

IN THE CHILDREN'S COURT OF VICTORIA
CRIMINAL DIVISION

Case No: R10844188

CONSTABLE P4

Informant

v.

MATTY (a pseudonym)

Accused

MAGISTRATE:

Stead

DATES OF HEARING:

28 August – 1 September 2025

COUNSEL FOR INFORMANT:

Ms Duan

COUNSEL FOR MATTY:

Ms Smoljko

DATE OF DECISION:

21 October 2025

CASE MAY BE CITED AS:

Constable P4 v Matty (a pseudonym)

MEDIUM NEUTRAL CITATION:

[2025] VChC 3

REASONS FOR DECISION

1. Informant Constable P4 has laid 8 charges against [the child Matty] for offending alleged to have occurred on 16 April 2025 during the execution of a warrant issued pursuant to s.598 of the *Children, Youth and Families Act 2005* (Vic):

Assault Police x 2

Resist police x 2

Assault emergency services worker on duty x 2

Resist an emergency worker on duty x 2.

The charges of assault and resist emergency services worker are alternative charges to the assault and resist police charges.

2. Police allege that Matty assaulted Senior Constable P1 by biting his right index finger, causing an injury by breaking the skin, and assaulted Senior Constable P2 by kicking her in the leg.
3. Police allege Matty resisted police by not complying with the request to accompany them under the warrant and struggling when being handcuffed.
4. To prove a charge of assaulting a police officer, or emergency worker on duty (in this case police), the prosecution must prove seven elements beyond reasonable doubt:
 1. The complainant was a police officer; and
 2. The complainant was on duty; and
 3. The accused knew that the complainant was, or probably was, a police officer; and
 4. The accused applied force to the body of the complainant; and
 5. The accused intended to do one or more of the following: injure the complainant, inflict pain, cause discomfort, cause damage, cause insult or deprive the complainant of liberty; and
 6. The accused's actions resulted in one or more of the following occurring to the police officer: injury, pain, discomfort, damage, insult or were deprived of liberty; and
 7. The actions of the accused were without lawful excuse.
5. There are six elements that the prosecution must prove beyond reasonable doubt for a charge of resisting police officer or emergency worker on duty (in this case police) to be made out:
 1. The complainant was a police officer; and

2. The complainant was on duty; and
 3. The accused knew that the complainant was, or probably was, a police officer; and
 4. The accused resisted the complainant; and
 5. The accused intended to resist the complainant; and
 6. The actions of the accused were without lawful excuse.
6. The elements in issue for each of the charges in this case are whether Matty intended to and did injure or inflict pain on a police member by her actions if that police officer was on duty, or if the actions of Senior Constable P1 and Senior Constable P2 were unlawful as contended by the Defence, Matty was entitled to resist, and her actions are protected by s.322K(1) and (2) of the *Crimes Act 1958* (Vic).
7. To answer these questions requires an analysis of the events captured by the body worn cameras of the four police officers in attendance and their evidence during the hearing, together with an analysis of police powers in executing a warrant issued under s. 598 of the *Children Youth and Families Act 2005*.

Body worn camera footage

8. The prosecution called 4 witnesses in the hearing, being the 4 officers who attended [an address at Greensborough] to execute the warrant issued on 15 April 2025 to take Matty into safe custody: Senior Constable P1, Senior Constable P2, Senior Constable P3, and Constable P4.
9. All four officers used their body worn camera, recording the events from just prior to entering the property until when Matty is transported in the divisional van. The footage confirms that the officers are aware that the property is a residential unit for young people in out of home care.

10. The footage from each officer's body worn camera was tendered. For convenience, I will describe the footage primarily by reference to the footage from the cameras worn by Senior Constables P1 and P2, referring to other footage where relevant.
11. The initial footage covers the planning led by Senior Constable P1 for how to approach Matty to execute the warrant.
12. The four police travelled in 2 vehicles – a division van and squad car. Senior Constable P2 drove the van, and Constable P4 travelled with her. The car was driven by Senior Constable P1, accompanied by Senior Constable P3. They met at an intersection just before [the address at Greensborough], where they got out of the vehicles to discuss the execution of the warrant. As they met, they all put blue latex gloves on. The first audio captured in this footage is Senior Constable P2 saying,

P2: "I don't know if you heard that, but a kid that's there now is the one that assaulted Casso and ripped her nail and her shirt, so I reckon we're not going to have a good time."

P1: "We have foam, (he then directs Constable P4 to grab the large foam (OC)). what I'm thinking,"

P2: "Go straight in"

P1: "Go straight in, we've got the warrant, got the power of entry, have a conversation, hey you've got to come with us. As soon as she shows any level of aggression, resistance, anything – 2 of us, and I'm happy to be one of them, just straight grab arm each."

13. Senior Constable P2 then directs Senior Constable P3 to keep an eye on CHA – another young person they believe to be in the premises.

P1: "From there we've got an arm each we go back and get the cuffs on. If she starts showing resistance from there, we'll put her on

the ground, and I'll get someone to grab the head so she can't spit. Just hand over head (he demonstrates over the body of Senior Constable P2 a hand over the back of her head and one over her neck) just like that so she can't spit."

P2: "Yep, so you and I (indicating P1) er um the Matty, and you (indicating P3 and P4) just watch CHA."

P1 then says for each officer to wear safety glasses. P3 says "masks".

