

NSW POLICE FORCE

STRIKE FORCE PARRABELL

Bias Crimes Indicators Review Form

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| Investigation No: | 57 |
| Victim/Deceased: | Robert John MACLEAN |
| Date of death: | 11 September, 1992 |
| Investigation Status: | Solved |
| Offender/s: | Paul GELLATLY |
| Investigative Unit: | The Rocks Detectives |
| Description: | Robert MACLEAN was a 48 year old heterosexual male who was unemployed and on a disability pension. He was murdered on the street after leaving Jackson's on George nightclub, George Street, Sydney by Paul GELLATLY. This area is not known to be frequented by any particular groups. GELLATLY was a 27 year old heterosexual male who did not know MACLEAN prior to the night of his murder where several altercations took place between the pair. GELLATLY believed MACLEAN to be homosexual. MACLEAN was found with extensive injuries to his head and body caused by GELLATLY punching and kicking him. GELLATLY was charged and convicted of manslaughter (alt) assault occasioning actual bodily harm, and was sentenced to a total of 400 hours community service. |

| 1. Differences | |
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| Prompts | Comment |
| <ul style="list-style-type: none"> • <i>Immutable characteristic differences between victim and POI's sexual orientation</i> | <p>At the time of his death, Robert MACLEAN was 49 years old. He had a de-facto wife, [REDACTED] 193. Robert and [REDACTED] 193 had been together for the past 16 years however did not have any children together (ST-433). There is no evidence that indicated MACLEAN identified as anything other than a heterosexual male. No information was reviewed that indicated the sexuality of Paul GELLATLY. Whilst there is no information pertaining to GELLATLY'S sexuality, numerous remarks were made by GELLATLY about homosexuals, referring to MACLEAN as a "faggot" on a number of occasions in the time leading up to the murder. At the time of assaulting MACLEAN, GELLATLY believed him to be a homosexual male.</p> |
| <ul style="list-style-type: none"> • <i>Victim is a member of a group which is outnumbered by members of another group in the area where the incident occurred</i> | <p>During the night, MACLEAN was drinking alone and continually walking between parties of other patrons including GELLATLY and his friends, many of whom believed MACLEAN to be a homosexual male influenced by the comments made by GELLATLY. No independent evidence was obtained to state how other members of GELLATLY'S party treated MACLEAN prior to the assault causing his death.</p> |
| <ul style="list-style-type: none"> • <i>Victim was engaged in activities promoting his/her group</i> | <p>There is no evidence in regards to MACLEAN engaging in activities promoting anything in particular prior to his death. In a statement from MACLEAN'S wife [REDACTED] 193 she stated, "The first time that I heard that Robert had been drinking at Jackson's Bar was when I was informed by the Police. I have never known Robert to drink at Jacksons before. Robert didn't have any regular drinking spots and he hardly ever went into the City" (ST-433).</p> |
| <ul style="list-style-type: none"> • <i>Incident coincided with a holiday or date of particular significance to the victim or POI's group</i> | <p>There is no evidence to suggest that the date of MACLEAN'S death held any significance to him or to GELLATLY.</p> |
| <ul style="list-style-type: none"> • <i>Victim, although not a member of the targeted group is a member a member of an advocacy group that supports the victim, or the victim was in company of a member of the targeted group</i> | <p>There is no available evidence to suggest MACLEAN was a member of, or affiliated with any specific minority advocacy groups. MACLEAN was not in the direct company of any other person at the time of his murder. Evidence suggests MACLEAN was in the city on his own at the time of his murder.</p> |
| <ul style="list-style-type: none"> • <i>Historical animosity exists between the victim's group and the POI's group</i> | <p>It is not believed MACLEAN and GELLATLY knew each other prior to the night of MACLEAN'S murder. It appears that during the evening, there were several incidents between MACLEAN</p> |

