

ESTRYPUB00760
31/05/2018

ESTRY
pp 00760-00813

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 31 MAY, 2018

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Now we have Mr Kennedy. And, Mr Murphy, you appear for Mr Kennedy?

MR MURPHY: I do, Commissioner. I've explained the provisions of section 38 declaration to him and he'll take the declaration and he'll also be sworn.

THE COMMISSIONER: All right. We might have that done now.

THE COMMISSIONER: Mr Kennedy, your solicitor has told me that he's explained the section 38 order to you. Just a few things I want to say in relation to your rights and obligations as a witness. As a witness you must answer all questions truthfully and you are to produce any items described in your summons, and I assume there are none, or that are required by me to be produced during the course of your evidence. The effect of the section 38 declaration is to ensure that any answer you give or item produced can't be used against you in any civil proceedings or subject to two exceptions, in any criminal or disciplinary proceedings. Are you currently a corrections officer?---Yes, I am, Commissioner.

Thank you. The first exception is that the protection provided by a section 38 declaration does not prevent your evidence being used against you in a prosecution for an offence under the ICAC Act, most importantly the offence of giving false or misleading evidence. The penalty, it's a very serious offence to give false or misleading evidence to this Commission and if you've been sitting there you've probably heard me mention that the penalty can be imprisonment for up to five years. The second exception applies because you are a New South Wales public official. Evidence given by you may be used in disciplinary proceedings against you if the Commission makes a finding that you engaged in or attempted to engage in corrupt conduct. Do you understand that?---Yes, I do.

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 inquiry 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.

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 INQUIRY 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.

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Mr Kennedy, can you please state your full name for the Commission?---Mark James Kennedy.

And are you still with Corrective Services?---Yes I am.

What's your current rank?---Governor at Bathurst, Mannus and Kirkconnell Correctional Centre.

10 And in February 2014, you were a deputy superintendent. Is that right?
---That's correct.

And you were based in Lithgow at that time. Is that right?---That's correct.

And who was your immediate report?---At that time I was filling in at Lithgow Correctional Centre due to the fact that I'd been demoted and I was placed there by the director, and I think it was Mr Creighton or Mr, I can't think of the other director's name off the top of my head, but - - -

20 All right. That's Mr Wayne Creighton, is it?---Yeah.

All right. And how long were you at Lithgow for?---All up probably seven months, eight months.

All right. And in February 2014, was that the tail end or the beginning, do you recall?---About towards the end.

All right. And Mr O'Shea was obviously the governor at that time.---That's correct.

30 Did you know him before you went to Lithgow?---Yes.

And how had your paths crossed?---We'd worked together for 25, 26 years on and off.

Right, okay.---So I knew him quite intimately, we were really good friends at one stage. Yeah.

40 And Mr Peebles, did you know him at all before you went to Lithgow?
---Yeah, our paths had crossed working together in different centres, he was also my manager at one stage I think.

All right. And were you also good friends with him?---Not to the extent that John and I were.

Right, more of a working relationship?---Yeah.

Yeah, all right. Now, obviously you're here to answer questions about the 19th and the 20th of February 2014. Do you understand that?---Yeah, that's correct.

Just dealing with the 19th of February first, were you at work that day?

---Yes I believe so.

You were. What were you doing in the morning? Do you recall?---No, I'm sorry, I don't recall.

10

Were you involved in the searches in Unit 3 at all?---I don't recall being there.

Were you in the day room when this incident occurred involving Mr

██████████ No, I don't recall being there.

Is it possible you were there?---No, I, I don't think so but I can't recall being there when the incident - - -

20

Right. Is it something you'd remember, do you think, if you were there?

---Yes.

When did you first find out that there was an incident involving an inmate in that unit?---I think it was the following day.

You didn't hear about it that day?---Not to my recollection, no.

30

You're now very well aware obviously that there was an assault that occurred and Mr Walker has given evidence to say that he struck the inmate and that injuries were sustained by the incident. You're obviously aware of that today.---Yeah.

You'd agree that that's a fairly significant event?---Yeah.

That doesn't happen every day in the correctional centre obviously?---Not every day but there was a lot of, there was a lot of incidents around 5 Unit I think during that time leading through Christmas. I don't know whether it was about the same time as him.

40

Are you talking about uses of force by officers on inmates?---Yeah, there was a few. 5.1 Unit was quite problematic.

All right.

THE COMMISSIONER: Would you mind just keeping your voice up just a little bit?---Yeah, sorry Commissioner.

No, that's okay.

MR DUGGAN: So the event involving Mr [REDACTED] would that have been the subject of some discussion amongst the correctional centre on the 19th?
---Yeah, probably.

Is it possible that you heard some information about it but you don't particularly recall now?---That's correct, yeah.

10 All right. But can I suggest that people working in the Lithgow Correctional Centre work fairly closely with each other because of the nature of the work?---Yeah, that's correct.

So if there's something, if there's an incident or an issue in the gaol, that people know about it fairly quickly because of the nature of that work environment?---Yeah. I could say yes to that, yeah.

All right. Now, you were, you obviously participated in the search operation on the 20th of February.---That's correct.

20 Who asked you to, or how did it come about that you were involved in that search operation?---I believe I was asked by Mr McMurtrie to assist.

All right. Is it normal that the intel manager would be asking you to assist in the search, in a search like that?---Not normally but I think I was there floating on the day as a reserve so he'd probably just grab me.

30 All right. And did he give you a briefing or what did he tell you about the search?---He informed me that there was a phone call that was listened to and there was some, there were things in the phone call he was concerned about that there was a weapon alleged to be in the cell and the inmate was going to use the weapon on staff.

All right. Did you listen to the call, do you remember?---I, I can't recall.

And were you aware at any stage or at that stage that there was a use of force in relation to the inmate the previous day?---Yeah, Mr McMurtrie told me about that.

40 All right. What did he tell you about that?---He said that there was a use of force on the inmate. That's probably about it. Didn't really go into much detail about it.

All right. Did he mention the fact that the governor had been named in a phone all the day before, sorry, the morning of?---No, I can't recall he said that.

Did he say anything about a threat made by the father of the inmate that he might be waiting outside the gate, something to that effect?---Not at the time, I don't think so.

Do you recall – I'll withdraw that and I'll ask a different question. That sort of threat would be of concern to correctional staff?---Yes, of course.

Is there usually, when a threat like that is made is there usually a bulletin or something that goes out or an alert?---Sorry, can you repeat the question?

10

So obviously that puts the safety of correctional officers at risk when there's a threat like that, particularly made from an outsider.---Yeah.

And the obvious statement, you know, we'll wait outside the gate, that means there might be someone bashed in the car park or there's a threat of something happening outside the gate. You understand that?---Yeah, yeah, I can understand now.

20

So how are the correctional officers who work there informed about that so that they can protect themselves or be aware of the threat?---I think it probably would have went up the chain. So the manager of security should have been notified and the information would have been disseminated if need be I suppose.

All right. And is there, do you have a bulletin board at the entrance to the centre or anything?---I think so, but I don't think something like that would be put on a bulletin board. Maybe a general email could have been sent out to the distribution list or phone calls made to everyone just to be careful.

30

All right. Now, is it a fair statement to say that you were the officer in charge of the search on 20 February?---Yeah, that's fair.

Would you normally prepare a report in relation to a search that you were the officer in charge of?---Not necessarily.

And when would you prepare such a report?---When everything was finished.

40

All right. Did you ever prepare a report in relation to the search on the 20th?---No, no, I didn't.

Is there an explanation why there's no report from you?---Yeah, I didn't, I didn't see the need.

Why would there be no need?---There was no, there was no major find, the weapon wasn't, wasn't found and everyone was okay, there was no staff injuries.

There was a contraband find though?---That's correct.

Is that not something that would be reported on by you?---Not by me, the staff did the reports.

All right. Did you review the reports?---Not that I can recall, but I know that they were done.

10 But is that, if you're the officer in charge and it's not at a level of seriousness, if I can put it that way, that requires you to report, do you then review the junior officers' reports or is that the procedure?---No, not really, they just usually do the package and forward the package up to the manager of security.

But let's assume that there are some junior officers who might not be particularly familiar with search procedures, as the officer in charge of the search wouldn't you want to know they've ticked the right boxes and done the right things?---That's correct, yeah.

20 And I assume you can't physically see everything they do during the search?---That's right.

So one way of checking would be to read their reports I assume?---That's correct, yeah.

Is that a practice that you had at the time?---No.

30 No. Would that be a good practice?---That would be an excellent practice, yeah.

Is there a reason, is it a time constraint or is there a reason why you wouldn't want to engage in that practice?---No, I just didn't feel the need at the time.

Now, when there is a contraband find, you're obviously made aware of the find itself?---Yeah.

40 Do you then make recommendations about how it's to be dealt with?---No. If there's a contraband find a charge form is usually submitted.

Submitted by you or by someone else?---By the staff that found it.

And do you oversee that process or, again, do you not have any participation in that process?---No. No participation. That package gets sent to the MOS.

All right. And so, all right, the practice with all contraband finds, small contraband finds would be to send the package to the MOS and one would expect a disciplinary charge.---That's correct.

If it was a bigger find the police might be interested and - - - ?---That's correct.

- - - there's a different process.---Yeah.

- 10 So the package goes to the MOS. Does the MOS make the ultimate decision about whether to lay the charge or is that a general manager responsibility?---It's the MOS but a find like that wouldn't necessarily go to the general manager.

All right. So just getting back to the search, do you recall and you may have seen it recently, you did an introductory video?---That's correct.

And it wasn't in the day room, it was in another part of the centre I think. ---Yeah. I think it was in the hallway between the two units.

20

All right. And you introduced the people who were going to participate in the search.---That's correct.

And there was Mr Dippel and Mr Murdoch of IAT.---That's correct.

Mr Murdoch was the camera man.---Yeah.

And there was also Mick Watson of SOG Dog Unit.---That's correct.

- 30 Now to your understanding, was Mr McMurtrie involved in the search? ---Yes. He was over there with us.

Is there a reason why he wouldn't have been introduced in that video?---No. No reason.

Did you ask him to be part of that process?---No.

Did you know he was going to be involved in the search at that point?---I knew he was going to be in the area with us, yeah.

40

So why didn't you ask him to announce himself on video?---Oh, oversight.

THE COMMISSIONER: What was that, sorry?---Just an oversight, Commissioner. His face was on the video though so you could see he was there.

MR DUGGAN: Yes. Yes. Now, the operational decisions about the search, were they made by you or were you directed by Mr McMurtrie or

someone else in that regard?---Mr McMurtrie and Mr Watson assisted in making those decisions.

