

Miles O'Grady

There are many very serious questions to be raised about the Miles O'Grady case in Nerrigundah on the night of 9 April 1866.

Miles was a young policeman, twenty-two years old, briefly trained, before being sent to Nerrigundah. He had been in the Araluen gold fields the week before his death, where he had contracted what probably was cholera.

Cholera was rife on the goldfields in Australia in those days due to poor sanitation. The medication at that time for any fever or pain was opiates. Laudanum did not cure the disease, but it did relieve the symptoms somewhat, and was even prescribed to children when needed, for want of anything else. It was composed of a tincture of opium in alcohol. It was easily available, in many different stores, and it was cheap. It had the ability to enhance the imagination and produced a euphoric state – happy and confident. It was highly addictive. The police and newspaper reports at the time did not say anything about the medication given to Miles, and it has never entered into reports claiming the questionable hero status of Miles that night.

Miles received word, after dark, at about 8 pm, that the hotel was being robbed by bushrangers. He arose from his sick bed, where he had probably retired for the night, after taking this medication. He staggered down the unlit street, in his euphoric state, against words of caution from others. He was accompanied by Constable Smith who had just started his career as a policeman. Constable Hitch, who was in charge of the station in Nerrigundah was absent in Moruya.

Both police fired once at the masked men in the doorway of the hotel. William Fletcher, who was with the gang that day, was killed and the other bullet just missed Pat O'Connell. None of the bushrangers were outlaws at that time. Outlawry was a consequence of not surrendering by a specified date, it was not a consequence of a particular crime.¹

If Miles had lived he should have been charged with murder for his actions. He fired without warning, and did not know at whom he was firing.

Customers at the hotel came onto the street at the sound of gun shots, to see what was happening. Miles and Constable Smith retreated. Smith down a side street to the police barracks. Miles into the line of sight. This is when he received a fatal wound. Members of the public are not supposed to fire on anyone that may later prove to be a policeman, and so Miles's death was murder. William Fletcher's death was ruled justifiable homicide, despite the fact that Miles fired without warning. A very different result to what happened later to Constable Kelly when he shot and killed Pat O'Connell.²

That the police on many occasions were reported firing on suspects would lead one to believe that in those days this was an accepted and lawful practice.

However, the *Golden Age* commented on this attitude in 1861,³

That every means - every stratagem - should be applied to apprehend these men, there is not two opinions in the district, but to spill one drop of blood, with a view of capturing them, the law will not tolerate. It is to be hoped the police will not so far forget themselves, as to fire a single shot under the present circumstances; if one life is taken by the police, in the attempt to take any of these men, who, it seems have not one single charge made against them, but merely suspicions directed towards them, the police will make themselves liable to be tried for a deliberate and cold blooded murder.

Unfortunately the police were not held to account very often and this immoral and unethical practice continued. The purpose of law is to give certainty where there is none, to restore justice and to provide for fairness. The law in these cases was not fulfilling its purpose. This was also seen in the FAA where

1 See Appendix 1.

2 See pages 78-82.

3 *Golden Age*, 17 October 1861.

it appears loose interpretations abounded.

It is not even certain that the boys knew they were being shot at by the police at Nerrigundah as there were no street lights, and it had been rumoured that there were no police in the town. The police and the papers were happy to blame Tommy and Pat with murder for this event. They would be outlawed if they did not give themselves up by 4 May 1866. We know that the rifle bullet taken from Miles was never compared to the rifling in any rifles present and there were no witness statements taken swearing as to who shot Miles. There were now no police on the scene. There is no official list of people in the hotel that night. Constable Smith had retired to the police station.

The question of who shot Miles O'Grady needs to be examined. Tommy Clarke and Pat O'Connell were suspected of the murder, but they were never charged and never faced court. Therefore, we can only say they were suspected of killing Miles, we cannot say that one of them did kill Miles. The question of why they were never examined in court must be asked. Was it because there was just not enough evidence to convict them? [Superintendent] Orridge was asked to send the depositions related to the murder of Miles to the Inspector General of Police on the 5th May 1867.⁴ This was when Tommy and Johnny were waiting their trial in the Supreme Court in Sydney. It was hoped that they may now be able to identify John Clarke and prove who killed O'Grady.

Thomas Clarke had been recognised by John Emmott, Marian Groves, and George Thomas at the Deep Creek robberies that afternoon, before Nerrigundah. Johnny, Tommy and Tom were recognised by Michael Manusa the next day. It was hoped that this may now be reinforced by Charles Nash. The word of one person is not sufficient in law. Robert Jones had recognised both the Clarkes, but he also had recognised the Berrimans whom it was found later were not present. No known witnesses were in view when Miles O'Grady was shot. It was decided by the Attorney General that there was not enough evidence for Tommy or Johnny to be charged with the murder.

The information we have of the events in the Nerrigundah township of the 9th April 1866 comes from newspaper reports and the report of the inquest into Miles' death.⁵ Again, these reports leave us with more questions than answers and again they show that the witness statements are lacking in content and there is no cross examination to elicit more information.