14. Senior Constable P2 then says she wants to confirm how they confirmed the information that she (Matty) is definitely there. P1 then uses his phone and accesses the missing person records for another person [name deleted] and then states the confirmation Matty is inside comes from one of the DHS (DFFH) workers.
15. Senior Constable P2 then drives the divisional van forward with Constable P4 and parks out the front of [the address at Greensborough]. Senior Constable P1 and Senior Constable P3 walk, leaving the squad car behind. As they walk, P1 says to P3 "I'm hoping she is just asleep." P3 replies "me too". As they meet P2 and P4 at the footpath outside the property, P1 says "She's half a chance to be asleep, she has probably been up all night." The time stamp on P1's camera is 10:11:39.
16. At 10:12:05 P1 walks first into the house. A worker from the unit opens a door from the right of the corridor.

Worker: "I didn't know you were coming."

P1: "Which one is Matty?"

Worker: "Come with me."

P1: "Is she all right with us?"

Worker: "I believe so, yes."

17. He then leads them through towards the back of the house into the lounge room where Matty is. The worker knocks on the wall and says "Matty, Tia a couple of visitors for you."
- Tia says, "hey, what?", in a sleepy way, and the worker says, "they just rocked up".
18. Senior Constable P2 enters the room at 10:12:40, and P1 walks back around and accesses the room via the kitchen. Another worker is present standing near the dining table.
19. Senior Constable P2 is recorded saying "Matty, Matty, I'm [C] from Greensborough Police. Matty, we've got a safe custody warrant and you need to be returned to Footscray." Tia questions "Footscray?"
20. Matty is lying on her left side with her knees bent on the couch, her hair is over her face. She does not respond. Matty is obviously asleep. P1 positions himself close the end of the couch standing near Matty's head. P2 is at the other end of the couch. P3 is positioned between the dining room and kitchen, and P4 is in the doorway to the hall. All exit points from the room are covered. Both workers are in the dining room – one on the far side of the dining table, and one at the far end of the dining table.
21. P2 continues to speak at Matty, "There was an incident last night with your sister, and they've got notification that you're here. And there's a safe custody warrant so they've sent us here to come and get you. Are you going to come with us willingly, or are we going to have to come pick you up?"
- Tia: "She's asleep."
- One of the workers says, "She is still sleeping".
22. Senior Constable P2 approaches closer, and P1 grabs Matty's right shoulder, and shakes her before moving to squeeze the pressure point between her neck

and shoulder blade twice. The time stamp is 10:13:21 As he does this, Tia says,
"Matty. It's the cops."

P1: "Matty, can you hear us?"

Matty flicks her hair out of her face and says, "Why are you doing that to me
cunt, why are you touching me?"

P1 responds, standing over her, "You're coming with us; we've got a safe
custody warrant."

Matty responds "Okay."

P1: "Are you going to behave yourself or not?"

Matty: "Why you touching me like that for?"

P1: "Because you weren't answering."

Matty: "You're touching me rudely, why the fuck are you touching
me?"

P2: "Matty, my name is [C], I'm from Greensborough Police, we've
got a safe custody warrant, you've got to get returned to
Footscray."

Matty: "No, call [R]." (10:13:45)

P2: "What's that?"

Matty: "My Child Protection worker."

P2: "Well, there's a warrant that needs to be executed."

Tia: "When is it from?"

P2: "From last night. So, they have applied for a safe custody
warrant and they've just informed us, and we've been told that
you are here, so we've got to take you back to an address in
Footscray, that's what the warrant states."

Matty remains lying on the couch and her response is not audible.

P2: "Matty I obviously don't want this to escalate."

23. Senior Constable P2's body language is showing clear signs of frustration. She is slightly huffing when she breathes, and her left hand is clenched in a fist, her eyes roll.

Matty: "No call [R] now. Why you being stupid for, you're touching me." (10:14:31)

P2: "We're not touching you."

Matty: "You did 5 minutes ago."

24. As Matty says this, her hand is over her face. P1, without warning, then reaches over Matty, and seizes a black bag that is at her feet in the curl of her legs (10:14:34). He lifts the bag and takes two steps towards Senior Constable P3 and gives her the bag. As he does this, Matty gets up from the couch and says

Matty: Why are you touching my shit? (10:14:40)

25. She seems to take one step forward. P2's camera footage shows that what looked like Matty taking a step towards the bag, is more clearly seen to be her putting her feet on the ground. She is immediately and forcefully grabbed by both P2 and P1 – one on each arm – P2 the left and P1 the right and forced back onto the couch, the two officers using their combined body weight. (10:14:41)

26. Matty screams "Why are you touching my shit?" Her arms are bent at the elbows, her hands open and level with her head.

27. P1 and P2 then force her arms down towards her chest. Matty begins to struggle as they force her onto her side, asking "Where's my Child Protection worker?" She is visibly distressed.

