



OUTLINE OF EXPECTED EVIDENCE OF EATHAN, DAVID AND ANJA CRUSE

HEARING BLOCK 4

28 MARCH 2023

BACKGROUND

- 1 Our names are Eathan, David and Anja Cruse. David is from Yuin country, Anja is from Kurna Narrunga country.
- 2 A few years ago, our family suffered due to the brutality and racism of Victoria Police.
- 3 We share this story with the Yoorrook Justice Commission on behalf of our family, in particular, those who have not had a chance to tell the story from their perspective.

POLICE BRUTALITY

Eathan's story

- 4 In the early hours of the morning on 18 April 2015, Victoria Police raided our family home and arrested me. I was 19 years old. Five police officers broke into the house, carrying semi-automatic rifles.
- 5 I had gone to bed after watching a movie with my family. I heard loud banging, like someone was breaking into the house, and my parents screaming.
- 6 I saw a man dressed all in black, with a black mask on his face, holding a gun that looked like an assault rifle. The man moved towards me and told me to "get down" or "get on the floor". I dropped straight away, as I did not want to appear as a threat. I had no idea why the police were at our house.
- 7 When the police came to me, I was already on my stomach and they handcuffed me with wire. I did not resist, as I was scared. The officer asked what my name was. When I said "Eathan Cruse" he replied, "this is the one". Then I was hit on the head - the night is blurry, so I can't remember if it was a kick or a punch. I was hit several times to the side of the head. I am unsure as to how many times exactly but it felt like 10 to 15. I was also thrown against the fridge in the kitchen.
- 8 All the main windows were smashed, and there was blood all over the floor, lounge room, and kitchen floor. I was covered in blood, on my face, hair and all over my chest. I sustained bruising and injuries to my head and body, and was left concussed.
- 9 While this was going on, I could hear my mum and dad screaming. I saw my sister come through with a cop and when she saw me, and the blood on the floor, she started screaming. I also saw my little sister [REDACTED] who was [REDACTED] at the time, being dragged by her hair through the kitchen to where my parents were.
- 10 The police used an excessive amount of force for someone that was handcuffed, wasn't resisting arrest and didn't say a word. I believe it was motivated by racism – I also heard them call my dad a "black Abo".

- 11 I was taken from my house to the police station, and back to my house, with bare feet and no shirt on.
- 12 When I got home, there was no one there. There was lots of broken glass and clothes everywhere – everything was turned upside down. My room at my grandmother's was the same. Property that was taken away, like my younger brother's laptop, came back broken.
- 13 I experienced a number of physical injuries from the raid, including a blood nose, a cut in front of my left ear, bruising near my left eye, a large bruise and swelling on my forehead, as well as bruising and swelling to my neck and right occipital area (at the base of my skull). I also had headaches during the week following the raid.
- 14 Since this incident, I have been diagnosed with post-traumatic stress disorder and major depression.

David's story

- 15 I am Eathan's father. I was with my family watching a movie on that night. When the movie finished, I started turning off the TV and lights, when I heard the sound of windows smashing.
- 16 I saw about five black figures standing outside. The dining room door flew open and I saw a machine gun come through first. I dropped the bike I was holding and put my hands up. The machine gun was pointed at my head by a person wearing a black balaclava and clothing. I now knew they were police. Then, I saw another three machine guns pointed at me through the window. I yelled at them that there were kids in the house. I was then pushed over onto my back, and was kicked in my left ribs and I rolled over onto my stomach. I then felt knees on my back - I believe there were about four or five knees on my back. My wrists were put together and they put plastic zip ties to hold them together. They held my head down which prevented me from seeing what was happening. I heard all the kids screaming very loudly. I yelled out again "there are fucking kids in the house." At that time, my head was grabbed and repeatedly smashed into the floor. I heard someone say, "I told you to shut up you black cunt", although they could have said "you black abo". After the third or fourth time of having my head bashed on the floor, I blacked out.
- 17 I ended up lying on the floor, where I heard screaming coming from the hallway. I could see two police officers lifting Eathan into a standing position. I saw that Eathan's hands were behind his back. I saw Eathan get ripped around and heard a loud bang, which I believed was Eathan being banged up against the fridge. Then I heard a heap of thumping, like they were kicking him. They yelled more racist things at me.
- 18 About 10 to 15 minutes later, they started to bring the kids out of the bedrooms. I was still lying down on the floor when I heard my [REDACTED], [REDACTED], say "ow, ow, ow". I looked to my right and saw her on her tippy toes being held by the hair. They then laid her down on the ground next to me. She looked at me and she was crying. She then put her hand out to me but I couldn't hold her hand as my hands were tied. I said to [REDACTED], "it's okay. it'll be over soon". I then got another boot to the head and was told, "I told you to shut up". Each of my children were then walked out of the house through the front door. As they walked past Eathan and myself, the officers said in an angry voice, "don't look".
- 19 I was picked up hard and fast. I was walked towards the front door and I started to pass out. I was sat down on my bum near the door to the lounge room and one of them kneed me to the right side of my head.

