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LECC

Law Enforcement
Conduct Commission

Transcript of Proceedings

Hearing: Operation Gennaker

Before the Hon M F Adams QC, Chief Commissioner

Held at Level 3, St James Centre,
Elizabeth Street, Sydney

On Wednesday, 4 December 2019 at 10.23am
(Day 3)

WITNESS INDEX

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1 MS DWYER: Chief Commissioner, the first witness for this
2 morning is Officer GEN9, and I call that officer.

3
4 MR MADDEN: Commissioner, my client will take an
5 affirmation, and in due course he will ask for
6 a declaration.

7
8 MS DWYER: While that's happening, I note another new face
9 at the Bar table.

10
11 MR AMIRADAKIS: Amiradakis, Commissioner, I appear for
12 [NAME SUPPRESSED].

13
14 THE CHIEF COMMISSIONER: That name is not to be published.
15 Where is he on the list?

16
17 MR AMIRADAKIS: Officer GEN10.

18
19 THE COMMISSIONER: Very well.

20
21 <OFFICER GEN9, affirmed: [10.25am]

22
23 THE CHIEF COMMISSIONER: Thank you. You may be seated.

24
25 Now, there are some things that I need to tell you.
26 I expect that your lawyer has already told you these
27 things, but I need to tell you them.

28
29 Firstly, you must answer every question that you are
30 asked, unless I say you don't have to. Secondly, you must
31 produce anything you are asked to produce unless, again,
32 I tell you you don't have to. You may object to answering
33 a question or object to production of anything, but you
34 must nevertheless answer the question and nevertheless
35 produce what you are asked to produce, but the effect of
36 your objection is that your answer or what you produce
37 cannot be used in any other proceedings except under the
38 Police Act, or under the Law Enforcement Conduct Commission
39 Act for either contempt of the Commission or perjury. Do
40 you understand that?

41
42 THE WITNESS: Yes.

43
44 THE CHIEF COMMISSIONER: Now, I can make a declaration,
45 which Mr Madden has asked for on your behalf, in relation
46 to treating all your answers, or all your productions, as
47 given under objection. I understand that that is the



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1 position you take?

2

3 THE WITNESS: Yes.

4

5 THE CHIEF COMMISSIONER: I declare pursuant to section 75
6 that all answers and other things given by this witness
7 will be regarded as having been given on objection.

8

9 <EXAMINATION BY MS DWYER:

10

11 MS DWYER: Q. Sir, you understand that in these
12 proceedings you are to be known by the codename GEN9?

13

14 A. Yes.

15

16 Q. In front of you, I am hoping that there is a schedule
17 of codenames with other police officers given codenames,
18 and you will see the names of three young people down the
19 bottom who also have codenames?

20

21 A. Yes.

22

23 Q. Could I ask you, please, to use those codenames
24 whenever you recall and as often as you can in response to
25 a question. Can I ask you first to confirm that your
26 current rank is senior constable?

27

28 A. That's correct.

29

30 Q. Was that your rank in February 2019?

31

32 A. Yes.

33

34 Q. You had a role on 23 February at the Lost City Music
35 Festival; correct?

36

37 A. Yes.

38

39 Q. What was your role there?

40

41 A. Drug support staff.

42

43 Q. Sorry?

44

45 A. Drug dog support staff.

46

47 Q. Were you a user-pays police officer or were you on
a rostered shift that day?

48

49 A. I was on a rostered shift.

50

51 Q. What did you understand to be your duties for the day
52 at the festival?

53

54 A. To support the drug support staff - oh, the dog,
55 sorry.

56



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1
2 Q. Did that involve searching some of the patrons once
3 there had been an indication from a drug dog?
4 A. Yes.
5
6 Q. And did you --
7
8 THE CHIEF COMMISSIONER: Q. How long have you been
9 a police officer?
10 A. Six years.
11
12 MS DWYER: Q. Had you performed that role, as the drug
13 dog support officer, at other music festivals?
14 A. Yes.
15
16 Q. Approximately how many times prior to 23 February?
17 A. To the best of my knowledge, two or three.
18
19 Q. Had any of those been underage events?
20 A. No.
21
22 Q. Had any of them been all-age events, so that there
23 would be some people under 18 there?
24 A. I believe that they were 18 or over.
25
26 Q. At any stage in your policing career prior to
27 23 February, had you had to search a child under the age
28 of 18?
29 A. I don't believe so, no.
30
31 Q. And in giving that answer, are you meaning that you
32 had not performed either a general search or a strip search
33 on a child under the age of 18?
34 A. Actually, sorry, was that - did you mean strip search
35 or a normal search?
36
37 THE CHIEF COMMISSIONER: Q. No, the first question was
38 a strip search. But you are now being asked about general
39 searches as well?
40 A. Yes, I would have conducted a general search.
41
42 MS DWYER: Q. But you had not conducted a strip search
43 on a child under the age of 18 prior to 23 February?
44 A. No.
45
46 THE CHIEF COMMISSIONER: Q. And I take it you had not
47 been present at a strip search of a child?



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1 A. No.

2

3 MS DWYER: Q. Had you received some training on the
4 LEPRO requirements when searching under-18s, either
5 stripsearching or general?

6 A. I can't remember.

7

8 Q. Do you remember receiving any training about LEPRO
9 when you were going through the academy?

10 A. Yes.

11

12 Q. And do you remember receiving any training about the
13 obligations when searching children?

14 A. I can't remember.

15

16 THE CHIEF COMMISSIONER: Q. When you went to this
17 festival, were you aware, or did you understand, that the
18 rules relating to the searching of young people - that is,
19 persons under the age of 18 - differed from those which
20 related to searching adults? Were you aware that there was
21 a difference or not?

22 A. I believe I do.

23

24 Q. Did you then is my question?

25 A. Yes, I believe so.

26

27 Q. Really? I was just wondering how long - why it took
28 you so long to answer the question?

29 A. I want to make sure I'm telling the truth, and --

30

31 Q. Yes, I understand.

32 A. -- I want to think about it before I speak, that's
33 all.

34

35 Q. I'm not being critical, I'm being curious.

36 A. Mmm.

37

38 Q. Are you sure you knew?

39 A. To the best of my knowledge, yes, I believe that
40 I knew that there was a difference.

41

42 Q. And did you know what the differences were?

43 A. I believe - I believe so.

44

45 MS DWYER: Q. So as at February 2019, what did you think
46 you would have to do if you were involved in the strip
47 search of a child under the age of 18?



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1 A. I believe that we probably have to get a support
2 person.
3
4 THE CHIEF COMMISSIONER: Q. I'm sorry?
5 A. We would have to get a support person.
6
7 MS DWYER: Q. And when you first --
8
9 THE CHIEF COMMISSIONER: Q. And how would you go about
10 that?
11 A. At that music festival?
12
13 Q. No, no; just let's talk about in principle.
14 A. In principle?
15
16 MS DWYER: Q. Just in general.
17 A. Just in general? Depends on the situation that you're
18 in.
19
20 THE CHIEF COMMISSIONER: Q. Yes. So give us some
21 examples of the kinds of things that you might need to do?
22 A. I would need to contact a parent or there's, in the
23 stations, I think - I don't know. I would probably speak
24 to a supervisor.
25
26 Q. Right. But in the field, that is a bit more
27 difficult.
28 A. Yes.
29
30 Q. I gather what you are saying - but I don't want to put
31 words in your mouth, so you take your time and I want your
32 own evidence; do you understand?
33 A. Yes.
34
35 Q. But I gather from what you are saying that you were,
36 as at February this year and, indeed, as you sit there in
37 the witness box, uncertain as to how you would go about
38 getting a support person for your search?
39 A. Sorry, Commissioner, I might have made a mistake here.
40 Is this in regards to a strip search or a general search?
41
42 Q. A strip search.
43 A. A strip search, okay. Yes, I would contact
44 a supervisor being not sure.
45
46 Q. So you would say, "I've got a 16-year-old or
47 a 17-year-old", or whatever it is, "here. I want to



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1 conduct a strip search. How do I get a support person", or
2 something like that?
3 A. Yes, I would explain the scenario that's occurred, so
4 they're aware so they can make a decision on what needs to
5 happen next, if I'm out in the field.
6
7 Q. Did you conduct any strip searches at this festival?
8 A. No. Not that I believe.
9
10 MS DWYER: Q. Did you attend a briefing before the
11 festival commenced?
12 A. Yes.
13
14 Q. If you look down at the schedule of codenames, do you
15 recognise the names of any officers who performed the
16 briefing?
17 A. Yes, I do.
18
19 Q. Who were they?
20 A. GEN6.
21
22 Q. Anyone else?
23 A. That performed the briefing?
24
25 Q. Yes, that stood up and spoke to police at the
26 briefing?
27 A. I only remember GEN6 speaking.
28
29 Q. When GEN6 spoke at the briefing, did he say anything
30 specific about stripsearching of children?
31 A. I can't remember.
32
33 Q. Do you recall getting any sort of documentation about
34 what you were to do on the day?
35 A. I don't remember.
36
37 THE CHIEF COMMISSIONER: Q. You were assisting the drug
38 detection dog team; right?
39 A. Yes.
40
41 Q. So the team would make a detection, obviously this
42 happened on a few occasions, did it not? The dog --
43 A. Sorry, can you repeat that?
44
45 Q. Okay. I will make a more general question. Were you
46 ever present when a drug dog gave an indication at the
47 festival?



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1 A. And I assisted that --
2
3 Q. Let's not worry about that. We will take it step by
4 step.
5 A. Okay.
6
7 Q. First of all, were you ever present when a drug dog
8 made a detection, indicated?
9 A. Yes.
10
11 Q. Then what happens is the dog handler just moves on,
12 but indicates to the support team that something needs to
13 happen in relation to that --
14 A. No.
15
16 Q. -- individual? What happens, then?
17 A. If a dog has made an indication, the handler will stop
18 and speak to that person. That's when the support staff
19 then go over to help the handler. And then it gets --
20
21 Q. All right. Were you ever called over to help the
22 handler at that festival?
23 A. I can't remember. I believe so.
24
25 Q. Then what did you understand - if you don't have
26 a specific recollection of what occurred, do you have
27 a specific recollection of --
28 A. I do not.
29
30 Q. All right. So what did you understand would or might
31 occur? So you've got a conversation between the dog
32 handler and the person?
33 A. Yes.
34
35 Q. Members of the team are called over?
36 A. Yes. Oh, well, they are not - sorry, they are not
37 called over. We will see the handler speaking and we'll --
38
39 Q. You will see that happen, so you go over?
40 A. And we go over to assist him.
41
42 Q. How many of them were in your particular team?
43 A. Dog handlers?
44
45 Q. No, not dog handlers, assisting?
46 A. We're normally paired up.
47



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1 Q. Paired up.
2 A. Yes.
3
4 Q. Were you paired up with someone you knew or with
5 someone you did not know?
6 A. With someone I knew.
7
8 Q. Are they on the list?
9 A. Yes, they are.
10
11 Q. Which one?
12 A. GEN10.
13
14 Q. So you go over. What's the next thing that you would
15 expect to happen?
16 A. We would go over. The dog handler - and this is in a
17 general --
18
19 Q. Yes.
20 A. The handler would be having a discussion with them in
21 relation to it. We would then introduce ourselves to that
22 person. We would then ask them to put their hands together
23 and then we would escort them into the police holding area.
24
25 Q. Why would you escort them into the police holding
26 area?
27 A. Well, as you could imagine a festival, very busy,
28 there's a lot of people rushing through, and this is in the
29 middle of lines and that, so you've got a lot of people, we
30 need to move them to the side.
31
32 Q. Yes, but for what purpose?
33 A. For what purpose? To have a discussion with them, to
34 have a talk to them.
35
36 Q. All right. And what kind of things would you be
37 talking about?
38 A. We would discuss if there was any reason why the dog
39 has made an indication, their whereabouts, just basic
40 information about their day.
41
42 Q. Designed to find out, as I gather, whether they'd had
43 any connection with drugs?
44 A. To form any reasonable suspicion.
45
46 Q. Would you ask them, "Have you got any drugs on your
47 person?", or a question like that?



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1 A. In a general setting, yes.
2
3 Q. Well, perhaps you might tell me: what's the kind of
4 thing you think --
5 A. Generally, yes.
6
7 Q. -- you could ask?
8 A. "Is there any reason why the dog has made an
9 indication on you today?" "Have you taken any drugs today?"
10 "Have you been around anyone that has taken drugs today?" -
11 those sorts of questions.
12
13 Q. So they are questions which seek either admissions or
14 denials, in effect?
15 A. Not necessarily, no.
16
17 Q. Well, what else would you be seeking?
18 A. We're trying to get an understanding of why the dog
19 may have indicated on them, and --
20
21 Q. Right. And one of the reasons that dogs indicate is
22 because someone is in possession of drugs, is it not? Is
23 that not one of the things they are trained to do?
24 A. No, not necessarily.
25
26 Q. Of course not necessarily, because there are many drug
27 indications, we know, where no drugs are found; right?
28 A. Yes.
29
30 Q. But it is a commencement of a process to discover
31 whether someone is in possession of drugs, amongst other
32 things; agreed?
33 A. Yes. Yes.
34
35 Q. Officer, it's not a difficult question. It's an
36 obvious one, isn't it? That's why they are called drug
37 detection dogs, aren't they?
38 A. They are called that, yes.
39
40 Q. Because they are used to - yes - detect - well, they
41 are not detecting watermelons?
42 A. Yes, but my understanding is --
43
44 Q. I don't understand - I just - there is no need for you
45 to be so defensive. Can you just - the questions are
46 simple. Just do your best to answer them instead of
47 worrying about what your answers might lead to; all right?



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- 1 A. Yes, sir.
2
3 Q. In fact, I have no doubt, without intruding into legal
4 professional privilege, that's the kind of advice Mr Madden
5 would give you.
6
7 Now, let's come back to my questions accordingly.
8 When you are speaking to these persons, one of the things
9 you are trying to discover is whether or not the reason
10 that the dog indicated was that the person might be
11 carrying drugs?
12 A. Correct.
13
14 Q. Do you actually ask people, in this context, "Are you
15 carrying any drugs?"
16 A. Yes.
17
18 Q. An admission "Yes" would be an admission of a criminal
19 offence; correct?
20 A. Yes.
21
22 Q. So when you ask a question like that, do you caution
23 the person that they need not answer your question unless
24 they wish to do so?
25 A. No.
26
27 Q. Why?
28 A. Because, at that stage, I'd be trying to get a reason
29 why the dog has indicated. Sometimes, a person could be
30 around people that have taken --
31
32 Q. Yes, of course, and there are --
33 A. -- and I'm trying to form that --
34
35 Q. I understand. There are a number of possible
36 explanations.
37 A. Yes.
38
39 Q. One of the explanations is that they're carrying
40 drugs - yes?
41 A. Yes.
42
43 Q. And you're asking a question of them whether they're
44 carrying drugs, because you want to know whether they're
45 carrying drugs. That's the ultimate reason for this whole
46 exercise; correct?
47 A. Correct.



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1
2 Q. You are not doing research on how efficient drug
3 detection dogs are.
4 A. Correct.
5
6 Q. So that seeks an admission of a criminal offence. You
7 don't caution. My question is: why? Is it because you
8 have never thought that a caution might be necessary?
9 A. Because I'm trained to form that reasonable suspicion.
10 I would - it wouldn't just be one simple question like
11 that. It would be something, "Is there any reason why the
12 dog has indicated on you today?", et cetera.
13
14 Q. Quite. I understand that there is more than one way
15 of skinning this cat. But the particular cat which you are
16 really interested in is whether or not they are carrying
17 drugs; correct?
18 A. Yes.
19
20 Q. So the questions are aimed at finding that out -
21 either yea or nay. They might say "No, I'm not carrying
22 drugs and I've never had anything to do with drugs";
23 correct?
24 A. Yes.
25
26 Q. And no doubt some of them do say that?
27 A. Yes.
28
29 Q. And some of them say, "Yes, I am carrying them", and
30 they indeed produce it then and there; correct?
31 A. Yes.
32
33 Q. So the bottom line is you want to know whether they
34 are carrying drugs or not so you can deal with that issue;
35 correct?
36 A. Yes.
37
38 Q. Which brings me back to my question as to why you
39 don't caution: is it because you have never been
40 instructed that a caution is appropriate or not appropriate
41 or you, in your own mind, decided that a caution was not
42 appropriate?
43 A. Well, this is --
44
45 Q. Or necessary?
46 A. This is generally speaking, and I have - that has
47 happened. But I'm not saying in every case that has



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1 happened.
2
3 Q. Sorry, not saying in every case what has happened?
4 A. Well, I can't say that I haven't cautioned in every
5 single case.
6
7 Q. So in some cases you have cautioned?
8 A. In some cases. I'm just trying to think back to them.
9 Yeah, I wouldn't be sure.
10
11 Q. See, even if you are doing a general search --
12 A. Yes.
13
14 Q. -- and you are searching for drugs --
15 A. Yes.
16
17 Q. -- you would always ask, before you started the
18 search, wouldn't you, because it is just commonsense, "Are
19 you carrying any drugs?" That's what you're interested in
20 before you search?
21 A. My wording would be, which I have said before, "Do you
22 have anything on you?"
23
24 Q. Well, you obviously don't mean a packet of cigarettes,
25 do you, in the context?
26 A. In that context, no.
27
28 Q. So let's suppose - and again we are talking generally,
29 because I think you have told me you didn't in fact strip
30 search anyone at the festival; is that correct?
31 A. I don't remember stripsearching anyone.
32
33 Q. Does that mean you did or you did not?
34 A. I don't remember.
35
36 Q. Are you saying, therefore, that you might have
37 stripsearched a young person and have forgotten it?
38 A. No, I'm saying I don't remember if anything
39 happened --
40
41 Q. I understand you have said, "I don't remember." Let
42 me give you an example. I think, if you asked me, "Is
43 there an elephant in this room?", I could answer it - or
44 "Was there an elephant in this room yesterday?", I could
45 answer it by saying, "I don't recollect any elephant being
46 in the room". What I really mean is, "My recollection is
47 there was no elephant in the room". Do you understand the



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1 distinction?
2 A. No, I don't.
3
4 Q. Let me give you another example. Let's just go back
5 to the question, then. I am suggesting that had you in
6 fact stripsearched a young person, that is something you
7 would certainly remember doing?
8 A. I would think so.
9
10 Q. Can it therefore be inferred, because you have no such
11 memory, that you did not in fact stripsearch a young person
12 at that festival?
13 A. Sorry, Commissioner, can you repeat the start of that,
14 please?
15
16 Q. Yes. Does it follow that you did not in fact search
17 a young person at the festival?
18 A. I don't remember.
19
20 Q. Let's think of the things you would have to do. First
21 of all, you can't stripsearch in public, can you?
22 A. That's correct.
23
24 Q. You would have had to have taken them to a place;
25 correct?
26 A. Can I just confirm, Commissioner, is this in general
27 speaking or at a festival?
28
29 Q. No, this is at the festival.
30 A. At the festival.
31
32 Q. At the festival there were arrangements made for
33 searching, were there not?
34 A. Yes.
35
36 Q. You were told of those arrangements; correct?
37 A. Yeah, they were obvious to me, yes.
38
39 Q. And that required you to take the person to be
40 searched to a particular - I think they were called pods,
41 but temporary tents or similar; correct?
42 A. Correct.
43
44 Q. So in order to search, you would take them out of
45 the - first of all, you would form a reasonable suspicion
46 that they were carrying drugs, firstly; correct?
47 A. Correct.



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1
2 Q. Having made that decision, you would then decide
3 whether a general search or a strip search was necessary;
4 correct?
5 A. Correct.
6
7 Q. So, having made a decision that a strip search was
8 necessary, you would take the young person to a pod, would
9 you not, because you couldn't stripsearch them anywhere
10 else; correct?
11 A. If you were going to conduct a strip search, yes.
12
13 Q. Yes. Well, then, we are testing what your
14 recollection is. So, obviously, if you did not conduct
15 a strip search and you thought a general search was
16 sufficient, where would you search them?
17 A. In the pod.
18
19 Q. In the pod?
20 A. Yes.
21
22 Q. So either way for a search, you would have taken them
23 to the pod?
24 A. Correct.
25
26 Q. For privacy reasons?
27 A. Yes, and to make things just easier with items.
28
29 Q. So whether you make the decision to stripsearch at the
30 pod or before you take them to the pod, it requires that
31 they be in the pod; correct?
32 A. To conduct the search?
33
34 Q. To conduct either a general or a strip search;
35 correct?
36 A. Yes.
37
38 Q. Do you agree that a strip search is very different to
39 a general search?
40 A. Yes.
41
42 Q. Now, you would have had to consider whether or not it
43 was necessary to have a support person, if you had decided
44 you were going to conduct a strip search; correct?
45 A. Yes.
46
47 Q. You would have to take the personal details of the



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1 person being searched, wouldn't you?
2 A. The personal details of the person being searched?
3
4 Q. That's right - to be searched?
5 A. Well, yes, in general or a strip --
6
7 Q. Yes, quite, for either case?
8 A. Yes.
9
10 Q. But in relation to a strip search, you would get also,
11 for example, a phone number or contact for a parent or
12 guardian so that you could satisfy the requirements of
13 LEPR; correct? Or you would call your supervisor;
14 correct?
15 A. The form - we still ask those details whether they are
16 18 - over 18 or under - because they are on the form.
17
18 Q. All right. Yes, but that form is completed after the
19 search is completed, isn't it?
20 A. No.
21
22 Q. Isn't it? What form are you talking about?
23 A. The field arrest form.
24
25 Q. But they are not under arrest?
26 A. So when you go into the police holding, as you walk
27 in, there is a table that has these - the forms, and we
28 take those.
29
30 Q. So did you fill in a field arrest form at any time at
31 this festival?
32 A. Yes, looking back on - I did, yes.
33
34 Q. Now, coming back, you say that - does the field arrest
35 form suggest whether the search is a strip search or
36 a general search?
37 A. Yes, it does.
38
39 Q. Have you looked at the forms you completed for the
40 purpose of giving evidence?
41 A. Yes.
42
43 Q. Do any of them show that you conducted a strip search?
44 A. No, they don't.
45
46 Q. Was that something that they should have contained,
47 had you conducted a strip search?



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1 A. No. My - I - oh, sorry, if - can you repeat that
2 again? I think I misheard that.
3
4 Q. Yes. If you had conducted a strip search, was it
5 something that should appear on that form?
6 A. Oh, yes, it should. Sorry, Commissioner.
7
8 Q. Do any of the forms that you looked at show that you
9 conducted a strip search?
10 A. No.
11
12 Q. Does it follow from that that you did not conduct
13 a strip search?
14 A. The forms indicate that we did not.
15
16 Q. No, no, no. You fill in the form.
17 A. Yes.
18
19 Q. You have to put in, you tell me, whether it's a strip
20 search or a general search, the nature of the search;
21 correct?
22 A. Yes.
23
24 Q. And can you think of a reason, if it were a strip
25 search, that you would not put that fact in a form?
26 A. Generally, no.
27
28 Q. Well, particularly? Let's not talk generally. Let's
29 talk about what happened at the festival?
30 A. Is there --
31
32 Q. Any reason why, if you conducted a strip search, you
33 would not have noted it on the form?
34 A. No.
35
36 Q. Can we therefore accept as truthful that you did not
37 conduct a strip search, or is that not a justifiable
38 conclusion?
39 A. I --
40
41 Q. Think carefully.
42 A. I don't remember a strip search being conducted.
43
44 Q. No, I didn't ask you that question. I asked you
45 a question about the inferences that can be drawn from the
46 fact, as I understand you to say, that the forms that you
47 signed or made did not indicate a strip search was



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1 conducted?
2 A. Correct.
3
4 Q. And I am asking you what inference should the
5 Commission draw from that form?
6 A. That a general search was conducted.
7
8 Q. And not a strip search?
9 A. Yes.
10
11 Q. Is that the conclusion you would draw?
12 A. Yes.
13
14 Q. Does it follow, therefore, that you are telling me you
15 did not conduct a strip search, because if you had, it
16 would be on the form?
17 A. Yes.
18
19 Q. That's the sense of your evidence?
20 A. Yes.
21
22 Q. Do you still maintain that if you had conducted
23 a strip search of a young person at this festival,
24 considering the steps that you would have to go through,
25 that it is capable of having lapsed in your memory?
26 A. I'm sorry, can you repeat that?
27
28 Q. Well, let's look at the steps. So far we've got to
29 the pod; correct?
30 A. Yes.
31
32 Q. You always conduct a general search before you conduct
33 a strip search; correct?
34 A. No, not necessarily.
35
36 Q. Shouldn't you do it in stages?
37 A. No, my understanding is there's either a general
38 search - either you're doing a general search or you're
39 doing a strip search.
40
41 Q. All right, then, so in that case, you go in there and
42 you have decided to conduct a strip search. You have told
43 me - correct? I'm just hypothesising here.
44 A. So generally?
45
46 Q. These are the steps you would have to go through if
47 you did a strip search; all right?



8456354

8458481

1 A. Okay.
2
3 Q. So you take them to the pod. You decide that a strip
4 search is necessary. You need to assess whether you've got
5 the necessary reasonable suspicion for exercising that
6 power. So far correct?
7 A. Yes.
8
9 Q. You have told me that you are uncertain about the
10 issue of a support person, you knew that a support person
11 one way or another should be sought or should be present
12 and, in that event, because you were uncertain, you would
13 have contacted your supervisor?
14 A. I said that being that the situation was we were out
15 in the field.
16
17 Q. I see. Sorry. So at --
18 A. That's what I was --
19
20 Q. Well, I did ask about the festival. Let's not worry
21 about that. So at the festival, would you have needed to
22 contact a supervisor in relation to obtaining a support
23 person?
24 A. Yes, probably.
25
26 Q. So if you have forgotten, that's another thing that
27 you would have had to have forgotten?
28 A. What's that?
29
30 Q. Well, you don't remember contacting a supervisor;
31 correct?
32 A. For this date?
33
34 Q. Yes.
35 A. No, I don't have any memory of it.
36
37 Q. Are you saying you did not contact a supervisor to ask
38 about a support person?
39 A. Yes.
40
41 Q. You did not?
42 A. Did not contact - yes.
43
44 Q. So either a supervisor was unnecessary because you
45 knew what you should do - correct?
46 A. Sorry, Commissioner, I'm struggling to understand. Is
47 this in relation to someone or generally?



8456355

8458482

1
2 Q. No. You see I am testing your memory. You say
3 "I don't remember conducting a strip search". The clear
4 import of my questions is, as I've already told you, I find
5 it difficult to imagine that in February this year, at
6 a festival, any officer, and you in particular, could
7 forget whether they conducted a strip search of a young
8 person, or not. Do you understand? I am sceptical about
9 the truthfulness of that evidence?
10 A. Okay.
11
12 Q. You understand that?
13 A. Yes.
14
15 Q. And that is the point of my question.
16 A. Mmm-hmm.
17
18 Q. What my questions are designed to examine are the
19 things that you must have forgotten if what you tell me is
20 the truth.
21 A. Okay.
22
23 Q. So we've got to the pod and you say, "Well, that's
24 ambiguous, because I would do that for a general search or
25 for a strip search"; correct?
26 A. Yes.
27
28 Q. But in order to conduct a strip search, you have to
29 make an independent decision as to whether there's
30 a reasonable suspicion justifying a strip search; correct?
31 A. Yes.
32
33 Q. That means you must suspect that concealed on the body
34 could be, in this particular case, drugs; correct?
35 A. Yes.
36
37 Q. Then, having decided to conduct a strip search, you
38 would have to consider whether or not it's appropriate to
39 contact a support person; correct?
40 A. Yes.
41
42 Q. You have told me that you are somewhat uncertain about
43 what to do in that situation, and you would expect to
44 contact a supervisor, though perhaps you might not have?
45 A. When I said that, Commissioner, that was in reference
46 to the - in the field --
47



8456356

8458483

1 Q. All right.
2 A. -- when we were generally speaking.
3
4 Q. So at the festival, I think you told me you would
5 probably need to contact a supervisor?
6
7 MR MADDEN: Commissioner, I don't think he did say that,
8 in fairness to him.
9
10 THE CHIEF COMMISSIONER: Do you recall what he said? I'm
11 not looking at the running transcript. I'm relying on my
12 memory. But I will ask it another way.
13
14 MR MADDEN: Right.
15
16 THE CHIEF COMMISSIONER: Q. Let's just explore that for
17 a moment. At the festival, had you needed to conduct
18 a strip search, would you have needed to contact
19 a supervisor about a support person or were you aware of
20 what you needed to do?
21 A. I would have gone to a supervisor to find where
22 a support person would be.
23
24 Q. Right. So had you conducted a strip search, the steps
25 we have gone through are: you have to make the decision
26 about whether you have an adequate reasonable suspicion;
27 correct?
28 A. Yes.
29
30 Q. The reasonable suspicion is whether drugs are
31 concealed on their person; correct?
32 A. Yes.
33
34 Q. You then have to move. You then decide to
35 stripsearch, and you then have to move to a consideration
36 of the support person; correct?
37 A. Yes.
38
39 Q. To do that, you would go to the supervisor and ask
40 what?
41 A. I would explain quickly what has happened and this is
42 what we think we would do, and where would I find - because
43 in the tent, it's obviously very busy. It's very busy,
44 you've a lot of people moving around, so I --
45
46 Q. Does that mean, then, two of you would be with the
47 person, because you could scarcely leave the person alone



8456357

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1 in the pod?
2 A. Well, they --
3
4 Q. To contact a supervisor?
5 A. They wouldn't necessarily be in the pod at that stage,
6 because we - you would need a support person.
7
8 Q. All right. So by the time the question of the support
9 person arises, on this scenario, you have already decided
10 that you are going to do a strip search, because you don't
11 need a support person for a general search, unless one is
12 asked for, from which it follows, in this circumstance, you
13 would have gone into the pod having decided to conduct
14 a strip search?
15 A. Sorry, can you repeat that again, Commissioner?
16
17 Q. Yes. If you have contacted the supervisor before you
18 got to the pod, you would only contact the supervisor
19 because you were going to or wished to conduct a strip
20 search and you knew that it was necessary that a support
21 person be obtained; correct? So all this takes place
22 before you get to the pod. That's what you told me?
23 A. Yes. When we --
24
25 Q. All right. So for you to have forgotten whether you
26 conducted a strip search or not, you cannot remember
27 whether or not you contacted a supervisor?
28 A. On this particular date, I don't remember. I only
29 remember a charge that I did that same day.
30
31 Q. However, let's just come back to this. You would only
32 contact a supervisor, as I understand your evidence, if you
33 had decided to conduct a strip search of a young person,
34 because the information that you wanted from the supervisor
35 was the availability of an independent person. So that
36 would only arise in the context of a proposed search, would
37 it not?
38 A. No. No, you could go up to your supervisor to ask
39 a question and say, "This is what we've got".
40
41 Q. Quite. Did you contact your supervisor in any respect
42 concerning a proposal to have a search?
43 A. In proposal to having any search?
44
45 Q. Yes. Did you contact your supervisor to ask any
46 question in connection with a search?
47 A. I don't remember.



