CITATION:	*Nadjowh v The Queen* [2019] NTCCA 6
PARTIES:	NADJOWH, Elonda v THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL from the SUPREME COURT exercising Territory jurisdiction
FILE NO:	CA 22 of 2018 (21555555)
DELIVERED:	22 March 2019
HEARING DATE:	12 March 2019
JUDGMENT OF:	Grant CJ, Hiley J and Riley AJ

CATCHWORDS:

CRIMINAL LAW – JURIES – VERDICT – IRREGULARITY

Presence in jury room of material not in evidence constitutes an irregularity – no rule that jury must be discharged where inadmissible or prejudicial evidence is received through inadvertence – appeal in those circumstances not against the failure to discharge jury but against conviction – verdict must be set aside unless appellate court satisfied that jury would have returned the same verdict if the irregularity had not occurred – incumbent on the Crown to make it clear that there is no real possibility that justice has miscarried – the verdict of guilty was inevitable if the irregularity had not occurred – appeal dismissed.

Barker v The Queen (1994) 54 FCR 451, *Cesan v The Queen* (2008) 236 CLR 358, *Crofts v The Queen* (1996) 186 CLR 427, *Domican (No 3)* (1990) 46 A Crim R 428, *Maric v The Queen* (1978) 52 ALJR 631, *Mathews v The State of Western Australia* [2015] WASCA 134, *McLean & Trinh v R* [2006] NTCCA 19, *McKell v The Queen*

[2019] HCA 5, *Mraz v The Queen* [1955] 93 CLR 493, *Patel v The Queen* (2012) 247 CLR 531, *R v Forbes* (2005) 160 A Crim R 1, *R v K* [2003] NSWCCA 406, *R v Weaver* [1968] 1 QB 353, *Rinaldi* (1993) 30 NSWLR 605, *Seriban v R* [2014] NTCCA 12, referred to.

REPRESENTATION:

Counsel:

Appellant:	M Aust with G Chipkin
Respondent:	WJ Karczewski QC, Director of Public Prosecutions

Solicitors:

Appellant:	North Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Number of pages:	20

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Nadjowh v The Queen [2019] NTCCA 6
No. CA 22 of 2018 (21555555)

BETWEEN:

ELONDA NADJOWH
Appellant

AND:

THE QUEEN
Respondent

CORAM: GRANT CJ, HILEY J and RILEY AJ

REASONS FOR JUDGMENT

(Delivered 22 March 2019)

THE COURT:

[1] On 19 October 2018, following a trial before a jury, the appellant was found guilty of the offence of unlawfully causing serious harm to Joseph Deegan. Regrettably, through administrative error, at the commencement of deliberations the jury was provided with a number of documents not in evidence. Those documents were described in general terms as the Local Court file (marked MFI X) and some *voir dire* exhibits (marked MFI Y).

[2] The appellant appeals on the ground that the decision of the learned trial judge to allow the trial to proceed was, in the circumstances, a wrong

decision on a question of law and resulted in a miscarriage of justice such that the judgment of the court of trial should be set aside.

The Crown case

[3] The Crown case at trial was that the appellant and the victim had been in a rocky relationship for several years. On the evening of 10 November 2015 they were both intoxicated and decided to camp near a school oval in Palmerston. An argument developed in which the victim told the appellant she should not go drinking with young girls. It was the Crown case that the appellant became angry and struck the victim with her fists and a bag. She then armed herself with a large stick and, whilst the victim was on the ground, struck him several times. She struck him to the arms and legs and, it was alleged, one of the blows delivered by the appellant struck him on the right radius causing a comminuted fracture. It was this injury alone upon which the Crown relied as constituting serious harm for the purposes of the proceedings.

[4] The appellant gave evidence in her defence. She acknowledged that she struck the victim with a stick but disputed that she struck him on the right radius causing the serious harm injury. The issues to be determined by the jury were said to be: (a) whether the Crown had negatived defensive conduct, ie was the appellant acting in self-defence when she hit the victim with the stick; and (b) whether there was a reasonable possibility the injury to the right radius was caused by a fall rather than by a blow delivered by the appellant.

[5] The materials in MFI X and MFI Y did not bear on the issue of defensive conduct. In the course of argument counsel for the appellant conceded that even allowing for the irregularity arising from the presence of the extrinsic material in the jury room, the issue of defensive conduct was not "something that occupied a significant concern amongst [the jury's] deliberations".

