



Justice

CSNSW Investigations Branch

DIRECTOR'S REPORT

IIS Case No: 14/0227
Type: FORMAL
Timeline:
Date received: 27 January 2015
Date delivered: 20 March 2015
Total days to complete: 39 working days; 53 calendar days
Comments: <p>I concur with the findings of the Investigator in this matter. Given the seriousness of the allegation, the burden of proof required by the Investigator was higher than <i>"the balance of probability"</i>.</p> <p>There is no corroborative evidence to support that Officers Walker; Duncan & Graf used force on inmate [REDACTED] during an incident at Lithgow Correctional Centre on 19 February 2014.</p> <p>Despite this, there are concerns regarding the standard of reporting and the failure to utilise a video camera. The practice that at Lithgow <i>"they only video searches after they find contraband/drugs in the cells"</i> is flawed and should be addressed urgently.</p> <p>Despite anomalies in the officers reports, [e.g. Officer Graf says <i>he</i> removed inmate [REDACTED] whereas Officer Duncan says he <i>and</i> Officer Graf removed inmate [REDACTED] and based on each officers version of events the impracticality of the time frame [i.e. that if Officer Duncan and Officer Graf removed inmate [REDACTED] and therefore saw and heard nothing, how did inmate [REDACTED] manage to leap from the bunk past Officer Walker?] only succeeding in <i>"muddying the waters"</i> the fact remains that there is no evidence available to refute the Officers assertion that they did not assault inmate [REDACTED]</p> <p>In reviewing the investigation, of greatest concern is that <i>if</i> the issues regarding this incident were not raised by the ICAC, it is highly probable that it would not have come to light under CSNSW processes. This is despite the incident being reviewed locally at the time.</p> <p>This and the failures highlighted in Paragraph 3 only serve to heighten suspicion that something nefarious occurred in cell 208 on 19 February 2014.</p>
Michael Hovey Director – CSNSW Investigations 20 March 2015



Justice

CSNSW Investigations Branch
Po Box 125 Matraville NSW 2036
Tel 02 8346 8100 | Fax 02 8346 8112
www.correctiveservices.nsw.gov.au

CSNSW INVESTIGATIONS

Date: March 2015

IIS Case No: 14/0227

Formal Investigation Report

Use of Force on inmate [REDACTED] MIN [REDACTED]
failed to use a video recorder when conducting a
search, made a false report in his officer report.

Correctional Officer Elliott Duncan, S/N 1004065.

Author: Principal Investigator John P Glasheen

*** CAVEAT ***

This document and the information contained herein has been classified Protected under Section 7.3.1 of the NSW Police and Justice Information Security Policy. The contents of this document (and the attachments) must not be disseminated, reproduced or referred to, either wholly or in part, by a third party. This document has been prepared by CSNSW Investigations Branch for use by authorised persons, agencies and/or organisations only. Unauthorised possession, storage, use, viewing, duplication or distribution of this document and/or any of its contents, by any means whatsoever, is strictly prohibited.

CSNSW Investigations Branch | PO BOX 125 Matraville NSW 2036 | Tel (02) 8346 8100 |
Fax (02) 8346 8112 | www.correctiveservices.nsw.gov.au

**CSNSW INVESTIGATIONS****IIS Case No: 14/0227 – DUNCAN**

Mr Michael Hovey
Director
CSNSW Investigations

Allegations of misconduct made against Correctional Officer (CO) Elliott Duncan regarding the Use of Force on inmate [REDACTED] MIN [REDACTED] at Lithgow Correctional Centre (CC) on the 19 February 2014.

Introduction

1. CO Elliott Duncan is an Immediate Action Team (IAT) officer who is attached to the Lithgow CC. Officer Duncan has been attached to that centre since August 2006. Officer Duncan joined CSNSW in May 2005¹.
2. On the 19 February 2014 Officer Duncan was rostered for duty with two other officers on IAT duties at the Lithgow CC². IAT duties at the Lithgow CC consist of responding to any serious incidents in the centre, requested tasks by the General Manager (GM), Manager of Security (MOS), Senior Assistant Superintendents' (SAS) or intelligence briefings to be followed up concerning inmates and the searching of cells for contraband.
3. On the morning of the 19 February 2014, Senior Correctional Officer Walker, the senior IAT officer on duty that day spoke with Intelligence Officer Assistant Superintendent (AS) McMurtrie regarding information he had received from an informant that an inmate named [REDACTED] MIN [REDACTED] in Cell 208, 5.1 Unit had a large quantity of suboxone in his cell.
4. SCO Walker was briefed by AS McMurtrie and he received instructions from AS McMurtrie which were directed to him by the A/MOS Stephen Taylor. Instructions from the A/MOS were for his IAT team to undertake a thorough search of Cell 208 by the IAT on duty which was occupied by inmate [REDACTED] and try and locate the alleged drugs. SCO Walker then briefed Officer Duncan and the other IAT officer on what he was told.
5. Officer Duncan with the other two IAT officers proceeded that morning to go to Cell 208 which housed inmate [REDACTED] MIN [REDACTED] and another inmate [REDACTED]

¹ Copy of the Employee Transfer History.

² Copy of the roster for Lithgow CC on the 19/2/2014.

MIN [REDACTED] It is alleged that the three officers went to 5.1 Unit and the cell door to Cell 208 was opened.

