



Alleged police assault of Aurukun resident Warren Bell

A report from the CMC

February 2007

This report in context

On Wednesday 10 January 2007, the CMC and the Ethical Standards Command (ESC) of the Queensland Police Service (QPS) began a joint investigation into an allegation made by Aurukun resident Warren Bell that he had been assaulted the previous day while in police custody. The allegation sparked a riot at Aurukun on the night of Tuesday 9 January, which damaged the police station and lasted into the following morning. The QPS is investigating the riot itself. It is also investigating the discharge of an unlicensed firearm during the riot, subject to the CMC's review.

This report relates only to Warren Bell's allegation of police assault.

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Role of the CMC

The CMC's role includes investigating complaints about police misconduct and gathering evidence for the prosecution of people for criminal offences or disciplinary proceedings. If at the end of an investigation the CMC decides that prosecution proceedings or disciplinary action should be considered, it can report on the investigation to the Director of Public Prosecutions for prosecution action or to the Chief Executive Officer of the relevant department for disciplinary action. It may also produce a report containing an objective summary of all known matters that support, oppose or are otherwise relevant to its recommendations.

To decide whether prosecution or disciplinary action should be considered in this case, the CMC analysed all the evidence gathered by CMC and ESC investigators who attended Aurukun and Cairns between 10 and 15 January in response to Mr Bell's complaint. The officers interviewed over 25 people, securing and reviewing physical evidence (documents and interview tapes).

The remainder of this report analyses the investigation and gives the CMC's finding.

The investigation — an overview

CMC and ESC investigators established the following facts about the case:

- ▶ The complainant, Warren Bell, is a 22-year-old Aboriginal man living at Aurukun, an Aboriginal community in the Western Region of Cape York.
- ▶ On Saturday 6 January 2007 local tavern manager Robert Priestly made a complaint at the Aurukun Police Station. He alleged that Warren Bell had thrown a stick at his car while he was driving past the house where Bell was staying. The stick went through the passenger window and caused him injury.
- ▶ Over the next two days, police officers, including community police officers, made numerous attempts to contact Bell for questioning about the incident. At this time, the police also were aware that Bell was wanted by the Cairns Child Protection Investigation Unit for questioning in relation to another serious offence (that matter is not the subject of this report). They left messages with Bell's family, requesting him to contact them. The two community police officers, Matthew Doomadgee and Cecil Toikalkin, succeeded in speaking to Bell. They asked him to report to the station with them for questioning. After initially saying he would, he failed to return with them.
- ▶ When the police still had not heard from Bell by late Monday, the Officer-in-Charge of Aurukun Police Station, Sergeant Mark Jones, approved a decision to go to the house where it was thought Bell might be staying.
- ▶ Early in the morning of Tuesday 9 January, three police officers — Sergeant Glen Smith, Acting Senior Constable Andrew Buckley and Constable Adam Reedy — arrested Bell for assault occasioning bodily harm while armed, and took him to the station for questioning. Smith audio recorded the arrest.
- ▶ According to the police account, the officers were let into the house by Nelson Wolmby, Bell's grandfather. They found Bell hiding in the ceiling. Buckley threatened Bell with capsicum spray if he did not come down. Bell came down of his own accord and the arrest proceeded without incident. This version of events is confirmed by the other occupants of the house, including Nelson Wolmby, and by Smith's audiotape of the arrest. Bell later told investigators that his girlfriend had let the police in, and that the police found him sleeping on the lounge room floor and 'rushed at him'. In still later accounts, he said the police also twisted his hand. Later again, he said that his grandfather had let in the police, and he hinted that police had also assaulted him (Bell) during the arrest.
- ▶ Of the three officers, only Buckley noticed at this time that Bell appeared to have a lump on his head. He noticed it when getting Bell out of the police car at the station. Nelson Wolmby and Roderick Yunkaporta, who witnessed the arrest, said there was nothing wrong with Bell's face at this time.
- ▶ Bell arrived at Aurukun Police Station while it was still dark. The time of his admission was entered in the watch-house custody register as 5.42 am.
- ▶ On arrival, Smith rang the Aboriginal and Torres Strait Islander Legal Service (ATSILS) on Bell's behalf.
- ▶ At about 6.15 am Smith and Reedy placed him in one of the small cells. At the same time a tape should have been placed in the video recorder that monitored the cell, but it was not.
- ▶ Smith stayed at the station but Buckley and Reedy went home straightaway, not returning till about 4 pm. Sergeant Mark Jones arrived at the station at about 6.50 am. Some tradesmen arrived at about 7 am and worked till about 7.45 am. They said they noticed nothing untoward during that time but could not confirm how many police officers were at the station.

- ▶ When community police officer Matthew Doomadgee (whom Bell refers to as his cousin) took him breakfast at about 8 am, he noticed signs of injury on Bell's face and asked him what had happened. Bell did not reply. (Bell later said he was 'a bit angry' at the time.)
- ▶ Smith interviewed Bell on videotape at 8.35 am in relation to the alleged assault on Priestly (first interview). He asked him to describe what had happened the previous Saturday. Bell told him of a fight with his brother Nicholas, who had hit him across the back with a bike rim. Smith noticed that he had a lump on his forehead and asked where that had come from. Bell said from his brother during the same incident. (Nicholas later told investigators that no fight had occurred and then that the bicycle part he threw did not actually hit Warren. At different times, Bell said that the bike part hit him on the back and forehead, on the back only, and not at all.) It was during this same fight with his brother that Bell said he threw a stick at Nicholas and that the stick accidentally hit passing motorist Robert Priestly. Bell also told Smith that he had been vomiting for days and was still vomiting.
- ▶ After the interview Smith recorded Bell's injuries in the watch-house custody register and contacted the Aurukun Health Clinic regarding medical treatment for Bell's persistent vomiting.
- ▶ Between 9 and 10 am Bell spoke to community police officers Matthew Doomadgee and Cecil Toikalkin. When interviewed later, Bell said this is when he told Doomadgee and Toikalkin about the police assault. They say that Bell said nothing to them about a police assault; rather he told them the same story he had told Sergeant Smith — that he had been hit by his brother Nicholas the previous Saturday.
- ▶ At 10.55 am Smith formally charged Bell with assault occasioning bodily harm while armed, in relation to the alleged assault on Priestly.
- ▶ At about 11 am, Sergeant Smith took Bell to the Aurukun Health Clinic. He was treated there by Dr Rachel Hughes of the Royal Flying Doctor Service. Bell later told police investigators that he told Dr Hughes and a male nurse [Peter Fenton] of the police assault. They both denied this. They said Bell told them his brother Nicholas had hit him with a bicycle part the previous Saturday. Hughes found that his injuries were consistent with this explanation. Bell also told Dr Hughes that he had been vomiting for days and had blood in his vomit. In her opinion, the injury and the vomiting were unrelated, the latter caused by gastritis, which is usually made worse by drinking alcohol. She believed the blood in his vomit was due to either swallowing blood from a previous nosebleed (Bell said he had had a nosebleed on the Monday night) or a small tear in his oesophagus from regular vomiting. She found no sign of any injury to his nose.
- ▶ While at the clinic, Bell spoke to a member of the Aurukun Community Justice Group, Martha Koowarta, in Wik, a local Aboriginal language. He told investigators (third interview) that she asked him what had happened to his face, saying something like, 'I think them two coppers were hitting you, hey?' and that he replied, 'Yeah'. Later (sixth interview) he told investigators that he directly told Koowarta that two coppers had hit him. Koowarta told investigators that Bell told her three coppers had hit him.
- ▶ Koowarta relayed Bell's accusation to other members of the Aurukun Community Justice Group. They confronted Sergeant Smith about the treatment of Bell while in custody. This was the first time Smith had heard anything about a police assault.
- ▶ Back at the station and in the presence of Doomadgee, Smith spoke to Bell, on audiotape, about the assault allegations (second interview). Bell told him that he had been assaulted in the cell by two officers, but he was vague about the details. He said he didn't know who had hit him because it was dark, or how many times he was hit. He appeared more concerned about the number of police cars that had come to his house that morning and the fact that Buckley had worn gloves. He complained that the lump on his forehead had grown bigger, so 'someone must have hit me'. Smith pointed out that he had been present at the station the whole time. At this point Bell made no accusation against Smith.

