were from Lithgow or from any police "stash" or "cache".

²¹⁸ T2867 Inquiry (1 October 2024); Ex 2.1-9, red p 276: Trial (24 April 1980) T243.30-.40 (Det. Musgrave); T434.44-.14, T436.26-.36, T443.40-.42, T447.26-.37, T448.30-.42, T449.23-.28, T451.34-.50 Inquiry (2 April 2024).

²¹⁹ Ex 2.1-12, red pp 349-50: Trial (30 April 1980), T382-3.

²²⁰ Ex 11.54, red p 236-8: Statement of Captain Gary Barkley, 3 April 1979.

Mr Bennett did not hear any sounds coming from the interview room to denote beating or see injuries when Mr Brajkovic left to be charged

- 10 141. Mr Bennett did not hear any sounds coming from the interview room consistent with beating.²²¹ It is submitted that he would not necessarily have heard or otherwise been aware of any such conduct. It is important to note the evidence of Mr Hudlin on the voir dire at trial that he was sitting on the main office floor on the Armed Hold Up side, 3 metres from the interview room when he saw Mr Brajkovic come out of that room escorted and “walking normally”.²²² In his statement to Det Sgt Shepard he also gave no evidence of hearing any beating, albeit he described seeing injuries on the exit of Mr Brajkovic from the room.²²³
142. Mr Brajkovic gave evidence on the voir dire²²⁴ that when he came out of the interview room he saw Mr Hudlin “and I did see surprise on his face”.²²⁵ If this evidence is accepted, it supports that Mr Hudlin did not hear any beating despite his proximity to the room. That is, even if the Inquirer was to accept that there was a beating, it is probable that it was not audible to those from at least 3m away.
- 20 143. Mrs Brajkovic does not mention having any information as to injuries to her husband that night in her statement to Det Sgt Shepard, simply noting that on the way to the train station with Mr Hudlin and the police “We also ask about Vic, what’s happen and all that”.²²⁶
144. Mr Bennett has consistently given evidence that he saw Mr Brajkovic leaving the floor and did not see any injuries on him. His evidence at the Inquiry was that he was sitting at his desk which was at the other end of the floor on the Special Breaking Squad side, 20 metres away.²²⁷ He did not have a good look at Mr Brajkovic and he would not necessarily have seen injuries on Mr Brajkovic, if there were apparent injuries at the time that he left the CIB.²²⁸

²²¹ T1393.20-.25 Inquiry (3 July 2024).

²²² Ex 2.1-18, red p 615: Trial Voir Dire (8 May 1980), T575.

²²³ Ex 11.170, red p 1520: Statement of J Hudlin, 3 May 1979, [5]-[6]; Ex 2.1-104, red pp 3447, 3449, 3470: Trial (21 October 1980), T3364, T3366, T3387.

²²⁴ Ex 2.1-18, red p 572: Trial Voir Dire (8 May 1980), T538.12-.14.

²²⁵ T3222.35-40 Inquiry (6 November 2024).

²²⁶ Ex 11.169, red p 1517: Statement of M Brajkovic, 3 May 1979, [6].

²²⁷ T1394.20-.37 Inquiry (3 July 2024).

²²⁸ Ibid T1394.7-.37.

145. The evidence of Mr Brajkovic as to what occurred in the interview room insofar as his allegations against Mr Bennett are not credible and would be completely rejected. This is so in relation to the allegations made to Det Sgt Shepard where despite not naming any officer responsible for the beatings he apparently was at that time referring to Mr Bennett as “his assailant” (see PS [946]), and the allegations as they read following his letter of 30 January 1980 when he first nominated “Bennett” as having to stand “Instead name Harding”,²²⁹ and also the various supplementary allegations made thereafter on the voir dire at trial and in the limited allegation before the jury against Mr Bennett. The varying accounts are examined in detail below at [160]-[163].
146. Mr Bennett’s repeated denials of not being present in the interview room either at the time of the alleged assaults or surrounding the times of the alleged assault, and also his evidence of not witnessing, hearing of or having any knowledge of any assault on Mr Brajkovic, have been consistent and credible since 1979. His evidence would be found to be honest and would be accepted: cf. PS [949]-[958].
147. If the submission of Counsel Assisting at [3272] (see also PS [947] adopting this submission) refers to Mr Bennett where it states that “it is highly probable that other officers, particularly those who attended Bossley Park and remained at the CIB” would have knowledge of the assault, this would be rejected. However, it appears that it does not refer to Mr Bennett, and we note that Mr Bennett was not an officer who remained at the CIB. The submission of Counsel Assisting at [3274] fortifies that Counsel Assisting is not to be taken as referring to Mr Bennett as likely knowing of any such assault. See also CAS [2334]. Mr Bennett’s evidence that he had no such knowledge would be accepted.²³⁰ The Petitioner’s Submissions to the contrary in relation to Mr Bennett, would be rejected.
148. Additionally, while being aware on 9 February 1979 from the Timeline of the assertion by other detectives of a Record of Interview being conducted and of its rejection from admission at trial, when asked in the Inquiry by Counsel Assisting

²²⁹ Ex 11.151/11.210, red p 1423/1598: Letter of complaint from V Brajkovic to Premier, 30 January 1980; Ex 5.5-3/11.156, red p 592/1145: Record of Interview between Det Sgt E Shepherd and V Brajkovic, 20 April 1979.