28. P2 yells: "Matty enough, stop resisting." Matty is forced face down into the couch.
29. P1 yells: "Fuck off, fucken bit me."
- P2: "Did she?"
- P1: "Yeah."
30. There is no footage that shows P1's hand near Matty's mouth. His hands are on her right arm, and he is forcing her arm behind her back.
31. Tia starts screaming and swearing in distress at what she is seeing Police do to her sister.
- Tia: "Stop! She just got up to get her bag! Stop cunt!"
- P2: "Stop Matty enough, stop resisting."
32. Matty says something, but it is inaudible on Senior Constable P1's footage. P2 and P1 have pushed her face into the join between the seat and back of the couch as P1 handcuffs her. Audio that was not captured by P1's camera is much clearer on that of P2. As they are pushing her into the couch face down. Matty struggles to free her face from the seat of the couch.
- P2: "Stop Matty Enough."
- Matty: "Why am I getting attacked?"
- P2: "Because you just bit my member."
- Tia: "You're hurting her neck – can't you hear her?"
33. As she is being handcuffed, Matty is crying, "I don't even live in Footscray" then wailing "I don't even live in Footscray" as she is pulled off the couch and P1 and P2 start to move her out of the loungeroom towards the hallway.

34. P2 is restraining Matty by her left arm, and P1 by the right as they walk her down the hallway. Matty continues to wail that she doesn't even live in Footscray.
35. Matty is not walking under her own steam– she is being frogmarched in cuffs towards the front door, when P2 says "If you had of let us explain it." As she does, Matty turns her head slightly to the left towards P2. Matty's face is covered by her hair. Upon Matty turning her head to the left, P2 says "Don't you fucking dare" placing her right hand around the back of Matty's neck and forcing her to the floor. Senior Constable P1 then places his hand on the back of Matty's neck, and P2 removes hers. Both officers use their body weight to press Matty into the floor. Her face is pressed close to the skirting board.
36. There is no motion captured on any of the body worn camera footage that would correspond with a backwards kick.
37. Tia says: "You're not allowed to do that!" whilst P1 is pushing Matty into the floor, with one of her legs bent under her body. The angle of the body camera footage from the cameras of P1 and P2 shows that P1 is clearly standing up, and that P2 remains in control of her motions.
38. P2 replies to Tia: "If she tries to assault people" then yells at Tia to get out of the way. Tia is not within range of P1's body camera at this time as he is maintaining his weight downwards on Matty, his hand still on her neck, pushing her face into the floor.
39. Tia says "You are not allowed to assault her, you are allowed to use reasonable force".
40. P2 then says to Matty whilst she and P1 pick her up from the floor "Congratulations, you're now getting arrested for assaulting police".
41. They then take her through the front door, bumping her into the brickwork at the entrance of the house, and walk her to the divisional van where they place

her into the pod that has been opened by Senior Constable P3, after a brief pat search.

42. After locking the pod P1 alleges again that he has been bitten. His gloved right hand is clearly visible on the footage. (10:18:11) There is no tear to the latex on his right index finger. There is no blood visible through the glove. He removes the glove and holds his right index finger up to his camera. There is some slight redness around the second joint on the finger, but there is no clear bite injury to his finger or blood visible.
43. As he does this P2 says she just got booted.
44. One of the workers from the unit asks the police for one of their names. P1 replies "I've just been fucking bitten, I'll do it in a minute."
45. P1 then requests P2 to photograph his finger. She does so using a smart phone camera. The photo was taken before any cleaning of the alleged injury to the finger was undertaken, shortly after the glove was removed. Another photograph was taken a few moments later by Senior Constable P3. When Matty is in the pod, P1's camera records the arrival of another two officers and the discussion held regarding Senior Constable P2's allegation that Matty kicked her. Senior Constable P3 asks P2, "Where did you get kicked?", and P1 says "Yeah, where did she kick you?". Senior Constable P2 replies, "On the way out".

Evidence of Senior Constable P1

46. In his evidence-in-chief Senior Constable P1 described what occurred after he grabbed the bag: "I passed it to Senior Constable P3. Matty got off the couch and tried to get to the bag. I grabbed one arm and Senior Constable P2 grabbed the other."
47. When asked why by the prosecutor he responded: "We had a warrant for her arrest. I pushed her into the couch".

48. Under cross-examination, Senior Constable P1 agreed that the police plan prior to entering the home where Matty was located was to use force on Matty if she showed any form of non-compliance. He agreed that the four officers made a formation to cover all exit points, surrounding Matty. He agreed that at no time did Matty say she would not accompany police. He agreed that he had used force within milliseconds of Matty standing in response to his seizure of her bag. Senior Constable P1 gave evidence that Matty "ran at us" when he took her bag.
49. When asked in re-examination when did police actions change from detaining Matty to arresting her he replied: "As soon as she got up and charged towards police." The body worn camera footage does not support this characterisation.
50. When giving evidence-in-chief about the alleged bite, P1 stated that Matty bit him as he reached in to get her hand which was near her face whilst she was facing the other way. By this I understood him to mean whilst she was face down on the couch. That footage is found at 10:15:14 of P1's body worn camera. It does not record any biting motion by Matty as Matty was face down on the couch. It records Matty struggling to turn her face from out of the couch seat and into open space. The next frames clearly show that there was no tear to Senior Constable P1's latex glove on his right index finger.
51. When shown the photograph tendered as exhibit C, P1 identified it as a photo of his right index finger taken outside the unit on the day. This photograph shows an old, scabbed injury to P1's right index finger that has three small parts. The marks start at the base of the middle joint of the finger, on the side closest to the middle finger: two are in a line, and one is slightly above another, and the scab has been removed. There is no fresh blood.
52. When asked by the prosecutor to identify which of the marks on his finger in that photo, noting old and 'new' wounds, were caused by Matty allegedly

biting him, he claimed that the bite he alleged by Matty caused the 2 marks closer to the knuckle and that she had broken his skin with her teeth.