| | and GELLATLY and his associates (ST-419) with claims that MACLEAN had assaulted several people by head-butting them for unknown reasons. GELLATLY assaulted MACLEAN prior to assaulting him a second time causing his death |
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| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | Yes |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |
| GENERAL COMMENT | |
| At the time of his death, Robert MACLEAN was 49 years old. He had a de-facto wife, [REDACTED] 193 Robert and [REDACTED] 193 had been together for the past 16 years however did not have any children together. There is no evidence that indicated MACLEAN identified as anything other than a heterosexual male. No information was reviewed that indicated the sexuality of Paul GELLATLY. Whilst there is no information pertaining to GELLATLY'S sexuality, numerous remarks were made by GELLATLY about homosexuals, referring to MACLEAN as a "faggot" on a number of occasions in the time leading up to the murder. At the time of assaulting MACLEAN, GELLATLY believed him to be a homosexual male. | |
| 2. Comments, Written Statements, Gestures | |
| Prompts | Comment |
| <ul style="list-style-type: none"> <i>Bias related comments, written statements or gestures were made by the POI</i> | Evidence was collected from three independent witnesses. A statement from [REDACTED] 194 and record of interview's from [REDACTED] 195 and [REDACTED] 196. Witness [REDACTED] 194 was standing with MACLEAN chatting to him when GELLATLY pointed towards the witness, her friends and MACLEAN and yelled, "That guy is a fag." |

| | <p>MACLEAN replied, "Who cares if I am?" The witness and her friends supported MACLEAN. This was followed by GELLATLY approaching MACLEAN and shaping up prior to stating, "Don't you ever think about touching me, you fag." After these comments, GELLATLY assaulted MACLEAN by punching him in the mouth and walking off (ST-430). Witnesses [196] and [195] are street kids whom GELLATLY gave approximately \$7.00 in change to. After this, he has asked them to lure MACLEAN to him, stating things such as, "Mate, you know, and there's this, ah, faggot, down at that, ah, club just down the road there. Do you reckon you can get him for me?"; "there's a fucking faggot down that way"; "can you get him for me, I want to belt him"; and "Nope, I want to kill him, I want to kill him" (ER-69). GELLATLY went on to brag to these witnesses how he likes to, "hit faggots or something" (ER-77).</p> |
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| <ul style="list-style-type: none"> • <i>Comments and gestures can occur before, during and after the incident</i> | <p>Whilst GELLATLY was assaulting MACLEAN in front of witnesses [196] and [195] he was heard to be shouting something to the point of, "Faggot", and "You fucking faggot" (ER-78).</p> |
| <ul style="list-style-type: none"> • <i>Victims may not be aware of the significance of gestures made</i> | <p>It is unknown if MACLEAN was aware of these comments as it is undetermined when he lost consciousness during this assault.</p> |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | Yes |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |

GENERAL COMMENT

Whilst GELLATLY was assaulting MACLEAN in front of witnesses 196 and 195 he was heard to be shouting something to the point of, "Faggot", and "You fucking faggot." It is unknown if MACLEAN was aware of these comments as it is undetermined when he lost consciousness during this assault. Independent witness 194 recalled in her statement GELLATLY pointing towards her friends, MACLEAN and her and yelling, "That guy is a fag." MACLEAN replied, "Who cares if I am?"

3. Drawings, Markings, Symbols, Tattoos, Graffiti

| Prompts | Comment |
|---|---|
| <ul style="list-style-type: none"> <i>Bias related drawings, markings, symbols or graffiti were left at the scene or were seen on the POI</i> | Approximately 30 post mortem photographs and 40 crime scene photographs were viewed during the review (PH-85) (PH-86). None of the reviewed photographs depicted any bias related drawings, markings, symbols or graffiti at the scene or on the deceased body. |
| <ul style="list-style-type: none"> <i>Before discounting symbols, ensure that you understand the meaning of the symbol</i> | No drawings, markings, symbols or graffiti were present at the crime scene, on the deceased body or on GELLATLY. |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | Yes |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |

GENERAL COMMENT

No drawings, markings, symbols or graffiti were present at the crime scene, on the body of MACLEAN or on GELLATLY.