All right. So you were obviously a more senior rank but you deferred to Mr Watson on some of the operational issues?---Yeah.

And also Mr McMurtrie.---That's correct.

10 Because presumably he would have been on top of the intelligence aspect.
---That's correct.

Now, you say, I think it's in the introductory video and we can go to it if necessary but you say that Mr [REDACTED] will be put in the phone cage and Mr [REDACTED] I think, will be taken out the back or something to that effect.
---Yeah.

20 Did you make the operational decision that [REDACTED] would go in the phone cage and [REDACTED] would be searched elsewhere, or was that someone else?
---I don't recall.

Is it possible that you would have made that search, that operational decision?---It's possible but I can't recall making that decision.

All right. You don't have any recollection about being told that's how it was going to happen?---No. Not that I can remember, no.

30 All right. Is that fairly standard procedure when you're conducting searches, to have someone in the phone cage?---They're just locked up in the phone cage for their security, so - - -

Yeah. And I'm not trying to suggest that it's inappropriate but is it, the phone cage is obviously there for inmates making phone calls.---That's correct.

But is it used like a cell when you need to move prisoners or take them out of their cell for a time, is it used to lock them in there for some time?
---Yeah, for convenience. Yeah.

40 I assume that all of the cells in that part of the unit are not always fully occupied?---Yeah, I think you can make that assumption, yeah.

Some of them are empty is a better way of putting it?---Yeah, that's correct.

Is there any reason why Mr [REDACTED] was taken to a different part of the unit for the search, as opposed to across the way for example?---No, I can't, I can't recall. I could, I could assume it was to put him in a camera'd cell.

Do you know where he was put in a camera'd cell for the search?---Yeah, I think so, I think what they call observation cell, they're also a camera'd cell.

There are observation cells in that part of the unit where he was residing at the time?---No.

There are not?---No.

10 Okay. Are there any cameras in the cells in that part of the unit - - -?---No.

- - - where Mr [REDACTED] was?---I don't think so. At the time that I was there, no, I don't recall that there was any cameras in cells.

Now, just going to the time period before the search, was it just Mr McMurtrie that you had discussions with and Mr Watson about the search operation or were there others?---I think we had a discussion with Mr Taylor prior to going over to the location, and I think that was myself, Mr McMurtrie and Mr Taylor.

20 All right. And what was said in that discussion?---Basically what Mr McMurtrie said to me about the phone call.

As in a threat had been made, looking for a weapon?---That's correct.

All right. Was Mr Taylor involved in the search at all?---No, I don't believe so.

30 Was there a reason for that?---No, I don't, no, I don't, I don't know. There's no reason why.

Do you have any understanding of him being told that he was not to participate in the search?---No.

You don't have any knowledge of that?---No.

Now, usually is it standard procedure for a sector manager to be briefed on a search in their sector?---Usually, yes.

40 Are you aware as to whether Mr Turton, who was the sector manager at the time, received a briefing about the search?---No, I don't think he did.

Is there any reason why Mr Turton wouldn't have received a briefing about this particular search?---No, there's no reason.

Would there be any difficulty in Mr Turton observing the search or being involved in it?---No reason at all, no.

He came down from the Unit 5 office at some point and was walking towards the day room just before the search, wasn't he?---Yeah, that's correct.

And you bumped into him in the hallway. Do you remember that?---Yeah, I can remember bumping him in the hallway, yeah.

10 All right. Do you remember what was said, if anything?---I believe he said he was going to see [REDACTED] and I said, "Oh, hold off going to that cell, we're just about to search it."

All right. Is it possible that you said to him, "Go back upstairs?"---No, that's not correct.

So you deny that that statement was made by [sic] Mr Turton, would you? ---Yeah, I'd deny that, yeah.

20 Did Mr McMurtrie say anything to Mr Turton at that point?---Not, not that I can recall.

You don't have any other understanding about, or knowledge of Mr Turton effectively being sidelined from the search?---Not to my knowledge. Probably just due to personal safety of the staff that were going to that area.

You've mentioned Mr Mick Watson of the Dog Squad. Why was he involved?---I think Mr McMurtrie had a conversation with him and he came in to assist.

30 Was that a bit unusual, that Mr Watson was involved without his dog, his German Shepherd?---Not really, no.

Were you aware that he was present in the day room the day before when the incident occurred?---No I wasn't, no.

You weren't told about that?---No.

Is that a piece of information that you should have been aware of as the officer in charge of the search?---Yeah, I think so. Yeah.

40 Who would you expect to have communicated that information to you? ---Whoever had the knowledge of it.

All right. But it's an important piece of the puzzle?---Yeah, I think so.

And you would have wanted to have known that.---Yeah.

Would you have excluded him from the search because of that?---Yeah, I suppose I would have, yeah.

And why would that be?---Just to make sure that it was a clear and transparent operation and that we weren't putting someone in front of a cell that was involved in an altercation or a use of force the previous day.

All right. For those reasons and for his own personal safety, I assume?
---Sorry, I don't understand that.

10 For his own personal safety as well, I assume.---Yeah. What, from the inmate?

Yes.---Yeah.

So the threat's been made in relation to a weapon and if the inmate recognises him, he may target him.---Yeah, that could happen.

20 And I'm not asking you to tell me what Mr Watson's actual knowledge was but he would have known that he shouldn't be involved in that search. Is that a fair statement?---I, it's hard for me to comment on what Mr Watson would or wouldn't know.

But in terms of general procedures at the centre, he should have an understanding that he shouldn't be participating in that search because of the incident the day before?---It's a fair presumption.

Now, you said that you didn't do a report and I think you may have reviewed the reports at the time although I don't want to put it too highly. What about SOG's report, did you review that at any point?---No, I didn't.

30 All right. Now, when the find was ultimately made there was some admissions made in relation to the possession of the puffer but can I suggest not a direct admission that the drug was the inmate's. Do you accept that?
---Yeah, I've watched the video and I can remember him saying that. Yeah.

And you're not aware of any admission by the inmate that he smoked bupe?
---No, I'm not aware.

40 All right. And you're not aware of any off camera admissions that directly admitted ownership of the contraband as opposed to the puffer?---Sorry, can you repeat the question?

You're not aware of any admissions made by Mr [REDACTED] in your presence to the admission, to the ownership of the contraband as opposed to saying "the puffer is mine"?---No, I'm not aware.

Can I take you to Exhibit 47, please, which is a policy at page 43? So, taking you to a page quite out of context but if you can assume this is a section from the operations procedures manual?---Yes.

Do you understand what I'm talking about, which I think is, I think it has a different name now.---Yeah.

10 But this, if you can assume this was the procedure enforced in February 2014. Just a general question, these procedures obviously change, it's a living, breathing concept. What sort of training do you have or how do you get updates about new procedures?---Sometimes they send out amendments or memos or Commission instructions or local operating procedures or standard operating procedures, depending on what level it's targeted at or if there's a change in policy, they usually send an email distribution.

All right. And so that implies that people are diligent in reading their emails and looking for updates. Are there also briefing sessions in the centre itself? So, for example would the general manager or someone else call the staff together and say right, I want to tell you about this new procedure and explain it, or does that sort of thing happen?---Yes, it can, during your local board and management meetings.

20 Right.---I know that there's an agenda item in my meetings where if there's any change to policy or amendments made that we discuss it as a local board and management.

All right. And so they're monthly meetings or - - -?---Yes, they are.

30 All right. And so is that, in your view is that the best way to be informed about key procedure changes or policy updates?---You have to look at a lot of branches of communication when you're dealing with that stuff, so, because some people read their emails, some people don't. Like, we've got staff that have no access to emails or the OIMS account they've been working for 20 years so - - -

Right.--- - - - there's yeah, it's hard to communicate with everyone in the one time, to get the message across at the one time.

Indeed. Do you have training days where people come in externally and there are sort of refreshers or - - -?---Not on policy, no.

40 So just going to the specifics now, you have in front of you clause 12.4.16 in relation to cell searching. Do you see that?---Yes, I do.

And the first sentences says, "In targeted searches or during monthly searches the inmate is to be present whilst the cell is being searched, unless there are exceptional circumstances. At other times the presence of the inmate to witness the search is desirable but not compulsory." Were you aware of that requirement on 20 February?---Yes, I was.

Mr [REDACTED] obviously wasn't present for the cell search.---No, he wasn't.

Did you consider there to be an exceptional circumstance?---At the time about the threat he had a weapon, that's probably the exceptional circumstance.

10 Did you make – I might have asked you this earlier in a broader way, but did you make that specific decision that there was an exceptional circumstance so he shouldn't be present at the cell or was that a decision made by someone else?---I can't remember making the decision by myself, there was, as I said, the three of us making the decisions.

So was there discussion about the fact that he shouldn't be present during the search?---No, just where, where to house him.

Right.

THE COMMISSIONER: When he was removed he was in handcuffs, wasn't he?---I believe so, yes.

20 So why would it have been necessary to take him away while the search was going on?---I, I can't answer that, Commissioner.

Because if anything was found, even a shiv or some other sharp implement, it might be alleged, mightn't it, that it had been planted?---That's correct, Commissioner, yeah.

So in hindsight do you think that he should have been there?---Hindsight's a wonderful thing, Commissioner.

30 Yes, it is, isn't it. I'm not suggesting otherwise, but in hindsight do you agree with me?---Yeah, I agree.

MR DUGGAN: I don't want to take it too much out of sequence, but at some part of the search, during the search operation you had an interview with Mr [REDACTED] in an office?---That's correct, yeah.

With Mr McMurtrie?---That's correct.

40 And it wasn't in a cell, but just the three of you were sitting there?---That's correct, yeah.

You didn't have any concerns for your personal safety at that point? ---Not at that stage, no. There was a, there was a couple of staff outside of the office, so if anything happened they could respond quite quickly.

All right. But given the fact that you were prepared to sit down in an office with the inmate, does it strike you as a bit unusual that he might have been

taken to a different part of the unit for the time at which the cell was searched?---Not really.

That interview I've just referred to took place I assume after he was strip-searched?---Sorry, can you repeat that again?

In terms of the timing, was the interview that you had in the office after he was strip-searched?---No.

10 It was before, was it?---Sorry, I'm just trying to get the timeline right in my head.

That's all right.---It was after he was strip-searched I think.

So he'd been cleared?---That's correct.

And there would have been no difficulty, I assume, once he'd been cleared observing the cell search.---You could say that, yeah.

20 So he may have been a danger beforehand because he might have had a weapon secreted on him but once he was strip-searched, he was cleared, he could have stood there, watched the search?---Yeah, you could say that.

