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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 24 MAY, 2018

AT 10.15AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: I understand that there's an applicant for authorisation to appear for Mr [REDACTED]

MR CRAWFORD-FISH: Yes, Commissioner. My name is Crawford-Fish and I seek authorisation to appear for [REDACTED] [REDACTED]

THE COMMISSIONER: Thank you. Authorisation is granted.

10 MR MUSICO: Excuse me, Commissioner, I, for the record, will also formally seek authorisation to appear today for the Commission for Corrective Services. My name is Musico, solicitor, and I've been instructing Mr Brasch of counsel for the last three days.

THE COMMISSIONER: I've noticed that.

MR MUSICO: And he's elsewhere, so just for formalities' sake, I seek to be authorised.

20 THE COMMISSIONER: Yes. I think he raised that yesterday afternoon, didn't he, that he had a problem today.

MR MUSICO: Mr Brasch is in the District Court at the moment, Commissioner, waiting to give leave in support of a late application for an interstate subpoena.

THE COMMISSIONER: All right.

30 MR MUSICO: So, he was anticipated to be here at 10.30 but he's just advised me he will be still - - -

THE COMMISSIONER: That's okay. I'm sure you can hold the fort.

MR MUSICO: I'll be here holding the fort, Commissioner. Thank you.

THE COMMISSIONER: Mr [REDACTED] will you take an oath or an affirmation?

MR [REDACTED] I'll take an oath, please.

40 THE COMMISSIONER: Thank you.

THE COMMISSIONER: For the benefit of Mr █ and for others present, can I just remind you all that there is a suppression order in relation to Mr █ which prevents publication of his name or any other information such as his physical appearance or other personal details and his place of incarceration. So, I ask that the media keep that in mind and also I made clear the other day that that extends to Corrections staff and they're not at liberty communicate to other Corrections staff who are not here today, or to any inmate, the identity of this witness. And I'll remind you again that the penalties for breaching that order are significant.

SUPPRESSION ORDER IN RELATION TO MR █ WHICH PREVENTS PUBLICATION OF HIS NAME OR ANY OTHER INFORMATION SUCH AS HIS PHYSICAL APPEARANCE OR OTHER PERSONAL DETAILS AND HIS PLACE OF INCARCERATION.

20

THE COMMISSIONER: Now, Mr Crawford-Fish, do you seek a section 38 declaration?

MR CRAWFORD-FISH: Yes, Commissioner.

THE COMMISSIONER: Right. I'm sure you've explained to Mr █ what that means but I'll just go through a few things with you so you understand what your obligations are in give evidence, so you know what your rights are. Perhaps at the making of the section 38 declaration, which your solicitor sought, you can object to answering a question or producing an item in respect to any summons, but you must answer all questions truthfully and produce any item described in your summons – and I don't know whether there were – or any document required by me to be produced during the course of your evidence. The effect of the section 38 declaration that I'm about to make is that although you must still answer the questions asked of you or produce any documents that I ask you to produce, your answers or the document produced cannot be used against you in any civil proceedings or, subject to one important exception in your part, in any criminal proceedings. That exception is that the protection you get from a section 38 declaration does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, and most importantly, as I'm sure you have been informed by your solicitor, an offence of giving false or misleading evidence. So, you've got to tell the truth. The section 38 declaration will protect you, but if you tell fibs it doesn't protect you and the penalty can be quite severe. It can be imprisonment for up to five years, which I'm sure is something that you would rather not happen.---Yes.

So I make the following declaration. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public enquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC ENQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

20

THE COMMISSIONER: Just before Mr Duggan proceeds, I understand that a copy of Mr [REDACTED] record was circulated and it's certainly up on the restricted website. Can I indicate that there were some redactions made and that's only because of the application of the Children Criminal Proceedings Act of 1987, which I'm sure you're all familiar with, or at least its intent. Thank you, Mr Duggan.

30

MR DUGGAN: Commissioner, that might be a convenient time to tender that document, if I may.

THE COMMISSIONER: Certainly. I'll make that Exhibit 61.

#EXH-061 – CRIMINAL HISTORY BAIL REPORT OBTAINED 24 APRIL 2018

40

MR DUGGAN: Thank you, Commissioner, and it's a bail report for Mr [REDACTED] dated 24 April, 2018. Thank you, Commissioner. Mr [REDACTED] can you please state your full name for the Commission?-- [REDACTED] [REDACTED] [REDACTED]

And you're an asthmatic, Mr [REDACTED] Yep.

And you usually have a puffer to deal with your asthma?--Yes.

And what colour is your puffer, or do you have more than one?--I've got more than one.

All right. So do you have a blue puffer?---Yes.

And it's usually referred to as a preventer, as I understand it?---Yeah, that's correct.

And how regularly do you use the puffer?---Oh, depending on how, how much I need to use it, so it all varies.

10 All right. And when do you need to use it?---When I'm about to have an asthma attack mainly or, so throughout the day, sometimes it could be twice a day, sometimes I won't have it for three or four days, so - - -

All right. And do you usually try and keep it with you or do you put it in a safe place or - - -?---Yeah, normally, normally it's in my pocket.

All right. And so is that, am I right in saying it's a blue/grey preventer with a dark blue cap?---Yes.

20 Do you also have another asthma inhaler?---Yes.

And what colour is that one?---Purple.

And is that called Seretide, is that the - - -?---Yes.

And when do you use that?---I use that regularly, daily. Every morning I use that.

All right. And so that's a once-a-day in the morning.---Yeah.

30 You don't use that throughout the day, that inhaler?---Oh, depending as well on the circumstances.

All right. I want to ask you some brief questions about Lithgow in 2014. You were on remand at Lithgow Correctional Centre there, do you recall?---Yes.

You were on remand there for an offence of supply prohibited drug in a commercial quantity?---Yes.

40 And you were eventually convicted of that later and sentenced to imprisonment?---Yes.

And in June 2014 you were also convicted of a charge of dishonestly obtain financial advantage by deception. Do you recall that?---Yes.

And you received a section 9 bond for that offence?---Yes.

Just in very high-level terms, what did that relate to?---It related to winding the kilometres back on an odometer metre on a car.

Right.---Quite minute.

And you were on remand in February 2014. Were you released before you were convicted or - - -?---Yes.

10 When was the offence of winding the odometer back?---It was, it was before I was charged with the supply prohibited drug.

All right. So it was probably sometime in 2013, was it?---I can't remember. It was before 2013, August, that's - before I was, before I was put on remand for the current sentence I'm on for now.

I understand.---I believe it was 2012 but roughly late 2012.

20 All right. And when you were on remand in Lithgow Correctional Centre, was that your first time in adult custody?---I done one night when I was 18. I got my MIN number in, I forgot what year it was, 2006 I think, I believe, so I done one night in Silverwater prior to this.

All right. And when I say your first time in custody, you didn't go into custody into Lithgow, did you, you were somewhere else before Lithgow, were you, or - - -?---What date, sorry? I don't understand.

So when you went into custody in relation to the supply charge - - -?
---Yeah.

30 - - - did you go into Lithgow Correctional Centre straightaway or some other - - -?---No, I went to Parklea.

All right. Now, I want to ask you some questions about 19 February, 2014. You understand that?---Yeah.

And do you recall that you were in the segregation unit in February that year?---Yes.

40 And the cells in segregation, some of them at least are two-out cells, meaning two-man cells?---Yes.

When you went into your cell in segregation were you by yourself or with someone else?---First I was by myself.

Right. And how long were you by yourself?---Oh - - -

Roughly.---Roughly say three weeks maybe.

And then at some point you were joined by another inmate. Is that right?
---Yes.

Do you recall his name?---[REDACTED]

Does [REDACTED] [REDACTED] ring a bell?---Yeah, it rings a bell. I remember [REDACTED] but
yeah, rings a bell but - - -

You remember him as [REDACTED]

10

THE COMMISSIONER: I'll just remind everyone that there's a
suppression order in relation to that name as well. Thank you.

MR DUGGAN: And do you recall how long [REDACTED] [REDACTED] was in the cell
before 19 February?---Oh, would have been roughly a few days.

A few days.---Yeah.

