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COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PATRICIA McDONALD SC
COMMISSIONER

COMPULSORY EXAMINATION

OPERATION ESTRY

Reference: Operation Estry E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 8 MARCH, 2018

AT 2.15PM

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

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

THE COMMISSIONER: This is the compulsory examination of Elliott Duncan. It's being conducted for the purposes of an investigation of an allegation or complaint of the following nature. Since February 2014, Corrective Services NSW employees have dishonestly exercised their official functions in relation to the assault of an inmate, [REDACTED] the recovery of a prohibited substance from his cell, and the related investigations. I'll take appearances.

10 MS CLIFTON: Yes, thank you, Commissioner. Clifton for the Commission.

THE COMMISSIONER: Thank you.

MR EURELL: Good afternoon, Commissioner. Eurell for Mr Duncan. E-u-r-e-l-l.

THE COMMISSIONER: And you're seeking authorisation under section 38 to appear?

20 MR EURELL: I'm seeking authorisation, yes. Is it 38? The declaration - -
-

THE COMMISSIONER: I'm sorry. I'm getting all confused.

MR EURELL: I certainly seek authorisation in any event.

THE COMMISSIONER: 33. We're going to turn to sections 38 and 112 in a minute. Have you had a chance to have a discussion with Mr Duncan?

30 MR EURELL: I have.

THE COMMISSIONER: And I would assume that he takes an objection and wishes an order to be made under section 38.

MR EURELL: He does.

40 THE COMMISSIONER: Thank you. Mr Duncan, you've had a discussion with your counsel, but I'll just go over a couple of things again. The first matter is questions of confidentiality. First I make a direction that the following persons may be present at this compulsory examination – Commission officers, including transcription staff; the witness and the witness's legal representative. Now, I propose to make a direction under section 112 of the Independent Commission Against Corruption Act. This restricts the publication of information about the compulsory examination. It will prevent those present today, other than the Commission officers, from publishing or communicating information relevant to the compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by

the Commission, and the direction can be varied or lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest, and it is a criminal offence for any person to contravene a section 112 direction.

10 So being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to the witness, any information that might enable the witness to be identified and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

20 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THIS WITNESS, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS, ANY INFORMATION THAT MIGHT ENABLE THE WITNESS TO BE IDENTIFIED AND THE FACT THAT THE WITNESS HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

30 THE COMMISSIONER: Now, the last matter is the section 38 declaration, and your counsel has informed you, I'm sure, that an oath or affirmation will be administered and you must answer all questions truthfully. But because you, through your counsel, have taken an objection, your answers can't be used against you in civil proceedings, subject to two exceptions, and in criminal or disciplinary proceedings.

40 Now, the first exception is very important. It doesn't prevent your evidence being used against you in a prosecution for an offence under the ICAC Act if you give false or misleading evidence. It's like a perjury offence.

MR DUNCAN: Yeah.

THE COMMISSIONER: So if subsequently it's discovered you have been untruthful and those proceedings are commenced – and it's a very serious offence. The penalty can be imprisonment for up to five years. Then your answers can be used against you. The second exception is for New South Wales public officials. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if

the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

Now, pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all the answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this compulsory examination are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

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

20

THE COMMISSIONER: Now, Mr Duncan, do you take an oath or an affirmation?

MR DUNCAN: An oath.

<ELLIOTT DUNCAN, sworn

[2.34pm]

THE COMMISSIONER: Thank you, Ms Clifton.

MS CLIFTON: Thank you. Mr Duncan, for the purposes of the record, could you tell us your full name?---Elliott Duncan.

And your date of birth?---[REDACTED].

10

And I understand that you are no longer with Corrective Services, that's correct?---Correct.

And you now have a role with a private employer, is that correct?---Yes, yeah.

Not a public servant any longer?---No, no.

You understand we're here to talk about events in February 2014?---Yes.

20

Yes. And in February 2014, what was your role?---An IAT officer. Immediate Action Team officer.

Yes. And that was with Corrective Services, obviously?---Oh, yes. Sorry. First class correctional officer at Lithgow Correctional Centre at that time, yeah.

And how long had you been an IAT officer?---I did the training in 2009 and on and off, worked on and off IAT until, well, past that event. Yeah.

30

And when did you leave Corrective Services?---June, early June 2017.

Thanks. Now, you just mentioned the training for IAT. Can you tell the Commissioner what the training involves?---Emergency response training. Procedural training, you know. Like, there's, there's a few more techniques that you don't get covered in your basic training. How to, you, you get taught how to deploy chemical munitions and all the, the things you need to know relevant to that. Yeah, stuff like that.

40

And do you remember how long that training was for?---Yeah, that was back when it was, I think it was five or six days. It was a live-in course back then, yeah.

A live-in course?---Yeah, yeah. It's not like that anymore.

And I understand that as a member of IAT you wear a vest that has some additional appointments on it.---Yes, yeah.

And you always have a set of handcuffs is what I understand.---Yes, yeah.

And do you have a camera that's part of the vest or is it a - - -?---No. No, we had a hand-held video camera.

And that's allocated to your IAT group, is it? Or is it - - -?---Yeah, it's to the team, as you said. Yeah, we had – at that point in time, I'm pretty sure we had one. I think there may be more now, but back then we had one, one camera.

10

I understand, and correct me if I'm wrong, there is an IAT office?---Yes.

And so the camera was kept in the office?---No, it was worn, put in a vest.

Right.---It was kept in the office, sorry. Like, after, after shift. Like, it would be left there to charge and whatnot.

But say you're rostered on for morning shift.---Yeah.

20

As you left, would one of – I understand there's three of you rostered on. ---One of the three would have the camera.

One of your three. And would there be a discussion or was there always one person allocated or how would it - - -?---No, there really wasn't, not at that point in time. It was just, a lot of the time, you know, like, we're all different sizes. Like, it can be left in one vest and, by one officer and, you know, the bigger one might have to come in and readjust everything, so he might just get a different vest. Like, there was no "This is your vest and this is yours." It was just grab whatever.

30

So the camera was always kept in the vest, and whoever put that vest on had that camera?---Yeah, pretty much, yeah.

Excellent. Thank you. Now, you understand we're investigating an allegation that a prisoner was assaulted in his cell on the 19th of February, 2014?---Yes.

40

And I understand that you have been interviewed by Corrective Services about that event. They were slightly different allegations but you gave them an interview in February 2015, on 24 February, 2015.---Yeah, yeah.

And I emailed a copy of that to you or Mr Grainger did.---Yes. Yeah.

Yes. And Mr Eurell also had a copy. Did you have a chance to read over that?---Yes.

Was there anything in that that you would like to clarify or amend for the Commission?---Yeah, there is, yeah.

Do you have a copy of it with you?---No, I don't, sorry.

All right. I have a copy - - -

THE COMMISSIONER: And hopefully you might have a copy for the Commissioner.

10 MS CLIFTON: I have a copy for the Commissioner. I have a copy for Mr Elliott. I have a copy for Mr Eurell.

MR EURELL: Thank you.

THE WITNESS: Thank you.

MS CLIFTON: I think probably the easiest thing to do is if you could take us to the pages or the bits that you'd like to amend, and then I'll see if I need to ask any further questions.---I'm on page 7 at the moment.

20 Page 7. Yes. And I'm sure you notice, but just for the purposes of the record, on the left-hand side of the page the questions are all numbered. ---Yes.

And then there's the following – so if you want to take us to the question. ---Yeah, like, I think at the start of it it's a lot of just semantics about – I don't mean to be ignorant or arrogant – but about, you know, the, what actual position I was on the roster for the day. Like, I'm not addressing that. Yeah, now, so down to question 39.

30 Yes.---Yeah. Sorry, furthermore, just to question 40.

Yes, you asked about the report you entered.---Yes, yes, no it wasn't exactly true or correct.

All right. Well perhaps to help you, do you want me to, I'll show you your report at the same time, would that help?---Yes, that would actually.

40 Your report is Exhibit 25, if the witness could be shown that and I'll have it brought up on the screen for Mr Eurell. It's page seven of our brief.--- Thank you.

So you've got Exhibit 25 which is your report dated 19 February, 2014, is that correct?---Yes.

You've taken us to page seven of your interview and said that the question 40 is that report true and correct, which refers to this report we're looking at?---Yes, yep.

And you've said that that answer wasn't entirely correct.---No.

Can you tell me what was incorrect about it?---There was an officer that was present that was left completely out of it.

Okay. What was that officer's name?---Wes, I don't know if it's Wesley but I know him as Wes Duffy.

10 Wes Duffy, all right. And what was Mr Duffy's role on that day?---I don't know what his rostered role was - - -

I'm sorry, what was his conduct that you've left out of the report?---Yes, as for my memory of this incident which, obviously it's a long time ago, I am pretty certain he entered the cell after Mr Walker. So Mr Walker, then Mr Duffy, then Mr Graf, then myself.

Okay, all right. Was there a reason why Mr Duffy wasn't included in your report on 19 February?---There would be, yes.

20 Do you know what that was?---No, all I can come up with is that he wasn't part of the team, wasn't part of the tight-knit group because obviously there was an allegation made of assault.

Well, at the time of you doing your report on 19 February, you didn't know that there was an allegation of assault did you?---I don't recall, I may have, I don't know.

Well, do you remember what day you did your report on 19th?---No.

30 Could it have been lunch time in the office?---I don't know.

All right.---I don't know what time it was I did it.

And you don't know what when the allegation was made?---No.

All right. And so you think you may have left Mr Duffy out, and I'm paraphrasing, so tell me if I've got it wrong. You might have left Mr Duffy out because the IAT was a tight-knit group.---Yes.

40 There had been an allegation made against him?---Possibly.

Possibly. And again, I'm now going to use words, tell me if I'm, I don't want to put them into your mouth, and you closed ranks?---Yes we did.

All right. Do you know what Mr Duffy did in the cell?---No, no, there's more to it than I've left out, do I need to declare?

Yes, if you would please.---So entered behind Mr Graf and removed inmate [REDACTED] with Mr Graf, this is my memory of it.

Yes, that's all I'm asking for.---So we removed him, placed him outside the cell. Once he was secured in, I don't recall him behind handcuffed or anything but he was in a position he wasn't going to get up and run around the day room or anything. I then looked back inside the cell and it looked like there was a scuffle taking place.

10 Who was the scuffle taking place with?---Well, it would have been the other inmate who I didn't know at the time, which is [REDACTED]

Yes.---The other two crash officers.

All right. So you saw Mr Walker and Mr Duffy scuffling?---Yes.

When you say scuffling were they standing or - - - ?---Yes, I think they were.

20 Was anything being said?---No, not that I can recall.

Did you hear anyone saying, "Stop resisting, stop resisting."---I don't recall, that's a common thing that is said at those points of time.

Sure. Did you hear the prisoner, Mr [REDACTED] saying, "I didn't do it, I didn't say it, it wasn't me."---I don't recall hearing that.

All right.---Yes.

30 So you saw scuffling can you, I know the cells are very small, but do you recall where they were in the cell?---I just, towards the back of the cell.

All right. You think all three were standing at that stage?---I think so.

All right.---I think so, it just looked like there was a struggle and I, I think I came in and almost just tackled everybody.

All right. ---But there's lots of incidents we go to, but unfortunately from this point in time, they're sort of blending into one.

40

No, I understand that. So from your recollection you helped Mr Graf with Mr [REDACTED] Yes, yes.