Yeah. And so I want to suggest that there weren't any exceptional circumstances which would have prevented him observing the search?---You're probably correct, yeah.

Now we've gone through that process of thinking about it, do you have any recollection of Mr [REDACTED] or a discussion with anyone that Mr [REDACTED] was
30 not to be present for the cell search?---No, I can't recall that I'm sorry.

You don't have any recollection of Mr Watson or McMurtrie saying that "we'll take him over here"?---No, I can't, I can't recall that. I don't know how the, I think I can remember it being discussed, we were going to locate them and we just went along with the decision that was made. I can't remember exactly who made the decisions.

Can I put it this way, was it your suggestion that he be searched in a different part of the unit?---No, I don't, I don't think so but I can't, I can't
40 honestly recollect.

Yeah, okay. All right. Now I just, you may have seen this video at some point during the hearing but I just want to play, in fairness to you, a portion of it. It's video two at three and a half minutes, please.

VIDEO RECORDING PLAYED

[10.47am]

MR DUGGAN: I just wanted to show you that piece of footage because it shows the inmate being walked out by Mr Dippel, Mr Mick Watson is in front.---Yeah.

And you can be seen at the cell door just prior with Mr McMurtrie.---Yeah.

10 You can't be, you obviously didn't leave the day room ahead of that group. Do you recall staying in the day room with Mr McMurtrie?---No, I followed the search team.

And were you, is your recollection that you observed the strip search?--- Yes, I did.

And were you there for the whole of the strip search?---Yes I was.

All right. Do you know if the cell was secured while you were observing the strip search in a different part of the unit?---No, I don't think it was.

20 You don't think it was?---No.

Why would it have not been secured?---There were no other inmates out in that location, only staff.

There wasn't any video going on of the cell at that time?---There was CCTV going in that area.

Have you ever seen the CCTV of - - - ?---No I haven't.

30 Are you aware of a policy that requires a cell to be secured as a search operation and inmates are not present?---No.

I know there are no inmates walking around but in terms of a search operation, one of the reasons you have a camera is to avoid any suggestion of anything nefarious going on?---That's correct.

One of the reasons.---Yeah.

40 And allegations by inmates that they make from time to time.---That's correct.

And that's why you would have the cell secured during a search operation when the search team is not there?---No, I didn't consider it because there were staff, only staff around that area.

But just as general policy, can I suggest to you that that's a reason why you would have the cell secured? Is there a policy? I don't want to mislead you but I'll try and find it.---Thanks.

But even if there is not a specific policy, as good practice wouldn't you usually secure a cell for the purposes of the search - - - ?---No.

- - - when you're not there?---No. Sorry, if I can, cells are searched randomly on occasions with no inmates present.

And is that consistent with 12.4.16?---No.

10 But it regularly occurs.---Yes.

So surprise searches, if you like?---No. If they're at work and say they're at programs then there's a requirement of six cells to be searched on a, on a daily basis, so those cells are searched without the inmate being there.

Has there ever been a discussion about the fact that that appears to be in conflict with the policy?---Not that I'm aware of, no, but you're right, it probably requires noting for a policy review.

20 Are those searches videotaped?---No.

That would also be a way of avoiding any suggestion of a plant, for example, in a cell during a search operation?---Yeah, that's correct.

So is it correct to say that during the 10 minutes or so that the strip search takes place in a different part of the unit, any other officer could have accessed that cell?---That's correct.

30 Did you consider reviewing the CCTV footage after this search operation?
---No.

Were there question marks in your mind about the contraband find on this day?---No, not in my mind. No.

Subsequently?---Subsequently, yes.

Can I take you to - - -

40 THE COMMISSIONER: What were those concerns?---I was being investigated, I was being interviewed by investigators from the ICAC, Commissioner.

All right.

MR DUGGAN: Well you had suspicions about a particular individual, didn't you?---Yes I did.

And what was the basis of those suspicions?---Are you talking about Mr
McMurtrie?

Well, that was the person who you had suspicions about?---Yes I did, this is
later on.

10 Yes. What was the basis of your suspicion?---Mr McMurtrie was working
at Kirk Connell Correctional Centre. During the time he was demoted to a
senior correction officer under my cluster and he was interviewed by PCIU
and Mr Glasheen in relation to a matter, I can't recall exactly what the
matter was, and during the interview he was asked to give up USB sticks or
have his property searched by the PCIU, and later on that evening I got a
phone call from, I'm not sure who it was, it was Mr De Costa or someone
from the gaol saying that Mr McMurtrie had rang the centre and asked the
staff on that night to go down to his office where he was and get some USB
sticks out of the drawer and meet him up on top of the hill with them.

20 And so what's the connection you made between that series of events and
this search operation?---He used to call them his sink files, and I don't know
whether they were or not, I didn't look at them, I had no cause to look at
them, so that's the correlation that I made.

But did you make an assumption that there might be something on those
files that related to the search operation?---Yes.

And what made you think that?---Just because of the use of force and the
rumours and innuendo and the subsequent internal investigation about it.

30 All right. So all of the circumstances put together created a suspicion in
your mind?---Yes, that's correct.

And did that suspicion include the possible planting of the contraband on
Mr [REDACTED] No, not at that time.

You've never had that suspicion?---I had it subsequently but yeah, not at the
time.

40 THE COMMISSIONER: At the time you attended the search on the 20th,
were you aware of any intelligence that had been received the previous day,
that is the 19th, that there was a large quantity of Suboxone in [REDACTED] cell?
---No.

MR DUGGAN: Again you're heading up this search.---Yeah, I am.

And that means you're responsible for it. You would expect to be given all
relevant intelligence in relation to the search?---That's correct.

And if there was some genuine intel in relation to a large quantity of Suboxone you'd want to know about it I assume?---That's correct, yeah.

You mentioned a phrase a minute ago, sink files.---That's correct, yeah.

What are sink files?---It's a term that Mr McMurtrie used for a set of files he had that if anything happened he'd drag them out and take as many senior officers with him as possible.

- 10 So intelligence he had gathered on other officers to sink them if there was any particular issue that arose. Is that - - -?---Yeah, that's correct.

Is that a concept that Mr McMurtrie used from time to time to threaten or to gain leverage over officers?---I wouldn't, I wouldn't know, but I suppose it puts him in a position of power.

But did you ever witness or were you ever the subject of that sort of intimidation?---No.

- 20 Now, were you aware that Mr Duncan and Mr Graf were not told to be involved in the search operation?---Yes.

How did you come to that knowledge?---Mr McMurtrie said they were involved in the incident the day before.

And when did he say that?---Either we were going over or during the briefing with Mr Taylor I think it was.

- 30 Right. So again that makes Mr Mick Watson's involvement all the more curious, you would accept?---Yes, it does, yeah.

I just want to take you to a screenshot of a video if I may. It's Exhibit 71. Now, just to orientate you with the timing, this is after Mr [REDACTED] has been strip-searched and I believe the body in the photograph is Mr Mick Watson and he's coming back to Mr [REDACTED] cell and effectively this is just before the video is ceased for the supposed searching of the cell. And you can see in the back left corner, it's a bit hazy, but there's a couple of plastic bags. ---Yeah.

- 40 Do you see them?---Yes, I can.

Did you notice them in the day room at the time?---Not that I recall, no I didn't notice them.

Seeing that now and knowing everything that's happened, do you have any concerns about those bin bags being there?---It's a hard question to answer, there's always bags, they bring rubbish out from those bags all the time, but I don't know the relevance of the question, I'm sorry.

Are you saying that it's not unusual to see rubbish bags in the day room?

---Yeah, that's correct.

So you wouldn't, you may not have noticed it at the time.---No.

And you're not drawing any inference from it now.---No. Not really.

When you got to the cell, I assume you went to the cell?---Yes.

10

Who went inside the cell?---I can't recall who was in there but I know that I came around and I've walked to the cell and walked in, I think. Officer Dippel was already in the cell starting the search.

Did you have, did you participate physically in the search by going through items or anything like that?---No, not that I recall. No.

And can I suggest that usually you'd have some gloves on to do that?

---That's correct. Yeah.

20

Do you recall putting gloves on?---No.

So is it unlikely that you were going through items in the cell?---No I don't think I would've.

Now, do you recall any items being brought out of the cell into the day room?---Yeah, there was a number of items.

30

And were those items in the day room when you came back from the strip search or were they taken out after you came - - -?---After we came back.

And who took the items out of the cell? Do you recall?---The staff that were searching in the area, probably Mr Dippel and Mr Murdoch, is it? Sorry.

Yes. Is it possible Mr Mick Watson did?---Yeah, it's possible.

Is it possible Mr McMurtrie did?---It's possible but I can't recall, no.

40

Are there any other possibilities?---No other possibilities.

All right. And at this point are you standing in the day room of the cell overseeing what is happening or what are you doing?---Yeah, in the vicinity just hovering.

Yeah, right. Did you see Mr Graf in the officer's station, as in, through the window watching what was going on?---No, not that I recall.

THE COMMISSIONER: You know Mr Graf?---I do, yeah, now. Yeah.

Is he known as Sim?---No. I think that's referring to Guy Sim, he's the current manager of security, Commissioner, at the centre. That's my assumption.

At Lithgow?---Yeah, Lithgow.

Thank you.

10

MR DUGGAN: Did Mr Sim sit in on one of your record of interviews?
---Yes, he did. Yeah.

And was he at Lithgow in February of 2014?---No he wasn't.

You may have seen this recently, and I'll play it for you if you need to see it but Mick Watson walks towards the cell door just after that photograph with the bin bags in it and then he turns around to the camera and says something like "video ceased". Do you remember seeing that on the video recently?

20

---Yes, I do.

Yeah. Did you hear that at the time, or do you have any recollection?---I think I did, I don't, I can't honestly recall.

It seemed to be a direction to Mr Murdoch who was the camera man. Is that a fair - - - ?---That's a fair assumption, yeah.

Is that a bit unusual given the length of video footage there is, that the key part of the search is not recorded?---Yeah, it's unusual but not uncommon not to film a cell search.

30

Now I assume that wasn't an operational decision that was discussed, or was it?---No, I don't think it was discussed.

Not with you.---No.

So that was an operational decision made by Mr Watson.---I would assume so.

40

So he's either made it himself or discussed it with others.---Yeah.

But not you.---Not me, no.

Now, you weren't wearing a stab vest or a Kevlar vest I don't think.---No.

But Mr Watson was.---Yes.

Do you recall?---That's correct, yeah.

And Mr Dippel and Mr Murdoch were.---Wearing stab vests?

Yes.---Yes.

Not the usual IAT equipment vest.---No, that's correct.

