



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

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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 Simon Graf, S/N 1004651.

Author: Principal Investigator John P Glasheen

*** CAVEAT ***

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

Mr Michael Hovey
Director
CSNSW Investigations

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

Introduction

1. CO Simon Graf is an Immediate Action Team (IAT) officer who is attached to the Lithgow CC. Officer Graf has been attached to that centre since June 2006. Officer Duncan joined CSNSW in December 2005¹.
2. On the 19 February 2014 Officer Graf 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) Mc Murtrie 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 Graf and the other IAT officer on what he was told.

¹ Copy of the Employee Transfer History.

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

5. Officer Graf with the other two IAT officers proceeded that morning to go to Cell 208 which housed inmate [REDACTED] MIN [REDACTED] and another inmate [REDACTED] 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 Graf 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 Graf 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 Graf 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.

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.

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.
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 Graf 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: Simon Graf
Rank: First Class Correctional Officer
Serial No: 1004651

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

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

on the 19 February 2014 and that the centre was in lock down due to searches being conducted of the cells at the centre⁸.

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 (MOS) 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.

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

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]

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.
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 Graf regarding the incident with inmate [REDACTED] on the 19 February 2014 at Lithgow CC¹⁶.
29. Copies of Instruments addressed to Officer Graf 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 Graf 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 Graf 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.

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 Graf.

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

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

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

32. Officer Graf 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.
33. On the 24 February 2015 Officer Graf 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. Just shy of 10 years.
- Q. How long have you been employed at Lithgow CC?
A. Roughly 4 years.
- 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. IAT 2.
- Q. Can you tell me what IAT (Immediate Action Team) does?
A. Just respond to any incidents in the Centre, do cell searches and escorts.
- Q. How long have you been an IAT Officer?
A. Maybe 7 years.
- Q. Were you performing IAT duties on the 19 February 2014 with SCO Walker and Officer Duncan?
A. Yes, I was.

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] in cell 208 at 5.1 Unit?
A. Yes.
- Q. Is that report true and correct?
A. Well, it is.
- Q. Is there anything that you would like to add or delete from that report?
A. No.

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

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

²² Copy of the roster shown to Officer Graf.

- 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. Yeah, I don't recall honestly.
- Q. Did he tell you about a search that had to be conducted?
- A. Oh, he said we were going to do a search, yes.
- Q. From memory what time of the day on Wednesday the 19 February 2014 were you told you were going to do the search?
- A. I can't be 100 per cent on that either.
- Q. In that report, if you just look at it, AS McMurtrie states that he informed SCO Walker of this information and was given instructions from the Manager of Security. Did he tell you of any instructions from the MOS?
- A. Not 100 per cent sure he said we had to go and do a cell search because we got Intel there was something, that's all I can remember.
- Q. But you can't 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]?
- A. I didn't, no.
- Q. Do you know what the instructions were from the Manager of Security?
- A. No.
- Q. Now just look at the roster who was the Manager of Security on the 19 February 2014?
- A. Stephen Taylor.
- Q. Now did you speak with Stephen Taylor, the Manager of Security that day regarding inmate [REDACTED]?
- A. I'd assume so.
- Q. So Mr Taylor was the Acting MOS that day?
- A. Yes, Manager of Security.
- Q. Now just go to your report?
- A. Yeah.
- Q. Now in your report dated the 19 February 2014 you have stated that SCO Walker entered the cell and you followed. Is that correct?
- A. Yes.

- Q. You also stated in your report that Cell 208 was occupied by inmates [REDACTED] and [REDACTED]. Is that correct?
- A. That's correct.
- Q. Now you further stated that inmate [REDACTED] jumped up from the lower bunk and moved towards the toilet. Is that correct?
- A. Yes.
- Q. Now what did inmate [REDACTED] do after that?
- A. No idea. As soon as I went in I saw [REDACTED] was on the top bunk and I just focused on him I suppose, took him out of the cell.
- Q. Where was SCO Walker when inmate [REDACTED] jumped up from the lower bunk?
- A. In front of me.
- Q. Where was Officer Duncan when this happened?
- A. Behind me.
- Q. What was Officer Duncan doing?
- A. I don't know he was behind me.
- Q. Did you see inmate [REDACTED] throw an article towards the toilet in the cell?
- A. No, I didn't.
- Q. Did you see inmate [REDACTED] rush towards the toilet and trip on a plastic chair near the toilet?
- A. I just saw him jump off the bed in that direction and then I focused on [REDACTED]
- Q. Now did you see inmate [REDACTED] trip on the plastic chair and his body, his torso fall on the rim of the toilet?
- A. I didn't see that, no.