53. Senior Constable P1 gave evidence that he attended the Austin Hospital after the alleged bite to have the finger inspected and seek preventative treatment for contagious conditions. No medical report was tendered.

Evidence of Senior Constable P2

54. Senior Constable P2 gave evidence that she had checked the Leap entry for Matty and it flagged her for potentially spitting, biting and kicking police. Senior Constable P2 also gave evidence she spoke to the applicant for the s.598 warrant who said Matty was too high risk and violent for Child Protection to transport.
55. Senior Constable P2 also gave evidence that the Sergeant at Heidelberg Police station had told her of an incident the night before involving Matty, her sister and residential unit staff.
56. The applicant for the s.598 warrant, Ms Sneddon, was not called by the prosecution to give evidence about the conversation Senior Constable P2 claimed to have had with her.
57. In her evidence Senior Constable P2 claimed that the officers discussed which car to use to transport Matty (squad car or division van), and decided that depending on how she presented, it would be better to transport her via the car if she was compliant. No such discussion was caught by the body worn camera of any of the police who attended, and on balance the footage does not support that this was the intended approach, as only the divisional van was driven to the front of the property. The car was left about 100 metres down the road. Further, Senior Constable P2's evidence is inconsistent with her statement about the pod in cross-examination detailed in paragraph [59]

below, as only the divisional van was driven to the front of the property. The car was left about 100 metres down the road.

58. Senior Constable P2 in her evidence claimed that rather than pushing Matty into the couch when she and P1 grabbed her arms, that they all fell as Matty was a dead weight.
59. In cross-examination Senior Constable P2 agreed she had never had any dealings with Matty before. When counsel for Matty put to her that police planned to load her into the pod before going to the unit, she agreed adding it was because of past secure care warrant experience with Matty.
60. Senior Constable P2 gave evidence that she observed a deep laceration to Senior Constable P1's finger, where the skin was broken and he was bleeding. The use of force document she completed was tendered, which also claimed a deep laceration. Her evidence cannot be reconciled with the evidence in the body worn camera footage.
61. When asked about the injuries she alleged were caused by Matty, P2 then gave evidence that Matty caused bruising to her thigh and elbow. She gave evidence that Matty kicked her in the hallway. She described Matty using her right leg to kick backwards and striking her in the right leg above her knee, "As I was walking out, she lifted up her right foot and kicked my right knee, and we fell to the ground". She added, "We all fell down when she kicked me off balance, and I landed on my elbow". This evidence is not supported by the footage from her or P1's body camera.
62. The footage clearly shows that she and P1 forcefully controlled Matty to the floor. Neither police officer was off balance and neither of them fell. Senior Constable P2 is holding Matty's left arm – P1 her right, and P2 is standing behind Matty and to the left. If Matty had kicked P2 with a backward kick

using her right leg, it is difficult to conceptualise how she would have landed a blow on the thigh of Senior Constable P2.

63. Photographs were tendered that Senior Constable P2 identified as the injuries to her arm and leg. The photographs do not include Senior Constable P2's face. Neither photograph contains a time or date stamp. The photograph of the arm is a right arm, with an area of redness of about 5-7 centimetres above the elbow on the underside of the arm.
64. The photograph of the leg is overexposed or pixelated and does not show any discernible mark. Senior Constable P2 did not give evidence that Matty caused the red mark to her forearm.
65. During re-examination, Senior Constable P2 was asked about why she was confused when defence counsel asked her if she was aware that Child Protection workers had been at the property 10 minutes before she and her colleagues had arrived. She agreed she was confused as "Senior Constable P3 had spoken to him (Matty's worker) numerous times before they attended the property, and he said he wasn't going to attend."

Evidence of Senior Constable P3

66. The evidence of Senior Constable P3 contradicted the evidence of Senior Constable P2 that she had spoken to Matty's Child Protection worker [R] prior to the warrant being executed. Senior Constable P3's evidence-in-chief was that she did not contact Child Protection, as she believed Senior Constable P2 had done so. Senior Constable P3 gave evidence that it was not until after Matty was taken to Heidelberg Police Station that she tried to call [R] several times and then spoke to a [CS] who told her that he was in court.
67. Of the four police witnesses, only Senior Constable P3 did not indulge in blatant historical revisionism of the way in which the warrant had been

executed. She agreed that when Matty got up from the couch, force was immediately used by her colleagues.

68. She agreed that Senior Constable P1 had taken Matty's bag without explanation, and that Matty had not been given a warning before force was used on her. She agreed that Matty getting up for her bag was not her refusing to go with police, and that Matty only reacted when force was applied by police to restrain her.
69. She agreed that in her written statement from 15 May 2025 she detailed that Senior Constable P1 and Senior Constable P2 wrestled Matty to the ground in the hallway, and that Matty was pushed to the ground by her neck whilst she was handcuffed with her hands behind her back.
70. When asked in cross-examination if she agreed mistakes had been made in the way the warrant was executed, she replied
- P3: "The situation could have been handled differently."
- Counsel: "Better?"
- P3: "It may have been handled differently if different officers were present."

Evidence of Constable P4

71. The evidence of the informant Constable P4 was particularly concerning. Constable P4 was the last witness to give evidence. The prosecution chose to call Informant P4 in this order. She was therefore present in Court to view all of the body worn camera footage played.
72. Constable P4's evidence was that this was her first experience of executing a safe custody warrant following her graduation from the Police Academy in January 2025.