Now, that was because of the fact that it was a security threat.---That's correct.

10

And you were looking specifically, I assume, for a weapon.---Yeah.

Because you hadn't been informed about any intel about drugs I assume.---No.

So that was the focus of the search.---That's correct.

Do you have any recollection of Mr Murdoch's attention to any specific items in, to search in the day room?---No, not that I can recall.

20

Do you have any recollection of anybody telling him to look at a particular plastic bag and, more specifically, to look at a puffer?---No I can't recall that.

Is there any possibility that you would have said that to Mr Murdoch?---I probably could've said to search everything, but that's part of the course of the search.

30

I don't want there to be any misunderstanding about this because it's more specific. Mr Murdoch says that he was specifically directed towards a plastic bag on the ground in the day room.---Okay.

And he was told to search a puffer in the plastic bag.---Okay.

That's the effect of his evidence. Is it possible you said that to him?---I can't recall, no.

You can't recall, but is it possible?---Yeah, it's possible.

40

Why would you be directing, why is it possible that you would be directing him to a puffer when you're looking for a weapon?---I didn't say I directed him to a puffer.

No, but you've accepted, as I understand your evidence, that it's a possibility. How can it be a possibility if you're looking for a weapon that you tell him to look in the puffer, or is it - - -

MR MURPHY: I object, Commissioner. I understood that the question was whether the attention was directed towards the plastic bag.

THE COMMISSIONER: I think Counsel Assisting is referring to the evidence of Mr Murdoch. Is that - - -

MR DUGGAN: Yes. Yes. And I - - -

10 THE COMMISSIONER: And I think it's just as a matter of fairness, and it maybe can be put another way, I mean there's a plastic bag, there's the puffer which, at some stage as I understand it, was in the plastic bag.

MR DUGGAN: Yes. Maybe I can do it by going to the photograph. Can I take you to Exhibit 72, please?

THE COMMISSIONER: I should say, Mr Kennedy, that as I recall that evidence, it wasn't suggested that - - -

20 MR DUGGAN: Mr Kennedy said it, no.

THE COMMISSIONER: - - - Mr Kennedy said that, was it? No.

MR DUGGAN: No. And I'm not suggesting - - -

THE COMMISSIONER: The evidence was that somebody said it.

MR DUGGAN: Okay, yeah. So this is another still taken from the search video.---Yeah.

30 And you may recognise the flooring, it's the floor of the day room.---That's correct, yeah.

And as I understand Mr Murdoch's evidence, he says that the puffer was in that bag.---That's his evidence, yeah.

And that he says someone told him, not necessarily you but someone, told him "look in the plastic bag and look at the puffer". That general sentiment.---Yeah.

40 Is it possible that you said that?---No, it, no.

That's not possible?---In that, in that context, no.

And is that because you were searching for a weapon?---Well we do search everything but yeah, if we're looking for a weapon, it doesn't make sense.

It's a pretty unusual direction given the context.---Yes, it is.

If it wasn't you, what are the other possibilities of who might have said that to Mr Murdoch?---Anyone that was there at the time of the search, so myself, Mr Watson, Mr McMurtrie.

Is that it?---Well there was Mr Dippel and Mr Murdoch there but Mr Murdoch found it, so - - -

Yes, so it's said to Mr Murdoch. So if that was said it must have come from someone in the search team.---That's correct. Yeah.

10

Excuse me one moment. When you have particular inmates who have medical issues and you need to keep an eye out for whatever the medical issue is, how are officers informed of that sort of information?

---Usually by a health problem notification form from the clinic.

All right. So is that emailed, is it posted somewhere?---It's usually kept in the wing office.

All right.---There's a number of ways.

20

All right.---The other ways are on their inmate profile documents, there can be health notifications or alerts on that, the case file, the case file usually contains case notes and medical assessments when they first come into custody.

What about on the name cards outside the cell, is there ever an alert, just a short alert posted on the - - -?---There can be, yeah.

All right.---There can be medical two-out.

30

Right, okay. And I assume that you receive training in relation to restraint techniques?---Yes.

And one of the things that you'd receive training about is if an inmate has any breathing difficulties, then things can get bad very quickly?---Yes.

And so that is something that you look out for?---That's correct. There's a, there's a name for it I think, something, asphyxiation or something, asphyxia or - - -

40

Yes, there is, but I can't remember it either.---Yeah.

And indeed sometimes inmates play on that.---Yes.

But it is an issue.---That's correct.

And so if there was an asthma alert in relation to an inmate, officers would be aware of that or informed of that?---Yeah, they should be, yeah.

And can I suggest particularly an intelligence officer would be aware of that because it would be littered throughout a case management file. Is that a fair statement or - - -?---That's a fair assumption. It depends whether he read the file or not.

What about the inmate profile?---Yeah, it's on the inmate, I'm sure it would be on the inmate profile document under medical alerts.

10 And who reviews the inmate profiles?---Anyone.

But anyone can, but who routinely looks at the inmate profiles?---Well, they're based on, you review them all the time in relation to classification decisions, placement decisions, whether or not the alerts need updating, whether they've got OMCG alerts, whether they're history of violence, things like that. So yeah, a lot of people review them on a regular basis.

Now, were you present when Mr Murdoch made the find in relation to the puffer?---I think I was, yeah, yeah.
20

Do you recall how it happened or - - -?---No, not really.

You don't have any recollection I assume of him being told to specifically look in the puffer?---No.

I think that was your evidence a moment ago. Do you remember him saying to you, "I've got something," or - - -?---Not, not to me. He might have said, oh, I've got something, yeah.

30 Right. And you went over and inspected it or - - -?---Yeah.

So what did you see, what did he have?---I can't recall. I know the only, my first memory of it is watching the video where Mr Dippel is actually having it on the, open on the floor.

All right. So you don't have any recollection of Mr Murdoch making the find. Is that a - - -?---No, it's only what I've heard in evidence when I was sitting up the back of the room.

40 So you've subsequently heard Mr Murdoch say, "I found the puffer and the camera wasn't rolling - - -?---Mmm.

- - - but I didn't really know what to say so Mr Dippel took over and" - - -?
---That's what I heard, yeah.

But did you know that at the time?---No, not at the time.

Now, you've heard on camera I assume, if you've been here, Mr McMurtrie can be heard very quickly after the camera's turned back on saying something along the lines of, "Confirmed with the clinic, [REDACTED] on a puffer."---That's correct, yeah.

Did you see him go and make a telephone call to the clinic at any point?
---Not that I can recall, no.

10 Is it possible he had that opportunity?---He probably had the opportunity but I can't recall.

Is it fair to say that he wouldn't need to check with the clinic because he would have been aware that [REDACTED] was an asthmatic due to his inmate profile?---That's a fair assumption to make.

Did it strike you as curious at the time that McMurtrie would say, "Oh, I've checked with the clinic. He's on a puffer"?---Not at the time, it didn't strike me, no.

20 But perhaps now?---Yeah, now it does.

And were you aware that Mr [REDACTED] also was on a puffer?---No, I wasn't.

Mr [REDACTED] was asked, if you recall, whether the drug was his.---That's correct.

Were you aware that he'd had some addiction issues in the past?---No, I wasn't.

30 Certainly there's a possibility that Mr [REDACTED] if he'd had addiction issues, might put a drug in his other inmate's possessions to deflect attention away from himself.---It'd be a dangerous act on his part but, yeah, it would.

Yes, quite. All right. But was he pressed about that particular issue or was it assumed that Mr [REDACTED] was responsible for this at the time?---Can you explained "pressed"? I think he was just asked a question and that was it.

And when he said he wasn't responsible for it, did you accept that?---Yeah.

40 THE COMMISSIONER: Is it usual when a drug is found within an inmate's cell for those in the cell to undergo urinalysis?---That can be a recommendation, Commissioner, yeah.

And why is that?---Well, it's part of the proof or disproof. Usually the process, if you don't mind me explaining - - -

No, no. Please go ahead.---That a charge form is put in in relation to finding the substance, and then the charge package is sent up, called a hand-

up brief, so there's additional documents to it added. And then it's heard by a correctional officer of a commissioned officer's rank, and then they make the determination whether it's guilty, not guilty or dismissed for whatever reasons. And then as part of that process he can recommend urinalysis as well.

And is the initiating document in that process called a misconduct report?
---That's correct.

10 Thank you. Thank you.

MR DUGGAN: Before you do a target search like this, I assume you'd check the inmate profile document?---Yeah.

And you'd probably also check, to some extent, the case management file or any safety alerts in relation to the inmate?---You would, yes.

20 You want to know what you're dealing with. So with this particular inmate, I think there was some OMCG alerts or at least intel.---That's right.

Do you recall reviewing the case management file with that in mind?---No.

I assume that – is that because Mr McMurtrie was giving you the briefing about the intelligence?---He was the Intelligence officer, yes.

So one would assume that his role was to review the case management file or at least the intelligence about this inmate.---That's correct.

30 Including the inmate profile document.---And, yes. And then it comes down to risk evaluation and then mitigation.

Do you recall Mr [REDACTED] saying, "Why don't you piss-test me?" or something to that effect?---I think I can recall him saying that, yeah.

And was he tested?---No, not that I can recall.

40 And you're not aware of Mr [REDACTED] having any addiction or use issues himself, are you? You weren't aware of it at the time?---No. No, not at the time, no.

And is it also correct that when a contraband find is made, sometimes an inmate is put in some form of observation cell or dry cell? Is that standard procedure?---Yeah, it can be.

In fact, I think that there's a misconduct form that is used as a bit of a template and you change it from "was placed in the cell" to "not placed in the cell".---No. That's for normal cell placement.

Oh, I see. That's nothing to do with a dry cell?---It's just a, if he's locked up in cell pending the charge then you say he's locked up and that can be used in relation to, if they're given seven day cells and they're locked up from that day, you can backdate it.

I understand.

THE COMMISSIONER: It seems that Mr [REDACTED] never faced any misconduct charge. Do you know why that was?---I have a theory.

10

What's your theory?---Oh, I think he was moved on the next day and there's a, it takes time to get those packages together. So, if an inmate is moved on to another location, another centre, that package then should be sent to that centre to have the charge heard at that centre where the inmate is. So, for the package to go to the IAT office, get formatted, sent to the MOS, the MOS then sends it to the deputy, sorry, the dep's clerk, the dep's clerk then prepares the documents. I reckon by that time, the inmate might have left the centre.

20

Well, he left in a bit of a hurry, didn't he?---Yeah, he did.

Do you know why that was?---I think it was a, an arrangement made to get him out of the centre quickly.

But why?---Because of his OMCG alerts, and he was, you know, use-of-force and it's not, it's not uncommon, Commissioner.