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Q. Something that you think you might have forgotten?
A. I don't have any memory of that. I don't remember.

Q. Does that mean it didn't happen?
A. I spoke to a supervisor in relation, as I said earlier, to another charge. I spoke to two supervisors.

Q. Was that before or after the search?
A. Which search?

Q. Any search. Was it following a search?
A. No. I was informed to go do the charge. Other officers had located drugs and I was informed by --

Q. Okay. I'm asking questions about speaking to a supervisor in connection with a proposed search. Did you speak to a supervisor --
A. No.

Q. No. Does it follow from that that you are saying you did not conduct a strip search?
A. I don't remember going to a supervisor about a search, no.

Q. You see, I've asked you about the logic. I've asked you this: does it follow - you told me you did not contact a supervisor for the purpose of - in connection with, a strip search; is that right? If you wish to change your evidence, on reflection, by all means do so.
A. I don't remember.

Q. Is it something you think you might easily forget, getting advice from a supervisor about a support person for a strip search?
A. If it was - I - what I'm struggling with is we're talking general - is this general or specifically to something?

Q. No, no, please, Officer. I have said this on a number of occasions and you know perfectly well I am talking about the festival and what you did.
A. Yes.

Q. Is that clear now?
A. Yes.



8456359

8458486

1 Q. Very well. Would you now answer my question?
2 A. And what was that question again, Commissioner.
3
4 Q. Well, let's move on to something else. Do
5 I understand you correctly to say that you would not strip
6 search someone, a young person, without an independent
7 person being present - parent, guardian or other
8 independent person present?
9 A. Yes.
10
11 Q. Are you saying that you might have forgotten a search
12 at which a parent, guardian or independent person was
13 present?
14 A. I may have. I --
15
16 Q. Think about your answer carefully, officer.
17 A. Can you repeat the question again, please,
18 Commissioner?
19
20 Q. Yes. Are you saying that you might have forgotten, at
21 this festival, stripsearching a young person in the
22 presence of a parent, guardian or independent person?
23 A. I wouldn't believe so, no.
24
25 Q. Do you have a recollection of stripsearching a person
26 in the presence of an independent person, parent or
27 guardian?
28 A. No.
29
30 Q. Does it follow that you did not strip search anyone,
31 any young person, at this festival?
32 A. Yes.
33
34 THE CHIEF COMMISSIONER: Go on, Dr Dwyer.
35
36 MS DWYER: Q. I want to take you back to the briefing
37 for one or two questions.
38 A. Yes.
39
40 Q. You recall going to the briefing, you recall
41 Officer GEN6 speaking. Do you recall being told anything
42 at the briefing about independent persons who were
43 available to assist during searches?
44 A. I don't remember specifics, but I - to the best of my
45 knowledge, I believe that there was persons, support
46 persons there.
47



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- 1 Q. Why do you believe that?
2 A. Because I remember something about SES.
3
4 Q. Do you remember being told that at the briefing or
5 just seeing someone from the SES around in the search area
6 at a later date?
7 A. Being told.
8
9 Q. Do you remember what you were told?
10 A. I - no, I just remember SES.
11
12 Q. You remember being told something about SES being
13 there on the day; is that right?
14 A. I couldn't be confident in answering that.
15
16 Q. So you just can't remember what you were told about
17 SES; is that fair?
18 A. That's correct.
19
20 Q. On a separate issue, can I show you some photographs,
21 please. They appear behind tab 19 of the brief of
22 evidence.
23
24 Just for the purpose of the record, I am showing the
25 officer five pages that begin 8405723 and end 8405727.
26
27 Officer, these are photographs of what appear to be
28 metal pods. Can you tell us if you recognise those
29 photographs, please?
30 A. Yes. I recognise those.
31
32 Q. What are they photographs of?
33 A. They're the pods that I spoke about earlier.
34
35 Q. So are they the pods that were within a separate area,
36 or a section that had been cordoned off from the festival,
37 where young patrons were taken to be searched?
38 A. Yeah. They're the searching pods, yes.
39
40 Q. Were they the searching pods that were used when
41 police were conducting either general searches or
42 strip searches, as far as you were aware?
43 A. Yes, as far as I'm aware. I don't know what other
44 officers were doing, but --
45
46 Q. Okay. But any search you conducted on 23 February was
47 conducted in that pod; is that right?



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1 A. Yes. I would believe so, yes.
2
3 Q. Sorry, in a pod that looked like that; correct?
4 A. Yes.
5
6 Q. How many searching pods were there?
7 A. I can't remember how many.
8
9 MS DWYER: I tender those photographs.
10
11 EXHIBIT #21C FIVE PHOTOGRAPHS OF PODS, BARCODED
12 8405723-8405727
13
14 MS DWYER: Q. In relation to any searches you conducted,
15 did you conduct those with your partner GEN10 alongside
16 you?
17 A. I would have, yes.
18
19 Q. So you don't have a recollection of conducting any
20 searches of a young person where you were on your own?
21 A. No.
22
23 Q. Officer GEN10 holds the rank, I think, of detective
24 senior constable. Is that officer more senior to you in
25 years in the force?
26 A. I believe so.
27
28 Q. Did you regard him as somebody that you could ask
29 questions of if you were uncertain about search process?
30 A. Yes.
31
32 THE CHIEF COMMISSIONER: Q. Who was your supervisor, by
33 the way, on the day?
34 A. There was - oh, sorry, I will refer to the - GEN6 and
35 I don't know if I can say their name. They are not on this
36 list.
37
38 Q. Someone not on that list?
39 A. Yes.
40
41 Q. Would you mind writing their name on this piece of
42 paper, please.
43 A. (Witness does as requested).
44
45 THE CHIEF COMMISSIONER: Thank you. We will deal with
46 that later.
47



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1 MS DWYER: Q. I take it from the answers that you have
2 given to the Chief Commissioner earlier, you don't have any
3 recollection of contacting either the officer whose name
4 you have just written down on that post-it note, or
5 Officer GEN6, to ask them questions as to how a particular
6 search should be conducted on a young person?
7 A. Not that I can remember, no.
8
9 Q. And you don't have any recollection of contacting the
10 SES to assist with the search of a young person?
11 A. Yes, I do.
12
13 Q. Sorry, you do have a recollection of that?
14 A. Yes, for the charge that I did.
15
16 Q. I see.
17 A. At the festival.
18
19 Q. So you searched one young person where drugs were
20 found; is that correct?
21 A. I didn't search them, no.
22
23 Q. Someone else searched them, drugs were found on
24 a young person, and the SES were subsequently contacted; is
25 that right?
26 A. No. In regards to that matter --
27
28 Q. Why did you contact the SES for that matter?
29 A. I didn't contact - oh, sorry, I contacted the SES for
30 when I - because that person was being placed under arrest,
31 and we were making inquiries to take him back to the
32 station to complete the charge.
33
34 Q. So in that circumstance, was the SES contacted to see
35 if they could assist with the interview of the young
36 person?
37 A. No.
38
39 THE CHIEF COMMISSIONER: Q. What role did the SES play?
40 A. They were just a support person. That's what I knew.
41
42 MS DWYER: Q. Can you accept from me that there is some
43 documentation before the Commission that suggests that the
44 SES officers were asked to be there as support persons
45 during the course of an interview of a young person. Do
46 you recall being told that?
47 A. No, I don't.



8456363

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1
2 Q. Can I ask you in relation to your presentation as
3 at February 2019 - you have a beard today - did you have
4 facial hair in that time?
5 A. I believe so, yes.
6
7 Q. Have you ever been clean-shaven over the last couple
8 of years?
9 A. Over the last couple of years, yes.
10
11 Q. Do you recall when the last time was that you would
12 have been described as being clean-shaven?
13 A. I - I'd be guessing. No, I can't.
14
15 Q. Was any photograph taken of you on 23 February 2019?
16 A. Photograph? Not that I can remember, no.
17
18 Q. You were asked some questions about the field
19 processing form that was filled out. Can I just clarify
20 the timing. If on an occasion you were asked to assist
21 with the escort of a young person after there had been
22 a drug dog indication and they needed to be taken to the
23 separate area for searching --
24 A. Yes.
25
26 Q. -- would a field processing form be filled out before
27 the search or after?
28 A. Generally, it's at the same time.
29
30 Q. Same time as a search; is that right?
31 A. As a search, yeah.
32
33 Q. Where was the empty field processing form physically
34 located?
35 A. Depending on the set-up, it's usually at the end of
36 a table.
37
38 Q. Within a pod or outside the pod?
39 A. Oh, no, when you first walked into the separate area.
40
41 Q. When you first walked into the separate area, were
42 there other police officers around who were also assisting
43 with other search or processing?
44 A. In other matters?
45
46 Q. Yes.
47 A. Oh, yeah, there's police everywhere, yeah.



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1
2 Q. Are you able to estimate for the Commission within
3 that general area that included the pods and the table for
4 processing how many police might be there at any one time?
5 A. Oh, it varies. Sometimes there's a lot of people in
6 there; and then sometimes there's a few.
7
8 Q. So it would vary from - when you say "a few" police,
9 do you mean four or five police right through to about
10 20 police? What would be the estimate?
11 A. Yeah, around five, maybe, it just - depends what's
12 happened.
13
14 Q. But there must have been more than just two police
15 available, because there might be more than one drug dog
16 indication at a time, correct, or in close proximity?
17 A. Out in the line-up?
18
19 Q. Yes.
20 A. Oh, sorry, in the line-up, yeah, there's police there,
21 yes.
22
23 Q. There are multiple police, aren't there, there to
24 assist?
25 A. Yes.
26
27 Q. Because once you take a young person in to be
28 searched, that might take up to 10 minutes?
29 A. Or longer.
30
31 Q. Or longer, and then you might need to process them;
32 correct?
33 A. Correct.
34
35 Q. So you will be taken offline with a young person that
36 needs to be searched, and there could be other officers
37 available to continue to assist; correct?
38 A. Correct.
39
40 Q. So are you aware how many police at any one period of
41 time were there to assist the drug dog handlers with the
42 searching process?
43 A. I don't know. I don't remember.
44
45 Q. You worked the entire shift I think with
46 Officer GEN10; correct?
47 A. Yes.



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1
2 Q. Do you actually have a memory, sitting there today, of
3 being the police officer who assisted to escort a young
4 person into the searching area?
5 A. No.
6
7 Q. It's possible you did and you don't have a memory of
8 that; is that fair?
9 A. Yeah, that's fair.
10
11 Q. Was it possible that one particular police officer and
12 his or her colleague assisted with the escorting process,
13 and other officers did the search?
14 A. I'm sorry, can you repeat that again, sorry?
15
16 Q. Sure. I'll withdraw that. I'll ask it differently.
17 In your experience, was it generally the case that if you
18 were the person who went out to assist the drug dog handler
19 to escort a young person back into the search area, you
20 also did the search, or is it possible that you could be
21 the escort and then hand the young person on to be searched
22 by someone else?
23 A. Yeah, generally, you would do that, you would take
24 them back and you would form the, yeah, reasonable cause.
25 In our case, like I did on the day, I was out on the line
26 where the drug dogs were and I got informed by my
27 supervisor to go in and do one of the charges that other
28 police officers had found.
29
30 Q. And by your supervisor, do you mean GEN6 or the person
31 whose name was on that post-it note?
32 A. Yeah, the post-it note.
33
34 Q. Do you recall conducting a search of any young persons
35 other than the one that you just told us about where you
36 were asked to assist by your supervisor?
37 A. I don't remember, no.
38
39 Q. I think you referred the Chief Commissioner earlier to
40 a field arrest form. Was it in fact called a field
41 processing form? Do you recall now?
42 A. Yeah, it might be processing form. I might have got
43 that mistaken.
44
45 MS DWYER: Can I ask that the witness be shown
46 exhibit 5C. In fact, I have a copy here.
47



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1 Q. Do you see, officer, that that is a field processing
2 form for a particular young person - and I won't use that
3 young person's name?
4 A. Yes.
5
6 Q. That young person has the codename 13C. Have you seen
7 that field processing form prior to today?
8 A. Yes, I have.
9
10 Q. You have refreshed your memory to prepare for your
11 evidence; is that right?
12 A. Yes.
13
14 Q. Your name appears on that field processing form as
15 having been involved in a search of the young person, 13C;
16 correct?
17 A. Yes.
18
19 Q. You are listed as an arresting or escorting officer.
20 Do you see that?
21 A. Yes.
22
23 Q. And your partner --
24
25 THE CHIEF COMMISSIONER: Q. Is that in your
26 handwriting?
27 A. Yes, that is my handwriting.
28
29 MS DWYER: Q. Your partner is also listed there;
30 correct?
31 A. Yes.
32
33 Q. That doesn't tell us whether or not you were involved,
34 in fact, as the escorting police officer or the search
35 officer, does it?
36 A. Well, it's both - it's - well --
37
38 Q. I will withdraw that and ask you something different.
39 If you had just escorted this young person to - the drug
40 dog handler has indicated, you've been asked to take the
41 young person out the back --
42 A. Yes.
43
44 Q. -- even if someone else was involved in the search,
45 would you still fill out that processing form because
46 you've done the escort?
47 A. Not necessarily.



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1
2 THE CHIEF COMMISSIONER: Q. So is your answer maybe?
3 A. Yeah, maybe, yeah.
4
5 MS DWYER: Q. So when you look at this field processing
6 form, you'll see that the type of search there for GEN13C
7 is circled as "General". There are two boxes you can
8 choose from, two words you can choose from, "General" or
9 "Strip", and it is circled "General"; correct?
10 A. Yes.
11
12 Q. Is that you that circled the word "General" for this
13 particular young person?
14 A. Yes.
15
16 Q. Do you have a memory now of this young person, as you
17 sit there in the witness box?
18 A. I do not.
19
20 Q. So this form must have therefore been completed after
21 the search, otherwise you wouldn't know whether a general
22 or a strip search had occurred?
23 A. I don't remember, Commissioner.
24
25 Q. I understand you don't remember it, but doesn't it
26 follow, you couldn't have indicated that it was a general
27 search until after it had been completed?
28 A. It could have been conducted during the search maybe.
29
30 Q. What, while you were present at the search?
31 A. For this particular one?
32
33 Q. For this form?
34 A. For this form, I would say that, yes, I would have
35 been - if I've filled it out, I would have been there.
36
37 MS DWYER: Q. Would you take this form --
38
39 THE CHIEF COMMISSIONER: Q. So the form was completed
40 either at the time of or after the search?
41 A. Yes.
42
43 MS DWYER: Q. I think you said that the form was on
44 a table within the general search area; is that right?
45 A. Yes.
46
47 Q. Would you pick up this form and take it into a pod to



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1 search a young person?
2 A. Yeah, sometimes, yes.
3
4 Q. What would you do otherwise, on the occasions you
5 didn't do that?
6 A. It's - obviously you could imagine it is very busy, so
7 sometimes you would have to - you would have to stand and
8 wait until a pod became available.
9
10 Q. And might you then fill that out while you were
11 waiting for the pod to become available?
12 A. I don't remember doing that - yeah.
13
14 Q. On this occasion, you filled out the form rather than
15 your colleague. Why was that?
16 A. Because whoever fills out the form, your partner will
17 then conduct the search.
18
19 Q. So by the fact that your handwriting is on this form,
20 does that help you to determine that it was your partner
21 who conducted the search of this young person?
22 A. That's correct.
23
24 Q. But you don't recall the search of this young person;
25 correct?
26 A. I don't.
27
28 THE CHIEF COMMISSIONER: Q. Would you just have a look
29 at "Reason for type of search"; do you see that in the
30 middle of the form?
31 A. Yes.
32
33 Q. "Indication from drug dog" - "Eyes" - would you read
34 the rest of the --
35 A. I've probably misspelt that, Commissioner, but "Eyes:
36 Pupils enlarged", and then "Shaky".
37
38 Q. So what did enlarged pupils indicate to you?
39 A. That that person could be on some sort of drug.
40
41 Q. What drugs cause pupils to enlarge? What is your
42 training about that?
43 A. It's I guess just - no training. It would be more
44 experience at these - at a couple of things that I've seen
45 at these things.
46
47 Q. Precisely what experience are you talking about?



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1 A. Well, I obviously have seen people drug affected
2 before, and that's a sign that I've seen in people.
3
4 Q. Pupils enlarged?
5 A. Yes.
6
7 Q. Is that a sign of intoxication, is it?
8 A. Of intoxication?
9
10 Q. Well, affected by drugs?
11 A. For me, yes. Well --
12
13 Q. Sorry, what do you think I mean by "intoxication"?
14 A. Sorry, I wasn't sure if you meant by alcohol.
15
16 Q. No, no. We're talking about drugs?
17 A. Drugs.
18
19 Q. Is it a sign of intoxication?
20 A. Yes.
21
22 Q. Have a look at the bottom of the form, would you?
23 "Does the person complain of or have you observed any sign
24 of intoxication"?
25 A. Yes.
26
27 Q. And do you see you have ringed "No".
28 A. Yes.
29
30 Q. Perhaps you might explain why that is "No" and yet you
31 thought the fact that he had had his pupils enlarged showed
32 drug intoxication?
33 A. It looks to be an error on my part, Commissioner.
34
35 Q. Yes. Which is the error?
36 A. That I've circled "No."
37
38 Q. There are only two possibilities, "Yes" and "No"; do
39 you agree?
40 A. Yes.
41
42 Q. Are you sure about the pupils?
43 A. Yes. I wouldn't have put it down on the sheet if it
44 wasn't true.
45
46 THE CHIEF COMMISSIONER: Very well.
47



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1 MS DWYER: Q. Just following on from the Chief
2 Commissioner's question, if the answer to "If you have
3 observed signs intoxication, pain, injury or illness is"
4 "Yes", you need to also bring that to the attention of the
5 custody manager. Do you recall who the custody manager was
6 on that day?
7 A. I have no idea.
8
9 Q. Did you give consideration to bringing it to the
10 attention of the custody manager or was that not something
11 that you read on the form or is there another explanation?
12 A. Is there a reason why I didn't bring --
13
14 Q. Yes.
15 A. I don't know why I didn't do that.
16
17 THE CHIEF COMMISSIONER: Q. Well, after the search - you
18 conducted only a general search; right? No drugs were
19 found? What did you do with the young person?
20 A. From referring from the event, we allowed that person
21 in to the event.
22
23 Q. Although he was affected by drugs? You just sent him
24 on his way?
25 A. Well, we suspected that he was on.
26
27 Q. What did he say to you about drugs?
28 A. I don't remember. I'm purely going off this sheet,
29 Commissioner.
30
31 Q. Well, this showed that he was affected by drugs and
32 you just let him go back into the event? That's what I'm
33 concerned about. What about your duty of care? He was
34 a young person affected by drugs, and you send him back
35 into the festival which you know is awash with drugs.
36 Isn't that the fact, if this form is to be believed?
37 A. Yes.
38
39 Q. Well, do you think that was a responsible thing to do,
40 looking back?
41 A. It looks to be a mistake on my part, Commissioner.
42
43 Q. Well, if something had happened to that young man, it
44 may be that you would be facing far more serious
45 consequences - you understand that, don't you?
46 A. Yes, Commissioner.
47



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1 Q. If, of course, this form is the truth.

2 A. Correct, Commissioner.

3

4 MS DWYER: Q. Just before moving off that form, do you
5 see that one of the other reasons for the search as given
6 as "Shaky"?

7 A. Yes.

8

9 Q. Do you accept that one reason why young people might
10 be shaky, if they are escorted by police officers to be
11 searched, is that it is very nerve-racking in those
12 circumstances, even if you are not carrying any drugs on
13 you?

14 A. I could understand that, yes.

15

16 THE CHIEF COMMISSIONER: Q. So that really doesn't
17 indicate anything, does it?

18 A. Not necessarily, Commissioner. Some - I have dealt
19 with people that have had drugs on them that were nervous
20 and shaky because they had those items on them.

21

22 Q. And no doubt you have dealt with a whole lot of kids -
23 or perhaps you haven't dealt with any of them, from your
24 evidence. You would readily accept that a young person,
25 taken somewhere apart from friends or family, alone and
26 with police, in a private place where they can communicate
27 with no-one, might well be a frightening experience;
28 agreed?

29 A. It could be, yes.

30

31 Q. And a frightening experience might well cause them to
32 shake; correct? This is not rocket science. This is just
33 ordinary understanding of how people react, and you have
34 that, don't you? You have commonsense?

35 A. Yes.

36

37 Q. Well, wouldn't you agree? You could infer nothing
38 from the fact, in this situation, that a kid was shaky?

39 A. Yes, or a person could have drugs on them and they're
40 now speaking to police.

41

42 THE CHIEF COMMISSIONER: Yes, go on.

43

44 MS DWYER: Q. Just in relation to the pupils enlarging,
45 do you accept that one reason for that might be going from
46 the outside area into a darkened area, like the pod?

47 A. It could be, yes.



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1
2 Q. I've asked you about the field processing form. There
3 is also a COPS entry, and I will show you a copy of that.
4 But can I ask, first --
5
6 THE CHIEF COMMISSIONER: Q. At what point did you
7 examine the pupils?
8 A. I wouldn't be able to comment on that, Commissioner.
9 I've written it on the form. I have no memory of that.
10
11 Q. Since it was a reason giving rise to your reasonable
12 suspicion, you would have had to have done it before you
13 decided to search; correct?
14 A. Yes.
15
16 Q. So where did that happen? Where did the decision to
17 search occur?
18 A. It would have happened some - I can't remember where
19 it's happened. I can't tell you exactly.
20
21 THE CHIEF COMMISSIONER: Very well. Yes, go on.
22
23 MS DWYER: Q. Have you refreshed your memory as to the
24 contents of the COPS event?
25 A. I have looked over it, yes.
26
27 Q. I will show you a copy of that now, I am referring to
28 a document 8453498. It is some four pages and goes to
29 8453501.
30
31 THE CHIEF COMMISSIONER: What tab?
32
33 MS DWYER: Tab number 4, Chief Commissioner.
34
35 Q. Do you see that that COPS entry suggests on the first
36 page that it was created by your colleague, whose name
37 I won't say out loud, but it is code GEN10.
38 A. Yes.
39
40 Q. Did you have any role in preparing the COPS entry?
41 A. Not that I'm aware of, no.
42
43 Q. Did you see your colleague prepare that COPS entry?
44 A. I can't remember.
45
46 Q. Did you prepare any COPS entries on that occasion,
47 23 February?



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- 1 A. Yes, I would have.
2
3 Q. Did you and your colleague go through a process of
4 preparing the COPS entries seated beside each other?
5 A. My only memory on that date was GEN10 looking on my
6 screen in relation to my charge - looking over, like, my
7 facts sheet and that.
8
9 Q. So unrelated to this young person GEN13C?
10 A. Yeah, I have no memory of that.
11
12 Q. Did you take any notebook entry? Did you make any
13 notebook entries on that day?
14 A. Yes.
15
16 Q. You didn't make any notebook entries in relation to
17 GEN13C; is that correct?
18 A. That's correct.
19
20 Q. Why was that?
21 A. I made an error by not writing it in my notebook, but
22 obviously we needed to get back out there quickly and
23 that's why.
24
25 Q. You did write some notes on the processing form. Were
26 you given any instructions in the briefing or at any time
27 that notes needed to be in your notebook as well as on the
28 processing form?
29 A. Not that I can remember.
30
31 Q. Was it your belief on 23 February that you did need to
32 make notes in both of those particular places, but you ran
33 out of time, or did you think the processing form replaced
34 your notebook?
35 A. Yeah, it - I just sort of ran out of time. I was
36 trying to get back out there quickly. It's very busy.
37
38 Q. So you were thinking at the time, "I really should
39 make notes in my notebook but I don't have the time to do
40 so", or did it not cross your mind?
41 A. I don't know why.
42
43 Q. I'm going to take you now to the interview with the
44 young person and just see whether it refreshes your memory
45 at all.
46
47 MS DWYER: I'm reminded just to tender that COPS event,



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1 Chief Commissioner, if I may.

2

3

EXHIBIT #22C COPS EVENT IN RELATION TO GEN13C BARCODED
8453498-8453501

4

5

6

MR MADDEN: Commissioner, may I have a copy of the
interview if my client is going to be asked about it?
I asked for a copy yesterday and got a negative response,
but if my client is going to be asked about it now, could
I have a copy of it?

9

10

11

12

THE CHIEF COMMISSIONER: In due course.

13

14

MR MADDEN: Well --

15

16

THE CHIEF COMMISSIONER: I will consider it over the
luncheon adjournment.

17

18

19

MS DWYER: Q. Senior Constable, what the young person,
GEN13 --

20

21

22

MR MADDEN: What I was getting at was that I could be
given a copy of it before he is asked questions about it.

23

24

25

THE CHIEF COMMISSIONER: We do not have a redacted copy.
There is material there which is of a confidential
character. That is my issue. I understand that you might
not be able to re-examine effectively without relevant
parts of the document, but I would need to go over the
document. That's why I'm not making an absolute ruling.
It's just that there are practical difficulties because we
do not have, at present, a document suitable for that
purpose.

26

27

28

29

30

31

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33

34

MR MADDEN: I suppose if it's a matter of confidentiality
per se --

35

36

37

38

THE CHIEF COMMISSIONER: What I'm saying, Mr Madden, I'm
not against it in principle.

39

40

41

MR MADDEN: No.

42

43

THE CHIEF COMMISSIONER: But it has been a long time since
I've read it myself and I would need to go over it.
Subject to those matters, there would be no problem. Of
course, you would need to keep it confidential, but we
could deal with that in due course. But that is my issue,

44

45

46

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1 which is why I have suggested I would look at it over the
2 luncheon adjournment. But I would allow you to come back
3 to any re-examination if you felt some points needed to be
4 made to qualify or explain some aspects.

5
6 MR MADDEN: It is more a point of having it while he is
7 asked questions.

8
9 THE CHIEF COMMISSIONER: No, I understand that. But this
10 is not a conventional trial.

11
12 MR MADDEN: No, I know that, Commissioner.

13
14 THE CHIEF COMMISSIONER: I understand usually, because
15 counsel for a person wants to be able to object, for
16 example, if some part is taken out of context and so on.

17
18 MR MADDEN: That's right.

19
20 THE CHIEF COMMISSIONER: But what is going to be put is
21 a particular set of facts. If it is not justified by the
22 interview, then it is not justified by the interview.

23
24 Also, this is not adversarial, so I think in the first
25 instance I will rely on counsel assisting to put fair
26 questions. By the same token, I think it is right that you
27 should have a chance to assess your own position, but I'm
28 afraid we can't do it on the run, as it were, and I will
29 revisit the question.

30
31 MR MADDEN: Thank you.

32
33 MR OATES: Commissioner, I also asked for a copy of the
34 interview of the young person who spoke about my client.
35 I act for GEN12. That request was declined.

36
37 THE CHIEF COMMISSIONER: Yes, it was.

38
39 MR GATES: I join in Mr Madden's application for a copy of
40 the interview, redacted by all means. My client is not due
41 to give evidence until this afternoon, so perhaps that is
42 sufficient time for any logistics to be taken care of. If
43 the decision of yourself is to grant access, perhaps
44 I might be given that before my client gives evidence.

