

CITATION: *Police v Andrew Ahkit & Shakira Ahkit* [2008] NTMC 028

PARTIES: POLICE

v

ANDREW AHKIT AND SHAKIRA AHKIT

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Court of Summary Jurisdiction

FILE NO(s): 20726763 & 20726764

DELIVERED ON: 1 May 2008

DELIVERED AT: Darwin

HEARING DATE(s): 15 April 2008

JUDGMENT OF: Ms Fong Lim RSM

**CATCHWORDS:**

Disorderly behaviour – execution of duty

**REPRESENTATION:**

*Counsel:*

Plaintiff: Mr Browne  
Defendant: Mr Cassells

*Solicitors:*

Plaintiff: Director Public Prosecutions  
Defendant: NAAJA

Judgment category classification: C

Judgment ID number: [2008] NTMC 028

Number of paragraphs: 59

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20726763 & 20726763

*[2008] NTMC 028*

BETWEEN:

**POLICE**  
Plaintiff

AND:

**ANDREW AHKIT**  
First Defendant

BETWEEN:

**POLICE**  
Plaintiff

AND:

**SHAKIRA AHKIT**  
Second Defendant

REASONS FOR DECISION

(Delivered 1 May 2008)

Ms Fong Lim RSM:

1. The first defendant Andrew Ahkit faces charges of disorderly behaviour in a public place, assault Police and disorderly behaviour in a Police station. The second defendant Shakira Ahkit faces charges of hinder Police in the execution of their duties and assault Police.
2. Evidence was called from four Police Officers for the prosecution and both defendants gave evidence. It is not disputed by the defendants that they had an altercation with the Police on the night in question and that there was some offensive language being used, however they deny the alleged assaults on the Police and the circumstances of that altercation.

3. To find the defendants guilty of all offences, I must be satisfied beyond a reasonable doubt as to each of the elements of each offence and the prosecution must have negated beyond a reasonable doubt the possible defence put forward by the defendants. The evidence of the Police Officers called for the prosecution, if taken alone, would in my view prove beyond a reasonable doubt that the defendants were guilty of all offences. However the defendants' evidence raised the proposition that the actions of the Police Officers that night and in particular that of Officer Kidney, were not in the course of their duties and therefore, the defendants were justified in their actions. The allegation by the defendants is that Officer Kidney deployed his OC spray upon the defendant Andrew Ahkit and with no reasonable grounds and that caused matters to escalate, culminating in the defendants' arrest.
4. Given the defendants have the same surname, I will refer to them throughout this judgment as Andrew and Shakira.
5. Officer Kidney's evidence is that he and his partner Officer Bayley were on patrol in the Darwin City area when at about 5.00am they were in the vicinity of Harriet Place and saw a male and female standing in the middle of Harriet Place arguing. The male and female were the defendants. Bayley and Kidney drove to where the defendants were standing and arguing, stopped the vehicle and sounded their horn. The male responded by turning around and aggressively waving his hands around yelling "what the fuck are you beeping at me for". Kidney says he asked the male to move off the road and the response from the male was to act in an aggressive manner and to continue to wave his arms about and swear.
6. When Kidney got out of the vehicle, the male then said something to the effect that he would "fucken lock himself up" and proceeded to walk towards the back of the paddy wagon. The male, Andrew, then walked towards the back of the vehicle followed by Kidney. It is then the evidence of Kidney that Andrew turned suddenly and swung a punch at Kidney which

either connected with Kidney's arms (held up in defence) or on his face. When asked in cross-examination, Kidney could not describe the level of force, except to say the punch caught him by surprise.