- ▶ Sergeant Jones invited the members of the Aurukun Community Justice Group to view the videotape of Bell's interview in which he had blamed his brother Nicholas for his injuries. In response, four members went to the police station and were shown the relevant part of the video. Two of them, Pastor Ralph Peinkinna and Dorothy Pootchemunka, separately visited Bell. Bell told them he had been assaulted and pointed to blood on the floor as proof. Peinkinna later told investigators that he could not tell whether the blood was caused by the vomiting or by Bell being hit.
- ▶ At about 5.40 pm Bell had a seizure in his cell and Dr Hughes was called. He was taken to the clinic and from there to Cairns Base Hospital where he was treated by Dr Carl Vogler. Bell later told investigators that he told Dr Vogler about being assaulted by police officers at Aurukun. Dr Vogler told investigators that Bell said he had been hit on the head by a bike part several days earlier.
- ▶ After Bell was flown to Cairns, a violent riot occurred in Aurukun, during which the police station was extensively damaged. The riot was sparked by community concerns that Bell had been assaulted while in police custody.
- ▶ Bell was interviewed by Cairns police early on the morning of 10 January. During the interview he told police that he had been assaulted by two police officers while in the watch-house cell at Aurukun.
- ▶ Later that day he made a formal complaint to the CMC through an ATSILS lawyer concerning the alleged police assault. (See fourth interview.)
- ▶ Bell was interviewed by CMC and ESC investigators later on 10 January and again on 15 January. At the 10 January interview he said for the first time that a police officer had kicked him with combat boots in the leg and foot while he was in the Aurukun watch-house.
- ▶ At the 15 January interview he said that, while at the clinic the first time, he told 'Nurse Polly' (Pauline Fenton) that he had been hit by Buckley. When later questioned by investigators, Nurse Fenton said that she had no conversation with Bell until she attended him at the time of the seizure and that at no time did he tell her that a police officer had assaulted him. Nurse Fenton's husband, Peter Fenton, who is the Director of Nursing at the clinic, told investigators that he had a brief conversation with Bell when he first came to the clinic and that Bell had told him he had been injured by his brother. In the interview of 15 January Bell also implied that he had been assaulted during the arrest at his grandfather's house.

Critical times

Times given are exact when know; otherwise they are approximate.

Saturday 6 January 2007

- | | |
|---------|---|
| 4 pm+ | Warren and Nicholas Bell fight, outside the house where they are staying. |
| 5.45 pm | Robert Priestly drives past and is hit by a stick. |
| 6 pm | Robert Priestly makes a complaint about Warren Bell to Aurukun police. |

Saturday–Tuesday

Police, including community police officers Matthew Doomadgee and Cecil Toikalkin, attempt unsuccessfully to question Bell about Priestly's complaint.

Tuesday 9 January

- | | |
|--------------|--|
| 5.30 am | Bell is arrested by police: Sergeant Glen Smith, Constable Adam Reedy and Acting Senior Constable Andrew Buckley. |
| 5.42 am | Bell is admitted to Aurukun Police Station. |
| 6.15 am | Bell is placed in a small cell, which has no video surveillance. Buckley and Reedy leave station. |
| 6.50 am | Sergeant Mark Jones, Officer-in-Charge, comes on duty. |
| 7–7.45 am | Tradesmen work at station. |
| 8 am | Doomadgee and Toikalkin give Bell his breakfast and notice lump in the middle of his forehead. |
| 8.35–8.55 am | Smith interviews Bell about alleged assault on Priestly (first interview). |
| 9 am | Smith enters Bell's injuries in watch-house custody register and makes arrangements for Bell to have medical treatment at clinic because he has been vomiting. |
| 9–10 am | Doomadgee and Toikalkin visit Bell in his cell. |
| 11 am | Smith takes Bell to the clinic. |
| 11–11.15 am | Bell speaks to Martha Koowarta in Wik. She then speaks to members of the community. |
| 11.30 am | Bell is treated by Dr Rachel Hughes. A crowd gathers outside the clinic. |
| 11.40 am | Members of Bell's family abuse Smith while he is taking Bell from the clinic back to the station. |

12 noon	Bell arrives back at the watch-house and is placed in the same cell.
12.30 pm	Smith speaks to Bell about allegations of police assault (second interview) and takes photographs of Bell.
12.52 pm	Smith provides medication to Bell, as prescribed by Dr Hughes.
12.55 pm	Bell is placed in large cell with video surveillance camera turned on. Bell's mother visits him, bringing lunch.
1 pm+	Sergeant Jones visits community justice group members and invites them to view the videotape of Bell's first interview with Smith. Various people from the community visit him and view the relevant part of the videotape.
5.20 pm	Bell has fit in large cell. He is immediately attended to by Doomadgee, Nurse Pauline Fenton and Dr Hughes.
6.15 pm	Bell is taken back to the clinic.
9 pm	Large, angry group begins gathering outside the clinic.
9.20 pm	Bell is flown to Cairns Base Hospital with Dr Walter Dietz of the Royal Flying Doctor Service in attendance.
11.40 pm	Bell arrives at Cairns Base Hospital.
Wednesday 10 January	
12.30 am	Dr Vogler examines Bell.
2.45 am	Bell is discharged from hospital into police custody.
3.05–3.57 am	Bell is interviewed by Detective Sergeant Sydney Churchill of Cairns Police (third interview).
Later that day	Bell makes formal complaint to CMC through ATSILS lawyer, alleging he was assaulted by police at Aurukun Police Station the previous day (fourth interview).
8.37 pm	Bell is interviewed by ESC and CMC investigators (fifth interview).
Monday 15 January	
1.07 pm	ESC officers interview Bell again to clarify some points (sixth interview).

Interviews with Warren Bell

From 9 to 15 January Warren Bell was interviewed six times, the first in relation to his alleged assault on Priestly and the others in relation to his allegation that police had assaulted him.

1. By Sergeant Glen Smith of Aurukun Police at 8.35 am Tuesday 9 January (audio and video recorded)
2. Again by Sergeant Smith at about 12.30 pm, 9 January (audio recorded)
3. By Detective Sergeant Sydney Churchill of Cairns Police at the Cairns Base Hospital at 3.05 am on Wednesday 10 January (audio recorded)
4. By ATSILS lawyer David Ritchie on 10 January who took down a formal complaint from Bell and relayed it to the CMC
5. By ESC and CMC investigators at 8.37 pm on 10 January at Cairns Police Station (audio and video recorded)
6. By ESC officers on Monday 15 January at 1.07 pm at Cairns Police Station (audio recorded).

CMC investigators viewed or listened to all the electronically recorded interviews.

The first interview – Bell says his brother hit him

From 8.35 to 8.55 am on 9 January, Sergeant Smith interviewed Bell about the assault the previous Saturday on Priestly. At the start of the interview, Bell was warned that he was not obliged to say anything, and he was given the opportunity to speak to a friend and a lawyer. He had previously spoken to ATSILS on the phone. He proceeded to answer questions and said he did not wish to speak to anyone else. The electronic recording of his interview establishes that he waived his right to have a support person present.