73. Despite viewing the body worn camera footage of her colleagues, Constable P4 would not concede that when Matty stood up after her bag was seized by Senior Constable P1 force was immediately applied to her. The time stamps on the footage are as follows: 10:14:39 – Matty stands, reaches for her bag and says “Why are you touching my shit?” 10:14:40 – Senior Constable P2 and Senior Constable P1 grab Matty by the arms and force her to the couch. The immediacy of the application of force is patent and undeniable.

74. Despite having watched the body worn camera footage of all four officers during the proceedings, when defence counsel put to her that Matty was thrown to the ground in the hallway, she disagreed and claimed that the three (P1, P2 and Matty) fell. When pushed to agree that this was not an accurate description of what is seen in the footage she replied:

Counsel: “Do you agree that is not an accurate description of what happened in the footage?”

P4: “She kicked out at officers and they fell. My body worn camera didn’t capture it.”

Counsel: “You didn’t see them fall?”

P4: “Yes, but I heard them falling.”

Counsel: “Your body worn camera captures Senior Constable P2 and Senior Constable P1 hunched over Matty?”

P4: “I wouldn’t say that. They fell and were on their knees.”

Counsel: “If you only heard, how can you say Matty was not pushed?”

P4: “Because I heard.”

Counsel: “Your evidence is not right.”

P4: “They dropped to their knees because they had been kicked.”

75. This evidence was a direct refutation of what was captured by the body worn cameras.

Did Matty cause an injury or inflict pain on Senior Constable P1 or Senior Constable P2?

76. Only one of the photographs said to be of the injury allegedly caused by Matty biting Senior Constable P1 was tendered.
77. The prosecution tendered no medical report on the injury, despite Senior Constable P1 giving evidence that he had attended the Austin Hospital immediately after the incident, nor did they tender the glove Senior Constable P1 was wearing. Indeed they could not do so, as his body worn camera footage clearly shows him remove the glove and put it into the bin outside of the house.
78. The evidence of Senior Constable P1 that Matty bit him and in doing so broke his skin is not supported by the photograph of his finger or the body worn camera footage. Two of the marks he claims to be freshly broken skin are clearly scabbed, indicating that have occurred earlier than that day. The third mark appears to have occurred contemporaneously with the other two marks, with the scab no longer in place.
79. The evidence of Senior Constable P2 that she observed a deep laceration to his finger, where the skin was broken and he was bleeding, and her report of this on the use of force document she completed cannot be reconciled with the evidence in the body worn camera footage.
80. I do not accept Senior Constable P1's evidence that Matty broke his skin by biting him. It is very likely that the slight redness to the middle joint of his right index finger observable in his body worn camera footage was caused during his use of force against Matty.

81. I do not accept Senior Constable P2's evidence of having observed a deep bleeding laceration to P1's finger as truthful.
82. The claim by Senior Constable P2 that Matty kicked her deliberately when being marched down the hallway is very problematic. Senior Constable P2's evidence was that the injury to her arm was caused when she 'overbalanced' after Matty kicked her. The body worn camera footage is clear. Senior Constable P2 and Senior Constable P1 pushed Matty to the ground by her neck. Senior Constable P2 did not fall with Matty as she claimed in her evidence. It cannot be concluded that the photograph of the arm is evidence of any injury caused to Senior Constable P2 as a result of an intentional action by Matty. No medical report was tendered to support Senior Constable P2's evidence.
83. Further, the language used by Senior Constable P2 as she grabbed Matty by the neck and forced her to the floor in the hallway is not consistent with her claim that Matty had kicked her: Senior Constable P2 says "*Don't you fucking dare!*". She did not immediately accuse Matty of kicking her or making any contact with her. Her language is more consistent with her pre-empting an action she thought Matty might take.
84. The body camera footage from Constable P4 and Senior Constable P3 do not capture the alleged kicking incident, but that of P4 does show that neither P1 nor P2 fell down with Matty. It also refutes the evidence of Senior Constable P2 that she landed on her elbow when Matty kicked her off balance. It shows Senior Constable P2 on top of Matty in a controlled manner, using her body weight to control Matty on the floor, and Senior Constable P1 bending over adding his weight on top.
85. The one witness who would have seen whether Matty did kick Senior Constable P2 was her sister Tia. Tia was not called by the prosecution to give evidence.

86. Neither of the residential unit staff members present were called to give evidence.
87. No explanation was given by the prosecutor for the failure to call these witnesses. In the circumstances I am satisfied that the uncalled evidence would not have assisted the prosecution case.¹
88. Matty was not interviewed by Police after she was taken to Heidelberg Police station. No other officer present gave evidence that they saw Matty kick Senior Constable P2 in the hallway, and it was not captured on any of the body camera footage. The photograph Senior Constable P2 claims is of a bruise on her thigh has no evidentiary value due to the very poor nature of the image.
89. The assertion that Matty did kick Senior Constable P2 has no independent support in the evidence before the Court.
90. The evidence of Senior Constable P2 causes the Court to have grave concerns about the veracity of her claims. She characterised her application of force to Matty on the couch earlier rather than pushing Matty onto the couch, (after she got up when her bag was taken), that Matty was a dead weight, and she “sort of fell with her onto the couch”. Neither her, nor P1’s body worn camera footage supports this version of what occurred. Matty did not fall as if a dead weight when she was grabbed on each arm by P1 and P2. She was pushed down forcefully by them both. She described Matty causing a deep bleeding laceration to Senior Constable P1’s finger. His body worn footage completely contradicts her evidence about the alleged injury. The Court does not accept that Senior Constable P2 gave truthful evidence.