Mr [REDACTED] was, I think, placed on his knees?---Yes, he probably was placed on his knees or his stomach.

All right. Mr Graf stayed with Mr [REDACTED] I think so.

All right. You looked into the cell and saw that there was a scuffle.---Yes, it just looked like there was, I wouldn't even call it a scuffle there was a struggle, like there was people holding onto to bodies is what I remember.

Sure. Obviously your training kicks in and your workmates are - - - ?---
Yes, yes, yes.

10 So you ran in and you think, from the best of your recollection, that you tackled?---Yes, tackling not the right term to use but yeah.

Threw your weight at them?---Well, I guess I just, yes, I just - - -

What happened when you did that?---I vaguely remember us all being on the ground.

All right. So do you think your momentum and your body weight touching someone - - - ?---Yes.

20 - - - set all of this - - - ?---I think so yes, like with items on the ground and you know, whatever else I'm slipping and tripping we've all with that momentum all ended up, I think we all ended up on the ground.

All right. Just trying to get some detail, I know it's a long time ago, do you remember, and I know humans fall in an exact order, but do you remember in the order - - - ?---No.

All right. Do you remember anyone being on top of you?---No I don't, I don't remember that.

30 All right. Do you remember being on top of people or a person?---If, if I wasn't on top I might have been off to the side holding onto whoever I had hold of.

All right. What happened after you were all on the ground?---I don't know, I guess we just got up.

Do you remember you personally handcuffing Mr [REDACTED] No, I don't remember handcuffing him.

40 Do you remember witnessing Mr Walker handcuffing him?---I don't remember it now.

All right. Do you know Mr Duffy had handcuffs that day?---I don't know.

All right. It's not the ordinary course for ordinary officers if I can call them that, not IAT to have handcuffs every day is it?---It depends where they're working. So the area in which this took place being 5 Unit, so, there's two ends of 5 Unit. Both ends the officers working there, if not all of them, at

least some of them have handcuffs with them. I don't recall where we picked Wes up from, whether he was there or, I don't know, I just know he was there.

All right.

10 THE COMMISSIONER: Sorry, what was unusual about Unit 5 that the officers would have handcuffs?---Depending on what end it was so there was a segregation unit on one end and the other end, at the time, I think it was the security or state threat group inmates. So just, inmates that are troublesome and prone to violence within the system. I think that's why the program was called at that time, but it does change.

MS CLIFTON: Violent offenders is my understanding.---Yes, it's changed like, towards the end of my career I think it was called the Indi Vic the Individual Violent Offenders, so, I've - - -

20 But they were prisoners that ought not be in the main population because they were quite violent?---Yes, violent, they had done something wrong - - -

Well, everyone in gaols done something wrong.---No but I mean, like a breach of centre security or for good management.

They had breached a gaol rule rather than the law?---Yes, yes, yes.

Yes.---Also, you had inmates there on strict protection.

30 That was the segregation was it or they could also be in the other end of 5? ---They could, from time to time, also be up the other end.

Right, because the unit that Mr [REDACTED] and Mr [REDACTED] were in was the segregation cell, I understand.---No, that was the 5.1, sorry that was the STG end but that's not to say that they didn't because the cells are identical on either end so it's not to say they're not up there for segregation purposes, like the other end could have been full, I don't know at the time at the time but I can't remember but yeah, they weren't on the typical segregation end.

40 But you don't know why they were, why both those prisoners were held on that floor in that area?---No. No. No.

And so we were back with four people on the floor, is that right? Mr Walker, Mr [REDACTED] Mr Duffy and yourself?---Yes.

And I think you said you don't recall what happened next, but what is the next thing you recall?---I really don't recall much after that. Like - - -

All right. Well - - -?---On the report I can see that he was taken to cell 203.

Yes.---Which, yeah, I mean, I'm sure that must have happened but I don't, I don't remember that.

So you didn't take him or you can't recall taking him - - -?---No. I, I'm not saying I didn't. I just, I don't recall it.

And do you recall if Mr Walker took him to cell 203?---No, I don't.

And you don't recall if it was Mr Duffy?---No.

10

Do you recall what Mr Graf did with Mr [REDACTED] afterwards?---No.

And you'll see the first line of your, the narrative of your report. "I was performing my duties as Immediate Action Team 3 at about 9.30am. The IAT was called to search cell 208."---Yes.

And is that true, that you were called to search the cell?---I, well, we were called to attend cell 208.

20

And who called - - -

THE COMMISSIONER: Sorry, I didn't hear that.---We were called to attend cell 208.

MS CLIFTON: And who called you to attend?---I don't know who called. I don't know.

How did that call come through?---Oh, I couldn't, I don't know.

30

How did you know to go to that cell?---Mr Walker I think told me that's where we were going.

And did he tell you why?---No. I don't remember him telling me.

Do you recall hearing a radio call-out from Mr Taylor, Mr Stephen Taylor, to attend the cell?---Oh, I don't remember it. No, I don't remember.

And so when were you told that you were called there to search the cell?
---Would have been not long before the incident took place.

40

So you specifically remember being told that you were called there to search it prior to going there?---No, I'm not saying specifically told to search it, but I just remember we were told we're going to cell 208.

But you've recorded in your - - -?---Oh, it is recorded in there to search it, yeah.

THE COMMISSIONER: Because you could have been called for a number of reasons.---Yes.

But in your report that you prepared on the day - - -?---That's correct.

- - - you specifically said "called to search".---That's correct.

Is that your recollection today, that you were called to search the cell?---I, I don't have a recollection of it.

10

All right.---I know it sounds terrible. I understand that. But - - -

No, no, no. It's a couple of years on. I can understand that.---Yeah. Yeah.

MS CLIFTON: And we've talked about, and you've told us that you didn't include Mr Duffy.---Yes.

And you think that was because you closed ranks, that it was just going to be IAT were there - - -?---Yeah.

20

- - - and that what occurred here was what occurred. Why didn't you include what you've just told us about the entering the cell and the scuffle and the falling?---The honest answer is I would imagine I was advised not to.

And who were you advised not to?---I, I don't know. I can't - - -

THE COMMISSIONER: Can I just stop you. You started your answer with "I imagine I was told" - - -?---Yeah.

30

- - - or, sorry, "advised not to." The use of the word "imagine", is that what you're speculating occurred or do you have a recollection?---No, it's what I'm speculating.

All right.

MS CLIFTON: And why would that be the first thing that you speculate about? Why would that be, well, I was told not to put something in if it wasn't in?---Because Mr Walker didn't follow procedure.

40

And what procedure did Mr Walker not follow?---Well, didn't, he just walked straight into the cell.

And so what procedure did he breach then?---Well, there was no camera or no time for a camera to be produced, or I don't even know if we had the camera on us that day because apparently we were doing searches up in another area and left the camera there. I don't know if that's true or not.

So you've left out that you entered the cell and fell and - - -?---I've left that out.

Yes, yes. And you're saying the reason that you did that was because you think someone told you to leave it out and you - - -?---Yeah, I think so.

- - - and Mr Walker breached the policy?---Yeah, yeah. It was an arse-covering thing, obviously.

10 Well, I don't understand, though, why you needed your arse covered for entering a cell to help colleagues and falling over?---Because there was a use of force that took place that wasn't recorded.

So what was the point of doing this incident report?---Because it's just, you have to do one after any incident. You have to do a report, yeah.

So you have to do one. And when you say "incident" do you mean after a use of force?---Oh, anything. Drug find, an escape – well, that would be on the extreme end, but, yeah.

20 Sure. So what - - -?---Or a death in custody. Like, you come across a death in custody. Self-harm. Whatever.

So within this incident report, what is it that you've recorded that meant – which part of it meant you had to do an incident report?---The use of force.

Where's the use of force?---There is none. It doesn't mention it.

30 Right. So do you see the circular argument you're making?---Of course. Yeah.

You've done a report because there was a use of force - - -?---Yeah, no, I understand that.

- - - which you've now left the use of force out - - -?---Yeah.

- - - to ensure that you didn't get in trouble for a use of force.---Yeah.

40 That makes no sense.---No, no. So, yeah, we, I'm saying I, I left the use of force out as if it didn't even take place, really.

But you've done a report because there was a use of force, yes?---Yes.

Wouldn't it have been better just not to have done a report?---Possibly.

If you were trying to cover up that there was a use of force that you thought breached the rules?---Yeah, yeah. Yeah.

And so you're saying the breach of the rules was not having a camera, is that right?---That was a breach of the rules. Just a breach of general procedure, as well.

Not having the camera?---Yeah.

That's your only concern about that day?

10 THE COMMISSIONER: You also said, "And he walked into the cell."
---Yeah, he's walked straight in. Didn't give directions. To my recollection, didn't give directions prior. Didn't say, you know, "We're here to do a cell search. Move to the back of the cell." I don't remember anything like that being said.

MS CLIFTON: Did Mr Walker tell you to leave out the use of force?---I don't know. I don't know if it was Mr Walker or higher above.

20 Did Mr Walker tell you to put that you went to the cell to do a search?---I don't know.

And when you say you don't know if it was Mr Walker who told you to leave out the use of force or higher above - - -?---Yeah.

- - - who are you referring to higher above?---This is only suspicion. Mr McMurtrie, Brian McMurtrie.

Well, you said you're not, you're unsure if it was Mr Walker who told you to leave it out - - -?---Yeah.

30 - - - or Mr McMurtrie who told you to leave it out.---Yeah.

You remember someone telling you to leave it out?---No.

So you could have just decided to do it yourself?---No. I didn't decide to do it myself.

40 Someone told you to.---Someone, yeah, I, I don't remember someone saying to leave it out, but I read it now and I know how I conduct myself. I know that's what I've done. I don't know if that makes sense.

When you say you know how you conduct yourself and you know that's what you've done, do you mean you've left it out because someone's told you?---Yeah, I wouldn't have left that kind of information out on my own accord.

So you think there was some pressure applied to you not to include certain information?---Yes. Yeah.

And that included Mr Duffy being there?---Yes.

And that included that you were involved in some physical action?---Yeah, look, I, I have in, I have got no qualms in how my physical action was. Like, I don't, I didn't, I don't, I didn't breach anything. Like, I didn't do anything - - -

I'm not suggesting that running into the cell - - -?---No, no, no.

10 - - - to assist colleagues and - - -?---Yeah, yeah, no, no, no.

- - - falling over - - -?---But, yeah, the fact I've left it out entirely - - -

Yes.---Yeah.

That is of concern.---Yes. I understand that.

Have you done it to protect Mr Walker?---Yeah, probably.

20 Has there been any element of protecting Mr Graf?---No. No, well, my memory of Mr Graf is exactly what, exactly what I said, yeah.

Is there any element of trying to protect Mr Duffy?---No.

I'd like to go back to the call to search the cell. Do you remember any pressure being put on you to say that that was the reason you attended the cell?---No, no. I don't recall it.

30 All right. In terms of your usual practice, I know you've said you know how you conduct yourself, so if you left that kind of information out there would have been a reason?---Yes.

In terms of your usual practice, did you usually leave out important information?---No, no.

So this might have been quite an ethical dilemma for you at that stage?---No, I know that's contradictory.

40 You felt perfectly comfortable covering up?---Yes.

And why is that?---Because I honour mateship above anything else, above, you know, leaving something out of a report.