When asked about what had happened the previous Saturday afternoon, Bell said he had had a fight with his brother Nicholas. He said he and his brother had argued over a cigarette.

- BELL He started hitting me with the bike rim and then I started to get really angry. I just only had four cans I think.
- SMITH four cans, yeah.
- BELL Then I ... (u/i) ... stick and that's it.
- SMITH Okay, which brother are you talking about?
- BELL Nicholas.
- SMITH Okay. Now I remember talking to Nicholas that afternoon and he says that you hit him with a stick across the arm. He had a little nick across the arm there.
- BELL No.
- SMITH No? Alright, so basically you've had a fight with Nicholas?
- BELL He hit me with a bike rim and he take off.
- SMITH Okay, where did he hit you?
- BELL In the back.
- SMITH In the back. Okay you've got a bit of a lump on your forehead, what's that from?
- BELL From him now.
- SMITH From him now?
- BELL Yeah.
- SMITH When?
- BELL Bicycle.
- SMITH So he got you on the forehead as well, did he?

BELL Yeah.
SMITH So how long has the lump been there for?
BELL From Saturday.
SMITH Since Saturday.
BELL Yeah.

Bell said he had been vomiting since Saturday afternoon and had 'almost vomited in the toilet ... just a while ago'. Smith asked him if he had sought any medical treatment. Bell said he was going to see a doctor but went fishing instead.

Apart from the injury to his forehead and the vomiting, he reported no other injuries.

Smith asked him if he was feeling okay to continue with the interview, to which Bell replied, 'Yeah'. Smith asked, 'Are you sure?', to which Bell again replied, 'Yeah'.

Bell was then asked further questions about the assault on Priestly. During the fight between the brothers, Robert Priestly drove past in his car. Bell said he went to throw a stick at his brother, slipped, and the stick hit Priestly.

At the end of the interview, Bell was asked a standard question about how he had been treated by police, to which he replied, 'Alright'.

The second interview – Bell says a police officer, unnamed, hit him

After returning from the clinic where he had heard of the assault allegation for the first time, Smith questioned Bell. Community police officer Matthew Doomadgee (whom Bell refers to as his cousin) was present and Smith audio recorded the interview.

Smith asked Bell what the allegation was all about. Bell said someone had come into his cell at about 2 o'clock and hit him. He said he did not know who had hit him as it was dark and he was hiding his face, and he said he did not know how many times he had been hit. His answers were very vague and, despite being given an opportunity to elaborate, he did not provide any more information about the alleged assault.

Smith pointed out that Bell had not been at the station at 2 o'clock and that he, Smith, had been in the station most of the morning with Bell and had not seen anything. Bell then started complaining about the fact that two police cars had been used in his arrest. He asked why Buckley wore gloves all the time and complained about Buckley threatening to spray him with capsicum spray when he was in the ceiling. Smith explained why Buckley wore gloves (a motorcycle injury some weeks earlier) and pointed out that Buckley gave him a clear warning that he would be sprayed if he didn't come out of the ceiling, and that Buckley had given Bell ample time to come out.

Bell then spoke of how the lump on his forehead was bigger, so this proved that someone had hit him. Smith reminded Bell that in the interview earlier that day he had said he had been hit on the head by his brother Nicholas with the bike rim. Bell maintained that the lump felt bigger, so someone must have hit him. Bell did not provide any further details of the alleged assault.

Smith took two photographs of Bell's face and made a note in the watch-house custody register about the injury. He also formally charged Bell with assault occasioning bodily harm while armed, in relation to the Priestly complaint.

The third interview – Bell says two police officers hit him (Buckley and Reedy)

After being taken to Cairns Base Hospital, Bell was interviewed, on audiotape, by Detective Sergeant Sydney Churchill of Cairns Police from 3.05 to 3.57 am on 10 January 2007. This interview occurred at the same time as the riot was happening at Aurukun.

Bell was asked if he was feeling well enough to be interviewed. Apart from stating he was a 'bit sleepy', he had no complaints about being interviewed and appeared to answer questions freely.

He spoke about the day before and how he was taken from the police station to the health clinic in Aurukun and was seen by a male nurse [Peter Fenton], who gave him Panadol for a headache. Bell said he was then returned to the cell where he started vomiting blood. He spoke about how he later passed out in the cell in Aurukun. He said he started to 'get a blackout' and 'fell down in the cell and busted my lip'.

When asked about what injuries he had, Bell said he had a busted lip and a sore right cheek from the fall in the cell. He also said he had a graze on his forehead and a cut on his eyebrow from the policeman who 'give me a little punch'.

Bell said he was punched by 'the tall' police officer at Aurukun the previous day (Tuesday). He said that the police officer wore a black and red weightlifter's glove, that the punch occurred at about 5.30 in the morning in the single cell, and that his face 'swelled up'.

Bell then said there were two police officers, one short and one tall [Reedy and Buckley], and that both of them had hit him. He said he was trying to lie down and he saw a hand swinging towards him and he was punched by the police officer. He was then placed in the big cell. He said he started feeling sick and vomited in the cell.

At about 8 am he said his cousin visited him [Matthew Doomadgee brought him his breakfast]. When Doomadgee asked, 'What happened to your face?', he did not answer because he was 'a bit angry'. But he said he told others at the clinic that he had been punched by the police. He said he was asked by a nurse [Fenton] what had happened to his face and he said, 'I get a whack from the fuckin' police, two police'.

He saw Martha Koowarta at the clinic. After being taken back to the police station, he saw Dorothy Pootchemunka and Ralph Peinkinna. He told each of them, 'The coppers hit me'.

He was then put back in the cell, taken to the clinic again, and later flown out to Cairns.

When Bell was asked who else he told about being punched by the police, he said, 'Everybody know in the whole town'. He said 'Koowarta, Pootchemunka, Peinkinna and Yunkaporta already tell all my friends'.

Bell was also asked about the fight with his brother Nicholas the previous Saturday. He said it was a fight over a cigarette and at first said he received no injuries from that fight. After being asked about what he said to the doctor at the clinic, he conceded that Nicholas had hit him on the head with a bicycle part causing a small cut on his forehead. Later he said Nicholas hit him on the back with the bike.

The fourth interview – Bell says two officers hit him, names Reedy, and makes a formal complaint to the CMC

On 10 January, Bell was interviewed by an ATSILS lawyer, who prepared the following statement on Bell's behalf (see next page). In it Bell claims that two officers punched him several times in the face in the cell at Aurukun and then threatened to do it again if he told anyone. He does not say why he believes he was assaulted.

Complaint to CMC

Bell was apprehended from his house in Aurukun on Tuesday 9 January 2007 at 5 am by two police constables. He knew one of the police officers as 'Adam'. He did not know Adam's surname or the name of the other officer that arrested him.

Bell was charged with assault causing grievous bodily harm. He said he was sleeping on a bench in the watch-house in Aurukun when two police officers came in and one started punching him. He recognised one of the officers as 'Constable Adam' who had arrested him earlier. He alleged that Constable Adam punched him six to seven times in the face. The police officer was wearing weightlifter's gloves. He tried to defend himself but he was not able. The other police officer was watching while he was getting bashed by Adam. He described the other police officer as 'a short and stocky fella'.

He said it was dark in the watch-house and he asked the police officers to turn the light on but they would not. As a result of the assault, the injuries he sustained were a swollen face, cut and bleeding eyebrows, a small cut to the nose, and a sore back.

After the alleged assault the police officers allegedly threatened him and told him not to tell anyone or they would 'get into him again'. At about 9 am police took him to the local health clinic because he was suffering headaches, bleeding and swelling on the face.