²³⁰ T1393-4, T1472.31-.50, T1473.1-.8 Inquiry (3 July 2024).

about whether at the time, or subsequently, he had seen the record of interview, Mr Bennett replied “I don’t think I’ve *ever* seen that document. No” (emphasis added). When then shown the document Mr Bennett confirmed that he had never seen it before.²³¹ His consistent evidence that he never questioned Mr Brajkovic and was not in the interview room with him apart from the first minutes would be accepted.

Presence at the typing of the “Timetable of Events and Notes in Relation to the Arrest of Brajkovic” at the AHU Squad Office on 9 Feb 1979 (Tab 11.89)

- 10 149. Mr Bennett has always candidly given evidence about the creation of these notes, and was the first to refer to them at the committal hearing²³² where he was the first witness from the Bossley Park raid to give full evidence. He there described them as “a resume of the offence that has taken place”, that were typed by Det Harding, that he saw being typed, with other members of the team there and the notes being available to the team to refer to, detailing that the notes were commenced early the following morning and been completed on return to work that next morning. When asked if he was present to assist, Mr Bennett said “Yes on the aspects that I had knowledge of”. Mr McCrudden, who was cross-examining at the time, was informed that Det Harding would have the notes.
- 20 150. Similarly, during the evidence of Det Harding, he was asked by Mr Goldberg whether it was simple to subpoena the notes, and he offered to bring the notes in if he was directed to do so.²³³ However it appears that, despite ample evidence being given about the notes, there was neither subpoena nor any direction prior to or during the trial. This is despite Mr McCrudden giving evidence that at the time defence counsel regarded “the scrum down” as “notorious”²³⁴.
- 30 151. Mr Bennett’s involvement in relation to the Timeline (Tab 11.89) was innocent, and as set out above, and testified at trial and on the Inquiry, he gave evidence at trial in accordance with his recollection, departing from matters in that document where they did not accord with his recollection and including matters from his recollection that were not in the document. This included in relation to:

²³¹ Ibid T1399.26-.28, T1400.26-.32.

²³² Ex 2.3-16, red p 6577-8: Committal (13 August 1979), T957-8.

²³³ Ex 2.3-36, red p 7887: Committal (19 September 1979), T2219.

²³⁴ Ex 8.6, red p 50: Statement of Mr James McCrudden annexing Statutory Declaration signed 9 January 2023, 29 September 2023, [26], quoted at PS [45].

- (a) Not searching in the home, as opposed to the timeline assertion that on red p.1289 that “*Bennett and Krawczyk searched kitchen and lounge room area*”;
- (b) Going into the workshop room and taking a cursory look in the white paper bag and seeing its contents shortly before leaving the house; and
- (c) The statement being taken from Mrs Brajkovic in the early hours of the morning, not as positioned in the Timeline *at or around 11.35pm and before 11.55pm*.

10 152. Moreover, those matters he had knowledge of that were set out in the document were largely not in dispute, were supported by the evidence of the Observation Squad officers, or were not controversial. It was not in dispute that the police had arrived at the home at around 10.15pm²³⁵ (Milena Brajkovic told Det Sgt Shepard that she went to bed “at about a quarter past ten” and it was just as she got into bed that the cars came “very fast”), or that prior to this there was a meeting at Prairie Vale Road. Dets Cook and Robinson gave evidence²³⁶ that they had picked Det Krawczyk up and taken him to that meeting. There was no issue that there were three officers, two of whom were Det Sgt Wilson and Mr Bennett, who went to the rear door of the home, and evidence supporting that Det Krawczyk was with them would be accepted for the reasons examined in detail above. The conversations with Mrs Brajkovic and Mr Hudlin on entry to the home were largely not controversial, 20 and there was no issue that she told police her husband was not there.

153. Mr Bennett’s evidence that he called out “He’s not here, have a look around” was supported by the evidence at the committal hearing of Det Cook,²³⁷ who was not present at the note taking, and not a member of the Special Breaking Squad or the Armed Hold Up Squad. As noted above, Det Cook also gave evidence at the committal hearing, voir dire and trial both that he saw Det Harding walking towards the house with a white bag in his left hand.²³⁸ Contrary to the submissions of the Petitioners (PS [357]), Det Cook can hardly be regarded as a corrupt officer.