THE COMMISSIONER: Why do you have to report use of force within the gaol?---It's just a reportable incident, it's just part of your duties, I've never questioned it to be honest, it just has to be done.

You put mateship above that duty?---Yes.

When you say mateship, that's mateship with Mr Walker?---Yes.

The use of the term mateship usually associate with a friend, was Mr Walker a friend or - - - ?---Yes, he was a friend.

So, not just a work colleague?---No, he was a friend.

He was a friend?---Yes.

10

MS CLIFTON: So that's an unspoken internal code is it? It's not a policy - - - ?---I'm not saying it's an unspoken internal code it was probably more so how I was brought up.

All right. So you shared that with Mr Walker, can I call it a broth ship, brotherhood, too high?---You can call it what you like I guess, you know - - -

20

Would that be putting too high?---I wouldn't call it a brother ship I think that's, that's not a term I'd use.

All right. But it was mates?---Yes, we were mates.

All right.---We are mates, yes.

You're still mates?---Yes, we're still mates.

30

Did you share that mateship and that level of loyal with Mr Graf?---Yes, yes, not to the same level, but yes, he was a mate, yeah, he was a mate.

And what about Mr Duffy?---No, he wasn't a mate.

All right. So if Mr Duffy had done something wrong, if he'd been the breacher of policy would you have included it in your report?---Can't really answer that question really, can I? I don't know. I don't know.

All right. I'm just trying to see - - - ?---See the level of it.

40

- - - where this code goes, how far it goes?---Yes, I understand that, and look, I can't answer that honestly at this point in time, I don't know what I would have done.

THE COMMISSIONER: Did you know Mr Walker before you started working as a Corrective - - - ?---No, no, no.

So, your friendship with him developed when you were working together? ---Yes.

And from what you're saying, with different officers you develop different levels of friendship?---Yes, you know, the job doesn't unite you, it's not the only thing that unites you, you know, there's got to be common personal interests or views, like personality traits that clash, that don't clash, yes.

MS CLIFTON: So when you completed this report, did you discuss the contents with Mr Walker?---I would have.

Beforehand?---I don't know.

10

You don't recall?---I don't recall.

But when you say you would have, that's part of the mateship, this is what I'm going to put in my report?---Look, it was often, I know you're not supposed to, you're meant to do your reports separately and what no but quite often we will sit there and go, can you remember what the time was, just getting little nuances correct.

Sure.---We would have spoken about it.

20

All right. Did you speak about what to leave out?---No, I don't remember doing that speaking with him specifically.

All right. Sorry, I won't be a moment. So we'll go back to your interview. ---There's other points I wanted to address.

Yes, please do.---It's about the report again and what I did and did not see.

All right.---Perhaps just give me a minute to get the pages right.

30

No, that's fine.---Like on, so on this particular interview, if you go to question 58 and then you go to question 57.

So that's bottom of page nine.---Yes, sorry, bottom of page nine and bottom of page ten.

Yes, all right.---Then to the top of page 11 for the ensuing answers and whatnot.

40

All right. So question 58 is, "Now your further statement you entered behind the cell SEO Walker and Officer Graf, is that correct?"---Yes, and then he questions again on question 67 at the bottom of page ten, "Was Officer Graf behind you when you entered the cell." No I don't know if this trying to trip me up or just didn't believe my answer but that is my honest recollection.

That Mr Graf was behind you?---No, I was behind Mr Graf.

All right. Sorry, I'm not trying to trip you up.---No, no, no, I understand that, yes.

THE COMMISSIONER: When Walker, Duffy, Graf and then you.---That's my recollection.

That's your recollection?---Yes.

10 MS CLIFTON: Can I just ask you while we're here, where was [REDACTED] when you entered the cell, do you remember?---I've been trying to think of this, I have, and I'm not saying this is right, my recollection is that he was towards the front of the cell at the time we were outside the cell, to then going in the cell.

And I understand that as you approached the cell the main solid door was open but the grill door was closed?---Oh, I don't remember.

20 All right. But you could look in as you approached the cell because you just said - - - ?---I don't remember, my memory of it is that, I was on the, so if we look at where The Commissioner from you - - -

Yes. - - - ?---That wall of, my memory, sorry, it helps me to visual is.

THE COMMISSIONER: No, that's fine.

MS CLIFTON: Yes.---My memory of is that say the door was, the officers were around the door and I was on the left hand side of the door as you look at it.

30 Right.---There's a concrete wall and that there.

Okay.---Yes, that's my memory of it.

So you entered fourth.---Yes.

All right. Sorry, did you say you couldn't recall where Mr [REDACTED] was at that stage?---No, I can't really I just - oh where he was when I entered the cell?

40 Yes.---He would have been towards the back of the cell.

All right. So he was standing towards the back?---I don't know if he was standing or not, I couldn't actually see him on memory.

All right. Mr [REDACTED] who you helped Mr Graf take out.---Yes.

Do you remember where Mr [REDACTED] was?---Yes, he was on the top bunk.

All right. So the front two people obviously went towards the prisoner, towards the back.---Yes.

You and Mr Graf grabbed the person who was on the bunk?---Yes, yes.

Okay. Were they were the prisoners aggressive, were they yelling or shouting?---[REDACTED] I don't recall him being aggressive, what's the other bloke's name, [REDACTED]

10 Yes.---I don't recall like I don't think I have an honest memory of it, like a certain memory of it.

Sure. But I think said before when I asked you if you heard, "Stop resisting or it wasn't me", you don't remember either of those?---No, yeah, I'm not saying they weren't said but I don't recall it I don't.

All right. So your purpose for taking us to those two references was to say, this is the order I remember it in and Mr Duffy was there.---Yes.

20 Yes.---And also, well, hang on sorry.

No take your time.---All of that page, page 11 really, like I know at the time when I was, even page ten.

All right. Well, page ten, perhaps if I ask you some questions about it. ---Sure.

Starts off at the very top at Q59 and we've agreed that that occurred. ---Yes.

30 You assisted Officer Graf to get [REDACTED] out of the cell.---Yes.

So from there down, we start to talk about what Walker and [REDACTED] were possibly doing.---Yes.

So do you say that your answers there were not correct?---No, they are correct.

40 They are correct, good.---Yes.

So when you enter the cell behind Walker and I know you weren't directly behind, "Did you see what he was doing?" And you say, "No." "Did you see what inmate [REDACTED] [REDACTED] was doing?" And you said, "No." You know he was towards the back of the cell but you didn't see him doing anything in particular.---Yep, yep.

And then you say, "You didn't see him jump up from his bunk, you didn't see him throw an article towards the toilet."---Yes, yes.

You didn't see him trip over a plastic chair near the toilet?---(No audible reply)

Okay. You then see him fall, his torso fall on the rim of the toilet.---Yes.

So all of that's correct?---Yes.

10 Yes, great. So over on page 11 was there something you were concerned about?---Oh yeah, where it says, because I remember the previous investigator looking at me like I had two heads.

Was that the Corrective Services one?---Yes, Mr Glasheen, I don't know the other guy, I can't remember his name.

Glasheen. Was it Farrell, it's down the bottom?---I don't know, it's on the bottom here, yes.

20 You think it was Mr Glasheen looked at you oddly?---Yes, when like, so it covers on this page but I'm sure it will go over. No. Oh look, I can't find exactly where it is at the moment but he was, it was saying like did I see the injuries on - - -

Oh yes, that's down at Q73, about two thirds of the way.---And then that he was reportedly taken to hospital that night.

30 Yes.---And at the time of interview they said, "Did you know that?" And I said, "No." At that time I didn't know that and they looked at me like I was full of crap.

All right. So I think start at 73, "Did inmate complain, [REDACTED] complain of having sore ribs?" And you've said, "Not to me."---No, I didn't, I didn't hear it, I hadn't heard it.

"Did you notice if had any injuries to his body when you saw him?" And you've said, "No." And that's correct?---Yes, I don't remember any of it.

40 Did you notice if he had an injury to eye and lip?---No, I don't remember seeing an injury.

All right. Then the question at the bottom is, "Were you aware that inmate [REDACTED] [REDACTED] was later taken to Lithgow Hospital for treatment, internal injury to his torso, to his ribs?" And you've said, "No."---Yes, sorry, I missed it, it was at the bottom of that page but yeah, that was the question I was looking for and no, I wasn't aware. If I was, I forgot all about it by the time I was interviewed.

Sure. When you're saying no there, do you mean 19 February, 2014, I did not know?---Yes.

Or do you mean on 24 February, 2015?---No, yeah, when I've said no it was to back then and as you'll see further on - - -

Well, he then says you were never made aware of this.---Yes, and then the answer was, and is, "I was made aware of it leading up to the interview."

10 All right. In the last few weeks.---Yes.

So the interview is about a year and about four or five days later.---Yes.

So you almost for a year you didn't hear about?---I'm sure I would but I do not recall it, I don't remember it.

All right. Whilst we are on page 11, if we could go back to that. You'll see there, question 71, pretty much half way down.---Yes.

20 "Did you find any contraband in the cell?" And you've said, "No, don't think so."---No, I didn't find any contraband.

Yes. Well then you're asked, "Did you search the cell?" And you said, "I don't think I did, I don't recall."---No, I don't recall the cell being searched.

Do you recall now not doing it or you don't recall?---No, I recall not searching it. I'm pretty, that make it sounds like I'm absolutely confident about that answer, I don't think it was searched.

30 You don't think you searched it?---Yes.

Do you remember seeing Mr Walker search it?---No, I don't remember seeing him search it?

Do you remember seeing Mr Duffy search it?---No.

Do you remember seeing Mr Graf search it?---No.

40 All right. Was there anything else in your interview that you wanted to correct or point out?---Look, off the top of my head there's not.

All right.---I don't want to look like I'm admitting things on purposes.

No, no, that's all right. I might give you some time in a little bit to have another good look at it and just let me know. In the meantime I might tender that interview if I may.

THE COMMISSIONER: So that's the transcript of the interview between John Glassheen, Mark Farrell and Elliott Duncan contacted on 24 February, 2015 that will be Exhibit 40.

**#EXH-040: TRANSCRIPT OF RECORD OF INTERVIEW
BETWEEN CORRECTIVE SERVICES NSW AND ELLIOTT
DUNCAN HELD ON 24 FEBRUARY 2015**

10

MS CLIFTON: Thank you. All right. So I might go back and try and tease out a few more details about 19 February, 2014.--Yes.

I'm saying 2014 because I recognise that it was a long time ago. Information that Commission has gathered is that that day was a gaol lock down day and searches were occurring. Do you recall that?---I don't recall, don't know if it's a memory of that or it's because I've been told that since, if that makes sense.

20

Well, I might tell you what we know about the day and you tell me if I'm wrong or if you have a different recollection.---Yes.

The gaol's in lock down so all officers rostered on that morning attend parade at 8.00am.---Yes.

That's the usual course of action, I understand.---Yes, yes.

You're allocated your roles for the searching and, is that, doesn't seem wrong to you?---No, it doesn't seem wrong, no.

30

All right. Allocated roles, you're in IAT, Mr Walker's in IAT, Mr Graf's in IAT that day.---Okay.

That seems correct?---Yes.

There's then ordinarily a head count.---Yes, yes.

40

So the likelihood then is by the time you're off to do your allocated responsibilities of searching, we're talking about 8.30 in the morning. Does that feel right for you?---Yes, yes.