6. It is further alleged that SCO Walker then spoke to the two inmates through the inner grill door who were both lying on their cell bunk beds. As SCO Walker and the other two officers entered Cell 208, Officer Duncan and the other IAT officer took inmate [REDACTED] from the top bunk and removed him from the cell and placed him outside the cell.
7. It is alleged that inmate [REDACTED] who was on the bottom bunk jumped up from his bunk and appeared to throw an object towards a toilet at the rear of the cell. It is alleged that SCO Walker observed this and he then noticed that inmate [REDACTED] trip on a plastic chair and fall towards the toilet and his body came into contact with the toilet bowl and then the ground.
8. Inmate [REDACTED] was then removed from the cell by SCO [REDACTED] and placed in handcuffs. Both inmates were then taken to Cell 203 whilst the officers conducted a search of Cell 208. No drugs were found in the cell. Officer Duncan and the other officers then continued on with their daily duties. This search was not photographed or video recorded.
9. Later that morning inmate [REDACTED] complained that he had soreness to his ribs, eye and mouth and was later seen by the Justice Health nurse for treatment. He was later taken to Lithgow Base Hospital for x-rays to his rib area³.
10. The 48 Hour Incident/Injury Form was completed together with the Inmate Assault/Injury Form and Use of Force Forms⁴. An officer report was completed by Officer Duncan together with other reports submitted by the other IAT officers who were present during the search. IRM No: 92719 were submitted by the senior IAT officer⁵.
11. The alleged Use of Force was later reviewed by A/MOS Taylor on the 20 February 2014 and submitted to the GM O'Shea for his information and attention.
12. On the 20 February 2014 inmate [REDACTED] phoned his father and complained that the 'squad' who searched his cell on the 19 February 2014 had flogged him⁶. He also mentioned in this telephone call to his father that the 'Governor' came up to his cell door and said to him, "You talking to me [REDACTED] cunt?" and then the squad came in and flogged him.
13. He further made threats against officers attached to Lithgow CC and stated that he had a gaol made weapon in his cell. Further threats were made by the father to identify officers when they left the centre.

³ Copy of the IRM submitted by SAS Turton regarding inmate [REDACTED] taken to Lithgow Hospital.

⁴ Copy of the 48 Hour Incident Form and Assault/Injury Form.

⁵ Copy of the reports submitted by Officers Walker, Duncan and Graf with IRM 92719.

⁶ Copy of the disc containing the telephone call to his father on 20/2/14

Copy of the disc of the recorded search of Cell 208 on 20/2/14.

14. As a result of this monitored telephone call by Intelligence Officer AS McMurtrie, he informed the General Manager and a further search was conducted of inmate [REDACTED] cell on the 20 February 2014 to locate the alleged weapon. Officer Duncan was not part of the search party on the 20 February 2014.
15. During the search a small amount of a white substance was found in a puffer located in Cell 208 occupied by inmate [REDACTED] and [REDACTED] Inmate [REDACTED] admitted ownership of the puffer and its contents. No weapon was found and this search was video recorded (**See Attachment 6**).

Subject Officer

Name: Elliott Ogden Duncan
Rank: First Class Correctional Officer
Serial No: 1004065

Allegations/Issues

- i. That on the 19 February 2014, during a targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, assaulted inmate [REDACTED] (MIN [REDACTED] contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates.
- ii. That on the 19 February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates.
- iii. Made a false report on the Incident Reporting Module relating to the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC on the 19 February 2014, contrary to the requirements of section 13.1 of the Custodial Corrections Operations Procedures Manual, Serious Incident Reporting.

Investigation

16. On the 4 March 2015 GM O'Shea, Lithgow CC was seen and a statement taken off him regarding the search of inmate [REDACTED] cell on the 19 February 2014⁷. In his statement GM O'Shea remembers that he was rostered on duty on the 19 February 2014 and that the centre was in lock down due to searches being conducted of the cells at the centre⁸.

⁷ Copy of the statement by General Manager John O'Shea on the 4/3/2015.

⁸ Copy of the roster for the 19/2/2014 at Lithgow CC.

17. GM O'Shea was given a copy of the recorded conversation between inmate [REDACTED] and his father on the 19 February 2014. GM O'Shea admitted to attending 5.1 Unit at the centre where he could hear inmates being verbally abusive towards staff and he told them over the knock-up system to settle down as staff were busy and would attend their needs as soon as possible.
18. GM O'Shea categorically denies being verbally abusive towards inmate [REDACTED] as claimed in the telephone conversation with his father and did not instruct any officer to physically abuse or assault inmate [REDACTED].
19. GM O'Shea reviewed the Use of Force package submitted by the officers, which included the officer reports from Officers Walker, Duncan, Graf and McMurtrie. Also contained in the package were the 48 Hour Incident Form, Justice Health Incident/Assault Form and Inmate Assault Questionnaire Form and IRM submitted by SCO Walker⁹.
20. On the 4 March 2015 a statement was obtained from AS McMurtrie, Intelligence Officer at the Lithgow CC¹⁰. In his statement AS McMurtrie states that he submitted a report to the General Manager on the 19 February 2014 regarding information he had received from an informant that inmate [REDACTED] in Cell 208 at 5.1 Unit had a large quantity of drugs in his cell¹¹.
21. AS McMurtrie documented this information on an Intelligence Report together with other information he had heard on a phone intercept (OTS) between inmate [REDACTED] and his father on the 20 February 2014. In this call inmate [REDACTED] complained that the 'squad' had assaulted him when they searched his cell on the 19 February 2014¹².
22. Further threats are made on the telephone calls inmate [REDACTED] made to his father stating that he had a gaol made weapon in his cell and to find out who the officers are so that his father can wait outside the gaol and confront them. This information was passed on to the Manager of Security and the General Manager for their information and attention.
23. On the 25 February 2014 contact was made with Senior Assistant Superintendent (SAS) Turton requesting a statement regarding his knowledge of the incident involving inmate [REDACTED] on the 19 February 2014.
24. On the 4 March 2015 SAS Turton was spoken to at Lithgow CC where a draft statement was signed by him. SAS Turton was rostered for duty on the 19 February 2014 in Sector 2 at 8am.