45
46 THE CHIEF COMMISSIONER: Yes, it puts counsel in a
47 difficult position, because I think I would be bound to



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1 require you not to disclose its contents to your client.
2 You would be aware in other contexts where there is
3 protected information, a compromise is reached because the
4 Bench relies on the integrity of the Bar - for this
5 purpose, the legal profession - and is prepared to trust
6 the legal profession to keep the material confidential, but
7 it does place - and I have known senior counsel who have
8 declined to receive material on that basis. It is
9 a fraught question. So, if I may say so, you and Mr Madden
10 might need to bear that in mind.

11

12 On the other hand, were that person to give evidence
13 or were I to rely on the material in the interview, it
14 would only be fair that you were aware of it so that you
15 could respond to it. So there are competing interests
16 here.

17

18 MR GATES: Your Honour, may I first say, I'm subject to
19 the Bar rules of any order you make with respect to
20 confidentiality.

21

22 THE CHIEF COMMISSIONER: I understand. All I'm saying is
23 that some barristers take the view it puts them in a
24 difficult position with their client where they are not
25 allowed to tell their client material to which they are
26 privy.

27

28 MR OATES: It wouldn't be the first time I've been subject
29 to such an order. But there is another element to it, and
30 that's raised by Mr Madden. Without casting any aspersions
31 on the capacity of counsel assisting to be accurate, the
32 reality is that sometimes context is perceived by one
33 person in a different way.

34

35 THE CHIEF COMMISSIONER: And different minds can
36 reasonably differ about those matters. I'm aware of those
37 things, which is why my prima facie view is to let you have
38 the material, but, as I say, I need to look at it first.
39 Let's return to this subject when I have had a chance to
40 reacquaint myself with the detail of the material.

41

42 MS DWYER: Chief Commissioner, just if it may assist, your
43 investigator has already requested redacted copies and can
44 provide them. I note that the police are actually in
45 possession of names and addresses in any event on the COPS
46 entries, so in my respectful submission, there is very
47 little in these interviews that will be --



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THE CHIEF COMMISSIONER: I understand, but I want to examine it for myself.

MS DWYER: Would it be convenient to take a morning tea break today and do that, Chief Commissioner?

THE CHIEF COMMISSIONER: Perhaps that is a useful idea. Very well. I will adjourn for 15 minutes.

SHORT ADJOURNMENT

THE CHIEF COMMISSIONER: Mr Madden, I understand you have been given a redacted copy of the record of interview?

MR MADDEN: I don't think it is redacted. I have a copy of the interview, but I can't see any redactions.

THE CHIEF COMMISSIONER: All right, then. I make an order that you are not to disclose it to any person without first getting my leave.

MR MADDEN: I understand.

THE CHIEF COMMISSIONER: Thank you, yes.

MS DWYER: Q. Officer, are you of the view that you did not conduct a strip search of any young person on 23 February this year?

A. I can't remember.

THE CHIEF COMMISSIONER: Q. Are you certain or are you uncertain whether you conducted a search? Are you uncertain about it?

A. Yes, I've got no memory of it.

Q. No, no, please, let's not - please don't use wriggle language. You and I know perfectly well what you are doing, and it is not acceptable. You are obliged to tell the whole truth. Do you understand?

A. I do, sir.

Q. And I have asked you did you conduct a search, a strip search, of a young person at that festival? You have previously said, I think, that by a process of reasoning you did not. I am now asking you, are you certain whether you did or are you uncertain whether you did or not?



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1 A. I'm uncertain.
2
3 MS DWYER: In that case, Chief Commissioner, I will go to
4 the interview.
5
6 Q. I'm going to take you to aspects, you understand,
7 Officer, of an interview --
8
9 THE CHIEF COMMISSIONER: Q. Do I correctly understand
10 your evidence that if, indeed, you conducted a strip search
11 of this young person, this would have been the first strip
12 search you have conducted in your entire police career so
13 far?
14 A. On a young person, yes.
15
16 Q. And you are uncertain whether it occurred or not?
17 A. Yes.
18
19 THE CHIEF COMMISSIONER: Go on.
20
21 MS DWYER: Q. In relation to a strip search, what do you
22 understand that to be, as opposed to a general search?
23 A. Removing of clothing.
24
25 Q. So any removal of clothing would --
26 A. Sorry. Removing of shirt, pants, et cetera.
27
28 Q. What about asking a patron to expose part of their
29 testicles; would that be a strip search?
30 A. To expose?
31
32 Q. Yes, without taking your clothes off, but to open your
33 clothes in a way that would allow you to see testicles,
34 would that be a strip search?
35 A. Yes.
36
37 Q. I'm going to read to you from the interview that was
38 conducted with LECC investigators and a particular young
39 person known as GEN13C. He explains --
40
41 THE CHIEF COMMISSIONER: Q. This is the young person in
42 relation to whom you wrote the form; do you understand
43 that?
44 A. Yes.
45
46 MS DWYER: Q. He explains - I'm paraphrasing - that the
47 dog came up to him, sniffed --



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MR MADDEN: May I have the page number, please?

MS DWYER: Page 4.

Q. Sniffed his pocket. Walked over to another person, sniffed their pocket. Came back to him for about two seconds, and then two officers came up and grabbed either side of him and said, "Mate, could you please put your hands like this" - in front - "and come with us". The words "Mate, could you please put your hands like this and come with us", indicating put your hands in the front is something you might say if you were tasked to bring a patron to an area to the searched; is that correct?

A. That's possible, yes.

Q. And then the young person explains, at page 5, that he was taken over to what looked like a metal little room by two police officers. One opened the door and asked him to step in. Then he was asked to take his wallet and phone out and put it on the bench, and to take his hat off. So far, from what I've read to you, that is something that you might do if you were involved in a search of a patron?

A. If I had reasonable cause, yes.

Q. He says:

And [then those police officers] were sort of just asking me questions, one was standing there writing stuff down and the other one was like face-on-face asking questions.

That's consistent with a search methodology you know - one officer asks questions; the other writes something down?

A. I would say - well, yes.

THE CHIEF COMMISSIONER: Q. But? Did you want to qualify it?

A. Both officers could ask questions.

MS DWYER: Q. Then the young person was told to take his hat off and shake his hair, because he had long hair. Does that refresh your memory of dealing with any patron on the day that had long hair?

A. No, it doesn't.



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1 Q. Is it possible that you did deal with a patron who had
2 long hair, a male, but you can't recall?
3 A. Yeah, I can't recall back then.
4
5 THE CHIEF COMMISSIONER: Q. Sorry, is it possible that
6 it occurred and your memory has failed?
7 A. Yes.
8
9 MS DWYER: Q. The young person was then asked to take
10 his shirt up and show underneath his armpits and his belly.
11 Is that something that you might do when you were
12 conducting a search of a young person?
13 A. No.
14
15 Q. Why not?
16 A. Because I - I would - if I was doing a strip search,
17 I would ask them to take the shirt off, not lift the shirt.
18
19 Q. What about if you initially thought that you might do
20 a general search, might you ask them in those circumstances
21 to just lift their shirt up and show underneath their
22 armpits and belly?
23 A. No.
24
25 THE CHIEF COMMISSIONER: Q. But at all events, it's
26 possible, if there were two officers, you were present when
27 another officer did that?
28 A. Yes.
29
30 MS DWYER: Q. Do you have a recollection of that
31 happening?
32 A. No.
33
34 Q. The young person was then asked to take his shoes and
35 socks off. That's something that you might do, obviously -
36 ask a young person to take their shoes and socks off for
37 a search?
38 A. Yes. Not at that stage, though.
39
40 THE CHIEF COMMISSIONER: Q. What stage would you do it
41 at?
42 A. That would be one of the last stages.
43
44 MS DWYER: Q. The young person then explains that he was
45 told by a police officer to pull his pants down and show
46 underneath his gooch. Are you familiar with that term
47 "gooch"?



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1 A. I have heard it, yes.
2
3 Q. Do you recall about when you heard it?
4 A. Maybe back when I was in school.
5
6 Q. So you were certainly well familiar with it
7 by February this year; correct?
8 A. Yes, I know it, yes.
9
10 THE CHIEF COMMISSIONER: Q. What does it mean?
11 A. Underneath your groin, in between.
12
13 Q. Yes, between?
14 A. Between your anus and testicles.
15
16 MS DWYER: Q. I'm just going to read you from --
17
18 THE CHIEF COMMISSIONER: Q. Is it a word you have used?
19 A. When I was in school maybe.
20
21 Q. Not as a police officer?
22 A. Not that I recall, no.
23
24 MS DWYER: Q. Do you have any recollection of ever
25 saying to anybody that they should show you their gooch or
26 that area?
27 A. No.
28
29 Q. Is it possible you would have used that term during
30 the course of a search?
31 A. I don't believe I would, no.
32
33 THE CHIEF COMMISSIONER: Q. So are you saying that you
34 now have a memory that you were not at a search where
35 either you or the searching officer told the person being
36 searched to move their pants so that the officer or you
37 could see their gooch? You are saying you were never at
38 a search where that was said; is that what you now say?
39 A. I'm saying, yes, my memory - I don't have any memory
40 of being at a search where that has been said.
41
42 Q. I see. Does that mean that it might have happened but
43 your memory has failed?
44
45 MR MADDEN: Commissioner, I know these are not
46 adversarial, but many times, with respect to you,
47 Commissioner, you have asked that question, "If you can't



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1 remember, does that mean that that may have happened?" If
2 someone can't remember something, how can they say it may
3 have happened or it may not have happened? It is of no
4 assistance to you.

5
6 THE CHIEF COMMISSIONER: On the contrary, Mr Madden. The
7 phrase is ambiguous, inherently ambiguous. It may mean
8 "Something might have happened but it has escaped my
9 memory", or it might mean "It did not happen and that is
10 why I have no memory of it."

11
12 MR MADDEN: Well, either of those meanings are of no
13 assistance to you, Commissioner.

14
15 THE CHIEF COMMISSIONER: I do not agree and I think it is
16 a reasonable question.

17
18 Q. So are you saying that you have no recollection of
19 being at a search where either you or another officer asked
20 the person being searched to move their underpants or
21 remove their underpants so that their gooch could be
22 inspected because it might have happened and your memory
23 has failed you or is the fact that you have not a memory of
24 it because it did not happen? Which of those two
25 alternatives do you mean by your answer that you have no
26 memory? Do you understand the question?

27 A. I - the first one, Commissioner.

28
29 Q. The first one?

30 A. Yes.

31
32 Q. That is to say, this might have happened and your
33 memory about it has failed?

34 A. I just would have thought I would have remembered if
35 something like that would have happened, so - yes.

36
37 Q. No, if you would have a memory of it if it had
38 occurred, then the second is true; namely, you have no
39 memory because it did not happen. Let me go through.
40 There are only two possibilities. You have no memory of
41 the event because, although it may have happened, your
42 memory about it has failed --

43 A. Mmm-hmm.

44
45 Q. -- because we do forget things.

46 A. Yeah.

47



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1 Q. Or you have no memory of it because it did not happen
2 at all. Those are the two alternatives. Do you understand
3 what I'm saying to you?
4 A. Yes.
5
6 Q. So which of those alternatives do you mean when you
7 say you have no memory of being at a search where someone
8 was asked to inspect their gooch?
9 A. That it did not happen at all, because we did
10 a general search.
11
12 Q. So you remember --
13 A. Well, that's --
14
15 Q. -- that you were not at a search where words like that
16 were used?
17 A. Yes. Because - sorry, Commissioner, I'm getting
18 confused.
19
20 Q. Well, either you were present at a strip search or
21 not. You have said that you don't remember one way or the
22 other. I am asking you - really, I'm trying to explore
23 what you mean by your lack of memory, you see? As I say,
24 something may not be in your memory because it actually did
25 not happen; something might not be in your memory because
26 although it happened, you have since forgotten it. Those
27 are the two possibilities, aren't they, logically?
28 A. Yes.
29
30 Q. So I'm just exploring which of the possibilities you
31 mean when you say you have no memory of being at a search
32 where someone was asked to show their gooch. So you say
33 that you have no memory of it. I'm now asking you, in
34 effect, is that because it didn't happen and therefore it's
35 not in your memory, or is that because it might have
36 happened but you have since forgotten? I think you
37 suggested it's something that you would not be likely to
38 forget.
39 A. Yes, so that it --
40
41 Q. It didn't happen?
42 A. It didn't happen.
43
44 THE CHIEF COMMISSIONER: Very well.
45
46 MS DWYER: Q. Before I move on to the interview, I want
47 to read you the entire passage of what the young person



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1 said to see if any of it refreshes your memory in any way.
2 I'm reading from page 25:

3
4 *I sort of like froze for a bit I guess*
5 *like, 'cause I was like, I had my shirt up*
6 *and then he's [the police officer] like*
7 *alright now like pull your pants down. And*
8 *I was sort of like, just stood there for*
9 *a bit like, [and said] are you sure? Like,*
10 *do I just pull down my pants and show you*
11 *everything or like what? And he's like, no*
12 *pull down your pants, ah hold your dick and*
13 *lift your balls up and show me your gooch.*
14 *And I was like oh okay. And I sort of just*
15 *done it, dropped my pants and, like*
16 *I dropped 'em to my knees and then he was*
17 *like, nah, and then I dropped 'em to my*
18 *ankles and he was like, yeah. And then*
19 *lift it up.*

20
21 Does that refresh your memory at all as to anything
22 a colleague of yours did, for example, as a search?

23 A. No, it doesn't.

24
25 Q. Do you say that that could have happened or didn't
26 happen?

27 A. I have no memory of that happening.

28
29 THE CHIEF COMMISSIONER: Q. Yes. Do you mean by that
30 that it possibly happened and you have since forgotten?

31 A. No.

32
33 THE CHIEF COMMISSIONER: Go on.

34
35 MS DWYER: Q. In the field processing form that I showed
36 you earlier, it refers to you conducting a search - you and
37 your colleague - on this young person, and the type of
38 search is indicated as a general search. Is it correct
39 that you don't have any memory of the general search that
40 was conducted on this young person?

41 A. That's correct.

42
43 Q. So you are not able to tell us what you did, in terms
44 of the general search of this young person; correct?

45 A. Correct.

46
47 Q. Do you agree that there should be a record somewhere,



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1 either in your notebook entry or elsewhere, as to exactly
2 what is done as part of a search?
3 A. The steps; like, procedures of what's happened?
4
5 Q. Yes.
6 A. Yes, there should be some notes, yes.
7
8 Q. And there are not in this case because no-one made
9 a note in their notebook, neither you nor your colleague;
10 is that right?
11 A. That's correct.
12
13 Q. Officer, since 23 February 2019 have you participated
14 in a music festival as a searching officer?
15 A. Yes.
16
17 Q. Have you become aware of any change in the field
18 processing form since February 2019?
19 A. I think there has been, but I'm not exactly sure.
20
21 Q. Do you say you think there has been because there's
22 been discussion of it in the preparation for this inquiry?
23 A. I - my knowledge is the last festival that happened,
24 I've had other colleagues tell me that it's changed.
25
26 Q. Do you mean the last festival that took place in
27 New South Wales?
28 A. Yes.
29
30 Q. But you weren't there in a capacity as a searching
31 officer; is that right?
32 A. That's correct.
33
34 Q. And you have received no official training with
35 respect to change in the field processing form; is that
36 correct?
37 A. That's correct.
38
39 Q. Have you received any training since February on the
40 specific requirements when stripsearching children?
41 A. I think there may have been some emails in regards to
42 children, sorry?
43
44 Q. Yes, stripsearching of young people?
45 A. There may have been an email within the last couple of
46 months maybe, possibly.
47



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1 Q. Do I take it from your answer you don't have a clear
2 memory?
3 A. That's correct.
4
5 Q. Do you think it would be a good idea, reflecting back,
6 that officers like yourself do receive some specific
7 training on the legal requirements when stripsearching
8 a young person?
9 A. Yes.
10
11 Q. Have you received any training on what are the medical
12 symptoms of MDMA intoxication?
13 A. No.
14
15 Q. Does that just come from discussion with your
16 colleagues?
17 A. Yes, and more sort of experience, like seeing it
18 first-hand.
19
20 Q. But if you see it - you don't have any medical
21 training, do you?
22 A. No, I don't.
23
24 Q. So you don't know yourself whether they're symptoms of
25 that or perhaps alcohol, for example?
26 A. That's correct.
27
28 Q. Or fear or some other human experience?
29 A. Alcohol, yes. I think I would be able to determine if
30 someone was under the influence of alcohol.
31
32 Q. Let me go back to MDMA. Do you think it would be
33 a good idea for you to receive some instruction as to what
34 are the medical indications of MDMA intoxication?
35 A. Yes.
36
37 MS DWYER: Nothing further. Thank you, Officer.
38
39 THE CHIEF COMMISSIONER: Q. As part of your duties at
40 the festival, there was at least an expectation that you
41 might have to stripsearch young people; correct?
42 A. Yes.
43
44 Q. This was a young persons' event; correct?
45 A. Yes.
46
47 Q. They were being checked for drugs; correct?



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1 A. Yes.
2
3 Q. It is notorious that some young people carry drugs
4 into these festivals; correct?
5 A. Yes.
6
7 Q. Many more than can be detected, indeed, is the
8 suspicion; correct?
9 A. Yes.
10
11 Q. So the chances were that you might well be called upon
12 to search a young person - stripsearch a young person;
13 correct?
14 A. Yes.
15
16 Q. Did you ever receive any training or instruction about
17 the consequences or potential consequences for a young
18 person being stripped naked in the presence of strangers?
19 A. No.
20
21 Q. Did you receive any training or understanding or
22 mention of the risks to the wellbeing of a young person
23 stripped naked in the presence of strangers?
24 A. No.
25
26 Q. Following an event of being stripped, did you receive
27 any training or advice as to what you should do in relation
28 to the welfare of a young person?
29 A. Sorry, since this event, Commissioner?
30
31 Q. Well, at any time?
32 A. Yes, I now know that there's a manual that has gone
33 out and --
34
35 Q. And what does it say about the welfare of a young
36 person who has been stripsearched?
37 A. I haven't completely read over. I'm aware of
38 a manual. I don't know if that's in that manual.
39
40 Q. Well, the only manual that I'm aware of doesn't
41 mention it.
42 A. Yep.
43
44 THE CHIEF COMMISSIONER: Are you aware of anything like
45 this, Ms Chapman?
46
47 MS CHAPMAN: I am sorry, I was just distracted with my



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1 instructing solicitor, Chief Commissioner. I was just
2 looking back --
3
4 THE CHIEF COMMISSIONER: There is the search manual, but
5 it doesn't contain anything about post-search welfare.
6
7 MS CHAPMAN: No, you are correct.
8
9 THE CHIEF COMMISSIONER: Sorry?
10
11 MS CHAPMAN: You are correct, Chief Commissioner, it does
12 not contain that.
13
14 THE CHIEF COMMISSIONER: All right.
15
16 Q. So you actually have not received any training or
17 advice about that?
18 A. No, but I'm aware that it is there now.
19
20 Q. No, it's not there now.
21 A. Oh.
22
23 Q. That is the point.
24 A. Okay, sorry.
25
26 Q. You are mistaken.
27 A. Yes.
28
29 Q. But at all events, it's not something that you just
30 pick up on a piece of paper, do you? The welfare of young
31 people in this situation, do you not agree, is a matter for
32 careful consideration and careful insightful training;
33 agreed?
34 A. Yes.
35
36 Q. You are unlikely to get it from any police officer who
37 was without skills relating to psychological welfare of
38 people who may be placed in such a position; correct?
39 A. Yes.
40
41 Q. I take it as a police officer, the prospect yourself
42 of conducting a strip search is not exactly a pleasant one?
43 A. That's correct.
44
45 Q. Do you receive any training or help with dealing with
46 the experience of stripsearching a young person or, indeed,
47 stripsearching any person?



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1 A. No, the only training we've had in relation to that
2 would have been back when I was in the academy.
3
4 Q. And that's only as to the LEPRA powers?
5 A. Yes.
6
7 Q. It does nothing about the welfare of the officers who
8 are conducting these searches?
9 A. That's correct.
10
11 Q. Do you agree with me that these searches can, on
12 occasions, be extremely confronting?
13 A. Yes.
14
15 THE CHIEF COMMISSIONER: Mr Madden, do you have some
16 questions?
17
18 MR MADDEN: Just possibly one.
19
20 <EXAMINATION BY MR MADDEN:
21
22 MR MADDEN: Q. What were you wearing on the day?
23 A. Full police uniform.
24
25 Q. You have read the COPS event that was prepared by
26 [NAME SUPPRESSED]?
27 A. Yes.
28
29 MR MADDEN: I am sorry, I didn't get far, did I?
30
31 MS DWYER: GEN10.
32
33 THE CHIEF COMMISSIONER: Yes, there is to be no
34 publication of that name.
35
36 MR MADDEN: Q. Do you see that GEN10 says during this
37 time - and he is talking about when the young person was
38 approached - a drug detection dog made an indication in the
39 free air surrounding the young person? Do you recall
40 reading that?
41 A. Yes.
42
43 Q. The drug handler introduced herself, cautioned the
44 young person and questioned him about being in possession
45 of prohibited drugs; do you remember seeing that, reading
46 that?
47 A. Yes.



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THE CHIEF COMMISSIONER: Q. Were you present when that occurred?

A. I don't remember it.

MR MADDEN: That's all, Commissioner.

<EXAMINATION BY MS CHAPMAN:

MS CHAPMAN: Q. Officer, there was a briefing given by GEN6 on the day of the music festival - that's right?

A. That's correct.

Q. You vaguely remember that occurring?

A. Yes.

Q. But you don't remember a lot of the content; is that right?

A. That's correct.

Q. Do you recall that, at the end of the briefing by GEN6, a YLO - youth liaison officer - then spoke at the end as part of the briefing?

A. I don't remember that.

Q. In terms of any information or training that you've received after this music festival, you referred to an email that had been sent out?

A. I think there may have been an email that was sent out.

Q. Are you referring to what is known as a NEMESIS message?

A. Yeah, I think so.

Q. That's a state-wide message - yes?

A. Yes.

Q. And it is compulsory for all officers to read that; do you agree? Do you know that?

A. I wasn't aware it was compulsory for all officers to --

Q. Are you aware it is a high-priority message?

A. A NEMESIS email?

Q. Yes.



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1 A. No, I didn't realise that.
2
3 Q. I'm suggesting to you that a message of - a NEMESIS
4 message was sent out in relation to stripsearching
5 under-18-year-olds in about June this year. Did you
6 receive that?
7 A. I have - I have some sort of memory of an email being
8 sent out. I don't know when it was.
9
10 Q. And you don't now recall the content of it; is that
11 right?
12 A. That's correct.
13
14 MS CHAPMAN: Nothing further.
15
16 THE CHIEF COMMISSIONER: Are there any other questions?
17 No. Thank you, you are free to go.
18
19 <THE WITNESS WITHDREW
20
21 THE CHIEF COMMISSIONER: I think we will adjourn now for
22 lunch and resume at 1.45.
23
24 MR OATES: Excuse me, Chief Commissioner, before you rise,
25 could I have access to that interview so that I can read it
26 over lunch? It would be more convenient for me to be able
27 to absorb it.
28
29 THE CHIEF COMMISSIONER: The brief answer is no, not at
30 this point. Indeed, I was a bit surprised that Mr Madden
31 had got it because I thought it had been understood that
32 I wanted to read it first. I just want a chance to read it
33 before it comes to you. I don't expect a problem, but
34 I will need to read it first.
35
36 MR OATES: As you please.
37
38 THE CHIEF COMMISSIONER: What I would be asking is that
39 after your client has finished being questioned, you return
40 it to mis-Raice.
41
42 MR OATES: I certainly don't want to take it away.
43
44 THE CHIEF COMMISSIONER: Thank you. And, Mr Madden, if
45 you would do the same after the luncheon adjournment.
46
47 MR MADDEN: I will return it now, Chief Commissioner.



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THE CHIEF COMMISSIONER: Very well. 1.45.

LUNCHEON ADJOURNMENT

MS DWYER: Chief Commissioner, just before we start, the interviews have been redacted - that is, the interviews with respect to the next two witnesses. I have just provided them - that is my mistake - without checking with you and I've, just this second, handed them out.

THE CHIEF COMMISSIONER: No, no, that's fine, but it is subject to orders for confidentiality. They are not to be shown to your clients at this stage.

MR OATES: Yes.

THE CHIEF COMMISSIONER: Although I told Ms Chapman I would be making this announcement at the end of the day, I've decided that I should make it now.

For the purpose of a public hearing, amongst other things, important aspects are educating the public, they are ensuring the public that an independent oversight body takes its responsibilities seriously and tests police actions for lawfulness and appropriateness, but also to give, where there is a criticism of police, an opportunity for police to be publicly vindicated where that is appropriate, in the hope, generally, that public knowledge about what police do and why they do it will increase respect for police but also will increase public knowledge about the rights that they have when they interact with police, thus contributing to the rule of law.

One of the important aspects of a public hearing is also that, by the publicity, persons who feel they are able to give relevant evidence about matters being investigated by the police will be encouraged to come forward.

The Commission only has relatively limited powers of investigation and we, of course, identify those persons who we believe are able to assist, but in a wide-ranging inquiry of this kind, it is certain that not all relevant witnesses are identified, and it is important in the public interest they be encouraged to come forward, by two or possibly three considerations: first of all, they become aware of the existence of the investigation and the subject



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1 matter; secondly, they understand that their rights,
2 including their rights of privacy, will be maintained and
3 respected; and, thirdly, that their particular experiences
4 with police can be dealt with in a way that is fair to them
5 and, I hasten to add, fair to the police.
6

7 When one is dealing with a subject such as
8 stripsearching of young people, the inevitable sexual
9 content of such events cannot be overlooked. This is
10 especially so with the experience that we have obtained,
11 particularly in the last decade, of sexual interferences of
12 various kinds with young people. I don't think anyone
13 would doubt that there must be cases where strip searches
14 are called for and are legally conducted. There are,
15 however, occasions where strip searches are not called for
16 and are not lawfully conducted.
17

18 Where a strip search is not lawfully conducted,
19 questions arise as to the legal category into which it
20 falls. It might be, for example, in due course - I will
21 hear submissions on this point - that strip searches that
22 are conducted without lawful authority may well be indecent
23 assaults. But leaving aside the criminal law, the
24 psychological consequences of such conduct are capable of
25 being quite serious, as recent history is enough to show
26 us.
27

28 Accordingly, the Commission proposes to reach out to
29 experts in this field dealing with relations between or
30 interactions between adults and young people. Which might
31 constitute or have a sexual character or element, to
32 attempt to identify the risks involved when such searches
33 are conducted and how those risks might best be
34 ameliorated, so that we can develop some best practice
35 rules around this matter.
36

37 Part of the reason I am making this announcement is
38 that it has not explicitly been part of the investigation
39 elements that the Commission will be examining, the
40 potential psychological risks and consequences of searches
41 of this kind on young people, and in the hope also that
42 parents in particular, or guardians, whose children have
43 been subjected to these searches with apparently unhappy
44 consequences, of whom, I might say, the Commission is aware
45 of some, who will come forward, knowing that their privacy
46 and confidentiality will be maintained but to provide
47 experts with material evidence that enables, rather than



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1 generalities, particular issues to be dealt with.

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I would expect those issues will be dealt with in consultation with the NSW Police Force and I am hoping that the NSW Police Force will itself consult relevant experts to assist the Commission in this area.

So far as I'm aware in this state, no such research has ever been conducted, and it is, I think, clear beyond debate between reasonable people that it is an important matter to consider when one is looking at this area, as the Commission does, not only in point of law but in point of appropriate police practice. Thank you. Yes.

MS DWYER: I call GEN10.

MR McGIRR JR: Before that happens, Chief Commissioner, may I note my appearance. Paul McGirr Jr, for the record.

THE CHIEF COMMISSIONER: Yes, certainly, Mr McGirr.

MR AMIRADAKIS: Thank you, Chief Commissioner, I appear for this client. He will be taking the affirmation.

THE CHIEF COMMISSIONER: I am sorry, which of you is appearing for this witness?

MR AMIRADAKIS: That's me. Amiradakis.

THE CHIEF COMMISSIONER: Thank you. Mr McGirr, it's simply that you are back in the room?

MR McGIRR JR: I am back in the room.

THE CHIEF COMMISSIONER: Inconspicuous. I wouldn't have noticed you otherwise.

<OFFICER GEN10, affirmed: [2.05pm]

THE CHIEF COMMISSIONER: You may be seated, thank you very much. Now, there are things which you have undoubtedly been told, but I need to remind you of them myself.

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: Firstly, you must answer any questions that you are asked unless I tell you you don't



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1 have to, and you must produce anything you are asked to
2 produce unless I tell you that you don't have to. You can
3 object to answering questions and you can object to
4 producing anything, but even if you do object, you must
5 answer the question and you must produce what you are asked
6 to produce.

7
8 The effect of your objection is simply that what you
9 say and what you produce cannot be used against you in any
10 other proceedings, except under the Police Act in relation
11 to any disciplinary matters that might arise, or under the
12 Law Enforcement Conduct Commission Act for perjury or
13 contempt. Do you understand?

14
15 THE WITNESS: Yes, sir.

16
17 THE CHIEF COMMISSIONER: Now, I can make a declaration
18 under section 75, and your lawyer has asked that I do so,
19 which has the effect that all your answers will be taken as
20 given under objection and everything you produce will be
21 taken as produced under objection. I take it you wish me
22 to make that declaration?