Earlier or later or?---No, like give or take thereabouts, that would be roughly right.

Yes, I'm not being precise I know sometimes things take longer and sometimes they're faster.---My only concern, a lot of time IAT's kept out of search roles, like they're more there to assist and often we don't attend morning parade because we into the, almost the middle of the gaol at that

centre, put our vests and whatnot on and sometimes we'd make it back in time to get to parade and sometimes we wouldn't.

All right. So you have no recollection of this specific parade if you're at parade or not?---No.

All right. Will you accept from that probably, searching started round 8.30?---Yes, yes.

- 10 Okay. The information we have is that IAT were part of the searching teams and you were up in 3 Unit searching.---That's vaguely familiar.

Okay, all right. I understand Mr Duffy was searching with you or in the vicinity?---Yes, I don't know.

You don't know.---No.

Do you know an officer called Michael Watson?---Yes.

- 20 And what's your relationship with Mr Watson, would you classify him as a mate?---Oh yeah.

In the same level as Mr Walker?---No.

Do you remember if Mr Michael Watson was searching with you that day? ---Now, can I just - - -

What do you want to refer to?---Yes, I, - - -

- 30 I can't see what you're pointing at.---No, sorry, I don't mean to be pointing at anything sorry. It's been brought to my attention that he was present, I'm just going to go straight to where you want to end it up, that he was present at Cell 208 I think we said it was.

Yes.---Yes, I don't remember him being there but I've been told since that he was.

And who told you that?---I don't know, I think it was Mr Graf.

- 40 Mr Graf. When did you speak to Mr Graf?---Oh, that was a long time ago.

Like after the incident or?---Oh no, probably after like that round of interviews and that's only surmising, that's guessing.

All right. You don't recall Mr Michael Watson being at the cell?---No, I don't, no.

All right. Do you recall a Mr Cameron Watson being at the cell?---No.

So the officers that you recall going to the cell were the four that we've mentioned before, Walker, Duffy, yourself and Graf?---Yes, yes.

Okay. Now, The Commission has also been told that the reason you went to that cell was there was a call out over the radio by Mr Steven Taylor?
---Okay.

10 Do you know Mr Taylor?---Yes, yes, I know Mr Taylor.

And what role was Mr Taylor in?---That day?

Yes.---His substantive rank was a senior assistant superintendent.

All right.---But I think I read somewhere that on the day he was the MOS.

Yes.---I think that's in that interview.

20 Yes.---Yes, or the Acting MOS.

He was the Acting MOS that day.---I don't remember.

But you don't recall getting a call out from him for IAT to attend that cell?
---No, I don't.

You don't actually don't recall why you went there or who told you to go?
---No.

30 I think before you said, you're assuming it was Walker because he was in charge of IAT?---Yes, it just sort of flows down.

All right. Whilst you were up on, I think it was level, Unit 3 searching in the morning - - -?---Yes.

I know you have little recollection of this but do you recall Mr McMurtrie speaking with Mr Walker?---I don't recall it.

All right.---It's not sticking in my memory.

40 No, that's fine.---It's not really something you'd commit to memory.

Yes, no, I understand. If we could go to page nine of your, I'm sorry was that Exhibit 39?

THE COMMISSIONER: 40.

MS CLIFTON: 40 Thank you. Page nine answer 56 and here we've got, "You stated that at 9.30 and this is your report, you were called to search Cell 208, is that correct."---Yes, I've said yes.

Yes.---Yes.

I mean, obviously from my questions to you it's the search, I'm wondering why you were specifically called on a lock down search down suddenly from searching to come to another cell to search.---Yes, I can't answer that.

10

You can't recall what happened?---No, well I don't, and I don't decide who gets searched and - - -

No, I understand that but presumably if you're in a particular spot doing a particular thing and suddenly you leave that spot to go somewhere to do another thing, somebody tells you something in between?---Yes, or it gets relayed to the boss and you just make your way down there.

20

Yes.---Relayed to the boss and what I meant by that was, relayed to the senior of IAT.

Mr Walker?---Yes.

So over on page 12 at Question 79, you'll see you're asked now, you were aware that there was Intel that a cell occupied by inmate [REDACTED] [REDACTED] was supposed to have drugs hidden in their cell. Do you see that?---Yes.

30

Once receiving this information, why did you not take a video camera, they're concerned about the not filming.---Yes.

Again, so you're asked there, you're aware that there was Intel that a cell was occupied by, that the cell occupied by the inmate had drugs hidden in it.---Yes.

When were you made aware that there was supposed to be drugs hidden in that cell?---I don't recall being called that at this date or point in time so I don't, I don't recall that there were drugs there or, I don't recall not being told either.

40

All right. I mean, you just didn't make that clear to the investigator and I understand hindsight's a great thing for me to comment on but, your answer there is, "Well because we get lots of calls to search cells."---I guess I was like if you read in about half way down Question 79, once you retrieved this information why did you not take a video camera. I guess I just went straight in to try and answer that and the answer for that at that point in time is spot on. We don't, we didn't always, we don't always video record like a drug find, video record it.

THE COMMISSIONER: You don't?---No. It's changed towards the end of my, the role I was in when I left the Department has changed slightly. I don't even know if that's in writing anywhere, it's just more of the bosses want you to, in the role I was in, to film a lot. This is a, excuse my French, an arse covering exercise. But yeah, no often you decide there's the drugs, you might take a still shot of it, yea.

10 Just a general question from your time and experience with Corrective Services, do you think it would be useful for all officers to have body worn cameras?---Absolutely.

MS CLIFTON: Right. When you say absolutely is that more for protection of Corrective Services or the prisoners or just everyone?---No, protection for yourselves. If you have of asked me that question at the time I had that interview I might have had a different opinion, in recent experience over the last years and a different role, yes, there are times where you respond to something or there's like something going on it would be fair easier to, I don't know how they work, flick a switch or whatever. I think they've spoken about the chest, I think they've even trialled the body worn cameras or whatever you call them.

20 Yes, I understand there's been a trialled but it's not been successful technology that they chose to trial.---Righto, yes.

All right. But you say that would be very useful.---Yes, absolutely.

Of course we then know that your version here wasn't complete if you had it.---Yes, yes.

30 All right. So what else, go back to my notes. Now we've just talked about you saying, "I don't think we did search the cell," and there's a part over on page 27 where you confirm that you don't think you searched the cell, it's page 27 answer 194. We looked earlier at where you said, "No, I don't think we searched the cell." And your recollection is there was no search. ---Yes, yes.

Do you know why there was no search if you specifically went there to search?---No, no. I don't know why.

40 No recollection whatsoever?---No.

When you got to the cell down at 208, were there any other officers present? ---I don't know and I'm trying to place what side of the unit 208 is, if you walk down the long corridor or not, I can't for the life of me remember, it would be in the same, it would have to be in the same end, you know, would mean a short walk obviously and I'd, I don't remember, I don't remember. Long story short, sorry, don't remember.

All right. Did you see Mr O'Shea on that floor in 5 Unit when you got there?---When we got there?

Yes.---I think he may have been there.

Do you remember where he was?---My memory of seeing him was in the office.

10 All right. That's the, you've got the day room and then you've got an office in the middle, is that correct?---Yeah, yeah, yeah. They're split in two day rooms.

Yes but that's not where his office was, was it?---No, no.

No. All right. Do you remember who else was there with Mr O'Shea?
---No, no.

Do you remember if Mr Peebles was there?---No, I don't remember.

20 And what about Mr Taylor?---No, I don't remember.

All right. Did you have a conversation with Mr O'Shea?---If he was there I would have.

Before you went into the cell?---I would have yeah, if he was there.

And do you say you would have because you friendly, you would have hi sir or?---He was the boss, out of respect like.

30 So when you say you would have had a conversation it would have been, "Hello sir, " or something along those lines?---Yes, something like that.

But you don't remember him directing you to go in the cell?---No, no, I don't remember.

Do you remember seeing him on the knock up system?---No, oh, I don't want to answer either to be honest, I, I don't know if I can remember that or not. As in, may be, maybe I do remember that. I know that's really vague I'm not trying to be.

40

Are you picturing in your mind may be seeing Mr O'Shea - - - ?---I'm trying to picture the cell, not the cell, the office and I don't know how, I think I was standing near, there's three doors and I think I was standing in one of the doors and in my head in can vaguely imagine Mr O'Shea sitting on the desk or standing on the desk near where the knock up system is. He must have, he may have.

All right. You think he may have been speaking - - - ?---He may have, yes.

All right. We do have a map of that unit, would that help you as you're trying to remember where people - - - ?---In my head I can imagine it.

All right. If you think it would help to see that and point out to The Commissioner where.---I can if you like.

I'll just keep asking questions and I'll see if we get to that need.---Yes.

10 So you think you might have seen Mr O'Shea on the knock up system?--- Yes, perhaps, may be.

Do you remember there being any conversation about one of the prisoner's in the cell having been on the knock up system?---I don't know, I don't remember hearing the inmate but I think O'Shea got a little bit colourful.

And when you say, a bit colourful, what - - - ?---Oh he was a colourful character.

20 Yes. So was he, was he swearing?---I don't know.

When you say a bit colourful, what do you think?--He's very jovial, his conversations were colourful whether he was being jovial or he had the shits he was very flamboyant.

Do you remember which one it was, was he jovial or had the shits when he was on the knock up system?---I really don't remember, I just, it's really vague.

30 Yes. Do you recall, do you know who he was speaking to, I know you can't see through the knock up system?---No.

Were you told afterwards?---Yeah, I don't recall being told but I'm not saying I wasn't told.

Now going back to your report.---Yes.

You said you don't recall when you filled that out.---Yes.

40 But it was, was it the 19th, that day?---I imagine it was, I don't, I really don't recall.

All right. And before you completed it, did you watch the CCTV footage from the day room?---No, no.

Have you ever seen that CCTV footage?---No, I haven't.

I won't be a moment. All right. I'll get you to hang on to Exhibit 25 because we might have to come back to that but I think - - - ?---By that you mean my report, the interview?

With your report, keep them both in the witness box with you but I'd like to show you Mr Graf's report from that day which is Exhibit 26 and page eight.---Okay. Thank you.

You read that?---Yes.

10

Good. So Mr Graf reports some similarities to you?---He's left me out of it.

Yes. Yes. So he's really closed ranks if that's what he's decided to do. ---I shouldn't laugh but yes.

So you're not mentioned there at all.---No.

20

And I know it's his report, were you part of a conversation over here why Mr Graf determined not to include you?---This is my first recollection of anything to do with this, is now.

Ever seeing Mr Graf's version?---I'm not saying I haven't seen it, but my first recollection of every seeing this, I don't have one. To me reading this now is all I've got.

I wouldn't have expected you necessarily to have seen his report.---Yes.

30

All right. So he's left you out, that's surprising. He's also left Mr Duffy out.---Yes.

If he has the same sense of mateship that you do that may explain why he's left Mr Duffy out?---Yes, yes, I can't answer that on his behalf.

No, no, I know it's what he thinks and feels. He says that he entered the cell behind Mr Walker.---Yes.

Yes. Then he says he saw [REDACTED] jump off the lower bunk and move towards the toilet from the sink. You didn't see Mr [REDACTED] - - - ?---No.

40

- - - jump off and move towards you, you just saw Mr [REDACTED] towards the back?---Yes.