7. Kidney then says he attempted to restrain Andrew, with Bayley's assistance and during that process, the defendant Shakira intervened and tried to pull him away from her brother. The Officer recalls Shakira pulling his shirt and radio from behind and finding it difficult to control Andrew as well as deal with Shakira. He also remembers Shakira having more than one go at stopping him from arresting her brother. During that tussle with Shakira and Andrew, Officer Bayley assisted by warning Kidney to step away as he was going to deploy OC spray. The spray was applied by Bayley to the defendant Andrew and while that was happening and Kidney was trying to deal with Shakira, he says he had pulled her to the ground by her hair. Andrew then broke free and ran towards Smith Street and some way down Smith Street.
8. Kidney says he pursued on foot and noticed Andrew then stopping in the middle of Smith Street turning and "shaping up to him". Kidney says he approached Andrew at running speed and grabbed a hold of him and put him to the ground in order to restrain him. He also remembers there being several other people around at the time and says he felt that they could become aggressive towards him as well. While on the ground with Andrew, Kidney then says he saw a female in his peripheral vision run towards him and the next thing he felt was a blow to the side of his face. His reaction to this blow was to grab whoever had hit him and pull her to the ground. That person was Shakira. It was at that stage Bayley arrived to assist, as did other Officers called by Bayley for back up.
9. There is further evidence from Kidney that Andrew then continued to resist being placed in the back of the paddy wagon and continued to swear and make threats to the Officers. The words used were something like "you're fucked I'm going to tell Uncle Johnnie on you, women basher". Kidney says

that he and Bayley took Andrew back to the watch house and during that journey, he continued to swear and carry on in the back of the van. Once at the watch house, Kidney says he had no further dealings with either of the defendants.

10. The evidence of Bayley accords with Kidney's evidence in parts but is seemingly inconsistent about the interaction between himself, Kidney and the defendants after Andrew had suggested that "I'll fucken lock myself up". Bayley agrees that the defendants were clearly having an argument in the middle of Harriet Place when first seen by him and his partner. He also agrees with Kidney's evidence about the defendant's demeanour (aggressive) and the form of words he used in his responses to Police - beeping the horn and the request to move off the road. Bayley also confirms that Andrew indicated that he would put himself in the back of the van. Andrew then started to move towards the rear of the vehicle and Bayley says he also moved toward the rear of the vehicle to open up the cage door for Andrew to be placed into the vehicle.
11. At the rear of the vehicle Bayley says that he was attempting to open the door of the van when Shakira tried to stop him by placing her hand on the door, keeping it shut while trying to convince him to leave her brother alone. Shakira apparently said something like "no, no leave him alone, we'll be right". He then heard a "commotion" around the other side of the van and moved to that area to see what was going on. Once he got around to the other side of the van, he observed Kidney and Andrew holding each other by the shirt and then saw Andrew swing a punch with his right hand at the left side of Kidney's face. Bayley was certain the punch connected. He also observed Shakira getting in between Kidney and Andrew, attempting to stop Kidney from restraining Andrew. That is when Bayley says he deployed his OC spray because he was unable to separate Kidney and Andrew and both defendants were sweating and slippery and hard to maintain a grip on. His evidence is that while the spray had an immediate effect on Andrew, he was

still “resisting”. Bayley says he then grabbed a hold of Shakira’s hair and pulled her to the ground and she was continuing to get in the way of her brother’s arrest.

12. Bayley then observed Andrew getting away and Kidney taking off in pursuit. His next move was to follow Kidney in the Police vehicle. When he arrived on Smith Street, he observed Kidney kneeling over both defendants in the middle of the road with a large crowd around them. He says Andrew was seated on the ground with his head in his hands and Shakira was hunched over him. He called for back up and went to assist Kidney. He confirms that Andrew was saying something like “fuck you all, youse are all fucked, wait till I tell my Uncle Johnnie and he will get you”. His memory is then that Shakira was placed in the back of the van he was driving and Andrew in another van.
13. Bayley’s further evidence is that upon arrival at the watch house, he assisted with the decontamination of the defendants by taking them to the decontamination unit and applying water to the face area and anywhere affected by the OC spray. His recollection is that Shakira was dealt with first and then Andrew. Andrew was continuing to be aggressive and once placed in the holding cell, continued to swear and kick the cell door.
14. Evidence was also taken from Constable Lisson, who was one of the Officers who responded to the call for back up by Bayley, along with his partner Constable O’Neill. Constable Lisson’s evidence was that he and Constable O’Neill were out on general duties when they heard the call for back up. When they arrived they saw Kidney and Andrew with a large crowd of 15 – 20 people surrounding them. The first thing he did was to move the crowd away from Kidney and Andrew and he then assisted to put Andrew into the back of the van he was driving to convey him to the watch house. It is also Lisson’s evidence that during the journey to the watch house, Andrew continued to swear and carry on in the back of the van, as well as when he

was taken for decontamination at the watch house. Lisson assisted with the decontamination and then helped put Andrew in the holding cell. Lisson's recollection is that Andrew continued to make threats to the watch house Police and kick his cell door.