²³⁵ Ex 2.1-18, red p 585: Trial Voir Dire (8 May 1980), T548; Ex 11.169, red pp 1516: Statement of M Brajkovic, 3 May 1979, [3]-[4].

²³⁶ Ex 2.1-22, red p 754: Trial (14 May 1980), T708/10; Ex 2.3-21, red p 6982: Committal (29 August 1979), T1350.

²³⁷ Ex 2.1-21, red p 6984: Committal (29 August 1979), T1352.

²³⁸ Ibid red p 6985: T1353; Ex 2.1-14, red p 447: Trial Voir Dire (2 May 1980), T416; Ex 2.1-35, red pp 999, 1001: Trial (3 June 2024), T950, T952.

154. There was no dispute in the trial that when inside the house, Mr Bennett guarded Mr Brajkovic or that Mr Brajkovic was taken into the front room (“the workshop”) with Det Harding and Det Wilson, noting that it was in dispute that Mr Bennett was also there at that time. It was not in dispute that Det Krawczyk searched the house, or that Mr Brajkovic was conveyed back to the CIB in a car with Mr Bennett, Det Sgt Wilson and Det Krawczyk, nor that this occurred before midnight,²³⁹ nor that the police car driven by Mr Bennett was the first to arrive back to CIB Headquarters, nor that Mr Brajkovic was taken into the interview room. It was not in issue that a statement was taken from Mrs Brajkovic by Mr Bennett at the CIB in the early hours of the morning, and that she was shown relevant items at that time, most of which she did not dispute being shown. There was also no dispute that Mr Brajkovic was charged at around 2am. This all supports that Mr Bennett’s presence at the recording of the Timeline was not corrupt.

155. Nor was Mr Bennett’s statement or his evidence at committal and trial, which would be accepted as given honestly and from his independent recollection. He did not give evidence as to matters otherwise on the timeline that he did not witness.

156. It is quite wrong to suggest that the exchange between Det Sgt Wilson and Mr Brajkovic about returning to the CIB was a “Wilson/Bennett verbal” and the submission is in any case is immediately contradicted by the Petitioners themselves accepting that the exchange “likely actually occurred”: cf. PS [897]-[899]. This submission supports that the exchange occurred as recorded in the Timeline, and recounted in evidence by Mr Bennett and Det Sgt Wilson. It says nothing against the evidence of explosives being located at the premises.

157. To the extent that there are any findings in relation to this document or that meeting, it is submitted that there would be no finding that the involvement of Mr Bennett was a corrupt one. To the contrary there would be a finding that insofar as Mr Bennett, his involvement and any use of the document was innocent.

Items conveyed to the Dangerous Goods Branch by Mr Bennett and certified by Mr Butt

158. On 28 March 1979, Mr Bennett conveyed the gelignite, detonators and flares to the Dangerous Goods Branch. As stated in his evidence at trial, Det Sgt Wilson phoned

²³⁹ Ex 2.1-17, red p 489: Trial Voir Dire (7 May 1980), T457.

him on 26 March 1979 and requested that he do so, and the items were conveyed on 28 March 1979 and handed to Mr Weatherstone who signed the receipt portion of the Exhibit Examination Form.²⁴⁰ His evidence at the Inquiry was that the description in that document of the items accorded with his recollection and with the evidence that he gave at trial.²⁴¹ The request was to keep the items intact so that they could be produced to the Court in the form in which they were found.²⁴² That was the way they were when shown to Mrs Brajkovic.²⁴³

10 159. Mr Butt certified his analysis of the items on 11 April 1979. The gelignite was later produced in the trial by Mr Butt.²⁴⁴

Mr Brajkovic's evidence as to there simply being more detail given of what he told Det Sgt Shepard, and as to why there were changes in his account from that given to Det Sgt Shepard

20 160. The evidence of Mr Brajkovic to the Inquiry that he was not able to check what he said to Det Sgt Shepard and was not asked if he had anything further to say, was directly contradicted by what occurred in the interview itself, as recorded at the end of the interview, namely that he was given the interview to read and asked if there was anything further he wished to say.²⁴⁵ This was pointed out to Mr Brajkovic by the Inquirer.²⁴⁶ Mr Brajkovic ultimately agreed there was no limit put on what he could have told Det Sgt Shepard at that time.²⁴⁷

161. The later evidence of Mr Brajkovic before the Inquiry that there were conversations before the interview and during the interview where Det Sgt Shepard would say "No, no, no, we don't want it" and "Well, I'm not interested about that one. Just continue what's happened to you" or "We are not interested. We want only about your complaint and tell us about that one",²⁴⁸ is also entirely contradicted by the

²⁴⁰ Ex 11.104, red p 1307, 1309: NSW Police Specimen Exhibit Examination Form for explosives, 28 March 1979.