The irregularity

[6] At the completion of the evidence both counsel addressed the jury. The trial judge commenced his charge to the jury on the afternoon of 18 October 2018 and continued the following morning. At the commencement of proceedings on 19 October 2019 the trial judge received a question from the jury to which his Honour responded before completing his address. The jury retired to consider its verdict at 10:10 am.

[7] As a consequence of a further note from the jury it was discovered that the documents in MFI X and MFI Y had inadvertently been provided to the jury and, at 11:24 am, those documents were retrieved from the jury room. The jury continued with its deliberations. The jury was provided with the actual trial exhibits and, subsequently, with a copy of the trial transcript.

[8] At that time the Court resumed and in the absence of the jury the issue of the irregularity was discussed. Counsel for the appellant sought a discharge of the jury. The trial judge was taken through the material and observed that it was "basically dross". Whilst those submissions were being made, at about 12:10 pm, his Honour received another note from the jury advising

they had reached unanimity on the alternative charge of unlawfully causing harm *simpliciter* but:

> After extensive discussion, it is apparent that we, the jury, will be unable to reach a unanimous verdict on the charge of unlawfully causing serious harm.

[9] In the absence of the jury his Honour then made a ruling in relation to the application for discharge in the following terms:

> Yes, look, I have come to a view that this problem, unfortunate though it is, can be remedied by a direction. I am not – I am by no means satisfied that there is any prejudice; in fact, I am positively satisfied that there is really no prejudice to either of the parties' cases arising out of the possible reading of this material by one or more members of the jury. And I propose to tell the jury that and give them a clear direction that they now have the correct exhibits. They now have the actual trial transcript and they should concentrate solely on the evidence.

[10] When the jury returned at 1:45 pm the trial judge gave a direction in the following terms:

> Through an administrative error you were provided with the wrong exhibits. I apologise for that. You got in fact some documents or exhibits from a preliminary hearing for this matter and you have got some documents from the Local Court file. Now those documents have now been retrieved and you have been provided with the correct exhibits, I trust, and you also now have some folders of the transcript of this trial. So I want you to disregard anything that you may have read or seen in the documents that were provided to you by mistake, and concentrate on the evidence from this trial, particularly the evidence as contained in the trial transcript which is there to remind you of the evidence that you actually heard in court, and of course the exhibits that relate to this trial.

[11] His Honour then went on to provide a form of *Black* direction[1] encouraging the jury to continue to strive for unanimity. At 1:58 pm the jury retired to continue deliberating and at 4:21 pm returned with a unanimous verdict of guilty in relation to the serious harm count.

[12] From that chronology, counsel for the appellant draws attention to the fact that the jury had the extrinsic material in its possession for one hour and 14 minutes, and did not receive any direction in relation to reliance on the material for approximately 3 ½ hours after it first came into the jury's possession.

The application to discharge

[13] The approach to applications for discharge of a jury was discussed by the High Court in *Crofts v The Queen*[2], where the majority said:

> No rigid rule can be adopted to govern decisions on an application to discharge a jury for an inadvertent and potentially prejudicial event that occurs during the trial. The possibilities of slips occurring are inescapable. Much depends upon the seriousness of the occurrence in the context of the contested issues; the stage at which the mishap occurs; the deliberateness of the conduct; and the likely effectiveness of a judicial direction designed to overcome its apprehended impact. As the court below acknowledged, much leeway must be allowed to the trial judge to evaluate these and other considerations relevant to the fairness of the trial, bearing in mind that the judge will usually have a better appreciation of the significance of the event complained of, seen in context, and can be discerned from reading transcript. Nevertheless, the duty of the appellate court, where the exercise of discretion to refuse a discharge is challenged, is not confined to examining the reasons given to the order to make sure that the correct principles were kept in mind. The appellate court must decide for itself whether, in the

1 *Black v The Queen* (1993) 179 CLR 44 at 51.

2 *Crofts v The Queen* (1996) 186 CLR 427 at 440; followed in the Northern Territory in *McLean & Trinh v R* [2006] NTCCA 19 at [171] and *Seriban v R* [2014] NTCCA 12 at [40]-[43].