Yes. All right. He orders [REDACTED] to get off and that was, that's what you witnesses, may be not him ordering him but you saw Mr Graf take Mr [REDACTED] Yes.

Did you grab a hold of Mr [REDACTED] or were you more there as a physical presence?---Oh - - -

Nothing really turns on, there's criticism involved if you touched him or not?---No look I, I don't remember exactly but I think I grabbed hold of him but I don't really know to be honest.

All right. He says there Mr Walker then escorted Mr [REDACTED] to Cell 203, does that help you?---No, it really doesn't.

10 Then that he then returned Mr [REDACTED] to the cell and there was no further incidence.---Oh yes, yep.

He also doesn't say that there was any searching of the cell.---Correct.

But he does say also that IAT attended it to search the inmates and the cell. Do you see that?---Yes, I can see that, yes.

20 All right. Did you discuss the contents of Mr Graf's report with him?---I've indicated by reading his report that probably not, sorry, sorry, I don't recall talking to him about it, no, I'm just really surprised I'm not on this.

Yes, well I'm surprised Mr Duffy's not on either of yours.---Yes, fair enough.

Did you discuss with Mr Graf that Mr Duffy would be left out of your report?---I don't recall having that conversation.

Did you have that conversation with Mr Walker?---I don't recall having that conversation.

30 Did you hear Mr Walker tell Mr Duffy, 'You don't need to do a report, you weren't here?'---No.

You said you hadn't seen Mr Graf's report before now?---Yes, well, I don't want to say I definitely hadn't seen it, I certainly don't remember reading this you know, yes, I don't remember it, I don't remember having read it.

No, that's, all right. Other than you not being there, not being part of this and obviously we've confirmed Mr Duffy ought to have been in here.---Yes.

40 Is there anything else you want to tell The Commissioner about this report, any other comment?---Other than I'm left off it?

Yes.---Yes, no, I was there. Is that what you mean?

No, no, I'm just asking now that you've read it, is there anything you want to say, that didn't happen or anything?---Obviously I can't say what Mr Graf did or did not see at the time of entering, I can't comment on that.

All right. When Mr Graf was outside with Mr [REDACTED] when you've both taken him out.---Yes.

And I believe Mr [REDACTED] was put on his knees - - -?---Yes.

- - - and held outside the door, do you remember if that was the left or the right of the door?---Strangely, I remember that, that was on the left hand side of the door.

10 All right. So the large solid door - - - ?---The reason it must have been there, the door must open out, it must swing the other way.

All right. So the large solid door would swing out to the right and be against the wall there, would it?---Yes, it must be.

All right. So Mr [REDACTED] so you could look around and look in while Mr - - - ?---Yes, yes.

20 So is it possible that Mr Graf didn't look in and didn't see the scuffle on the floor?---Oh yeah, absolutely.

MR EURELL: The witness can't be asked what another witness might have seen or not seen.

THE COMMISSIONER: I think that the way the question was phrased was more given the positions and where the door was, theoretically and on that basis I would allow it.

30 MR EURELL: Very well.

MS CLIFTON: It was on that basis because you said you had to turn your head, you had to poke your head in.---If Mr Graf's with the inmate there's a concrete wall in front of that inmate at that point if that's where he was, which I think he was. Yes, by all means, there's reasonable grounds that Mr Graf wouldn't see to the back of the cell without looking in.

Yes, there's nothing, you said you had to turn around and poke your head in.---Yes, I looked in.

40 You had to lean in, basically just in a leaning in action. Was there a reason that you leaned in to have a look?---Just, no.

I guess what I'm getting at did you hear a noise?---I don't recall hearing anything but no, you certainly, I mean, we had one inmate and he was fine, you want to see what happens with the rest, you know, if there's help required or - - -

Yes.---I don't recall anything pricking my ears.

Okay, thank you. If you hand back Mr Graf's version and I think you can hand back your version also, so that's Exhibit 25 and 26. I'm going to show you Mr Walker's IRM, I believe. Have you seen Mr Walker's report, the official IRM.---I don't remember seeing the report or the IRM.

All right.---I'm not saying I didn't but I don't recall it.

10 That's Exhibit 16, which is page 9 of our brief. And whilst the associate's doing that, I've been helpfully given a map of that floor. I've got one for the Commissioner also. And it might just help us all if you want to refer to that.---Yeah, I'd like to know where cell 203 is in relation to cell 208.

Unfortunately that's not marked on, but one of my investigators might be able to figure that out for me.---I should know. I worked there long enough.

So you'll see on the map that I've just given you - - -?---Yeah.

20 - - - up in the top right-hand corner, highlighted and handwritten in, is 208. ---Yeah.

So that's cell 208. And whilst you have that, can I just help you, get you to help us identify things? You'll see there are door-like structures opening out into the middle column.---Yeah.

And then in the very middle there, is that what everyone calls the office? ---Yes, yes, yes, yeah.

30 Yes. That little - - -?---There's, you'll see, like I said earlier, three doors. Yes.---Yeah.

And so that desk there, is that where you have a vague recollection of perhaps Mr O'Shea sitting and being on the knock-up system.---Okay. Yeah, so if you look at the door, the, the office and there's a doorway on the, the day room side where 208 is, that side.

40 Yes. So can I just, sorry, interrupt you for one - I'm just trying to get the lingo right. When you say day room, you mean that corridor-type area, do you?---Am I able to point this up? Is that going to - - -

THE COMMISSIONER: Yes.

MS CLIFTON: Yes, please do.

THE COMMISSIONER: No, that's going to help.---I don't know if, has anyone got a pen?

MS CLIFTON: Yes. I will hand you a red pen.---I've got one. Thank you. Just, just to point so my finger's not in the way.

Yes. Thank you.---So that there would be the office.

Yes.

THE COMMISSIONER: Hold on.

10 MS CLIFTON: That's that structure in the middle?---That, that structure there is the office.

THE COMMISSIONER: Yes.---I can circle it, if you like.

MS CLIFTON: Yes. That would be helpful, thank you.

THE COMMISSIONER: Why don't you put "O" for office?---I'll do that too. So there's the office, and that there is what I referred to as the day room. That there is also a day room but they're separated by the office. So
20 the day room in question that I was mentioning is this one. Can you see that, Commissioner?

Yes, thank you.---Okay.

MS CLIFTON: And I have been told that cell 203 is directly opposite 208. ---Oh, okay.

See, my memory of 208 was it was further down towards the middle of the day room. But, I mean, that doesn't mean anything, but - - -
30

And is that area called day room because the prisoners can go into there during the day?---Why it's called that, I'm not sure. But, look, in that area, well, I can vaguely remember when I first started at Lithgow that inmates in that area would have access to the day room. But I think after a few incidences, with the nature of inmates that's in that area, that day room access ceased. Not related to this. Yeah.

Just keep that map with you.---Free day room access, I mean. Like - - -

40 Yes.---Yeah.

Yes, I know what you mean. All right. So do you have Mr Walker's IRM?
---Yes.

And firstly I'd just like you to read that intel there. Sorry, under the summary.---Yes.

That little paragraph.---"During an intel-based centre search" - - -

Yes. You don't need to read it out loud.---Sorry.

I'd just like you to, no, no, I'd just like you to have a read of it and then I'll ask you some questions about it.---Do you want me to read the whole thing, ma'am?

Just that summary paragraph. Have you read that?---Oh, yeah, yeah, still going. Yeah, I've read it.

10

And is any part of Mr Walker's version of events what you witnessed?
---No. Oh, well, the bit where he trips and falls, I didn't witness that, no. I didn't witness it.

So Mr Walker says, "IAT were detailed by the MOS to search 208 in 5.1 Unit with direction to specifically look for", and I think he means buprenorphine.---It's, yeah, it's buprenorphine.

Yes.---Yeah.

20

So were you aware that you were detailed by the MOS to search that cell looking for – I'll call it bupe because it's easier.---Yeah, bupe, yeah.

Yes?---No, I don't recall that, ma'am.

No?---No. Sorry, is ma'am the right way to address you?

That will do.---Okay.

30 Anyway, you don't recall being told, "The MOS has sent us off to do that"?
---No, I don't recall.

And then I think you've already said this part is not correct. "Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable."---Yeah.

40 I think you told us before Mr Walker just ran in.---Oh, no, he didn't, I didn't say he ran in. But he just, it was sort of, for me, I just sort of remember being there and then next minute the door was open and everyone's walking in. Like, I wasn't, I know within myself I didn't feel ready. Like, I wasn't prepared for that.

Because in the ordinary course of events, prisoners would be spoken to at the grille and told to get down on their knees or be prepared for an entry. Is that - - -?---In some, in some cases, yes. There are times where you are trying to get the element of surprise. But, yeah - - -

But you don't – do you recall Mr Walker speaking to the inmates at the cell door prior to entry?---No, I don't recall it.

Do you recall anyone else speaking to them at the cell door prior to entry?
---No, I think O'Shea might have been there.

You think he was at the cell door?---Maybe.

10 And do you remember him speaking to the inmates prior to you going in?
---No. No. But I think he was there.

So you said before you thought you saw, when you first got down there you saw Mr O'Shea maybe on the knock-up system?---Yeah, he might have come out with us.

And he might have gone down to 208 with you?---Maybe.

20 Anyone else other than Mr O'Shea go down?---No, I don't remember anyone else. I, I didn't remember Watto being there, Mick Watson.

Do you call him Watto?---Yeah.

Do you ever call him Mick?---No, oh, I mean, no, I think always called him Watto.

And so then Mr Walker says, "As officers entered the cell, offender [REDACTED] ran without warning towards the back of the cell in the direction of the toilet." You didn't witness that, did you?---No, I didn't witness that.

30 "During the action, the offender tripped over cell furniture and fell heavily onto the toilet itself." Did you witness that?---No.

Could that have occurred in the time period between Mr Walker entering and you entering?---Oh, absolutely.

Mr [REDACTED] could have run to the toilet, tripped, and fallen over the toilet?
---Yeah (not transcribable) me to the window would be more than enough. That'd be, that'd be roughly the length of the cell. Probably not even.

40 Well, how far behind Mr Graf were you when you went to the cell?---Oh, I don't know. Like, no time, if you know what I mean. Like, there was no big gap, I don't recall.

Yes. Yes. Mr Walker goes on, "IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet." Did you witness Mr [REDACTED] throw anything in the toilet?---No.

Were you aware at the time that Mr [REDACTED] put something in the toilet?

---No. No.

Do you remember Mr [REDACTED] flushing the toilet?---No, I don't remember hearing a toilet flush. Don't remember not hearing it either.

Sure. Yes. "The offender was handcuffed and did not resist." Now, the "did not resist" is not something, is the opposite to what you saw.---No, that's a lot of crap. Yeah.

10 Yes. Sorry, did you just say that - - -?---Sorry, I - - -

No, no, no. Please, did you just say - - -?---I said that's a load of crap.

Load of crap. Thanks. And then Mr Walker goes on to say, "The cell was searched thoroughly, with only nuisance items being found."---Yeah, I don't recall a cell, the cell being searched.

You certainly didn't search it thoroughly.---No. I don't think I did.

20 You didn't identify any nuisance items?---No. But, I mean, it would have – I don't recall searching the cell but, I mean, it would have, usually we would have. But, yeah, I don't recall searching the cell.

THE COMMISSIONER: Sorry, you said "usually we would have".---Yeah.