The doctor checked Bell and gave him Panadol for the headaches. The police later transported him back to the police station. Witnesses, including his grandmother, saw him in hospital.

Back at the watch-house his mother brought lunch in for him. He started to eat but he vomited up blood. Sergeant Mark Jones (Officer-in-Charge at Aurukun Police Station) took him water. Bell started to feel nauseous and said he was going to pass out.

Bell asked Jones to take him back to the clinic, but Jones told him to just drink water. After Jones left, Bell sat back on the bench and later blacked out and fell to the ground. Police officers then took him back to the clinic where he was kept until he was transported to Cairns.

While in the cell at Aurukun, Bell was visited by members of the Aurukun Community Justice Group. During the visit he told the visitors that there was blood in one of the corners of the cell where he was allegedly bashed.

The fifth interview – Bell says he was also kicked with combat boots

Bell was interviewed by ESC and CMC investigators at 8.37 pm on Wednesday 10 January 2007 at Cairns Police Station. The interview was video recorded. ATSILS lawyer David Ritchie sat in on the interview.

Bell started by saying how he was bashed by two police officers. He was then asked about what happened on Saturday 6 January. He said he had a fight with his brother Nicholas over a cigarette and Nicholas took a bicycle rim and hit him from the back. Bell said this occurred at about 4 o'clock on the Saturday afternoon. He said he was hit on the right shoulder by the bicycle rim but had no other injuries as a result.

On the Sunday morning he said he woke up with a very sore back, but rather than obtaining medical help he went fishing with his uncle. On Sunday night he stayed at his uncle's house.

On the Monday morning he went back to his mother's house to get some clothes. When he heard that the police were after him to take him to Cairns Police Station he went back to his uncle's place and stayed there.

On Monday night he slept on the lounge room floor of his grandfather's house, with his girlfriend Nicole Bowinda.

He said he heard someone knocking and his girlfriend opened the door. The police rushed for him. He said they handcuffed him and one of them had weightlifter's gloves on. He thinks his name was 'Barkly'. He said he was in the lounge room of the house and everyone else in the house saw him being taken out by the police, including his grandfather, Nelson Wolmby, and Roderick Yunkaporta. He was taken to the police station and put in a cell.

He said one of the police officers made a phone call to ATSILS and that he spoke to 'Dave' [David Ritchie].

He said he told the police he wanted to go to the hospital because he had a bad asthma-like cough. He said they thought he was kidding and started laughing. He asked 'Barkly' to turn on the light because it was dark and there was no window. He said it was about 6 o'clock in the morning.

He said that as he started to lie down he heard the cell door open and in came 'Barkly' who started punching him with the weightlifter's gloves on. He said he knew it was 'Barkly' because he recognised the gloves. He said another police officer, whom he described as 'a tall young bloke' [presumably Reedy], was also in the cell.

'Barkly' hit him in the body and the face. He said that he ended up with a bruise from his nose to his forehead and across his eyebrow. He said he was punched six times and had a headache afterwards. Both the police officers then said to him, 'If you tell, you're going to get more'.

This occurred in the small cell while he was trying to lie down on his back. He then said he was kicked with combat boots in the leg and the foot. He said he was bleeding from his head and some blood ended up on his shorts, which he later took off and gave to his cousin to take home.

He said he was taken to the clinic at about 9 o'clock [he was actually taken at about 11 o'clock] where he saw Martha Koowarta. She asked what happened to his face, saying something like: 'I think them two coppers were hitting you, hey?' He replied, 'Yeah'.

He said Ralph Peinkinna and Dorothy Pootchemunka also saw him while he was in the cell at Aurukun Police Station [after his return from the clinic]. He told both of them that the police had hit him.

He said he was brought lunch, but once he started to eat it he felt sick and started vomiting blood. He said he vomited three times in the sink in the cell. He said he knocked on the window and the sergeant said, 'You'll be alright'.

Later he said he started to get a blackout and the police took him some cold water in a coke bottle. He drank it sitting down in the cell. When he stood up he started getting dizzy again and fell down, busting his lip when he hit the ground. He said he started having a fit and a nurse rushed to the watch-house. He was taken to the clinic and later flown out to Cairns.

The content of the allegation relayed to the CMC by ATSILS was then read out to him and he agreed with the complaint provided by ATSILS on his behalf. He was asked again about the injuries he had sustained from the assault, and he said he had a cut from his eyebrow to his nose and his cheeks were swollen. He also said he had bleeding from the nose and a sore back from his brother, not from the police.

He said while he was being visited by members of the Aurukun Community Justice Group he showed Ralph Peinkinna the blood in the sink and in the bin, in the big cell. He explained that he was originally in the small cell where he started vomiting and spitting, and was then transferred to the big cell.

The sixth interview – Bell implicates Smith and implies earlier assault at his grandfather's house

Bell was re-interviewed, on audiotape, by ESC officers on Monday 15 January 2007 to clarify his allegation that he had been assaulted by police.

He was asked who opened the door of the house on Tuesday morning when the police arrived. He said his grandfather Nelson Wolmby opened the door [he had previously said his girlfriend had opened the door]. He said he and everyone in the house were asleep in the lounge and the police rushed towards him and twisted his hand. He said the police, 'beat the door — trying to break the door'. They handcuffed him, threw him into the back of the jeep and took him to the police station.

He agreed that at the police station he was put in the second small cell on the right and that he saw his cousin Matthew Doomadgee while he was in the cell. He said he told Doomadgee that the two coppers were hitting him.

He remembered being interviewed by Smith on videotape. When asked if Smith asked him about the mark on his head, he stated that Smith already knew about the two coppers hitting him. He further said, 'The two coppers was hitting me, he know, he know. Them two coppers was hitting me ... and in my grandfather's house ...' He said he told Smith about his injury. He said, 'I told him Barkly, Barkly, Barkly they hit, hit me ...' He told Smith that 'Barkly' had hit with the 'weights gloves' in the watch-house and that this was what caused his injury.

He said he also told Smith that he had been vomiting blood from his nose and mouth. He agreed that Smith told him that he needed medical attention. He indicated that he could remember Smith taking a photo of him and then going back to the cell. He said that Smith brought him a cup of tea.

He remembered going to the clinic and talking to 'Nurse Polly' [Pauline Fenton] and he told her that 'Barkly' hit him in the face with his 'weights gloves' from his nose to his eyebrows. He also pointed to his cheeks and the centre of his forehead indicating that he was hit there as well.

He remembered talking to Doctor Rachel and that he also told her that 'Barkly' was hitting him. He stated, 'I told her Barkly was ... hitting me in the cell with a weights glove'. He further states that he was starting to vomit blood from his mouth and nose and that both vomit and blood was coming through his nose.

He remembered talking to Martha Koowarta at the clinic in Wik, a local Aboriginal language. She asked him what had happened to his face and he said, 'The two coppers were hitting me in the cell'.

He remembered leaving the clinic, going back to the watch-house and being put into the big cell. There he spoke to Smith, Doomadgee and Toikalkin about being assaulted by the coppers. He said he told them the same story about being hit with the 'weight gloves'.

He vomited blood in the big cell and told Smith that he was going to black out. He states that Smith said to him, 'You're just kidding'. Smith brought him in some water. It was while he was drinking the cold water that he started feeling dizzy and fell down, busting his lip on the right side. He started having a fit and was panicking.

He was given a needle and oxygen. He remembered Ralph Peinkinna and Dorothy Pootchemunka coming into the watch-house and speaking to him. He showed them the blood on the bench and said that it was evidence of the coppers hitting him.

He remembered flying to Cairns and being treated by a doctor. He told the doctor that he got the injury on his forehead from the coppers bashing him.

He was asked if he had told anyone that the bump on his forehead was caused by Nicholas throwing the bike part at him. He said the bike part hit him on the back and not on the head.

