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Minute

Office of the Director of
Military Prosecutions

ODMP 2015/1217311
RMC:JAW/R24166803

See distribution

DECISION NOT TO PROSECUTE ^{s22} ^{s47F}

References:

- A. Brief of Evidence INV-ADF01-DWN-2015-32
- B. *Defence Force Discipline Act 1982 (Cth)(DFDA)*
- C. *Director of Military Prosecutions – Prosecution Policy* dated 26 Oct 15

1. Reference A was referred to my office on 16 Nov 15 by ADEIS on the basis that it disclosed a potential prescribed offence. It is alleged that on 9 Oct 15 ^{s47F} assaulted ^{s47F} in Darwin, which resulted in actual bodily harm. The victim ^{s47F} ^{s47F} ^{s47F}

2. I have decided in my discretion pursuant to paragraph 1.5 of reference C not to proceed with charges against ^{s47F}. In all the circumstances, I have formed the view that there is no reasonable prospect of conviction.

3. The evidence available consists of a series of statements ^{s33} ^{s33}

4. While a person not wishing to 'complain' or 'press charges' does not determine whether charges will be laid, a lack of a fulsome and detailed account of what has transpired makes it difficult, sometimes impossible, to prosecute.

5. The evidence of most eye witnesses was that the altercation between ^{s47F} and the victim only came to their attention once it was already underway. ^{s33} ^{s33}

Indeed, that seems to be the case based on the evidence of other witnesses.

6. Significantly other witnesses describe the two as wrestling while on the ground. There is no evidence from any witness about what led to the altercation or how it escalated. On balance it seems ^{s47F} ^{s47F} What is not clear on the evidence is the manner in which the matter escalated to a 'struggle' or how the ^{s47F}

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7. Furthermore the ^{s47F} [redacted] ^{s47F} Without further evidence, the highest the matter can get is that ^{s47F} [redacted] ^{s47F} although there is insufficient evidence to even particularise this aspect of his conduct.

8. All of the [redacted] and accordingly the ability to gain further particulars, even if the witnesses would supply them, is in all of the circumstances not achievable.

9. In short there is insufficient evidence to press charges.

10. ^{s47F} [redacted] ^{s47F} [redacted]

11. You are to inform the member of my decision, provide the member with the attached minute, and provide him appropriate counselling and support.

12. Notwithstanding my decision not to prosecute ^{s47F} [redacted] ^{s47F} [redacted]

^{s22} [redacted]

JA WOODWARD
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Director of Military Prosecutions

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15 Dec 15

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Enclosure:

1. DMP Minute to ^{s47F} [redacted] Dec 15

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Minute

Office of the Director of
Military Prosecutions

RMC:JAW/R24166810

§47F

1 CER

DECISION NOT TO PROSECUTE

References:

- A. Brief of Evidence INV-ADF01-DWN-2015-32
- B. *Defence Force Discipline Act 1982 (Cth)(DFDA)*
- C. *Director of Military Prosecutions – Prosecution Policy* dated 26 Oct 15

1. Reference A was referred to my office on 16 Nov 15 by ADFIS. It is alleged that on 9 Oct 15 you assaulted another ADF member, which resulted in actual bodily harm.
2. I have decided in my discretion pursuant to paragraph 1.5 of reference C not to proceed with charges against you. In all the circumstances, I have formed the view that there is no reasonable prospect of conviction.

§22

JA WOODWARD CSC
Brigadier
Director of Military Prosecutions

15 Dec 15

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