20 All right. And do you recall that, or were you aware that the cells in
segregation at that time were in lockdown on 19 February?---No, I wasn't
aware.

How many hours a day are you usually allowed out or were you allowed out
from that cell?---I believe it was from 9.00am to 3.00pm, 2.30/3.00pm, it all
sort of varied. Just out, just out in a little courtyard, like, it's a segregation
cell so it's only a little, little area you get out from the cell. It's about the
same size as a cell. It's all caged in.

30 All right. So that's a small area, what, about two metres by three metres out
the back of the cell?---Yeah, but it varied. Throughout the three weeks I
was there I was sharing one yard with another neighbour, cellmate, so I only
got say two hours out there, two to three hours.

All right. Now, you recall that there was an incident on the 19th. Are you
familiar with the knock-up system in the cell?---Yes.

40 What's the knock-up system?---It's a microphone speaker normally used for
emergencies, you hit, hit the button and you can speak to an officer on the
other end, so in case you're having a fit or cellmate's trouble or fights, sort
of an SOS button I guess, an emergency button.

All right. And in your experience is it used a bit more often in segregation
to communicate with officers?---Yeah, it is used a bit more, yes.

All right. And do you remember it being used on the morning of the 19th?
---Yes.

Who by?---By [REDACTED]

By [REDACTED] And can you tell me what happened?---What was said or - - -

Well, he pressed the button I assume?---Yeah, he pushed the button, yeah.

And did someone answer?---Yes.

And do you recall the conversation?---Yes.

10 What was said?---Oh, [REDACTED] was just asking for a TV, 'cause we had no TV in the cell.

All right. Was he worked up, was he calm?---Oh, he was a bit worked up, he was a bit rude I guess, so - - -

All right. And was there a response that came through the intercom do you recall?---I don't, don't recall a response. I was - - -

20 This was pretty early in the morning I assume?---Yeah, it was, yeah, it was quite, I was half-asleep, I just woke up so, woke up from him hitting the, the buzzer.

All right. And so what happened next, was there any response or did anything else happen?---Oh, a few minutes later there was officers at the door.

All right. And are you still in bed at this point?---Yeah.

30 Now, there's a, you'd recall there's a solid door and a grille in the cell. ---Yes.

So when you say there were officers at the door, you were able to see them, were you?---Once the primary first door was open, yes, I could see officers.

All right. So shortly after this knock-up call made by [REDACTED] the solid door was opened to the cell. Is that right?---Yeah.

40 And so what happened next?---They called [REDACTED] to the, to the door, so I got up and went to the door.

And can you just tell me who you were able to see through the grille door, who was there?---A lot of officers.

How many do you think?---Between seven and 12.

And are they all dressed the same or - - -?---From my recall, no, they're not, not dressed the same, no.

Are you able to describe any of them standing at the grille, what they were wearing?---Yeah. Some were in squad uniform, some were contage, there was a pipper there, there was normal officers, dressed in normal clothes.

All right. So you've just said pipper.---Sorry, yeah.

No, that's all right. What does pipper mean to your understanding?---Just someone that has a star, a few more stars on their shoulder. Like, an area manager of sort, or higher, or manager of security.

10

So a pipper is someone who has the stars on the shoulder?---Yep.

And I think you referred to the squad. How do you know it's a squad? Are they wearing something different?---Yeah, they've got big vests with all the pepper spray and batons and mask and whatnot. So, it's a big sort of backpack gear they wear.

20

And so there's quite a few people outside the cell. Do you call that area the day room?---Oh, I didn't call it the day room. I didn't, I was only there for a while. I didn't know, sort of a hallway, yeah.

So, do you remember who called you to the door?---Yes.

Who was that person?---Oh, I don't remember the, I just remember he had stars on his shoulder. It wasn't the squad, it was the boss in charge for them people at the time.

30

And what did that person say to you?---He said that, I was speaking with him through the knock-up system.

He said that you were speaking to him through the knock-up system?---Well he, first he said, "[REDACTED] to the gate." And then he said, "Do you want to be tough" or, or, I can't remember the actual word he used but he said, "You're talking through the, you're talking to me directly." And he wasn't quite happy about it.

THE COMMISSIONER: Was he raising his voice?---Yeah. He was quite stern in a manner, yeah.

40

MR DUGGAN: You'd just got out of bed, I assume?---Yes.

What were you wearing, do you recall?---I was in undies or shorts. Like - -

-

It was February, it was pretty warm. Were you wearing a top, do you remember?---I don't believe I was wearing a top, no.

You just said a moment ago, "The boss of them people at the time." Do you know a name? Did you know these people by name?---No. At the time I didn't know any names, no.

When you say the boss, and I think you might have also said something about the area, what do you mean by "the boss"?---I recall, when he was, when he was speaking to me he said, "[REDACTED] do you want to be tough?" through the microphone. "You don't know who you're talking with." And he was quite, well he wasn't happy and just, I could tell, I'd come from
10 Parklea at the time, so I didn't know, I was, was, didn't know what, what stars meant what at the time. Like, now, I've been here four years I sorta know what's an AS or an SAS, what a manager of security, but at that time I just knew that, from general knowledge, that how many stars he had, that he was, was quite high up and - - -

THE COMMISSIONER: Do you recall how many stars he had?---It was the lines then three stars.

MR DUGGAN: And, all right. Do you remember what this person looked
20 like?---Just a, an older gentleman. I can't really - - -

So, he wasn't happy about the knock-up call?---No.

And he was suggesting that you'd made the knock-up call to you?---Yep.

How did you respond?---Well, I quite sort of, I couldn't really give [REDACTED] up or, you know, I couldn't be a dog and sort of point at him and gave [REDACTED] a quick look and he's just sort of, he was frightened himself. Well, before they come I think [REDACTED] could see through the top and he said, "Squad's
30 here." Like, he goes, and he was quite, he was quite frightened at the time. So, I was sort of, didn't think that what was going to occur, what was going to happen would happen so I was just well, in like, didn't know what was going on at the time. But - - -

And I think you referred to contage before. What do they wear?---At the time they had like, dark, dark blue overalls with, they don't wear the squad gear, so they don't wear the vests with all the, the pepper spray and the batons and - - -

40 Did you see dog at any time?---Yep.

Did the dog get close to the cell, do you remember?---Not at that initial cell, but the next cell it did, yeah.

Now, sorry, you've indicated that you didn't want to give Mr [REDACTED] up, [REDACTED] up, so how did you respond to the person who was talking to you about the knock-up call?---Well, the grille gate was opened and that's when an officer just come in and started sort of attacking me.

All right. But you would have felt a bit taken aback that someone was accusing you of something you hadn't done?---Yeah, I was, yeah.

Did you give a bit back, yell at the person who was accusing you of this?
---No, I didn't at the time, no. No real, not enough time, it sort of happened so quick, it was - - -

10 And was this person who was talking to you through the grille, were they talking calmly or, or not?---Um - - -

How would you describe it?---They weren't happy, I'd describe it.

And so did anyone else say anything else before the grille door was opened?
---As, what do you, officers or - - -

Yes, anyone outside the cell?---No.

20 All right. So you recall the door being opened.---Yeah.

And what happened next?---Through, through the grille gate, as I said before, he said, "You want to be tough through the" intercom system, the knock-up button, whatever he said, "You were speaking to me directly," and he wasn't happy and the grille gate opened and one officer's come straight in and started attacking me, punching me in the face.

And is that, is that squad, contage regular officer?---Ah, squad.

30 Squad.---The squad member, yeah.

All right. And when you say attacking you in the face, what, are you able to describe what they did?---Oh, just punching. I was just standing there, he said, "Stop resisting," and I wasn't resisting, I was just standing there and sort of shocked like, what was, I thought I'd be handcuffed, didn't think I'd just be beaten as I was, but he just started attacking me and then a few more come in and then more than one, I think it was about three of them that were attacking me.

40 All right. And the first one, you'd been in segregation for three weeks, did you know any of these people by name?---Prior to that, no.

After that did you learn, work out who they were?---I had a few names after that, that, yes.