Why?---Well, if you're there to search, would be there to search, or if we were there and just to go and talk to an inmate and a use of force broke out, you'd still search it afterwards because, I mean, why would they react?

30 Why would they be carrying on or what are they hiding or, you know. Is there a reason for their mood to be elevated or not elevated or – I'm coming up with a whole list of reasons, not saying specific to this, but, yeah. You know, yeah.

MS CLIFTON: Now, hoping that you can help me with what this means, Mr Walker goes on and says, "Reported as a technical use of force." Do you know what a technical use of force is?---I can give you an example. If I was to lay a hand on inmate [REDACTED] which I can't remember if I did or not, even just with him being compliant and me still placing my, grabbing a part of his body, whether it's his hands or is his arm or his leg or whatever and putting him outside, that would still be a technical use of force. That's my take on it.

40 All right. If you went to this cell, for example, to remove the prisoners and Mr Graf's got a hold of Mr [REDACTED] and just walked him out. Is that a technical use of force?---That would be a technical use of force.

And does that require an IRM?---In my mind, and I'm not saying this accurate, for my mind I think it's a grey area. So often we'll handcuff

inmates and then I believe, I think handcuffing I think is a technical use of force, even if it's just part of procedure to move an inmate from 3 Unit for example down to 5 Unit. We don't report that, we'll say throughout the day we get a segregation move but we don't report that we handcuffed the inmate. If he was compliant and all the rest of it.

10 All right. I know he says Mr Walker says here, "It was reported as a technical use of force on direction of the general manager." If we took that out, does Mr Walker's version of event, does that require a report, entering a cell, an offender running towards the toilet, tripping over furniture, falling - - - ?---That would require a report.

That requires, because they've been injured, is that why?---It was an incident, you know like, possible so, so if his version is that there was an unknown item, because it got flushed, then you should do at least do an Intel report.

20 Right. Okay. So I think you said some of Mr Walker's version is a load of crap. Is there any of Mr Walker's report that you feel comfortable with and know to be the truth and by that I just mean in the summary paragraph not the entire thing.---I, no.

Thank you.

THE COMMISSIONER: Coming back to the searching of the cell, I'm sorry did you want to add?---No, sorry Commissioner, when I say no, I don't know, I didn't see him run to the cell, to the back of the cell, you know - - -

30 MS CLIFTON: Trip and fall.---I didn't see that, so I can't say for sure whether that happened or not. I can't recall being sent there by the MOS to search. I don't know if that was fact or made up.

You know Mr Walker quite well?---Yes.

You're good friends.---Yes.

40 It's possible from your knowledge of Mr Walker he that he would lie in an IRM?

MR EURELL: I object to that. He can't be asked to speculate about whether or not it's possible that somebody lies, surely. He might be able to speak as to whether or not he's known of incidences when a person has lied in a report but about whether or not it's possible a person might do it. If he answers that question no, it takes us (not transcribable) if he answers that yes, it's entirely speculative the way it's put.

THE COMMISSIONER: Ms Clifton, I would like it rephrased as to knowledge of.

MS CLIFTON: Have you know Mr Walker to lie previously in incident or IRM reports?---No.

Have you lied previously in incident or IRM reports?---No, no, I don't think so.

10 All right. Do you know if Mr Walker lied in this particular IRM?---Well, yes, he has.

He has, thank you.

THE COMMISSIONER: Can I just ask you, with searching, if the account was correct that the inmate ran for the toilet and was able to flush something away, would that mean that it would a search of the cell subsequently would have been undertaken?---Yes, it should have been, yes. Ordinarily, you would search it, yes, regardless.

20

I know you said ordinarily a search would occur in those circumstances but just if that account is correct it would suggest the disposing of some drug or illicit.---Speculation again, you can, Mr Walker may have, or whoever called the shots, may have thought that the drugs were gone and there was no need to search the cell, they have been satisfied that it was - - -

It was a one off.---That it was flushed away and there was nothing to find but I can't answer that really if that was the case or not.

30 MS CLIFTON: Okay. If we go down a bit, you'll see that there are some columns under details and they're titled, Question and Responses Day, Time, Number, Comment.---Am I right to face this way.

Yes.---Sorry, I'm with you, on the, yes.

You can see that?---Yes.

So we've got involved parties and we've got offender number 1.---Yes.

40 We've got staff number three three, IAT officers.---Yes.

So again, Mr Walker has decided to leave Mr Duffy out of it, it looks like. ---Yes.

Then, if you go to comment, see the last comment on that page is still photos as part of standard centre procedure.---Yes.

So that indicates to me that still photographs were taken.--- Yes.

Do you recall still photographs being taken?---No.

What would still photographs be taken of ordinarily?---Ordinarily of drug find nature of the drug and where it lays in situ as to where it was found.

All right. But you don't know what those photographs were?---(No audible reply)

10 Do you recall seeing them?---No.

Just over on the page, I know we've already covered this, but just for the completeness you'll see involved parties is the last, the last lot of entries there and we've got [REDACTED] [REDACTED] and his role was subject to use of force. ---Yes.

Then we've got the last lot of entries there and we've got [REDACTED] [REDACTED] and his role was subject to use of force.---Yes.

20 Then we've got Terrence Walker, Elliott Duncan, Simon Graf and Steven Taylor and you three IAT officers are listed as searching officers.---Yes, yes.

Mr Taylor, obviously his role is entered later because he's the use of force reviewing officer.---Yes.

So again, Mr Duffy obviously is not there.---Yes.

30 Neither is Mr Watson, Mr Michael Watson.---Yes.

Is there anything else that you'd like to tell us about that particular document, anything else that occurs to you from reading it?---No, am I allowed to ask questions?

Well, you can ask a question.---You mentioned Cameron Watson.

Yes.---What was his involvement?

40 I was just asking if you remember if he was there or not.---I don't remember him being there.

You don't remember him, all right.

THE COMMISSIONER: Before we move off this document. You were asked about the terminology used, technical use of force, and you gave an example of what you thought it meant. In your training and the various procedures at the gaol, was that a term used?---It was used, on an official

capacity I'm not sure if it was ever used, but yes, I've heard it bantered around.

Between officers?---Yes.

MS CLIFTON: Just before we move off this document, do you have any idea, did you have a conversation with Mr Walker about why he lied in this IRM?---I can't recall one.

10 You don't have any idea why he lied?---No.

His lies different to your omission and to your version.---Yes, it is.

Now you were asked in your Corrective Services Interview about some Intel.---Yes.

Do you recall if you ever saw that Intel Report?---No, I don't recall ever seeing it.

20 All right. I'm going to show you that now, it's Exhibit 15 which is page four of our brief.

THE COMMISSIONER: Just before we move to that, did you wish to tender the map?

MS CLIFTON: I should tender the map, yes.

THE COMMISSIONER: Just before we forget.

30 MS CLIFTON: Thank you.

THE COMMISSIONER: Could I just have a look at it please, the map. Mr Duncan, if I describe this as just the ground floor of the gaol, is that correct?---Yeah, it's only one floor. Yeah, that's, it's all single level, that particular unit.

All right.---Oh, yeah, in, it doesn't look like (not transcribable) very busy, but the building actually looks like a big H. In the middle of the corridor between the two offices, the IAT office is above that. So - - -

40

All right.---Yeah. Oh, and there's other offices, like, opposite us. Yeah, there is, there's another level but not for inmate housing. Yeah.

The map of the ground floor of the Lithgow gaol, with cell number 208 highlighted and with additional handwriting or the letter "0" and a circle depicting the office, made by Mr Duncan - - -?---Yeah.

- - - will be Exhibit 41.

#EXH-041: MAP OF GROUND FLOOR OF THE LITHGOW JAIL WITH CELL NUMBER 208 HIGHLIGHTED AND WITH ELLIOT DUNCAN'S HANDWRITTEN LETTER 'O' DEPICTING THE OFFICE

10 MS CLIFTON: Thank you, Commissioner. And if I may just add for the purpose of the record, and so that Commission officers aren't hopelessly lost while we try and find that, our internal reference for that document is D10453042. I'm sorry, that's not really part of the hearing. I just, we'll be lost otherwise. I just want to show you the intel report regarding the purpose for attending the cell that day. And as I said, it's Exhibit 15. It's a report by Mr McMurtrie. Do you have that in your hand?---Yes.

Yes.---Yeah.

20 I just need to explain to you now, you'll see right down the bottom there is a date, Monday, 13 January, 2014. I have been advised – and I certainly accept, if you'll accept from me – this was a “save as” job, so it was an old document from 13 January that someone's done a “save as” and then typed in fresh information and forgot to update the date on the bottom.---Oh, righto.

So you'll see at the top Mr McMurtrie starts, “Today, Wednesday, 19 February.”---Yeah, yeah, I'm with you now, yeah.

30 Yes. Yes. So that's just an error by the person who saved the document into the system.---Yeah.

So you'll see there – have you seen this document before?---I, no, I don't recall ever seeing it.

Do you remember if Mr Walker ever told you that he had intel or this document?---No, I don't recall.

40 Do you recall seeing Mr Walker with this document in the IAT office?
---No, I don't recall that either.

And Mr Walker saying, “This is the reason we went into that cell”?---No. I know that didn't happen.

That didn't happen?---That sticks nothing in my memory whatsoever.

So you'll see Mr McMurtrie is reporting that “On the 19th of February, 2014, the centre was attended by SOG to assist IAT with target searches.”---Yeah.

“During the searching, numerous inmates were questioned,” and then there’s a highlighted bit. “During the informal interviews, an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] cell 208, 5.1.1 Unit. The informant was confident in the information and has previously been reliable.” And he says it’s consistent with the current drug of choice at Lithgow. Mr McMurtrie then reports that “The manager of security was informed and instructed to have this information forwarded to search teams and have [REDACTED] included in the target searches.” Mr McMurtrie says he informed the search 2IC, Mr Walker, of the information and instructions from the manager of security. See that?---Yeah.

And does any of that remind you that that is why you went to search the cells? You weren't aware of these details?---No.

No. And if we can just think about the timeline for a moment. Your report says that you went in at about 9.30 in the morning to [REDACTED] cell?---Yeah.

I can show you that if you want, but - -?---No, no. I remember it being there, yeah.

Yours and Mr Graf’s. Both say it was 9.30.---Yeah.

And we agreed that it was probably about 8.30 that searching started. ---Yeah, yeah.

So in terms of the timeline we’ve got somewhere between 8.30 and 9.30 a prisoner saying, “I want to tell you something,” to an Intel officer or a searching officer.---Yeah.

And that information receiving some credibility because the informant had previously been reliable.---Yeah.

And I am reliably told that it wasn’t Mr McMurtrie who received this information directly.---It wasn’t, did you say?

It wasn’t him who received it directly.---Yeah.

So we’ve got the information going to a Corrective Services officer.---Yeah.

That Corrective Services officer passing it to Mr McMurtrie. Mr McMurtrie satisfying himself that it was reliable. And Mr McMurtrie’s ordinary way of dealing with this information is that he checks the databases to see if [REDACTED] is violent or if there’s other intel. So he has done that this day. I know you can’t know that, but if you accept that from me.---Okay.

And Mr McMurtrie then has time to speak to the MOS, the manager of security, and get some instructions. He then has time to speak to Mr Walker

and pass on those instructions. And I think we said before you can't recall if you saw Mr McMurtrie talk to Mr Walker that morning or not.---No, I can't.

No. No recollection. And Mr Walker then has time to gather the IAT - - -? ---Yeah.