²⁴¹ T1489.16-.18 Inquiry (4 July 2024).

²⁴² Ibid T1489.22-.25.

²⁴³ Ibid T1490.1-.4.

²⁴⁴ Ex 2.1-89, red p 3052: Trial (29 August 1980), T2977.

²⁴⁵ T3256.38-47, T3257.28-3258.27 Inquiry (7 November 2024); Ex 5.5-3/11.156, red p 596/1449: Record of Interview between Det. Sgt E Shepherd and V Brajkovic, 20 April 1979.

²⁴⁶ T3256.38-47, T3257.28-3258.27 Inquiry (7 November 2024).

²⁴⁷ Ibid T3257.42-.45.

²⁴⁸ Ibid T3259-60.

record of the interview itself which involves open ended questions, long answers and recorded answers that travel well beyond the complaint itself.

162. The assertions of Mr Brajkovic that Det Sgt Shepard limited what Mr Brajkovic could say is also inconsistent with:

(a) Mr Brajkovic's earlier agreement in cross-examination at the Inquiry that Det Sgt Shepard "put absolutely no constraints on you", saying "That's correct. That's correct";²⁴⁹ and

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(b) the concession in 1980 under cross-examination by the trial prosecutor on the voir dire that there was no restriction put on him by Det Sgt Shepard, namely that it was "not that he told me what I could say or not to say. It was only my understanding to see his position" and further when asked "He certainly did not restrict you, he did not say 'you should not go into this?'" Mr Brajkovic responded "No, he did not say "tell this and tell this and tell this". He then purported to say that it was only after the second day that Det Sgt Shepard said they would come tomorrow and they were interested only about the letter he wrote to the Premier".²⁵⁰ However, we note that there was no further interview after the second day, and as Mr Brajkovic conceded in response to questions to the Inquirer, and as the transcript records, there was no limit put on him at the end of the second day.

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163. It is submitted that these attempts to explain away the large discrepancies and inconsistencies with his evidence is yet another example of Mr Brajkovic being prepared to throw truth to the wind.

The credibility of Mr Brajkovic in relation to matters exposed by the trial prosecutor on the voir dire, and allegations made against Mr Bennett as to conduct said to have occurred at the CIB

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164. There were issues with the credibility and reliability of Mr Brajkovic established on the voir dire at trial, only some of which overlap with matters which were explored in some detail in the Inquiry on behalf of Mr Bennett. The cross-examination by the trial prosecutor established that Mr Brajkovic:

²⁴⁹ T3206.29-.30 Inquiry (6 November 2024).

²⁵⁰ Ex 2.1-18, red p 583: Trial Voir Dire (8 May 1980), T546.

- 10 (a) never said anything to Det Sgt Shepard about, when outside, going within 20 feet of the police car (Helson's car);²⁵¹
- (b) gave further inconsistent versions about his position and when it was that he moved to the scrub tree;²⁵²
- (c) never said anything to Det Sgt Shepard about waving to the police (explored in further detail on the Inquiry, as set above at [34]-[44]);²⁵³
- (d) told Det Sgt Shepard a different account of throwing himself on the ground;²⁵⁴
- (e) told Justice Maxwell that he became paralysed when "the new cars" came and people were running around and was shaking and "at that moment, I throw myself down", whereas he told Det Sgt Shepard that it was because people said "shoot" or "don't shoot";²⁵⁵
- (f) did not mention at all to Det Sgt Shepard that Mr Hudlin was assaulted in any way by Det Harding, either with the torch or his hand grabbing his hair;²⁵⁶
- (g) claimed that Mr Bennett called him into the workshop, not Det Sgt Wilson;²⁵⁷
- (h) contrary to what he told Det Sgt Shepard, gave evidence on the voir dire that he did not ask to see the explosives at the CIB.²⁵⁸

20 165. The assertion on the Inquiry, both in Mr Brajkovic's 2023 statement to the Inquiry and his oral evidence, that all of his accounts of evidence in the trial, including the voir dire, were the same, including the assertion at the Inquiry in relation to allegations relating to Mr Bennett that *'There's no difference'*, the alternative account that there was simply more detail, and the reasons proffered,²⁵⁹ should not be accepted as grounding the vast discrepancies, inconsistencies and additions to his evidence in relation to those allegations. The description of "more detailed evidence" is maintained in the Petitioner's submissions: PS [923].

166. The Petitioner's submissions at all times purport to present a coherent account by Mr Brajkovic, including insofar as allegations against Mr Bennett. The attempt to

²⁵¹ Ibid red p 577: T540.