15. Probationary Constable O'Neill's evidence accords in the main part with Lisson's and she gives further evidence of Shakira's arrival in the van with Kidney and Bayley and seeing her placed into the holding cell. She remembers a lot of swearing by both defendants and the use of the term "white cunts" quite a bit.
16. Andrew Ahkit then gave evidence that he had been to his cousin's 18<sup>th</sup> birthday party and had left there with his two friends to go to Discovery. He left Discovery when it closed and went with his friends to the 24 hour eatery on Smith Street to get some water. It is there where he saw his sister Shakira and they had an argument about a girl he was talking to who was their cousin. He says that it was just a "brotherly/sisterly" argument and that he was laughing at his sister's mistake. He says that they were outside of the eatery standing on the road but close to the parked cars. He denies standing in the middle of the road and claims that by the time he was beeped by the Police, the argument had ceased.
17. Andrew says he was standing there talking to his sister waiting for his friends to come back and pick him up to take him home when he was surprised by a beep from a car horn directly behind him. He says his reaction was one of shock and surprise and he turned with his hands up in the air saying "what the fuck" or "who the fuck". He says before the horn sound, he was not aware of the car behind him and certainly not aware that it was the Police. Once he realised that it was the Police, he says he kept his hands in the air and explained that it was just he and his sister having an argument and that it was finished. He does not remember Kidney telling him

to get off the road and denies he ever said that he was going to put himself in the van.

18. The next thing he recalls happening is that while his hands were still in the air and he was talking to Kidney, explaining what was going on, Kidney suddenly sprayed him with OC spray. This occurred while he was still standing in front of the car. Andrew says the spray affected him such that he couldn't breath or talk and he had to lean up against the car covering his face with his hands because it was burning. Andrew did not explain how he got to the side of the vehicle.
19. The next thing Andrew remembers is seeing an Officer, "the one who sprayed me" grab his sister and chuck her to the ground. He thinks that it was because she came in to see what was happening to him and while he did not specifically see that, he heard some yelling to that effect. He then pushed the Officer away because he was concerned for his sister's safety. Andrew denies ever punching or attempting to punch Kidney.
20. It is at this stage Andrew's evidence becomes confused. He says the second Officer became involved when Kidney and his sister became "involved" and he sprayed Andrew the second time. Although Andrew says he couldn't see who sprayed him the second time because of the first spray, yet he could see what was going on between his sister and Officer Kidney. He didn't see his sister get sprayed.
21. After having pushed the Officer, Andrew says he ran away because he knew he shouldn't have pushed the Officer. He denies shaping up to the Officer on Smith Street and denies encouraging others around to "get these white cunts". He says he stopped in the middle of Smith Street because the spray was hurting too much and he couldn't breathe or talk. He says he sank down to his knees calling out "its hurting its hurting". It is then he is arrested. The defendant accepts that he was swearing and abusing the Police and that he was angry with the way he and his sister had been treated. He also accepts



that he struggled when they put him into the van and that he continued to carry on while at the watch house. He complains that he was not properly decontaminated and that his behaviour in the cells was because of the lack of attention he was getting regarding that complaint.