| 4. Organised Hate Groups (OHG) | |
|---|---|
| Prompts | Comment |
| <ul style="list-style-type: none"> • <i>Objects or items that represent the work of an OHG were left at the scene, e.g. business cards, flyers, burning cross</i> | MACLEAN was assaulted and eventually died near the front entrance to nightclub 'Jackson's on George', George Street, Sydney. There is no evidence available which indicates any objects that represent an OHG were left at this location by GELLATLY or others prior to or following the assault which resulted in MACLEAN'S death. |
| <ul style="list-style-type: none"> • <i>An OHG claimed responsibility</i> | GELLATLY was charged with the murder of MACLEAN. There is no evidence to suggest GELLATLY was affiliated with an OHG. As such, an OHG did not claim responsibility for this matter. |
| <ul style="list-style-type: none"> • <i>There are indications that an OHG was involved or active in the area</i> | There are no indications that an OHG was involved or active in the area around the Sydney CBD at the time of MACLEAN'S death. |
| <ul style="list-style-type: none"> • <i>MO is similar to known MO of an OHG</i> | An autopsy report from registered medical practitioner Thomas OETTLE stated MACLEAN'S death was a result of head injury (OD-197). Evidence supports that these injuries were caused by GELLATLY repeatedly punching and kicking MCLEAN. This is a common MO for many assaults however not necessarily specific to OHG'S. |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | Yes |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |

GENERAL COMMENT

GELLATLY was charged with the murder of MACLEAN. There is no evidence to suggest GELLATLY was affiliated with an OHG. There is no evidence available which indicates any objects that represent an OHG were left at this location by GELLATLY or others prior to or following the assault which resulted in MACLEAN'S death. MACLEAN'S death was a result of head injury. Evidence supports that these injuries were caused by GELLATLY repeatedly punching and kicking MCLEAN. This is a common MO for many assaults however not necessarily specific to OHG'S.

5. Previous existence of Bias Crime Incidents

| Prompts | Comment |
|---|---|
| <ul style="list-style-type: none"> • <i>Victim was visiting a location where previous bias crimes had been committed against members of the victim's group</i> | MACLEAN was assaulted and died outside Jackson's on George, George Street, Sydney. There are no recorded incidents of bias crime having occurred at this location. |
| <ul style="list-style-type: none"> • <i>Several incidents occurred in the same area and the victims were members of the same group</i> | No previous incidents of bias related crime or homicide are recorded against the location. There is no evidence to suggest MACLEAN was a member of any specific groups. GELLATLY is presumed to identify as heterosexual, and MACLEAN is also believed to also be a heterosexual male in a 16 year de-facto relationship with his wife. |
| <ul style="list-style-type: none"> • <i>Victim has received previous harassing mail, email, social media posts or phone calls or has been the victim of verbal abuse (anti-gay) based on his/her affiliation with a targeted group</i> | There is no evidence or previous reported incidents that suggest MACLEAN had been receiving harassing mail, email or phone calls for any reason. |
| <ul style="list-style-type: none"> • <i>Recent bias incidents or crimes may have sparked retaliatory bias crime</i> | GELLATLY and MACLEAN are not known to have been victim to or engaged in any recent bias incidents or crimes that may have sparked retaliatory bias crimes. GELLATLY is not known to have been involved in other bias related crimes or incidents that may have caused him to assault MACLEAN. [REDACTED] |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |

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| <p>Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.</p> | <p>No</p> |
| <p>Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses.</p> | <p>Yes</p> |

GENERAL COMMENT

MACLEAN was assaulted and died outside Jackson’s on George, George Street, Sydney. There are no recorded incidents of bias crime having occurred at this location. There is no evidence or previous reported incidents that suggest MACLEAN had been receiving harassing mail, email or phone calls for any reason.