⁹ Copy of the Reports and Forms submitted to GM O'Shea re the Use of Force on inmate [REDACTED]

¹⁰ Copy of the statement obtained from AS McMurtrie on the 4/3/2015.

¹¹ Copy of the report submitted by AS McMurtrie to the GM on the 19/2/2014.

¹² Copy of the Intelligence Reports submitted by AS McMurtrie regarding inmate [REDACTED]

25. In his statement SAS Turton acknowledges that he supervised the 48 Hour Incident/Injury Notification Form and the Inmate Assault Questionnaire Form for inmate [REDACTED] on that day as part of his duties. He confirmed that his signature appears on both those forms¹³ and was not involved in the Use of Force on inmate [REDACTED]
26. On the 5 March 2015 a statement was obtained from A/MOS Taylor regarding his knowledge of the Use of Force on inmate [REDACTED] on the 19 February 2014¹⁴.
27. In his statement A/MOS Taylor states that according to the Lithgow roster for the 19 February 2014 he was the A/MOS that day. A/MOS Taylor was shown the 48 Hour Incident Notification Form together with the other documents, including officer reports he reviewed as the Use of Force package prepared regarding the search of inmate [REDACTED] cell. A/MOS Taylor agreed that he reviewed the Use of Force and accepted the content of the reports and other documentation submitted with the package. A/MOS Taylor after his review gave the documents to the General Manager for his attention¹⁵.
28. The CSNSW Investigation Branch received a letter dated 27 January 2015 from A/Assistant Commissioner Custodial Corrections, Ms Marilyn Wright an appointment to conduct an investigation into three allegations of alleged misconduct against Officer Duncan regarding the incident with inmate [REDACTED] on the 19 February 2014 at Lithgow CC¹⁶.
29. Copies of Instruments addressed to Officer Duncan also dated the 27 January 2014 were also received at the Investigations Branch alleging that he may have engaged in misconduct¹⁷.
30. On the 17 February 2015 contact was made with Officer Duncan by email advising him that Senior Investigations Officer Glasheen had carriage of this investigation and offering him an interview concerning the three alleged allegations of misconduct¹⁸.
31. Contact was made with Officer Duncan on the 18 February 2015 where he agreed to be interviewed at the Lithgow CC on the 24 February 2015. This was confirmed in an email sent to GM O'Shea on the 18 February 2015¹⁹.
32. Officer Duncan was sent a letter confirming the time and date of the interview, a copy of his report, copy of IRM 92719, Options for Interview and relevant sections of the Government Sector Employment Act & Rules²⁰.

¹³ Copy of the statement obtained from SAS Turton and the Incident/Assault Forms.

¹⁴ Copy of the statement obtained from A/MOS Stephen Taylor on the 5/3/2015.

¹⁵ Copy of the Use of Force package reviewed by A/MOS Stephen Taylor.

¹⁶ Copy of the instruments sent to Director Hovey dated 27/1/2015 regarding Officer Duncan.

¹⁷ Copy of the instruments sent to Officer Duncan dated 27/1/2015.

¹⁸ Email sent to Officer Duncan by Investigator Glasheen offering him an interview.

¹⁹ Copy of the email sent to GM O'Shea with attachments on the 18/2/2015.

²⁰ Copy of the letter and attachments sent to Officer on the 18/2/2015.

33. On the 24 February 2015 Officer Duncan was electronically interviewed at the Lithgow CC where he was asked a number of questions regarding the search of inmate [REDACTED] cell on the 19 February 2014 and he stated the following²¹;

Q. How long have you been employed by CSNSW?

A. 10 years in May.

Q. How long have you been employed at Lithgow CC?

A. I came here in August 2006.

Q. Were you on duty on the 19 February 2014 at Lithgow CC?

A. Yes. **(SHOWN ROSTER FOR THE 19/2/2014)**²²

Q. What duties were you performing that day?

A. According to the roster IAT 1.

Q. Can you tell me what IAT (Immediate Action Team) does?

A. Our main responsibility is to respond to any critical incident within the Centre ensuring safety.

Q. How long have you been an IAT Officer?

A. I did the training to qualify for IAT in August 2009 that is going on 6 years. I have not worked IAT the whole time.

Q. Were you performing IAT duties on the 19 February 2014 with SCO Walker and Officer Graf?

A. Yes.

Crimes (Administration of Sentences) Regulation – Submitting of reports

Q. Did you submit a report dated the 19 February 2014 regarding an incident with inmate [REDACTED] MIN [REDACTED]

A. Yes.

Q. Is that report true and correct?

A. Well, it is, yes.

Q. Is there anything that you would like to add or delete from that report?

A. Well I have just looked at the IAT 3 and it does not correspond with the roster, however that is not a big issue.

Q. I will now show you a report submitted by AS Brian McMurtrie, Intelligence Officer who states that he informed SCO Walker that a cell occupied by inmate [REDACTED] MIN [REDACTED] who allegedly had a large quantity of drugs in his cell 208, 5.1 Unit. In his report he states he informed SCO Walker of this information. Were you told by SCO Walker this information?