> circumstances, the result of the refusal to discharge the jury occasioned the risk of a substantial miscarriage of justice. In other words, can the appellate court say with assurance that, but for the admission of the inadmissible evidence, the conviction was inevitable? (Emphasis added)

[14] *Crofts* was concerned with the receipt by the jury during the course of the trial of prejudicial inadmissible evidence of instances of alleged sexual misconduct which were not the subject of the charges. Counsel for the appellant submitted that the test where the jury receives extra-curial information which is not in evidence is as expressed in *Mathews v The State of Western Australia*[3] and *Barker v The Queen* [4]. The test formulated in those cases is that the irregularity calls into question the integrity of the jury's verdict unless the appellate court is satisfied that the jury would have returned the same verdict if the irregularity had not occurred; and that it is for the Crown to establish that there is no real possibility that justice has miscarried.

[15] There is no material difference in the content and application of those tests in the present circumstances. The presence in the jury room of material relating to a subject of deliberation and not in evidence constitutes an irregularity.[5] The existence of such an irregularity is conceded by the respondent in this case. There is no rule that where inadmissible or prejudicial evidence is admitted through inadvertence a jury must be

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3 [2015] WASCA 134 at [102], endorsing the approach of the New South Wales Court of Criminal Appeal in *R v K* [2003] NSWCCA 406.

4 (1994) 54 FCR 451 at 465.

5 *Domican (No 3)* (1990) 46 A Crim R 428 at 447-448.

discharged.[6] The appeal is not against the failure to discharge the jury but against the conviction.[7] However, the verdict must be set aside unless this Court is satisfied that the jury would have returned the same verdict if the irregularity had not occurred.[8] It is for the Crown to make it clear that the irregularity did not affect the verdict.[9]

[16] In making that assessment, the New South Wales Court of Criminal Appeal in *R v Forbes*[10] observed:

> There is no material irregularity where the jury acquires information which is the same as that which it subsequently receives in the proper course of the trial or which does not relevantly differ from the evidence in the trial. (References omitted)

[17] That observation draws attention to the fact that, as when considering the application of the proviso, the appellate court's task in determining whether there is any real possibility that justice has miscarried must involve a consideration of the whole of the record of the trial.[11] In doing so, the appellate court may also give consideration to the extent to which the return of the guilty verdict indicated a rejection of the relevant parts of the accused's evidence.[12] It is only on a consideration of the evidence before

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6 *Patel v The Queen* (2012) 247 CLR 531 at [67], citing *R v Weaver* [1968] 1 QB 353 at 360.

7 *Patel v The Queen* (2012) 247 CLR 531 at [67], citing *Maric v The Queen* (1978) 52 ALJR 631 at 634.

8 *Marsland* (unreported, Court of Criminal Appeal NSW 17 July 1991); *Rinaldi* (1993) 30 NSWLR 605.

9 *Mraz v The Queen* [1955] 93 CLR 493 at 514.

10 (2005) 160 A Crim R 1 at [38].

11 *Cesan v The Queen* (2008) 236 CLR 358 at [128].

12 *Cesan v The Queen* (2008) 236 CLR 358 at [129].

the jury that the nature and significance of the irregularity may be assessed. In some cases the irregularity may be so "radical" that a miscarriage must necessarily have resulted[13], but this is not such a case.

A miscarriage of justice?

[18] The sole ground of appeal before this Court was that the decision of the trial judge to allow the trial to proceed was a wrong decision on a question of law and resulted in a miscarriage of justice. As already stated, the focus in an appeal of this nature is on the conviction rather than the failure to discharge the jury.

[19] The parties and the Court have had access to the documents in MFI X and MFI Y inadvertently allowed into the jury room. Although there is no evidence of what took place in the jury room, for present purposes it must be assumed that the jurors had an opportunity to consider each of the documents. The appellant argues that the individual and cumulative effect of the documents calls the integrity of the verdict into question and gave rise to a miscarriage of justice such that the verdict should be quashed and a new trial ordered. On the other hand, the respondent contends that many of the documents were simply irrelevant and those identified by the appellant as being of concern were "in the context of the contested issues at trial, largely innocuous".

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13 See discussion in *Patel v The Queen* (2012) 247 CLR 531 at [127]-[128].