Okay, thank you.

30

MR DUGGAN: Mr [REDACTED] had been wanting to be moved from that centre for a few weeks, as I understand it?---Mr [REDACTED]

THE COMMISSIONER: Mr [REDACTED]

MR DUGGAN: Sorry, Mr [REDACTED] That's all right.

And there was a recommendation that he be moved some weeks earlier. ---That's correct, yeah.

40

But it does seem to have been expedited, would you agree, by what happened on the 19th and the 20th?---That's a fair assumption but trucks come and go all the time. He's a remand inmate so he doesn't actually belong to any centre.

Oh, no, I understand that, but I think as far back as about 1 February there was a recommendation made that he be moved.---Yep.

And he was in Unit 5 without much outside cell time for a few weeks.---
Yep.

And then all of a sudden, within 48 hours roughly of this incident or these
two incidents, he's out.---Yeah.

So it's a fair assumption to say the process seemed to have got greater
attention.---Expedited, yep.

10 THE COMMISSIONER: I mean, the instructions, as I recall it, that came
via the governor was that he be moved urgently, I think.

MR DUGGAN: Yes, I think that's right, Commissioner.

THE COMMISSIONER: Yes.

MR DUGGAN: Just in terms of the disposal of drugs, is there a particular
procedure with buprenorphine tablets that you're aware of?---There's a
procedure but not directly relating to buprenorphine, I don't think, no.

20

Right, okay. But just in terms of drug disposal, what's the usual procedure
as you understand it?---As I understand it, that it's a recommendation that
it's either put in a blender to a powder and then watered down and then
flushed by, and you have to have a witness and a, and someone to sign it off.

When you say flushed, are you talking about the toilet or the sink or what?
---Yeah, either/either.

30 Yes. Have you been involved in that process yourself?---Yes, I have.

Do you video that process?---Yes, I do.

Is that common for drug disposal to be videoed?---No.

Do you think it should be?---Yes.

Yes.

40 THE COMMISSIONER: Why do you do it yourself?---Because they're
illicit substances and it's, it protects the people in the room

Yes.

MR DUGGAN: Now I, I asked you a bit earlier about an interview that you
had in an office with Mr [REDACTED] during the search procedure and I do want
to go in to the specifics of that at some stage but I'm more interested in a
slightly different topic. I just want to take you to your record of interview.
Now it's about line 32, and you say in the context of this interview, "Well

over 28 years in the department, it's been problematic for inmates to make police charges against prison officers." So you, at the time, had almost three decades of experience in correctional centres in New South Wales?--- That's correct.

And you're expressing an opinion in that interview, were you, that it was problematic for an inmate to make a police complaint against an officer? ---That's correct.

10 And why was that?---Because it can be problematic.

I'm not talking about this specific case, but just generally, why is it problematic for an inmate?---To make allegations or a charge with police whilst the correctional officers are in the centre, in that environment, it's quite, it's quite difficult because they are at the, at the mercy of the people that are in that location.

20 THE COMMISSIONER: So there could be reprisal.---There could be. Not often, Commissioner. But yes, there could have been.

MR DUGGAN: And in 2014, that was an issue. There was still a chance of reprisal against an inmate for making a complaint against an officer? ---There is now.

Yes, there is now.---Yeah.

And is that a Lithgow issue or is it broader, in your opinion?---I believe it's broader.

30 How many correctional centres have you worked in?---A number. I can list them, but, Kirkconnell, Bathurst, Lithgow, Super Max, Oberon then I'm in charge of Mannus and Kirkconnell currently and Silverwater.

And you go on to say that it may have a detrimental effect on the way they are treated in the correctional environment. So what are the sorts of detrimental things that might happen to an inmate if they make a police complaint?---Well with respect, Commissioner, it was a perfect example with [REDACTED] [REDACTED]

40 The intimidation?---Correct.

What about further assaults, has that occurred in your experience?---No, not further assaults but things happening to items that they belong to.

THE COMMISSIONER: A bit of cell therapy?---Yes, Commissioner.

Yes.

MR DUGGAN: So buy-up forms going missing, perhaps.---That's correct.

Possessions going missing.---That's correct.

When they're doing something else.---Yeah.

THE COMMISSIONER: I think you said [REDACTED] [REDACTED] did you mean [REDACTED] or [REDACTED] [REDACTED]

10 MR DUGGAN: No, [REDACTED] [REDACTED] [REDACTED]

With the knock-up, on the door intimidation.

THE COMMISSIONER: Okay, yeah.

MR DUGGAN: Just in relation to that interview that you had with Mr [REDACTED] - - - ?---Yeah.

20 - - - did you take a note of that at all?---No I didn't.

Do you know if Mr McMurtrie took a note of it at all?---No I don't think he did.

All right. What was the purpose of having that conversation with Mr [REDACTED] Just to explain how he could make police charges if he wanted to and I think he did discuss that with us.

30 Right. Well - - - ?---I think he also asked can he get out of the centre, or he wanted out of the centre.

Did you observe that he was clearly injured?---Yes.

Had a black eye and he was fairly ginger, if I can put it that way?---He was sore, yeah.

Yeah. And he had some rib issues, if you recall.---Yes.

40 And there was some discussion wasn't there about whether there'd be any police charges.---Yes, I think so. Yeah.

Did he indicate that he may want to press charges, or - - - ?---I don't recall at the time, no.

But you indicated to him that because of your experience, 28 years in centres as you say, that there may be some form of reprisal against him if he did go to police?---I said it could be problematic, yeah.

Is that what you meant?---Yes.

And were you in doing that discouraging him from going to the police?---I don't believe so. Now in hindsight, yeah, you probably could take it that way but I just wanted to put all the cards on the table for him.

So are you saying that you were trying to do him a favour by setting out the consequences of his actions?---Probably not a favour but just to let him know.

10 Right. You wanted him to at least make a fully informed decision if he was going to go to police?---Yes, pretty much.

But you accept that, as you say, he's at the mercy of whoever the officers are in the centre at the time, so he's in a vulnerable position.---Yes.

And you're telling him that there are consequences if he goes to police.---Yes.

20 THE COMMISSIONER: There might be.

MR DUGGAN: There might be, sorry. And you do, in your record of interview, you do say there might be some problems.---Yes.

MR MURPHY: Well, "can be problematic" I understand was the precise term.

MR DUGGAN: Can be problematic. So you would have understood that there might have been some reluctance on his part to go to the police?---Yes.

30 And you were a deputy superintendent at the time?---That's correct, yeah.

You had no doubt that he'd suffered some injury?---Yes.

And you had no doubt that in effect he was suggesting the injury had been caused by an officer?---During a use of force, yeah.

40 Why didn't you inform police?---Because I had no understanding of the use of force.

But you knew that this individual was injured and reluctant to go to police. Did you speak to the general manager about it?---No.

Didn't you feel obliged to at least discuss the concept of police charges with a superior officer?---Not at the time, no.

Even Mr Creighton or someone outside the centre?---No. The way I understood at the time, that there was a use-of-force review occurring, so I

was pretty sure if anything came up it would come up in that if there was anything that happened that shouldn't have happened.

But isn't the problem with that that the review process may involve officers that were involved in the use-of-force incident?---That's correct, yeah.

If an inmate is in a vulnerable position and there's a discussion about police charges through the deputy superintendent that doesn't end up going anywhere, who do you suggest that that inmate report their concerns to?
10 ---There's a number of ways. You can either put an application form in or you can make a phone call to the Ombudsman or the official visitor.

Is that a process that inmates are briefed on or aware of?---They're all aware of that, yeah.

Was that discussed with Mr [REDACTED] No.

Commissioner, is that a convenient time?

20 THE COMMISSIONER: It is. Just one question or two maybe. Were you aware that there had been a telephone call – I think you are – a telephone call between Mr [REDACTED] and his father the day before, where this question of the weapon had come up?---Yes, I was aware of the call.

And were you aware that during the course of that call he alleged that he'd been flogged?---No, I can't recall that.

The other matter I just wanted to raise with you is this, that did you become aware that he had gone to hospital?---I wasn't aware he went to hospital, no.
30

All right. That makes my next question unnecessary.

MR DUGGAN: Just, Commissioner, might I pick up on the first question?

THE COMMISSIONER: Yes, sure.

MR DUGGAN: You said that you were aware of the phone call. Were you aware that Mr [REDACTED] had said in the phone call something along these lines, "The governor's come up to the fucking door, 'You were talking to
40 me, cunt [REDACTED] I go, 'It wasn't me.' Fuck, boom, the squad comes in and flogged the fuck out of me." So were you aware that the governor had some connection, according to Mr [REDACTED] with this incident?---No, not at the time. I, I can't remember listening to the phone call.

If you were aware of that at the time, I assume that you would see the difficulty in the ultimate reviewing person of the use of force is involved in some way, so might not pick up the complaint.---Yeah. Yeah, you could say that, yeah.

There's a conflict.---Yes.

Thank you.

THE COMMISSIONER: Take a short adjournment.

SHORT ADJOURNMENT

[11.35am]

10

THE COMMISSIONER: Mr Greenhill, can I ask a favour? If you'd just be careful about speaking to your instructing solicitor close to the microphone. Apparently it's being picked up on the transcript and is causing a bit of difficulty.

MR GREENHILL: Oh.

THE COMMISSIONER: Yes. Thank you.

20

MR GREENHILL: Can they wipe it?

MR DUGGAN: Please don't.

THE COMMISSIONER: I hope not. Off you go.

MR DUGGAN: Mr Kennedy, before the break we were talking about situations, not this particular situation, but situations where an inmate might make an allegation about an assault by an officer and make that allegation to an officer, and that inmate might be in a vulnerable position - - -?---That's correct, yeah.

30

- - - for the reasons we talked about. If an officer receiving an allegation like that was concerned and themselves reported the matter to police, and that fact became known within the correctional environment, how would that officer reporting the complaint to the police be viewed by their colleagues?---It's probably a difficult question to answer because I haven't, I don't think I've ever come across that personally, but they're probably not looked on as favourable, no.

40

Would they be ostracised and put on the dog?---I don't like that term, but they might be ostracised, yes.

But have you heard that term before?---Yes, I have, yeah.

And you don't like it because it's a particularly derogatory term?---Yeah, that's correct.

But in your experience in correctional centres, have you heard people using that phrase?---Yes.

And other phrases that might link someone to dogs, like saying, “Are you sniffing,” or, “Do you need some dogfood,” things like that. Have you heard that sort of thing going on?---No, not like - - -

Not at that level?---No.

