

*[Handwritten scribble]*

VICTORIA



POLICE

Senior Sergeant's Office.  
[Redacted] Police Station.  
28th October, 1982

Chief Inspector's Office.  
[Redacted]

SUBJECT:

[Redacted] -  
of [Redacted] Brief of Evidence  
against for Unlawful Assault and Assault by Wicking.  
Recommendation that the Brief be not authorised.

1. I concur with Sergeant [Redacted] recommendation in this matter. It appears that this was initially a minor dispute that got out of hand. The injuries received by TRIN were of a minor nature.

2. The defendant [Redacted] is a well respected local business man who is not recorded at the Information Bureau. His actions on this occasion are out of context with his local reputation.

3. I respectfully suggest that this brief be marked "NOT AUTHORISED" and left for civil litigation.

[Redacted signature]  
Senior Sergeant [Redacted]

Chief Inspector's Office,  
No. 2 Division [Redacted]

1st November, 1982

Officer In Charge  
[Redacted]

1. The charges, as outlined, are approved for the following reasons:-
  - (a) Apart from the accused, there is no evidence to negate the version of the incident given by the two complainants.
  - (b) The accused corroborates in part, the version given by the two complainants.
  - (c) A defence of self-defence is not strongly established at this stage and the matter should be determined by the proper tribunal, the court.

[Redacted signature]  
Chief Inspector

VICTORIA



POLICE

Sergeant's Office.,

Officer in Charge

27th October 1982

## SUBJECT:

of [REDACTED] Brief of Evidence  
against for Unlawful Assault and Assault by Kicking.  
Recommendation that the Brief be not authorized.

1. The attached brief of evidence against [REDACTED] of [REDACTED] has been submitted by Constable MERRICK 21776 and alleges two counts of Unlawful Assault and one count of Assault by Kicking. The complainants are two Vietnamese, TRAN [REDACTED] and NGUYEN [REDACTED].
2. The assaults are alleged to have occurred after an extremely minor traffic accident between a car driven by TRAN and a parked car owned by [REDACTED]. Briefly, [REDACTED] states that TRAN refused to exchange names and address and attempted to leave the scene. [REDACTED] took hold of him to prevent him leaving. NGUYEN also attempted to leave and when approached by [REDACTED] took up a "karate" stance and the assault on NGUYEN then occurred. TRAN then shouted at [REDACTED] and approached him from behind; [REDACTED] turned and struck TRAN as he approached.
3. Both TRAN and NGUYEN deny any aggression towards [REDACTED] and state they were talking quietly when attacked for no reason. Both deny taking up aggressive "karate" stances, and state they ran after being attacked.
4. The incident was witnessed by a number of employees of [REDACTED] at [REDACTED]. These witnesses state they heard loud arguing between the three parties concerned but, did not witness any actual assault. One witness [REDACTED] does state he saw [REDACTED] throw an open handed blow at one of the Vietnamese but does not know if it connected or not. The statements of the witnesses tend to discredit the version of the incident as related by TRAN and NGUYEN.
5. I believe this matter should be left to Civil litigation between the parties due, to the conflicting evidence and the fact that the grounds of reasonable self defence have not been adequately covered as required by R - V - BIFALCO (1958) VR 363 as outlined in the Legal Digest, Page 262. Further the answers given by [REDACTED] in his Record of Interview conducted with Constable MERRICK on the 14th July 1982 and in a statement made by him the 2nd August 1982, put him firmly into the situation of self defence. His actions are backed by the decisions of R - V - RAINEY (1970) V.R. 650, Virc - V - R 18 A.L.R. 257 and R - V - HOWE (1958) A.L.R. 753 all of which are outlined at Page 262 of the Legal Digest.

6. Specifically as outlined in the Record of Interview at questions 19 to 29 and 36 to 40 and in his statement [REDACTED] believed it necessary for his own protection in the circumstances to resort to violence (RAINEYS CASE) and this was not disproportionate to the assault he believed was about to be committed on him by NGUYEN who was in a "karate" position, widely renowned as a kicking attack stance. Further, as he was defending against NGUYEN, TRAN shouted and moved at him from behind: Fearing another attack, he struck TRAN as TRAN moved towards him.

7. For the reasons as stated and supported by Case Law Decisions a case for reasonable self defence has been made out for [REDACTED] backed by independent witnesses who contradict the complainants statements and I believe any action in this matter should be left to Civil proceedings.

8. Forwarded for information and transmission to the Chief Inspector No 2 Division [REDACTED] for decision.

[REDACTED]

Informant on Annual Leave

APPLICATION FOR SUMMONS

VICTORIA POLICE

Form No. 28

From 15/8/82 to 11/9/82

BRIEF

29 OCT 1982

I DISTRICT

Defendant's Car/Cycle Regn. No.

No. ////////////////

Brief No. 921

STATIC

Defendant's Driving Licence

No. ////////////////

(CRIME AND GENERAL)

Date 24 / 7 / 19 82

For Hearing at [redacted] Magistrates Court (Place) on [redacted] / [redacted] / 19 (Date of Hearing)

Against [redacted] (Family Name) [redacted] (Given Names) DISTRICT [redacted] Division [redacted] Age [redacted] Date of Birth [redacted]

Full Address [redacted]

BB 1174/82  
3 / 11 / 82  
file no.

- CHARGE (in full)
- Charged on—
- \* Summons
- \* Warrant
- \* Arrest without Warrant
- \* Cross out whichever is NOT applicable
- 1. Assault.
- 2. Auspalt.
- 3. Auspalt by Kicking

(See attached informations)

Statutory Reference SOA 7405.23 SOA 7405.23 SOA 7405.24 (2) Government Gazette Reference N/A

INFORMANT Name P. MERICKA Rank Constable No. 21776

- WITNESSES Page No. [redacted]
- 1. TRAN [redacted] Complainant, evidence of assault.
  - 2. NGUYEN, [redacted] Complainant, evidence of assault.
  - 3. MERICKA, Peter John Constable [redacted] Informant, evidence in chief.
  - 4. [redacted] Corroboration of Police evidence.
- Priors: Nil Costs: Nil Exhibits: Nil.

C.O. & M.O. Report forwarded on 14 / 7 / 19 82 Alien Form 299 forwarded on N / A / 19

Antecedent Report forwarded on Attached / / 19 Children's Court Form 276 forwarded on [redacted] / / 19

Fingerprints forwarded on N / A / 19 Prosecution Authorized by [redacted] Refused to be printed

To be completed where an alien is arrested INFORMATION BUREAU notified of arrest at a.m./p.m. on / / 19 Signature P. MERICKA Rank Constable No. 21776

Decision of Court

Chairman of Court Defending Counsel

Signature of Prosecutor Rank No.

1 Initials and Surname to be typed or printed

NOTE.—Details of exhibits to be produced, to be shown on back of this form.

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Informations

1. The defendant on the 14th day of July, 1982 at Richmond in the State of

Victoria did unlawfully assault one [REDACTED] TRAN.

Summary Offences Act 7405.23.

2. The defendant on the 14th day of July, 1982 at Richmond in the State of

Victoria did unlawfully assault one [REDACTED] NGUYEN.

Summary Offences Act 7405.23.

3. The defendant on the 14th day of July, 1982 at Richmond in the State of

Victoria did unlawfully assault one [REDACTED] NGUYEN by kicking.

Summary Offences Act 7405.24.