[20] The appellant's contention that the real possibility of a miscarriage of justice cannot be excluded is based on four propositions which are said to operate both individually and in combination to lead necessarily to that conclusion. First, the jury received material in the form of a statutory declaration by a medical practitioner which provided the basis for a finding of serious harm which had not been put in evidence before the jury.[14] Secondly, the effect of the extrinsic material was to afford the Crown a "second closing" because it included a Statement of Alleged Facts containing the Crown's depiction of the altercation and a statement containing the complainant's account of the altercation. Thirdly, the receipt of the complainant's statement and statements by attending police suggested prior consistency and thus had the potential to impermissibly bolster the credit of Crown witnesses. Finally, the jury received various documents from the (then) Court of Summary Jurisdiction and other materials which had the potential to bear adversely and prejudicially on the appellant's character and credit.

[21] It is convenient to deal with each of those groups of documents in turn.

Statutory declaration of the medical practitioner

[22] The Crown case was that the comminuted fracture of the radius was the injury upon which it relied as amounting to serious harm for the purposes of the proceedings. The case for the appellant was that, whilst she had hit the

14 This evidence was said to be materially and significantly different to the evidence received during the course of the trial: cf *R v Forbes* (2005) 160 A Crim R 1 at [38].

complainant with the stick, she had not done so to his wrist. The injury which constituted the serious harm was caused in some other way and not by her blows with the stick. The statutory declaration by the medical practitioner described the various injuries sustained by the complainant, including fractures to the leg and a laceration to the shin, and later stated:

> It is a serious harm to the patient in which if they are not treated, will lead to severe deformity and loss of function. He can develop severe infection from the open wound that can be fatal.

[23] Counsel for the appellant submitted that repeated references in the evidence and in the Crown's closing address to the appellant striking the victim on the leg, coupled with that passage in the statutory declaration, may have resulted in the jury concluding that one or other of the leg injuries, which the appellant admitted inflicting, amounted to serious harm.

[24] In the circumstances of this matter that suggestion is implausible. At all times the Crown case made it clear that the injury upon which reliance was placed as constituting serious harm was injury to the wrist. Defence counsel's cross-examination of the medical practitioner was concerned entirely with the question of whether the injury to the victim's arm could have been caused by a fall rather than being hit by a stick.[15] In the Crown's closing address, the prosecutor drew attention clearly and repeatedly to the fact that any finding of serious harm had to be referable to the wrist injury.[16] Defence counsel also made it clear in his closing address that "the

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15 Appeal Book (**AB**) 102-107.

16 See, example, AB 191-192.

prosecution case for serious harm relies on the injury to the right distal radius also known as the right wrist".[17]

[25] In the aide memoire the trial judge repeated that "the Crown acknowledges that only the comminuted right (R) radial fracture is relied on as serious harm in this case".[18] His Honour repeated that advice in his charge to the jury[19] and, of course, the relevant x-rays were in evidence. The jury could have been under no misapprehension that some injury other than to the wrist was the basis of the allegation of serious harm. There was no discussion in relation to any injury to the leg which may have caused confusion.

[26] There was one aspect in which the medical practitioner's evidence at trial went beyond what was contained in the statutory declaration. During the course of his evidence he expressed the opinion that the other injuries sustained by the victim made it less likely that the injury to the wrist was caused by a fall. That is a matter which reflected the focus on the wrist injury during the course of the trial, and which is properly taken into account as part of the whole record of the trial in assessing whether there is any real possibility that justice miscarried.

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17 AB 206.

18 AB 265.

19 AB 224, 225, 244 and 246.

The Statement of Alleged Facts

[27] Also included in the extrinsic material was a document entitled "Statement of alleged facts" which referred to the appellant and the victim and described their relationship. It included the following paragraph:

> During the physical altercation the Defendant took a solid 1 m long stick and struck the victim numerous times across the face, torso, arms and legs resulting in swelling and bleeding.[20]

[28] Concern was expressed by the appellant that the manner of drafting of the document asserted the truth of its contents, which included reference to a "physical altercation" between the appellant and the victim prior to the appellant striking the victim with a stick and that the stick was "a solid 1 m long stick".

[29] The first thing to note is that the heading of the document includes the word "alleged", making it clear that this document represented what was to be alleged by the police rather than being a statement of fact. The reference to a "physical altercation" was a description of what took place on any view of the evidence. Indeed, as the trial judge pointed out, that description may have supported the defence case in that the evidence of the victim was that he had done nothing physically towards the appellant.