A. I can't recall being told anything I have no recollection of it.

²¹ Copy of the Transcript of the electronic interview with Officer Duncan on 24/2/2015.

²² Copy of the roster shown to Officer Duncan.

Q. Is that because it happened 12 months ago?

A. Yeah.

Q. So you can't tell me what SCO Walker told you that day?

A. No.

Q. In that report, if you just look at it, AS McMurtrie states that he informed SCO Walker you of this information and was given instructions from the Manager of Security. Did he tell you this?

A. I can't recall.

Q. Can you remember what time you were told this information on that day?

A. No.

Q. Now did you speak with AS McMurtrie about this intel information regarding inmate [REDACTED] [REDACTED]

A. Not that I can recall.

Q. Now just look at the roster who was the Manager of Security on the 19 February 2014?

A. According to the roster Stephen Taylor.

Q. Now did you speak with Stephen Taylor, the Manager of Security that day regarding inmate [REDACTED] [REDACTED]

A. I don't know.

Q. Is that because it is 12 months ago?

A. Yeah.

Q. Now just go to your report?

A. Yes.

Q. You have stated that at 9.30am you were called to search Cell 208 in 5.1 Unit. Is that correct?

A. Yes.

Q. You have stated in your report Cell 208 was occupied by inmates [REDACTED] and [REDACTED] Is that correct?

A. Yes.

Q. Now you further state that you entered the cell behind SCO Walker and Officer Graf. Is that correct?

A. Yes.

Q. You have also stated that you assisted Officer Graf to apprehend inmate [REDACTED] who was on the top bunk and you removed inmate [REDACTED] from the cell. Is that correct?

A. Yeah.

- Q. When you entered the cell behind SCO Walker did you see what he was doing?
A. No.
- Q. Did you see what inmate [REDACTED] was doing?
A. No.
- Q. Did you see where inmate [REDACTED] was located?
A. No.
- Q. Did you see inmate [REDACTED] jump up from his bunk when you entered the cell behind SCO Walker?
A. No.
- Q. Did you see inmate [REDACTED] throw an article towards the toilet in the cell?
A. No.
- Q. Did you see inmate [REDACTED] rush towards the toilet and trip on a plastic chair near the toilet?
A. No.
- Q. Did you see inmate [REDACTED] trip on this plastic chair and his body fall, his torso fall on the rim of the toilet?
A. No.
- Q. Was Officer Graf behind you when you entered the cell?
A. No.
- Q. Where was Officer Graf?
A. In front of me.
- Q. You have stated in your report that you observed SCO Walker placing inmate [REDACTED] in handcuffs. Is that correct?
A. Yeah.
- Q. At what stage was that?
A. That was after inmate [REDACTED] had been removed from the cell and secured.
- Q. Did you find any contraband in the cell?
A. No, don't think so.
- Q. Did you search the cell?
A. I don't think I did. I don't recall.
- Q. Now did inmate [REDACTED] complain of having sore ribs when you saw him?
A. Not to me.
- Q. Now did you notice if inmate [REDACTED] had any injuries to his body when you saw him?
A. No.

Q. Did you notice if he had an injury to his eye and lip?

A. No, I can't recall anything.

Q. Were you aware that inmate [REDACTED] was later taken to Lithgow Hospital for treatment to an injury to his torso and ribs?

A. No.

Q. You were never made aware of this?

A. I have been since, like in the last few weeks.

Recording searches on a video camera

Q. Now you were aware that there was Intel that a cell occupied by inmate [REDACTED] and another inmate were supposed to have drugs hidden in their cell. Once receiving this information why did you not take a video camera with you to video the search for this alleged contraband in the cell? Why didn't you take a video camera?

A. Because we get lots of calls to search cells, most of the time they don't come up with anything getting found and usually we just video record once we find something, once it is in situ and it's found.

Operations Procedural Manual (OPM) Section 13.9²³

Q. I will now show you a copy of OPM Section, Operations Procedural Manual at 13.9 which contains the recording and managing of video evidence?

A. Yes.

Q. The policy overview states that the policy applies whenever there is an incident or likely event that may later require investigation. *This includes video recordings of uses of force, assaults, deaths in custody, escapes, fights, fire industrial accidents and suspected drug trafficking.* In this case information was received that an inmate had possible drugs in his cell, why as the searching officer did you not take a video camera with you to record the cell search?

A. Well for one it wasn't anything getting trafficked; the drugs were reported to have been there according to what was said. Also there was back in those days probably only one video camera amongst the IAT, I don't even know if I had the video camera in my vest that day.

Q. So which IAT Officer carries the video camera?

A. It's no set person generally as long as one of them has it. Now days we've got two.

Q. I am now going to show you IRM 92719 which was submitted by SCO Walker regarding the search of the cell occupied by [REDACTED] on the 19 February 2014. Have you got that document? **(SHOWN COPY OF THE IRM)²⁴**

A. Yeah.

²³ Copy of the Operations Procedural Manual, Section 13.9.

²⁴ Copy of the IRM submitted by SCO Walker.

Q. In the IRM summary it states during an Intel based search IAT were detailed by the MOS to search 208 in 5.1 Unit with directions to specifically look for buprenorphine?

A. Yeah.

Q. Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable. Is that correct?