23
24 THE WITNESS: Yes, sir.

25
26 THE CHIEF COMMISSIONER: Very well. Pursuant to
27 section 75 of the Act, I declare that all answers and other
28 things given by this witness will be regarded as having
29 been given on objection by the witness.

30
31 Yes, thank you, Dr Dwyer.

32
33 <EXAMINATION BY MS DWYER:

34
35 MS DWYER: Q. Officer, you understand, do you, that in
36 this hearing you are to be known by the codename GEN10?

37 A. Yes.

38
39 Q. In front of you, you have a list of scheduled
40 codenames, or a schedule of codenames; do you see that?

41 A. Yes.

42
43 Q. Could I ask, please, that when you're asked to refer
44 to another police officer or, indeed, to a young person,
45 you refer to that sheet?

46 A. Yes, ma'am.

47



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1 Q. How long have you been in the force?
2 A. Approximately seven and a half years.
3
4 Q. You have attained the rank of detective senior
5 constable; is that right?
6 A. Yes, my actual rank is plain clothes senior constable,
7 just in the training for the detectives, yeah.
8
9 Q. Was that your rank, plain clothes senior constable, as
10 at February 2019?
11 A. No. It was just senior constable.
12
13 Q. On 23 February this year, you had a role at the Lost
14 City Music Festival?
15 A. Yes.
16
17 Q. What was that role?
18 A. To assist in the drug dog operation.
19
20 Q. During the course of that day, is it the case that you
21 were partnered with Officer GEN9?
22 A. Yes, that's correct.
23
24 Q. Did you know that officer prior to that day?
25 A. Yes.
26
27 Q. Did you work in the same station together?
28 A. I did.
29
30 Q. Did you attend a briefing for the festival at some
31 stage before it started?
32 A. Yes.
33
34 Q. Looking at that list of codenames, do you recall who
35 gave the briefing?
36 A. I don't remember exactly. It's usually a couple of
37 officers who would run the briefing, yeah.
38
39 Q. But none of those names stand out to you as the
40 officers that ran the briefing that day?
41 A. Look, I can't remember on that day, but I do recognise
42 the names that would usually give the briefing.
43
44 Q. Who are they?
45 A. So it would be GEN4, GEN6, and that's all I would
46 remember, yep.
47



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1 Q. I take it from that last answer that you have worked
2 at other music festivals prior to February?
3 A. Yeah, that's correct.
4
5 Q. How many do you think you have worked at?
6 A. I'm not too sure, I'd say probably in excess of 10.
7 Yep.
8
9 Q. That's in the capacity as assisting the drug dog
10 operations?
11 A. Yes.
12
13 Q. So searching capacity; correct - or that's required
14 you to search the patrons?
15 A. Yeah, just assisting drug dog. On an occasion I've
16 worked as a user-pay before at a festival as well.
17
18 Q. So I take it, then, that having worked at that many
19 festivals, you have conducted searches of persons after
20 there has been a drug dog indication?
21 A. Yes.
22
23 Q. Has that included strip searches on occasions?
24 A. On occasions, yes.
25
26 Q. Have you, prior to 23 February, worked at a festival
27 where there were under-18s present?
28 A. Yes.
29
30 Q. So prior to 23 February, you have conducted a strip
31 search, have you, on an under-18?
32 A. I don't remember if I'd done an actual strip search
33 prior to that. Yeah.
34
35 THE CHIEF COMMISSIONER: Q. As distinct from?
36 A. Sorry?
37
38 Q. You used "actual", I'm just wondering what distinction
39 you were drawing.
40 A. I don't --
41
42 Q. You said "I don't recall an actual" were you - I mean,
43 do you mean that you might have done a virtual one?
44 I just --
45 A. No, no, just --
46
47 Q. I'm just trying to understand your answer, that's all.



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1 A. No, there is only one type of strip search. I don't
2 recall, sorry.
3
4 Q. What about in the course of your ordinary duties, have
5 you done strip searches?
6 A. On a young person or anyone?
7
8 Q. Anyone for a start?
9 A. Yes, I have.
10
11 Q. Can you give me an idea? Would it be --
12 A. How many?
13
14 Q. -- more than a handful?
15 A. Yeah. Yeah, more than a handful.
16
17 Q. What about young persons?
18 A. I don't really recall with young persons, as I would
19 have only done a couple of festivals there as such.
20
21 Q. I'm talking in the course of your general duties?
22 A. Yep, generally don't deal with many young persons, to
23 be honest, yes.
24
25 Q. So far as your general duties are concerned, you
26 believe you haven't done any strip searches of young
27 people; does that fairly state your evidence?
28 A. Yep. Not that I can recall.
29
30 MS DWYER: Q. During the course of the briefing that you
31 attended for the Lost City Music Festival, was anything
32 said about the requirements in LEPRa when searching young
33 people?
34 A. Not that I remember.
35
36 Q. Was anything said about stripsearching?
37 A. Not that I remember.
38
39 Q. Was anything said about independent persons who might
40 be available to assist police on that day?
41 A. Yes. Generally at the under-18s festivals we will
42 have either people known as the Red Frogs, as independent
43 people who can represent them, or I believe on this
44 occasion we had a couple of members from the SES.
45
46 Q. All right. I want to ask you --
47



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1 THE CHIEF COMMISSIONER: Q. To represent them for what
2 purpose?
3 A. In the case that we may need to conduct possible
4 interview with the young person or - yeah, if they are -
5 yeah, just need to represent their interests.
6
7 Q. Just so I understand you, what you are saying is that
8 in the past - and possibly at this particular festival -
9 there are SES officers and perhaps Red Frogs people around
10 that you might call on if you needed, and their purpose was
11 to be an independent witness at an interview?
12 A. I don't believe that was their only purpose, but if we
13 required them for - if we were going to conduct an
14 interview and you happened to find something on them, then,
15 yep, they would come and assist --
16
17 Q. You are not allowed to interview while they are
18 searching, are you?
19 A. While searching, no.
20
21 Q. So they are two separate things?
22 A. Yep.
23
24 Q. So interview - what about the search? Did you
25 understand that they were available also if you were going
26 to search anyone?
27 A. Yes.
28
29 Q. Who told you that?
30 A. I --
31
32 Q. Or was it your assumption?
33 A. My assumption, yep.
34
35 MS DWYER: Q. Were you familiar, in February 2019, with
36 the requirements under LEPR when you were stripsearching
37 young people?
38 A. Yes.
39
40 Q. So what were they?
41 A. That they need a support person present when you're -
42 if you do conduct a strip search.
43
44 Q. Did you distinguish in February 2019 between parent,
45 guardian or support person, or did you think it was okay if
46 any of them were present?
47 A. I was of the opinion that it would be okay if any of



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1 them were present, if the young person agreed to it, to
2 have them present there, as well.

3

4 Q. Did you understand that you needed to offer the young
5 person their parent or guardian first?

6 A. I wasn't aware of that to be honest, yep.

7

8 Q. Did you understand that there must be a parent,
9 guardian or independent person present in all
10 circumstances, unless there was a specific condition?

11 A. That's correct.

12

13 Q. And so did you understand that when you were faced
14 with the young person who you were going to stripsearch,
15 you would have to have a conversation with them about their
16 parent, guardian or a support person being present?

17 A. Yes.

18

19 Q. Who did you understand was available as a support
20 person other than a parent or guardian, for a strip search
21 of a child?

22 A. Would be an acceptable person --

23

24 Q. But who specifically, for that festival in February?

25 A. Oh, for that --

26

27 Q. Yes.

28 A. -- I would say the members of the SES.

29

30 Q. Why would you say that?

31 A. Because I was told that they are the independent
32 persons representing the interests of the young people.

33

34 Q. When were you told --

35

36 THE CHIEF COMMISSIONER: Q. Yes, but you said that they
37 had to be an acceptable person. What if they were
38 unacceptable? Acceptable to whom?

39 A. I believe acceptable to the police and to the young
40 person.

41

42 Q. Right. How would you decide whether a person was
43 acceptable, from a police point of view? Was it just
44 because they were members of SES?

45 A. I would insinuate that, yes. Yep. But generally --

46

47 Q. But all sorts of people are volunteers at SES.



8456401

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1 A. Mmm-hmm.
2
3 Q. Aren't they?
4 A. I believe so.
5
6 Q. Why would they know anything about civil rights or the
7 rights of a young person? How would they be able to
8 represent the rights of a young person in that context?
9 A. I --
10
11 Q. No more than any other member of the public, I should
12 think; do you agree?
13 A. Yes.
14
15 Q. And most members of the public, what do they know
16 about this? Not very much, I think; do you agree?
17 A. Not very much - yes.
18
19 Q. So you were taking a great deal on trust for a start,
20 weren't you?
21 A. Yes.
22
23 Q. On looking back, not very satisfactory; do you agree?
24 A. Yes.
25
26 Q. And how would you ask whether the - get a response
27 from the young person about whether the SES officer was an
28 acceptable person to that young person?
29 A. How would I ask them?
30
31 Q. Yes.
32 A. I would generally say, "Are you happy for them to be
33 present while this is conducted", or --
34
35 Q. On what basis would they know? Because they were
36 six-foot tall and were wearing clothes and apparently had
37 a smile? Upon what basis could they make a decision about
38 whether the individual was acceptable?
39 A. I --
40
41 Q. Would you suggest they would have a conversation with
42 the person first?
43 A. Yeah.
44
45 Q. Ever done that?
46 A. Have I? No.
47



8456402

8458529

1 Q. Why?
2 A. Because I haven't had the need to bring in a member of
3 the SES.
4
5 Q. Is it because you have never done a strip search of
6 a young person?
7 A. No, I don't recall doing one at the festival. Like
8 I said, prior, I possibly have, I just don't recall.
9
10 Q. When you say you don't recall, are you saying you did
11 not do a strip search of a young person at this festival?
12 A. On that day I remember doing one, but it was - I was
13 involved in one that was at a police station.
14
15 Q. Right. But at the festival itself, you did not do
16 a strip search?
17 A. Not that I recall, no.
18
19 Q. Well, could you have done one and it escaped your
20 memory?
21 A. From the information that I've refreshed my memory
22 with, I don't believe I have conducted a strip search.
23
24 Q. Well, I understand that, but if you conducted a strip
25 search of a young person, you would have had to have
26 contacted a parent, guardian or an acceptable person, for
27 a start - don't you think you would remember that?
28 A. Yes.
29
30 Q. And can we infer from the fact that you have no such
31 memory, that it did not occur?
32 A. What didn't occur?
33
34 Q. A strip search conducted by you.
35 A. Yes. I didn't - yep.
36
37 Q. So your evidence boils down to this: you did not
38 conduct a strip search at the festival?
39 A. At the festival, yes.
40
41 MS DWYER: Q. You have refreshed your memory from the
42 field processing form that relates to a young person who is
43 known in this inquiry as GEN13C; is that right?
44 A. Yes, that's correct.
45
46 Q. I will show you a copy of that field processing form.
47 A. Yes.



8456403

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1
2 Q. It is exhibit 5C. Is your handwriting on that form?
3 A. No, it's not.
4
5 Q. Do you recognise the handwriting?
6 A. Yes.
7
8 Q. Is it the handwriting of Officer GEN9?
9 A. Yes.
10
11 Q. Do you see that on that form it notes that you are one
12 of the arresting/escorting police for that particular young
13 person?
14 A. Yes.
15
16 Q. Do you have a memory of searching that young person?
17 A. It's very vague memory with that one.
18
19 Q. What memory do you have, as you sit there, of
20 searching that young person on 23 February?
21 A. Possibly the T-shirt that they may have been wearing.
22 That was it. Yep.
23
24 Q. So they are noted to be wearing a black and white
25 striped shirt?
26 A. Yep.
27
28 Q. Do you see that?
29 A. Yep.
30
31 Q. Do you have a vague memory of a black and white
32 striped shirt?
33
34 MS CHAPMAN: Commissioner, with respect to --
35
36 MS DWYER: A black and red striped shirt, thank you.
37
38 THE WITNESS: Yes.
39
40 MS DWYER: Q. Is that what jogged your memory?
41 A. Yeah, I believe it might have - may have been
42 horizontal stripes, from memory.
43
44 Q. Do you remember anything else about this young person?
45 A. No, just that it was from [NAME SUPPRESSED], so
46 I wasn't too sure where that was.
47



8456404

8458531

1 Q. So when you read that on the field processing form --

2

3 THE CHIEF COMMISSIONER: There is to be no publication of
4 that location.

5

6 MS DWYER: Q. When you read that, did you think to
7 yourself, "Oh, I remember asking a person about that
8 location on 23 February"?

9 A. Not about the location, just noting that, obviously,
10 the details that were written down, that, yeah, I remember
11 that someone was from there, yep.

12

13 Q. Apart from the shirt, and the fact that you heard that
14 suburb at the February 2019 festival, is there anything
15 else that you remember about this young person?

16 A. Just the - just some of these observations - some of
17 the observations that have been put down here on the field
18 processing form.

19

20 Q. What observations are you referring to?

21 A. I think it is written there that - was shaky, and
22 the - that's all I can remember.

23

24 Q. You don't remember, do you, seeing a particular young
25 person who was shaky? Do you?

26 A. When I was dealing with them, yes.

27

28 Q. So you remember dealing with one particular young
29 person who was shaky. Did you deal with any more than one
30 young person who was shaky who was searched on that day?

31 A. Was shaky wearing that shirt and from that location,
32 no, because then - yeah. That's it, no.

33

34 Q. How many young people did you search on 23 February?

35 A. I think I was involved in two.

36

37 Q. Have you refreshed your memory from the field
38 processing forms with respect to those two?

39 A. Not from the other one.

40

41 Q. So you are just going off your general memory to give
42 that answer that you think you were involved in two
43 searches?

44 A. Yes.

45

46 Q. Were they general searches or strip searches, those
47 two that you have referred to at the festival?



8456405

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1 A. One was general and the other one, like I said, at the
2 station, was a strip search.
3
4 Q. What about at the festival?
5 A. General.
6
7 Q. So were you only involved in, as far as you remember,
8 one general search at the festival?
9 A. That's correct.
10
11 THE CHIEF COMMISSIONER: Q. Were you bearded at that
12 time or clean-shaven?
13 A. I would have been bearded.
14
15 Q. How long have you had your beard?
16 A. A few years.
17
18 MS DWYER: Q. You recall, then, with respect to the one
19 search you did and this young person, having some contact
20 with him. How did that come about?
21 A. We're talking about GEN13C?
22
23 Q. That's right.
24 A. Yep. So we were notified of this person through an
25 indication of a drug dog.
26
27 Q. And what happened after that?
28 A. Myself and GEN9 have then taken that young person to a
29 designated searching area where we had a chat there further
30 and --
31
32 Q. I will just stop you there. Do you remember taking
33 that young person into the designated searching area?
34 A. Vaguely. Vaguely. Yeah.
35
36 Q. Do you remember then being in the search area, the
37 designated search area, with the young person?
38 A. Yes.
39
40 Q. Whereabouts in the designated search area were you
41 with the young person to have a chat with him?
42 A. So on the way generally we will have a chat as we are
43 escorting them back to that searching area.
44
45 Q. Are you relying on your general practice to say that?
46 A. Yes.
47



8456406

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1 Q. Do you remember having a chat with this particular
2 young person on that day while you were walking him to the
3 general search area?
4 A. Yeah, vague - vaguely, yes.
5
6 Q. What do you remember saying to him?
7 A. I just remember asking if he'd consumed any drugs and
8 he said, "No."
9
10 Q. At any time prior to asking him if he had consumed any
11 drugs did you caution him?
12 A. I didn't, no.
13
14 Q. Did you hear your colleague caution him, GEN9?
15 A. No. It's usually done with the drug dog handler.
16
17 Q. Did you hear the drug dog handler caution him?
18 A. Not that I can remember.
19
20 Q. So you asked him if he had consumed any drugs, he
21 said, "No". What happened next?
22 A. Like I said, from memory, it was conducted a search.
23 That's all I can --
24
25 Q. Where did you conduct the search?
26 A. In the designated searching booth.
27
28 Q. What did that look like?
29 A. It's like a cylinder with, like, a pointy roof where
30 you can walk in, close the door behind you, and you're in,
31 like, a little circle.
32
33 Q. Did you take --
34
35 THE CHIEF COMMISSIONER: Q. So was the search conducted
36 with the door closed?
37 A. I believe so.
38
39 THE CHIEF COMMISSIONER: Yes, go on.
40
41 MS DWYER: Q. I will just show you one page of
42 exhibit 21C. Is that the area where you conducted
43 a search?
44 A. It looks like one of those domes that we used to
45 search.
46
47 Q. Whenever you searched someone, was it done in that



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1 dome?
2 A. Yes, I think.
3
4
5 MS DWYER: The barcode is 8405723.
6
7 Q. So while that search was being conducted, did you see
8 your colleague take any notes?
9 A. He was, yeah, writing down the notes on this field
10 processing form.
11
12 Q. Did you take any note in your notebook at any time in
13 relation to this search?
14 A. I believe later I transferred some notes from here on
15 to - into my notebook.
16
17 Q. Have you got your notebook here in court with you?
18 A. No, I don't.
19
20 Q. Have you had a look at your notebook to refresh your
21 memory of that?
22 A. Yes.
23
24 Q. Have you got access to your notebook at some stage
25 this week?
26 A. The entry that was made on that day, I've had, yes.
27
28 Q. You've had access to it?
29 A. Yes.
30
31 Q. Does your lawyer have a copy or do you have a copy of
32 that in court, or does anybody here in the courtroom have
33 access to it, that you know of?
34 A. I'm not too sure if he has.
35
36 MS DWYER: I call for that notebook or an entry of it if
37 it is here in court.
38
39 (Page produced to court officer)
40
41 MS DWYER: Q. I will show you a photocopy. Is that the
42 page of your notebook that you are referring to, with the
43 name of the young person given codename GEN13C on it?
44 A. That's correct.
45
46 Q. Do you agree that the entry there with respect to
47 a description of that young person is exactly the same, in



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1 terms of the reason for the search, as what is on the field
2 processing form?
3 A. Yes.
4
5 Q. Is that the only note that was taken by you in
6 relation to this search?
7 A. Yes.
8
9 Q. Do you agree that that does not contain anything about
10 what was done for the purposes of the search?
11 A. That's correct, not in the notebook, yep.
12
13 Q. Does it describe the search as a person search?
14 A. Yes.
15
16 Q. Why is it described as a person search rather than
17 a general search?
18 A. It is just what I record it as - yep, I've always
19 recorded it that way.
20
21 Q. When did you write that entry into your notebook?
22 A. I don't remember the time. It could have been after
23 the festival, or it could have been when I left the
24 festival and went to the police station. I don't remember.
25
26 Q. Why did you write that entry in your notebook when
27 there was already a field processing form with the same
28 information in it?
29 A. Because when I was at the station, my partner was -
30 GEN9 was dealing with the other incident that we were
31 involved in. So generally, if he took these details here
32 on the field processing form, I would expect him to put on
33 a COPS report event for it. So I was the searching
34 officer, so I've helped him out with that. So I've
35 transferred some details into my notebook.
36
37 Q. So you were the --
38
39 THE CHIEF COMMISSIONER: Q. What was the other
40 incident? You said he was noting "the other incident we
41 were involved in"?
42 A. So there was another person that we assisted - was
43 searched at the event and due to what was found, we
44 assisted and took over that matter.
45
46 Q. So you didn't conduct the search?
47 A. No.



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1
2 Q. But that person was brought to you after the search?
3 A. Yes. Well, we were notified after the search and the
4 findings, and then we went and assisted with that.
5
6 MS DWYER: Q. I think you said earlier that you did do
7 a strip search back at the station; is that right?
8 A. That's correct, yes.
9
10 Q. Was your colleague GEN9 there for the purpose of that
11 strip search?
12 A. Yes, yep. I believe he was the one that was conducted
13 it, yep.
14
15 Q. Was that a young person from the festival?
16 A. Yes.
17
18 THE CHIEF COMMISSIONER: Q. Who was there as an
19 independent person?
20 A. I - from memory, I don't think any independent person
21 was there.
22
23 Q. Why?
24 A. Because at the time, I had spoken to the young
25 person's father on the way to the police station. He said
26 he was going to be quite some time before he could get
27 there. I said, "We need you there to be a support person
28 for him." Due to that, we wanted to ensure that there was
29 nothing more, no other drugs there. So to prevent any
30 destruction of evidence and to ensure the safety of the
31 young person, we have conducted that at the police station.
32
33 Q. How long was the delay?
34 A. I can't remember. Yeah, I - I wouldn't be able to
35 give you a time. I mean, I think it was about an hour or
36 more, that he gave us, the time frame. But I can't say for
37 sure.
38
39 Q. Why could you not keep the young person under security
40 or in a secured position while you waited?
41
42 MS CHAPMAN: Chief Commissioner, I'm loath to interrupt,
43 however, I have some information here which, if we are
44 talking about the same search of this other young person,
45 this officer might be mistaken, and I'm --
46
47 THE CHIEF COMMISSIONER: I see.



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1
2 MS CHAPMAN: If it is the one I think it is, there was
3 a support person. I don't know how you want me to --
4
5 THE CHIEF COMMISSIONER: We can leave it for the present.
6 Perhaps you might give that to counsel assisting in due
7 course.
8
9 MS CHAPMAN: Yes.
10
11 THE CHIEF COMMISSIONER: Yes, go on.
12
13 MS DWYER: Q. I was asking you about why you wrote in
14 your notebook entry the exact same information as in the
15 field processing form. You were the searching officer?
16 A. Yes.
17
18 Q. For GEN13C; correct?
19 A. That's correct.
20
21 Q. Why not write in your notebook what you actually did
22 as part of the search?
23 A. As in how it was conducted or --
24
25 Q. Yes.
26 A. I don't know.
27
28 Q. Do you agree with me that there's no record anywhere
29 in your notebook or COPS or the field processing form as to
30 what was actually done for the search?
31 A. No, I mean, on the field processing form it's
32 indicated general, but it doesn't say how it was actually
33 conducted; that's correct.
34
35 Q. And you've got no memory of how it was conducted now,
36 sitting there, do you?
37 A. No.
38
39 Q. So do you agree with me that it would be a good idea
40 to keep a record of what was actually done?
41
42 THE CHIEF COMMISSIONER: Q. Well, it's not a good idea:
43 it is essential, isn't it, that the relevant details of
44 what you do when you are exercising a compulsory power, as
45 you were, be recorded? Aren't you taught that?
46 A. Yes.
47



8456411

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1 Q. You know why COPS entries are made, don't you?
2 A. To keep a record.
3
4 Q. Yes. And the record, when you are exercising a power,
5 has to show the power was appropriately exercised; correct?
6 A. Yes.
7
8 Q. Well, if you don't know what happened, and the officer
9 then can't remember what happened, that means that there
10 can be no effective oversight of what happened; do you
11 understand?
12 A. Yes.
13
14 Q. So is it not obvious that COPS records must include
15 details of what occurred?
16 A. Yes.
17
18 Q. Do you agree?
19 A. Yes.
20
21 Q. In future, will you do it?
22 A. Yes.
23
24 THE CHIEF COMMISSIONER: Good. Yes, go on, please.
25
26 MS DWYER: Q. You completed a COPS entry in relation to
27 GEN13C; is that right?
28 A. Yes, that's correct.
29
30 Q. You have refreshed your memory from that in order to
31 prepare for this hearing?
32 A. Yes.
33
34 Q. I will show you a copy of that. It's exhibit 22C. Do
35 you see there that with respect to the COPS entry, your
36 name appears as having created it?
37 A. Yes.
38
39 Q. There is an automated narrative created at 11.09pm on
40 that day. Did you enter some information on that day in
41 the evening?
42 A. Yes, I would have.
43
44 Q. If you turn over the page, there is a further
45 indication that on 4 March 2019, some eight days later or
46 so, something further is done in relation to that COPS
47 entry?



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1 A. Yes, that's correct.
2
3 Q. What was that?
4 A. It appears to be an action of the officers involved.
5
6 Q. So did you do something in relation to the COPS entry
7 on 4 March 2019?
8 A. I would have, yes, completed the actions of it.
9
10 Q. What were they?
11 A. So it has there police involved, so you can put in the
12 officers involved in the incident. And it looks like I've
13 also put in there that the young person was stopped and
14 searched, nothing was found, and they were allowed to
15 re-enter the festival.
16
17 Q. I take it that in preparing the COPS entry, what you
18 relied on was the processing form and your notebook, which
19 said the same thing?
20 A. Yes, and what I could remember at that time.
21
22 Q. But there is nothing additional in the COPS entry, is
23 there, that tells us how the young person was searched?
24 A. Yes, that's correct.
25
26 MS DWYER: Chief Commissioner might I tender the record of
27 interview with GEN13C, or at least check that it is
28 exhibit 23C? It appears at tab 3 of the brief. The
29 barcode is 8453456 through to --
30
31 THE CHIEF COMMISSIONER: At what tab is it?
32
33 MS DWYER: Tab 3, Chief Commissioner.
34
35 THE CHIEF COMMISSIONER: It hasn't thus far been tendered.
36
37 MS DWYER: Might I tender it now, please, and 8453497 is
38 the last page of that exhibit.
39
40 THE CHIEF COMMISSIONER: Very well. The record of
41 interview of GEN13C will be 23C.
42
43 **EXHIBIT #23C RECORD OF INTERVIEW OF GEN13C BARCODED**
44 **8453456-8453497**
45
46 MS DWYER: Could I also tender GEN10's notebook extract.
47



8456413

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1 Q. Do you still have a copy of that there, sir?

2 A. Yes, sure.

3

4 Q. Would you provide it to the court officer and
5 a barcode will be placed on it.

6

7 **EXHIBIT #24C EXTRACT FROM THE NOTEBOOK OF G10 BARCODED**
8 **7603244-7603245**

9

10 MS DWYER: Officer, I appreciate that you have no memory
11 of what was done with respect to this young person, but you
12 certainly accept that you were involved in a search of
13 GEN13C, don't you?

14 A. Yes, that's correct.

15

16 Q. GEN13C has told an investigator at LECC what happened
17 to him when he was subjected to a search, and he says that
18 he was with two officers - and this is page 25 - he had his
19 shirt up, because he was asked to pull his shirt up, and
20 a police officer said to him:

21

22 *... alright now like pull your pants down.*
23 *And I was sort of like, just stood there*
24 *for a bit like, are you sure? Like, do*
25 *I just pull down my pants and show you*
26 *everything or like what? [And the police*
27 *officer said] no down pull your pants, ah*
28 *hold your dick and lift your balls up and*
29 *show me your gooch.*

30

31 And the child said "like okay" and he dropped his pants to
32 his knees and the police officer said "Nah" and then he
33 dropped them to his ankles. Is that something that you did
34 as part of a search of this young person?