We know from the inquest report that Constable Smith went back to the police station after discharging his gun at Pat O'Connell and stayed there for over an hour when it was suggested to him that he recover the dead body of William Fletcher. According to the newspaper report Fletcher took about an hour to die.

Constable Smith said at the inquest that he took two watches and a letter from William's body. He said nothing about taking a rifle and a revolver. Would the boys leave without taking their firearms? Especially the prized asset of a revolving rifle? Smith's book on page 287 states, without documentation, that the police had taken possession of the rifle and revolver that was with Fletcher's body and it was identified as the one stolen from police at Mudmelong. This does not appear to be correct.

Robert Jones, who was robbed and confined in the afternoon, on the road to Nerrigundah, was a witness at the inquest into Miles' death on 10 April 1866. He said there were six bushrangers, naming Tommy, Tom, and Berriman, saying he had known them for years. He also named Fletcher and a man named Joe. Then he described the colour of two of the cloaks and three of the masks. Apart from connecting Tom O'Connell to the dark grey cloak, Tommy to a blue coat and Berriman to a blue cloak and a blue mask, he did not correlate the cloaks or masks with the other bushrangers. He then said he was not positive whether Connell's name was Tom, despite saying he had known him for years and he was unsure as to whether Berriman had a blue or a grey cloth over his face. It appears there could be confusion in his mind between Tom and Pat O'Connell, (at Tom's trial in 1859 it had been stated they were similar looking, but that Tom was heavier). Berriman was also of similar height and colouring. He said that Joe and Berriman kept guard and four bushrangers went into town, three returning one and a half hours later.

4 NSWSR, *Col Sec Papers*, 9/6492. *Trial of John & Thomas Clarke, 28 May 1867, Depositions, 1867.*

5 *SMH*, 16 April 1866.

However Robert Jones had changed his tune by the time of Tom O'Connell's trial for wounding and robbing John Emmott in February 1867. Here he said he knew Tommy and Johnny Clarke, Pat O'Connell and Fletcher. He said nothing about Berriman or his brother, Joe. By then Joe Berriman's case of robbery and attempted murder of John Emmott at Deep Creek in May 1866, had been dismissed as he was not recognised by the witnesses, and the news about Bill Berriman's capture and life in northern NSW since the end of December 1864, would be well known. This information was apparent before Tom's committal⁶ hearing in December 1866, as then all witnesses, except John Emmott, were only talking about five bushrangers in total at Deep Creek. John Emmott still maintained there were six, but he did stress how confused he was by the pain and blood loss from his wound.

Several years later John would reply to Tom's letter agreeing that Tom did not harm him, but did in fact try to assist him.⁷

Mrs Groves, in April 1866, also a prisoner at Deep Creek, said four men went into Nerrigundah. She said that someone said there is only one constable at the Gulph [Nerrigundah] and that he has the fever. Recalled, she said they returned about two hours later. She also said that one of the men that returned was tall and he stuttered. This describes Johnny Clarke, who stuttered and was six foot tall. Until then Johnny's presence had not been suspected. Months later, Michael Manusa said in his evidence at Tom O'Connell's trial⁸ that the next day, 10th April, he was visited at his farm by Tommy and Johnny, and that Tom O'Connell had been left to guard the prisoners the day before. Thus, the four men that went into town were Tommy, Johnny, Pat and William Fletcher. This also explains why Tom's charge of the murder of Miles O'Grady later in November 1866, after he was captured, was dropped. The fact that he was charged in the first place shows the police did not have any idea as to who was in the township of Nerrigundah that fateful night. They had not done their homework and were made yet again to appear very foolish.

Smith, on page 507, is not correct in saying, in reference to Tom O'Connell, that

his charge of murder had been dropped in preference for one that police considered easier to prove.

The charge of the non-fatal wounding of John Emmott was less important than the charge of murder. Both did incur the same consequence but there was no evidence to back his charge of murder. Tom was not in the township when O'Grady was killed.

Similarly there was no evidence to convict the boys of killing the four Special Constables, which is why they were charged with the wounding of Constable Walsh. Smith appears to find legal proceedings difficult to understand. It is beholden on all writers of crime to have a firm grasp of the law, and not appear to twist it to suit themselves. Neither does Smith appear to understand that people cannot be accused of any crime unless convicted in a court of law. Nor are they required to appear in court unless the court has a good chance of proving their criminality. This is one of the most basic tenants of law, historically and today, as stated on page 20 above, the presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. Charges are only dropped when it can't be proven, not because there is another charge that is easier to prove. Even a complainant can't drop charges unless the Crown agrees. Thus for every robbery and every murder that has not been proven in court the suspected perpetrator is only suspected. He/she is not guilty, unless convictable evidence comes to bear. One hundred and fifty years later, the chances of that are very slim. It is beholden on people recording history to record the truth not some made up fiction that suits their purpose.