[30] The description of the "solid 1 m long stick" reflected what could be seen in the photograph of the stick which became exhibit P1 in the trial. In any

20 AB 289, paragraph [7].

event, the size of the stick was not an issue in the proceedings. As the trial judge observed, the dimension of the stick was "hardly an issue".

[31] Counsel for the appellant also raised an additional matter arising from the Statement of Alleged Facts which was said to be potentially prejudicial to the appellant. Later in the statement appeared a paragraph in the following terms:

> At 4:01 PM the Defendant agreed to participate in an electronic record of interview however the interview was concluded when the Defendant raised concerns that she was too fatigued to participate.[21]

[32] Reference to the record of interview, which was one of the documents in MFI X, reveals that the appellant was asked how she was feeling and she responded "I feel tired" and she was then asked whether she was too tired to go through with the questioning and she said she was. There was no suggestion from any source that this was not a statement of truth. The appellant gave evidence at her trial. In the circumstances it is difficult to see how her earlier expression of fatigue in the record of interview, at the prompting of the interviewing police, might have been unfairly used against her. This was not a case in which the appellant had initially refused to participate in a record of interview, but subsequently gave evidence at trial.

The victim's statement

[33] A statement taken from the victim was included in the extrinsic material. That statement discussed the relationship between the victim and the

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21 AB 289.

appellant and briefly described the events of the night. The statement contains an account of the appellant hitting him over the legs with a good-sized stick. Significantly, and consistently with the case for the appellant, the statement did not refer to the victim being hit on the arms or wrist with the stick. Unsurprisingly, the victim was cross examined at some length about the statement, including the omission of any mention of the blows to the wrist. The presence of the statement amongst the material seen by the jury would have, if anything, supported the appellant's case. It was, arguably, a prior inconsistent statement going to his credibility. Given the matters at issue in the trial, it was not a bolster to the evidence of the complainant.

A second closing

[34] Counsel for the appellant submitted that the provision of the Statement of Alleged Facts and the victim's statement in effect gave the Crown a second closing because the parties had completed their closing addresses prior to the provision of the extrinsic materials to the jury. The situation here under consideration is far removed from the principle relied upon by the appellant and expressed in *McKell v The Queen*.[22] That was a case in which the trial judge made remarks to the jury which were said to be akin to "a powerful address by counsel for the prosecution".

[35] Save for paragraph 7 of the Statement of Alleged Facts, the material was not of a kind that could be characterised as supporting the Crown case.

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22 *McKell v The Queen* [2019] HCA 5 at [40]-[43].

Paragraph 7 referred to the appellant striking the complainant across "the face, torso, arms and legs". The case for the appellant was that she had struck the complainant, but not on the arm. To this extent the statement supported the Crown case and not the case for the appellant. However, as we have already noted, these are clearly described as allegations and they provide no further detail than the mere assertion. To that extent the document is consistent with the Crown case but it adds nothing to that case. It could hardly be described as a second closing. For the reasons already described, the victim's statement did not support the Crown case, at least not in relation to the primary issue in contention.

Statements of the police officers

[36] The statements of the attending police officers were amongst the extrinsic materials. Each of those officers was called to give evidence. The only complaint made on behalf of the appellant in this regard was that the original statements had the capacity to reinforce the evidence of the officers and bolster their credibility and reliability. The police officers were not witnesses to the altercation and had no direct evidence to give in relation to what transpired at that time. There was no suggestion that the evidence of the police officers was other than in accordance with their original statements. There was no attack upon the officers regarding their credibility or reliability. There was no prejudice to the appellant's cause by virtue of the police statements being inadvertently taken into the jury room.

The Information

[37] Included in the extrinsic material was an unsigned Information for an indictable offence charging the appellant with an aggravated assault and alleging a number of aggravating circumstances including the particular that "the victim being unable to effectively defend himself".[23] The indictment presented to the Supreme Court for the purposes of the trial contained a different formulation of the offence with no mention of that particular circumstance of aggravation.

[38] It was submitted on behalf of the appellant that, in a case in which defensive conduct was an issue, this may well cause the jury to have concerns as to the credibility of the appellant's evidence. As the respondent submitted, the reference to the circumstance of aggravation did not introduce to the jury anything that was not already before them in evidence. The complainant gave evidence that he was sitting on the ground when he was hit with a stick on the arm.[24] The appellant, in her evidence, conceded that he was either sitting or lying on his back when she hit him with the stick and that he had his hand up to protect his face.[25] On either account, the complainant was not in a position to defend himself. In those circumstances, it is difficult to see how the earlier formulation of the charge could have been prejudicial to the appellant or have any impact upon the subsequent trial in which the circumstance of aggravation was not identified.