²⁵² Ibid red p 577: T540.

²⁵³ Ibid red p 577: T540.

²⁵⁴ Ibid red p 578: T541.

²⁵⁵ Ibid red p 578: T541.

²⁵⁶ Ibid red p 583: T546.

²⁵⁷ Ibid red p 584: T547.

²⁵⁸ Ibid red p 586: T549.

²⁵⁹ Ex 15.4, red pp 5, 9: Statement of V Brajkovic, 26 October 2023, 2 [15], 6 [26]-[27]; T3185-6 Inquiry (6 November 2024).

present Mr Brajkovic as “a reliable narrator of events in the interview room at the CIB”, simply does not survive scrutiny insofar as allegations against Mr Bennett: cf. PS [871]-[874], [901], [921]-[926], [949], [1074] Table re Brajkovic, [1045], [1087], [1089], [1090], [1102], [1873]-[1874]. In addition to those aspects already examined, there are further egregious aspects of incongruence, material inconsistencies and purported additions when it comes to Mr Brajkovic’s allegations as to what occurred relevant to Mr Bennett at the CIB.

- 10 167. In the account given to Det Sgt Shepard on 19-20 April 1979, Mr Brajkovic alleged that an unnamed tall man assaulted and strangled him with a towel, and that another officer, Det Harding, was going in and out of the interview room and that at the conclusion, Det Harding entered the room and apologised to him for the conduct of others. That this original allegation as to the conduct of the unnamed man of strangulation and assault was apparently levelled against Mr Bennett is now asserted by the Petitioners who say Mr Brajkovic initially thought “the name of his assailant was Bennett”: PS [946].
- 20 168. The Petitioners also assert that it would be “a mischaracterisation of the letter of 30 January 1980 for it to be submitted to the Inquiry that Brajkovic withdrew his complaint against Bennett”: PS [872]. However, Mr Brajkovic certainly did abandon any suggestion of the involvement of Mr Bennett in any beating of him, confirming at the Inquiry in relation to Mr Bennett that “*he was not involved in any beating*”.²⁶⁰ At the Inquiry Mr Brajkovic also gave evidence that the car driver he called ‘Harding’, “*was not in the room. He was not in the room*”.²⁶¹ While the Petitioner’s submissions persist in endeavouring to simply characterise the interview as getting the names mixed up (PS [871]-[873]), this would not be accepted, as in truth, the allegations of Mr Bennett having any involvement in any beating, or being present in the room, were withdrawn.
- 30 169. In any case, even accepting the account of a name substitution alone, the allegations against Mr Bennett changed completely in key respects by the time of the voir dire at trial, from those alleged against ‘Harding’. This evidence is examined below. It is submitted that the reason for the material discrepancies is that the allegations

²⁶⁰ T3191.12-.14 Inquiry (6 November 2024).

²⁶¹ Ibid T3214.49-.50.

against Mr Bennett were not true. They were aimed at him in the voir dire and the trial both because Mr Brajkovic needed to name a person to be ‘Harding’ in his Shepard narrative, and he needed to discredit Mr Bennett in the trial. This and the development of the false account is expanded on below.

170. At least by the time of the committal hearing, Mr Brajkovic knew that Det Harding had in fact taken him to be charged, however he had told Det Sgt Shepard that it was “*some other Detective, not Harding*” who had taken him to be charged.²⁶²

10 171. At the Inquiry, Mr Brajkovic accepted that at the time of the committal hearing, Mr McCrudden was using his instructions (given every few minutes), and that Mr McCrudden had a copy of his interview with Det Sgt Shepard,²⁶³ when allegations were put:

(a) On 15 August 1979 to Det Sgt Wilson that while at the CIB, Mr Brajkovic was showing signs of injury by 1am, and that he was beaten on several occasions which was known to Det Sgt Wilson;²⁶⁴

(b) On 15 August 1979 to Det Morris that he and another officer who defence could not name at that time, beat Mr Brajkovic in the interview room (noting that Mr Bennett had already given evidence);²⁶⁵

20 (c) On 18 September 1979 to Det Harding that he beat, strangled and kicked Mr Brajkovic.²⁶⁶

172. However when Mr Bennett was called at the committal hearing on 13 August 1979, despite him giving evidence that he was the driver of the car back to the CIB, there were no allegations put to him that he entered the interview room with other police officers, or that he took his notebook and questioned Mr Brajkovic about Serbians or Croats or human rights or other topics, or that he re-entered the interview room after Mr Brajkovic was beaten, or that he knew police beat Mr Brajkovic, or that he apologised.²⁶⁷ Mr Brajkovic accepted in evidence at the Inquiry, that at the

²⁶² Ibid T3214.30-.40.