Photographs of Cell 208, 5.1 Unit at Lithgow CC

- Q. I will show you some photographs in relation to the cell in question, this is cell 208. These photographs were taken on Friday (202/2015)?
- A. Yes.
- Q. So where were you standing?
- A. There in the doorway.
- Q. Where was Officer Duncan?
- A. Behind me.
- Q. Where was SCO Walker?
- A. Well there in front somewhere.

- Q. Where was inmate [REDACTED]
A. [REDACTED] was on the bottom bunk somewhere.
- Q. [REDACTED]
A. [REDACTED] was up top.
- Q. Now these are other photographs of Cell 208?
A. Yeah.
- Q. In this photograph there is a plastic chair. Was the chair there?
A. I have no idea.
- Q. You didn't see the chair?
A. I honestly have no idea where the chair was.
- Q. So in this photograph it just shows you the grill door?
A. Yeah.
- Q. But I think in this photograph that door was open?
A. I'm pretty sure it was shut.
- Q. Now was Officer Duncan behind you when you entered the cell?
A. I'm pretty sure he was.
- Q. How would you describe yourself in height?
A. 6 foot in height.
- Q. SCO Walker?
A. Probably shorter.
- Q. Officer Duncan?
A. He'd be 6 foot as well.
- Q. You have stated in your report that you observed SCO Walker escorting [REDACTED] to Cell 203?
A. Yes, because I took [REDACTED] out and knelt him outside the cell, then when I went to go back in the cell they were bringing him out.
- Q. Who was bringing him out?
A. Mr Walker and Mr Duncan I believe.

Injuries to inmate [REDACTED]

- Q. Now when he was brought out did inmate [REDACTED] complain of having sore ribs when you saw him?
A. Not to me.
- Q. 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 any injury to his eye and lip?

A. Not that I recall.

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

A. Yes.

Q. Who told you?

A. No idea.

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 just usually do, they weren't aggressive that I remember, usually what we do if we are searching a cell and find something then we'll start the camera and bring the inmate back in.

Q. Well did you have a video camera with you that day?

A. I don't think I did but one of us would have, yes.

Q. Did you have a still camera with you that day?

A. One of us would have, yes.

Q. Did you take still photographs of the cell?

A. I don't think so.

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. No response.

²³ Copy of the Operations Procedural Manual, Section 13.9.

- Q. Do you want a break?
- A. No. I'm just trying to think of my answer. I suppose we do a lot of cell searches and Intel and nine out of ten turn up nothing. That's I guess why we start a recording if something is found, it's left in situ and we start recording then.
- Q. But the OPM states that you should do it?
- A. Yes.
- Q. In other words if you did do it you had video evidence of the incident?
- A. Understand.
- Q. And any complaints that are made regarding the search could be handled properly?
- A. Yes.

IRM submitted by SCO Walker on the 19/2/2014

- Q. I am now going to show you an IRM completed by SCO Walker?
- A. Yeah.
- Q. Now were you aware that SCO Walker submitted an IRM 92719 regarding the search of the cell occupied by inmate [REDACTED]?
- A. Oh, we do it after everything like that.
- Q. Can you just read the document?
- A. Yeah.
- Q. If you look at the summary it states, 'During an intel based search IAT were directed by the MOS to search Cell 208 in 5.1 Unit with direction to specifically look for Buprenorphine. Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable. Now that is contained in the IRM Report. Is that correct?
- A. Yes, that's right.
- Q. Now in the IRM in the detail reason it further states, Use of Force was not fully recorded?
- A. Yes.
- Q. No force anticipated. Is that correct?
- A. Yes.
- Q. Now in the column where photos of inmates taken it states, 'Still photos as part of the standard Centre procedure'.
- A. Yeah, it says that.
- Q. Can you tell me where the photographs are?

A. I don't know.

Q. Can you remember either yourself or Officer Duncan or SCO Walker taking photographs?

A. They could have but I didn't take any photos.

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?