The use of force against a child when executing a safe custody warrant

¹ See *Jones v Dunkel* (1959) 101 CLR 298, 312; *O'Donnell v Reichard* [1975] VR 916, 929; *Kuhl v Zurich Financial Services Australia Ltd* (2011) 243 CLR 361, 384-385.

91. The *Children, Youth and Families Act 2005* [CYFA] is silent on whether force may be used to take a child into emergency care pursuant to a warrant issued under that Act.
92. At the commencement of the hearing, prior to evidence being given, the prosecution submitted that the power of police to use force to execute a s.598 warrant came from the power to use force found in sections 342(3) and 462A of the *Crimes Act 1958*.
93. Section 342 of the *Crimes Act* is located in **Part IIA – Extra-territorial offences**: s.342 is entitled “**Authority conferred by and other incidents of a search warrant**”.
94. A warrant under s.598 of the CYFA is not a search warrant relating to an extra-territorial offence.
95. Section 462A of the *Crimes Act* is found in **Part III**, which deals with procedure and punishment. It governs the use of force to prevent the commission of an indictable offence. When force was applied to Matty, there is no evidence that she was about to commit an indictable offence. The police cannot rely upon any power in this section for their use of force against Matty.
96. Whilst it was not raised, Police cannot rely upon s.459 of the *Crimes Act* either. That section empowers police to apprehend a person without warrant where on reasonable grounds the police member believes the person has committed an indictable offence. Whilst Senior Constable P2 gave evidence that she was aware from Leap that Matty had been at Heidelberg Police station the night before after an incident, she was aware that Matty had been released.
97. No provision of the *Crimes Act* that authorises the use of force when executing a warrant can be used to assert a power for police to use force when only executing a s.598 CYFA warrant. A child being absent from the placement determined by the Secretary of the DFFH or the Children’s Court of Victoria

(exercising the power to make accommodation decisions regarding a child) is not an indictable offence – nor any offence at all.

98. Where the CYFA is silent, the source of power to use force, if any, must come from common law.

99. Section 51(a) of the *Victoria Police Act 2013* gives officers “all of the powers of a constable at common law”.

100. Courts have hesitated to rigidly define the powers of a constable at common law.

101. In *R v Waterford, R v Lynn* [1963] Ashworth J of the Queen’s Bench observed:

“In the judgement of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person’s liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.”²

102. The Federal Court of Australia considered the scope of a constable’s powers in *R v K* (1993) 118 ALR 596. At 601, the court held that s.64(1) of the *Australian Federal Police Force Act 1974* (Cth)....

“should not be construed in any narrow or restricted sense, but should be given broad operation to protect the performance of all police

²*R v Waterfield, R v Lynn* [1963] 3 All ER 659 at 661, per Ashworth J.

duties, and not just some. The section is general ‘in the execution of his duty’. That means that the section applies whenever the police officer is doing something which can fairly and reasonably regarded, given the existing circumstances, as carrying out his duties.”

103. The purposes of the *Children, Youth and Families Act 2005* are integral to the context in which s.598 must be interpreted. The purposes are set out in s.1 of the Act:

The main purposes of this Act are—

- (a) to provide for community services to support children and families; and
- (b) to provide for the protection of children; and
- (c) to make provision in relation to children who have been charged with, or who have been found guilty of, offences; and
- (d) to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children.

104. In the execution of a warrant to take a child into emergency care, the fundamental principle is found in s.1(b) *to provide for the protection of children*. A warrant to take a child into safe custody is not an arrest warrant pursuant to the *Crimes Act 1958*; its execution is a duty imposed upon a police officer offer to take a child into safe care for the child’s own wellbeing.

105. Section 598 of the *Children, Youth and Families Act 2005* is found in Part 8.3 of the Act, which deals with the placing of children into emergency care.

106. The warrant for Matty was issued on 15 April 2025 at 8:46pm, under s.598(1)(b) or(c):

- (1) If a magistrate is satisfied by evidence on oath or by affirmation or by affidavit by the Secretary or by a police officer that—

- (b) a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order or by the Secretary under section 173 or from the lawful custody of a police officer or other person; or
- (c) a child or a child's parent or the person who has the care of a child is refusing to comply with a lawful direction of the Secretary under section 173 as to the placement of the child—

the magistrate may issue a search warrant for the purpose of having the child placed in emergency care.

107. 'Emergency care' is defined in the CYFA as placement in accordance with section 242(5) or 247A(4). The latter is not relevant in the circumstances of this case.

Section 242(5) is located in Part 4.8 of the Act which governs protective intervention and prescribes that a child placed in emergency care under section 241 may only be placed—

- (a) in an out of home care service; or
- (b) if there is a substantial and immediate risk of harm to the child, in a secure welfare service; or
- (c) in other accommodation approved by the Secretary in accordance with the prescribed criteria (if any).

108. Chapter 5 of the CYFA covers alleged criminal offending by young people. These provisions are entirely separate from the provisions for protective intervention and care for young people.

109. Form 39 is the prescribed form for a warrant issued under s.598(1)(b) or (c). It authorises police to "break enter and search any place where the child

named or described in this warrant is suspected to be and place in emergency care the child named or described in this warrant.”