- 20 I was standing with Anja and the two police for about 15 minutes when I saw them with Eathan at the front door. I could see his hands behind his back and he wasn't wearing a shirt and had no shoes on. He was just wearing his track suit pants. I could see that he had blood all over his chest and on his face. I fell to my knees and started to cry.
- 21 I stood with Anja on the footpath for about an hour. The kids were all together further up the street. After about an hour the police allowed us back into the house. The kids were put into bedrooms. As we were passing through the kitchen, some plain clothed police asked me how I injured my right hand as it had been bleeding. A police officer in black, wearing a balaclava said, "you smashed a window, that's how you cut your hand."
- 22 At about 12:30 pm, I asked one of the police if I was under arrest. They told me I wasn't. I then walked to [REDACTED] room to see if the kids were okay. I could see that they were absolutely terrified, scared, and tired, though not injured. As I walked out of the house, I could see a policeman mopping my blood where I had been lying. As I walked past him, I said "what, are you trying to hide the evidence?". He didn't say anything but dropped the mop and walked away.
- 23 As a result of this incident, I suffered the following injuries: bruising to my forehead and to the right of my right eye, bruising behind my left ear and a cut to my right-hand index finger. I went to the Dandenong hospital where I was seen by a doctor.
- 24 As a result of this incident, I now suffer from anxiety and chronic depression. I also keep getting bad headaches which I never used to get.

Anja's story

- 25 I am Eathan's mother. On the night, I was heading towards the bathroom when I heard smashing noises. We were yelling "who's out there" and "what do you want" but there was no answer.
- 26 Then, the police entered. I was shaking as these men with guns approached me. One of them said "get in the room with your son" [REDACTED]. I asked, "what's going on?" but he kept telling me to "shut up" and "get in the room".
- 27 When I was in the room, I sat on the end of my bed and grabbed [REDACTED], who was about [REDACTED] at the time, just as he was waking up. He crawled over to me and we were just holding each other.
- 28 I could hear David shout "be careful, I've got kids in the house" a number of times. I could also hear lots of banging and thought it was David getting beaten. I yelled back to David: "it's okay, just stop talking".
- 29 On the other side, I could also hear noises from the kitchen where Eathan was. I thought he was getting punched too, and I saw his feet as he was laying on the ground. The girls were screaming.
- 30 [REDACTED] and [REDACTED] came through, with [REDACTED] being pulled by her hair. I looked at her and said "it's okay" as I could see she was freaked out. I heard [REDACTED] ask one of the policemen "what are you doing to my brother?", to which they replied, "do not look, keep walking". The police then threw her on the ground.
- 31 Sometime later, we were told to go out the front of the house. On leaving the bedroom, I saw blood and glass all over the floor. I saw David with his hands behind his back in cable ties and Eathan standing in the kitchen, also handcuffed.

- 32 Out the front of the house, the street was full of police. But these were not the same police as the ones inside our house; they were uniformed AFP people.
- 33 David came out after us, and this is when they took the cable ties off him. After asking us a few questions, we all went back inside except for Eathan, who was being taken away by police.
- 34 Once inside, they sent us to the children's bedrooms. They gave me a statement to read, which contained a copy of the search warrant and the names of people they were after (which included Eathan). The police also took some of our property.
- 35 The whole thing has left me feeling confused and upset and I don't understand it at all. I have been really shaken up. I find myself getting up in the night to check that things are okay and the house is secure, out of fear that something like this happens again.