Thomas Brown was also a witness at the inquest. He was stuck up at Wallis' Hotel, in Nerrigundah, by three bushrangers, and he states, that two of them had blue ponchos, one with a blue mask, the other a red mask and one had his face blackened. From his information it seems Tommy is not disguised, whereas Robert Jones had Tommy in a blue coat, suggesting, either that the boys changed clothes, perhaps to cause confusion, or that the witnesses themselves were confused. He also refers to a

6 *Goulburn Herald & Chronicle, (Henceforth GH&C), 15 December 1866.*

7 For John Emmott's letter to Tom when he was in gaol, see page 96/7.

8 *Empire, 16 February 1867.*

big man which may be Johnny or Pat. But then said it was either the big man or Tommy that shot Miles. Ignoring this information, reports since blame Tommy.

According to the newspaper report, Sergeant Hitch arrived back from Moruya shortly after the bushrangers had left Nerrigundah.⁹ Hitch had been in Moruya and it is 27 miles (44 kilometres) to Nerrigundah today. The direction of the track in 1866 would probably be very similar to the road today owing to the terrain. To travel twenty-seven miles on horseback would take about five hours at night time, which means he would arrive about 1 am, assuming he left at 8 pm as soon as the boys arrived in town. It is unlikely that he would have received reports of the bushrangers before this as those that were robbed at Deep Creek, on the road to Nerrigundah were held prisoner. The boys had left town well before 1 am. Hitch was reported arriving at Manusa's place on the morning of the 10th April. His arrival caused the bushrangers, who were at Manusa's to flee. So instead of chasing the boys, Hitch and Manusa went together to Nerrigundah. They saw Mrs Groves and the wounded John Emmott on the way, and at Nerrigundah saw the dead body of Miles O'Grady. Whether Hitch arrived in Nerrigundah very late on the night of the 9th, or whether he arrived the next day for the first time since leaving Moruya is immaterial, but the fact they talked to Mrs Groves and John Emmott and went to see the body of Miles indicates that the next day is probably when Hitch, the only experienced policeman, finally arrived in Nerrigundah.

The presence of the rifle is important for two reasons. One is that O'Grady was killed by a rifle bullet and if it could be shown the boys did not have a rifle that day, they can't be guilty of his murder. Secondly, if a rifle was taken from Fletcher it would mean one less revolving rifle the boys would own. However there was no mention of the police retrieving a rifle at the inquest. This *fact* appears to be a red herring. That the boys had three revolving rifles, almost a year later, on 14th January 1867, when they robbed at Little River has been used to suggest that they must have taken one or two from the dead Special Constables, suggesting they killed the Special Constables. This of course is only circumstantial evidence as they could have borrowed or bought rifles from unknown people. And given the time difference they could have gained other rifles since April 1866. Smith states that they only had one revolving rifle before the death of the Special Constables.¹⁰ According to newspaper reports this is not correct.¹¹

Before they came to the township they had been robbing and confining travellers a few miles away at Deep Creek. When robberies are committed the newspapers give seemingly comprehensive accounts of the weapons used by suspects and by victims. There are detailed reports of these robberies before Nerrigundah, including the weapons, but only revolvers and pistols are mentioned. There is no mention of them having a rifle that afternoon, or at the township itself. So, who had the rifle that shot O'Grady? It is very doubtful that Pat or Tommy, in the heat of the moment, would use the rifle that Smith alleges William Fletcher had, then leave it next to his dying body. William had been shot and it was never suggested he had been in a state to use any weapon. However, we do know that as soon as the police discharged their weapons, many clients came out of the hotel to be part of the excitement, and many of these people would have their own weapons.

Whilst every situation can be different, past behaviour is significant. A revolver was Pat's weapon of choice, and there are no reports in any of his escapades where he fired any gun. His horse riding skills were enough to allow him to escape capture, even when the police were firing at him. The day he was shot and killed he was trying to flee on his horse instead of involving himself in a shooting match with the police. Tommy's preferred weapon was also a revolver, he was reported to own nine of those. The only recorded time a rifle may have been used was when the Special Constable's camp was alleged to have been shot up.¹² All reports of Tommy's robberies to date, stated he used a revolver. Revolvers were more reliable and easier to carry, especially when travelling distances. So, it seems the boys were blamed for killing Miles merely because Miles was shooting at them and somebody had to take the blame.

The case never went to court. The evidence given by witnesses at the inquest had significant differences. But it would seem that in certain minds, the absence of concrete, supportive, evidence can

9 *SMH*, 16th April 1866.

10 Smith, *Clarke Gang*, page 456.

11 See Appendix 2.

12 See page 115.

mean an assumption that murder has been committed. The boys were now in a can't win situation, condemned by their lack of skills and education and by the English perception of their culture and religion. As a consequence of not surrendering Tommy and Pat would be outlawed. This meant if they were found and were armed or thought to be armed they could be taken dead or alive. Also anyone convicted of harbouring or supplying food etc could face up to 15 years gaol. It is not surprising the bushranging had to continue, the only way they could be employed and pay their harbourers. Several authors have suggested that for economic reasons the robberies would increase after being outlawed. Certainly unfounded accusations were higher.¹³

13 See pages 105-117 for a discussion of robberies without warrants.