A. Yeah correct according to this.

Q. Now in the IRM in the detail reason it further states, Use of Force was not fully recorded?

A. That's what it says.

Q. No force anticipated. Is that correct?

A. Yeah.

Q. Now you did not submit that IRM, SCO Walker did. Is that correct?

A. That's correct.

Q. So you had no input into that IRM?

A. No.

Q. You never discussed what was going on in the IRM?

A. No.

Q. Now in the column where photos of inmates taken it states, 'Still photos as part of the standard Centre procedure'.

A. Yeah I can see that.

Q. Did you take still photographs?

A. I didn't.

Q. Did Officer Graf or SCO Walker?

A. I don't know.

Q. Do you know if photographs were taken?

A. I don't.

Q. Now can you just talk me through what you did when you attended inmate [REDACTED] Cell 208 on the 19 February 2014. You can refer to your report?

A. Yeah, I am going to have to. It states that I walked in as the third officer entering the cell and I assisted Mr Graf to apprehend inmate [REDACTED] it says he was on the top bunk. Mr Graf and I then removed [REDACTED] [REDACTED] from the cell and placed him outside Cell 208.

Q. When you went to the cell occupied by inmate [REDACTED] [REDACTED] and the other inmate did you speak to both inmates prior to entering the cell?

A. I didn't.

Q. Who spoke to them?

A. I don't know I assume Mr Walker.

Q. Now did you know inmate [REDACTED] prior to the 19 February 2014?

A. No.

Q. Where was inmate [REDACTED] situated in the cell at the time you walked into the cell through the cell door?

A. I could not say.

Photographs of Cell 208, 5.1 Unit Shown to Officer Duncan²⁵

Q. I'm now going to show you some photographs of the cell. This photo is marked 1. Is that photograph of the cell door?

A. It's a photograph of a cell door, yes.

Q. The grill door?

A. Yeah.

Q. Is the cell door open?

A. Yes, the cell door is open.

Q. Can you mark where you were standing when you walked through the door?

A. I can't mark specifically, I'm sorry I would have been standing in there somewhere.

Q. Now in photograph 2 which I have marked there is a plastic chair?

A. There is a plastic chair, yes.

Q. Can you remember if you saw the plastic chair?

A. No.

Q. Is that the same bunk that was in the cell?

A. I don't know I know the bunks have been refurbished.

Q. I've marked this photograph number 3, as you can see that's another photograph of the cell, it's a bit darker but it's got a back door which is open?

A. Yes.

Q. Can you remember if that door was open on the day?

A. I don't think it was open.

Q. Now you have stated in your report that you assisted Officer Graf to apprehend the other inmate [REDACTED] Is that correct?

A. Yes.

²⁵ Photographs of Cell 208, 5.1 Unit at Lithgow Correctional Centre.

Q. Now do you remember seeing inmate [REDACTED] jump up from the lower bunk where he was seated and appear to throw an item towards the toilet at the rear of the cell?

A. No.

Q. Did you see inmate [REDACTED] trip over a plastic chair?

A. No.

Q. Did you see him fall onto the toilet seat?

A. No. You have got to remember I was behind another two blokes.

Q. Did you see inmate [REDACTED] flush the toilet?

A. No.

Q. Did you see what SCO Walker was doing when he entered the cell?

A. No.

Q. Now how many inmates can the cell accommodate?

A. Two.

Q. Now I have been informed that inmate [REDACTED] jumped up from the bottom bunk and moved between SCO Walker trying to get to the toilet. Were you aware of this?

A. No.

Q. Were you ever told of this?

A. Oh yeah, I've been told now.

Q. Were you told prior to this day?

A. Yes.

Q. Who told you?

A. Mr Walker.

Q. When did he tell you?

A. I can't recall.

Q. Did he tell you on that day?

A. He probably did.

Q. Were you aware that inmate [REDACTED] had tripped on the plastic chair?

A. No.

Q. Were you told he had tripped on the chair?

A. Yes.

Q. Who told you that?

A. I'd assume Mr Walker again.

Injuries to [REDACTED] Incident Assault Form

- Q. I'll just show you an Incident Assault Form submitted by the NUM A Sinclair on the 19/2/2014 and injuries noted contusion left eye/check, lip, bruising to the right side of torso over ribs. Have you seen that form before?
- A. No.
- Q. Are you aware of how he received those injuries on the 19th?
- A. No.
- Q. Now according to that form these injuries would've been visible when you saw inmate [REDACTED] removed from the cell that day. Would you care to comment?
- A. No. I don't, I don't agree.
- Q. Well would you like to comment further?
- A. No.
- Q. If you say you don't agree, what don't you agree with?
- A. That is just because of what's written here is to indicate that I would've seen it. I mean these injuries could have happened after the incident or they could have taken a while to have risen. I've had plenty of facial swelling it doesn't happen instantly.

48 Hour Incident Injury Notification Form

- Q. I'll show you a 48 hour Incident Injury Notification Form and on this form which is filled out by Mr Walker, part of this form goes to the MOS and then goes to the General Manager. The inmate Assault Questionnaire which would have been filled out by the SAS Turton and there is a list of injuries that was noted on the form. Can you please look at this form and were you aware of this form?
- A. No.
- Q. Were you aware of the questionnaire filled out by Mr Turton?
- A. No.
- Q. Were you aware that inmate [REDACTED] was taken to Lithgow Hospital for assessment for injuries to his ribs?
- A. No.

Questionnaire Form submitted by SAS Turton

- Q. The questionnaire form. I'll refer you to the questions down here. Would you like to read that?
- A. Yeah, what was the cause of the injury, and answer says, no comment, that's the inmates answer.