IMPACT ON OTHER MEMBERS OF OUR FAMILY

- 36 This incident has had a profound negative effect on our family. Our family were in the house together at the time, including Eathan's two sisters and two brothers. Eathan's youngest brother was three years old at the time.
- 37 When Eathan was assaulted, our whole family was impacted. When something like this happens, the whole family goes through it. Despite the trauma caused to our family and the ongoing impacts, nobody has ever asked our other children to share their stories.
- 38 That night was a horrifying night. David and Anja's son [REDACTED] is [REDACTED] now, and still to this day remembers what happened. He says, "this is where Eathan got smacked on the fridge". After the incident, he couldn't be left alone and wouldn't go to the toilet or bed by himself.
- 39 [REDACTED] would also ask strange questions out of the blue, like "is Eathan going to die?".
- 40 [REDACTED] was emotionally affected by this incident and would cry. She saw her father and brother both be beaten by the police officers.
- 41 [REDACTED] remembers the police physically touching their gun against her head while they patted her down. She remembers being held by her hair and being told to not look at Eathan as she was ushered past. She also remembers seeing Eathan limping and being escorted outside the house with blood on his stomach.
- 42 [REDACTED] says she has become "meaner" than she was before the incident occurred, and feels sad, hurt and angry whenever she sees police on the street.
- 43 David and Anja's kids, except for Eathan, never had a voice throughout the whole thing. It's unfair. What they saw, no kid should see. We all witnessed everything that happened that night. From day dot, the rest of them haven't had the chance to explain how they feel. They have never been approached, never been asked. They have been left to the side.
- 44 David's health has continued to deteriorate. He now has high blood pressure and kidney disease. And it all started 6 years ago, when this incident happened.

CIVIL PROCEEDING

45 In 2019, Eathan commenced civil proceedings against the State of Victoria. In *Cruse v State of Victoria* [2019] VSC 574, Eathan claimed that he suffered physical and psychological injuries as a result of a vicious battery and assault by the police officers and sought damages from the State of Victoria.

46 Justice Richards held that Eathan's evidence was credible and was to be preferred over the evidence of police officers, including that:

- (a) Eathan complied with the direction to "get down" and did not resist arrest;
- (b) Eathan was struck to the left side of his head after his hands had been cuffed behind his back;
- (c) one police officer slammed Eathan into the fridge, resulting in him smearing blood onto the freezer door;
- (d) Eathan was then pushed to the floor, where he lay face down and struck numerous times, including 10 to 15 blows to his head;
- (e) while Eathan was on the floor, a police officer said "there's more to come" or "there's more where that came from"; and
- (f) as police officers walked out the front door, one of them twisted Eathan's wrist and said "don't fucking say a word".

47 Justice Richards found that one particular police officer viewed another officer's witness statement before drafting his own to ensure their consistency.

48 Justice Richards found that the arrest was not lawful under s 3WA of the *Crimes Act 1914* (Cth) and that the police officers' conduct was a "cowardly and brutal attack".

49 Justice Richards considered the conduct of the police officers and the State after the incident. Justice Richards explained (at [213]):

"...the State, and the police officers for whose torts it is liable, have at all times disputed Mr Cruse's account of what the police did to him during the raid. The State accepted the false denials of the officers involved over the evidence of Mr Cruse and his family. It sought to minimise the force used against him, and claimed that it was necessary and reasonable because he had resisted arrest. In final submissions, it characterised his conduct as 'provocative' and maintained its position that the police concerned acted in 'good faith'. In short, it blamed the victim. Although Mr Cruse made a complaint to Victoria Police Professional Standards Command in 2015, it appears no action was taken against any of the officers involved. At no stage has the State acknowledged what occurred, or expressed regret or contrition for the conduct of its police officers."