Are you able to tell me who came through the door?---Oh, there was, who, the first one or the - - -

Well, perhaps you can tell me of the officers that you saw outside, whether you recognised any of them or now know their names.---Sorry, I'm just getting a bit confused. Do you mean at that time obviously or - - -

THE COMMISSIONER: No, I think he's saying later, did you come to know who they were?---After, yeah, I've come to know who, who it was, yeah.

10 MR DUGGAN: Well, let's start with the person you think might have had three stars on their shoulder. Do you know their name now?---Oh, I do now but not, back then I didn't.

All right. And who was it?---Mr O'Shea I believe.

All right. And why do you believe it was Mr O'Shea?---Well, from then I've sort of, I learnt what a three-star and a crown was a GM, I didn't know at the time and through inmates and through knowledge after that incident I've, it's come to my knowledge that he was the GM at the time.

20 All right. So you've just mentioned a crown there. You didn't mention that earlier. Are you suggesting that the person who spoke to you through the door had three stars and a crown - - -?---Um - - -

- - - to your memory?---So my memory, only seeing three stars but just now I know that a GM has three stars and a crown, but at that time I didn't see, I don't remember seeing a crown.

30 All right. But you did mention it in relation to suggesting that this was Mr O'Shea. You understood him to be the GM, did you?---At the time, yeah.

Before the squad came in the door was opened. Do you recall who opened the door?---No, I don't recall.

And do you know the names of anyone else?---No.

40 So I think you said up to three of the squad have come in. Are you able to describe the first one?---Oh, he had a goatee. He was quite a solid sort of guy. Not too tall. He's the first one that attacked me. The other two I can't really describe.

And so I think you said you were struck in the face, is that right?---At first, yeah.

Were you struck once or - - -?---More than once.

So maybe if you can please describe what then happened after you were struck.---Um - - -

THE COMMISSIONER: In as much detail as you can.---Well, the second officer put me in sort of a, like an arm bar with my face sort of was parallel to the ground, and he was kneeling me in the ribs while the first officer was hitting me in the face and the third one was hitting – my leg was out and he was just kicking me in the shin and the, the ankle. And by then the whole cell was just full of, squad, contage. I couldn't really, once I was being attacked I didn't know what way was sort of up, down, so, and I, I remember just blacking out. I remember coming, like, so I remember coming to and said that I've got asthma, like just "I can't breathe," and they've stopped.
10 And once I've come to and sort of, they come again.

MR DUGGAN: Did you get any punches in or were you able to - - -?---No.
Are you sure about that?---Yeah, I'm a hundred per cent sure.

Now, you said that someone was kneeling you in the ribs. Do you remember anything about that person?---No, I couldn't, couldn't see. Like, my face was sort of, I was just looking at the ground, covering one side of my face. That's why I had bruises to one side.
20

And, sorry, can you just say that again? What was the reason you had bruises to one side of your face?---I was covering one side. I only, one arm was in a bar so I couldn't cover it, have a full guard, so I only had half a guard covering half of, half my face.

But was the bruise from contact with the floor or contact with something else?---No, from a fist.

And was there any conversation at any point, apart from you saying, "I can't breathe"?---No.
30

And whereabouts in the cell did this occur, do you remember?---It was at the, the back of the cell. As, as they've come in I, as I was being hit sort of pushed towards the, the back of the cell.

Did you make contact with the back wall?---No, I, I can't remember.

Did you make contact with the toilet at any point?---No. I was on the right side of the cell so it was away from the toilet.
40

So did you ever hit your ribs on the toilet?---No.

Did you ever try and flush anything down the toilet?---No.

Did you have drugs on you at any point?---No.

So eventually you were restrained and handcuffed, I assume?---Eventually, yeah.

Did they handcuff you in the cell, do you remember?---Yeah, they did.

10 THE COMMISSIONER: Were you on the floor at any stage?---Yeah, like I said, I, I, when I was, like, blacked out I don't remember what happened. But I come to on the floor and they've come back up, said, "He's awake," and I've said, "I've got asthma," like, "I can't breathe." There was another beating that occurred. I don't know, at that time I don't know where, who, what. And then shortly after that I was, I don't know if I was zip-tied or handcuffed but I was tied up behind my back.

MR DUGGAN: So your hands were behind the back. Could you get up and walk out of the cell by yourself or were you assisted?---No, I was assisted by one of the squad members.

20 And you walked out of the cell with your hands behind your back.---I didn't walk out. He, he grabbed me and sort of was by force pushing me through the cell and smashed my head up against the grille gate, like, banged it against it as I was handcuffed, and sort of by force pushed me over to another cell across from the hallway.

And do you remember which one of the squad that was?---It was the first one that come in.

THE COMMISSIONER: The one who threw the first punch?---Yeah. the first.

30 MR DUGGAN: And just in terms of, just going back a moment in time. Were you on the floor for long?---In where, about what time, sorry?

So, after you were struck and you said someone was kneeing you in the ribs, were you on the floor at that time?---No. I wasn't. I was, so I was in an arm bar, held up off the floor. So I, I was still, he was holding my weight up and kneeing me in the ribs and, while the other one was hook, like, uppercutting me in the face and I wasn't, wasn't on the floor at that time. Like, at first I wasn't until I, when I blacked out, I don't know where I was or, so - - -

Did you, do you recall going doing to the floor at some point?---No.

40 When you say you blacked out and you came to, were you standing up when you came to?---No, I was on the floor. Yeah, once I come to, I was on the floor.

But do you remember going down?---I can't remember, like, it was that, I remember being in an arm bar and being kned. I remember being hooked in the head and obviously saying, "Stop, stop." Like, "What the fuck? Get off me." And trying to say it like, you know, "Stop, stop." And I don't

remember exactly going down. I might have been knocked up, knocked out while I was off the floor. But I don't - - -

And when you came to, and you were on the ground, was anyone on top of you or restraining you?---I can't remember.

But eventually you were let out the cell, your hands were behind your back and your head was hanged against the grille door. Is that right?---Yep.

10 And you were taken out into the hallway, you call it?---Yep.

And what happened next?---I was pushed into another dry cell, like an observation cell which no one was in. I was pushed into the, the back end of the, the cell. I was told to put my, get on my knees at the end of the cells, so they could uncuff me, or the zip ties, whatever it was.

And from the time you were struck to the time you went into the cell, was there much conversation?---No. Not from me. No.

20 What about from anyone else?---I've, I can't remember anything.

Okay, so you were in this cell across the hallway, is that right?---Yep.

And your restraints have been taken off and you were facing the wall, is that right?---I was facing the wall, like I was (not transcribable) on my knees facing the back of the cell door and I was struck again, attacked again from behind and - - -

30 And how were you attacked?---Well it was just in the, in the rib again. Like, I was punched. I don't know if I was kicked, I wasn't, wasn't, wasn't looking, so - - -

And I'll get to it in a moment but you, you suffered an injury to your ribs? ---Yep.

What was it that caused that injury?---Mainly the, the knees and, the, the knees I was copping to the ribs, I believe. Mainly.

40 And so, you say you were struck from behind. Were you on your knees at that point?---Yes.

And then what happened next?---Then I was, I remember the dog being close. I was unhandcuffed, the dog was there and one officer saying, "Let the dog in," or the dog was there. But then they said, "No, leave it," and, and shut the door.

So the dog never entered the cell?---No. It didn't enter the cell, no.

And at that point, did you see the dog or did you just hear someone say, "Let the dog in"?---No, I seen it and heard it. It was going off its head. I couldn't not hear it. It was quite, he was doing backflips just ready to sort of attack.

And so, did the officer then leave the cell at that point or did more happen?
---No. The officer left. One of the officers said, you know, obviously, one asked to bring the dog in and, and then said, "No, no, leave him, he's done." I'm bleeding, I sort of, sort of copped enough, I guess, and, and that was it.
10 they closed the door and left me in there for a good twenty minutes and I buzzed up because I needed, I needed help like, I needed to go to hospital. I was bleeding out quite, quite a bit from the face.

THE COMMISSIONER: My impression is that, and correct me if I'm wrong, but you go back to the cell where they came through the grille, they opened the grille and came in, that there wasn't a great deal of time between them coming in and you being assaulted, is that - - -?---Oh, it happened instantly, yeah.