A. We went to the cell door, I'm sure Mr Walker spoke to them, either one of them or both of them and then we went in and I saw [REDACTED] hop off the bottom bunk to go to the back. I took hold of [REDACTED] off the top bunk and took him outside and handcuffed him outside. I was outside for the rest.

Q. Now how long did this take?

A. A short time, probably a minute or two.

Q. Did you specifically with inmate [REDACTED]

A. No.

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

A. No.

Q. Now when you went to the cell door where was inmate [REDACTED]

A. [REDACTED] was on the bottom bunk and [REDACTED] was on the top bunk.

Q. Can you tell me what inmate [REDACTED] was doing, was he lying down or was he seated?

A. I'd say he was seated, I can't be 100 per cent sure but I think he was seated on the edge.

Q. You have stated in your report that you directed inmate [REDACTED] to get on his knees. Is that correct?

A. Yes.

Q. Is that standard procedure?

A. To kneel when outside, yeah.

Q. Where was SCO Walker when this was taking place?

A. He would have been in the back of the cell.

Q. Would he be in the back of the cell with inmate [REDACTED]

A. Yes.

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

A. No.

Photographs of Cell 208, 5.1 Unit Shown to Officer Duncan²⁴

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

A. Yes.

Q. Is Cell 208 at 5.1 a big cell?

A. No.

Q. Just approximate size?

A. Three (3) metres by maybe five (5) at a guess.

Q. How many inmates can it accommodate?

A. Two.

Q. You have indicated on the photos where you were and where the inmates were. Is that correct?

A. Yes.

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

A. No, all I saw was [REDACTED] jump off the bottom bunk stand up and go towards the back and that's all I saw.

Q. Did SCO Walker talk to you about this incident that day?

A. I don't believe so, no.

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

A. Afterwards he said that, yes.

Q. Now can you remember if the plastic chair was near the toilet when you entered the cell?

A. No idea.

Q. Now did you see inmate [REDACTED] fall on the toilet?

A. No.

Q. Did you see SCO Walker place handcuffs on inmate [REDACTED]

A. No, I wasn't in the cell.

²⁴ Photographs of Cell 208, 5.1 Unit at Lithgow Correctional Centre.

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. Yeah.

Q. Were you aware of those injuries?

A. No.

Q. Are you aware of how he received these injuries?

A. No, I wasn't in the cell.

Q. Now when inmate [REDACTED] was removed from the cell did you see any injuries on him?

A. I didn't see any, no, but I wasn't looking for them either.

Q. Now were you aware of any injuries as a result of this alleged fall onto the toilet?

A. Only when they said he was going to hospital.

Q. Now these injuries would've been visible when you saw inmate [REDACTED] removed from the cell that day. Would you care to comment?

A. They just walked him past me to another cell I had [REDACTED] outside the cell.

48 Hour Incident Injury Notification Form

Q. I'll show you a 48 hour Incident Injury Notification Form and on this form?

A. Yes.

Q. Were you aware this form was submitted?

A. No, I wasn't but they usually do.

Questionnaire Form submitted by SAS Turton – IRM submitted by SAS Turton

Q. In this form it notes that injuries to his eye during Use of Force and down her on the form it has what was the cause of the injury?

A. It says, No comment.

Q. Now there was an IRM completed by SAS Turton regarding inmate [REDACTED] being taken to hospital. Were you aware of that?

A. No.

Q. Were you aware that he was taken to Lithgow Hospital for assessment?

A. Yes.

Handheld video

- Q. Now if you would agree that if a hand held video camera was used to document the search of the cell by you and other officers that day on the 19th everything would have been recorded on a disc as to what took place and would be primary evidence to support your version of what took place. Would you agree?
- A. That is correct, yes.

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 those injuries?
- 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.
- Q. At any stage during the search of Cell 208 at 5.1 Unit on the 19 February 2014 did you see Officer Duncan 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. Yes.
- 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 Graf'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. That's correct.
- Q. I have been informed that on the 20th of February 2014 the search of Cell 208 occupied by inmates [REDACTED] and [REDACTED] was on video. Is that correct?
- A. I didn't do the search so I can't be sure whether it was videoed.