35 A. No, definitely not.

36

37 Q. Do you understand the term "gooch"?

38 A. No, I don't. That's why - I don't use that term.

39

40 Q. Is it a term that you had heard at any time prior
41 to February 2019?

42 A. I've heard of people saying it, but I - to be honest,
43 I don't know what it actually means.

44

45 Q. Have you heard of other police officers saying it?

46 A. No.

47



8456414

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1 Q. Have you ever heard another police officer in your
2 earshot saying it?
3 A. No.
4
5 Q. After you conducted a search or an escort of GEN13C,
6 was he left alone for any period that you are aware of, in
7 the search area?
8 A. Not that I'm aware of, no.
9
10 Q. Do you say to the Commission that it is impossible
11 that any other officers were involved in the search of this
12 young person?
13 A. Yeah, I would have thought it was just me - myself and
14 GEN9.
15
16 Q. Have you ever escorted a young person into the search
17 area and then asked another officer or officers to assist
18 with a search?
19 A. Yes, yeah.
20
21 Q. Do you recall doing it on this day?
22 A. No.
23
24 Q. Is it possible that you escorted this young person
25 into the search area and then got called off to do duties
26 and this young person was searched by any other officer?
27 A. I mean, it's possible, but I don't think that's
28 happened.
29
30 Q. Can I ask you to please have a look at the field
31 processing form again, 5C, if it is still in front of you?
32 A. Yeah.
33
34 Q. Do you see that there is a set of notations under the
35 subheading "Action taken"?
36 A. Sorry, just trying to find it.
37
38 Q. Three-quarters of the page down?
39 A. Yep.
40
41 Q. "Action taken", "Caution or ejected" appears to have
42 a tick next to it, or is it just in fact a stroke -
43 I appreciate you didn't make the markings on the document?
44 A. To me, that would appear it's just a line, not a tick.
45
46 Q. So is there any indication under "Action taken" as to
47 what actually happened for this young person on that day,



8456415

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1 after the search?
2 A. In the COPS event.
3
4 Q. I will take you to the field processing form first, if
5 I may.
6 A. I'm sorry.
7
8 Q. Does that tell you what happened?
9 A. It doesn't appear to, no.
10
11 Q. And the COPS entry, if you could go to that, please,
12 if it is still in front of you - it is exhibit 22C.
13 A. Yep.
14
15 Q. The initial entry is at 23:09, then there is another
16 entry at 23:12, with some further details. Down the bottom
17 of that, it says:
18
19 *The [young person] was allowed to enter the*
20 *LOC.*
21
22 Is that short for location?
23 A. Yes, it is.
24
25 Q. So that was entered at 11.12pm, that information?
26 A. Yes, that appears to be when I've created the
27 narrative.
28
29 Q. But if you're looking at the field processing form, it
30 wouldn't have told you that, so you're going off your
31 memory at that stage; is that right?
32 A. Absolutely, yep. Yes.
33
34 Q. Do you recall now, sitting there, escorting the young
35 person to the entry where he could go back into the
36 festival?
37 A. I don't recall doing it with him but it's common. It
38 was something that I always do, is once - if they are going
39 back in, I escort them to the front so - just get them
40 through that drug dog --
41
42 Q. But you have no recollection of having done that on
43 this day?
44 A. I don't recall it that day.
45
46 Q. Do you have a recollection of other police officers in
47 the general search area where you were with your colleague



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1 GEN9?
2 A. No.
3
4 Q. It's the case, isn't it, though, that it wasn't just
5 you and Officer GEN9 assisting the drug dog operation;
6 there were many other officers also in the area?
7 A. Generally that is the case.
8
9 Q. And there were sometimes various patrons being
10 searched at the same time?
11 A. Yes.
12
13 Q. In different pods?
14 A. Yes.
15
16 Q. While other patrons were being spoken to in the area
17 immediately outside the pods?
18 A. Yes.
19
20 Q. But sitting there, you don't have a recollection of
21 how many other officers were with you at that time;
22 correct?
23 A. I don't; that's correct.
24
25 Q. Have you worked at music festivals since February
26 2019?
27 A. I might have done one, yep.
28
29 Q. But you have no clear recollection of when that was,
30 or if you did do one?
31 A. No - no, I can't - can't be sure.
32
33 Q. Are you aware of any changes to the field processing
34 form since February 2019?
35 A. No. That looks like the one I've always used.
36
37 Q. And as far as you are aware, that's the one still in
38 existence; correct?
39 A. Yes.
40
41 MS DWYER: Nothing further. Thank you, Chief
42 Commissioner.
43
44 THE CHIEF COMMISSIONER: Are there any questions?
45
46 MS CHAPMAN: No.
47



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1 MR AMIRADAKIS: Nothing further.
2
3 THE CHIEF COMMISSIONER: You are free to go, but it is
4 always possible, given the scale of our investigation, that
5 you may be recalled. So I won't entirely release you from
6 the summons, but if you need to be recalled, we will speak
7 with your lawyer.
8
9 THE WITNESS: Okay.
10
11 THE CHIEF COMMISSIONER: You are free to go for the
12 present.
13
14 THE WITNESS: Thank you, sir.
15
16 <THE WITNESS WITHDREW
17
18 MS DWYER: I call officer GEN11.
19
20 MR WILLIS: Commissioner, my client will take an oath and
21 he will also seek a declaration.
22
23 <OFFICER GEN11, sworn: [2.45pm]
24
25 THE CHIEF COMMISSIONER: You may be seated. Thank you.
26
27 I have no doubt Mr Willis has told you this, but
28 I need to tell you these things: firstly, you must answer
29 all questions that you are asked unless I tell you you
30 don't have to, and you must produce anything you are asked
31 to produce, again, unless I tell you you don't have to.
32
33 You can object to answering a question or to producing
34 something, but you must nevertheless answer and you must
35 nevertheless produce what is asked. The effect of the
36 objection is that what you say and what you produce cannot
37 be used against you in any other proceedings except
38 proceedings under the Police Act - you understand that?
39
40 THE WITNESS: Yes.
41
42 THE CHIEF COMMISSIONER: Or under the Law Enforcement
43 Conduct Commission Act for perjury or contempt; do you
44 understand that?
45
46 THE WITNESS: Yes.
47



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1 THE CHIEF COMMISSIONER: Now, I can make a declaration
2 that obviates the necessity for you to object to each
3 question or object to each request for production. Do you
4 wish me to do that?

5
6 THE WITNESS: Yes.

7
8 THE CHIEF COMMISSIONER: Very well. Under section 75 of
9 the Act I declare that all the witness's answers and
10 anything produced by him are to be treated as though they
11 have been made or given under objection.

12
13 <EXAMINATION BY MS DWYER:

14
15 MS DWYER: Q. You understand that you have been given
16 the codename Officer GEN11?

17 A. Yes.

18
19 Q. In front of you, there is a list which is a schedule
20 of codenames, with other officers listed as well as three
21 young people at the bottom; you understand that?

22 A. Yes.

23
24 Q. Could I ask you, please, to use those codenames
25 wherever you can, if you are asked a question which elicits
26 the answer requiring them. You are the rank of constable;
27 is that right?

28 A. Correct.

29
30 Q. When did you attest to the police force?

31 A. December 2014.

32
33 Q. On 23 February 2019 you were a police officer working
34 at the Lost City Music Festival; is that right?

35 A. Yes.

36
37 Q. What was your role there?

38 A. Drug dog support.

39
40 Q. Had you performed that role of drug dog support at
41 a music festival prior to February this year?

42 A. Yes.

43
44 Q. How many times, approximately?

45 A. Fifteen.

46
47 Q. On any of those 15 occasions had there been young



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1 people under the age of 18 at the festival?
2 A. Yes.
3
4 Q. Were any of them specifically under-18s gigs?
5 A. Not that I can specifically remember.
6
7 Q. But some of them were all-ages, where young people
8 would be present; is that right?
9 A. Not that I can remember exactly.
10
11 Q. Is it possible that they were, given your earlier
12 answer?
13 A. Yes, it's possible.
14
15 Q. What did you wear for the role of drug dog support
16 officer?
17 A. I was in full uniform.
18
19 Q. Did you have a cap or hat on at all?
20 A. Yes, a cap.
21
22 Q. Were you partnered with another officer for the whole
23 of the festival?
24 A. Yes. I was with GEN12.
25
26 Q. Was that somebody that you knew prior to that
27 festival?
28 A. Yes.
29
30 Q. Was GEN12 more senior than you in February 2019?
31 A. Yes.
32
33 Q. And had GEN12 been in the police force for
34 a considerably longer period of time than you?
35 A. Yes.
36
37 Q. Was he in effect your supervisor on that day?
38 A. No.
39
40 Q. Who was your supervisor, if you have a look at the
41 schedule of codenames? And if the name is not there, just
42 tell us it's not there.
43 A. GEN6.
44
45 Q. Did you attend a briefing for that music festival?
46 A. Yes.
47



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1 Q. Is it the case that with the 15 or so other festivals
2 you have been involved in, there would always be a briefing
3 prior to it starting?
4 A. Yes.
5
6 Q. But do you have a specific memory of this briefing?
7 A. I believe I know who led the briefing.
8
9 Q. Who was that?
10 A. That was GEN6.
11
12 Q. Do you recall at the briefing being told anything
13 about the requirements when you're searching a child under
14 the age of 18?
15 A. No.
16
17 Q. Do you recall being told anything about
18 stripsearching - any of the legal requirements when you are
19 stripsearching?
20 A. No.
21
22 Q. Prior to February 2019 --
23
24 THE CHIEF COMMISSIONER: Q. Sorry, when you say you
25 don't recall, are you saying it might have been said but
26 you now don't recall it, or are you saying to the best of
27 your recollection, there wasn't any reference to those
28 subjects?
29 A. The second one.
30
31 MS DWYER: Q. Prior to February 2019, were you familiar
32 with section 33 of LEPR that sets out specific
33 requirements when you are stripsearching a child?
34 A. Sorry, could you repeat the question?
35
36 Q. Certainly. Before February 2019, were you familiar
37 with section 33 of LEPR, that sets out the rules for
38 conducting strip searches?
39 A. Not as familiar as I am now.
40
41 THE CHIEF COMMISSIONER: Q. So what have you since
42 discovered?
43 A. A lot more details about that section.
44
45 MS DWYER: Q. Like what?
46 A. Such as having a parent or guardian there, not just an
47 independent person.



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Q. So what was your belief about that? In February 2019, what did you think you would have to do when you were stripsearching a young person under the age of 18?

A. At that time, I believed that you had to have an independent person there, you had to have someone there. I did not know that you had to ask the young person first if they wanted a parent or guardian there.

THE CHIEF COMMISSIONER: Q. There is another aspect, isn't there, and that is that the independent person, if there is no parent or guardian, or they don't want a parent or guardian there, must be someone who is acceptable to the young person?

A. Yes, and have their best interests in mind.

Q. Quite. How would you go about satisfying yourself, first of all, that the person was appropriate from the point of view of looking after the interests of the young person? What do you think they would need to know?

A. They would need to know the objective of what was happening and they would also need to have the interests of the person who was being searched in mind in terms of fairness and, I guess, a duty of care.

Q. Yes. So what about if they - and how would you ascertain that they were aware of the relevant legal aspects of the search? How would you ascertain that? In this particular case, you have SES officers, but you don't know what they know or don't know, and a knowledge of law is not a test for being an SES officer. Their interests are somewhat different - yes?

A. Yes.

Q. So how would you go about ascertaining whether they were appropriate?

A. It was my belief, because they had been organised at the time, that they were vetted to be there to assist us.

Q. So your understanding was that whether they were appropriate people had already been taken care of?

A. Yes.

Q. Then there is the question of whether they are acceptable to the person being searched. How would you ascertain that?

A. I didn't.



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Q. Because? Oh, you were unaware of that requirement, I take it, is what you are saying?

A. Yes.

THE CHIEF COMMISSIONER: All right. Thank you, yes.

MS DWYER: Q. The Chief Commissioner just asked you about SES officers. Do you recall being told anything about the SES officers during the course of the briefing?

A. Not specifically. However, I believe it would have been words to the effect of "They are there to support us with the young people."

Q. Why do you believe --

THE CHIEF COMMISSIONER: Q. So just in general terms, you think?

A. Yes, in general terms. Like I said, I don't remember specifically, but I feel like that was the gist of what was said at the briefing.

MS DWYER: Q. And you became aware at the briefing that there were these SES officers present to assist?

A. Correct.

Q. To assist police in some capacity?

A. Correct.

Q. On this --

THE CHIEF COMMISSIONER: Q. I mean, I suppose it was obvious, there were a whole lot of young people attending this festival, the fact that young people, unfortunately, take drugs, these festivals are notorious - you hoped to find some of them and stop them from bringing those drugs in if you can; correct?

A. Yes, for their own safety as well.

Q. No doubt. Anyway, they are breaking the law if they bring these drugs in, at all events; correct?

A. Yes.

Q. So it is your job to try to stop it if you can?

A. Yes.

Q. However, there are rules around what you can do and



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1 how you are to go about doing that; correct?
2 A. Yes.
3
4 Q. But one thing that's clear is it is very likely you
5 are going to be in a situation where you are going to have
6 to stripsearch a young person?
7 A. Yes.
8
9 Q. Not essential. As it were, you might be lucky, but
10 maybe not. Agreed?
11 A. Agreed.
12
13 Q. So did you, in your own mind, have a plan of action,
14 as it were, if you were called upon to consider a strip
15 search of a young person?
16 A. Yes. If that occurrence happened, I would speak with
17 an SES volunteer, explain to them why I wanted to do
18 a strip search, what was happening, and ask them if they
19 would like to come and assist.
20
21 THE CHIEF COMMISSIONER: Yes, all right. Thank you,
22 Dr Dwyer.
23
24 MS DWYER: Q. How many young people did you stripsearch
25 on 23 February at the festival?
26 A. From my notebook, and my COPS events - sorry, do you
27 mean in terms of my investigations?
28
29 Q. How many strip searches were conducted either by you
30 or in your presence on 23 February?
31 A. I'm not sure of the exact number, but I did three.
32
33 Q. As in you personally did the stripsearching of three
34 young people; correct?
35 A. Correct.
36
37 Q. Is it possible that you were present when your partner
38 did the stripsearching and you took the notes - of other
39 young people?
40 A. Yes.
41
42 Q. Is it likely that that happened?
43 A. Yes, very likely.
44
45 THE CHIEF COMMISSIONER: Q. Can you give us a number
46 where you performed that role?
47 A. I did three as investigator, and I believe I would



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1 have assisted GEN12 on a number of his searches.
2
3 Q. Can you give us three, four, two - what is your
4 best --
5 A. I would say at least two.
6
7 Q. At least two, possibly up to four?
8 A. Possibly - I'd say maybe three, two to three.
9
10 Q. So you are pretty sure about two, uncertain about
11 three?
12 A. Yes.
13
14 Q. Does that fairly put it?
15 A. Yeah, I'd say three, actually, yes.
16
17 Q. You think it was three?
18 A. Yes.
19
20 THE CHIEF COMMISSIONER: Yes, all right.
21
22 MS DWYER: Q. In a list of 30 strip searches that we
23 were initially provided with by police for the purposes of
24 this inquiry, you are listed as having performed two strip
25 searches and your colleague, GEN11, is listed as having
26 performed three strip searches, but you tell the Chief
27 Commissioner that you have checked your notebook and you in
28 fact performed three not two strip searches; is that
29 correct?
30 A. Yes, correct.
31
32 Q. Do you have a copy of that notebook entry on you here
33 in court?
34 A. Not on me, no.
35
36 Q. Does your lawyer have a copy of that here in court?
37 A. No, he doesn't have a copy, but I believe everything
38 was subpoenaed a long time ago.
39
40 MS DWYER: I call for that in case any of my colleagues at
41 the Bar table have a copy of that notebook entry relating
42 to any strip searches here.
43
44 MR WILLIS: Commissioner, I have copies of the notebook
45 entries. Mine are marked. I understand from my client
46 that he has an envelope that he may have left in the
47 waiting room.



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1
2 THE CHIEF COMMISSIONER: We may get some help from
3 Ms Chapman. She's waving paper around.
4
5 MR WILLIS: They are available.
6
7 THE CHIEF COMMISSIONER: Yes. I don't doubt they would
8 be.
9
10 MS DWYER: My instructing solicitor could go and retrieve
11 them from the waiting room, if that's of any assistance,
12 Chief Commissioner.
13
14 THE CHIEF COMMISSIONER: Q. You have an envelope in the
15 waiting room. Has that got your notebooks in it?
16 A. I think it's in someone's bag as well.
17
18 MS CHAPMAN: I have a copy here, a clean copy.
19
20 THE CHIEF COMMISSIONER: That will do. Thank you.
21
22 MS DWYER: May I just confirm with my learned friend, is
23 this a copy of the notebook entry with respect to this
24 young person, GEN14C, or is it in respect to each of the
25 strip searches that were conducted?
26
27 THE WITNESS: GEN14C is not someone that I investigated or
28 I have a notebook entry of. They are not one of my
29 searches at all.
30
31 MS DWYER: I see. Just excuse me one moment.
32
33 Q. Could you look down at the schedule of codenames,
34 please.
35 A. Yes.
36
37 THE CHIEF COMMISSIONER: Just give the envelope to
38 Mr Willis, would you?
39
40 MS DWYER: Q. Do you see the name that is against
41 GEN14C?
42 A. Correct.
43
44 Q. Do you tell his Honour that you did not strip search
45 GEN14C?
46 A. No, my answer to your earlier question was in my
47 notebook, this person is not one of the persons that



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1 I investigated or had a search on. That was the answer to
2 the question.
3
4 Q. But you know, don't you, that there is a field
5 processing form which indicates that this child was
6 stripsearched?
7 A. Yes.
8
9 Q. And your name is there on that form as well as your
10 colleague's, who is GEN12; correct?
11 A. Correct.
12
13 Q. Do you say to the Chief Commissioner that GEN12
14 stripsearched this young person?
15 A. So GEN12 and I would have if that's on the field
16 arrest form.
17
18 Q. And you took notes; is that right?
19 A. I took notes of the ones that I was investigating of,
20 in my notebook.
21
22 Q. I see. So I have here some notebook entries that will
23 be reviewed, but GEN14C doesn't appear in your notebook
24 entry; correct?
25 A. Correct. Because my notebook entries were about my
26 searches.
27
28 THE CHIEF COMMISSIONER: Q. So where you were merely
29 present you did not make a notebook entry; is that what you
30 are saying?
31 A. That's what I'm saying, because if someone else was --
32
33 Q. That's all right. As long as I understand your
34 answer.
35 A. Yes.
36
37 MS DWYER: Just before we go on, I tender this copy of
38 various notebook entries. I have not had an opportunity to
39 review it.
40
41 MR WILLIS: Commissioner, might I see that document.
42
43 THE CHIEF COMMISSIONER: Of course. That's notebook
44 entries of GEN11.
45
46 MS CHAPMAN: Having done that on the run, I wonder if the
47 officer should just identify it and make sure there is



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1 nothing missing.
2
3 THE CHIEF COMMISSIONER: I think that's what Mr Willis is
4 just doing. You are comparing them with your documents,
5 are you?
6
7 MR WILLIS: Yes, Commissioner. Yes, I believe they are
8 the same --
9
10 THE CHIEF COMMISSIONER: Show them to the witness, please.
11
12 MR WILLIS: -- documents that have come from the envelope,
13 Commissioner.
14
15 THE CHIEF COMMISSIONER: Q. Are these copies of your
16 notebook entries? Just check, would you?
17 A. Yes.
18
19 THE CHIEF COMMISSIONER: Thank you. All right. They are
20 going to be collectively 25C.
21
22 **EXHIBIT #25C COPY OF VARIOUS NOTEBOOK ENTRIES BARCODED**
23 **7603246-7603253**
24
25 MS DWYER: Q. I show you a copy of this document, which
26 is the field processing form in relation to the young
27 person 14C?
28 A. Yes.
29
30 Q. Do you recognise the handwriting on that form?
31 A. Yes. That's my handwriting.
32
33 Q. So on that form, it indicates that this young person
34 was stripsearched; correct?
35 A. Correct.
36
37 Q. You have written beside that, "POI was stopped after
38 avoiding the dog. He was detained by security." Correct?
39 A. Correct.
40
41 Q. And the arresting/escorting officers are listed as
42 yourself and your colleague GEN11?
43 A. GEN12.
44
45 MS DWYER: I beg your pardon. Chief Commissioner,
46 I tender that document, barcoded 8441305 and it appears as
47 one of the documents behind tab 7.



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THE CHIEF COMMISSIONER: Yes, that will be exhibit 26C.

EXHIBIT #26C FIELD PROCESSING FORM BARCODED 8441305

MS DWYER: Q. When you review that field processing form does it trigger your memory in relation to this young person? You are shaking your head - no?

A. No, do you have anything else to show me to refresh my memory?

Q. I will take you shortly to the COPS entry, but is it the case that, sitting there you don't have a particular memory of this young person, 14C?

A. No.

Q. So you have no memory of what was done in relation to the strip search; correct?

THE CHIEF COMMISSIONER: Q. Well, it doesn't necessarily follow. Do you have a memory of the strip search?

A. No, I'm trying to remember. Do you have any more information?

Q. No, no, let's just deal with it step by step, and we will deal with the best of your memory as you sit there now. We will, of course, show you as much as we can, but for present purposes does it strike for you a memory as to what you did in that strip search?

A. No.

Q. I suppose some things are obvious - it took place in one of those pods; correct?

A. Yes, that's correct.

Q. You and GEN12 were there?

A. Correct.

Q. Was the door open or closed?

A. It would have been majority closed with possibly just a gap open.

Q. Was there rear access in these things?

A. There was just one door.

Q. So if you closed the door, you didn't get any fresh air in?



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1 A. Yes.
2
3 Q. So you remember that much. I suppose you remember you
4 didn't find anything, or you don't recall now?
5 A. Well, according to the form, it says "Nil", under
6 "Offences", so --
7
8 Q. I understand that, but do you recollect?
9 A. I recollect one strip search that was done where GEN12
10 was the officer in charge of that matter. I remember that
11 one, because of what was found. But I don't have any
12 memory of this one.
13
14 THE CHIEF COMMISSIONER: Yes, go on.
15
16 MS DWYER: Q. In relation to this field processing form,
17 when did you fill it out?
18 A. It would have been filled out while GEN12 would have
19 been speaking to GEN14C.
20
21 Q. You say that because that was your general practice;
22 is that right?
23 A. Yes. Yes, it was.
24
25 Q. Did you fill out the COPS entry at all?
26 A. No.
27
28 Q. Have you refreshed your memory from the COPS entry at
29 any time prior to today?
30 A. Yes, I did have a look at it.
31
32 Q. Do you agree that it's your colleague, GEN12, whose
33 name appears on that COPS entry?
34 A. Yes.
35
36 Q. Did you recall, when you were seeing the COPS entry,
37 that that was completed two days after the festival, on
38 25 February 2019?
39 A. I didn't look at the date of when it was completed.
40
41 Q. I will show you a copy of that COPS entry.
42
43 MS DWYER: Chief Commissioner this is tab 7D. It is
44 barcoded 8459541. I tender that document.
45
46 EXHIBIT #27C COPS EVENT IN RELATION TO GEN14C BARCODED
47 8459541



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1
2 MR GATES: May I have access to that document if you
3 please, Chief Commissioner?
4
5 THE CHIEF COMMISSIONER: Certainly.
6
7 MR OATES: Thank you.
8
9 MS DWYER: Q. Do you recall being consulted at all when
10 the COPS entry was done by your colleague GEN12?
11 A. No.
12
13 Q. Do you believe that were you not consulted for that
14 purpose?
15 A. Sorry, could you rephrase that.
16
17 Q. Do you believe you were not consulted by your
18 colleague GEN12 when he did the COPS entry?
19 A. Yes.
20
21 Q. Do you see that in the field processing form beside
22 "Type of search and reason for type of search", you have
23 written "POI was stopped after avoiding the dog. He was
24 detained by security". In contrast, the COPS entry says:
25
26 *... security approached the [young person]*
27 *as they had sighted a package in the [young*
28 *person's] groin area. Security handed the*
29 *[young person] to police, spoke to him and*
30 *co-operated to a search.*
31
32 There are two different reasons given, aren't there, as to
33 why the young person was stopped and searched?
34 A. Yes.
35
36 Q. Why was that?
37 A. I wrote the field processing form. You would have to
38 ask GEN12 in terms of the event.
39
40 THE CHIEF COMMISSIONER: Q. The difficulty that I have
41 here is I can understand if someone is in a line or
42 somewhere in the festival and apparently avoids a dog.
43 There is a team of police which is designated to assist the
44 dog handler; correct?
45 A. Correct.
46
47 Q. And you were one of those?



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1 A. Yes.
2
3 Q. What happens is, usually, the police, who are
4 designated to assist, would see the avoidance and then go
5 up to the person and then do whatever it is they do;
6 correct?
7 A. Correct.
8
9 Q. Here, though, it is a completely different account.
10 This is someone in the COPS entry found by security - that
11 is, obviously the festival security, not police - who says
12 they saw something secreted in his groin and, indeed,
13 I think that there was in fact a bumbag located, or he
14 produced one from his trousers, and explained why it was
15 there. Do you recall that now?
16 A. No.
17
18 Q. But you agree that this is a very different account of
19 how he came to the attention of searching police?
20 A. The entrance to the music festival, it has a line of
21 police to one side of the event and normally there are
22 security at the gate, at the gates, actually checking
23 tickets, searching bags, things like that, before they go
24 inside. So --
25
26 Q. Now, I can readily understand how each of these things
27 might occur. But that both of them occurred in relation to
28 the same person strikes me as being odd. Do you see what
29 I mean?
30 A. I do.
31
32 Q. One assigns an explanation - well, obviously that's
33 the only explanation of which GEN12 was aware, because
34 otherwise he would have put the dog avoidance in his COPS,
35 or should have?
36 A. Yes.
37
38 Q. And on the other hand, you were only aware of the
39 other reason - the dog avoidance reason - when you filled
40 in your form. Do you see what I mean?
41 A. Yes.
42
43 Q. I mean, you work together. I just find that a bit
44 strange.
45 A. I would have written this within five to 10 minutes of
46 it occurring.
47



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1 Q. You think because the COPS entry was later, that might
2 explain the difference?

3 A. I'm not certain, but it's a possibility.

4
5 THE CHIEF COMMISSIONER: Go on.

6
7 MS DWYER: Q. You would assume, though, that because you
8 wrote your field processing form notes five to 10 minutes
9 after it happened, it's likely to be more accurate than
10 a COPS entry that was written two days later?

11 A. That's possible, yes.

12
13 Q. The thing is, Officer, the COPS entry actually accords
14 with what the young person says in an interview with LECC
15 officers. He says he did have a bumbag secreted under his
16 pants, not to carry drugs in, but because he wanted
17 something for his mobile phone. So actually his account
18 accords with what is in the COPS entry. Do you accept
19 that --

20
21 THE CHIEF COMMISSIONER: Q. A fact which he could not
22 possibly have known at the time he gave us that statement.
23 Do you see my point? That can't be coincidental, and it's
24 impossible that the information got to him, because he
25 wouldn't have had any access to the COPS report and, of
26 course, we wouldn't give it to him.

27
28 That rather suggests - that that verifies for me, at
29 least, the COPS report and I just wonder whether you got
30 your information from some other source or you were perhaps
31 confused, if you were in a hurry and had transposed some
32 other commencement point by mistake into your form? I'm
33 not suggesting there is any particularly sinister in it; it
34 is just that we have had problems with the records and --

35 A. I can imagine.

36
37 Q. -- I'm trying to ascertain how these kinds of mistakes
38 get made.

39 A. Yes, I see.

40
41 Q. So what I'm saying is, objectively --

42 A. Yes.

43
44 Q. -- it looks like yours is a mistake, but maybe there
45 is some other explanation that I'm not thinking of. Can
46 you help?

47 A. I wish I could explain more. However, I genuinely



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1 don't have a memory of this certain incident. I have
2 memories of other incidents on the night, but not of this
3 one.

4
5 THE CHIEF COMMISSIONER: All right, then.

6
7 MS DWYER: Q. Do you have a memory that this particular
8 shift was very busy?

9 A. Yes, it was busy.

10

11 Q. So you yourself did three searches, strip searches,
12 you remember. You were there when your colleague did other
13 strip searches. Were there other young people who you did
14 general searches of?

15 A. I can only go off what's in my notebook.

16

17 Q. Does your notebook suggest that there were other
18 general searches that you did, of young people - that is,
19 personal searches that weren't strip searches?

20 A. No.

21

22 Q. So, to the best of your memory, every person that you
23 or your colleague searched that night, where you were
24 present, was a strip search; correct?

25 A. Sorry, can you rephrase the question?

26

27 Q. Yes.

28

29 THE CHIEF COMMISSIONER: Q. So far as any search that
30 you were involved in, either conducting it yourself or
31 being present, they were all strip searches?

32 A. I can't know that 100 per cent. However, the ones in
33 my notebook, all three were strip searches, and I remember
34 one other one from GEN12 that was a strip search.

35

36 MS DWYER: Q. And you don't remember any that weren't
37 strip searches?

38 A. No. I could have assisted in other people's general
39 searches; however, those are the only four that I remember.

40

41 Q. Were you instructed at all on that day that searches
42 should be strip searches?

43 A. No.

44

45 Q. So you were just going on your general practice, were
46 you, to conduct strip searches at music festivals?

47 A. Yes.



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1
2 Q. After there had been a drug dog indication?
3 A. And other factors.
4
5 Q. So is it the case that regardless of whether the young
6 person admitted that they had drugs on them or not drugs,
7 if there was a drug dog indication, you would be likely to
8 conduct a strip search?
9 A. No.
10
11 Q. If you have a look again, please, at the field
12 processing form, what other reason is given on that form,
13 other than the young person being stopped after avoiding
14 the dog, for conducting a strip search?
15 A. There is no other reasons written on this field
16 processing form. I'm not sure what GEN12 has written in
17 his notebook in relation to that matter.
18
19 Q. But you were the one who was responsible for taking
20 the notes during the course of the search, weren't you?
21 A. No, not responsible for taking the notes. My
22 responsibility, as assist, was to fill in the field
23 processing form.
24
25 THE CHIEF COMMISSIONER: Q. And one of the things that
26 had to be in the field processing form was the reason for
27 the strip search; correct?
28 A. Yes.
29
30 Q. And if there were two reasons, two reasons should be
31 noted; if there were three reasons, three reasons should be
32 noted; and so on?
33 A. Yes, you are right.
34
35 Q. It is supposed to inform any later interrogation so
36 that people knew whether you had lawfully exercised your
37 powers; correct?
38 A. Yes.
39
40 Q. And it involves your senior officers, obviously. It
41 might involve a court, if the young person might sue? You
42 need to say "yes" not nod, because it is not noted on the
43 transcript, then.
44 A. Yes.
45
46 Q. And, of course, the Law Enforcement Conduct
47 Commission, which has general oversight over suggestions of



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1 allegations of police misconduct. We all need to know what
2 went on. So you agree it is an important document?
3 A. Yes.
4
5 Q. And it has to be comprehensive?
6 A. Yes.
7
8 Q. I understand you also have a notebook and you also
9 have a COPS, but everybody knows this is a compulsory form,
10 so if you are trying to get the facts, this is where you go
11 first; correct?
12 A. Correct.
13
14 Q. And also, because of the circumstances in which it is
15 written, which is in the shortest time frame between the
16 record and the event, it's got a good chance of being
17 accurate?
18 A. Yes.
19
20 Q. So here, all you have got is that he walked away from
21 the dog; agreed?
22 A. Yes.
23
24 Q. Well, you would accept, walking away from the dog, by
25 itself, could not be a ground for a reasonable suspicion?
26 A. Not --
27
28 Q. There are many reasons why someone might walk away
29 from a drug dog?
30 A. Yes. Alone, that is not enough.
31
32 Q. And yet it appears, so far as your record is
33 concerned, that that is all you were working on; do you
34 agree?
35 A. Yes.
36
37 Q. And I think you are saying you don't recall this
38 search, so you are unable to point to any other factors?
39 A. Yes, that is correct.
40
41 MS DWYER: Q. Do you agree that the field processing
42 form is the document where you would record who the parent,
43 guardian or independent person was who was present at the
44 search?
45 A. I personally wrote that in my notebook.
46
47 Q. Did you receive any training as to that information



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1 having - that it should have been put on the field
2 processing form as well?
3 A. No, I don't believe so.
4
5 Q. Should it be in the COPS entry?
6 A. Of course.
7
8 Q. But you didn't make a notebook entry, did you, in
9 relation to the search of this young person, 14C?
10 A. No, because I was the assist.
11
12 Q. But your colleague was actually performing the
13 strip search, wasn't he?
14 A. Correct.
15
16 Q. So he couldn't write in his notebook when he was
17 performing the strip search, could he?
18 A. No, that's impossible.
19
20 Q. Well, why wouldn't you make a detailed note, then, of
21 what was going on, in your notebook?
22 A. Because when you are the investigator or, sorry, the
23 lead investigator, in terms of speaking to someone at
24 a drug dog, it's your job to talk to the person, make
25 observations, ask them questions, look at their history,
26 essentially form enough to establish the burden of proof
27 for reasonable grounds. However, the assist would be
28 responsible for filling out this form.
29
30 Q. But isn't the assist also responsible for scribing the
31 information that comes out during the course of the search?
32 A. No, I would argue that that responsibility is in the
33 investigator, because they're the one who formed the
34 reasonable grounds for the search.
35
36 THE CHIEF COMMISSIONER: Q. But let's just go back to
37 the logic of this. Amongst your responsibilities, as
38 I understood you to say you accepted, was the filling in of
39 this form, one part of that form being the reasons for the
40 search; correct?
41 A. Yes, I accept that, yes.
42
43 Q. Now, the difficulty with the way in which you describe
44 what happens is you may not know what that conversation was
45 with the person conducting - that the so-called lead
46 investigator is having with that individual. So you would
47 have to rely on what that person told you for the filling



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1 in of this form, at least in respect of that; would you
2 agree?