20 Instantly, did it?---Instantly pretty much. Once the grille door was open, one, first officer come straight in and said, "Stop resisting," which I've sort of had my hands in a non-threatening way like, what, what on earth? Like, I thought it was absurd that he thought I was resisting, but then just before I knew it, he was attacking me. So - - -

Thank you.

MR DUGGAN: And when you were taken out of your cell and walked across the hallway, were you held the whole way across or did - - -?
30 ---Yeah. There was officers everywhere around me so there was a lot, not all the officers were in the cell at the time, like I said there was, there was many, many there so - - -

All right. And do you have a recollection of which officers were in the hallway at that time?---No. Like I said, squad, contage, I don't know any names or any, it was just, they were all sort of squad and contage.

All right. What about the person who'd spoken to you initially through the grille door, were they still there or not?---I believe he was still there. I, I
40 didn't see him at the time so (not transcribable)

You didn't see him at that time?---When I've gone through I was handcuffed, my head was down and I sort of didn't really get to look in my periphery or look around.

How were you feeling at that point when you came out of the cell?---Oh, pretty sore.

Right. So I assume that when you were put into the cell across the way you were still in your shorts?---Yeah. I could have even been naked. Like, I was, just had me undies on, I was pulling them up in the scuffle.

Right. You didn't have any shoes on I presume?---No.

Did you get put in the phone cage at any point?---Yeah, I did, after, I think I did get put in the phone cage.

10 Was that sometime later?---Yeah, would have been, it was after I left that dry cell, the second cell.

All right. So you were in the cell for 20 minutes and you knocked-up?
---Could have been 10 to 20 minutes, it was a while, I knocked-up, it took say 10 to 20 minutes for them to come.

All right. And then so what happened, did someone come and visit you?
---Yeah.

20 Who came to visit you, do you recall?---I don't know the name but it was another, a pipper, or someone with a star on their shoulder.

And did they give you some assistance or what happened?---Yeah. I just said, "I want to, I want to go to hospital, like," 'cause my head was sort of (not transcribable) and said, "I just want to get X-rays and make sure there's no internal damage." And he, and he brang me into an office.

All right. And were you seen by someone at some point?---I went to the clinic and then got referred to the hospital.

30 Do you recall being seen by a nurse unit manager before you went to the clinic?---I think I went straight to the clinic.

Right.---From my - - -

And did you have any conversation with the pipper other than to say you wanted to go to hospital?---Yeah.

40 What was that conversation?---I went through, he had paperwork, went through all the paperwork of where I was injured and - - -

All right. Did you have your puffer with you in the dry cell, do you recall?
---I can't remember.

I don't need to ask you about every minute, but you were in the dry cell and then a bit of time passed and some things happened and then you went to hospital. Did you have your puffer at any time before you went to hospital?
---I can't remember.

All right. Can I take you to a document, please, which is in Exhibit 45 at page 49. Do you have that document in front of you?---Yeah.

Now, that's headed 48-Hour Incident Injury Notification Form and there are some details on the front. You can see the date of the incident towards the bottom. It's the 19th of February and it says, "Time of incident, 9.15am." Do you see that?---Yeah.

10 Does that accord with your memory as to when it happened?---Yeah.

And this says, "Time reported, 10.15am." Do you see that?---Yes.

And if you can go over the page, is that your signature at the bottom of the page, to the right of "[REDACTED] J."?---Yes.

And I think you referred to a form or some questions a moment ago. Is this what you're referring to?---Oh, there was that, I do recall one with a, with an animated body picture, a picture of a body to circle where you were injured.

20

All right. So this here ticks abrasion and bruise/swelling. Do you see that? ---Yes.

So you provided that information, did you? Do you recall?---I guess by just observing me at the time of -- so explain that again. I don't - - -

Do you recall reviewing this form and reviewing the ticks?---No, not, not this form, no. I only remember the one with the body and - - -

30 Perhaps we'll go over the page to page 51. Is that your handwriting on that page?---No.

Do you recall being asked the circumstances which led to you sustaining your injury?---No.

You don't remember saying, no, you couldn't recall?---Explain that again. I'm confused by - - -

40 So do you see there, about two-thirds of the way down the page, there's a question on this form which says, "Can you tell me the circumstances which led to you sustaining your injury?"---Yeah, I can see that, yeah.

And the answer is "No", which suggests that you had indicated no. Do you remember that at all?---I don't remember that.

And it says, "What was the cause of the injury?" and it suggests here your answer was "No comment." Do you remember saying that?

THE COMMISSIONER: Was this the information taken by, I think the witness might have said, an officer with two stars?

MR DUGGAN: I think he said pippier. I'm not sure I recall a number of stars.

THE COMMISSIONER: I don't know either.

10 MR DUGGAN: But we might go to the next page, which might assist. The second page of this form at 52. Halfway down the page, again where it says "inmate signature", is that your signature?---That's my signature, yeah.

But the other handwriting on that, for example, the print name "J. [REDACTED] is that your handwriting?---No, it's not, no.

No. And it says there "Completed by SAS Turton." Or "SAS Turton". Do you remember that person?---I believe that would have been the pippier I was speaking to, I'm guessing, but I don't remember the name.

20 If we can just go over one more page, to page 53. I'm not suggesting you saw this form but it refers to "contusion, left eye", which is a bruise on the left eye, "cheek, lip". Is that, as you recall, your injury at the time?---Yeah.

And "bruising to the right side torso over the ribs"?---Yep.

30 And over the page at 54, no, sorry, I won't go there. Can I go to page 56, please? These are your clinical notes from New South Wales Health. It suggests there that, on the 19th at 10.45 am, you were assessed in some way and it says, "Seen in 5 Unit, post use of force." Does that refresh your memory about someone coming to see you in 5 Unit before going to the clinic?---I can't remember.

And you were assisted by a couple of different people on this particular day, both inside and outside the centre?---Yes.

So, this here suggests lacerated and swollen lip to the left side. Is that something that is a result of what happened in the cell?---Yes.

40 Again, it refers to the bruise to the left eye and cheekbone. "Ribs inflamed and tender to touch." Is that something that happened in the cell?---Yes, it is.

And then it, halfway down the page, "Left side face very sore, he stated." Do you recall saying that?---Yeah, I was sore sort of everywhere.

"Left side lip lacerated in and outside the mouth. Considerable swelling apparent, down to jaw." So that, that would be consistent with what you just said.---Yep.

And, "Spitting blood. Probably from lip, mouth injury." Do you recall, I think you mentioned some blood in the cell across the hallway. Is that right?--- Yes.

And then it refers to, at 12.50, towards the bottom of the page, "Seen in clinic." So that, the clinic isn't in 5 Unit, is it? Do you remember?---It's not in 5 Unit, no.

10 So, it's across the compound?---It was a walk, yeah, it was a few minutes' walk. I don't know where or what.

And then you were taken to Lithgow Hospital?---Yep.

And I just want to take you very quickly to page 61 which is a note from a doctor in doctor's handwriting from 19 February and it's got at the bottom, "Lithgow ED." If you can assume that probably means Lithgow Emergency Department and I'll try and translate some of this for you. It says, "█
█ attended Lithgow ED today with injuries to face, neck, chest." Do
20 you see that?---Yep.

"Question mark, LOC," which is loss of consciousness. Do you see that? ---Yep.

Did you suggest to the doctor at the hospital that you might have been knocked out?---Yeah.

And then it says, "Periorbital bruising," which mean bruising around the eye. Do you remember that?---Yes, sir.
30

And then it says a couple of lines down, "Tender high C spine in midline." If you can assume from me that that's probably cervical spine, which means, the back of the neck. Do you remember having a tender back of the neck?---Yes, sir.

What was that from?---Oh, from punches and headlocks and a few things I'm assuming like, from that incident.

So, you eventually went to hospital. Do you remember being, I assume you were dressed when you went to hospital?---Yes.
40

Did you go back to your cell to get some clothes?---Yeah, I must, I can't remember whether I went to get the clothes or - - -

Do you remember whether you took your puffer to hospital?---I can't recall that.

Do you remember being searched before you left the centre to go to hospital?---I can't remember that.

So you were assessed at the hospital and then you were discharged?---Yes.