Case Notes of the search on the 19 February 2014

- Q. Now did you make a case note entry on inmate [REDACTED] case file regarding the search of his cell on the 19th?
- A. No.
- Q. Do you usually make case notes?
- A. No.
- Q. If a search is conducted of a cell and contraband is found in the cell and even if it is not found would a case note be done?
- A. I don't make a habit of doing that, no.
- Q. Do you think a case note would have been correct to do on that day?
- A. Not by me, no.
- Q. Now did you recover any contraband in Cell 208 occupied by [REDACTED] and inmate [REDACTED] on the 19th?
- A. Not that I know of, no.
- Q. Now did inmate [REDACTED] resist SCO Walker when you entered the cell that day?
- A. I don't know.
- Q. Just a general question, how many searches would you do a week regarding your duties as an IAT Officer?
- A. Oh, it varies but some weeks we can do a lot, some weeks not many, it averages out maybe five a week.
- Q. Are these videoed?
- A. Not unless something's found.
- Q. But you find the article and then you start the video?
- A. Yeah, just leave it and then we usually bring the inmate in and do it all on video and put it in the events bag in front of them.
- Q. Why would you not start the video on entering the cell?
- A. Because a search can take hours.
- Q. Is police action taken if you find contraband in the cells?
- A. I think it depends on how much then it is up to the boss.
- Q. Do you video the cell when you find it?
- A. Yes, we start as soon as we find something. I know what you are saying about planting it but it's just that way I suppose we've done it.
- Q. It just covers you for anything you find in there?
- A. Everything will be videoed from now on, everything.

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. Can I read what I've written here?

Q. You will give me a copy of that?

A. You can have it. To the best of my knowledge on this day IAT attended Cell 208 in 5.1 Unit. SCO Walker entered the cell and I followed. I retrieved the second inmate [REDACTED] [REDACTED] from then top bunk and, and escorted him from the cell. [REDACTED] refused, laid down, I lifted him on his knees and I knelt [REDACTED] down outside the cell facing the wall.

SCO Walker and First Class Duncan removed [REDACTED] from the cell and I returned [REDACTED] from floor and secured him in a cell. I did not come into contact with [REDACTED] at all my whole dealings in this incident were with inmate [REDACTED]. At no time did I assault [REDACTED] or [REDACTED] (THAT HAS BEEN READ ONTO THE RECORD).

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. A video recorder was not used it was only a cell search. It was a spontaneous event. There was no aggression displayed by [REDACTED] or [REDACTED] and no indication a use of force was likely.

IAT generally record all their cell searches. If contraband is located a video is started, the inmate brought into the cell and the item sealed in an evidence bag in front of the inmate.

Q. On that day there was no contraband found?

A. Not on that day, no.

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. I have a question first, when it says Incident Reporting Module, are you talking about the IRM or just my written report?

Q. Your report?

A. The report that I submitted was not false it was a report of what I did on this particular incident, everything was correct on it.

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

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 did not happen. I did not assault inmate [REDACTED]

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 Graf has denied assaulting inmate [REDACTED] on the 19 February 2014. There is no supporting evidence to support that inmate [REDACTED] was assaulted by Officer Graf 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] 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 Graf 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 2014²⁵. In his 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 Graf 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

²⁵ Transcript of the interview with inmate [REDACTED] on 4/3/2015.

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 Graf 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

48. 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 Graf assaulted inmate [REDACTED].
49. 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.
50. Inmate [REDACTED] makes no comment to SAS Turton who supervised the Assault/Injury Forms that he was assaulted by the IAT officers that day.
51. 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

52. 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.
53. 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.
54. Although Officer Graf 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)*²⁶.

²⁶ Commissioner's Memorandum No: 2015/05 (Industrial Relations Commission Decisions).

55. 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.
56. 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 Graf was not involved in the search of Cell 208 on the 20 February 2014.
57. Officer Graf has admitted that the policy of the centre is to only start video recording when contraband is found. This simply leaves open for complaints to be made by the inmates that contraband was planted in their cell. When conducting searches for contraband all searches should start to be recorded when they enter the cell.

3rd Allegation – Finding

58. 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 Reporting. I find that there is sufficient evidence to support this allegation and it is therefore substantiated.
59. 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 Graf.
60. 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.
61. Officer Graf 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 Graf 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 Graf was aware that an IRM was submitted by SCO Walker which contained that information.
62. 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'*.

63. 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 Graf would have been aware that reports were submitted by the other officers.
64. 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

65. 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]