3 A. Yes.

4

5 Q. Now, in this case, were you acting on your own view of
6 what happened or was this what he reported to you?

7 A. I think this is what I witnessed. I was of the belief
8 that they would obviously be making notes about what had
9 happened, such as when I make my notes in my notebook
10 regarding my searches.

11

12 THE CHIEF COMMISSIONER: Yes, go on.

13

14 MS DWYER: Q. When would you have expected your
15 colleague to make a note in his notebook about this search?

16 A. Once the search had finished.

17

18 Q. Immediately afterwards; is that right?

19 A. Yes.

20

21 Q. Is that what you did when you were the person
22 conducting a search?

23 A. That's what I normally did, yes.

24

25 Q. Is that what you did on this night?

26 A. I believe --

27

28 Q. With respect to the three strip searches you did?

29 A. Yes.

30

31 Q. Who was the independent person, parent or guardian for
32 this young person, 14C, when he was stripsearched?

33 A. I'm not sure.

34

35 Q. You don't know, looking at this form, whether there
36 was a parent, guardian or independent person, do you?

37 A. I know on my three narratives - sorry, my three
38 notebook entries, there was an independent person present
39 on those forms. There was also an independent person on
40 the COPS narrative as well.

41

42 And also I definitely remember an independent person
43 present, a male SES officer, who was present during a strip
44 search of a matter that GEN12 was investigating. So of
45 those four, there were independent persons. However, in
46 terms of this one, I don't remember this one and I can't
47 tell you whether or not there was one there or not.



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1 However, going by the four that I do remember from that
2 night, and the other two - you said that he did three that
3 night - I don't remember those two.
4
5 Q. Have a look at the COPS entry that is in front of you.
6 A. Yes.
7
8 Q. There is no indication in that COPS entry that an
9 independent person was present, is there?
10 A. No.
11
12 THE CHIEF COMMISSIONER: Q. And do you agree that that
13 would have been, or should have been, there if there were
14 such a person?
15 A. Of course.
16
17 Q. Now, I want you to assume, please, that there was no
18 independent person at this search.
19 A. You want me to assume that?
20
21 Q. Yes. Well, no, let me perhaps ask the question in
22 this way: you would have known, of course, because were
23 you there, whether there was an independent person present
24 or not; correct?
25 A. If I was --
26
27 Q. You are there, in the room, when the search is taking
28 place, so you know if someone else is there or not?
29 A. Yes, of course.
30
31 Q. If someone was not there, would you have regarded it
32 as your duty to say to the leading investigator, "What
33 about a support person"?
34 A. Of course.
35
36 Q. Can you remember asking that question in this
37 particular case?
38 A. No.
39
40 Q. Are you saying from that you believe, therefore, there
41 was an independent person there?
42 A. No. I believe that there would have been an
43 independent person there only because, from the other four
44 that I do remember of that night, there was an independent
45 person - there was - in terms of my notebook entries of my
46 three searches, those notebook entries refer to an
47 independent person present there.



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1
2 Q. Quite. But you were not the lead person. You made no
3 notes as to this search. So what you did with your notes
4 is interesting, but I can't see why it is relevant to this
5 matter.
6 A. The only reason I brought it up was because there's
7 records of searches I'd done and there's records of the
8 independent person present on those not book entries. So
9 those three --
10
11 Q. That I understand.
12 A. Yes.
13
14 Q. But this was (a) not a search that you did, and (b)
15 not a search as to which you made any notebook entry?
16 A. Yes, I see what you're saying.
17
18 Q. So I don't think they are very much help to us in
19 ascertaining whether or not there was an independent person
20 here. We are necessarily reliant on the records, from
21 which one would infer there was no independent person,
22 because one would have expected there to be a note of it,
23 had it occurred, because of its importance, so that leans
24 in one way; or there's your memory, I think, that had there
25 not been an independent person present, you would have in
26 some way brought this to the leading investigator's
27 attention and you would have ensured that the requirement
28 was satisfied?
29 A. Of course.
30
31 Q. So do you see there is something on each side of the
32 scales?
33 A. Yes.
34
35 Q. And when we go to the document that you filled out,
36 there's no reference to any support person at all. So that
37 doesn't help us.
38 A. I see, exactly. When I was --
39
40 Q. And here we have a complaint about what happened at
41 that search, and an independent person and the
42 identification of an independent person would have been of
43 great assistance in resolving that problem. Yes?
44 A. Yes.
45
46 Q. Well, we are calling in due course the SES officers.
47 If there were an independent person - I mean, he came from



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1 the north coast, I won't mention his suburb - one could
2 assume that unless his parents had come down with him, it
3 would have been somewhat difficult to get a father or
4 guardian there?

5 A. Yes, definitely.

6
7 Q. So if there was an independent person, the chances
8 are - well, more than the chances are, it's virtually
9 certain, that it was one of the SES officers, bearing in
10 mind the possibility that it might have been a Red Frogs
11 volunteer; correct?

12 A. Yes, correct. It would have been one of the two.

13
14 Q. And I suggest you would have been likely to remember
15 a Red Frogs volunteer present at the search?

16 A. Yes, if they were inside, yes.

17
18 Q. So I'm trying to look at realities here. First of
19 all, you don't actually remember this search so you don't
20 remember, for yourself, whether there was an independent
21 person present or not; am I correct?

22 A. Correct.

23
24 Q. You rather think if there were an independent person,
25 it wouldn't have been Red Frogs because that's likely to
26 have stuck in your memory?

27 A. I believe that if there was an independent person
28 present that it probably would have been a Red Frogs
29 person.

30
31 Q. Because?

32 A. Because the Red Frogs people I remember - there was
33 one certain male, he was shorter and he was quiet. So
34 I think - and the SES male he was quite large, he was tall.
35 So there's a possibility that, in this search, it may have
36 been the Red Frogs shorter male who was quiet.

37
38 THE CHIEF COMMISSIONER: Go on.

39
40 MS DWYER: Q. I suggest to you that if there was an
41 independent person present, you would have written that on
42 the field processing form, wouldn't you?

43 A. No.

44
45 Q. I'm going to suggest to you that in circumstances
46 where the COPS entry doesn't mention an independent person
47 and the young person says an independent person was not



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1 there, and you have no memory of this search, there was not
2 an independent person there. Do you accept that that is
3 likely?

4 A. No.

5
6 Q. You say that it is likely that an independent person
7 was there; is that right?

8 A. Yes, actually, I do.

9
10 Q. Why do you say that?

11 A. Because of the history of what had occurred that
12 night, where I had, on my records and my notebook entries
13 and my COPS events, three independent persons listed.
14 A fourth event that me and GEN12 did, I clearly remember
15 the larger SES male in a strip search that GEN12 was in
16 charge of. So going by that, that is four strip searches
17 that were done with records of independent persons present
18 there. So I find it hard to --

19
20 THE CHIEF COMMISSIONER: Q. Sorry, I thought there were
21 records of three but you rely on your recollection for the
22 fourth?

23 A. That's correct.

24
25 Q. Right. So here we have no note from you and you have
26 no recollection. So this distinguishes this particular one
27 from all those examples?

28 A. Yes, and there is a reason for that.

29
30 Q. And the reason is?

31 A. That male had a condom full of MDMA capsules on him.

32
33 MS DWYER: Q. Not this particular male?

34 A. The other one.

35
36 THE CHIEF COMMISSIONER: Q. The point that I am making
37 is simply that - well, it is a matter for me to decide
38 this. I must say, I find the reasoning illogical - you
39 cannot move from saying "Well, I made a note and there was
40 an independent person present", to saying, "Where I did not
41 make a note, the fact that I did make a note and an
42 independent person was present indicates that an
43 independent person was present when I didn't make a note",
44 I don't think that follows at all. And where you say
45 "I have a recollection of another case where an independent
46 person was present", and you have just said you remember it
47 particularly because of the drugs found, whereas this had



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1 nothing special about it because nothing was found - that
2 would rather suggest that you don't have a recollection of
3 it rather than that you would. So I don't think the
4 logic - anyway, I don't want to get into arguments. It is
5 a matter for me weighing up your evidence, but I just want
6 you to understand why I don't think that is a logical path
7 of reasoning, in fairness to you.
8

9 MS CHAPMAN: Commissioner, again, and following on from
10 what you have said, in fairness to the witness,
11 I understood his evidence to be slightly different.
12 I thought the point that he was trying to make was that
13 because he was aware, acutely aware of the need for
14 a support person, and that's the reason he had recorded it
15 in his notebook, that's the reason that he has some
16 certainty in his own mind that this search would not have
17 occurred without one, because he said he absolutely would
18 have said something. Now, I don't think he got to finish
19 his answer. I'm not being critical of anyone, but I'm not
20 sure if I'm misinterpreting his evidence or whether the
21 officer could say if I'm right or wrong, or if I've
22 misunderstood.
23

24 THE WITNESS: No, I - what you are saying is exactly my
25 point.
26

27 THE CHIEF COMMISSIONER: Very well.
28

29 MS DWYER: Q. Sir, at what point did you get an
30 independent person in when you were going to stripsearch
31 a child on 23 February?

32 A. So after the general search - so depending on what
33 would happen during the general search, if more information
34 came in or if I located something that increased my
35 reasonable suspicion, then I would go and find a support
36 person to come in.
37

38 Q. But you said that every single person you searched you
39 ended up stripsearching on 23 February to your memory;
40 correct?

41 A. My three, yes.
42

43 Q. So for each of your three, is it the case that you
44 obtained the independent person prior to the strip search
45 or after for the purposes of an interview?

46 A. It would have been prior to the strip search, but
47 after the general search.



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Q. So if we called each of those independent persons that are listed in your notebook, they are likely to confirm, are they, that they were called in for the purpose of the strip search not the interview?

MS CHAPMAN: Chief Commissioner could I just say something about that? It is a difficult question to answer, because this witness can't predict what they would say because they might not remember this. This is an event --

THE CHIEF COMMISSIONER: He is being asked about his expectations.

MS CHAPMAN: May it please the Commission.

MS DWYER: Q. Could you answer that question, please. What's your expectation as to what those independent persons would say as to when they were brought in?

A. I believe so - again, I don't have an exact memory of all three, but I believe so. I've made records of it.

Q. Putting your records to one side, do you have an exact memory sitting there now, that the independent persons were present for the strip searches as opposed to just the interview?

A. No, I don't have any exact memory. The only one that I remember very clearly is the one with the - I think half a dozen MDMA capsules on him.

Q. Was the independent person there for the strip search of that young person?

THE CHIEF COMMISSIONER: Q. As distinct from the interview?

A. For that one with the 12 MDMA capsules, I believe it was - yes, he was.

MS DWYER: Q. And with respect to the other two young persons where an independent person was present and you know that from looking at your notebook, is it possible that they were only there for the interview rather than the strip search?

A. I'm not a hundred per cent sure. I can't give you an exact answer.

Q. Would you go back, please, and look at the field



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- 1 processing form?
2 A. Yes.
3
4 Q. Do you see that under the "Reason for arrest or
5 ejection" is written the word "nil"?
6 A. Yes.
7
8 Q. What did you mean by that?
9 A. So they weren't arrested or ejected.
10
11 Q. Then there is a separate box for "Action taken", or
12 subheading of "Action taken"; do you see that?
13 A. Yes.
14
15 Q. Nothing is filled in there by you; correct?
16 A. Yes.
17
18 Q. Why not?
19 A. I didn't complete the form.
20
21 Q. Why not?
22 A. I'm not sure.
23
24 Q. Is it because you were in a rush that night?
25 A. Probably.
26
27 Q. Was that because you were involved in so many
28 different searches of young people?
29 A. It was a very busy night that night. So that's
30 probably what happened.
31
32 Q. You understand from what I said earlier that the young
33 person was interviewed by a LECC officer?
34 A. Yes, you mentioned that earlier.
35
36 Q. I'm going to take you to aspects of his interview,
37 bearing in mind that you have said that you don't recall
38 anything about the actual search that was conducted. You
39 do accept, don't you, that you were present while this
40 young person was stripsearched?
41 A. Yes, I do accept that.
42
43 Q. The young person indicates that he was taken out of
44 a line and he showed his driver's licence. Was it part of
45 your practice to ask for identification prior to conducting
46 a search?
47 A. Yes.



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1
2 Q. Was it part of your practice to caution someone prior
3 to conducting a search?
4 A. Normally if a drug dog handler made - stopped somebody
5 and he cautioned the person, after he's finished speaking
6 with them, I would ask the person "Do you understand
7 everything the drug dog handler said to you?"
8
9 Q. And if you didn't hear the drug dog handler caution
10 would you caution someone before you asked them any
11 questions?
12 A. I probably would, yes.
13
14 Q. Do you recall doing that on 23 February, or are you
15 going on your general practice?
16 A. Probably on my general practice, to be honest.
17
18 Q. The young person indicates that a security guard
19 introduced him to police. He says that he was not
20 cautioned at that stage. He gave over his identification.
21 He was moved from the corner that was fenced off - sorry,
22 moved to a corner that was fenced off and he was with
23 another friend at that stage. Do you remember being
24 present for the escort of two young people who had been
25 detained by security first?
26 A. I don't remember that, sorry.
27
28 THE CHIEF COMMISSIONER: Q. Are you saying it didn't
29 happen or you just don't remember it?
30 A. I don't remember it.
31
32 MS DWYER: Q. He says that he sat for about 10 minutes
33 or so waiting to be searched, and then when he was spoken
34 to by police he was asked if he had any drugs on him.
35 That's something that you would ask straight up, isn't it?
36 A. It is, but I find it odd about the sitting part. Did
37 you say he sat at a table or on a floor or --
38
39 Q. No. He just waited for some period of time while the
40 first person was searched prior to him being searched. In
41 any event, I will just move on from that. He says that he
42 was asked if he had anything, and he said "No". I'm
43 reading from page 13. He was asked if anything was on him,
44 and they, the police, asked if he was hiding anything. And
45 he just said:
46
47 ... I had a bumbag in my pants.



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Do you recall a young person who was subjected to a strip search by you or your colleague telling you that he had a bumbag hidden in his pants?

A. No, I don't remember that.

THE CHIEF COMMISSIONER: Q. But you will recall, that is referred to in the COPS event?

A. Yes. Which I have read.

THE CHIEF COMMISSIONER: Yes, go on.

MS DWYER: Q. At page 16 he says one of the police officers laughed when he said that:

... and then he asked if I had anything on me and then I said no and then he kept saying that to see if I was telling the truth or not so I can just come out now instead of having a big issue.

I will try and rephrase that. When you are talking to a young person at a music festival, might you say something to them like, first of all, "Do you have any drugs on you"?

A. Yes, that would be something I would say. I wouldn't say the word "drugs", though.

Q. What would you say?

A. I would say, "Do you have anything on you that you shouldn't have?"

Q. Are they the exact words you generally use?

A. Yes, they are.

THE CHIEF COMMISSIONER: Q. Well, they have the same portent, don't they, in the context?

A. Yes.

MS DWYER: Q. If the young person then says, "No, I don't", might you then say something like, "Why don't you just come out and tell me if you do have something on, because then it won't be a big issue"?

A. That is not something I would say.

Q. Might you not say something like, "Look, you're in less trouble if you just tell me the truth and come out what you've got on you"?



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- 1 A. That is definitely not something I would say.
2
3 Q. Is it something that you have heard your colleague,
4 GEN12, say?
5 A. No.
6
7 Q. Would it be your practice in February 2019 to have
8 a look at the phone that a young person has with them?
9 A. No.
10
11 Q. Would you have a look around the phone - that is, to
12 check the case around the phone?
13 A. Yes, I would take the case off.
14
15 Q. Would you have a look in the wallet of a young person?
16 A. Of course.
17
18 Q. And if they had a bumbag on them, you would have
19 a look in the bumbag?
20 A. Correct.
21
22 Q. And if you had a young person and you have checked
23 their wallet and around their phone and their bumbag and
24 they have got no drugs on them, and the young person
25 themselves said they have no drugs on them, without more,
26 there is no reasonable basis for a further search, is
27 there?
28 A. Without more, under what you've explained, no.
29
30 Q. So if a further strip search was conducted in those
31 circumstances, without more, it would be unlawful, wouldn't
32 it?
33 A. I would say it doesn't fit the seriousness or urgency,
34 under what you've explained.
35
36 Q. Yes. So, therefore, it is not justified under the
37 legislation; correct?
38 A. By your example, correct.
39
40 Q. And it would be unlawful; correct?
41 A. Well, it doesn't fit the legislation.
42
43 Q. Making it unlawful; correct?
44 A. Well, I - yes.
45
46 Q. So the young person goes on to say that after he had
47 his wallet searched, then his phone and his bumbag, they,



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the police:

... told me to turn around take my hands off the table and just start removing my clothes.

Before I get to the next point, is it your practice that when searching a patron at a music festival, you personally might ask them to put their hands on the table while a general search is done?

A. I'm sorry, where did this occur?

THE CHIEF COMMISSIONER: Q. I was going to ask that. Were you ever present at a search where there was a table in the room or space?

A. No. The searching booths have, like, a little shelf, but there was no table.

MS DWYER: Q. All right. Well, relating to the little shelf and the searching booth, are you referring to a pod within the searching area?

A. Yes, inside the pod is a shelf.

Q. Did you conduct any searches outside the pod?

A. Not from memory, no.

Q. Did GEN12 conduct any searches outside the pod that you saw?

A. No. I was with him on all of the searches that we did together.

Q. So any of these strip searches that you did were done inside the pod; correct?

A. Yes.

Q. And there was a shelf inside the pod; correct?

A. Yes.

THE CHIEF COMMISSIONER: Q. What height was the shelf?

A. I would say 1.5, maybe --

Q. 1.5 metres, about?

A. Yeah, probably about there.

Q. Indicating midriff?

A. Yes.



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1 MS DWYER: Can I ask that the witness be shown the
2 photographs which are behind tab 19, exhibit 21C.
3
4 Q. I will show you a particular photograph - actually,
5 I will show you this bundle of photographs. If you have
6 a look at the first one there?
7 A. Yes.
8
9 Q. That's a photograph of a pod where the searches were
10 conducted; correct?
11 A. That's correct.
12
13 Q. Could you please have a look, then, at four
14 photographs in. Is that what you describe as a shelf with
15 a chair next to it?
16 A. There was no chairs in any of the pods that were
17 inside.
18
19 Q. Was the shelf inside that pod the same as depicted on
20 that photograph?
21 A. No, this photograph is different. There is what seems
22 to be like a clear piece of perspex with a hole in it.
23 There is like a door on the other side. I don't - this is
24 similar to the pods, however, it's not the ones that I was
25 using.
26
27 Q. Is the steel desk-like structure there something that
28 was present in the pod that you conducted your strip
29 searches in?
30 A. Yes. It's very similar.
31
32 Q. Is that structure what you describe as a shelf?
33 A. Yes. However, this is different to what I remember.
34
35 Q. But there was a similar sort of shelf or desk-like
36 structure?
37 A. Yes.
38
39 Q. During the conduct of strip searches that either you
40 did personally or GEN12 did, was any young person asked to
41 put their hands up on that shelf while a pat-down was
42 conducted?
43 A. Yes.
44
45 Q. Was that part of the standard practice?
46 A. Yes.
47



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1 Q. Can you please tell the Commissioner what your
2 standard practice was when you were conducting a strip
3 search of a young person inside that pod on 23 February?
4 I will ask you first about your standard practice and then
5 your colleague's?

6 A. So my standard practice for a strip search of a young
7 person, obviously I would inform them as to why I need to
8 subject them to a strip search. I would ask them for their
9 cooperation and inform them that we will do it as quickly
10 and as efficiently as possible to provide them - to
11 preserve their dignity as well.

12
13 So I would do it from the top down, starting with
14 a hat, I'd get them to remove their hat if they were
15 wearing a hat. I'd search around the hat, search inside
16 the hat to see if there was anything inside there. Then
17 I would ask them - well, it depends on the shirt they are
18 wearing. If, when I had done the general search, if I was
19 content with my general search where I felt under their
20 arms, and I was happy with the shirt they were wearing,
21 just a T-shirt, I wouldn't ask them to take their shirt
22 off.

23
24 Then in terms of their pants, I would ask them to take
25 off their pants while leaving their underwear on. I would
26 ask them to pass me their pants [REDACTED]
27 [REDACTED]
28 [REDACTED] I would run my hands through
29 the pants to the cuffs and make sure I'm content.

30
31 Then I would ask the young person to drop their
32 underwear while facing me, and if anything fell from their
33 underwear when they dropped their underwear I would ask
34 them to please step away from their underwear and then
35 I would seize the item, the drug. Once I seized the drug,
36 then I would ask them to put their underwear back on. If
37 I believed there was something under their testicles,
38 I would ask them to please lift up their testicles.

39
40 THE CHIEF COMMISSIONER: Q. How would you come to
41 believe there was something under their testicles?

42 A. Sometimes there can be things --

43

44 Q. No, I readily accept that it's possible, but it's
45 different to say it's possible; anything is possible.

46 A. Of course.

47



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1 Q. The point is what would lead you to suspect that there
2 was something under their testicles?
3 A. If I saw something there that shouldn't be there.
4
5 Q. So you look at their testicles and you might see
6 something suggesting that something was there; is that what
7 you are saying?
8 A. Yes, that's what I'm saying.
9
10 Q. And then what would you do?
11 A. If I believed there was something there, I would ask
12 them to raise their testicles. For example, there might be
13 sticky tape or tissues or something like that that might be
14 wedged in there.
15
16 Q. Have you been given specific guidance about whether
17 you are entitled to ask someone to manipulate their
18 genitalia?
19 A. Prior - at the time of that festival, not to my
20 recollection, no. There has been a new --
21
22 Q. There has been a new manual, and let me tell you it is
23 currently the subject of controversy between the
24 Commissioner and this Commission. But I am talking about
25 then, at that time, had you been given any direction that
26 explained why that was lawful or not?
27 A. Not that I can remember, no.
28
29 Q. It was your assumption it was lawful?
30 A. Yes.
31
32 THE CHIEF COMMISSIONER: Yes, go on.
33
34 MS CHAPMAN: Pardon me, Chief Commissioner, could I seek
35 a non-publication order in relation to [REDACTED]
36 [REDACTED]
37 [REDACTED]
38
39 THE CHIEF COMMISSIONER: I will, but, frankly, it is
40 a no-brainer. I think it is commonsense and common
41 knowledge. [REDACTED]
42 [REDACTED] But, yes, there
43 should be no publicity given to that. Go on.
44
45 MS DWYER: Q. You described a particular practice that
46 you undertake when you are stripsearching. Was that
47 different in any significant way to the one you saw GEN12



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1 carry out?

2 A. No. I believe we operate very similarly.

3

4 Q. So what the young person says is this: that he was
5 told to turn around, take his hands off the table and just
6 start removing his clothes. And once he got to his undies,
7 they - meaning the police - said to take them off too;

8

9 *... so then I did and then, they told me to*
10 *lift up my balls and then squat and cough.*
11 *So I done so and then I ... asked why is*
12 *this happening?*

13

14 Have you ever asked a patron to squat and cough after they
15 lift up their balls?

16 A. No, not squat and cough.

17

18 Q. Have you ever been present while a colleague asked
19 a young person or any patron to squat and cough after they
20 lifted their testicles?

21 A. I have seen an officer ask someone to squat. I have
22 not seen them ask someone to squat and cough.

23

24 Q. Have you ever received any training as to whether or
25 not asking a patron to squat and cough is appropriate?

26 A. In terms of squatting and coughing, no. I've never
27 seen that before.

28

29 Q. Have you received any --

30

31 THE CHIEF COMMISSIONER: Q. You see, we are dealing -
32 the issue here is simple. Most things can be covered by
33 consent, obviously, but you are dealing with a young
34 person. The legal capacity of a young person to consent to
35 matters is a matter of some controversy. The general view
36 of the law is that a young person cannot consent to
37 anything which would be otherwise unlawful - you do
38 understand that? Yes?

39 A. Well - yes.

40

41 Q. So let's take squatting. Is it your view that you
42 would be entitled, whether you would or not is another
43 matter - is it your view that you would be entitled to use
44 force to require a young person to squat?

45 A. If I believed there was something there, if I could
46 obviously see, for example, a condom or something or
47 a syringe, obviously there would be a need to get that away



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1 as soon as possible, and obviously you would ask for a
2 person's consent if there was something obviously there.
3 However, if, for example, they didn't want to remove
4 a syringe or something else they'd secreted in their
5 behind, and you knew you had to get it off them for their
6 own safety as well as for my safety and my offside's
7 safety, then reasonable force would have to be used.
8

9 Q. Okay. Absent any indications of anything being there,
10 what about that situation?

11 A. Then I wouldn't see a need to do a squat.
12

13 Q. Not a need - I'm not asking you - I'm asking about
14 what you think your legal powers are, and I'm asking you
15 whether your legal powers mean that you are entitled to use
16 reasonable force in order to get a young person to squat,
17 if you had asked and they declined? Do you understand what
18 your powers are in that respect?

19 A. In terms of squatting, like I said, I've only believed
20 it to be necessary if there was --
21

22 Q. No, no. I understand the point you are making.

23 A. Yes.
24

25 Q. You would do it in some situations and you wouldn't in
26 others. I've got that. What I'm asking you about is your
27 understanding of your legal powers. Let me go back a step.
28 It is my assumption - correct me if I am wrong - that you
29 have never actually been told what your legal powers of
30 compulsion are if someone refuses to squat, whether you can
31 use force or you can't use force; is that correct?

32 A. Yes.
33

34 Q. Now, I want to come to the next point. In this
35 situation, you've got two police officers in full uniform.
36 You've got a young person and the young person is being
37 told to squat. You might say, "Please squat", so you might
38 do it courteously. But in that context, do you agree that
39 it is virtually certain that the young person would
40 perceive that as an order or command?

41 A. Yes.
42

43 Q. If you were going to get genuine consent, you would
44 have to say to them, "You don't have to do this if you
45 don't want to, but would you please squat?" Then, if they
46 did it, there's no question they're consenting to it;
47 correct?



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1 A. Yes.

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Q. So the reality of the situation is, when you get a person, or when you have a person being searched, a young person, anyway - let's worry about adults separately - the reality is that the simple power relationship between uniformed police, on the one hand, and a young person on the other means that what the police request is going to be read as a command or understood in that way; correct?

A. Yes.

Q. One of the reasons that one might have an independent person who knows the right of the young person might be to say, "You can't ask that unless they consent." I'm not saying they would, but they might - yes?

A. Yes.

Q. Do you have a view yourself about whether, taking squatting as an example, squatting is something you could require as distinct from request with consent? Do you understand the distinction I'm making? First of all, do you understand the point I'm making?