110. The power given to police under a s.598 warrant is broad in its scope for the purpose of locating a child, but the structure of the CYFA makes it abundantly clear that the powers and obligations of police to fulfill their duty under a warrant issued under s.598 are limited to taking a young person into emergency care once they have been located.
111. Whilst the CYFA is silent on the use of force to take a child into emergency care, the common law provides that a police officer on duty may use force to perform their duty, but only *“such a degree of force as in the circumstances he reasonably believes to be necessary to effect his purpose, provided that the means adopted by him are such as a reasonable man placed as he was placed would not consider to be disproportionate to the evil to be prevented”*³.
112. The common law has long recognised that in some situations it is necessary for police to use force against a person for their own safety.⁴
113. It is not difficult to imagine circumstances where a child is found by police at immediate risk of harm and to take them into emergency care to protect them the police officer(s) need to use force, either against another person or against the child who is the subject of the warrant.
114. In using force, the police will be “on duty” so long as the force used is proportionate to the imminent harm the child to be taken into care is found in. The test for proportionality will depend on the immediacy and the severity of the risk posed by the circumstances in which the child is located under the emergency care warrant.

³ *R v Turner* [1962] VR 30, 36.

⁴ *DPP v Gribble* [2004] NSWSC 926; *Johnson v Phillips* [1975] 3 All ER 682; *Director of Public Prosecutions v Evans* [2017] NSWSC 33

Did the circumstances in which Matty was located sanction the use of force to execute the warrant?

115. Matty was in a property run under the auspices of the Secretary of the DFFH under s.242(5)(a) of the CYFA. The police in attendance knew that they were not executing a warrant to arrest Matty for alleged criminal offending. The plan to execute the warrant did not consider using techniques to avoid distress to Matty, nor contemplate using de-escalation techniques if she was distressed.
116. The police members who attended did not need to use force to enter the property. A member of staff at the home told police he did not think that Matty had a problem with police, and escorted police to the loungeroom where Matty was sleeping on the couch. Another young woman was also in the loungeroom – Tia, Matty’s sister. Tia was roused from sleep easily, Matty not so. Tia was calm and asked appropriate questions about why the police were there for her sister, until Police applied force to her sister.
117. Matty was woken by Senior Constable P1 shaking her shoulder, then pinching the pressure point between her shoulder and neck. In pinching Matty, Senior Constable P1 applied unnecessary and unreasonable force to Matty. Matty was not in any danger, nor was she placing others at imminent risk of harm by sleeping on the couch.
118. She woke with a fright response to this. Matty did not move from her horizontal position on the couch until, without warning, Senior Constable P1 reached over her body and took possession of her bag. When he took her bag, Matty got up and challenged him about removing her bag. As she did, she was immediately grabbed and pushed brutally back onto the couch by Senior Constable P1 and Senior Constable P2.

119. Matty was not at immediate risk of harm when police forced her onto the couch. She had not refused to accompany them voluntarily. Indeed, when Senior Constable P1 told her they had a warrant, her response was “okay”.
120. The common law has repeatedly confirmed that the scope of a warrant is to be construed narrowly, and any force beyond what is reasonable in the circumstances, or any actions not authorised by the warrant, will make the conduct of the police unlawful as they are not acting in execution of their duty.
121. In *Nguyen v Elliot* [1995] VSC 28 (unreported), Hedigan J considered whether a person being searched without reasonable suspicion was entitled to resist the search and subsequent arrest, and whether a bite injury to a police member executing a warrant was intentional or protected by the right of self-defence:

“[T]here was no reasonable suspicion that the appellant was in possession of the drugs, so as to justify a search. In those circumstances it cannot be said that a police officer is acting in the execution of his duty to facilitate an unlawful search and arrest. The right of citizens to resist unlawful search and arrest is as old as their inclination to do so.”

“[I]t appeared from the evidence it was a minor breaking of the skin, probably caused by the finger passing across a single sharp edge of tooth in the course of the struggle to make the appellant submit to having his hands cuffed. It appears to me that it was not open for the magistrate conclude that any injury was intentionally caused...he struggled to escape and prevent close confinement which was not justified.”⁵

⁵ Pages 9-14

122. In *Allitt v Sullivan* [1988] VR 621, Brooking J helpfully observed (at 649) when the actions of police in purported execution of a warrant are in question: “ask in each case what powers were given by the warrant and whether they had been exceeded.”
123. In *Henderson v O’Connell* [1937] VLR 171 Mann CJ held (at 177) that “A man who is searched or to search whom an attempt is made without legal authority, is entitled to resist and use all reasonable force for that purpose.”
124. The scope of the powers of police when executing a warrant issued under s.598 of the CYFA was considered by the Victorian Court of Appeal in *Johnston (A Pseudonym) v The King* [2023] VSCA 49. The issue before the court was the exclusion of evidence obtained following the search of premises entered under a warrant issued under s.598 of the CYFA:
- “By its terms, it is not confined in terms of location or premises. It is ambulatory in its scope. It permits a specific member (or all members) of the police force to search ‘any place’ if the child is suspected to be there... it does not authorise any action by police other than ensuring the child is, in practical terms, removed and placed in safe custody. The warrant is effective until the child is recovered and, in this way, remains ‘extant’ until that time. However, and importantly, it does *not* authorise any search of premises other than to search for and remove the child.” (at [20]-[21])
125. The Court of Appeal held that “once it was clear the [child] CM was not on the property, the officers had no right to be on the premises, and from that time on they were trespassers. The continued search was unlawful.” (at [5])
126. The power given to police executing a warrant issued under s.598 (b) or (c) of CYFA (the warrant in this case), does not include a power to take possession

of any item in the premises in which they find the child who is the subject of the warrant.