And you returned to the centre that evening or afternoon?---Late that, yeah, late that evening.

10 And what cell did you go back to?---Back to my original cell with [REDACTED]

And was [REDACTED] there?---Yeah, [REDACTED] was there.

Just remind me again, his initial complaint over the knock-up system, do you remember what it related to?---Not having a TV.

Was there a TV there when you got back?---Yeah, he had a TV. Yes, he did have a TV, yeah.

20 Did he have anything else that he didn't have before?---Yeah, he had a pouch of cigarettes, which was peculiar at the time, which, like, like, yeah, a pouch of White Ox, yeah. A pouch of cigarette.

A pouch of what? Sorry, I missed that.---White Ox cigarettes, like, yeah.

THE COMMISSIONER: White Ox. Ex-smoker.

30 MR DUGGAN: Did you have a conversation with him when you returned?---At first, yeah, I said, obviously I was like, "How the hell did you get a pack of cigarettes? We're in segro. Like, explain yourself." He said that they gave it to him for reception 'cause he was new to the gaol, and "They gave us a TV 'cause they felt sorry for you," like, trying to put it on me. And at this stage I was quite sort of sedated from, from what happened, being in the hospital and the painkillers, and I was quite, I was quite upset, but I didn't want to have to turn to aggression so I just, just sort of, as angry as I was, just got some sleep.

So you're up the next morning. At some point you got a chance to make a phone call. Do you remember that?---Yeah.

40 THE COMMISSIONER: You may have covered this, Mr Duggan, but when you came back from the hospital did you go directly to your cell or were you placed somewhere first?---So I did, I did go to the cage to make a phone call. I was just about to make a phone call, I think it did ring, and then the officer said, "Put that phone down." Like, "What do you think you're doing? No-one can use the phone at this time." And then I was put in the cell.

At any time after leaving the escort and getting into the cell with [REDACTED] did you ask for your puffer?---I can't remember. Like I was - - -

Can't remember.---Yeah.

10 MR DUGGAN: Commissioner, I was going to go to a phone call that Mr [REDACTED] had with his father. I understand there's also an audio of that phone call, and I think it's very short so it might be convenient to play it if that assists, but I'm just wondering whether we might take the morning break - - -

THE COMMISSIONER: So it can be set up?

MR DUGGAN: - - - early so it can be set up.

THE COMMISSIONER: Yes, that's fine.

MR DUGGAN: If that assists.

20 THE COMMISSIONER: All right. Well, I'll adjourn. Just let me know when you're ready to go.

MR DUGGAN: Thank you, Commissioner.

SHORT ADJOURNMENT

[11.23am]

30 THE COMMISSIONER: Mr Brasch is back.

MR BRASCH: I am, thank you, Commissioner.

THE COMMISSIONER: And I think there's somebody replacing Mr Willis. Is that right?

MR WILLIS: Not quite yet.

THE COMMISSIONER: Not quite yet?

40 MR WILLIS: Not quite yet, Commissioner, but Ms Johnson is beside me and she'll be appearing for Mr O'Shea this afternoon in my absence.

THE COMMISSIONER: Thank you very much.

MR WILLIS: Thank you.

MR DUGGAN: Thank you, Commissioner. Commissioner, I'm about to ask my instructors to play an audio of a telephone conversation on 20 February, 2014.

THE COMMISSIONER: Oh, there's a matter I want to raise in relation to that.

MR DUGGAN: Thank you.

10 THE COMMISSIONER: On this telephone call there may be reference to the [REDACTED] Motorcycle Gang. I have made a suppression order in relation to that. People have been told to report that the witness, without using your name, may have had an association with a motorcycle gang, but the actual name of that gang has been suppressed. Do you understand that? ---Yeah, yeah.

MR DUGGAN: Thank you, Commissioner. I might just introduce it this way if I can. Mr [REDACTED] you recall making a telephone call to your father the day after the incident on the 19th?---Yes.

20

We're just going to play an audio of that video call, and for the benefit of the other people in the room I indicate that the transcript of the audio call is at page 104 of Exhibit 45, and then I'll ask you some questions about it. ---Yes.

THE COMMISSIONER: Just before it's played, Mr Duggan, is it proposed to tender this as a public exhibit? And the reason I raise that is that is there a risk that the witness's voice would be recognised?

30 MR DUGGAN: Yes, there certainly is that risk.

THE COMMISSIONER: Would you be concerned about that?---Yes, I would.

MR DUGGAN: The transcript is already in exhibit.

THE COMMISSIONER: That's okay. I'm happy to play it but we'll make a suppression order in relation to – or sorry, we won't tender it as a public exhibit. So I think Ms Fishburn wants to - - -

40

MR DUGGAN: As I understand it the transcript that is a public exhibit has also been redacted consistent with the suppression order that's been made.

THE COMMISSIONER: Oh, good. Okay. With the audio recording it shouldn't go beyond this room.

AUDIO RECORDING PLAYED

[11.59am]

MR DUGGAN: I'll just ask it to be stopped there. Thank you. There was just an exchange there with your father and I want to suggest that these words were said. You said, "I'm green. They're blue. They probably think I'm fucking with some new governor." Is that what you said on the - - -? ---Oh, I can't, I could barely understand my own voice, like, couldn't - - -

10 Well, the audio records that the transcript says something slightly different but I just want to indicate that my ears tell me that it says, "They probably think I'm fucking with some new governor," rather than what the transcript records, which is, "Probably think, fuck him, some new governor," and that we might amend that at some point.

THE COMMISSIONER: Well, if that's right, we can correct that transcript.

MR DUGGAN: Thank you.

20 **AUDIO RECORDING PLAYED** **[12.04pm]**

MR DUGGAN: Mr [REDACTED] in that phone call, you were asked by your dad, "You rang yesterday and then hung up?" Do you recall that?---Yeah.

30 And what was that a reference to?---When I was in the cage I rung and the officer made me hang up, he might've just answered and the officer said, "Hang up, you're not allowed to use the phone at this time." So they locked me in the cage with a phone while they were doing something so I just picked it up and was gonna let him know what happened.

All right. So they were transferring you from cells or something like that? ---Yeah.

And they put you in a cage, but not for the purpose of making a phone call. Is that right?---No, just to, yeah.

40 And is that right that you called your dad and then you hung up?---They made me hang up, yeah.

All right. Now you go on to say that you got "fucking ogflayed by the squad." What does "ogflayed" mean?---It means bashed, like - - -

All right. Is that pig Latin, is it?---It's, yeah, it's a, yes.

All right. And then it refers to your celly buzzing up, that's your cellmate, is it?---Yes.

That's [REDACTED] Yeah.

And that's a reference to the knock-up call, is it?---Yes.

All right. And then it says, you tell your dad you were half asleep and you say, "He said it to the governor." What's that a reference to?---[REDACTED] speaking to the governor.

10 On the knock-up system, or - - - ?---Through the knock-up system, yeah.

All right. And then it says, "The governor's come to the fucken door, 'You were talking to me cunt [REDACTED] so is that a reference to the conversation that - - - ?---Yes.

- - - you say you had with the boss through the grille, is it?---Yes.

"I go, 'It wasn't me'". Do you remember whether you said that on the 19? ---I can't remember from now.

20 All right. "Fuck, boom, the squad comes in and flogged the fuck out of me." That suggests that this all happened quickly and I think that was your evidence earlier. Is that, is that correct?---Yes.

And then you were asked what happened and you say that, what the squad did and you say you thought you had a fractured rib but you got it checked out and it was not fractured. Is that right?---It was fractured, I just didn't want dad to know how sort of serious the injury was.

30 All right. Did you recover from the injury pretty quickly?---Oh, not quickly, no.

Did it cause you grief for a bit longer?---Oh, it was a good six, six weeks, six to eight weeks before I could sort of sleep on that side.

40 All right. And it says, "They went into another room and said, 'What are you something another two pippers?' He said, 'Oh, what, what happened, do you want anything to be done?' I said, 'No, no, no.'" Is that a reference to the form, the questionnaire that I took you to earlier, is that what you're talking about there?---Yeah, briefly, yes, from that, yes, yeah.