What police say happened

CMC and ESC investigators interviewed the police officers involved in this case: Sergeant Smith, Constable Reedy, Acting Senior Constable Buckley and Sergeant Jones. They also spoke to community police officers Matthew Doomadgee and Cecil Toikalkin.

Why was Bell arrested?

Constable Adam Reedy was on duty at Aurukun Police Station on Saturday 6 January 2007 when the manager of the tavern, Robert Priestly, reported an incident involving Warren Bell. Priestly told him that he had been hit in the arm with a lump of wood thrown by Bell while he was driving along the road outside the house where Bell and his brother were staying. The wood had flown in through the passenger window.

Over the next two days, police made concerted efforts to find Bell. They were aware at this time that he was also wanted for questioning by the Cairns Child Protection Investigation Unit over another serious matter (not the subject of this report).

On the morning of Monday 8 January the two community police officers, Matthew Doomadgee and Cecil Toikalkin, saw Bell at 'Aunty Gertie's place' [Gertrude Bell]. They said they went there specifically to pick up Bell for questioning. He asked them could he have a shower and some breakfast first. They agreed, saying that they would come back for him. When they returned, he was gone. They found him again at the Respite Centre, but once again Bell failed to accompany them to the station.

When Bell still did not report to the station, Sergeant Jones authorised Sergeant Smith, Constable Reedy and Acting Senior Constable Buckley to go to the house where they had reason to believe Bell might be staying, in the hope of finding him. Buckley was recalled to duty to assist because he was the only one of the three officers who knew Bell.

They found him hiding in the ceiling of the house and arrested him under the *Police Powers and Responsibilities Act 2000*, which permits police to arrest people suspected of having committed a serious crime. He was charged with assault occasioning bodily harm while armed.

How was Bell arrested?

The three officers went to the house at about 5.30 am on Tuesday 9 January 2007. Reedy found Bell hiding in the ceiling of the house. At first Bell was hesitant about coming down through the manhole, but he eventually came down calmly and allowed himself to be handcuffed. The arrest was witnessed by the occupants of the house, Bell's relatives. Smith also recorded the arrest on a digital audio recorder.

The officers put Bell in the back of one of the police cars and drove him to the Aurukun Police Station. The watch-house custody register records his admittance as 5.42 am.

Why did Buckley wear gloves?

During the arrest Buckley wore gloves, a common practice for him while on duty since injuring his hand in a motorcycle accident three weeks earlier. (He had received the gloves while serving in East Timor with the Australian Federal Police.) He said he did not own 'weightlifter's gloves' and he did not know of other Aurukun officers having similar gloves.

Did anyone notice any injuries to Bell?

At the time of the arrest, Smith and Reedy did not notice any injuries to Bell's face, and so no injuries were recorded in the watch-house custody register. Later, Buckley said he did notice a 'bit of a lump' on Bell's forehead about the size of half a golfball, which he estimated protruded by about a

centimetre. He said he first noticed the lump when they took Bell out of the police car after the arrest. He thought it looked like Bell had received some blunt instrument trauma similar to being hit by a rock.

Buckley stated that nothing occurred in his arrest that could have caused that injury. This was later confirmed by Bell's grandfather, Nelson Wolmby, who witnessed the arrest and said that there were no struggles or fights at the house.

Who put Bell in the cell?

Reedy and Smith put Bell in one of the four small cells for male prisoners in Aurukun Police Station. Buckley said he never went to the cell at any stage. He worked on his computer and saw Reedy and Smith, through the closed circuit television (CCTV), taking Bell to the cell.

Why was Bell not monitored on video?

There is no video footage of Bell in the cell that morning, even though it is correct procedure when placing someone in a cell to place a tape in the video recorder. Smith explained there were logistical difficulties with the equipment and added:

... if he [Bell] was fighting or, you know, boisterous or disagreeable even, if there was any sort of animosity or anything, it probably would have clicked with me that I'd better record this. But there wasn't.

He said he didn't usually keep prisoners in that cell:

... usually you interview 'em and they're out the door, so there's no need to put tapes in the machine.

He acknowledged that this was an unfortunate oversight on his part.

Soon after Bell was placed in the cell, Reedy and Buckley left the police station and went home to sleep. They said they left at about 6.15 am and they did not return until about 4 pm that day.

Smith was the only officer on duty until Sergeant Mark Jones, the Officer-in-Charge, started work at about 6.50 am. Smith was at the station for the remainder of the morning.

What explanation did Bell give Smith for his injuries?

From 8.35 to 8.55 am, Smith interviewed Bell about the assault on Priestly. During the interview Smith commented on the lump on Bell's forehead. Bell said that he had been hit by his brother Nicholas the previous Saturday (see earlier for details of the interview, which was videotaped). At the end of the interview, Smith returned Bell to the cell and made a note in the watch-house custody book about his injuries.

Later, when Smith took Bell to the clinic where he was treated by Dr Rachel Hughes of the Royal Flying Doctor Service for persistent vomiting, Smith heard Bell tell Dr Hughes what he had told him: that the lump on his forehead was caused by his brother hitting him with a bike part and that he had been vomiting for days.

As Smith was taking Bell from the clinic to the police vehicle, a number of Bell's relatives and other members of the community began gathering outside the clinic. Some members of the group confronted Smith and questioned the treatment Bell was receiving. For the first time Smith heard the allegation that Bell had been assaulted by police. Smith tried to calm the group down by telling them he was looking after Bell.

How did police respond to Bell's assault allegation?

Bell and Smith arrived back at the station sometime between 11.45 am and 12 noon. Bell was returned to the cell and the CCTV video was switched on, and remained on for the whole afternoon.

Smith spoke to Bell about the assault allegations. Doomadgee was present and Smith recorded the conversation on his digital audio recorder (see second interview). Bell claimed he had been punched while in the cell that morning, but he was very vague about the details. He did not say who punched him or how many times.

The tape shows that Bell was upset about two police cars going to his house early that morning and about Buckley wearing gloves. Bell claimed the lump on his head was proof that he had been hit. After Smith reminded him that he had earlier said the lump was caused by his brother Nicholas, Bell claimed the lump was bigger and was proof that someone must have done something.

Sergeant Jones invited members of the Community Justice Group to go to the police station and view the videotape of Bell's interview in which he had stated that his injuries were caused by his fight with his brother Nicholas. Four members of the Community Justice Group — Ralph Peinkinna, Susie Yunkapoorta, Janine Chevathun and Dorothy Pootchemunka — went to the police station and were shown the relevant part of the interview videotape. Gary Kleidon, the CEO of the Aurukun Shire Council, was also there at that time.

Peinkinna and Pootchemunka, separately, also spoke to Bell in his cell.

What care was taken of Bell?

Immediately Bell was admitted to the station, Smith phoned ATSILS on Bell's behalf.

After the first interview, when Smith realised Bell was injured and sick, he recorded his injuries in the watch-house custody register and contacted the Aurukun Health Clinic to make arrangements to get him medical treatment. They went to the clinic at about 11 am. Smith stayed with Bell while he was being examined by Dr Hughes.

After returning him to the cell, Smith noticed some vomit and blood on the floor. At about 1 pm, he gave Bell the medication prescribed by Dr Hughes. He also took him a cup of tea.

At about 5.40 pm Smith heard a noise. He looked up at the CCTV monitor and saw Bell shaking. He saw him stand up and fall to the ground. Doomadgee was with Smith at the time and they both went into the cell. They placed Bell in the recovery position and Doomadgee stayed with him while Smith called for medical help.