10 - - - and Mr Duffy and get down to the cell at 9.30. Does that seem like a reasonable amount of conduct to have been done between 8.30 and 9.30 in the morning?---Yeah, if you were dedicated to finding that out, absolutely, I think that's possible.

It's possible?---Yeah. I'm pretty sure Mr McMurtrie had two computers, computers or computer screens, maybe even, no, I'll say two in his office so he can look at - you know, the rest of us can only look at one thing at a time, whereas, and not things that he could look at.

Yes. Yes.---Maybe it is possible, yeah.

20 And you don't recall being told that there was a large quantity of Suboxone in a cell to search for?---No.

And were you ever advised who passed on that information.---No. Not, not that I can recall.

And you don't ever recall seeing that before?---No.

30 You can hand that back. Commissioner, for your own information and Mr Duncan's, I know Mr Duncan is hoping to head back to Newcastle tonight. I have half an hour more to go. I wondered if anyone minds sitting for longer and finishing today.---I'd, I'd be preferable for that for me, personally.

THE COMMISSIONER: Are you all right with that, Mr Eurell?

MR EURELL: Yes, Commissioner.

40 MS CLIFTON: Thank you. I only have two more documents to show you, I think, and the first will be Exhibit 18, please, which is page 5 of our brief. And this is Mr Duffy's incident report. Yes. Have you seen that report, before?---Yes.

You have?---Yeah.

And when did you see it previously?---I have no idea on the time or the date. I just remember where it was.

And where was it?---Change room, Lithgow Correctional Centre. Officers' change rooms.

And who showed it to you?---Wes Duffy did.

And what did Mr Duffy do or say when he showed it to you?---"This is my report."

10 And did he say why he was showing it to you?---He wanted, layman's terms, his words, you know, "To show I'm not a dog," or something along those lines. "This is the report I tendered but it never got submitted." As in he submitted it. It went away. Or, you know, words to that effect.

And did he tell you why he felt he needed to point out to you he wasn't a dog?---No, he didn't.

20 Were there rumours at the time that he was a dog?---Oh, if, I don't recall any but he must have felt, must have, he must have heard something or he, I don't know.

And you and Mr Duffy weren't as close as you and Mr Walker, is that correct?---No, no.

Would you consider Mr Duffy a friend?---At one point in time. Not that there'd been a falling out or anything but just, yeah.

Sure. And at the time that he showed you this, were you friendly?---No. No, not especially.

30 No.---What, you know, not not friendly but not, you know what I mean.

And as you're reading it, I saw you go, "Huh." You looked a little bit surprised about a portion of it.---Oh, sorry, no not surprised. Just - - -

What was your reaction?---Pleasantly surprised that my memory was somewhat accurate.

40 Right. And that's the last paragraph of his narrative that you're saying - - -?
---Just that we all ended up on the ground.

THE COMMISSIONER: He has you tripping over something. Do you recall doing that?---No, I don't remember tripping. No, I don't remember not tripping. I just, yeah, there's, yeah.

MS CLIFTON: Now, is it possible when all of you fell and it sounds like [REDACTED] may have ended up at least underneath one officer - - -?---Yeah.

- - - that that's when he sustained some injuries?---Oh, look, yeah, of course.

Yes.---Of course that could, he could have been injured from that.

Yes. How tall are you?---Roughly six foot.

Yes. And around that time – I don't mean to be rude. I'm a short person so everyone tall and big to me.---I haven't shrunk.

10 How much you weighed around that time?---Oh, look, I always float somewhere back then power-lifting, probably around about 119 kilos, 120 kilos.

And Mr Walker, how tall or - - -?---Oh, I think he'd be very similar in height to me if not maybe a tiny bit shorter.

And is he a similar build or - - -?---No, he's fat.

He's fat. And Mr Duffy, is he - - -?---He's short.

20 He's short. All right. And what kind of build would he be?---You'd say he'd have a stocky build.

So the three of you falling on a, an - - -?---Yeah, there'd be, oh, yeah, it'd be, you know, like, 200 to, between 200 and 300 kilos, I guess, combined.

Yes. And do you remember Mr [REDACTED] at all?---No.

30 So, now Mr Duffy, he says that he was conducting searching duties on 3 Wing and that he was attached to IAT for the purpose of searching.---Okay.

You don't recall that?---No.

But you don't say that's not true?---No, I'm not saying it's not true. But, yeah, I don't, I don't recall it either way.

Yes. Yes. And then he says that it was about 10.30am, there was a call for IAT to attend. He says it's 5.2 but he goes on later to say 5.1. So one of those, I think, might be a typo.---Oh, yeah.

40 Oh, no, sorry. He says he later finds out it was 5.1, I think.---Yeah. Yeah, yeah, yeah.

Anyway, he says there was a radio call and you all responded. So IAT and he immediately responded. He entered 5.1 Unit through the day room and that's, that's that corridor area, I think, that we talked about.---No - - -

Or is that - - -?---I, I can only, I don't know this for certain but if I was to say that myself, I entered through the day room. I would say, I haven't got the picture in front of me.

All right. Could the witness just be handed back the map, please.

THE COMMISSIONER: Exhibit 41.---Thank you. So what that would mean to me is that we entered through this door here.

10 MS CLIFTON: Right.---Oh - - -

From the outside corridor?---Look, it could mean that you went in, yeah, you could go in through there, I guess. But, no, I, I would take that as going in that way. But I'm not saying that was, I don't remember that happening or not happening.

THE COMMISSIONER: Can I just ask you, while you've got Exhibit 41, is 3 Wing depicted?---No. No, no, no.

20 It's - - -?---A separate area.

Right.---Yes.

MS CLIFTON: And Mr Duffy records, and again I should point out there's also an odd date on this one. You'll see it's dated 7th of the 12th, 2016. ---Yeah.

30 And my understanding of this date is that it's one of those automatic fields that when you print the document the date automatically updates.---Yes, yeah.

But you'll see he's recording something that occurred on the 19th of February, and I accept, I've been told and I accept that this was completed either on the 19th or the 20th.---Okay.

So pretty close to the day. So that date of 2016 is a bit misleading.---Yeah.

40 So back to his narrative. First paragraph, midway through, you'll see, "Entered the day room with IAT." And he says that in the office he sees Mr O'Shea and Mr Peebles.---Yeah.

And that "Mr O'Shea directed us to cell 208 and asked us to remove the inmate."---Yeah.

Do you recall any of that?---I, I have no recollection of Mr Peebles being there. Obviously not to say that he wasn't. I just, I don't remember it.

Sure. But you remember Mr O'Shea. We've talked about that.---Yeah, vague memory of Mr O'Shea being there, yeah.

Well, you'll see here that Mr Duffy's recollection is that you were, you went there not to search the cell but to remove the inmate.---Yeah, I don't, don't recall.

No recollection either way?---No.

10 And he's got you entering the cell pretty much in the right order. He says, "Mr Walker goes in. Mr Duffy is directly behind him."---Yeah.

Now, tell me if you witnessed any of this. Mr Duffy says that, "[REDACTED] backed up to the rear of the cell and raised his hands as though to strike Officer Walker." Did you see that?---Didn't witness it.

Pardon?---No, I didn't witness that.

20 You didn't witness it. "Officer Walker retaliated with a strike to the side of [REDACTED] head."---I didn't witness that.

Mr Duffy says he then "reached low and applied a figure-four leg lock to [REDACTED] leg in an attempt to take him to the ground and to apply handcuffs".---Whilst I'll say I don't recall him trying to apply a specific lock, like, I do remember there being a struggle, like, yeah - - -

Sure.---Yeah.

30 So when you looked around the corner and entered, you saw there was a struggle?---Yeah, looked like they were trying to get him to the ground or - - -

You don't know whether that was at the time of the leg lock or - - -?---No.

But there was a struggle. All right.---Mind you, I don't know exactly what a figure-four leg lock looks like.

40 No, I can't help you there either. And so he says, "[REDACTED] continued to struggle." Now it's obviously at that point just a struggle, full stop. We could insert there, if he saw it, "Mr Duncan looked into the cell."---Yeah, yeah.

And you then entered to assist.---Yeah.

And then that paragraph there, does that accord with your recollection, that you entered to assist?---Yeah, look, my, like, like I said, my recollection is, is vague. But, yeah, I, like, I, I faintly remember falling, like, all of us being on the ground.

Sure.---Yeah, so that's consistent with what I remembered. Faintly.

And you all fell. At that point [REDACTED] had three officers on top of him and could struggle no more. He's restrained and handcuffed and moved to the opposite cell, the cell opposite 208, which we've identified as 203. --Yeah.

And he says he then left, washed up and returned to searching. And so again, he doesn't recall searching the office.---Yeah.

10

But for some reason he's left Mr Graf out of - - -?---Yeah, I, I noticed that.

But you're content – other than you don't think you tripped on the edge of the bed, you thought it was more a, you're going to try and restrain.---No, by no means am I saying I didn't trip.

Sure.---But I'm not saying, yeah, I don't remember tripping. I don't remember not tripping. I just remember being on the ground.

20

But other than that detail, whether you tripped or whether you did a controlled tackle - - -?---Yeah, yeah. Got the desired result.

- - - you're content, though, that is correct?---Yeah.

Are there any parts of that that you think, "That's a lie"?---No. No. Obviously he doesn't think it is. I, I can't recall the lead-up to it so I can't say he's lying or he's not.

30

But none of it strikes you as "That did not occur" rather than "I can't remember"?---Yeah. Yeah.

None of it strikes you as "No way"?---Yeah.

Great. Thank you. And Mr Duffy told you, I think, when he showed it to you, that he had submitted it but it disappeared. Is that what your words were?---Oh, look, I can't remember his wording but – and I can't remember, I wish I could remember the time frame in which he showed it to me in relation to the interview that I participated in a year later.

40

Sure.---But, yeah, obviously it never, like, it was never mentioned in the interview process, was it?

THE COMMISSIONER: Sorry, the interview that - - -?---I had in 2015.

In February 2015?---Yeah.

MS CLIFTON: Well, the result of the interviews in 2015, one of the results was that you were fined.---Yes.

Yes. And are you aware if anyone else was fined?---Yeah.

And who else?---Mr Graf and Mr Walker.

And do you know if Mr Duffy was fined?---No.

You don't know or - - -?---I, no, I - - -

10 Or you know he didn't?---No, I, well, I know he didn't unless I, I've got it wrong.

And so in the Corrective Services interview, that would have been the time to say, well, there was someone else there.---It would have been.

But at that stage you were maintaining your loyalty, if I could describe it that way.---Yeah.

20 Yes. To Mr Walker.---Oh, yeah.

And Mr Graf.---Yeah.

Yes. All right.

THE COMMISSIONER: Sorry, can I just go back to the date of your conversation with Mr Duffy. You referred to your interview in February. It was before the interview.---No, no. I was saying I wish I could remember when it was in relation to the interview.

30 So you really don't recall whether it was before or after?---No, I have no idea when it was. I just, I just remember it being in the change room at work, like, out, or, you know, outside of work.

You said that his words were, "I'm showing you this," sorry, "This is my report to show that I'm not a dog."---Yeah. I don't know if he used that terminology or not but - - -

40 That was the intention.---That was the general consensus. Sorry, like, that was the thing he was trying to portray, that he's, you know, he's trustworthy, I guess.