And later on at page 107 of the exhibit, there's this exchange. You say, "Probably knew it was a celly that rang and one of the squad, yeah, that's, and I heard [REDACTED] voice," inserted there, "Fuckin' dog." And then your dad says something and you say, "They grabbed him, threw him out, he's the one who went on with it and didn't, after he said to the screws it was me." So you're talking about [REDACTED] there, are you?---Yes, I would have been, yeah.

So do you recall whether he mentioned that it had been you on the knock-up system, is that what that's a reference to?---No, explain that again, please?
So - - -

So I'm just trying to work out what you meant by, "They grabbed him, threw him out, he's the one who went on with it and didn't, after he said to the screws it was me." Do you remember that?---No, I can't. I've heard it but I don't understand what - - -

10 All right. "It was me, like the security, they know I didn't ring up, but they don't give a fuck, you know, I'm green, they're blue, like they probably think I'm fucking with some new governor." What did you mean by that?
---Oh, the last bit was sort of mumbled. I think I was about to say something and I cut it, cut off, so, but when I come back from the hospital one officer said, "We knew it wasn't you, we knew it was your," like, you got shit-goed pretty much. That was the officer that accompanied me to the hospital, he was a bit sort of I think upset that I had the injuries that I had and he just said to me on the way back from the hospital, "We know it wasn't you that knocked up." So that's how I've, and that was before I
20 spoke to my father on the phone.

All right. And why do you think the officer was upset that you'd sustained some injury?---'Cause it was unfair 'cause I hadn't done anything. I'm assuming, like, I don't know why he said it so - - -

So what did the officer say, do you remember?---Well, as he come back he said, "Oh, you've been shit-goed, we know it wasn't you that," or he said, "I know it wasn't you that buzzed up." I'd been, this officer, I'd been with him for a good two or three weeks, I sort of, hand the lunches out, let me go
30 on the phone, so there was a little bit of a connection there.

All right. And do you remember, was this a regular officer or squad or - - - ?---No, it was just a normal officer, regular.

And do you remember what rank?---No, he was only either a two-striper or three-striper.

Do you remember his name by any chance?---No.

40 But this officer accompanied you to the hospital, did he?---Yeah, he was one of the officers.

All right. And were you taken in a car or an ambulance?---No, a car.

All right. So the transcript's up there now for you which might make it a little bit easier to follow me. So on the previous page you start by saying, "They think you're weak, they think you're weak 'cause you're" – and then at 108, "Not going on with it. Oh, they're scared that we're going to flog

him again.” And then you say, “Didn’t even know he was going to hit me. He just comes in, fuckin’ ‘Stop resisting.’ I go, ‘What, I’m not doing nothing.’ Bang. King hit. Boom.” So I take it from that, that it all happened pretty quickly?---Yes.

And were you expecting that was going to happen when they came in the cell?---No, the last thing I was expecting.

10 And you say, “Big cunt, like 120 kilo.” What’s that a reference to?---Oh, just the size of the, of the, the contage members, the squad contage. I just - - -

All right. Now, I just want to take you to the next page, which is 109, and you say there, it's about two thirds of the way down the page, “If they come in again, I don't give a fuck, I'm going to go on with it. I have a blade ready and all, fuck ‘em.” Did you have a blade in your cell?---No.

20 Why did you say that?---Oh, it was just more a bluff. I just, I was afraid I was going to get attacked again. Like - - -

It was more what? Sorry, I missed that word.---It was just more of a bluff. I was just sort of, I had a cellmate next to me that said that to them and they didn't they wouldn't go and, they wouldn't enter that cell, so I thought - - -

THE COMMISSIONER: I take it you knew that the call was being recorded?---Yeah.

30 MR DUGGAN: That message at the beginning that you heard played that sounded like, an American recorded message and it says, “You are about to receive a call from an inmate at Lithgow Correctional Centre. Your conversation will be recorded.” When you're making a call, do you hear that as well?---Yeah. I was fully aware that it was recorded.

I now want to ask you some questions about a search that happened later that day, a little bit after this phone call.---Yep.

40 But to do that I, if I can play a search video and I can indicate it's video number 2, at about 10 minutes 30. Now, just before it's played, do you recall being searched later that day?---Yes, yeah.

And do you recognise the person in the video?---No.

And I mean the other person, other than you obviously. If that might be played.

VIDEO RECORDING PLAYED

[12.18pm]

MR DUGGAN: Well, you can just stop it there. The key phrase was mentioned just when it stopped, so we might just play that again if that's all right.

VIDEO RECORDING PLAYED

[12.19pm]

10 MR DUGGAN: If we just stop it there. So that voice at the end there, do you recognise that voice at all?---No, not, not as yet. No.

All right. Now, what you said at the beginning of that was, and it's not all recorded on the transcript, that's at page 119, "I wouldn't threaten officers after what's happened to me", it's a bit difficult to hear but what did you mean by that?---Well the last thing I wanted to do was to be beaten up again but - - -

20 All right. And then that distinctive voice that I asked you about could be heard on the tape.---Yeah.

You know who I'm referring to?---Yeah.

And they seemed to come into the room or at least start talking and you say, "Please, I've had enough, officer", or something to that effect. What was that a reference to?---I just, I remember saying give me another week because my ribs were so, sort of, tender, that I just wanted time to heal that they were gonna use force again, just to give me another week to recover before, if, if anything was gonna happen again.

30 All right. So, did you have some apprehension that you might get a repeat dose of the day before?---At that time yeah, I did. Yeah.

And was there any particular reason you said that to that person at that time?---No. Explain it again, please.

40 So, the search operation, you'd been searched before this and you'd been searched by the officer that you can see on the screen, but when the other officer starts talking to you then you say to him, "Please, I've had enough." Was there any reason that you said it to that particular person or it was just because it was a correctional officer?---I think, well he was the one speaking to me, like, I believe he was the one in charge of that, at that time. So I was speaking to him because he was the one speaking to me from the beginning, from what I can remember.

All right. If I can now take you to video three, please. So, Mr [REDACTED] we're just going to get a video up. You wouldn't have seen all of this at the time, you were in a cell elsewhere, but this is video footage of the officer

who says he found some drugs in your puffer. So we'll just play the beginning of that video.

VIDEO RECORDING PLAYED

[12.23pm]

10 MR DUGGAN: And I'll just stop it there. Mr [REDACTED] did you put that in your puffer at any stage?---No.

Do you know who put that in your puffer?---I wouldn't, wouldn't have a clue.

We might forward it a little bit to where the exhibit bag is sitting there. So if I can indicate, the puffer was then put in an exhibit bag and then you may recall some officers came and spoke to you about it.---Yes.

VIDEO RECORDING PLAYED

[12.26pm]

20

MR DUGGAN: If you can just stop it there. Now, there seem to be some legs that are seen on the bottom of that video, or the bottom legs are seen on the video. Was someone in the cell that looked like they were talking to you, is it, do you have any recollection of that?---Very, very small recollection.

30 And do you have a recollection of who was talking to you in your cell before you were presented with the puffer with the drug in it?---No, I think it was a piper but I don't know who, or - - -

All right.

THE COMMISSIONER: Can I just see that again if you don't mind?

MR DUGGAN: Certainly.

VIDEO RECORDING PLAYED

[12.27pm]

40

THE COMMISSIONER: Thanks.

MR DUGGAN: I just want to suggest to you that this was said to you before, perhaps immediately before or some time before you were presented with the puffer. Do you understand the timing?---Yeah.

Which is the part just shown on the video. I want to suggest this was said to you by an officer, "Me and Mr McMurtrie talked to one of the inmates in relation to his visits." So that's a reference to you. "And Mr McMurtrie on the day said that his visits were going to be terminated for some reason." Do you recall being told that?---Yeah, I do recall being spoken to about visits.

10 All right. And I want to suggest that there was some discussion with you by these officers about the use of force the previous day.---Yes.

And by use of force, I mean the incident that happened in the cell. You understand that?---Yes.

And that you were talking about police charges. Do you recall that?
---Yes.

20 And those officers talked you through that and let you know that it was your call, but they said that it could be quite problematic for you, but ultimately your decision. Do you remember being told that?---Somewhere along those lines, yes.

And when those officers were with you, there wasn't any squad there, was there?---No.