²⁶³ T3121.50-3123 Inquiry (5 November 2024); T3189.26-.39 Inquiry (6 November 2024).

²⁶⁴ Ex 2.1-18, red pp 6684-5: Committal (15 August 1979), T1060.

²⁶⁵ Ibid red p 6747: T1123.

²⁶⁶ Ex 2.3-35, red p 7836: Committal (18 September 1979), T2168.

²⁶⁷ T3190.5-.50, T3191.1-.14 Inquiry (6 November 2024).

time of Mr Bennett's cross-examination, he was there giving instructions to McCrudden.²⁶⁸

173. It followed from the change in the allegation made at the committal hearing, now alleging that it was Det Harding who beat him, that Mr Brajkovic could no longer assert that Det Harding was responsible for the conduct alleged against the officer named as 'Harding' in the interview with Det Sgt Shepard.

10 174. It was only after having heard the evidence at the committal and having also received the depositions, that Mr Brajkovic wrote on 30 January 1980 to allege
"Instead name Harding must stand Bennett all during interview".²⁶⁹ The evidence at committal and the depositions had by that time each confirmed that Mr Bennett was the one who gave at least two critical pieces of evidence against him: first, of seeing the white plastic bag and its contents at the home; and, second, that he was the officer who took a statement from Mr Brajkovic's wife at the CIB as to the contents of the white plastic bag. It is submitted that the simple explanation for the 30 January letter was that he now needed someone else to inculcate given the allegations made against 'Harding' to Det Sgt Shepard could no longer be made against Det Sgt Harding (as he was now alleged to be the assailant), and Mr
20 Brajkovic also now understood that it was critical to his defence case to undermine the credibility of Mr Bennett. Mr Brajkovic agreed at the Inquiry that by that letter, after the committal hearing, he "*simply substituted the allegations that he said were Harding when he spoke to Shepherd, to Bennett*".²⁷⁰

175. However, that is not all that occurred, wrong as it was to make such allegations against Mr Bennett. There are ample holes in the various accounts that Mr Brajkovic gave, as well as the fact of the taking of the statement from Mrs Brajkovic in the early hours of the morning, to completely discredit the allegations that were made against Mr Bennett from the time of the trial. The bases for this submission are
30 summarised below with changes and additions by Mr Brajkovic underlined.

176. First, the account given to Det Sgt Shepard by Mr Brajkovic about entering the CIB was that on entering, Det Sgt Wilson took the suitcase from him and from the

²⁶⁸ Ibid T3180.

²⁶⁹ Ex 11.151/11.210, red p 1423-4/1598-9: Letter of Complaint from V Brajkovic to Premier, 30 January 1980.

²⁷⁰ T3216.15-.17 Inquiry (6 November 2024).

entrance Mr Brajkovic was taken to the interview room²⁷¹ where he claimed to have been left alone. On the voir dire he gave evidence that Det Sgt Wilson took the typewriter from Mr Bennett, and Mr Brajkovic was left “kneeling upon the briefcase” on the floor of the CIB, before Det Sgt Wilson returned and then took the briefcase from him and he was then left on the right side of the main office where he could see all the property before Det Sgt Wilson took him to the interview room and he was left for 15 -30 minutes by himself.²⁷² In the trial he said that he was left in the main office of the CIB with a suitcase, Det Sgt Wilson then returned and he went with him and could see all the property near the front two doors and Det Sgt Wilson led him into the interview room where he was left for some time.²⁷³ At the Inquiry he gave a version of being left on the CIB floor and demonstrated straddling the suitcase. These various accounts were inconsistent, departed radically from being taken straight to the interview room and would not be accepted.

177. Second, the various accounts given as to what occurred following the allegation of Det Morris hitting him in the chest all varied. In his account to Det Sgt Shepard²⁷⁴ he claimed that Det ‘Harding’ entered and stayed with his hands behind his back while Det Sgt Williams/Wilson questioned him about family in Croatia, then all the detectives left and he was left on his own and he could see Det ‘Harding’ sitting at an outside desk, before Dets ‘Harding’, Wilson and the two officers who beat him re-entered and Det ‘Harding’ apologised “Excuse me Vic this is a rough people we are sorry for this”, Det Sgt Williams told him he would be charged and the two detectives who beat him took him to be charged. As noted above, on the voir dire the allegations against Det ‘Harding’ were said to be conduct attributable to Det Bennett.

178. On the voir dire, Mr Brajkovic said that after the beating, Det Morris hit him in the chest and that Wilson came in and then Mr Bennett.²⁷⁵ It was now alleged that it was Mr Bennett who asked him about family in Croatia, and that he was then left alone with Bennett after others left, who asked him his name and Mr Bennett went

²⁷¹ Ex 5.5-3/11.156, red p 591/1444: Record of Interview between Det. Sgt E Shepherd and V Brajkovic, 20 April 1979.