6. Victim/Witness Perception

| Prompts | Comment |
|--|---|
| <ul style="list-style-type: none"> • <i>Witnesses (actual) perceive that the incident was motivated by bias</i> | <p>Evidence was collected from three independent witnesses. A statement from [194] and record of interviews from [195] and [196] Witness [194] was standing with MACLEAN chatting to him when GELLATLY pointed towards the witness, her friends and MACLEAN and yelled, "That guy is a fag." The victim replied, "Who cares if I am?" [194] and her friends supported MACLEAN. This was followed by GELLATLY approaching MACLEAN and shaping up prior to stating, "Don't you ever think about touching me, you fag." After these comments, GELLATLY assaulted MACLEAN by punching him in the mouth and walking off (ST-430). Witnesses [196] and [195] were street kids whom GELLATLY gave approximately \$7.00 in change to. After this, he has asked them to lure MACLEAN to him, stating things such as, "Mate, you know, and there's this, ah, faggot, down at that, ah, club just down the road there. Do you reckon you can get him for me?"; "there's a fucking faggot down that way"; "can you get him for me, I want to belt him"; and "Nope, I want to kill him, I want to kill him" (ER-69). GELLATLY bragged to these witnesses how he likes to, "hit faggots or something" (ER-77). It is evident from the versions given by all independent witnesses that they would likely have perceived the actions of GELLATLY to have been motivated by bias.</p> |

| Indicators | (y/n) |
|---|-------|
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | Yes |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |

GENERAL COMMENT

Evidence was collected from three independent witnesses providing information in respect to derogatory terms being made by GELLATLY towards MACLEAN prior to the assault that killed him. It is evident from the versions given by all independent witnesses that they would likely have perceived the actions of GELLATLY to have been motivated by bias.

7. Motive of Offender/s

| Prompts | Comment |
|---|--|
| <ul style="list-style-type: none"> <i>POI was previously involved in similar incident or is a member/associates with members of an OHG</i> | <p>Prior to assaulting MACLEAN, GELLATLY is not known to have been involved in any instances involving such a high level of violence, [REDACTED]</p> <p>[REDACTED] There is no evidence available to suggest GELLATLY was associated with or a member of an OHG.</p> |
| <ul style="list-style-type: none"> <i>The victim was in company of a member of the targeted group</i> | <p>MACLEAN was alone at the time he was assaulted by GELLATLY which lead to his death.</p> |
| <ul style="list-style-type: none"> <i>The victim was perceived to be breaking from traditional conventions or working non-traditional employment</i> | <p>MACLEAN was unemployed, receiving disability benefits, and for the past two years had been living in a housing commission unit in Caringbah (ST-433). He had numerous health problems and was taking angina tablets for his heart. He had only recently been hospitalised</p> |

| | for a collapsed lung. MACLEAN'S wife believed he was visiting friends near Manly and not in the City drinking. This lie to his wife was repeated throughout the night from MACLEAN. She was not aware he was in the City drinking until being informed by Police. Although his actions were deceiving for unknown reasons to his wife, his actions aren't necessarily breaking from traditional conventions. |
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| <ul style="list-style-type: none"> <i>The POI has a history of previous crimes with similar MO and involving other victims of the same group</i> | GELLATLY had not been charged previously with any matters involving any violence or bias related crimes. |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | Yes |
| GENERAL COMMENT | |
| <p>Prior to assaulting MACLEAN, GELLATLY is not known to have been involved in any instances involving such a high level of violence. There is no evidence available to suggest GELLATLY was associated with or a member of an OHG. Evidence suggests MACLEAN had been involved in several incidents of violence towards GELLATLY and his associates in the time leading up to his murder. Witness [194] described standing with MACLEAN chatting to him outside the Jackson's on George nightclub when GELLATLY pointed towards the witness, her friends and MACLEAN and yelled, "That guy is a fag." MACLEAN replied, "Who cares if I am?" This was followed by GELLATLY approaching MACLEAN and shaping up prior to stating, "Don't you ever think about touching me, you fag." After these comments, GELLATLY assaulted MACLEAN by punching him in the mouth and walking off. Witnesses [196] and [195] described GELLATLY as shouting something to the point of, "Faggot", and "You fucking faggot" during the assault. Whilst evidence suggests MACLEAN was in fact heterosexual, GELLATLY'S perception of his sexuality is likely to have come from MACLEAN'S comment, "Who cares if I am?" The retaliatory assault is likely to have been as a result of MACLEAN assaulting GELLATLY and his associates prior.</p> | |