And you weren't in handcuffs or restrained in any way?---Not, not that I can remember, no.

30 Now, you said that the drugs and puffer weren't yours and you didn't put them there a moment ago.---Yeah.

From time to time do inmates get drug-tested?---Yes.

And urine analysis is one of the ways that they might get tested?---Yeah, yes.

Did you get tested on that day or afterwards?---No.

40 Was there any discussion about that or did you refuse to be tested?
---I think I said, "You can piss-test me, I'm happy to do a urine," but no, I wasn't urined.

And did you admit that the puffer was yours?---I admitted the puffer was mine, yes.

Did you ever say that you smoke bupe?---No.

Did you ever say, "The drugs are mine," or something to that effect?---No. I do remember saying the puffer was mine, I'd just had enough, I was sore,

wanted to lay down, I thought what, like, it's only a tiny bit, I didn't really, I was trying to be selective with my words and I said that the, I do remember saying, "The puffer's mine," but I didn't admit that the drugs was mine.

And you said it was a tiny bit. So for a small drug find like that, there would probably be an internal charge. Is that right?---More than likely, yeah.

Were you ever charged?---No.

10

Were you ever told why you weren't charged?---No.

And how long after this did you move out of Lithgow Correctional Centre, do you recall?---That was another week or so, give or take.

All right. But you didn't stay in Lithgow much longer?---No, not, like I said, about a week roughly.

Was anything said to you about why you were moving?---I understood at that time I was, I was waiting to go to a gaol that I could be housed at, so I knew that I was, there was a wait but they just said I was on escort the next morning.

Apologies for the stilted nature of this, Commissioner, but we might now play the audio of another phone call that Mr [REDACTED] made to his father the next day, 21 February. Do you recall doing that, Mr [REDACTED] making a - - -? ---Yeah.

Right. We might just play you that tape and then I'll ask you a short question about it.

30

THE COMMISSIONER: This is the 21st, is it?

MR DUGGAN: Yes.

THE COMMISSIONER: So the day after the drug was found in the puffer?

MR DUGGAN: Yes, that's correct.

40

THE COMMISSIONER: Actually we don't even know whether it was a drug, do we?

MR DUGGAN: No, it's never been tested.

THE COMMISSIONER: Never been tested, has it, no. All right. Thank you.

MR DUGGAN: And I can indicate that the transcript of this is in Exhibit 45 at page 176, and, Mr [REDACTED] you can follow the transcript on the screen.

AUDIO RECORDING PLAYED

[12.35pm]

MR DUGGAN: Commissioner, the rest of the conversation is not particularly relevant, so we might stop there.

10

THE COMMISSIONER: Thank you.

MR DUGGAN: So, if we can just go to page 176 of the transcript. In the middle of the page there, you can see you said, "I got charged yesterday for talking on the phone," and there's a reference I think to the statement you made in the previous day's call. You remember that?---Yep.

20

And when you say you were charged, is that a reference to the fact that someone said to you your visits were revoked? Do you recall?---I, I, they asked me if I had a visit, how many visitors, if I was getting a visit on the weekend and I, I replied like, "Yes. My lawyers will be coming up with four visitors to observe the injuries that I've got." Because they were saying they were charging me for assaulting an officer, which I said, "I'm not going to stand for that." And I said, "If you're charging me, I'll charge you." Like, just, I copped a flogging, I just wanted to do me time and get out. So, they kept saying, "Well, you're going to get charged, outside charges." So, once I said, they said, "How many, who's visiting?" I said, "My, I'm going to have a few lawyers. I'm going to make sure they can observe, because, to see what's, what's happened to me." And then after that, they've said that they've cancelled my visit. So, I was assuming that I was charged. So, I hadn't signed any papers but, I was just explaining that.

30

And is this the same conversation with the same two officers that I asked you about a moment ago? Where I said, "Were you talking about police charges?"--- I believe it was them and I can't exactly remember which one but it was, it was just another pipper but I can't - - -

40

And so one of those officers indicated to you, did they, that if you wanted to lay any charges that they would charge you as well, is that - - -?---No. They, they said to me that they would charge me. That was the first thing, "You're being charged. You're going to need," like, "You're getting outside charges for assaulting an officer." And I said, "Wait a second." Like, "No, I'm not, I'll charge, I'll counter-charge youse." Like, "I'm not an idiot. I'm not going to, I've already been sort of smashed and I've already copped what I've copped, so if youse are going to, if youse are going to charge me for something I haven't done, I'm going to look into it." So - - -

THE COMMISSIONER: And when you say an outside charge, you mean being charged by the police?---That's what they said, yeah. They're going to, "The police are going to charge you for assault in the," which is the last thing I needed because I was already on remand for another serious case. So that's - - -

MR DUGGAN: And the timing of this, I think you agreed that this conversation was before you were presented with the puffer with the alleged drug in it. Is that right?---Yeah.

10

Do you remember how close the conversation was to being presented with the puffer?---I believe there was two occasions. The first one was when I was going through the report that I showed earlier on where I was, like, where I was hurt.

The injury questionnaire the day before?---Yeah, the questionnaire. Yeah.

20

And then the second occasion - - - ?---Was briefly in there, in the cell, but I can't, I can't recall exactly anything that happened, that was spoken to before, like, they showed me the asthma puffer.

All right.

THE COMMISSIONER: And your visits were cancelled?---I can't even remember if it was just, they just verballed me and said they were, I couldn't look it up, so, it wasn't - - -

MR DUGGAN: So you've never seen your internal charge sheet?---No.

30

Are you aware as to whether or not there are any charges on your internal charge sheet?---I think the agreement after it, they said "We're not charging you, you don't charge us", and I just said that's, I'm happy with that, and that was the last of the charge, sort of, that was sort of spoken.

40

So you have you been told at some part after this that you've never been charged with an internal offence?---Nah, I don't believe I was charged because I've been incarcerated four years, I've had no charges but from what I've heard, you've got to sign something and you can appeal, you've got to plead guilty or not guilty to an internal charge, so, none of that was given to me, I was, I was sent from Lithgow to Silverwater Prison which was another gaol that the, the groups that I was hanging with weren't allowed at so I was put back in segro in, in Silverwater for another three or four weeks.

THE COMMISSIONER: What happened there?---I just had to wait for a bed at Parklea where I was allowed to be housed, so it was just another, yeah, just another, just in segro again for another, for a month.

MR DUGGAN: Have you ever failed a urinalysis while you've been inside?---No.

Mr [REDACTED] do you have any concerns about having to come here and give evidence today and what might happen?---Well yes, sort of, yeah.

10 What are those concerns?---Well, I had an agreement, I said that I wasn't gonna do anything, I just want to do my time, and that was the agreement until I was subpoenaed here.

And what do you think might happen if it's considered that you've broken that agreement?---I don't know what could happen. Anything could happen I guess, like, I guess it's pretty much a powerful enemy that, it's classified an enemy now and I'm in their, sort of, house, so I, it's just how they take it, I guess.

20 THE COMMISSIONER: Well you were compelled to come here, it's not as though you were offered to come, you were compelled to come here. And can I say this to you, that if you get threatened or it's suggested to you that any adverse consequence may flow from giving evidence here, we want to know about it. Do you understand that?---Yeah.

Yes.

MR DUGGAN: Commissioner, I have no further questions at this stage of this witness.

30 THE COMMISSIONER: Thank you. Mr Madden, do you have any questions?

MR MADDEN: I do, Commissioner. Yeah.

THE COMMISSIONER: Mr Madden appears for Mr Peebles.

MR MADDEN: Mr [REDACTED] as I understand your evidence, as soon as the officers went into the cell where you were, one officer pretty well attacked you straight away. Is, is that right?---Yes.

40 Right. Do you know the name of that officer?---Yes.

Is it Walker, Tex Walker?---Surname Walker.

Right. Okie doke. Mr Walker has given evidence sitting where you're seated now, just a couple of days ago, and this is what he claims happened. He says, this is at page 33T, he says, "After he got down," that's, that's you, "Off the bunk, I had words with him in relation to the abuse on the knock-up. Things got a bit heated. I was yelling at him. He lunged

towards me.” So he claims that you lunged towards him. “I thought he was going to hit me and I struck him with a palm strike.” Now, you would say that’s simply not true. Is that right?---Well, firstly I was on the bottom bunk.