Handheld video

- Q. Now would you agree or disagree that if a handheld video camera was used to document the search of the cell by you and the other officers that day on the 19 February 2014, everything would have been recorded on a disk as to what took place in that cell that day and provide primary evidence to support your version of what took place. Now would you agree with that?
- A. Yeah.

Allegation of bodily contact with inmate [REDACTED]

- Q. At any stage during the search of Cell 208 at 5.1 Unit on the 19 February 2014 did you come into bodily contact with inmate [REDACTED] that would have caused these injuries to that inmate?
- A. No.
- Q. At any stage during the search of Cell 208 at 5.1 Unit on the 19 February 2014 did you see Officer Walker come into bodily contact with inmate [REDACTED]
- A. No, other than handcuffing like I said in my report. If you ask me, is the same question that could have caused that harm the answer is no.
- Q. At any stage during the search of Cell 208 at 5.1 Unit on the 19 February 2014 did you see Officer Graf come into bodily contact with inmate [REDACTED]
- A. No.

Phone call made by inmate [REDACTED] to his father on the 20/2/2014

- Q. Were you aware that inmate [REDACTED] phoned his father on the 20 February 2014 to complain that he'd been assaulted by the officers who searched his cell on the 19 February 2014?
- A. Yeah.
- Q. I will shortly play that telephone call to you to be fair to you because of what was said on there. Do you understand?
- A. Yeah.

Officer Duncan's knowledge of the search of Cell 208 on the 20/2/2014

- Q. The next day, the 20 February 2014, a search took place of Cell 208, 5.1 Unit Occupied by inmate [REDACTED] and another inmate by the name of [REDACTED] Is that correct?
- A. Yeah.
- Q. Were you aware that search took place?
- A. Yeah, I think a search took place.
- Q. The 20th, the next day, who were the officers on duty?
- A. On IAT, myself, Mr Dimple and Mr Graf.
- Q. Can you remember doing a search of the cell on the 20th?

A. No.

Q. I have been informed that on the 20 February 2014, the search of Cell 208 at 5.1 Unit occupied by inmates [REDACTED] and [REDACTED] was on video. Can you remember?

A. No.

Q. So if you conducted the search on the 20th and you used a video why didn't you use a video on the 19th?

A. I don't recall conducting a search on the 20th.

1st Allegation of Alleged Misconduct - Response

Q. Now the first allegation of alleged misconduct is that you on the 19 of February 2014, during a targeted intelligence based search of Cell 208 at Lithgow Correctional Centre assaulted inmate [REDACTED] MIN [REDACTED] contrary to the requirements of Section 13.7 of the Custodial Corrections Operations Procedures Manual using Force on Inmates. What is your reply to that allegation?

A. Are they asking if I assaulted him?

Q. Yes.

A. No, I didn't assault him.

2nd Allegation of Alleged Misconduct – Response

Q. The second allegation of alleged misconduct is that you on the 19 of February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208 at Lithgow Correctional Centre contrary to the requirements of Section 13.7 of the Custodial Operations Procedure Manual using force on inmates. What is your reply to that allegation?

A. No, I didn't fail; there was no use of force to record.

3rd Allegation of Alleged Misconduct – Response

Q. The third allegation is that you made a false report on the Incident Module relating to the targeted intelligence based search of Cell 208 at Lithgow Correctional Centre on the 19 of February 2014, contrary to the requirements of Section 13.1 of the Custodial Corrections Operation Procedures Manual Serious Incident Reporting. What is your reply in relation to that allegation?

A. That I've made a false Officer Report, no.

Phone call from inmate [REDACTED] to his father played to Officer Duncan

Q. Having heard that telephone call, is there anything you would like to say in respect of that phone call, the content of the phone call?

A. That is rubbish and it did not happen.

Comments

34. It would appear and it is well documented by the Intelligence Officer AS McMurtrie that he received information that inmate [REDACTED] had contraband in the cell he shared with inmate [REDACTED]. This information was received from an informant.
35. AS McMurtrie submitted two Intelligence Reports regarding this and other information he received when monitoring telephone calls between inmate [REDACTED] and his father on the 20 February 2014.
36. The telephone call by inmate [REDACTED] to his father on the 20 February 2014 is the day after his cell was searched. He tells his father that he was flogged by the 'squad' when they searched his cell on the 19 February 2014. He further tells his father that has been locked in for two days since the search.
37. There is documentation that inmate [REDACTED] was treated for injuries to his eye, mouth and ribs on the 19 February 2014 after the search of his cell. He was later taken to the Lithgow Hospital for x-rays to his rib area.
38. Although inmate [REDACTED] had injuries to his face and rib area, these injuries could have been sustained when he allegedly tripped over the plastic chair and came in contact with the toilet bowl and concrete floor. When inmate [REDACTED] was interviewed by SAS Turton and completed the Inmate Assault/Injury Questionnaire he declined to comment on how he received these injuries.
39. Officer Duncan has denied assaulting inmate [REDACTED] on the 19 February 2014. There is no supporting evidence to support that inmate [REDACTED] was assaulted by Officer Duncan or any other officer during the search of his cell on the 19 February 2014. Inmate [REDACTED] his cell mate did not see any assault take place.
40. The senior officer on receiving information that there was a large amount of drugs in Cell 208, 5.1 Unit occupied by inmate [REDACTED] [REDACTED] should have instructed the two officers who were with him that the search of the cell would be videoed to gain evidence if contraband was found or located in the cell. In any case searches for contraband should be video recorded to negate any complaints of alleged misconduct.
41. However this was not done and Officer Duncan did state that they only video searches after they find contraband / drugs in the cells. This practise could lead to complaints being made by inmates that articles were planted in the cell by not starting the video camera when entering the cell which would alleviate that claim. *This is supported in the OPM, Section 13.9 'Recording & Managing Video Evidence'. (Attachment 23)*
42. Inmate [REDACTED] was interviewed as part of the investigation process and stated that he remembers the search of Cell 208 on the 19 February 2014²⁶. In his

²⁶ Transcript of the interview with inmate [REDACTED] [REDACTED] on 4/3/2015.

interview inmate [REDACTED] has stated that he remembers the 19 February 2014 when the squad (IAT) came to his cell.