10 All right. Okay. But this is not some problem in the 1980s, this is a problem today in correctional centres?---Yeah.

Now, just going back to the specifics of this event, we were talking about the interview with Mr [REDACTED] that you and Mr McMurtrie had.---Yeah.

Whose idea was it to have an interview with Mr [REDACTED] I don't, I don't recall whether it was mine or Mr McMurtrie's or – I don't recall.

20 Why was the interview even taking place?---Just to talk to the inmate about the search and that there was an item found and yeah, that he, I think Mr McMurtrie discussed a couple of things about his placement and - - -

Do you have a recollection of this interview taking place before or after the contraband find?---After.

You say this was definitely after, do you?---Yeah.

30 So the contraband had been found and had Mr [REDACTED] been presented with the contraband find at this time?---I think so, yes.

And he was asked about it on camera?---I can recall seeing it on camera, yeah.

And he made some admissions about the puffer at least being his?---That's correct, yeah.

40 And those admissions seemed to be duly recorded. Doesn't it strike you as highly irregular there would be a further interview of Mr [REDACTED] after that which wasn't recorded?---Not really, not with the intel manager, he likes to ask questions and, of the inmates.

Was the purpose of having this interview to discuss the possibility of a police complaint?---Not that I recall, no.

So what was the intel, why did he need, what did you have to speak to him about or ask him?---Just to discuss the inmate with the, just to discuss Mr [REDACTED] in the search and, and then I think Mr McMurtrie raised the fact that he'd asked to be moved and that's, that's all I can remember about it.

But why would he be asked about the search off camera?---Yeah, I don't recall.

Can I suggest that the interview might have taken place before he was presented with a contraband find? Is that a possibility?---No, that's not possible.

10 All right. I just want to play - - - ?---There was two, we, we spoke to him twice, though.

Okay. So tell me about the first occasion.---I think it was in, just after the item had been found and it was being recorded on the video tape.

So the item had been found but hadn't been presented to Mr [REDACTED] That's correct.

20 Is that correct? And you spoke to Mr [REDACTED] at that time?---I don't recall speaking to him but we went up, I think it was Mr McMurtrie said let's go and talk to him about this, so we went up to where he was being held.

So you've obviously seen the video where he's presented with the find? ---Yes.

So are you saying that after you found out about the find and before any discussion with Mr [REDACTED] took place, you went and told him about the find off camera?---That's correct, yeah.

30 Why would you do that?---Just to have a discussion about the, I don't think I had the discussion, I think it was Mr McMurtrie had the discussion about the find and, that was found in his cell.

Did you know that that was going to be the discussion?---No, I just, Mr McMurtrie and I just said we'll go and talk to him about it.

But you understand that he may have made some admissions or comments, there was certainly the potential for that, before you spoke to him?---Yeah. That's correct.

40 And you're the officer in charge of the search?---That's correct, yeah.

Before McMurtrie opened his mouth you'd say, "hang on, we need the camera", surely.---I didn't think of it. No.

Well I want to suggest to you that it's highly irregular to have that type of discussion with an inmate when you've made a contraband find, without the camera being there. Do you accept that?---Yeah. I do accept that, yeah.

Were the concept of police charges discussed at this time?---No, I don't recall.

So is your understanding of the chronology, this, that there was a contraband find, you and McMurtrie, Mr McMurtrie went to speak to Mr [REDACTED] before anyone else, you had a conversation which you told him about the contraband find.---Yeah.

10 Then there's an interview of him on camera and then you had discussions with him about police charges. Is that the chronology?---Pretty much, yeah.

And were you doing most of the talking in these interviews or was Mr McMurtrie?---Mr McMurtrie.

Weren't you extremely concerned that there'd been a use of force the previous day in which Mr [REDACTED] was injured - - - ?---Yes.

20 - - - and you understood that there was at least an allegation being made that he'd been assaulted by officers or that they may have had something to do with his injuries?---Yes.

He's then - - - ?---No, sorry, not at the time.

But you knew that from the telephone call didn't you, or not?---No. I didn't listen to the telephone call.

Mr McMurtrie didn't brief you on that aspect?---No, I don't recall if he did, no.

30 But the concept of police charges, you understood that to mean Mr [REDACTED] making some sort of allegation that officers were responsible for his injuries.---Yes.

Because of the use of force.---Yes.

And then he's presented with this drug, or whatever it was in the puffer. ---Yeah.

40 And then you have a further discussion with him in which you say Mr McMurtrie does most of the talking, after that, off camera. Firstly that's highly irregular, isn't it?---Not, not really. No.

Not really? That's common to have those, after the contraband find, have further discussions with an inmate after the recorded part?---Yeah, because that could, I suppose you'd call it leading questions into where something else was that we could find in the cell, or - - -

Did you have any concerns about the presentation of the drug find and the circumstances in which it was presented to him at this time?---Sorry, you'll have to repeat that.

Did you have any suspicions that the drug might have been planted?---No.

Not at that time?---No.

10 Do you have any knowledge now of anything that might indicate that the drug was planted?---No.

Can I just take you to your record of interview at page 12 please. So just towards the bottom of the page at about line 35 you say that you were asked by Mr McMurtrie to assist in the cell search of the inmate, and you would agree with that statement I assume?---Yes.

And I assume that when you spoke to ICAC officers on this day when you gave your interview you told them the truth. Is that a fair - - -?---Yes.

20 Yes. Not just in relation to that, but generally?---Yes.

So over the page.---Sorry, to the best of my recollection, yeah.

Of course. Over the page, page 13. So there's the large block paragraph at the top of the page and you say, you're describing the search operation generally and you say, "We went into the cell, the video ran during the operation. Both of the inmate were removed from the cell and isolated." You refer to the cell search et cetera. "I don't think I was there during the find." You refer to the finding of the tablet. And then you say, "Me and Mr
30 McMurtrie talked to one of the inmates in relation to his visits and Mr McMurtrie on the day said that his visits were going to be terminated for some reason. We talked to him about the use of force the previous day." Now, just pausing there, is this the conversation you had before the find or after the find? Sorry, before he was interviewed on camera or after he was interviewed on camera about the find?---This is um, just trying to get the, this is after he was presented - - -

This is the second - - -?--- - - - with the evidence, yeah.

40 All right. And so you say there, "We talked to him about the use of force the previous day." What was discussed, do you recall, about the use of force?---I can't, I can't really, I can't really recall the exact conversation but it was in relation to the use of force, how it occurred, the injuries he sustained.

Did he say, I was punched or struck?---Not to my recollection, no.

You could see his black eye though?---Yeah.

It says there, "He was talking about police charges." So that suggests that he might have been contemplating making a police charge. Is that a fair summary of what happened?---That's right, yeah, that's a fair summary, yeah.

10 All right. And it says, "We talked him through that and let him know that it's his call and wants to pursue that (not transcribable)." And then you refer to your experience in correctional centres and say, "I did say that can be quite problematic for him, being honest, but ultimately it was his decision."---Yes.

And that accords with your evidence earlier.---Yes, yeah, to the, yeah, to the best of my knowledge, yeah.

And again you didn't feel any obligation to communicate his allegation to police, given his reluctance?---No.

20 Or report it to a senior officer?---No, not at the time, now.

Do you accept in hindsight you probably should have done?---I should have, yeah, yes, I should have.

Gone to police or reported it to a senior officer or both?---Reported it to a senior officer.

And would that have been someone within the centre or outside the centre? ---Within the centre.

30 Mr O'Shea?---Or the manager of security.

Right. Mr Peebles.---Yeah.

Or Mr Taylor on the day.---Or Mr Taylor I think it was, yeah.

40 Did you have any discussions, maybe not a formal report but any discussions with Mr O'Shea about this allegation?---No. Oh, yes I did. It was a phone call I made after my interview with the investigators, I rang Mr O'Shea and asked him what it was all about, because I couldn't recall any of it.

What did he say?---He said oh, don't worry about it, the guys have got a fine, it's an old thing, yeah, don't worry about it.

All right. Just in terms of the purpose of this second conversation, he's been presented with the drug and he's a bit ginger from the day before. There wasn't any suggestion made to him was there that if he didn't pursue police

charges then he wouldn't be charged for the drug find?---No, I can't recall that.

Is it possible that it was said?---It's possible but I can't recall it, no.

Would you have said something to that effect?---No I wouldn't have said that.

10 Who might've said something to that effect?---Whoever else was in the room, Mr McMurtrie could've done it, I don't know.

But that's, if that was said and let's be clear about this, if it was indicated to Mr ██████ that he wouldn't be charged for the drug find if he didn't go to police, that's a pretty serious thing to say to the inmate?---Yeah, that's correct.

Do you have any recollection of that being suggested by Mr McMurtrie?
---No I have no recollection of that.

20 You can see the position that the inmate is in though at this point during the conversation?---That's correct, yeah.

I just want to play you some video if I can which is hopefully the portion of the video between the two interviews. Just while that's coming up, do you have any recollection of any discussion of a speedy placement being put to Mr ██████ as a sweetener for not saying anything to police?---I think there was a discussion about him being moved, yeah.

30 By you or Mr McMurtrie?---Mr McMurtrie.

And did that come across as some sort of sweetener if he didn't go to police, we won't, we won't charge you for the drug find, we'll get you moved quickly, give you what you want?

MR MURPHY: I object to this. Isn't this a conversation between McMurtrie and this witness that's being suggested?

MR DUGGAN: No.

40 THE COMMISSIONER: I didn't think so.

MR DUGGAN: I thought, maybe I misunderstood the evidence but I'm just trying to find out if anything was said to Mr ██████ by either you, Mr Kennedy, or Mr McMurtrie about the fact that if he didn't lay police charges he might be moved on quickly to somewhere else.---No.

Do you understand that's what I'm - - - ?---I understand that and no I don't recall that taking place.

Okay. You don't recall that conversation. I'm not suggesting it did take place, I'm just trying to see.---Yeah. Yeah. Sorry, we'll go to the video if we can.

VIDEO RECORDING PLAYED

[12.17pm]

10 MR DUGGAN: I'll just pause it there. Were you present during that process?---I can't recall whether I was or not.

You don't recall whether you heard any admissions about the puffer being his?---No. I can't recall.

Do you recall having any concerns as to whether, as to whether the inmate was in a vulnerable position during that part of the process?---Can you explain, sorry?

20 So he's obviously in physical discomfort as you can see on the video. ---That's correct. Yeah.

And he's being presented with a contraband find, and the purpose of the interview is really to see if he'll make some admissions.---That's correct. Yeah.

And did you have any concerns, given his state and the fact you'd just spoken to him, that he was in a vulnerable position and might make admissions that weren't genuine?---No, not, not really, it's a hard call to
30 make I suppose. I can understand why you're asking the question but no, I didn't think so.