22. He denies that he ever offered to lock himself up or that he had moved towards the back of the van.
23. Shakira Ahkit also gave evidence that she and her brother had met up at the 24 hour eatery and had an argument about a girl her brother was talking to. She says she was “tipsy” and the aggressor in the argument and that her brother was having a laugh at her. She says that the argument was a bit loud and she was angry and not listening to him. She agrees that she and her brother were standing on the side of the road near the cars on Harriet Place and that her argument had finished when they were approached by the Police. She also agrees with her brother about his startled reaction when the Police beeped the horn. In cross-examination, Shakira says that while her brother was talking to the first Officer, she moved to the back of the car to talk to the second Officer to talk him out of arresting her brother. She accepted that she believed her brother was about to be arrested. It was from the rear of the vehicle she says she saw that Kidney had her brother with his back “up against the cage on the passenger side” with his hands in the air and that is when Kidney sprayed her brother. She said in her evidence in chief that is when she went to her brother’s rescue. Then in cross-examination she says she was talking to Officer Bayley at the rear of the vehicle when she heard the commotion on the passenger side of the car where she saw Kidney struggling with her brother up against the vehicle and her brother with his hands in his face. She then clarified that by saying that she actually saw Kidney spray her brother while she was talking to Bayley.
24. Shakira accepts in her evidence that she was trying to get between her brother and Kidney and was trying to stop Kidney from arresting her

brother. She remembers struggling with Kidney and him “reefing” her down to the ground by her hair and pushing her down to the ground. Her recollection is that after that her brother ran away. Shakira’s recollection is that she got sprayed when the second Officer got involved and sprayed her brother while they were all struggling together, but does not remember ever seeing her brother pushing or punching either Officer. Shakira denies ever hitting Kidney later on Smith Street, but admits she had followed them to assist her brother. It is interesting to note that spray clearly did not affect Shakira as much as it affected her brother. She doesn’t make any complaint about its affect on her during her evidence and was clearly able to chase after her brother after having been sprayed. She admits the bad behaviour of her brother in the watch house.

25. The Crown accedes that the assault charge against Shakira is a situation of oath on oath. Officer Kidney’s evidence is that he saw a female in his peripheral vision running towards him, he then felt a blow to the head and he reached around and pulled the defendant Shakira to the ground. Kidney’s evidence is uncorroborated and Shakira’s denial under oath places doubt on that evidence. Even taking Kidney’s evidence at its highest, it can only prove beyond a reasonable doubt that Kidney saw a female running, that he received a blow and that Shakira was close enough to have delivered that blow. There is no certainty about who the female was and no certainty about what the blow was, eg elbow, fist, kick etc. A reasonable alternative explanation is that he could have been hit by one of the other people around, who Kidney says were hostile towards him. Therefore, I cannot be satisfied beyond a reasonable doubt that the charge against Shakira for assaulting a Police Officer is made out.
26. The defendants argue that the evidence shows that the Police were not in the execution of their duty when they went to arrest the defendants and also raises the possibility that the defendants’ behaviour subsequent the

attempted arrest was caused by the Police operating outside of the execution of their duty.

27. Both Officers Kidney and Bayley state that they had formed the opinion that Andrew should be arrested for disorderly conduct because he was having a loud argument with his sister in the middle of a road with other people around and after his response of “get fucked” to the request to move off the road. Their evidence was also that he was speaking in a loud and aggressive manner. They say that the OC spray was only deployed by Bayley and only after Andrew attempted to punch Kidney. The defendant’s evidence is that the OC spray was first deployed by Kidney upon Andrew while he was talking calmly to Kidney, explaining to him the situation. If I accept the evidence of the Police Officers over that of the defendants’, then I will be reasonably satisfied beyond a reasonable doubt that the balance of the offences occurred as alleged. However, if I find that Kidney did deploy his spray on Andrew as claimed by the defendants, I must find that Kidney was acting outside of his duties and that Shakira’s attempt to hinder him in arresting Andrew and Andrew’s assault on him and further disorderly behaviour, were all predicated by Kidney’s unlawful assault of Andrew.
28. To make a decision about this issue, I must consider the evidence of all parties in relation to the early interaction between them.
29. The first question to consider is whether the defendants’ argument in the middle of the road and Andrew’s response to the Police intervention was “disorderly conduct”, which justified arrest.
30. There are inconsistencies between the Police Officers as to part of the interaction between them and the defendants. The initial interaction is clear, they saw a male and female arguing in the middle of the road and they approached to investigate. It was after Andrew became aggressive and using offensive language that they decided to arrest him for disorderly behaviour.