²⁷² Ex 2.1-1, red p 568: Trial Voir Dire (7 May 1980), T531.

²⁷³ Ex 2.1-100, red p 3297: Trial (15 October 1980), T3220.

²⁷⁴ Ex 5.5-3/11.156, red p 591-2/1444-5: Record of Interview between Det. Sgt E Shepherd and V Brajkovic, 20 April 1979; Ex 2.1-18, red p 592: Trial Voir Dire (8 May 1980), T555.

²⁷⁵ Ex 2.1-17, red p 570: Trial Voir Dire (7 May 1980), T533.

out and brought in a three page document which had a number of names, including Mr Brajkovic's name, and Mr Bennett asked him about his work and address after which Mr Bennett left him and he was feeling very bad. None of these allegations about questioning or a three page document had been made against 'Harding'.

179. The next day in his evidence he repeated his evidence about Mr Bennett coming in with a three page document in front of him, saying that after he left, Mr Brajkovic could see a group of detectives and further down Mr Bennett sitting at a desk. Mr Brajkovic now said he saw Ilia Kokotovic come towards the room before Det Sgt Wilson and Dets Harding, Morris and Mr Bennett re-entered, and Mr Bennett apologised.

180. Later on the voir dire, when challenged in cross-examination, he appeared to then assert that the reference to Det Sgt Wilson coming into the room half way down page 6 of the Shepard interview (ie. just after the hit in the chest and after the beating on red p592/1145), was Mr Bennett rather than Det Sgt Wilson.²⁷⁶ This evidence was a further account demonstrating the nonsensical nature of the allegations against Mr Bennett. Mr Bennett could hardly have been talking to himself, noting that the passage referred to recorded Det Sgt Wilson (who Mr Brajkovic was now saying should be Mr Bennett) making comments to 'Harding' (also said to be Mr Bennett). It was a further example of the willingness to simply attribute conduct to Mr Bennett as embellishments which simply never occurred.

181. At trial, Mr Brajkovic gave evidence that Mr Bennett entered the interview room following Det Sgt Wilson, and stayed with his hands behind his back at this time, and Brajkovic was then left alone with Mr Bennett, who left the room and then returned and left again, and that Mr Bennett later returned to the room with others.²⁷⁷

182. The suggestion in the evidence on the voir dire, that the most junior man was questioning him was incredible. The evidence comes undone when the very different versions of what was said to have occurred after the allegation of Det Morris pushing him on the chest are examined. The questions attributed to Det Sgt

²⁷⁶ Ex 2.1-18, red p 580: Trial Voir Dire (8 May 1980), T543.

²⁷⁷ Ex 2.1-100, red p 3300: Trial (15 October 2024), T3223.

Wilson in the Shepard interview about family in Croatia were now being said to be being asked by Mr Bennett, and all of what is recounted at EX 2.1-17,18 (VD) Red p. 570-571 was added in, including a whole new sequence of being left alone and questioned by Mr Bennett.²⁷⁸ There was simply no mention of any three page document with his name on it in Mr Brajkovic's account to Det Sgt Shepard. This evidence goes well beyond any claim of misidentification or detail. Indeed, an acceptance of the claim that *all* that occurred was a misidentification, would itself demonstrate that these additional allegations were entirely unfounded.

- 10 183. It is unsurprising that none of the allegations, made against Mr Bennett, and known to his counsel, of speaking with Mr Brajkovic in the immediate aftermath of the beating were put to him in the trial before the jury,²⁷⁹ not even the alleged apology. It is submitted that there were two simple tactical reasons for this. First, the jury would hear from both Mrs Brajkovic and Mr Bennett that they were on Level 5 in the early hours of the morning, sometime after midnight and before 2am. Mr Brajkovic accepted at the Inquiry that there was a problem for his account if Mr Bennett was upstairs questioning his wife in the early hours of the morning.²⁸⁰ While he attempted to claim that he did not know about his wife's statement at the time of the trial²⁸¹ this evidence on the Inquiry would be rejected, given he heard the evidence of Mr Bennett at the committal hearing, had the trial depositions and heard Mr Bennett's evidence on the voir dire²⁸² prior to Mr Bennett giving this evidence at trial before the jury. Second, the prosecutor had a copy of the Shepard interview and even against that account, the major inconsistencies and discrepancies in the evidence as to his claims against Mr Bennett by the time of the voir dire told against Mr Brajkovic's allegations against Mr Bennett on the voir dire being accepted as credible.
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184. The Petitioner's submissions as to the effect of the rule in *Browne v Dunn* as to evaluation of questioning and answers in the Inquiry (PS [1984], [1899]) is misplaced, as the questioning and submissions do not assume that the reason for the
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²⁷⁸ Ex 2.1-17, red p 570: Trial Voir Dire (7 May 1980), T533; Ex 2.1-18, red p 571: Trial Voir Dire (8 May 1980), T534.