127. When he took possession of Matty's bag Senior Constable P1 was depriving Matty of property without lawful authority. In doing so he again exceeded the scope of his powers. Senior Constable P1 ceased to be acting in execution of his duty when he pinched Matty, and further when he seized her bag. Matty was entitled to challenge his taking of her bag. She was entitled to act reasonably to recover it. In standing and asking "Why are you touching my shit?", Matty did not act unlawfully. She was not resisting the execution of the s.598 warrant. The immediate application of force to Matty by Senior Constable P1 and Senior Constable P2 was so grossly disproportionate to her legitimate challenge to the seizure of her property, that their actions constitute an assault upon Matty.

Matty was approached as if she was a violent offender being arrested

128. The prosecution case was that Police were entitled to approach as they did as the Leap dossier accessed by Senior Constable P2 claimed that Matty had previously spat at, bit or kicked other police officers, and thus they were entitled to act in a way that would reduce the risks of such behaviour on this occasion.
129. Counsel for Matty sought that this evidence be excluded as it was tendency evidence, and that the proper notice provisions for seeking to use tendency evidence had not been complied with, and the prosecution had not complied with its obligation to disclose the Leap records prior to the hearing. It was also submitted that the prejudicial effect of such evidence would outweigh any probative value.
130. The evidence was relevant to the state of mind of the Police in approaching the execution of the s.598 warrant. It was of high probative value in assessing

whether the police were reasonable in their use of force. In admitting the evidence, I have not used it for any other purpose.

131. This evidence was not disclosed until the second day of the hearing, despite earlier directions of the Court. It was not the only failure of the prosecution to fulfill its disclosure obligations. This failure precluded the defence from examining the accuracy of such Leap entries to properly challenge the prosecution case in this regard.
132. None of the body worn camera footage captures any discussion of the alleged prior behaviour of Matty during the planning for the execution of the warrant. The only reference is to another young person, CHA, who may have been inside the home having allegedly used violence towards another police member, which led to the instruction for Constable P4 to get the large OC foam cannister, and for Senior Constable P3 to keep an eye on this young person.
133. It is sensible for Police to consider what risks they may face when entering a property to execute a warrant, but the planning for executing a s.598 warrant must focus on the wellbeing of the young person subject to it. There was no discussion of why a warrant had been issued for Matty, or what her trauma background might be.
134. Senior Constable P2 enters the loungeroom at 10:12:41 and addresses Matty whilst she is asleep. At 10:13:24, Senior Constable P1 applies unreasonable force through pinching Matty. It was not reasonable to pinch Matty to wake her.
135. From the time that Matty is woken by Senior Constable P1 pinching her, to her being forcibly restrained on the couch, a total of 1 minute and 13 seconds elapses. Matty twice requests that her Child Protection worker, [R], be called. No police member calls Child Protection in response to her request. Her

request, whilst not spoken quietly and with good manners, was a reasonable request to make.

136. A call to Child Protection would have been an important opportunity to show Matty that police were listening to her and treating her with dignity. It would have allowed her time to calm down from the intrusive and forceful way in which she was woken. Police could have sat on the coffee table opposite her on the couch and spoken to her in a less oppressive way. A call to Child Protection could have also given police insight into other ways to engage Matty without using force. Instead, not only was the police plan for executing the warrant to use force on Matty if she was not instantaneously compliant, Senior Constable P1's actions of pinching Matty and taking her bag outside the permitted scope of the warrant provoked a distress response in Matty which Police then seized upon to apply force to her.

Conclusion

137. The conduct of Senior Constable P1 and Senior Constable P2 showed no intention to use patience with Matty, a vulnerable young person in the care of the State. From the commencement of planning to execute the warrant – where they planned to “go straight in” and grab her “at any sign of aggression, resistance or anything” – to their conduct inside the unit, their approach is devoid of any consideration of Matty's vulnerability, her trauma experiences and her right to be treated with dignity by those in positions of power. There was no consideration of how they might avoid a confrontation in how they approached her, nor any planning to use de-escalation techniques if Matty became distressed.
138. All four officers gave evidence that they had not received any specific training in the execution of safe custody warrants. Victoria Police are a signatory to the Framework to Reduce Criminalisation of Young People in Residential Care (2020). None of the officers appeared familiar with this document or their

obligations in the Victoria Police Manual when taking a person into care or control as opposed to arrest:

“The overarching consideration for the management of people in police care and custody is the protection of a person’s human rights including their safety, security, health and wellbeing. Members must manage the person in a fair and consistent manner and treat them with dignity and respect in accordance with their human rights.”⁶

139. The body worn camera footage shows clearly that the intentions of police in executing the warrant were to arrest her, and they approached her as if she were being arrested for violent criminal offending – rather than the situation actually encountered – a 15-year-old girl asleep on a couch in a residential unit.

140. The use of force against Matty to execute the s.598 warrant was entirely unreasonable. Matty was not treated with dignity and respect. The police actions constitute an assault against Matty. She was entitled to resist. The prosecution has not negated self-defence.

141. All charges are dismissed.

Magistrate Stead

⁶ Victoria Police Manual (January 2025) pg 7