31. Much was made of the Officers' assessment of the first defendant's sobriety in cross-examination. Apparently all Police Officers who gave evidence assessed the first defendant as intoxicated from alcohol because of his behaviour and the fact that alcohol was smelt on his breath. There apparently was no mention of the level of intoxication in any of the Police statements. Andrew states that he only had three drinks that night and they were a lot earlier in that night. All Police Officers stated that Andrew smelt of alcohol and O'Neill suggested his words were slurred and he was unsteady on his feet.
32. The implication in the inconsistency in this evidence is that the Police Officers had either fabricated their observations of the smell and effect of alcohol on the defendant or assumed that it existed because that is what they expected of people in that area at that time of the morning.
33. If the Officers are mistaken about the smell of alcohol on the defendant, I am not of the view that they have fabricated the evidence, rather they could have mistaken it because of what is normally expected in these circumstances.
34. In any event, it was not the sobriety or otherwise of the defendant Andrew which determined in Kidney's and Bayley's mind to arrest him for disorderly conduct, it was his aggressive behaviour and bad language which was the basis for his arrest. The question is, was that behaviour reasonable grounds to arrest the defendant for disorderly behaviour?
35. In Watson v Trenerry [1998] 122 NTR 1, the Court of Appeal considered what constituted "disorderly behaviour". His Honour Justice Angel referred to the reasons of Napier J in Barrington v Austin [1939] SASR 130 where his honour says:

"I have no doubt that these words "disorderly behaviour" refer to any substantial breach of decorum which tends to disturb the peace or to

interfere with the comfort of other people who may be in, or in the vicinity of, the street or public place”

36. These words have been used at a standard which has been applied in such cases, however his Honour Justice Angel did not accept these words as establishing a standard. His view is that “disorderly behaviour” is “an ordinary and rudimentary expression (like “reasonable doubt”) which eludes a priori definition. It can be illustrated but not defined; it is to be applied to the circumstances of each case by the finder of fact” (at page 5).

37. With respect, I agree with his Honour Justice Angel in his analysis. Section 47(a) of the *Summary Offences Act* reads:

“47. Offensive, &c., conduct

Every person who is guilty –

(a) of any riotous, offensive, disorderly or indecent behaviour, or of fighting, or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place;”

38. Counsel for the defence suggests that because of the use of the words “riotous, fighting” and the inclusion of the words “or using obscene language”, the Court has to be satisfied of more than obscene language before it can make a finding of “disorderly behaviour”. I agree with that analysis.

39. The disorderly behaviour is particularised in the complaint as:

“whilst standing in the middle of Harriet Lane, Police drove up to you, stopped the vehicle and beeped the horn. You turned and raised your arms in the air in an aggressive manner and yelled “what the fuck you beeping at me for? Police instructed you to move off the road. You then walked toward the vehicle and did yell “Fuck you all Cors. I’ll fucking walk to the back and lock myself up.”

40. The behaviour complained of is not only bad language but the yelling of that bad language, the standing in the middle of the lane and the aggressive manner in which the defendant was waving his arms around.

41. The defendant gave evidence that his argument with his sister was over by the time he was beeped at by the Police and reacted in a surprised way. He says he was calmly explaining to the Police that it was just an argument with his sister and they were going home. Shakira agreed with Andrew in her evidence. However, it is in my view unbelievable that the defendants felt the need to explain their behaviour to the Police if the argument had in fact finished when the Police arrived. In my view, it is not credible that the defendant would be explaining his behaviour if, as he says, there was none to explain at the time. The evidence that the defendants were standing and talking calmly when the Police arrived cannot be believed. I accept that the Police did observe a heated argument between the defendants and that argument was continuing when they approached the defendants. I further accept that the Police had reasonable grounds to arrest the defendant, Andrew, on a charge of disorderly behaviour. The argument was loud and the bad language used by the defendant, Andrew, and the aggressive way he responded to the Police enquires was sufficient basis for arrest.
42. I am also satisfied beyond reasonable doubt that the defendant behaved in the manner as described in the complaint and as Kidney and Bayley described up to his suggestion that he would lock himself up.
43. It is clear that matters escalated after that on both versions of what happened. The prosecution version is that Andrew then assaulted Kidney by throwing a punch at him and the defendant's version is that Kidney sprayed Andrew with OC spray for no reason.
44. The evidence of all of the witnesses must be carefully scrutinized to establish whether the defendant's version of what happened is credible. The defendants are inconsistent in their evidence about where they say Andrew was sprayed with OC spray by Kidney. Andrew says it was while he was at the bonnet of the vehicle and Shakira says it was at the passenger side of the vehicle and Andrew had his back up against the cage of the van.