A. I believe so, yes.

Q. What is your understanding of your legal power?

A. That you can ask somebody, with consent, if they can squat.

Q. Right. So if they say "No", you may be able, query; but you might be able to charge them with hindering, for example?

A. If I was going to require someone to squat, I would have - there would be a need for me to ask them to do that. I would have a belief that there was something there. Therefore, if I was going to request them to do that and they refused to do that, then obviously they'd go down that path. However I think it starts from the very beginning in terms of the reason why I'm asking them to do that.

THE CHIEF COMMISSIONER: Right. Okay. I think I understand what you are saying. Yes, thank you.

MS DWYER: Q. Officer, this young person explains that as he took his clothes off he put them on the table, as he perceived it, in the pod - that's something that happened when you were stripsearching somebody, that they'd take their clothes off and put them on that shelf or that was



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1 present in the pod?
2 A. Not normally, no. In my ones, they would be handed
3 back their clothes, they would put that on, then move on to
4 the next item.
5
6 Q. Who would hold their clothes when they took them off?
7 A. I would. If I'm the searching officer I would.
8
9 Q. And do you recall what happened when GEN12
10 stripsearched generally - that is, with their clothes --
11
12 THE CHIEF COMMISSIONER: I don't think you can really ask
13 that.
14
15 Q. I think you're attempting to reconstruct. You have no
16 real memory of this search; correct?
17 A. No, I'm trying, but no.
18
19 Q. What you are attempting to do is, as I say,
20 reconstruct what happened, based upon what you would expect
21 and what you thought usually happened, rather than any
22 particular memory of what happened here; am I understanding
23 you correctly?
24 A. Yes.
25
26 THE CHIEF COMMISSIONER: I don't think you can ask at that
27 level of detail.
28
29 MS DWYER: Q. I'm going to suggest to you that in this
30 case of this young person, he was asked to take his shirt
31 off and his shorts and then his underwear and he stood
32 there naked for a period of time. Does that refresh -
33 I suggest to you that that happened. Does that refresh
34 your memory?
35 A. No. I don't have any memory of seeing any completely
36 naked young people at all. I disagree that happened.
37
38 MR DATES: Dr Dwyer, do you have a page, please, for that
39 assertion?
40
41 MS DWYER: Page 21 is one page, and 19 is another.
42
43 MR OATES: Thank you.
44
45 MS DWYER: Q. The young person indicates in his
46 interview that he was nervous and shaking during the course
47 of the strip search. Does it surprise you that any young



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1 person stripsearched by two male officers would be nervous
2 and shaking, or can you understand that?
3 A. I can understand if someone's nervous. However, in my
4 experience, and when I am dealing with people during drug
5 dog festivals and strip searches, it is my standard
6 practice to talk to them like a normal person and
7 essentially bring them down, and just have a general
8 conversation with them about where they are from, what they
9 do for work, things like that, to assist if they are
10 nervous, because at the end of the day, I just want them to
11 be honest with me.

12
13 Q. You can appreciate that, for a young person under the
14 age of 18, even if you don't have any drugs on you, it can
15 be pretty intimidating to be stripsearched by a male
16 officer; do you agree?

17 A. It can be intimidating, yes. However, I know myself
18 and I know how I operate, and if I do see someone who
19 I believe is apprehensive or nervous, I actually tell them
20 my name. I say my full name to try and, I guess, take
21 myself out of the uniform and just essentially show them
22 that I'm not just a uniform.

23
24 Q. Have you had any training as to what you should say to
25 a young person after they have been stripsearched in terms
26 of checking on their welfare?

27 A. I can't recall any specific training. However,
28 I would generally talk to them after it.

29
30 Q. Did you wear a cap on that day when you were
31 conducting strip searches?

32 A. During the drug dog festival - sorry, when the - where
33 the dog was patrolling, yes, I would wear a cap. However,
34 as soon as we go into the searching area, I would
35 immediately take it off because it's quite hot.

36
37 Q. Did your colleague GEN12 wear a cap while strip
38 searches were conducted?

39 A. He probably was actually like me; we both would have
40 taken our hats off when we walked into the searching area.

41
42 Q. Do you have a recollection now as to whether or not
43 you both took your caps off --

44 A. I don't have a recollection; however, I believe that's
45 what would have happened because that's my standard
46 procedure.

47



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1 MS DWYER: Nothing further, Chief Commissioner.
2
3 THE CHIEF COMMISSIONER: Are there any questions?
4
5 MR GATES: Only with respect to the interview. I can't
6 find the reference to "shaking" in this interview.
7
8 THE CHIEF COMMISSIONER: That's not a question, really.
9
10 MR OATES: No, no, but I didn't want to yell out again.
11 I thought I would raise it at a more subdued time.
12
13 THE CHIEF COMMISSIONER: Officer, you are free to go now.
14 As you appreciate, this is a wide-ranging investigation and
15 it may be that we will need to have you back. I doubt it,
16 but it is possible, so I won't completely release you from
17 your summons. But if we need you, we will talk to your
18 legal adviser about that.
19
20 THE WITNESS: Okay.
21
22 THE CHIEF COMMISSIONER: So you are free to go now.
23
24 THE WITNESS: Yes.
25
26 <THE WITNESS WITHDREW
27
28 MS DWYER: Chief Commissioner, I'm told that we need
29 a five-minute break before the next witness, if it pleases
30 the Commission.
31
32 THE CHIEF COMMISSIONER: Very well.
33
34 **SHORT ADJOURNMENT**
35
36 MS DWYER: I call Officer GEN12. Before this next witness
37 is sworn, I am reminded that I have been asked to clarify
38 the issue of whether or not of young person said "shaky".
39 That was my mistake. He said "scared. It was this, from
40 page 23, he is asked:
41
42 *How would you say you felt at the time you*
43 *were being searched?*
44
45 *Well I was nervous and like since it was*
46 *two guys telling me to get unclothed,*
47 *undressed, just, just scary at the time ...*



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<OFFICER GEN12, affirmed: [4.18pm]

THE CHIEF COMMISSIONER: You may be seated, thank you, Officer.

THE WITNESS: Thank you, sir.

THE CHIEF COMMISSIONER: There are some things that I need to tell you, although I have no doubt you have already been told this by your legal adviser.

The first is that you must answer all questions you are asked unless I tell you you don't have to. The second is that you must produce anything you are asked to produce unless I tell you you don't have to. You may object to answering any question and you may object to producing anything. But even if you do make those objections, you must nevertheless answer and you must nevertheless produce what you have been asked to produce. Do you understand that?

THE WITNESS: Yes, sir.

THE CHIEF COMMISSIONER: The effect of the objection that you take is that what you say and what you produce cannot be used against you in other proceedings except under the Police Act or under the Law Enforcement Conduct Commission Act for perjury or contempt of the Commission; do you understand that?

THE WITNESS: Yes, sir.

THE CHIEF COMMISSIONER: I take it that you wish me to make a declaration that will have the effect of making each of your answers and anything you produce being taken to have been made or given under objection; is that correct?

THE WITNESS: Yes, sir, that's correct.

THE CHIEF COMMISSIONER: Very well. I declare under section 75 of the Act that each of the answers given by this witness and anything produced by him are to be taken as given and produced under objection.



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1 <EXAMINATION BY MS DWYER:
2

3 MS DWYER: Q. Officer, you understand that in these
4 proceedings you are to be known as Officer GEN12?

5 A. Yes, ma'am.
6

7 Q. And in front of you you have a schedule of codenames,
8 where there are the names of fellow officers there who are
9 given codenames and also three young people. Do you see
10 that?

11 A. Yes, ma'am.
12

13 Q. Could I ask you please to refer to the codenames when
14 you are asked a question that elicits an answer requiring
15 them?

16 A. Yes, ma'am.
17

18 Q. You have provided the Commission, I think, with an
19 email and also copies of notebooks. Is it the case that
20 you sent an email to the investigators at LECC attaching
21 copies of your notebook entries in relation to a number of
22 different events where strip searches took place?

23 A. Yes, ma'am.
24

25 Q. And this is on 23 February 2019, these strip searches?

26 A. Yes, ma'am.
27

28 Q. I will just show you a copy of that email and the
29 subsequent notebook entries. The barcode number is 8441289
30 and it ends with the last notebook entry as 8441236 [sic].
31 Could you just confirm please, sir, that that email and the
32 accompanying notebook entries are the entirety of the
33 notebook entries that are relevant to strip searches you
34 conducted on 23 February 2019 where you made a note?

35 A. Yes, ma'am.
36

37 MS DWYER: I tender that.
38

39 **EXHIBIT #28C NOTEBOOK ENTRIES OF GEN12 BARCODED**
40 **8441233-8441235 TOGETHER WITH EMAILS BARCODED**
41 **8441289-8441290**
42

43 MR GATES: May I have access to that, if you please,
44 Chief Commissioner?
45

46 THE CHIEF COMMISSIONER: Yes.
47



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- 1 MS DWYER: Q. Sir, is it the case that your rank is
2 senior constable?
3 A. Yes, ma'am.
4
5 Q. And that was your rank as at February 2019?
6 A. Yes, ma'am.
7
8 Q. When did you attest in the police force?
9 A. 16 December 2011.
10
11 Q. What was your role on 23 February this year at the
12 Lost City Music Festival?
13 A. To assist in the drug dog operation.
14
15 Q. And to assist in the drug dog operation, you
16 understood that you would have to participate in a number
17 of searches of the patrons?
18 A. That's correct.
19
20 Q. Including strip searches; correct?
21 A. Yes, ma'am.
22
23 Q. Had you done that role for the drug dog operation at
24 other music festivals?
25 A. Yes, ma'am.
26
27 Q. Approximately how many? More than 10, less than 10;
28 is that the --
29 A. More than 10, ma'am.
30
31 Q. At some of those music festivals had there been young
32 people under the age of 18?
33 A. I did one at the same music festival the previous
34 year.
35
36 Q. Had you been at other music festivals where they might
37 have been all-ages gigs so that young people could come if
38 they wanted to?
39 A. No, ma'am.
40
41 Q. Prior to 23 February 2019, had you ever been required
42 to stripsearch a young person at a music festival?
43 A. No, ma'am.
44
45 Q. You did stripsearch a number of young people at the
46 music festival this year; is that right?
47 A. Yes, ma'am.



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1
2 Q. We have a record to suggest that you were the
3 particular searching officer in three strip searches of
4 young persons; is that correct?
5 A. That's correct, yes.
6
7 Q. Is it the case that you were also present with your
8 partner when he conducted strip searches but you recorded
9 details?
10 A. Yes, ma'am.
11
12 Q. You were, in effect, the scribing officer while he was
13 conducting the physical search; correct?
14 A. That's correct.
15
16 Q. Do you recall how many times your fellow officer
17 conducted the strip searches while you were present?
18 A. I believe it was three.
19
20 Q. You were partnered with an officer who has been given
21 the codename GEN11; is that right?
22 A. That's correct.
23
24 Q. What were you wearing on that day, 23 February? Were
25 you in full uniform?
26 A. Full uniform.
27
28 Q. Did you have a cap on?
29 A. Yes.
30
31 Q. Did you tend to wear the cap while you were conducting
32 the strip searches?
33 A. Yes, ma'am.
34
35 Q. Do you recall going to a briefing on the day of the
36 music festival?
37 A. Yes, ma'am.
38
39 Q. Do you recall, looking at the codenames, who actually
40 spoke at the briefing?
41 A. GEN1 and GEN6.
42
43 Q. Do you recall at that briefing being told anything
44 specific about the LEPR requirements when searching
45 under-18s?
46 A. Yes, ma'am.
47



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1 Q. What were you told?
2 A. That strip searches, if strip searches are required,
3 for under-aged patrons, that we need to - we are required
4 to have a support person there, or a parent or guardian.
5
6 Q. Do you actually remember being told that in the
7 briefing, or are you trying to guess that were you told
8 that now?
9 A. No, I was told that.
10
11 Q. You have a specific memory of it; correct?
12 A. Yes, ma'am.
13
14 Q. Were you told who those persons - the support person
15 would be if there wasn't a parent or guardian available?
16 A. An SES volunteer.
17
18 Q. Who told you that?
19 A. That person is not on this list.
20
21 Q. If we give you a post-it note, are you able to write
22 down the name, please, of that person? I think you have
23 got post-it notes there with you.
24 A. I cannot remember that name.
25
26 Q. But it was someone whose name does not appear on the
27 list of codenames; correct?
28 A. That's correct, ma'am.
29
30 Q. Where were you told that the SES volunteer would be
31 located?
32 A. With --
33
34 THE CHIEF COMMISSIONER: Where is that other note? Maybe
35 he might recall the name.
36
37 MS DWYER: That has been given a barcode as we speak,
38 I think. I will note the barcode, 7603254, and I tender
39 that now.
40
41 **EXHIBIT #29C POST-IT NOTE CONTAINING SUPPRESSED NAME**
42 **BARCODED 7603254**
43
44 THE CHIEF COMMISSIONER: Q. Does that name ring a bell
45 with you or not?
46 A. The name does ring a bell.
47



8456463

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1 Q. But you're not able to say whether that was the
2 person, or are you able to say it was not the person?
3 A. I cannot remember, sir.
4
5 Q. One way or another?
6 A. That's correct, sir.
7
8 MS DWYER: Q. You mentioned earlier that you had been
9 told that the SES volunteer would be available as a support
10 person. Were you told at what point you should get that
11 person involved, if the parent or guardian wasn't there?
12 A. During the searches.
13
14 Q. Do you have a specific memory that you were told that
15 they were there for the searches or the interviews of young
16 persons or both?
17 A. Both.
18
19 Q. Where were those SES volunteers physically located
20 during the music festival?
21 A. They were to be in the police compound but at the
22 briefing they weren't there at the beginning.
23
24 Q. They were not there at the beginning?
25 A. That's correct.
26
27 Q. Where were you physically located for your shift at
28 the music festival?
29 A. At the front entrance.
30
31 Q. Were you located close to where the drug dogs were?
32 A. Yes.
33
34 Q. And that's so that you could assist with the searches
35 after there had been an indication by a drug dog; correct?
36 A. That's correct.
37
38 Q. Were you with your partner, GEN11, for the entirety of
39 the shift?
40 A. Yes.
41
42 Q. And your role primarily was to conduct the searches
43 after there had been a drug dog indication; correct?
44 A. That's correct.
45
46 Q. Do you recall conducting any general searches of any
47 of the patrons, or were all the searches that you did strip



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1 searches?
2 A. Oh, all the searches that I did were strip searches.
3
4 Q. Was that the same for the searches where you were
5 present but they were performed by your partner, GEN11?
6 A. That's correct.
7
8 Q. Were you told anything specific on that day,
9 23 February, to suggest that you should be conducting strip
10 searches wherever possible?
11 A. No.
12
13 Q. Your procedure or your tactics for 2019 at this
14 festival changed from the year before, because you told us
15 that the year before you hadn't conducted any strip
16 searches; is that right?
17 A. I never mentioned that, but I - my role at the same
18 festival the previous year, my role was different that
19 year.
20
21 Q. I see. Was there any particular reason why you
22 conducted strip searches for each of the persons that you
23 did a search on?
24 A. The circumstances for each incident.
25
26 Q. I will take you to the circumstances separately
27 shortly. In February 2019 were you familiar with the
28 provisions in LEPRa under section 33 relating to the
29 stripsearching of children?
30 A. Yes.
31
32 Q. You were well aware, as at February 2019, that you
33 required a parent or guardian or independent person when
34 a child was being stripsearched; correct?
35 A. Yes, ma'am.
36
37 Q. So you were aware of that before you were told it at
38 the briefing?
39 A. Yes.
40
41 THE CHIEF COMMISSIONER: Q. What are those requirements?
42 A. That a parent or a guardian or a support person or
43 independent person is to be present before a search can be
44 conducted.
45
46 Q. How do you select out of which of those three
47 categories should be there?



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1 A. Well, the first option is to contact a parent or
2 guardian. If they are unavailable, then an independent
3 person should be present.
4

5 Q. And who decides the acceptability of that person?
6 A. It's not the young person. It's the parent/guardian.
7

8 Q. No, I'm talking about if the parent or guardian is not
9 there --
10 A. Yes.
11

12 Q. -- you need an independent person. That person must
13 be acceptable; right?
14 A. Yes, sir.
15

16 Q. Acceptable to whom?
17 A. The independent person present has to - the
18 independent person - sorry. The independent person has to
19 be looking after the young person's welfare and the conduct
20 of the search.
21

22 Q. How are they to look after the welfare of the young
23 person? In what kind of way?
24 A. Well, the privacy.
25

26 Q. Right. So they've got to make sure it's in a room
27 where members of the public don't have access, right, or
28 other police officers don't, so it is done in private,
29 right?
30 A. Yes, sir.
31

32 Q. Does that deal with the privacy issue then?
33 A. Yes, sir.
34

35 Q. What else are they concerned with?
36 A. Well, the mental status of their - the young person's
37 mind, I guess.
38

39 Q. How are they to do that?
40 A. Speak to them.
41

42 Q. And so when you have an independent person, do you
43 give them an opportunity to speak to the person being
44 searched?
45 A. Well, it really depends, but most of the times I do
46 give an opportunity.
47



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1 Q. How did you do that?
2 A. I introduce them to the young person or the
3 independent person to each other.
4
5 Q. And?
6 A. And then that they are here to - I explain to the
7 young person that the independent person present is to act
8 as an independent person to look out for their welfare and
9 their concerns for - during the search of the young person.
10
11 Q. Well, how does that give the person any insight
12 whatever into the mental state of the young person being
13 searched? You are just introducing them; correct?
14 A. Correct.
15
16 Q. Do you tell them their name?
17 A. Yes.
18
19 Q. And you make a note of that name in your notebook?
20 A. Yes, sir.
21
22 Q. So you tell them the name, you introduce them. So
23 upon what basis is the independent person able to assess
24 the mental state of the young person being searched?
25 A. Well, that I cannot answer, sir.
26
27 Q. Well, unless they're mind-readers, they can't, can
28 they?
29 A. That's correct.
30
31 Q. So that's not a very effective way of ensuring that
32 they are looking after the welfare of the young person;
33 correct?
34 A. Yes.
35
36 Q. But there is another thing that you have to ask, isn't
37 there, under the Act? I thought you told me that you had
38 a detailed understanding of the requirements of LEPR
39 relating to the searching of young people. Did
40 I understand you or misunderstand you?
41 A. No, you didn't, sir.
42
43 Q. I didn't what?
44 A. I have an understanding of it, sir.
45
46 Q. Yes. Are you confident about the extent of your
47 knowledge?



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- 1 A. Yes.
- 2
- 3 Q. Don't you have to ask whether the independent person
- 4 is acceptable to the young person?
- 5 A. Yes.
- 6
- 7 Q. How do you do that?
- 8 A. Well, we were given the information that the SES
- 9 volunteers would be the independent person present.
- 10
- 11 Q. Yes, I know. But the decision is not yours; the
- 12 decision is the young person's. So they are not given any
- 13 information, are they?
- 14 A. No.
- 15
- 16 Q. So how do you ensure that aspect of the Act is obeyed?
- 17 A. It's not - it wasn't in this - in the instance where
- 18 an independent person present was.
- 19
- 20 Q. Is it fair to say that in no case where you had an
- 21 independent person attending a search did you ascertain
- 22 whether that independent person was acceptable to the young
- 23 person being searched - does that correctly state the
- 24 position?
- 25 A. Yes.
- 26
- 27 Q. Until I reminded you of this requirement, as you sat
- 28 there, is it the case that you had no knowledge of it?
- 29 A. That's correct.
- 30
- 31 Q. So you've got a notebook, you're making a search and
- 32 you've got an independent person there. What do you tell
- 33 the independent person about their role?
- 34 A. That they're separate to the investigation, or the
- 35 searching; that they're there just to observe and basically
- 36 support the young person.
- 37
- 38 Q. How do they support them? Hold their hand? I mean,
- 39 what do you mean by "support"?
- 40 A. If they have - if the young person has any concerns,
- 41 that they can ask the independent person --
- 42
- 43 Q. Do you tell the young person that?
- 44 A. Yes.
- 45
- 46 Q. What do you say?
- 47 A. I cannot recall in this instance, but --



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1
2 Q. No, but what do you usually say?
3 A. That the SES volunteer is here to be a support person
4 whilst the search is being conducted, and that this person
5 is not tied to the investigation.
6
7 Q. Well, that doesn't give either of them information
8 about what the independent person might do, does it?
9 A. No.
10
11 Q. The independent person might say, for example, "Why
12 are you stripsearching this young person?" Correct?
13 A. Correct.
14
15 Q. That would be a legitimate question to ask?
16 A. Yes.
17
18 Q. Do you tell the independent person why you are
19 stripsearching the young person?
20 A. In this instance where --
21
22 Q. No, in any instance do you tell them?
23 A. Yes.
24
25 Q. And do you tell them what led to your reasonable
26 suspicion?
27 A. That they may be secreting drugs or any --
28
29 Q. No - well, anyone is capable of secreting drugs.
30 I could be secreting drugs right now. It wouldn't give you
31 a right to search me. So the question is not whether it's
32 possible; the question is whether you have a reasonable
33 suspicion that it is necessary for the purpose of the
34 search to conduct a strip search - correct?
35 A. Correct.
36
37 Q. So what do you say - or do you say anything - to the
38 independent person as to why this search is justified?
39 A. We explain to them why we have to stripsearch them.
40
41 Q. And what is the explanation you give?
42 A. Based on the reasonable suspicion that we have on that
43 young person.
44
45 Q. Right. But that doesn't say anything. All that says
46 is you've got a reasonable suspicion. They need to know
47 whether your suspicion in fact is reasonable. For all they



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1 know, it's just because their eyes are too close together.
2 How does the independent person maintain the rights of the
3 individual who you are searching unless they know the basis
4 for your reasonable suspicion, or are they supposed to just
5 pluck it out of the air?
6 A. No.
7
8 Q. Right. So you have to give them something like that,
9 don't you, to work on?
10 A. Well, the reasonable suspicion would be the secreted
11 drugs --
12
13 Q. No, no, secreted drugs is the outcome. The question
14 is how do you arrive at your suspicion, isn't it? So don't
15 you have to tell the independent person, "Look, we're
16 having this search because there was a drug dog indication,
17 and when I asked the person being searched about whether
18 they were carrying any drugs, they prevaricated, they were
19 uncertain, they didn't tell me the truth and I formed the
20 suspicion, therefore, that they might be carrying drugs" -
21 something like that? An explanation of how you got to your
22 reasonable suspicion; do you see the point?
23 A. Yes.
24
25 Q. Did you ever do anything like that in relation to any
26 independent person whom you procured to be present at
27 a search?
28 A. Yes, I did.
29
30 Q. Really? Tell me the kind of thing you said.
31 A. Did you want me to give an example?
32
33 Q. Yes.
34 A. So the - one of the young persons, who is not listed
35 on here, I - we found - they admitted to us that there was
36 secreted drugs in their persons. There was no urgency in
37 that regard because the young person had told us before we
38 even asked - spoke to that person. So we introduced
39 ourselves and that young person informed us straight away
40 that they had secreted drugs in their persons. There was
41 no urgency there. We believed that there was no - there
42 wasn't going to be any issues in regards to evidence being
43 concealed or destroyed. Therefore, we asked an SES
44 volunteer, or I asked my - GEN11 to obtain an SES volunteer
45 to act as an independent person.
46
47 Q. And what did you tell the volunteer?



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- 1 A. Oh, I cannot remember.
2
3 Q. Well, now, after the search, you have to make a record
4 of it, don't you?
5 A. Yes, sir.
6
7 Q. You conduct the search, you make the COPS record;
8 correct?
9 A. That's correct.
10
11 Q. What are the relevant facts that it's important should
12 be contained in a COPS record?
13 A. The details of why we search; if a parent or guardian
14 or an independent person was not contacted; the details of
15 the actual event that arose during that, while we searched
16 that person; and what outcome it was in our narrative.
17
18 Q. Well, let's just go back to the second thing you
19 mentioned, which was details of the parents or guardian or
20 independent person, if they were not contacted?
21 A. Yes.
22
23 Q. Why would you not contact them?
24 A. If - because if there was a delay in the likely - when
25 we - there would be a delay in search and it's likely that
26 evidence would be concealed or destroyed.
27
28 Q. And you must put that reason?
29 A. On COPS.
30
31 Q. In the COPS record?
32 A. Yes.
33
34 Q. Just explain to me, please, if you've got a young
35 person in front of you and you've got their hands on
36 a table or shelf or desk, so you can see what is happening
37 to their hands, there is no possibility of the destruction
38 of a drug, is there, in that context - the destruction of
39 evidence?
40 A. If I am looking at them the whole time, no, there
41 isn't.
42
43 Q. Well, if you are in the pod, that's what you're doing,
44 isn't it?
45 A. That's correct.
46
47 Q. And you only get to do the search when they're in the



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1 pod. You don't do the search outside; correct?
2 A. That's correct.
3
4 Q. And that's the point when you need to consider whether
5 or not an independent person needs to be present; correct?
6 A. That's correct.
7
8 Q. In other words, at the time when you are considering
9 whether an independent person needs to be present, you're
10 in the position where you know they cannot conceal or
11 destroy drugs or evidence; correct?
12 A. In the pod, yes.
13
14 Q. Well, you're only in the pod. That's where you're
15 going to do the search. So why, in that situation, could
16 you not arrange - you've got a partner - for an independent
17 person to be present?
18 A. Well, there's the time between when we are at the
19 front entry, where we were standing, to the area that we
20 have to go to conduct the search.
21
22 Q. Yes, but by the time you're at the search, if any
23 drugs have been concealed or they've been destroyed, you're
24 not going to find them, are you?
25 A. It's a possibility.
26
27 Q. No. Well, it follows, if they are concealed or
28 destroyed, you're not going to find them on the strip
29 search. It must follow, mustn't it?
30 A. Well, we're not - we can't - like, as we guide them to
31 the pod, we have to make our way through crowds and --
32
33 Q. Sure, but at that time you are not conducting the
34 strip search?
35 A. That's correct.
36
37 Q. When you are conducting them to the pod, you don't
38 need a parent or guardian or independent person, do you,
39 because you're not then conducting a strip search?
40 A. That's correct.
41
42 Q. We are talking about the necessity for their presence
43 at the time you are conducting the search, aren't we?
44 A. Yes.
45
46 Q. And at that time, you have the person in full view and
47 plainly unable either to conceal or to destroy evidence;



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1 correct?
2 A. Correct.
3
4 Q. Why then do you say that that entitles you not to have
5 an independent person present when you're going to start
6 your search?
7 A. Well, within the pod, it's not a controlled or sterile
8 environment like a police station. The pod itself has gaps
9 at the base of the pod itself on the exterior, at the
10 base - there's a gap between the floor and the outer wall.
11
12 Q. So are you saying that whilst you are there, perhaps
13 a metre away from this person, who is either standing or
14 sitting with their hands on a shelf, you couldn't stop them
15 from destroying or concealing evidence; is that what you're
16 telling me?
17 A. There is a possibility, sir.
18
19 Q. That would require them to move, wouldn't it?
20 A. That's correct.
21
22 Q. And you would be there to stop them from moving,
23 wouldn't you?
24 A. There is a possibility for that, sir, yes.
25
26 Q. A possibility? If they started to move or looked as
27 though they were taking something from their pocket or from
28 around their testicles, do you think you might notice it?
29 A. There are times where I turned to my partner, GEN11,
30 to speak to him and to hand over any items on the exterior
31 of the young person.
32
33 Q. And you can do that while not taking your eyes off the
34 young person, can't you?
35 A. I could.
36
37 Q. So you still maintain, do you, in that situation,
38 you're entitled not to call an independent person because
39 there's a chance that the young person might conceal or
40 destroy evidence; is that what you are saying?
41 A. Yes.
42
43 Q. Do you agree that it is a very slight chance?
44 A. Yes.
45
46 Q. Indeed, the possibility is a remote one; agreed?
47 A. Agreed, sir.