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23 AB 345.

24 AB 16, 18.

25 AB 150-151.

The Court of Summary Jurisdiction file

[39] Reference to the Court of Summary Jurisdiction file which was erroneously placed in the jury room reveals a stamp stating “In Custody” on the front of the file, together with a handwritten notation indicating a presumption against bail.[26] There was also reference to an endorsement granting bail with conditions that included not approaching or contacting the victim. In a matter such as this notations of this kind would be entirely unexceptional. Anyone reading the file, including those with limited knowledge of police procedures, would expect that the alleged offender would initially be arrested[27] and taken into custody and remain there until bail could be arranged. Further, it would be expected that any terms of bail would be designed to keep the participants in the events apart. In our view there is no basis to apprehend that the jury might draw any adverse inference against the appellant in light of this information.

[40] Similar comments may be made regarding the document which recorded the committal to the Supreme Court. All that is recorded there is that there was found to be sufficient evidence to send the appellant to trial in the Supreme Court.[28] That is unexceptional and reflected what had occurred. There is no prejudice in a jury being aware of the process by which matters are committed from the Local Court to the Supreme Court. Similarly, the fact

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26 AB 338. The file also includes shorthand notations such as "NAD", "WTI" and "QFR" which would carry no discernible meaning for the layperson.

27 Indeed the police officers gave evidence to the jury that the appellant had been arrested at the scene.

28 AB 342.

that the committal sheet referred to one count of aggravated assault and one count of unlawfully causing serious harm, both alleged to have been committed on 10 November 2015, could not give rise to any reasonable possibility of miscarriage.

Schedule 2 documents

[41] The Schedule 2 documents completed by both the Crown and the defence were included in the materials. These documents are filed pursuant to r 81A.16 of the Supreme Court Rules to identify issues in the proceedings and inform the Court of the state of preparation of the parties.

[42] The document filed on behalf of the Crown included a statement that "[d]efence are likely to challenge the admissibility of admissions against interest made at the scene".[29] The defence document included a statement to similar effect namely that "[t]he defence intends to challenge the admissibility of certain admissions recorded by police".[30] It was suggested by counsel for the appellant that the jury might thereby have been left with a concern that the appellant had made admissions at the scene, other than those that were in evidence, but they have been precluded from accessing that evidence. Evidence was led from the police officers of the appellant making admissions against interest at the scene including, "I did that to him – I hit him with that stick". That evidence would explain the comment in the Schedule 2 documents. There was nothing to suggest that other admissions

29 AB 320.

30 AB 307.

may have been made. There was nothing otherwise to suggest a basis for the concern identified by the appellant.

[43] Later in the Crown's Schedule 2 document there was an indication that the Crown may seek an admission from the defence that the appellant had never made a complaint against Mr Deegan to the police regarding physical or verbal violence toward her.[31] Counsel for the appellant submitted that this was contrary to the evidence of the appellant at trial. The fact that the Crown might seek such an admission, which was never confirmed nor the subject of any agreement placed before the jury does not lead to any prejudice to the appellant. It was not evidence of the fact. It was only an expression of possibility. The evidence of the appellant was clear and to the contrary.

[44] The defence document also included a comment that "[i]t is unlikely the defence will admit injuries".[32] It was acknowledged by counsel for the appellant that, at the trial, she did not deny hitting the victim with a stick or causing him some injuries. It is apparent the defence document reflected a preliminary view which was not inconsistent with the appellant's ultimate position that she did not cause the injury said to constitute the serious harm. It is difficult to see how this could act to the prejudice of the appellant in any realistic way.

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31 AB 321.

32 AB 307.

Conclusion

[45] Although it is apparent that an irregularity occurred in the course of this trial when the documents contained in MFI X and MFI Y were inadvertently provided to the jury, it is also apparent from the review of those documents in the context of the trial record that no miscarriage of justice occurred. We are satisfied that the verdict of guilty was inevitable if the irregularity had not occurred.

[46] The appeal is dismissed.

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