50 Justice Richards also referred the case to the Independent Broad-based Anti-Corruption Commission (IBAC) for review.

51 A copy of the judgment in *Cruse v State of Victoria* [2019] VSC 574 is at **Annexure 1**.

52 We did not have any communications with the police. We were told that IBAC was going to re-investigate the incident. We were told that that IBAC found in our favour, but sent the complaint back to Victoria Police. However, we did not get a response from Victoria Police. We were expecting an apology.

IBAC COMPLAINT

53 Eathan made a complaint to the Victoria Police Professional Standards Command in 2015, but no action was taken against any of the police officers involved in the incident. Eathan's complaint was dismissed as unsubstantiated.

54 IBAC sent the Victoria Aboriginal Legal Service (**VALS**) a letter on 7 December 2020 entitled "Complaint to IBAC against Victoria Police on behalf of the Cruse Family". A copy of this letter is at **Annexure 2**.

55 IBAC noted its delay in its letter, stating:

"...I acknowledge the significant passage of time since IBAC last contacted VALS on this matter in 2015.

IBAC regrets that our handling of this matter in terms of timeliness was not what we would have liked, and we are working to improve our response times."

56 IBAC's review of this finding took more than 16 months. IBAC disagreed with Victoria Police's finding and explained:

"...IBAC determined that, on the basis of the evidence available at the time, Victoria Police should have concluded that the complaint in relation to the excessive use of force against Eathan Cruse was "substantiated" rather than "not substantiated"."

57 Importantly, the letter demonstrates that IBAC wrote to Victoria Police "regarding these review findings outlining the deficiencies" they had identified. The letter explains:

"These deficiencies included issues with their investigation findings, procedural issues including human rights considerations and statement taking practices. We have requested that Victoria Police consider changing their investigation finding in relation to the complaint, and we have also provided guidance as to how complaints about excessive force should be assessed in the future. Concerns were also raised about the investigation's consideration of human rights. Additionally, Justice Richards' findings that the arrest of Eathan Cruse was unlawful and concerns about the statement taking practices of officers have been referred to Victoria Police to address, noting IBAC's recent Special Report in Operation Gloucester".

58 Despite IBAC referring this matter back to Victoria Police, we heard nothing from them.

59 Two years later, our lawyers were contacted by a reporter from the Guardian. The reporter informed them that he contacted Victoria Police for an update about Eathan's case. A copy of this email chain is at **Annexure 3**.

60 In his email to Victoria Police, the Guardian reporter asked whether any steps were taken following IBAC's findings in December 2020, i.e., that the complaint of excessive force was "substantiated", and whether steps were being taken to address procedural issues in Victoria Police's investigation procedures.

61 In response, Victoria Police said that they did not find sufficient evidence to determine Eathan's allegation and that the entry by the police officers was considered appropriate. The email, which is attributed to a Victoria Police spokesperson, states:

"The matter was thoroughly investigated by Professional Standards Command and this investigation did not identify any criminal or discipline offences.

There was no evidence located to determine the complainant's allegations and the entry by police was considered appropriate under the circumstances and existing threat level.

... Following the IBAC recommendation, a review was conducted by Victoria Police however it was determined that insufficient evidence existed and the findings of the initial investigation were not changed."

ONGOING FRUSTRATION

62 We all feel frustrated. We have gone through reporter after reporter, but nothing happens. If IBAC and a Supreme Court Judge can't change the views of Victoria Police, what hope does anyone else have?

63 When it gets to that point, we can't be bothered. We don't think anything will happen to them, because white protects white. It's a long process – it has taken six years, but it feels like nothing has been done at all. It feels like a waste of time, talking about the same stuff over and over to different people.

64 Our story needs to be out there. The police need to be held accountable. It can't go on and on. David remembers that even when he was a kid, there was abuse and assault. That's why there is hate between all of us, between us and the police.

65 We need change so that people have confidence in complaints procedures.

Annexures

Annexure 1	IBAC review outcome letter dated 7 December 2020
Annexure 2	Email to the Guardian, forwarded to Robinson Gill on 2 February 2023
Annexure 3	<i>Cruse v State of Victoria</i> [2019] VSC 574