Soon afterwards, Nurse Pauline Fenton arrived. She phoned Dr Hughes who arrived at about 5.45 pm. Hughes treated Bell and then had him transferred to the clinic and later to Cairns Base Hospital.

When asked about Bell's assertion (see fifth interview) that, shortly after his arrest, he had asked police to take him to the hospital because of an asthma-like cough and had asked to have the light turned on because it was dark, the officers did not remember him making either request.

Accounts from Indigenous witnesses

CMC and ESC investigators interviewed numerous members of the community in relation to this matter; the main ones are listed below. Tribal elder Mrs Rebecca Wolmby sat in on many of these interviews.

- ▶ Nelson Wolmby, Bell's grandfather
- ▶ Roderick Yunkaporta, Aurukun Shire Council employee
- ▶ Matthew Doomadgee and Cecil Toikalkin, community police officers at Aurukun
- ▶ Martha Koowarta, Dorothy Pootchemunka, Susie Yunkaporta, and Pastor Ralph Peinkinna, members of the Aurukun Community Justice Group
- ▶ Gary Kleidon, CEO of Aurukun Shire Council since November 1994
- ▶ Nicholas Bell, Bell's brother
- ▶ Craig Bara, Bell's neighbour.

The following is a summary of what they had to say, relevant to the case.

Nelson Wolmby and Roderick Yunkaporta

Nelson Wolmby and Roderick Yunkaporta (who live in the same house) witnessed Bell's arrest. They confirmed that Wolmby opened the door for the police and that the police found Bell hiding in the ceiling of the house. They said Bell came out of the ceiling and there were no struggles or fights at the house. They also said that there was nothing wrong with Bell's face when the police arrested him.

Matthew Doomadgee and Cecil Toikalkin

Neither Doomadgee nor Toikalkin noticed an injury to Bell's head when they saw him briefly on the Monday. They stated that when they visited him in his cell on the Tuesday morning (at breakfast), and later at smoko time, they noticed that he had a lump on his forehead. Toikalkin described the lump as 'not very big' and added that it seemed 'old'. Doomadgee described it as a 'big' lump. They both said that Bell told them his brother Nicholas had hit him with a bicycle part the previous Saturday.

Martha Koowarta

Martha Koowarta said that when she saw Bell at the clinic on Tuesday morning he told her that three police officers had bashed him at the police station, inside the cells. Koowarta relayed Bell's comments to other members of the Community Justice Group including Dorothy Pootchemunka, Susie Yunkaporta and Ralph Peinkinna. They all decided to return to the clinic and challenge Sergeant Smith for an explanation. Sergeant Jones later spoke to the group and invited them to go to the police station where they were shown a videotape of the interview with Bell — in which he states that his brother Nicholas had hit him.

Dorothy Pootchemunka

Dorothy Pootchemunka said the lump on Bell's forehead looked fresh, not two or three days old as the police claimed. She said that Bell told her two constables had hit him. Bell told her that, when the police took him to the watch-house, they didn't put the light on. He said the police were hitting him, and she saw that both sides of his face were swollen. Bell mentioned the name 'Buckley' when he was speaking to her in Wik.

Pastor Ralph Peinkinna

Ralph Peinkinna, a pastor of the Uniting Church, visited Bell in his cell, after Bell had returned from the clinic. He said he saw blood and vomit in the cell but could not tell whether the blood was caused by the vomiting or by Bell being hit. He said he was not sure if Bell was telling the truth about being hit by police.

Gary Kleidon

Gary Kleidon said he learned of Bell's allegations from Ralph Peinkinna and Dorothy Pootchemunka. He went to the watch-house and saw first Peinkinna and then Pootchemunka go into the cell and speak to Bell for a few minutes. He said they went in separately and neither said anything when they came out. He was under the impression that they were satisfied with what they had seen and he understood that they were going to talk to Bell's family. When he left the police station, he could see Bell on the television monitor talking to Smith, Doomadgee and Toikalkin.

Nicholas Bell

Nicholas Bell at first denied having anything more than a verbal disagreement with his brother the previous Saturday, but later he admitted that he had thrown a bike rim at him. However, he said the rim missed his brother, thereby denying that he had physically assaulted his brother.

Craig Bara

Craig Bara, Bell's neighbour, witnessed another fight between the brothers on the Monday night. Once again Nicholas threw a bicycle rim at Bell but Bara said it missed. He said that when he saw Bell on the Monday afternoon he did not notice any marks or bruises.

The medical evidence

Dr Rachel Hughes – first treatment (vomiting)

Dr Hughes first saw Bell for about 30 minutes at 11.30 am on Tuesday 9 January. During that treatment, she examined him thoroughly and asked him a series of questions about his injuries. She had never treated him before.

She noted that Bell had a ‘three-centimetre bruise’ on his forehead with a very slight graze on top of the bruise, which was dry and in the process of healing. There was no bone injury underneath the bruise and no evidence of active bleeding.

What did Bell tell Dr Hughes?

Bell told Dr Hughes that he had a sore forehead and a headache. He said he’d had abdominal pain for the previous five to seven days and had been vomiting for the past few days.

When asked about the injury to his forehead, he said he had been hit by his brother in the forehead with a bicycle frame the previous Saturday. This was the only injury he reported and the only explanation given to Dr Hughes for his injuries.

Bell also told Dr Hughes that he did not have any diarrhoea, but he had been drinking alcohol fairly regularly and he had consumed alcohol on Saturday.

Bell also reported a small streak of blood in his vomit and a nosebleed the previous evening (Monday night).

What did Dr Hughes conclude?

Dr Hughes thought the bruise on Bell’s forehead was consistent with the history provided by Bell of being struck in the head three or four days earlier. She did a thorough neurological examination and found no sign of a severe head injury.

She came to the conclusion that the vomiting and abdominal pain Bell complained of was due to gastritis or an inflammation of the lining of the stomach, which is usually made worse by drinking alcohol. She thought his vomiting and abdominal pain were most likely a continuation of the gastritis that Bell had prior to the head injury, and it was very unlikely that Bell’s vomiting was due to his head injury.

She believed the blood in his vomit was due to either swallowing blood from his previous nosebleed or a small tear in his oesophagus from regular vomiting. On examining his nose, she found no sign of any injury to it and no dried blood or other residual evidence of a nosebleed.

She gave Bell paracetamol for his headache and Omeprazole, a medication that stops acid production in the stomach, to reduce irritation to the lining of the stomach.

Bell was due to fly to Cairns the following morning to attend court for the assault charge (in relation to Priestly’s complaint). Dr Hughes thought he would be fit to fly, but made an appointment to see him at 8.30 the following morning before the flight.

Dr Rachel Hughes – second treatment (seizure)

The seizure

Dr Hughes received an urgent phone call from Nurse Fenton at about 5.40 that afternoon to attend the police station. She arrived at about 5.45 pm and was met by Sergeant Jones. She was given a brief description of what had occurred and observed Bell having what looked like a fit or seizure of some kind.

She was told by the police officers that Bell had fallen to the ground and banged his arm. She could see that Bell was probably fitting, so she went into the cell where Fenton and Doomadgee were taking care of him. Fenton had taken Bell's blood pressure and his heart rate and made some basic observations, and Hughes had the opportunity, while waiting for medication and intravenous instruments to arrive, to observe his seizure.

Bell was on his side in the left recovery position. Both his legs were shaking symmetrically and his arms were not moving. The tone in his upper arms was quite normal and he was nodding his head. He had a rapid breathing rate, he was drooling, and his eyes weren't focusing. Dr Hughes spoke to him and he did not respond to her voice. He had not been incontinent, and his blood pressure and heart rate were within normal limits.