So your recollection just after having seen that piece of footage, you say do you that the two conversations we've been talking about happened either side of this part of this?---Yeah, that's true.

Right. Now I think you said earlier in relation to at least one of the interviews that you didn't take a record of what occurred.---That's correct, yeah.

40 And there was no video footage.---That's correct.

Should you have taken a record or made a report afterwards about what had happened?---In relation to the whole incident, or - - -

No, specifically the two interviews and the conversations you had with Mr [REDACTED] Probably in hindsight, yes.

All right. I just want to show you the last video, if I may, of the search operation.

VIDEO RECORDING PLAYED

[12.25pm]

10 MR DUGGAN: Do you hear yourself say there, “No complaints from either of the inmates in relation to the search operation?”---Yes.

That was a pretty good time to raise the complaints made in relation to the incident the day before?---Yes, probably, yeah.

Why didn’t you raise the complaint in that part of the interview, search video?---Because I was talking about the search operation that I conducted.

20 Yes, that is true, and you very specifically say, “No complaints made in relation to that search operation,” but that would have been the perfect opportunity, I want to suggest to you, to raise the complaints that Mr [REDACTED] had made to you. Do you accept that?---Yes, I take that on board, yeah.

Why didn’t you?---Because I was talking about the search operation I was conducting.

But fresh in your mind, very fresh in your mind must have been a clearly injured inmate who you had discussions with and Mr McMurtrie had had discussions with about laying police charges. That was the perfect opportunity to raise it.---In hindsight, yes.

30 Well, not in hindsight, it must have been in your mind at the time, I want to suggest. Do you accept that?---Yeah, I’ll accept that, yeah.

And when you said, “No complaints by either of the inmates,” you ensured to add a phrase in relation to the search operation so that what you were saying wasn’t untruthful. Do you see what I’m saying, do you accept that? ---That was just a normal, normal sentence that I’d use at the conclusion of an operation.

40 All right. But when you said that, you must have known, it must have been in your mind that whilst there weren’t any complaints in relation to the search operation, there were certainly complaints about an assault by a use of force.---No, not, not at the time, no.

You’re very good friends with Mr O’Shea?---Yeah.

And this incident that happened on the 19th and the search operation on 20 February, 2014 has become a rather significant event at Lithgow, if I can put it that way?---That’s correct, yeah.

And you've identified one conversation that you've had with Mr O'Shea in relation to the events?---That's correct, yeah.

And the effect of that conversation, and I can't remember your exact words, but the effect of it was, it wasn't about much – sorry, what were your words, perhaps better rather than me trying to summarise them.---What I can recall is I, I rang John after I knew I was going to be interviewed by ICAC and I said, "Oh, what happened, can you remember what happened?" And he said, "Oh, yeah, it's about an old incident, a use of force, and it's been dealt with, I don't know, internal," he said, "But don't worry about it, it's been dealt with."

When you say the ICAC, is this in 2015 with Investigations Branch or are you talking about some later period or - - -?---No, this is when I got the email from, I think it was Mr Grainger in relation to being interviewed and in relation to the 19th and 20th.

Right. Okay. And did Mr O'Shea indicate to you that he'd had any involvement in the events of 19 February?---No.

Given the closeness of your relationship with him, is that surprising that he wouldn't have mentioned that?---No.

Why not?---No, he just didn't mention it. I didn't find it surprising at all.

But you agree that in terms of the people who were working in the Lithgow Correctional Centre in February 2014, this has become a very significant event and you're very close friends with him. One would expect that you might have talked about it.---Yeah, no, we didn't talk about it.

Is there a reason you didn't talk about it?---No, not really. We haven't, if I can clarify, probably the last couple of years, John, we, John and I grew, sort of joined the department together, I was about 20, he was probably 25, a bit older than I so we had a relationship both personal and professional for many years and over the last couple of years we've sort of drifted apart a little bit, you know, so it might be the odd phone call every now and then but we don't have, like, deep and meaningful conversations about things. No.

THE COMMISSIONER: Is there any reason for that?---No just a matter of time and distance, Commissioner, that's all.

MR DUGGAN: You said on the tape that Mr [REDACTED] was going to a cell for adjudication. What did that mean?---I think he was just locked back in his cell pending adjudication of the charges that were submitted.

All right. Now I've asked you about Mr O'Shea. Have you had any discussions with Mr Peebles about these events?---No, not that I can recall. Probably just in passing conversation but that's about all. He was my director up until not long ago, well still is my director so - - -

I think you agreed earlier that you have some concerns or suspicions about the events of this period including the possibility that a drug might have even been planted on Mr [REDACTED] Yeah, that's correct.

10

Have you ever discussed any of those matters with anyone involved in the events?---No, not that I can recall. Maybe Mr Peebles on occasion but that's all.

What was the content or effect of those discussions?---Just that it was, you know, quite upsetting for us that we had to come here and be put through this, so just along those lines, just providing a bit of moral support to each other, that's all.

20 I have no further questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Madden?

MR MADDEN: I have no questions.

THE COMMISSIONER: Mr - - -

MALE SPEAKER: No questions.

30 MALE SPEAKER: No questions.

THE COMMISSIONER: Mr Dunne's got a few.

MR DUNNE: I have one or two. Mr Kennedy, my name is Dunne and I represent Mr McMurtrie.---Yeah.

Now I don't think that there's any dispute that you believe that you were in charge of the search operation that took place on the 20th of February. ---Yeah, that's correct.

40

However Mr McMurtrie as the intel officer provided you with information and details that he had, and they had perhaps even made suggestions or the like which you followed. Is that correct?---Yeah, that's correct.

And I think you were asked questions about whether it would be reasonable to expect that, assume that Mr McMurtrie would have looked at the case management file.---That's correct, yeah.

You don't know that he did, do you?---No I don't.

And would you also accept that being the person in charge of this search, it would have been reasonable for Mr McMurtrie to assume that you had looked at the case management file?---That's a good assumption, yeah.

10 And so it could have been the case where neither of you looked at the case management file but both of you simply thought the other person had. Is that correct?---That's a, yeah, that's an assumption. Yeah.

You've been asked some questions by counsel assisting about why a puffer might be something of significance to look for what's described as a weapon. Do you remember those questions being asked of you earlier this morning?---I can't really recall about a puffer being used as a weapon.

No, sorry, to conceal a weapon.---Yes.

20 Do you recall those questions why you would look at a puffer if you were looking for a weapon?---Yeah.

And the word "weapon" is used.---Yeah.

But were you aware that, in fact, Mr [REDACTED] had described in his telephone conversation with his father that he had a blade? Do you recall the use of the word blade at all?---Yeah. That's correct.

30 And you've been in corrections I think now you say for 28 years?---Twenty-nine years yesterday.

Twenty-nine years. Congratulations.---Yeah, thanks.

And in that time you would have come up or come across weapons of all shapes and sizes. Would that be correct?---Yes, that's correct.

Would you have come up with a blade the size of a puffer in that period of time?---Yes.

40 I suppose a razor blade would be something that could fit inside of a puffer. Would that be right?---A sharp, I'm only speculating but a sharpened piece of metal or parts of it, yeah.

Yes. The fact that a puffer is the size that it is, and I don't think we need you to be shown the size of a puffer but the simple size of it doesn't mean that it could not house a weapon or a blade of some description.---That's a correct assumption.

And so therefore it would be reasonable to search it for a weapon or blade.
---That's why we search everything.

That's why you do search everything. Can I ask in your experience have you ever found a weapon in a puffer?---No, not in a puffer. No.

Thank you. You were also I think asked some questions about a comment Mr McMurtrie made along the lines of clinic has confirmed [REDACTED] has a puffer, or something along those lines.---Yeah, that's correct.

10

And I can't remember, were you shown the film at the time that you were asked that question?---I have seen that.

You have seen that film and it's of Dippel.---That's correct, yeah.

And the film starts off with Dippel with the puffer and opening up the puffer and displaying the tablet, and a short period of time after that, I think you hear McMurtrie's voice saying, "clinic confirms [REDACTED] has a puffer" or something along those lines.---Yeah, that's correct.

20

But Dippel didn't find the contraband, did he? Or the puffer?---After listening to the proceedings I think it was Mr - - -

Mr Murdoch?---Mr Murdoch, yeah.

That's right. And so in between the time, sorry, prior to Mr McMurtrie making that comment, we have what's shown on film.---Yeah.

30

But there's a period of time prior to that where Murdoch made the discovery and then passed it on to Dippel and there was a discussion and there was some time, a time lag before the video started showing Mr Dippel from the time of the discovery of the, of the puffer. Is that right?---I'd assume so, yes.

And you're not aware how long that is?---No I'm not.

Okay. Now, you were asked some questions about suspicions you might've had about Mr McMurtrie. Do you recall those questions being asked?

---Yes. Yes I do.

40

And those questions related, or involved a discussion about some memory sticks which Mr McMurtrie had. Do you recall that?---Yes, I do recall that.

And do you recall in your record of interview with ICAC in October of last year, you were asked questions about those memory sticks?---Yes.

And when you were asked questions about the memory sticks today, correct me if I'm wrong, but I think what you said was you had heard that he had

asked other staff to give up memory sticks and to meet him on a hill. Is that right?---Yeah, that's, that's about correct.

Is that right? And of course that was to do with a set of circumstances unrelated to the current procedures before ICAC today?---Yes, that's correct.

10 Thank you. Excuse me just a moment. Please excuse me, I've just lost my place. But do you recall that Mr McMurtrie not only contacted other staff, but he contacted you directly in relation to those memory sticks. Do you recall that?---Yeah, I told the staff if he rang back to get him to ring directly to me.

That's right. So, and he did?---Yes, that's correct.

So he contacted other staff and then he came and asked you.---Yes.

20 Okay. So it wasn't so much a case of avoiding you entirely, he wanted the memory sticks, he asked other staff, when they said no he spoke to you. Is that correct?---Because I told the staff to tell him to ring me.

That's right. And he said, sorry, I'm just reading from your transcript, record of interview on page 47. I don't think it needs to be shown to you but please let me know if you do.---Thanks.

30 Towards right at the bottom you said Mr McMurtrie said words to you of the effect of, "Oh, by the way, can I get those USBs?" You said, "No, you can't." He said, "I have a number of personal items on those, like my references and resumes and stuff about my divorce." And you said, "Once the department has vetted those USBs and there's any personal stuff I'm sure that you'll get them back." Is that right?---That's correct, yeah.

Are you aware whether those USBs were vetted and - - -?---No, no idea.