43. Inmate [REDACTED] stated that he was bedded on the top bunk and got dragged off the bunk by officers and taken outside. He states that inmate [REDACTED] was standing near the toilet when he got dragged out of the cell. He then saw inmate [REDACTED] who was handcuffed and being dragged out of the cell.
44. Inmate [REDACTED] did not see any officer assault inmate [REDACTED] however he remembers seeing injuries later that evening to inmate [REDACTED] eye and mouth and was told by inmate [REDACTED] that the officers bashed him.

Findings

45. There is evidence that a search took place of Cell 208, 5.1 Unit on the 19 February 2014 which was occupied by inmates [REDACTED] and [REDACTED]
46. There is also evidence that a further search of that cell was undertaken on the 20 February 2014 by officers who were looking for a gaol made weapon. This is contained in the telephone calls made by inmate [REDACTED] to his father on the 20 February 2014.
47. After inmate [REDACTED] was removed from Cell 208 on the 19 February 2014, there is evidence that inmate [REDACTED] was treated for injuries to his lip, eye and ribs by the NUM nurse and was later taken to Lithgow Hospital for x-rays to his rib area.
48. Officer Duncan has denied assaulting inmate [REDACTED] when he was removed from his cell on the 19 February 2014. It is alleged that inmate [REDACTED] got up from his bunk, threw something towards the toilet, tripped on a plastic chair and fell onto the toilet bowl. This may have been how he received those injuries and cannot be discounted.
49. Inmate [REDACTED] was interviewed by police on the 30 April 2014 from the Corrective Services Investigations Unit (CSIU) and declined to provide a statement (**See Attachment 29**).
50. The roster for the 20 February 2014 has Officer Duncan on IAT duties at the Lithgow CC. The recorded video search of Cell 208 on the 20 February 2014 does not identify Officer Duncan as participating in that search.

1st Allegation - Finding

49. That on the 19 February 2014, during a targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, assaulted inmate [REDACTED] (MIN [REDACTED]) contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates. I find there is no evidence to support that Officer Duncan assaulted inmate [REDACTED]

50. Inmate [REDACTED] could have received his injuries when he fell onto the toilet. The only evidence supporting this allegation is in the telephone call he made to his father on the 20 February 2014.
51. Inmate [REDACTED] makes no comment to SAS Turton who supervised the Assault/Injury Forms that he was assaulted by the IAT officers that day.
52. Inmate [REDACTED] was interviewed by police on the 30 April 2014 and stated that he was getting legal advice and did not wish to supply a statement.

2nd Allegation – Finding

53. That on the 19 February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates. I find there is sufficient evidence to support this allegation and it is therefore substantiated.
54. There is evidence that information was received that a large quantity of drugs was in Cell 208. When receiving this information steps should have been taken to video record the search of that cell. One of the IAT officers would have had a camera and a video recorder.
55. Although Officer Duncan was only a junior officer on duty that day he should have made sure that a video recorder was used to record the event. *I refer to Commissioner's Memorandum No: 2015/15, recent decisions from the Industrial Relations Commission (IRC)*²⁷.
56. It should be noted that there was a further search of Cell 208 on the 20 February 2014 when officers received information from a phone call made by inmate [REDACTED] that he had a gaol made sharp implement weapon in his cell.
57. On the 20 February 2014 when the search was conducted by officers it was video recorded (**See Attachment 6 – Disc of the search**). It should be noted Officer Duncan was not involved in the search of Cell 208 on the 20 February 2014.
58. Officer Duncan has admitted that the policy of the centre is to only start video recording when contraband is found. This policy leaves the centre open for complaints to be made by the inmates that contraband was planted in their cell. When conducting searches for contraband all searches should be recorded when they enter the cell.

3rd Allegation – Finding

59. Made a false report on the Incident Reporting Module (IRM) relating to the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC on the 19 February 2014, contrary to the requirements of section 13.1 of the Custodial Corrections Operations Procedures Manual, Serious Incident

²⁷ Commissioner's Memorandum No: 2015/05 (Industrial Relations Commission Decisions).

Reporting. I find that there is sufficient evidence to support this allegation and it is therefore substantiated.