²⁷⁹ Ex 2.1-23, red p 803: Trial Voir Dire (15 May 1980), T757.

²⁸⁰ T3222.16-.19 Inquiry (6 November 2024).

²⁸¹ Ibid T3222.10-.14.

²⁸² Ex 11.169, red p 1518: Statement of M Brajkovic, 3 May 1979, 3 [9]; Ex 2.3-16, red pp 6571, 6575, 6597, 6599: Committal (13 August 1979), T951, T955, T977, T979; Ex 2.1-13, red p 437: Trial Voir Dire (1 May 1980), T403.

omission in questioning at the trial was “*that counsel was unaware of the matter and that counsel was unaware because the accused had not given an account of it in his instructions*”: cf. *Hofer v The Queen* (2021) 264 CLR 351 at [32]. There was clearly a tactical decision made at trial, and for good reason. This is additionally a case where, insofar as the allegations against Mr Bennett, there are clear indications of invention subsequent to the Shepard interview that cannot be explained away by language difficulties: cf. *Hofer* at [34]. In relation to the committal hearing, as stated above, the direct evidence in the Inquiry was that Mr McCrudden had both instructions from the accused and the Shepard interview, yet it was only *after* the committal (and receipt of the depositions) that Mr Brajkovic made these allegations in relation to Mr Bennett.

185. The evidence of Mr Brajkovic insofar as the allegations against Mr Bennett would be rejected as not true. There is a plethora of evidence that Mr Brajkovic made repeated and serious unsubstantiated allegations against Mr Bennett.

186. There is no credible or reliable evidence that Mr Bennett was present or had any involvement or knowledge of what happened in the interview room after he left in the first ten to fifteen minutes. He had never seen the interview prior to the Inquiry, only being aware of the assertion that it took place from the Timeline. It is entirely plausible that in the times he was on Level 3, he did not hear any beating and that he did not see any injury to Mr Brajkovic on his exit from the CIB.

187. Moreover, even if the fact that the explosives were being shown to Mr Hudlin and Mrs Brajkovic supports that the ROI did not take place in the manner asserted by Det Harding, that does not undermine the evidence of Mr Bennett who repeatedly gave an honest account of showing Mrs Brajkovic the explosives in the plastic bag on the 5th floor of the CIB in the early hours of the morning: cf. PS [905].

188. Finally, it cannot be ignored that Mr Brajkovic at the Inquiry, while attempting to maintain his own version and allegations, and being questioned about the workshop conversation, volunteered in an answer during his evidence that “- *what I want to actually say about Bennett, he was the only one officer that was civilised there. He was not physically- Q. He was civilised? A. Yeah, nice, nice behaviour, and he tried to be nice to me, and that’s only that I experienced of all of those detectives, he’s*

the only one that I praise as the good person, good man".²⁸³ This cannot be dressed up as Mr Brajkovic saying that Mr Bennett was playing 'good cop'. It is an assertion that Mr Bennett was a good person (and officer) on the night in question. It speaks directly against Mr Bennett having engaged in the conduct alleged against him, and being involved in a conspiracy to fabricate evidence, and being witness to Mr Brajkovic's injuries, present in the immediate aftermath of a beating, and otherwise being a witness who lied on committal, at trial and before the Inquiry.

10 Conclusion

189. The claims of Mr Brajkovic in his statement that his evidence on the voir dire and at trial was no different and was correct, albeit more detailed, in the voir dire,²⁸⁴ insofar as that evidence conflicted with that of Mr Bennett would be rejected. So too would his claims on cross-examination at the Inquiry that there was simply more detail in his evidence and that his varying accounts could stand together.²⁸⁵ His evidence insofar as allegations against Mr Bennett would be rejected and found to be not credible. It would not be relied on in relation to the issues that Mr Bennett gave evidence of, where it conflicted with Mr Bennett's evidence, when it came to the ultimate evaluation of whether there was a reasonable doubt about Mr Brajkovic's guilt.

190. Mr Bennett's evidence would be accepted by the Inquirer for the reasons detailed above, and the findings set out at [10]-[16] above would be made.



Gabrielle Bashir SC
Forbes Chambers
18 February 2025

²⁸³ T3212.31-.37 Inquiry (6 November 2024).

²⁸⁴ Ex 15.4, red pp 8-9: Statement of V Brajkovic, 26 October 2023, [25]-[26].

²⁸⁵ T3186 Inquiry (6 November 2024).