Are you aware whether, or sorry, sorry, you've answered that question. You're not aware of Mr McMurtrie using at any stage during his - well, at any stage up to today, of using any information he may have had on the alleged sink files?---No, not that I'm aware of, no.

40 And in fact it could just be all talk and bluff about these sink files?
---That is correct.

By Mr McMurtrie. Is that right?---Yeah, that's correct.

Because there's certainly no evidence that he's sought to use them at any time.---No, I haven't seen what was on the USB sticks.

And to your knowledge no one has discovered any sink files of Mr
McMurtrie's, to you knowledge?---That's correct, yeah.

And would you have thought that if they had have, if such sink files had
have been found that you would have heard through, through the grapevine
or official channels?---No. It could be some part of an ongoing
investigation I'm not aware of.

10 Yes. I see. And you were asked questions by Counsel Assisting this
morning about your suspicions I think in the context of the search that was
taking place, that took place on 20 February, 2014. Is that correct?---Yeah,
that's correct.

Now would I be right in saying that when you were asked questions on this
point by investigators from the Commission back in October last year, your
suspicions were more in relation to why you were being interviewed by
ICAC. Would you agree with that?---I don't understand the question.

20 Well, at the end – sorry, on page 48 of your record of interview, Mr
Grainger having asked you questions about this, says words, “I can assure
you this is not a retribution for McMurphy [sic] so it's nothing to do with
that, that's a side issue, that's an issue.” Do you recall Mr Grainger saying
that to you?---Yes, I can recall that, yeah.

And you commenced your, on page 46 as part of the discussion, we've got
“What you're putting to me isn't unreasonable” about line 27 on page 46.
---Yeah, can I have that up please, Commissioner?

30 THE COMMISSIONER: Sure.

MR DUNNE: Page 46. If I take you, it's about line 27 I think where your
name appears and then starts off, “No, I've been totally frank and honest”,
would you like to read that?---Yes, I've read that paragraph.

40 Okay. And can I say that, could I suggest to you and please agree or
disagree, that your concerns at this stage with suspicions about Mr
McMurtrie involved whether or not he had made allegations against you in
relation to the ICAC investigation. Would you agree or disagree with that?
---No, I disagree.

You weren't concerned that he'd made allegations?---No, I disagree. I, I
could probably concede he'd made allegations in regards to both days but,
yeah, not specifically against me.

You didn't, so that was what you thought at that time. Is that right?---Yeah.

Okay. Thank you. One final question. The fact that someone, that an
officer might know that someone has asthma, okay, would there be anything

strange or unusual in that officer taking the extra step to contact the clinic to see whether they'd issued the puffer to that inmate?---No, not really, just to put that puffer with that person, that's probably the only reason I could think of.

That's right. And I must confess, sorry, I'm not an expert on asthma. Is it the case that everyone, to your knowledge, that everyone with asthma requires a puffer?---I'm not a doctor, I can't - - -

10 You don't know.---No, I don't know.

So you wouldn't know if someone asked you or, sorry, someone told you that someone had asthma that they would necessarily a puffer.---No, I - - -

Would you agree with that?---I'd agree with that, yeah.

Thank you, no further questions.

20 THE COMMISSIONER: Thank you, Mr Dunne.

MR BRASCH: Just a couple of questions, Commissioner.

THE COMMISSIONER: I think it was granted.

MR BRASCH: Thank you. Sir, maybe just to clear something up, you were asked some questions and taken to the policy dealing with the cell searches and the requirement that the inmate be present at targeted or monthly searches unless there are exceptional circumstances.---That's correct, yeah.

30 Do you remember that? And you were also asked some questions or gave some evidence about searches that you make or take place where inmates may be on, in the recreational area or at work.---Yes.

Do you remember saying that?---Yes, that's correct.

And that those searches are required, or those searches are in fact daily searches. Is that right?---Yeah, that's correct.

40 They are different to the monthly or targeted searches. That's correct? ---Yes, that's correct.

So there are daily searches, there are monthly searches and there are targeted searches. Is that right?---There's a lot of searches.

Yes. Okay. Yes. Thank you, Commissioner.

THE COMMISSIONER: I think Mr Harris has got some questions.

MR HARRIS: Yes, I do and thank you.

THE COMMISSIONER: I'm not avoiding you, Mr Murphy, I'm just giving you - - -

MR MURPHY: I'll learn to watch the screen.

10 MR HARRIS: All right. Mr Kennedy, my name's Harris and I'm for Steven Taylor. Can I take you back to your evidence earlier this morning near the start? And I'm referring to the 20th of February, the day of the cell search, and your evidence was to the effect of that you thought you'd had a discussion before the search, yourself, Mr McMurtrie and Mr Taylor. Can you remember that?---Yes I can.

Would that be a meeting perhaps in Mr O'Shea's office, do you remember? ---No, I think it took place in the manager of security's office.

20 Thank you. You'd said you didn't know of any reason why Mr Taylor was not participating in the search that day on the 20th?---No, I didn't. No.

No, all right. Likewise of course with sector manager, Mr Turton's non-involvement. Correct?---Yeah, that's correct.

Yes. So, did you not hear a direction being given to Mr Taylor to the effect that he was not to be involved in the search on the 20th?---I don't recall that occurring, no.

30 All right. Did you understand he was in fact being kept out of the loop effectively?---No I didn't know he was kept out, no.

All right, thank you Mr Kennedy.

THE COMMISSIONER: Mr Taylor, have you got any questions?

MR TAYLOR: I have no questions, thank you, Commissioner.

THE COMMISSIONER: Mr Murphy.

40 MR MURPHY: Thank you, Commissioner. Mr Kennedy, you were asked about the fact that you didn't inspect or supervise the reports that were made by the officers under your direction as a result of the search that you supervised.---Yeah, that's correct.

And counsel assisting raised the desirability of your supervising such reports. It was suggested to you that in the event that there were any junior officers not familiar with the procedures involved in such a search that you probably should have overseen those reports.---Yeah.

Do you recall that?---Yeah.

Were there any officers fitting that description involved in this particular search on the 20th?---As in junior officers, or - - -

As in junior officers not familiar with procedures?---Yeah, the two IAT staff were junior but they were still experienced officers, I think they'd be, they were inexperienced with IAT stuff but they were normal officers that
10 worked there for over 12 months I think.

So they couldn't be described as being inexperienced when it comes to searches?---No I wouldn't describe them as inexperienced.

Thank you. Now, the expression sidelining has been used.---Yeah.

Is there a departmental policy on who should or who shouldn't take part in a search, or who should desirably be sidelined?---No, I don't think there's a policy on that. No.
20

So on occasions when you sidelined somebody - - - ?---Yeah.

- - - is that something that you feel as if, you feel is within your discretion as the officer in charge?---Yes.

And do you understand that you have that power to decide who takes part in the search and who doesn't?---Yeah, that's correct.

Thank you. Now, you were questioned extensively on the statement that
30 appears in your interview at page 3, line 14 and I'll read it onto the record. "I did say that it can be quite problematic for him being honest but ultimately it was his decision." Now that's what you said to the interviewer. Do you recall the exact words that you said to [REDACTED] on that day?---No, not the exact words, no. It was something along those lines.

Okay. Were you trying to affect, I'm sorry, were you trying to influence him or were you trying to advise him of his possible options?---Advise him.

All right. That's why you finished with the words "ultimately it's his
40 decision", or your decision?---Yeah, that's correct.

Thank you. Now Mr Dunne asked you a number of questions in relation to the, I'll call it digital media. The word, the term memory sticks, the, that's never a term that's been used by you with respect to Mr McMurtrie's files, is it?---No.

You've always, at all times have been described as USBs?---USBs.

All right. And they contain what's, well they're thought to contain what's called sink files. Is that correct?---That's the presumption, yes.

Presumption, yes. Now, that term, sink file, where did that come from, when did you first hear that?---Oh, it's been bandied around for a while, about Mr McMurtrie having an amount of files that he could use against staff.

10 Is that, is the term sink file something that you've only heard within your duties as, well, with, with the Department of Corrective Services?---No, I just think it's a general term - - -

All right.--- - - - that I've heard.

Thank you. Now, speaking generally, does the fact that somebody has sink files in their possession or the suspicion or suggestion that someone has sink files in their possession, does that affect your attitude towards them?---It could, yes.

20 All right. Okay. So would it be correct to say that you were suspicious of, well, I'll withdraw that. One of the reasons that you may have been suspicious of Mr McMurtrie was the fact that he was thought to have sink files in his possession?---Yes, that's right.

Thank you. Yes, nothing further, thank you, Commissioner.

THE COMMISSIONER: Thank you.

30 MR DUGGAN: Nothing further, Commissioner.

THE COMMISSIONER: Well, I note the time. The next witness is Mr Peebles, is it?

MR DUGGAN: Mr Peebles is the next witness.

THE COMMISSIONER: Well, we might commence at 2.00 I think. Is that suitable for you?

40 MR DUGGAN: Yes.

THE COMMISSIONER: Well, I'll adjourn. Mr Kennedy, you're excused from your summons which means you're free to go, and thank you very much for your evidence.

THE WITNESS: Can I just say one thing, Commissioner?

THE COMMISSIONER: Yes, by all means.

THE WITNESS: I know that there's going to be some recommendations about processes and policies around what should and shouldn't happen.

THE COMMISSIONER: Yes.

THE WITNESS: I believe that body cameras would be, I know they've been mentioned before but I think they'd be vital to, to protect not only the staff but the inmates in our, in custody. I really think it, I know it's being
10 explored but I think it's imperative.

THE COMMISSIONER: Okay.

THE WITNESS: That's all.

THE COMMISSIONER: Thank you very much for that.

MR DUGGAN: Commissioner, I just want to ask the witness one question if he's - - -
20

MR MURPHY: I'm getting hungry.

MR DUGGAN: Just in relation to the UOF packages and the reviewing of that, would you also endorse centralised reporting rather than reviewing with the correctional centre?---I don't think any use of force that occurs at a centre should be reviewed at that centre, whether it's an external centre or sent to Security and Investigations for investigation.

Thank you. That's all I had, Commissioner, thank you.
30

THE COMMISSIONER: Can I ask you why that's so?---Just to make the process totally transparent because we're a vast organisation, everyone knows each other over a period of time, but there's two organisations, one's Custodial Corrections and one's Security and Investigations, and they are apart from each other, so I just think that it would be a good autonomous way to deal with that situation.

THE COMMISSIONER: And to maintain transparency.---Yes.

40 Thanks very much.---Thanks.

THE WITNESS EXCUSED [12.58pm]

LUNCHEON ADJOURNMENT [12.58pm]