Was there discussion before you were interviewed that he had doxed you in or put in a - - -?---No. No, it was just more to the fact that, this is all vague, but that he'd done a report and it was never (not transcribable)

MS CLIFTON: Now, we've been given a few other versions about what occurred that day, and I just want to ask you if you witnessed any of these other things that we've been told occurred. So we were told that as Mr

Walker and all of the officers, yourself included, entered the cell, that Mr [REDACTED] backed up towards the back of the cell but had his hands palms out in a conciliatory manner. Did you see that at all?---No.

And we're being told that Mr Walker punched Mr [REDACTED] several times to the face. Did you witness that at all?---No.

10 And at that stage Mr [REDACTED] put his hands up in front of his face in a protective way to try and stop the punches.---No, I didn't see that either.

Didn't see that. Did you hear Mr [REDACTED] at any time call out that he had asthma and could not breathe?---No, I don't recall that.

Did you witness Mr [REDACTED] losing consciousness at any time?---No.

And as Mr [REDACTED] was removed from the cell, did you witness any officers deliberately banging his head against the door?---No.

20 Did you see Mr [REDACTED] head accidentally be banged against the door?
---No, I don't recall that, no.

When Mr [REDACTED] was taken across the hallway to cell 203, do you know if he was assaulted in that cell?---No. I, I don't know. I don't think so.

Did you assault Mr [REDACTED] in cell 203?---No. Oh, that's the first cell. No.

208 is the first cell.---Yeah, that, that use of force. Even there I didn't assault him. I just - - -

30 Fell on him.---Well - - -

If I can put it that way.---Yeah, there was, you know, a use of force but it wasn't a, by no means assault.

All right.---In 203, no. I don't remember even going to 203.

So 208 is the original cell that you entered and we've - - -?---Yeah.

40 Was there an assault in there?---No, not that I saw.

And you're saying you didn't assault him in 203?---Yeah. That's not to indicate that I saw him get assaulted in 203 area. Yeah.

Right. Thank you. I just want to show you the Justice Health report. You know that Mr [REDACTED] then was taken to the hospital. The Justice Health report is Exhibit 23. You can hand Mr Duffy's version back.---Did you want the map back as well?

Just hang onto it because we seem to keep coming back to it and - - -?
---Yeah.

- - - you may as well hang onto it in case we need to again.---Thank you.

And that was page 14. Good. Thank you. And you'll see there that is the Justice Health report. Surname [REDACTED] Date of presentation, 19th of February. Sent to Lithgow. And you'll see the injuries noted are "contusion to left eye/cheek/lip".---Yeah.

10

"Bruising to right-side torso over ribs".---Yeah.

Yes.---Yeah.

And can you explain how Mr [REDACTED] received those injuries. And I'm saying more what physical actions did you see that may have caused those?
---No.

20

No?---No, when I, what I remember seeing was just more of a, it's hard to describe. I just remember seeing people having hold of one another. Like, no, no striking or anything. Just having hold, like a tussle.

Sure. Yes.---Yeah.

When you all fell over together, and I think you said it could have been 200 or 300 kilos - - -?---Combined weight.

Yes. Possibly landing, some of that landing on Mr [REDACTED] Yeah.

30

According to Duffy report, Mr [REDACTED] was underneath. Could that have been how this bruising to his ribs occurred?---Oh, absolutely.

You don't remember making contact with part of him but - - -?---No.

- - - I understand it's a fast-moving thing as you'd fall.---Yeah.

Yes. And he didn't complain to you afterwards or - - -?---No.

40

- - - or clutch his ribs or anything like that?---No, I don't remember anything like that.

And did you witness any bruising around the eye, cheek or lip?---No, I don't recall ever seeing anything like that.

Or a contusion, sorry. The bruising is to – but you didn't see any injuries to the face?---No.

At any time whilst you were struggling or assisting with Mr [REDACTED] was there a time when yourself and Mr Walker had Mr [REDACTED] in the corner of the cell face first? Do you recall that at all?---No.

And do you recall Mr Taylor entering the cell at all?---No.

And did you at any stage have a conversation with Mr Peebles in which you told him you were concerned that you may have broken the ribs of Mr [REDACTED] No, I don't recall that conversation.

10

Do you remember talking to Mr Peebles and telling him that you were a bit stressed out about the investigation into the incident?---No, I don't recall that, actually. But, I mean, he was someone that I would confide in.

He was someone you'd confide in?---Oh, I would have, yeah. I respected him as a boss.

Yes, yes. Were you friendly with Mr Peebles or is there a great divide between officers - - -?---Oh, look, you'd say you were friendly but, I mean, we never met each other out of work, outside of work or anything.

20

All right.---Yeah.

Yes. And are you aware that the search, Mr [REDACTED] cell was searched the following day, on the 20th?---Yes.

Were you rostered on that day?---Yes.

And I think you were rostered on with Mr Graf, is that correct?---Yeah, I think I read that in the reports or interview.

30

I can show you the roster, but if you accept from me you were rostered on. ---Yeah, no I accept that I was there, yeah.

And I think you were the acting senior in IAT that day.---Yeah.

Was that a role that you did?---Yeah, yeah. Yeah, we often, well, like, between the regular IAT – not underlings, the one and two, like, the junior staff, if the senior wasn't there, would often rotate who acted up into the senior position.

40

Yes. So the first classes would get an opportunity to act up, yes.---Yes.

And I think that day – I do have the roster and I can show it to you if you like – but that day you're down as acting senior.---No, accept that I was. Okay.

Mr Graf was on and Mr Dippel.---Yeah.

And so you said you were aware the cell was searched.---Yeah.

How did you become aware of that.---My recollection of becoming aware of it is (not transcribable) in the interview or, and getting interviewed about it, but - - -

10 You have no independent recollection from that day?---No, I, I can vaguely remember – I didn't participate in the search. I vaguely remember Simon and I sitting in an office – either in, I can't remember if it was in 5 Unit, in the office that you would see circled, or in our own IAT office, which is in the same general area – not participating in the search.

Not participating in the search. Well, the information the Commission has been given is that Mr Kennedy was in charge of the search that day. Do you know Mr Kennedy?---Yeah, I know Mr Kennedy.

20 And Mr Kennedy specifically told yourself and Mr Graf that you could not be involved because you were involved the previous day.---Yeah. Sounds about right. But, yeah, I don't remember it, but - - -

Do you know anything about that search the next day?---No. I, I did read, I think, in the interview or somewhere that, yeah, they found a substance, but I can't tell you more than that.

Sorry, and did you fill out any reports about that search that day? I know you weren't involved.---I, I don't think so.

30 Do you know if Mr Dippel had to fill out a report?---Oh, I don't. I don't know. If I reported anything as the senior, it would have just been what duties were undertaken that day and if any finds have, you know - - -

Sure. Is that - - -?---And that's not even naming names. It's just, "Oh, you know, found a shiv in cell this one," or, you know.

Yes. So when you're acting up in the ordinary times that you're acting up - - -?---Yeah.

40 - - - if another officer did a certain thing and participated in a search, just because you're the supervisor wouldn't then require you to fill out a report. Is that - - -?---No. No, no.

You might just say, "Here's the people, what the people I supervised today did," and a very short - - -?---Yeah, well, I, I can't, like, yeah. If I wasn't even in the area I can't give a report as to what happened in there.

And do you have any information as to how or why Mr Duffy's report went missing?---No, I don't.

And I think you told us that you never watched the video footage, the day room footage.---Yeah, correct.

And do you have any information of you ever being told why Mr Walker or Mr McMurtrie told you to leave information out of your report?---No. Don't recall it.

10 And just back to the information that you decided you'd leave out of your report, you do know that there is a regulation – and it's a Crimes (Administration of Sentences) regulation – that requires you to be honest? ---Yeah.

You're aware of that?---Yeah.

Were you aware of that at the time that you breached that?---Oh - - -

MR EURELL: I object.

20 THE COMMISSIONER: Why?

MR EURELL: Because he's being asked whether or not he knew at the time the information was left out that he had breached it. It assumes that there is a breach. That hasn't been established. There's information omitted but, with respect, there's a little bit further one needs to go before one puts the proposition that requires somebody to confess a breach.

MS CLIFTON: I'm sorry, Commissioner. I'm quite sure he's admitted the breach. I would say - - -

30 THE COMMISSIONER: Were you aware that you weren't complying with that regulation at the time?---No, I, I don't remember seeing the regulation.

MS CLIFTON: But you knew you had omitted information?---I knew I had omitted information, yes.

THE COMMISSIONER: And did you know you had an obligation to include all relevant information?---No, I don't recall knowing that.

40 MS CLIFTON: I'll just hand you a copy of regulation 251.---Yeah.

And so 251, subreg 1, is that "A correctional officer must at all times be honest and truthful." And so do you accept that you breached that?---Yes.

And regulation, subregulation 2 is that a correctional officer, "(a) Must not make any statement that the officer knows or ought to reasonably know is false or misleading in a material particular."---Yeah.

And you accept that you breached that?---Yeah.

Yes, thank you. I have no further questions.

THE COMMISSIONER: We don't need to tender that?

MS CLIFTON: No, I don't think so.

10 THE COMMISSIONER: Mr Eurell, have you got any questions.

MR EURELL: No, thank you.

THE COMMISSIONER: Could you just give me a minute ?---Yes.

You spoke about your mateship with Mr Walker.---Yes.

And at the time you weren't a friend or a mate of Mr Duffy's.---Mmm

20 And was that as a result of just personality differences or different interests or - - -?---No. No, not at all. Like I said, we weren't friends. We weren't not friends. Yeah, there was no bad blood or anything like that. No, it's, it's just work acquaintances. But when you're asking me in relation to someone like Mr Walker, was I friends with him on that capacity, well, no, I wasn't.

Mr Walker?---Was I friends with Mr Duffy on the same capacity I was Mr Walker? The answer would be no.

30 You said you're still mates with Mr Walker.---Yes.

Do you still see him?---Yes.

Have you discussed the incident in February 2014 with him recently?---Yes.

When did you discuss it with him?---I couldn't tell you. Probably a couple of months ago when we realised or heard rumours of this ICAC investigation surfacing, or however long that was ago.

40 And what did you discuss with him?---Oh, I can't recall.

Did you discuss what you could recall of what occurred on that day?---No, nothing like that. I just remember saying, like, I remember saying, I don't, my memory of this whole thing is abysmal. Like, I don't, I don't recall much of it.

And did Mr Walker tell you anything about his recollection?---He told me that he delivered a palm strike to [REDACTED]

And anything else?---No.

MS CLIFTON: Yes, thank you, Commissioner. Have you spoken to Mr Walker about the fact that you'd been summonsed here today?---No.

Thank you.

THE COMMISSIONER: Anything arising, Mr Eurell.

10 MR EURELL: No.

THE COMMISSIONER: On that note, can I just remind you of the order I made under section 112 - - -?---Yeah.

- - - that you are not to tell not only the content of what has been discussed or questions and answers given, but also the fact that you've come here for the examination, with the exception of discussing it with Mr Eurell - - -?
---Yeah.

20 - - - and that it is a criminal offence if you don't comply with that direction.
---Okay.

All right. Thank you, Mr Duncan.---Thank you, Commissioner.

We stand adjourned.

MS CLIFTON: Thanks, Commissioner.

30 **THE WITNESS EXCUSED** [4.39pm]

AT 4.39PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.39pm]