| 8. Location of Incident | |
|---|--|
| Prompts | Comment |
| <ul style="list-style-type: none"> <i>The victim was in or near an area or place commonly associated with or frequented by members of a particular group e.g. beat</i> | MACLEAN was assaulted and subsequently died outside the nightclub Jackson's on George, George Street, Sydney. At the time of MACLEAN'S death, it was not known to have been a location associated with or frequented by persons from any particular group. |
| <ul style="list-style-type: none"> <i>The location of an incident has specific significance to the victim or POI group e.g. cemetery, religious building, historical landmark, etc</i> | There is no evidence to suggest the location of the incident had any specific significance to MACLEAN or GELLATLY. GELLATLY attended due to other establishments closing earlier and MACLEAN'S wife did not believe he had been to this pub before (ST-433). |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | No |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | Yes |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |
| GENERAL COMMENT | |
| MACLEAN was assaulted and subsequently died outside the nightclub Jackson's on George, George Street, Sydney. At the time of MACLEAN'S death, it was not known to have been a location associated with or frequented by persons from any particular group. There is no evidence to suggest the location of the incident had any specific significance to MACLEAN or GELLATLY. | |

| 9. Lack of Motive | |
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| Prompts | Comment |
| <ul style="list-style-type: none"> <i>No clear economic or other motive for the incident exists</i> | <p>GELLATLY and his friends were drinking at Jackson's on George prior to GELLATLY assaulting MACLEAN causing his death. In a statement from an associate of GELLATLY, [REDACTED] it is stated how MACLEAN had approached [REDACTED] and then GELLATLY and whilst introducing himself to them, head-butted each person for no reason, as stated, "For some unknown reason the guy wearing the fawny coloured jacket (MACLEAN) 'head butted' me. It felt hard, I didn't fall over, but I asked the guy why he did this to me but I don't recall his answer. I got the impression he was trying to be friendly but stand overish. The guy then turned around to where Paul [GELLATLY] was standing and I saw him 'head butt' him as well. The guy appeared to of head butted Paul a lot harder than he did to me. When he did this, I could tell that Paul wasn't impressed but he didn't retaliate. The guy with the fawny jacket then left..." (ST-415). MACLEAN'S behaviour continued later in the night by head-butting another of GELLATLY'S friends, Stuart (ST-419). This was approximately half an hour prior to being assaulted by GELLATLY. From statements obtained from the associates of GELLATLY, a defence of provocation is raised that GELLATLY assaulted MACLEAN due to MACLEAN'S aggressive and harassing behaviour during the night.</p> |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | Yes |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |

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| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses. | No |
| GENERAL COMMENT | |
| A general motive is established from the statements of GELLATLY'S associates which stems from MACLEAN'S actions throughout the night. Evidence suggests MACLEAN assaulted GELLATLY and his associates which most likely resulted in GELLATLY retaliating. A defence of provocation is raised that GELLATLY assaulted MACLEAN due to MACLEAN'S aggressive and harassing behaviour during the night. In regards to GELLATLY'S comments regarding MACLEAN'S alleged sexuality, there is evidence to suggest that this was a misconception on GELLATLY'S behalf. | |
| 10. Level of Violence | |
| Prompts | Comment |
| <ul style="list-style-type: none"> <i>The level of violence and injuries sustained by the victim/s is greater than would be expected for a crime of that type</i> | <p>GELLATLY assaulted MACLEAN an initial time causing him a split lip from a single punch. After this initial assault, GELLATLY walked a short distance away and waited until he could recruit two young person's to lure MACLEAN over to him away from the general public where he started a much greater assault against MACLEAN. Witnesses suggest that this assault was excessive, stating, "He belted the shit out of his, all his face, and all his eye up there was cut, you know, around on his bottom lip there, you know, then he ended up falling to the ground like a bag of shit." (ER-75) There is also evidence that GELLATLY kicked MACLEAN to the face whilst he was on the ground unconscious which is very excessive for a retaliatory assault. It is unknown if the excess levels of violence were as a result of GELLATLY'S perception of MACLEAN'S sexuality.</p> |
| <ul style="list-style-type: none"> <i>Weapons of opportunity are used in the incident</i> | <p>There is no evidence to suggest weapons were used against MACLEAN by GELLATLY in this incident. The Coroner's report suggests MACLEAN died from head injuries.</p> |
| <ul style="list-style-type: none"> <i>The number of POI's is greater than the number of victims and all POI's take an active role in the assault</i> | <p>There is no evidence to suggest that there was more than one offender assaulting MACLEAN.</p> |
| Indicators | (y/n) |
| Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence. | No |