45. Officer Bayley's evidence is that when he came around the vehicle, Kidney and Andrew had their hands on each other's shirts, there was no indication that Andrew had been sprayed, in fact Bayley says he sees the attempted punch on Kidney at that point. Bayley also gives evidence that it was he who pulled Shakira to the ground by her hair and he who applied the OC spray to both Andrew and Shakira because he was of the opinion that the situation was that both he and Kidney were unable to contain the defendants without the deployment and there were other people around who may get involved. The defendants claim it was Kidney who took Shakira to the ground. In regards to what was happening to his sister, Andrew first says that he saw a uniform and non-uniform struggling, then clarifies that it was Kidney and his sister. This he says he saw clearly, even though he had been sprayed fully in the face by OC spray. He says it was Kidney who pulled Shakira to the ground. Shakira confirms this version.
46. The altercation between Kidney, Bayley, Andrew and Shakira happened over a very short space of time, between 20 and 30 seconds, emotions were high on behalf of at least Shakira, she was trying to stop her brother from being arrested and OC spray had been deployed. In those circumstances, it would not be unexpected that witnesses' recollection about the detail to be inconsistent, even if they are doing their best to tell the truth.
47. It is the evidence of both Kidney and Bayley that there were other people in close vicinity of where the altercation happened with the defendants and that is not denied by the defendants. In fact, the defendants give evidence that they were aware of other people being around.
48. If I were to believe the defendants' claim that Kidney had deployed his spray on Andrew while he was calm and had his hands in the air while other people were around to witness such blatant disregard for the principles of reasonable force upon arrest, I would have to believe that Kidney had taken leave of his senses. In the alternative, the prosecution have in my view

negated that proposition through the evidence of Bayley and his observations of the interaction between the defendants and Kidney and through the glaring inconsistency in the defendants' evidence as to where this deployment of Kidney's OC spray occurred.

49. It is possible that the defendants were mistaken as to who out of the Officers deployed his spray and pulled Shakira to the ground. Bayley volunteered that it was he who pulled her to the ground by the hair and clearly confusion would have reigned with emotions running high at that stage. The deployment of the OC spray could have also affected the defendants' recollection of what happened. There was a suggestion that alcohol may have also had an affect on the actions of the defendant, Andrew, however I cannot be satisfied beyond a reasonable doubt that was the case. Even if I accept that there was the smell of alcohol emanating from him as is suggested by all of the Police Officers, I cannot be satisfied that it was contributing to his behaviour.
50. I am therefore satisfied beyond a reasonable doubt that Kidney did not deploy his OC spray on that night and that the defendants must be mistaken in their recollection of who in fact did spray them and the sequence of the events that night.
51. Having found that there was no unlawful deployment of OC spray by Kidney, it follows that at the time that Shakira tried to intervene in the arrest of Andrew by Kidney by attempting to place herself between them and pulling at the shirt of Kidney, and, on her own admission, with the express design to stop her brother from being arrested, she was hindering Kidney in the execution of his duty and therefore must be found guilty of that offence.
52. In relation to the alleged assault on Kidney by Andrew, I do not accept Andrew's denial that he attempted to punch Kidney. Both Kidney and Bayley were unshaken in cross-examination about Andrew offering in no uncertain terms to lock himself up and I find it difficult to place any