60. The IRM No: 92719 regarding the search of Cell 208 on the 19 February 2014 was submitted by SCO Walker, the senior officer on the search team and not Officer Duncan.
61. However his name does appear on that document and in the summary it states; *'IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet'. 'Offender offered medical attention by Justice Health at Centre Clinic'*. This is not mentioned in his report.
62. Officer Duncan has stated he did not see inmate [REDACTED] try to dispose of any article in the toilet. He has further stated that he only became aware of that when SCO Walker told him. Officer Duncan was unaware how inmate [REDACTED] received his injuries. Although in the IRM summary it states that inmate was offered medical attention by Justice Health at the Centre Clinic. Surely Officer Duncan was aware that an IRM was submitted by SCO Walker which contained that information.
63. Although this allegation refers to OPM 13.1 Serious Incident Reporting, it states at 13.1.1; *'The submission of an IRM report does not remove the obligation of personnel to write Incident Reports and complete other documentation as stipulated in each of the policies in CSNSW Operational Procedures Manual'*.
64. 13.1.2 Mandatory Reporting of Incidents states; *'Although an on-line IRM report may have been entered, other manual reports still have to be written by the personnel involved in the incident and then submitted to the general manager before ceasing duty'*. Officer Duncan would have been aware that reports were submitted by the other officers.
65. There is the fact that inmate [REDACTED] had injuries, which were later treated by the Justice Health nurse and he was later conveyed to the Lithgow to Hospital. There is also the fact that this was a targeted search and was not photographed or videoed.

Recommendations

66. That this report and documents be forwarded to the decision maker for their information and attention.

John P Glasheen
Senior Investigations Officer
CSNSW Investigations
18 March 2014

List of Attachments

1. Copy of the employee payroll history.
Copy of SCO Walker's shift schedule from 9/2/2015 to 8/3/2015.
2. Copy of the Lithgow CC roster for the 19/2/2014.
3. Copy of the IRM No: 92718 submitted by SAS Phillip Turton.
4. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED]
5. Copy of the report submitted by SCO Terry Walker on 19/2/2014.
Copy of the IRM No: 92719 submitted by SCO Terry Walker.
6. Disc of the Use of Force on inmate [REDACTED] at Lithgow CC on 20/2/2014.
Disc of the two phone calls made by [REDACTED] to his father on 20/2/2014.
Disc of photos taken of Cell 208, 5.1 Unit at Lithgow CC on 24/2/2015.
7. Statement of General Manager John O'Shea on the 4/3/2015.
8. Copy of the roster for Lithgow CC for the 19/2/2014.
9. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED]
Copy of the Inmate Assault/Injury Questionnaire.
Copy of the Use of Force Coversheet/Summary Forms.
Copy of the Justice Health Incident/Assault Form.
Copy of the report submitted by AS Brian McMurtrie.
Copy of the report submitted by SCO Walker.
Copy of the report submitted by Officer Graf.
Copy of the report submitted by Officer Duncan.
Copy of the IRM submitted by SCO Walker.
10. Statement of AS Brian McMurtrie dated 4/3/2015.
Copy of the roster for Lithgow CC for the 19/2/2014.
11. Copy of the report submitted by AS McMurtrie on the 19/2/2014.
12. Copy of Intelligence Report (IR) 14-0366 submitted by AS McMurtrie.
Copy of employee schedule for AS McMurtrie from 27/2/15 to 26/3/15.
13. Report submitted by SAS Phillip Turton on the 4/3/2015.
Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED]
Copy of the Inmate Assault/Injury Questionnaire.
Copy of the roster for Lithgow CC for the 19/2/2014.
14. Report by A/MOS Stephen Taylor dated 5/3/2015.

15. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED]
Copy of the Inmate Assault/Injury Questionnaire.
Copy of the Use of Force Coversheet/Summary Forms.
Copy of the Justice Health Incident/Assault Form.
Copy of the report submitted by AS Brian McMurtrie.
Copy of the report submitted by SCO Walker.
Copy of the report submitted by Officer Graf.
Copy of the report submitted by Officer Duncan.
Copy of the IRM submitted by SCO Walker.
Copy of the roster for Lithgow CC for the 19/2/2014.
16. Letter dated 27/1/2015 to Mr Michael Hovey to conduct an investigation.
17. Letter dated 27/1/2015 to SCO Terry Walker with three counts alleged misconduct.
18. Email from Investigator John Glasheen to SCO Terry Walker on the 17/2/2014.
19. Email from Investigator John Glasheen to SCO Terry Walker dated 18/2/2015.
20. Letter to SCO Terry Walker dated the 18/2/2015.
Copy of the Options for Interview.
Copy of the Government Sector Employment Act (Section 69).
Copy of the Government Sector Employment Rules (Part 8, Sect 38).
Copy of the Record of Interview Guidelines.
Copy of SCO Terry Walker's report.
Copy of the IRM submitted by SCO Walker.
21. Copy of the transcript of the electronic interview with SCO Walker on the 20/2/2015.
Copy of the notes taken by Investigator Glasheen on the 20/2/2015.
22. Copy of the roster for Lithgow CC for the 19/2/2014.
23. Operations Procedures Manual, Section 13.9 Recording & Managing Video Evidence. Section 13.1 Serious Incident Reporting.
24. Copy of the IRM No: 92719 submitted by SCO Walker on 19/2/2014.
25. Five (5) photos of Cell 208, 5.1 Unit at Lithgow CC.
26. Transcript of the electronic statement made by inmate [REDACTED] on the 4/3/2015 at Lithgow CC.
Copy of inmate [REDACTED] profile.
27. Copy of Commissioner's Memorandum No: 2015/05.
28. Copy of inmate profile for [REDACTED] MIN [REDACTED]

29. Copy of the notebook statement taken by Detective Sergeant Roberts from inmate [REDACTED] at Parklea CC on the 30/4/2014.
30. Copy of the roster for the 20 February 2014.
31. Copy of the response letter dated 2/5/2014 by Mr Michael Hovey, Director of Investigations (CSNSW) to the ICAC letter, reference E14/0472.
Copy of the ICAC letter dated 8/4/2014 sent to Commissioner Severin regarding inmate [REDACTED]