Dr Hughes gave him an injection of Madalazam, a drug that is used to cease seizures. When she put the needle in his arm, he withdrew in response to the pain. His movements slowed until they ceased in about one minute after the injection. She spoke to him again and he responded. She saw that his lip was swelling up and she noticed a new small cut above his left eyebrow. She thought either he had bitten his lip during the seizure or the injury had been caused when he fell to the ground. There was vomit on the floor near his head, but she did not see any blood in the vomit.

Bell was taken to the clinic, where Dr Hughes decided he should go to Cairns Base Hospital for a scan of his head. He was accompanied on the flight by Dr Walter Dietz of the Royal Flying Doctor Service. The flight passed without incident.

Dr Carl Vogler (seizure)

Dr Vogler treated Bell on his arrival at Cairns hospital at about 11.30 on Tuesday night.

What did Bell tell Dr Vogler?

In an effort to find the cause of the seizure, Dr Vogler asked Bell a series of questions about his injuries and read the notes provided by Dr Hughes. He said Bell was largely uncooperative and did not answer many questions.

Dr Vogler said he had heard rumours that Bell was claiming police had assaulted him, but he did not question Bell about this. He said that when he asked Bell what had caused his injuries, Bell told him that he was hit on the head by a bike part several days beforehand. His reported symptoms were a minor headache, feeling sore all over, nausea, and upper abdominal pain.

Bell said he did not lose consciousness when hit by the bike, nor during the seizure that afternoon. He said he had been vomiting.

Dr Vogler's examination

Dr Vogler checked his vital signs — blood pressure, pulse and breathing — and they were all normal. He checked for the normal signs of a seizure, including decreased levels of consciousness, aspiration (inhaling his own vomit), weakness in his limbs, loss of sensation and neck stiffness. Bell had none of those symptoms.

His lungs were clear, he had no rib tenderness or fractured ribs. He had slight upper abdominal pain, which Dr Vogler thought was most likely due to his vomiting and alcohol gastritis (inflammation of the stomach lining due to excessive alcohol consumption).

Dr Vogler did a full neurological examination on Bell, including testing the sensations of his body, the power in all his limbs and his reflexes. They were all normal.

He then examined Bell's pupils and tested his eye movements indicating his brain function, which were normal. He could not find any signs of brain swelling. The results of the CT scan of Bell's head showed no signs of a fracture or bleeding in the brain.

Blood tests were done to check if an electrolyte (salts in the body) abnormality had caused the seizure — the results were normal. Bell's blood count was normal, as was his liver and pancreas function.

Dr Vogler described the facial injuries Bell had. He said he had a small, approximately 3 cm by 3 cm, haematoma (swelling of blood under the skin, like a bruise) in the middle of his forehead with no cuts, bony tenderness or fractures underneath it. He believed it was two to three days old, which he said was consistent with Bell's explanation that he was hit on the head with a bike part several days before. There was a small — half a centimetre — haematoma over his left eyebrow. Dr Vogler was unable to say how old the bruise was. There were no cuts on his eyebrow. The only other finding was a slight tenderness over his right elbow. There was no fracture.

What did Dr Vogler conclude?

Dr Vogler discussed the results with the Registrar. They believed a likely explanation of the seizure was alcohol withdrawal, given Bell's history of high alcohol consumption and his statement that he had not drunk alcohol since the previous Saturday.

Bell was released from Cairns hospital to police custody at about 2 am on Wednesday. Dr Vogler gave police officers Panadol tablets for Bell's headache, Diazepam tablets to prevent any more alcohol withdrawal seizures and Maxolon tablets for nausea and vomiting.

Assessing the assault allegations

What is the direct evidence?

The only direct evidence of the alleged assault is the evidence of Warren Bell himself. No other witness saw any assault and the officers at the police station all deny any assault took place. It is therefore necessary to consider the reliability of the evidence given by Bell.

Who did Bell say assaulted him, and when?

Bell's assault allegations are directed at Constable Adam Reedy and Acting Senior Constable Andrew Buckley. He has made no assault allegation against Sergeant Glen Smith, or named any other officer, although he does imply that Sergeant Smith knew of the assault because he witnessed it (see sixth interview).

Bell is unclear of the exact time of the alleged assault. In the second interview he makes a vague reference to 2 am, in the third interview he puts it at about 5.30 am, and in the fifth interview says it happened at 6 am. However, confusion over exact times is understandable. What is clear is that, on Bell's own account, it took place in the small cell at Aurukun Police Station in the morning of 9 January while it was still dark, and before the first interview with Smith (8.30 am) in which he and Smith discussed the injuries to his face. (He makes a vague reference in the sixth interview to an assault also occurring earlier at his grandfather's house, but the other occupants of the house flatly deny that this occurred.)

The CMC has reviewed the answers given by Bell in six separate interviews between Tuesday 9 January 2007 and Monday 15 January 2007, including the information provided to the CMC on Bell's behalf by ATSILS on 10 January 2007. What is apparent is that, over the course of those interviews, Bell's evidence changed in significant respects. Some of the more significant changes and inconsistencies are as follows.

How is the assault supposed to have happened?

When Sergeant Smith first asked him about the allegations — after they returned from the clinic — he was very vague about the details. He seemed more concerned with the fact that police used two vehicles to arrest him, and that Buckley had worn gloves, than about any assault. He did not provide any details about who assaulted him or how many times he was struck. He said nothing about being kicked or threatened.

When interviewed by Detective Sergeant Churchill in the early hours of the following day, he said the 'tall police officer with the weights gloves' (Buckley) punched him at about 5.30 am in the small cell. Later in the same interview, he went on to say that the other officer (presumably Reedy) also hit him.

According to the complaint relayed to the CMC by ATSILS on the Wednesday, Bell was hit by 'Constable Adam' [Reedy] and another officer (presumably Buckley) six to seven times in the face.

When interviewed by ESC and CMC investigators later that night, Bell stated he was punched six times by 'Barkly', who was wearing 'weights gloves'. He was punched in the head and body and was kicked with 'combat boots' to the legs and feet. He said he suffered a bruise from his nose to his forehead and his eyebrow. Later in that interview, after being asked about the content of his complaint through ATSILS, he said he was bleeding from the nose.

There is inconsistency in the versions given by Bell about whether one or more police officers assaulted him, who those police officers were, how many times he was hit, whether he was kicked, and the injuries he suffered as a result.

What is apparent is that the earlier versions given by Bell soon after the alleged assault are vague, whereas in later interviews the following day more detail is revealed that is inconsistent with previous versions.

It may be argued that this inconsistency can in some part be explained by the alleged assault occurring quickly, and by confusion on the part of Bell, but the differences are nonetheless significant.

Whom did he tell?

In the first recorded interview by Smith at 8.30 on the Tuesday morning, Bell said nothing about the alleged assault — even though, on Bell's account, it would have occurred only two to three hours earlier.

Bell made no mention of it to Doomadgee (his cousin) and Toikalkin when they had their smoko with him between about 9 and 10 that morning, even when they asked him specifically about the lump on his forehead. One would have thought this would be the perfect opportunity for Bell to raise the allegations for the first time. He was speaking to people he knew from his own community and they had asked him specifically about what had caused his injury.

Similarly, when taken to the clinic and treated by Dr Hughes, he made no mention of the alleged assault, despite being twice asked about the cause of his injuries by Dr Hughes and Peter Fenton (Director of Nursing). On the contrary, he told them both that his brother had hit him.

The evidence shows that the first time the assault allegation is made is during the conversation with Martha Koowarta at the clinic while he is waiting to be treated by Dr Hughes. There are different versions of how he told Koowarta. Bell said (see fifth interview) that she asked him what happened to his face, saying something like: 'I think them two coppers were hitting you, hey?' and he replied, 'Yeah'. Koowarta told investigators that when she saw Bell at the clinic on Tuesday morning he told her directly that three police officers had bashed him at the police station, inside the cells. Later, when interviewed for the sixth time, Bell said that he told Koowarta directly that two coppers had hit him.