credence to the suggestion by Andrew that he kept his hands up in the air for the whole time he was talking to Kidney to show he meant no harm. I cannot accept that the Police would have approached the defendants without reason and I accept that they observed an animated argument between a male and female which caused them some concern. Having accepted that I am satisfied beyond a reasonable doubt that the defendants in their evidence were minimalizing the level of the argument. Both of the defendants adopted the language of their counsel referring to a “brotherly/sisterly” argument and both suggested that Andrew was laughing off Shakira’s reaction to the girl subject of the argument. I do not accept the defendants’ description of their argument, while the topic of the argument may well have been the girl cousin, the level and emotion behind that argument was clearly more than what they described.

53. Given the high emotion and anger that was being demonstrated towards his sister, it is not credible that Andrew calmed down immediately he was approached by the Police. Even if I accept that the words he used were “what the fuck you beeping at me for” as Andrew claims without the added “you cunts” as claimed by Kidney and Bayley, I do not accept that it was said in a surprised manner. The phrase “at me” indicates to me that he was on the defensive and prepared to challenge whoever was beeping the horn. I am satisfied the manner in which he said those words was in an aggressive manner and indicates that he was in an aggressive mood.
54. I do not accept that Andrew was calmly talking and approaching Kidney with his hands in the air in a submissive manner. I am satisfied what Bayley witnessed and what Kidney experienced was an attempted punch by Andrew at Kidney. The fact that Kidney says he deflected the blow and Bayley says it connected can be explained by the positioning of the parties, Bayley was observing from the opposite side of the alleged blow and clearly could have mistaken the actual contact.

55. I am therefore satisfied beyond a reasonable doubt that Andrew did attempt to punch Kidney in the manner stated by Kidney and therefore, he must be found guilty of charge 2.
56. The charge of disorderly behaviour in a Police station is supported by the evidence of Officers Lisson, Bayley and to a small extent O'Neill. Both defendants accept that Andrew continued to swear and kick the cell door when placed in the holding cell, however the claim by Andrew is that it is because he was not decontaminated sufficiently and that he was still suffering the effects of the OC spray. The evidence of Bayley and Lisson is that Andrew was held over the water fountain for about 5 minutes, O'Neill states she could not recall how long he was at the fountain, as her focus was more on Shakira and other tasks. The defendant, Andrew states that he was only held over the fountain for 1 minute at the most and that his eyes were still stinging and he still couldn't breathe properly and that is why he still carried on in the cell. There was no evidence from Andrew that he was asking for water, his evidence was that he was yelling because he needed water for his throat. He accepted that he was yelling abuse but doesn't state that he actually told the Police he needed further decontamination. When asked by his counsel whether he continued to be abusive towards Police in the cell, he agreed and when asked why, he says "because I needed some water to wash it down my throat but they didn't give me a drink of water or nothing". The implication is that he asked for a drink of water however there is no evidence that he did make that request. It was not put to the Police Officers in cross-examination that the defendant had been requesting a drink of water and that they were ignoring his requests. The Court should not make anything of the imputation that the disorderly conduct by the defendant was caused by the alleged disregard for his comfort by the Police. The length of time for decontamination was put to the Officers, however the requests for water were not.

57. The defendant also claimed that he couldn't breathe and that is clearly not supported by the fact that he was able to yell and swear at the Police Officers, as well as kick the cell doors, if he couldn't breathe because of the spray, then one would expect him to be weaker and less vocal. Given the circumstances, this leads me to be of the view that the requests were not made by the defendant and that the defendant is giving his evidence in such a way as to imply that he made the requests to excuse his behaviour in the holding cell.
58. I do not accept the defendant's behaviour in the cells to be because of a failure by the Police to attend to his requests for water and find that he clearly behaved in a disorderly manner in the Police station.
59. In summary, the defendant Shakira Ahkit is found guilty on charge 2 and not guilty on charge 1 and the defendant Andrew Ahkit guilty of all charges.

Dated this 1st day of May 2008.

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**Tanya Fong Lim**  
RELIEVING STIPENDIARY  
MAGISTRATE