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|---|-----|
| Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence. | Yes |
| Not Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group. | No |
| Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses. | No |

GENERAL COMMENT

GELLATLY acted alone during the assault of MACLEAN. GELLATLY assaulted MACLEAN an initial time causing him a split lip from a single punch. After this initial assault, GELLATLY walked a short distance away and waited until he could recruit two young person’s to lure MACLEAN over to him away from the general public where he started a much greater assault against MACLEAN. Witnesses suggest that this assault was excessive, stating, “He belted the shit out of his, all his face, and all his eye up there was cut, you know, around on his bottom lip there, you know, then he ended up falling to the ground like a bag of shit.” There is also evidence that GELLATLY kicked MACLEAN to the face whilst he was on the ground unconscious which is very excessive for a retaliatory assault. It is unknown if the excess levels of violence were as a result of GELLATLY’S perception of MACLEAN’S sexuality.

SUMMARY OF FINDINGS

Indicator: Bias Crime (BC)

Comment: There is no evidence that indicated Robert MACLEAN identified as anything other than a heterosexual male. No information was reviewed that indicated the sexuality of GELLATLY. Whilst there is no information pertaining to GELLATLY’S sexuality, numerous remarks were made by GELLATLY about homosexuals, referring to MACLEAN as a “faggot” on a number of occasions in the time leading up to the murder. At the time of assaulting MACLEAN, GELLATLY likely believed him to be a homosexual male. Independent witness [194] recalled in her statement GELLATLY pointing towards her friends, MACLEAN and her and yelling, “That guy is a fag.” MACLEAN replied, “Who cares if I am?” This was followed by GELLATLY approaching MACLEAN and shaping up prior to stating, “Don’t you ever think about touching me, you fag.” After these comments, GELLATLY assaulted MACLEAN by punching him in the mouth and walking off. Whilst GELLATLY was assaulting MACLEAN the second time, in front of witnesses [196] and [195], he was heard to be shouting something to the point of, “Faggot”, and “You fucking faggot.” It is unknown if MACLEAN was aware of these comments as it is undetermined when he lost consciousness during this assault. It is evident from the versions given by all independent witnesses that they would likely have perceived the actions of GELLATLY to have been motivated by bias. Evidence suggests MACLEAN had been involved in several incidents of violence towards GELLATLY and his associates in the time leading up to his murder. GELLATLY’S perception of his sexuality is likely to have come from MACLEAN’S comment, “Who cares if I am?” and his appearance. During a conversation with associate [150] she recalled GELLATLY saying, “I think the guy [MACLEAN] looks as camp as hell.” The retaliatory assault is likely to have been as a result of MACLEAN assaulting GELLATLY and his associates prior. Witnesses suggest that this assault was excessive, stating, “He belted the shit out of him, all his face, and all his eye up there was cut, you know, around on his bottom lip there, you know, then he ended up falling to the ground like a bag of shit.” There is also evidence that GELLATLY kicked MACLEAN to the face whilst he was on the ground unconscious which is very excessive for a retaliatory assault. It is unknown if the excess levels of violence were as a result of GELLATLY’S perception of MACLEAN’S sexuality.