Explanation for the injuries sustained

There are also significant differences in the explanations Bell provided to different people about how he received the injury to his forehead.

When first interviewed by Smith, Bell was clear in his explanation that his brother hit him with the bike part the previous Saturday, which caused the bruise on his forehead. He provided the same explanation to Doomadgee and Toikalkin less than an hour later, and, in separate conversations, to Dr Hughes and Peter Fenton later that morning.

After speaking to Martha Koowarta at the clinic at about 11 o'clock, the explanation he provided for the lump on his forehead was the alleged assault. However, when treated by Dr Vogler in Cairns later that night, he said once again that he was hit on the head by a bike part several days earlier.

The arrest

A final significant anomaly in the evidence provided by Bell relates to what happened when he was arrested on the Tuesday morning.

In the interview with CMC and ESC officers on Wednesday night, Bell stated he was asleep on the lounge room floor when he heard the police knocking on the front door. After the door was opened by his girlfriend, the police 'rushed' towards him and handcuffed him.

In the last interview with ESC officers the following Monday, he stated he was asleep on the floor, his grandfather Nelson Wolmby opened the door and the police rushed towards him and twisted his hand. He also made a vague reference to being assaulted at his grandfather's house during the arrest.

All other witnesses to the event said that Wolmby opened the door, Bell was hiding in the ceiling and the arrest was without incident. Smith's audio recording of the arrest supports this version.

All these inconsistencies suggest it would be unsafe to rely on Bell's evidence, unless it can be supported by corroborating evidence.

Is there any corroborating evidence?

Possible corroborating evidence of Bell's allegation is provided by:

- the lump on his forehead
- his seizure
- the existence of blood and vomit in the cell
- the statements of the people who say that Bell did not have a lump on his head before his arrest.

The first three are explained by the medical evidence. In addition, in relation to the existence of blood in the cell, the medical evidence is supported by the forensic examination of the cell. The fourth point — the statements of the people who say Bell did not have a lump on his head before the arrest — is not supported by the medical evidence, which puts the injury at two to three days old, and is challenged by Bell's own explanation of how he received his injury.

Statements of people who say Bell did not have lump on his head before the arrest

Two Indigenous witnesses — Nelson Wolmby and Roderick Yunkaporta — told investigators that Bell did not have any injuries to his face before the arrest.

Their assertion is supported by:

- Craig Bara, who said that he did not notice any injuries when he saw Bell the previous day (Monday).
- The two community police officers (Doomadgee and Toikalkin), who said they did not notice an injury when they saw Bell the previous day.
- Two of the three arresting police officers, who said they did not notice an injury at the time of the arrest. (Buckley said he noticed it when he got Bell out of the police car at the station.)

Bell himself, however, told at least six people that he had got the lump on his head the previous Saturday when his brother Nicholas had hit him with a bicycle rim during a fight. He told:

- Matthew Doomadgee and Cecil Toikalkin when they had their smoko with him on the Tuesday morning of his arrest
- Sergeant Smith when Smith asked him in the first interview how he got the lump on his forehead
- Peter Fenton when he was taken to the clinic the first time
- Dr Hughes when he was examined by her in relation to the vomiting
- Dr Vogler when he was taken to Cairns Base Hospital after the seizure.

Moreover, the photographs taken of Bell's face by Sergeant Smith after the second interview on Tuesday show that, unless Bell's hair is pulled well back from his forehead, the injury is not obvious from the front and difficult to see at all from the side.

The medical evidence

Both Dr Hughes and Dr Vogler, after treating Bell on the day of the alleged assault, concluded that the injury to Bell's forehead was three to four days old and consistent with being hit the previous Saturday by his brother.

There is no dispute that Bell vomited and later fell to the ground and had some kind of seizure while in police custody. Some witnesses saw a small amount of blood in the vomit in the cell. However, the separate conclusions of the two doctors who treated Bell that day provide explanations for the vomiting, blood and seizure that are unrelated to any alleged assault. Their conclusions do not support the assault allegations.

Dr Hughes concluded that Bell's vomiting while in custody was due to a pre-existing gastritis condition related to regular alcohol consumption, which was consistent with Bell's reported history of vomiting during the previous few days.

Dr Vogler, after extensive tests, believed the seizure Bell suffered later that afternoon was most likely due to alcohol withdrawal symptoms.

The forensic examination of the cell

In the days following Bell's allegation of an assault, forensic examinations were conducted on his cell and on the clothing worn by the four police officers: Smith, Buckley, Reedy and Jones. Nineteen blood swabs were obtained from various areas in the cell, three hair samples, two cigarette butts and six other items including a scraping of what looked like vomit from the toilet seat. The walls, floor, ceiling, toilet and bed areas were examined. Blood was found in various parts of the cell, but no splatters on any of the walls or floor consistent with someone being assaulted in the cell. There were no signs that a clean-up had occurred.

The police officers' clothing, including their shoes and Buckley's gloves, was examined visually and with Polilight.¹ No evidence of blood was found on any of the items.

¹ A portable light source, used in forensic examinations, that shows invisible clues like blood stains.

Conclusion to the investigation

There are significant inconsistencies in the accounts given by Warren Bell, which suggest that it would be unsafe to rely on his evidence without information from other sources to support it.

The only independent evidence to corroborate or support Warren Bell's allegation — an injury to his forehead, the seizure in the cell, the blood and vomit in the cell, and the accounts of the people who said that he had no injury before the arrest — is challenged by the medical evidence, the forensic examination of the cell, and Bell's own account of how he received his injury.

Therefore, the CMC concludes that there is no ground for referring anything to the Director of Public Prosecutions for possible criminal charges.

The CMC makes no adverse findings against any police officer in relation to an assault. It does, however, refer this report to the QPS for consideration of disciplinary action in relation to the failure of police to videotape Warren Bell in his cell at Aurukun Police Station on the morning of 9 January 2007 (see recommendation below).

Recommendation

Section 37 of the Standing Operating Procedure for Aurukun Police in relation to surveillance/security equipment in the watch-house says in part:

- 37.1 Video and audio monitors exist in the Aurukun Watch-house.
- 37.2 When prisoners are lodged, the monitors are to be turned on to the appropriate cell that prisoners are lodged in.
- ...
- 37.4 A video recording function exists on both the Spot/VCR and the Multiplex Monitor. This operates on the cell that is displayed on the corresponding monitor. Tapes are provided for the video recording and are located in the storage room beside the charge counter. These tapes are to be signed out in the Watch-house Video Register. They are numbered and are designed to assist members with recording the behaviour of prisoners. They are to be held in case any complaints are made.
- 37.5 This videotape facility is to be activated for all prisoners.

By his own admission, Sergeant Glen Smith did not follow these instructions. He explained that:

- the cell Warren Bell was placed in did not have a monitoring tape in readiness, and the setup at Aurukun does not make it easy to carry out the procedure quickly
- the fact that Bell was not violent or difficult while being admitted meant that it did not occur to Smith that video monitoring might be necessary.

Sergeant Smith concedes that he made a mistake.

The CMC refers this report to the Queensland Police Service for its consideration of any disciplinary action that may be warranted as a result of the failure of Aurukun Police to videotape Warren Bell in his cell at Aurukun Police Station on the morning of 9 January 2007.²

² At the request of the Premier and under section 52 of the *Crime and Misconduct Act 2001*, the CMC will be carrying out a research project into various issues surrounding policing in Indigenous communities. This will include the question of whether round-the-clock surveillance can be used in watch-houses.