Yeah.---And, yeah, that’s not true, no.

Right. Yes. Thank you, Commissioner.

10 THE COMMISSIONER: Thank you, Mr Madden.

I was going to ask Mr Willis but he’s gone now, hasn’t he, so - - -

MS JOHNSON: My name’s Ms Johnson and I seek authority to appear instead.

THE COMMISSIONER: Of course. You’ve got that authority, there’s no problem.

20 MS JOHNSON: We have no questions.

THE COMMISSIONER: No questions?

MS JOHNSON: No questions.

THE COMMISSIONER: Mr Dunne?

MR DUNNE: No questions, Commissioner.

30 THE COMMISSIONER: Mr Greenhill?

MR GREENHILL: No questions, thank you.

THE COMMISSIONER: Does anyone apart from perhaps Corrective Services have any questions they want to ask?

MR TAYLOR: I have a few questions, Commissioner.

40 Mr [REDACTED] my name is Taylor. I appear on behalf of Officer Walker. You’ve heard what Mr Madden has said about what Mr Walker said earlier this week down here. You just say that’s just not true. Is that correct?
---Yes.

Did you do anything which could have caused Mr Walker to believe that you were about to strike him or interfere with him in any way?---No.

You never raised your hand?---I raised my hands as far as my hips saying, when he said, "Stop resisting," and I said, "What the hell, like what the hell's going on?"

And were you yelling back at Mr Walker - - -?---No, not - - -

- - - as he was yelling at you?---Not yelling, no.

10 In fairness I should put to you that another officer, Officer Duffy, has given evidence on oath that you raised your hand towards Mr Walker. Do you agree with that or not?---No, I didn't raise my hand towards him.

And you deny having any words with Mr Walker?---Just, like I said, I just answered what, he said, "Stop resisting," and I said, "I'm not." My hands were in a non, like, a, not in a threatening position, they were open and, to show I had nothing in my hands and like what's, what the hell's going on.

20 So you weren't abusive towards him as he was being abusive towards you?
---No, I was not abusive towards him, no.

And that's - - -

MR DUGGAN: Can I just indicate, it won't be recorded on the transcript but the witness has just indicated what he was doing with his hands and it might be convenient to - - -

THE COMMISSIONER: Would you like to describe it?

30 MR TAYLOR: Well, the best description would be, do you agree with this or not, Mr [REDACTED] that you just raised your hands from elbows, hip level, palms up?---Yes.

THE COMMISSIONER: Thank you.

MR TAYLOR: In a non-threatening way.---Yes.

40 I want to suggest to you that just did not happen. Do you agree with that or not?---Say that again, sorry?

I'm going to suggest to you that that did not happen, that you just didn't put your hands up in that fashion at all?---I was there and telling the truth so - - -

Yes, thank you, Commissioner.

THE COMMISSIONER: Thank you. Anyone else?

MR GREENHILL: I just rise as amicus. Mr Duffy has been mentioned. He's here, perhaps you should give him an opportunity to do whatever he wants to do.

THE COMMISSIONER: I can see Mr Duffy's standing. Come forward, Mr Duffy. Perhaps we can make room just next to – come right forward.

MR DUGGAN: Mr Duffy, come up here.

10

THE COMMISSIONER: Now, Mr Duffy, you want to ask this witness some questions?

MR DUFFY: Yeah, if that's all right, Commissioner.

THE COMMISSIONER: Yeah, that's okay.

MR DUFFY: I'd like to ask him a couple of questions.

20

THE COMMISSIONER: You go ahead.

MR DUFFY: My name's Officer Duffy. Mr [REDACTED] I'd just like to ask you a couple of things that happened on that morning that the officers came to your cell.---Yeah.

So Mr O'Shea and Mr Walker were at the door and they were obviously verballing you a bit, yeah?---Mr Walker wasn't at the, at the first, no.

30

All right. And it wasn't very long before the staff came into your cell. Is that correct?---So explain that?

It wasn't a very long period of time before the staff came into your cell? ---Pretty much immediately.

Okay. When they've come in and moved towards you, did you just stand there, did you move back?---They just come in - - -

(not transcribable) sorry.---So was standing upright and he said, "Stop resisting." And I explained my arms.

40

Yeah.---And that's when he struck me, then I did move back, yes. After I was struck.

And that's when you moved towards the back of the cell. Would that be correct?---Towards, yeah.

And did you receive more strikes after that?---Yes.

Yeah. And you've said earlier on that you blacked out at one point.---At one stage, yeah.

Yeah, okay. Would that have been because you've received extra strikes to the head that you've blacked out, do you think?---Yes.

Yes. So, I suppose you would've, did it make your eyes water? Did he get you in the nose?---I can't remember exactly, it was - - -

10 No. You would've been a little bit delirious.---I don't think it was the nose, it was more the side of the face that was hit.

But you reckon that's probably what made you black out?---Yes.

Okay. And then you've come - - - ?---It depends, it was a mix between choking and strikes, so - - -

All right. And then you've come to on the ground.---Yes.

20 All right. So, there were other staff in the cell at the time.---Yes.

And you've said that you did black out, you were a bit delirious. Is it possible that Mr Walker was the only one that struck you?---Once I was blacked out, I don't, there was, there was more than Mr Walker striking me.

Okay. So then you went to the clinic, you ended up going to the hospital.---Yeah.

30 Yeah. Okay. Now it's actually gaol procedure that after you've gone to hospital and had a head injury, you get placed in a camera cell. Are you aware of that?---No, I'm not aware of that, no.

Do you recall being placed in a camera cell?---I was taken straight back to the cell with [REDACTED] so I wasn't in an observation cell.

It's just that I was actually on duty that day and I was tasked with another officer to retrieve your puffer from cell 208 where you were with Mr [REDACTED] and take it to you in that camera cell.---Yeah.

40 Do you recall that at all?---I was taken to the camera cell, to elaborate, after the hospital I got sent to the cell with [REDACTED] a non-observation cell. The next morning when I made the call to my father with the, saying I had a, a, a shiv, along those lines, I was searched and then taken to the, more than likely it was an observation cell.

THE COMMISSIONER: Is it possible, though, that you were put in the observation cell when you came back from hospital?---No. I was straight to [REDACTED] that's how I knew he had a TV and a pouch, so I, I've gone straight, it

would've been between 8.00 to 10 o'clock at night, it was late, I got sent straight into [REDACTED] cell. I remember clearly because I was so outraged that he had a, how he got a TV and smokes and it wasn't a buy-up day, or, he hadn't even been there long enough to put a buy-up in. I slept there that night and it was the next day that that phone call took place, and then they've come again to search the cell which was the camera, what you showed me, the footage, the video footage, and I was taken to the, another cell, another area. It wasn't, I'm not sure what area it was, but it was a bit of a walk from the original cell.

10

But your position, Mr Duffy, is that he was put in an observation cell.

MR DUFFY: I was under the impression that it handed on the same day but I could be wrong about that, Commissioner. The other thing, you've indicated the whole thing was fairly quick from the time that staff went into the cell and you were removed from that cell, you got knocked out?---I'm not sure how long I was blacked out, so - - -

20

Would you be surprised if you knew that it was about a minute and a half?
---I couldn't tell the time, I was sort of - - -

You couldn't tell. Yeah. All right.---The initial strikes happened so quick and after, once I was, I don't know how long I blacked out, or, so I wouldn't, I can't answer that.

All right. That's all I had to ask.

30

THE COMMISSIONER: Thank you, Mr Duffy. So, thank you very much for your assistance and I stress again if you strike a problem, we'd like to know about it for obvious reasons.---Yes.

That shouldn't happen to you and I would hope that Corrective Services will take all the steps that are necessary to ensure that it doesn't happen, and that's recorded, they know that I've said it, but I'll let you go, but I think you have to be managed out, so I might adjourn early and resume at 10 to 2.00.

MR DUGGAN: Thank you, Commissioner.

40

THE WITNESS STOOD DOWN [12.54pm]

LUNCHEON ADJOURNMENT [12.54pm]