8456473

8458600

1
2 Q. But you say even a remote chance justifies you not
3 having an independent person there?
4 A. Yes.
5
6 Q. So you conducted some searches here with an
7 independent person?
8 A. Yes, sir.
9
10 Q. And were they conducted in a pod?
11 A. Yes, sir.
12
13 Q. And was there, there, in those cases, the chance that
14 the person might conceal or destroy the evidence?
15 A. On that day, no.
16
17 Q. Because?
18 A. Because the young person that we searched that day had
19 admitted to us --
20
21 Q. Yes, but you did more than one search?
22 A. Yes.
23
24 Q. And in those other searches did you have independent
25 persons there?
26 A. No.
27
28 Q. So how many searches did you do with an independent
29 person present?
30 A. There was one person that I can remember that there
31 was an independent person present. There was one with
32 GEN14C that I cannot - or that that independent person
33 wasn't there, and there was another search which
34 I conducted and I cannot remember if there was an
35 independent person present.
36
37 Q. So with 14C there was no independent person present?
38 A. That's correct.
39
40 Q. You have a clear recollection of that?
41 A. Yes.
42
43 Q. And is that why, in your COPS report, you don't refer
44 to any independent person?
45 A. No. I just had an oversight and I just forgot to
46 write it down or record it in COPS.
47



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1 Q. What was your oversight?
2 A. I just forgot to write it in COPS.
3
4 Q. Forgot to write what in COPS?
5 A. That an independent person or a parent or guardian
6 wasn't there to - wasn't recorded to have that person
7 present there.
8
9 Q. Because the legislation requires you to explain why
10 that person wasn't there?
11 A. Yes.
12
13 Q. And you say you overlooked that requirement?
14 A. Yes, sir.
15
16 Q. But there is no doubt that an independent person was
17 not there; correct?
18 A. There was no - yes.
19
20 Q. Had an independent person been there, you would have
21 noted in the COPS report their name, contact details;
22 correct?
23 A. Yes.
24
25 Q. And would you have also put that in your notes?
26 A. Yes.
27
28 Q. And you know from your notes there is no reference to
29 a contact person; correct?
30 A. That's correct.
31
32 Q. And that's because there was no independent person
33 there?
34 A. Yes.
35
36 MS DWYER: Q. During the course of the search of GEN14C
37 you did not make any notes in your notebook; correct?
38 A. That's correct.
39
40 Q. And was it your practice, when you were the actual
41 searching officer, generally, to make notes in your
42 notebook?
43 A. If we didn't find anything on the person, my general
44 practice is that I just took a photo of the field arrest
45 form.
46
47 Q. And that's because, is it, there was no follow-up



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1 needed if you didn't find anything?
2 A. That's correct.
3
4 Q. And would you have expected your colleague, who was
5 the scribe, to make a note in the field processing form of
6 whether there was an independent person present or not?
7 A. Yes.
8
9 Q. You've had a look at the field processing form in this
10 case; correct?
11 A. In regards to 14C?
12
13 Q. Yes.
14 A. Yes.
15
16 Q. And you've done that to refresh your memory for coming
17 to give evidence today; is that right?
18 A. Yes.
19
20 Q. You in fact looked at the field processing form when
21 you went to do the COPS entry two days after the actual
22 music festival; is that right?
23 A. Yes, that's correct.
24
25 Q. Why did you do the COPS entry two days after the
26 festival rather than on the night?
27 A. We had - I just - we just were told to do it at the
28 next available shift.
29
30 Q. I see. Who told you that?
31 A. A supervisor would have told me.
32
33 Q. Do you have a memory, if you look down at the sheet of
34 codenames, the schedule of codenames, as to which
35 supervisor told you to do it at the next available shift?
36 A. I cannot remember.
37
38 Q. I'm not being critical here. I'm just saying that the
39 information that you received from your superiors was it's
40 not necessary to do the COPS entry at the time of the
41 festival as long as you do it as soon as possible
42 afterwards; correct?
43 A. Yes, ma'am.
44
45 Q. But to do it as soon as possible afterwards, you still
46 needed to rely on some contemporaneous notes taken at the
47 time; correct?



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1 A. Yes, ma'am.
2
3 Q. And you assumed that a field processing form should be
4 sufficient in circumstances where no drugs were found?
5 A. That's correct.
6
7 THE CHIEF COMMISSIONER: Q. But also you had a memory of
8 the searches; correct?
9 A. For 14C I cannot remember.
10
11 Q. Well, have a look at the COPS report.
12
13 MS DWYER: Q. Have you still got that in front of you,
14 officer?
15 A. No, ma'am.
16
17 Q. I will just hand it back to you.
18 A. Thank you.
19
20 THE CHIEF COMMISSIONER: Q. Do you see there's a detail
21 of the facts that led to your reasonable suspicion?
22 A. Yes, sir.
23
24 Q. Would you read it out, please?
25 A. The primary reason for suspected possession of illegal
26 drugs, and the additional, was that a security observed an
27 unknown package in the young person's groin area.
28
29 Q. Right. The security officer brought that to your and
30 your partner's attention?
31 A. That's correct.
32
33 Q. And then you thought - needed to be searched; correct?
34 A. Yes.
35
36 Q. It doesn't matter when this particularly happened, but
37 you asked him why he had secreted his bumbag. What it
38 was - it was a bumbag. Why had he secreted it, and he gave
39 you a reason?
40 A. I cannot remember.
41
42 Q. But anyway, it didn't seem to be significant, because
43 you make no note of it; correct?
44 A. My - GEN11 didn't make a note of it, but I recall when
45 I was --
46
47 Q. Sorry, I thought this was your COPS entry?



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8458604

1 A. Oh, the COPS entry, yes. But the field arrest form,
2 sorry.
3
4 Q. No, I'm concerned with the COPS entry.
5 A. Oh, the COPS entry, yes.
6
7 Q. So you didn't make a note of what his response was,
8 but you know there was nothing in the bumbag?
9 A. That's correct.
10
11 Q. So what led you to think that you had the basis for
12 a reasonable suspicion for a strip search? He denies any
13 connection with drugs; correct?
14 A. After the search is completed, yes.
15
16 Q. Well, didn't you ask him before?
17 A. No.
18
19 THE CHIEF COMMISSIONER: Yes, all right.
20
21 MS DWYER: Q. Do you remember GEN11 asking him
22 beforehand whether he had any drugs on him?
23 A. I cannot remember.
24
25 THE CHIEF COMMISSIONER: Q. Wouldn't it be a matter of
26 course?
27 A. I don't - in this instance I cannot remember. My
28 practice is to introduce myself and that - if it was a drug
29 dog indication, I inform them that a drug dog indication -
30 there was a drug dog indication and that they will - we
31 will inform them that we will do a search.
32
33 Q. Well, there was no drug dog indication here?
34 A. That's correct.
35
36 Q. So what you had was something apparently secreted in
37 his groin that led to a suspicion?
38 A. That's correct.
39
40 Q. Then he produced what was secreted in his groin, being
41 a bumbag?
42 A. I cannot remember that.
43
44 Q. Well, do you have any doubt about it? You looked in
45 the bumbag, didn't you?
46 A. At some point, but not - I cannot remember if it was
47 at the time when the security handed the young person to



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1 us.

2

3 Q. No, but at some time, before the search, did he not
4 tell you, "I've just put a bumbag in here because it's got
5 my phone and other items in it"? Did he not explain that?

6 A. I cannot remember.

7

8 THE CHIEF COMMISSIONER: All right.

9

10 MS DWYER: Q. Have a look at the field processing form,
11 which I think is in front of you still, please. You see
12 there that your colleague has written - that is, GEN11 has
13 written - that the reason for the search is that the POI
14 was stopped after avoiding the dog, he was detained by
15 security. When you came to do the COPS entry two days
16 later, you realised that that was wrong, what was on the
17 field processing form. You had a memory that, in fact,
18 this young person had secreted a bumbag and that's why he
19 had been detained; correct?

20 A. Yes.

21

22 Q. Did you ever tell GEN11 that he had written this
23 incorrectly, this field processing form?

24 A. I cannot remember if I had mentioned it to him.

25

26 Q. There is nothing on this field processing form about
27 the independent person being present or absent, is there?

28 A. That's correct.

29

30 Q. But you had a memory of that when you came to do your
31 COPS entry, that there was no independent person there?

32 A. Yes.

33

34 Q. And you have a memory of that, still sitting there
35 today; correct?

36 A. Yes.

37

38 Q. Is it fair to say that as at February 2019, you were
39 not familiar with the LEPR provision which required you to
40 actually make a note of whether or not an independent
41 person was there?

42

43 THE CHIEF COMMISSIONER: No, that's not what the LEPR
44 provision requires. The LEPR provision requires that in a
45 case where you do not have an acceptable person, a parent,
46 guardian or independent person there, it requires you to
47 make a note as to why they are absent, explaining it.



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- 1
2 Q. Correct?
3 A. Yes.
4
5 Q. And you knew that, but you say to me, as I understand
6 it, you overlooked it at the time?
7 A. That's correct.
8
9 Q. You understand the importance of that information,
10 don't you?
11 A. Yes, I do.
12
13 Q. Because it could render the search completely
14 unlawful?
15 A. That's correct.
16
17 Q. Strip searches are particularly fraught, aren't they,
18 because you're dealing with a naked young person?
19 A. Yes.
20
21 Q. So it's of vital importance that the statutory
22 requirements are strictly complied with?
23 A. That's correct.
24
25 Q. And, secondly, that a complete record is taken of what
26 happened?
27 A. Yes, sir.
28
29 Q. Otherwise, your superiors can't properly supervise
30 you; correct?
31 A. Yes.
32
33 Q. The young person, who may wish to take legal action,
34 is stymied by the inadequate reporting; correct?
35 A. Correct.
36
37 Q. Because the young person also has rights - you
38 understand that?
39 A. Yes, that's correct.
40
41 Q. And this Commission, which has oversight
42 responsibilities for police, can't exercise its
43 responsibilities adequately, because we can't get the
44 information.
45 A. Yes.
46
47 Q. So you won't do that again?



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A. No.

THE CHIEF COMMISSIONER: Yes, go on.

MS DWYER: Q. I'm just going to hand you a copy of this document, which is at tab 12. It's a list that has been provided by police of strip searches of under-18s at the festival and your name appears there against three different entries. Do you see your name there, officer?

A. Yes, I do.

Q. If I could ask you to assume that the COPS entry that we're referring to for GEN14C is 137457702, which shows that it's a male, unknown, and there was no drug found. "NA" for not applicable, for drugs; do you see that?

A. That's correct, yes.

Q. Then above that are two other event numbers, one where the drug was found and one where drug recent use or possession was admitted; correct?

A. That's correct.

Q. The only one of those three searches where an independent person was present was the event number which has MDMA marked against it where the drug was found; correct?

A. Yes.

Q. And that's where the drug was - where the young person admitted that they had drugs on them?

A. That's correct.

MS DWYER: I tender that document, Chief Commissioner. It has the barcode 8453400.

EXHIBIT #30C LIST AND EVENT NUMBERS FOR STRIP SEARCHES AT THE LOST CITY MUSIC FESTIVAL BARCODED 8453400

THE CHIEF COMMISSIONER: Can I ask you about this? So we have the COPS entries for each of these searches?

MS DWYER: Yes.

THE CHIEF COMMISSIONER: The one that we are presently concerned with is the one with the event number ending in 702.



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1 MS DWYER: That's correct, Commissioner.
2
3 THE CHIEF COMMISSIONER: And the other one, where there
4 was no independent person present, has the event reference
5 number ending in 736.
6
7 MS DWYER: That's correct, Chief Commissioner.
8
9 THE CHIEF COMMISSIONER: Does that explain why the
10 independent person is not present?
11
12 MS DWYER: I think it's a question for the witness. In my
13 respectful submission, the witness's answers have indicated
14 that to date, but I can clarify that right now.
15
16 THE CHIEF COMMISSIONER: No, no. We've shown him the --
17
18 MS DWYER: The COPS entries, Chief Commissioner?
19
20 THE CHIEF COMMISSIONER: I'm talking about the COPS
21 entries. Do we have that COPS entry?
22
23 MS DWYER: We do.
24
25 THE CHIEF COMMISSIONER: Can you show it to me, please?
26 Or where is it? I can find it for myself.
27
28 MS DWYER: Tab 11, Chief Commissioner. 8453407 is the
29 barcode.
30
31 THE CHIEF COMMISSIONER: Where does the fact appear that -
32 oh, this is one of those COPS reports where you have to
33 interrogate further, but when you interrogate further, it
34 is shown to be a strip search?
35
36 MS DWYER: Correct, Chief Commissioner.
37
38 THE CHIEF COMMISSIONER: Q. So you can understand - this
39 is shown by police records and the COPS entry which you
40 made, though it is not the one before you, that this was
41 a strip search. Do you see that? It's only a couple of
42 sentences. Just read it to yourself. Have you read the
43 entry?
44 A. Yes, sir.
45
46 Q. It doesn't mention anything about an independent
47 person, does it?



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1 A. No, sir.
2
3 Q. This was actually created on the day, was it not, of
4 the search itself?
5 A. It was created on 25 February.
6
7 Q. That's quite right, two days later. So you made the
8 same mistake twice?
9 A. That's correct.
10
11 Q. How could that happen? Was it because you were
12 unaware you had to give a reason?
13 A. It was just an oversight on that day. I did one entry
14 after the other.
15
16 Q. There's nothing in there about the need for urgency,
17 is there?
18 A. No, sir.
19
20 THE CHIEF COMMISSIONER: Thank you, Ms Dwyer.
21
22 MS DWYER: Q. You understand that the young person has
23 been interviewed - that is, 14C has been interviewed - by
24 the LECC investigators?
25 A. I wasn't aware until today.
26
27 Q. If you can take it from me that that has happened,
28 I am going to take you to aspects of the interview. He
29 explains that he told police officers that he had secreted
30 the bumbag for innocent reasons that had nothing to do with
31 drugs, and that he didn't have anything on him. In those
32 circumstances, where a young person says, "Look, the reason
33 I was itching or fidgeting with my groin area is I had
34 a bumbag because I wanted to carry my phone and wallet.
35 Here is the bumbag, I don't have any drugs on me", there
36 would have to be something other than him secreting
37 a bumbag to justify a search, wouldn't there?
38 A. That is correct.
39
40 Q. And you would have to make a record, you or your
41 fellow officer, as to the reasons in those circumstances;
42 correct?
43 A. Yes ma'am.
44
45 Q. And that wasn't done here; you agree?
46 A. That's correct.
47



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1 Q. So there was no record of what the lawful reason was
2 for conducting the strip search of 14C, was there?
3 A. Not in the COPS entry.
4
5 THE CHIEF COMMISSIONER: Q. Well, it's not anywhere?
6 A. That's correct.
7
8 MS DWYER: Q. The young person says that police searched
9 him in the pod - that is, he is talking about two male
10 police officers - and they searched his wallet, his phone
11 case and phone, and the bumbag. I mean by that they didn't
12 go into the young person's phone, but they had a look at
13 the phone. Is that something that you would do prior to
14 conducting the physical search - have a look at the wallet,
15 the phone, the bumbag?
16 A. Yes.
17
18 Q. He had his hands on a table within the pod at some
19 stage. Was it part of your practice to ask a patron to put
20 their hands on the table or shelf within the pod?
21 A. Yes.
22
23 Q. And what would happen while the person had their hands
24 on the table or pod? What sort of search would you
25 conduct?
26 A. I would search the items.
27
28 Q. I see. So you would ask them to put their hands out
29 on the table?
30 A. That's correct.
31
32 Q. While you were conducting the search; correct?
33 A. Yes.
34
35 Q. So that they couldn't use their hands to destroy any
36 substances they had on them; correct?
37 A. Yes.
38
39 Q. Or to otherwise interfere with the process; correct?
40 A. That's correct.
41
42 Q. He says that after that, he was told to turn around,
43 take his hands off the table and start removing his
44 clothes. Is that something that you would say for your
45 search?
46 A. I would do a general search of the exterior of their
47 clothing.



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1
2 Q. How would you do that?
3 A. Just do a physical search of their clothing on the
4 outside, using my hands.
5
6 Q. Would you do a pat-down of the person?
7 A. That would probably best describe it.
8
9 Q. And then what would you do after that, generally
10 speaking?
11 A. If it's going to continue on to a strip search,
12 I would ask them to take - if they have headgear on, I'll
13 take them - I'll ask them to take their headgear off.
14
15 Q. Do you remember conducting a strip search on 14C?
16 A. I cannot remember the actual search itself.
17
18 Q. So when I'm asking you questions now about what you
19 did on this day, are you relying then on your general
20 process?
21 A. That's correct.
22
23 Q. So you would ask them to take their headgear off but
24 you don't have a memory of whether 14C had any headgear on;
25 correct?
26 A. That's correct.
27
28 Q. What would you do next?
29 A. I would work my way from the top to the bottom.
30 However, if they had headgear on, I would ask them to take
31 it off. I would search that. And I ask them if they want
32 to wear it again. Most instances they - some instances
33 they do; some instances they don't. Then I'd ask them to
34 take whatever clothing on top they have, search that,
35 search - sorry, I'd look at the person's body to see if
36 anything's attached to them out of the ordinary. As soon
37 as that is done and I'm satisfied with that part of the
38 search, I ask them to put their top part of the clothing
39 back on. And then I ask them to take their shoes and socks
40 off, and I conduct a search of the shoes and socks, and in
41 between their toes. And then I ask them to take their
42 pants off, search the pants and then look at the person's
43 legs. Then, after that, I will ask them to take their
44 undergarments off.
45
46 Q. This young person says that he was asked to take his
47 clothes off, he took his shirt off, and then his pants off,



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1 and then once he got to his undies, police said to take
2 them off too, so he did that and he was completely naked.
3 Do you accept that that might have happened when you were
4 searching 14C, given the busyness of the day?

5 A. That's incorrect.

6
7 Q. How can you say that that is incorrect when you don't
8 have a memory of the search of this young person?

9 A. My general practice of searching, whether it be
10 a young person or an adult - that's my process, what
11 I explained to you.

12
13 Q. The young person says that when he had his underwear
14 off he was told - and I'm quoting.

15
16 *... to lift up my balls and then squat and*
17 *cough.*

18
19 Is that something that you would say to a patron?

20 A. Yes.

21
22 Q. How do you come to an understanding that you have the
23 power to ask a young person to lift up his testicles? Have
24 you been taught that?

25 A. It's just from experience that people secrete items
26 under their testicles or in their bum cheeks or anus.

27
28 Q. But do you believe that you have the power to touch
29 a young person's testicles or butt cheeks?

30 A. No, I don't touch any part of the person.

31
32 Q. Have you been taught at any time that you don't have
33 the power to touch a young person's testicles or butt
34 cheeks?

35 A. Yeah, I don't have the power, yes.

36
37 Q. Have you been taught that?

38 A. Yes.

39
40 Q. Have you been taught that, on the other hand, you do
41 have the power to ask them to touch themselves on the
42 testicles or the butt cheeks during the course of a search?

43 A. I don't have the power but I just ask them to do it.

44
45 Q. That's something you just assume that you have the
46 power to do; correct? That is, to require them to spread
47 their butt cheeks or to lift up their testicles.



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1
2 MR OATES: I object. I don't think he said "require"; he
3 said "ask".
4
5 THE CHIEF COMMISSIONER: Yes, all right.
6
7 Q. In this situation, when you are saying - you are two
8 uniformed police, you are saying to a young person,
9 "Squat". You would agree, that would be taken as an order
10 or command? The question of consent doesn't arise, does
11 it?
12 A. It depends on what - their knowledge of what their
13 rights are.
14
15 Q. Do you think they have a right to say "No"?
16 A. If they know their law, I guess they do.
17
18 Q. I see. So you take advantage of their ignorance of
19 the law, do you?
20 A. No.
21
22 Q. Well, then, if it is genuine consent, why don't you
23 say, "You do not have to do this if you do not want to,
24 but, please, would you squat"?
25 A. That's something that I don't practice.
26
27 Q. No, because you don't want them to know they can
28 refuse, isn't it? Why else wouldn't you tell them that, if
29 that's your actual view?
30 A. I just ask them to do it and --
31
32 Q. Officer, I know you just ask them to do it, but you
33 are not suggesting to me, are you, that a young person -
34 the ordinary, everyday young person, who hasn't happened to
35 have a policeman father or a lawyer mother - is going to
36 know whether or not, in this situation, you have the power
37 to require it to be done or not? You would expect they
38 would believe you had the power; do you not agree?
39 A. I agree.
40
41 MS DWYER: Q. Do you recall --
42
43 THE CHIEF COMMISSIONER: So let's then - so you've got -
44 the question is therefore entirely justified.
45
46 Q. You required him to squat. You agree? That was the
47 effect of it, in the circumstances? He was not - he would



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1 have not understood he was free to refuse?
2 A. I asked and he complied.
3
4 Q. Yes. But your expectation was, your understanding
5 was, that he believed he would be required to comply;
6 correct?
7 A. Correct.
8
9 Q. So then where did coughing come from? Why would
10 coughing assist the search?
11 A. Just to see if there is anything between their butt
12 cheeks.
13
14 Q. How would coughing help that?
15 A. Because the tension within their butt cheeks would -
16 or the muscles would release.
17
18 Q. That's just a guess, isn't it? You haven't the
19 faintest idea?
20 A. No.
21
22 Q. Hmm?
23 A. No, that's incorrect.
24
25 Q. You do? Who told you this? Where does this
26 anatomical information come from?
27 A. It is just something that I've seen on previous
28 experiences.
29
30 THE CHIEF COMMISSIONER: Yes. Do we have any more
31 questions?
32
33 MS DWYER: Only briefly.
34
35 Q. The young person says to the investigator that during
36 the course of this search - at page 23:
37
38 *... I was nervous and like since it was two*
39 *guys telling me to get unclothed,*
40 *undressed, just, just scary at the time ...*
41
42 He's describing how he felt. Can you appreciate that
43 a young person would feel nervous and scared, having to
44 take their clothes off, including their underwear, in front
45 of two clothed police officers?
46
47 THE CHIEF COMMISSIONER: Q. And squat and cough and move



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1 his genitalia.
2 A. I can understand their circumstances, yes.
3
4 MS DWYER: Q. Have you ever received any training as to
5 what you should say to a young person to look after their
6 welfare during the course of that event?
7 A. I just try and be as quick as I can and make sure
8 everything's --
9
10 THE CHIEF COMMISSIONER: Q. One of the things you might
11 do is simply be candid and say to them, "Look, I can't
12 oblige you to do this or that, but would you please do it?"
13 That might be one way in which you would restore to them
14 some decision-making, wouldn't it?
15 A. Well, I do ask for their cooperation.
16
17 Q. Yes. "Cooperation" means complying with your
18 requirements, doesn't it?
19 A. Yes.
20
21 MS DWYER: Q. Officer, I take --
22
23 THE CHIEF COMMISSIONER: Q. However, as I understand
24 it, you have never been told this? This kind of suggestion
25 has never been made to you in any training or any other
26 document; correct?
27 A. In regards to what, sir?
28
29 Q. The matters that I'm putting to you that you might do?
30 A. Yes.
31
32 MS DWYER: Q. You haven't received any training about
33 how to protect the welfare of a child in those
34 circumstances, have you?
35 A. Not really.
36
37 Q. Well, not at all, have you?
38 A. Not at all.
39
40 Q. Do you think it would be a good idea, that sort of
41 training?
42 A. Yes.
43
44 THE CHIEF COMMISSIONER: I'm not going to be assisted by
45 that.
46
47 MS DWYER: Nothing further, Chief Commissioner.



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1
2 THE CHIEF COMMISSIONER: Because of the state of the
3 evidence, do you want to cross-examine, Mr Willis?
4
5 MR WILLIS: No, I hadn't planned to, Commissioner.
6
7 THE CHIEF COMMISSIONER: Very well. Yes.
8
9 MR OATES: With respect to exhibit 27C,
10 Chief Commissioner - that's the COPS entry - in view of
11 yesterday's comments about the COPS entries being
12 potentially incomplete --
13
14 THE CHIEF COMMISSIONER: Well, in fact, it is incomplete.
15 We only know because we have been told - have you got
16 a complete one?
17
18 MR OATES: Yes, I asked my client to go to a police
19 station and bring up the COPS entry and take screenshots.
20
21 THE CHIEF COMMISSIONER: That's helpful, thank you.
22
23 MR OATES: He did that, and my friend has a copy of that.
24 It shows clearly that he recorded that it was a strip
25 search.
26
27 THE CHIEF COMMISSIONER: Yes, I understood that.
28
29 MR OATES: Lest there be any doubt, that document was made
30 two days later. It reflects upon his credit potentially at
31 the end of the day.
32
33 THE CHIEF COMMISSIONER: All I can say is it is most
34 unfortunate, where we ask for information and adverse
35 conclusions might be drawn on a mistaken basis. That's
36 a very unsatisfactory position for the Commission to find
37 itself in, but I am glad that this issue has now been
38 clarified.
39
40 MR OATES: Could I seek through counsel assisting that
41 that document I provided be tendered?
42
43 THE CHIEF COMMISSIONER: Yes, certainly.
44
45 MS DWYER: I have that here, Chief Commissioner.
46
47 THE CHIEF COMMISSIONER: I think what we might do is to



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1 just join it to 27C so then run together.
2
3 MR OATES: Certainly.
4
5 MS DWYER: It contains a photograph of the screenshot that
6 indicates "strip search".
7
8 THE CHIEF COMMISSIONER: I understand. There is no need
9 to give it to me. I accept what has been said.
10
11 EXHIBIT #27C ADDITION OF SCREENSHOTS OF FULL COPS EVENT
12 BARCODED 7603255-7603260
13
14 <EXAMINATION BY MR OATES:
15
16 MR OATES: Q. When you search somebody, stripsearch
17 somebody at a police station, it is different to in the
18 field, isn't it?
19 A. That's correct.
20
21 Q. In a police station, is it not the case that if you
22 are waiting for a parent or a guardian, or an independent
23 person, you can put somebody in the dock, in the custody
24 area?
25 A. That's correct.
26
27 Q. That's a sterile area, isn't it?
28 A. Yes.
29
30 Q. The person is under constant surveillance, aren't
31 they?
32 A. That's correct.
33
34 Q. From the custody staff and also from cameras?
35 A. That's correct.
36
37 Q. So if anything is discarded in the dock, it can be
38 sheeted home to the person who is in the dock - any
39 contraband or anything else that is released by them;
40 correct?
41 A. That's correct.
42
43 Q. When you are in the field, at this concert, there is
44 a pod, isn't there?
45 A. Yes.
46
47 Q. Or there was a pod, wasn't there?



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1 A. Yes.
2
3 Q. The pod is not secure, is it?
4 A. No.
5
6 Q. There is a gap between the wall and the floor, isn't
7 there?
8 A. That's correct.
9
10 Q. The pods are required by other police to conduct
11 searches?
12 A. Yes.
13
14 Q. Now, when you are making a decision about whether
15 there is going to be a delay which could be likely to
16 result in evidence being concealed, tell me if this is
17 wrong or right: you are not just thinking about the time
18 when you are in the pod, when you are talking to the
19 person, but there must be a period of time waiting for the
20 independent person to arrive or the parent to arrive;
21 correct?
22 A. Yes.
23
24 Q. What would you need to do in that period of time to
25 preserve the integrity of the investigation, so to speak,
26 to ensure that no evidence was lost or destroyed? What
27 observations or care would you need to take?
28 A. In regards to the person, the young person?
29
30 Q. In regards to this person, the young person you have
31 with you?
32 A. I would have to keep looking at him until that
33 independent person or parent or guardian person arrives.
34
35 Q. What if you get a job? What if a job comes over the
36 air or you are required to go somewhere else - what do you
37 do then?
38 A. If I'm required to go somewhere else, I would have to
39 go to that job or - and try and ascertain another person to
40 look after the young person.
41
42 Q. What if there is no police officer there because they
43 have been called to the same job, what would you do then?
44
45 THE CHIEF COMMISSIONER: The question is not what are the
46 possibilities. The Act says "likely". Mere possibility is
47 not enough. All these matters that you refer to, unless



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1 there is something that you are able to point to that
2 suggests that such interruptions are likely, they are not
3 of much relevance, are they?
4

5 MR OATES: That's ultimately a matter for yourself,
6 Chief Commissioner.
7

8 THE CHIEF COMMISSIONER: Quite.
9

10 MR OATES: I'm trying to draw out --
11

12 THE CHIEF COMMISSIONER: As I understand it, your point is
13 simple: if you are not there or you are called away, you
14 are not capable of overseeing him. I entirely accept it.
15

16 MR OATES: The point I'm attempting to make, which I can
17 do in submissions later, is that there is a period of time
18 when - it is not just the time at which the person is
19 looked at by the constable in the pod which is the relevant
20 period. There is a period of waiting.
21

22 THE CHIEF COMMISSIONER: Quite. But the effect of your
23 questions, because they are leading, is to make suggestions
24 to the witness which he didn't think of at the time he was
25 being questioned about why he did not contact the person.
26 So it's not really of much value. However, I'm not going
27 to stop you, I'm just pointing out I don't think this time
28 is well spent, and it's 25 past 5.
29

30 MR OATES: I didn't have any control over that.
31

32 THE CHIEF COMMISSIONER: No, I wouldn't blame you for the
33 passing of time.
34

35 MR OATES: No. As you please. I think I have made the
36 point sufficiently.
37

38 THE CHIEF COMMISSIONER: Indeed. Are there any other
39 questions?
40

41 MS CHAPMAN: No.
42

43 THE CHIEF COMMISSIONER: Thank you, Officer. You are free
44 to go for the present. However, this is a somewhat
45 wide-ranging inquiry, so I can't entirely discharge you
46 from your obligation under the summons. I think it's
47 unlikely you would be recalled, but you might be, and we



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1 will let your lawyer know. But in the meantime, you are
2 free to go. Thank you.

3
4 THE WITNESS: Thank you, Commissioner.

5
6 <THE WITNESS WITHDREW

7
8 MR GATES: Commissioner, can I return that document to my
9 friend? I made some notes on it, but they are only to
10 assist me in comprehension.

11
12 THE CHIEF COMMISSIONER: No, that's not a problem. Yes.
13 I will adjourn.

14
15 MS DWYER: Until 2pm tomorrow, Commissioner.

16
17 THE CHIEF COMMISSIONER: Until 2pm.

18
19 AT 5.25PM THE COMMISSION WAS ADJOURNED TO
20 THURSDAY, 5 DECEMBER 2019 AT 2PM

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CERTIFICATE OF AUTHENTICITY

I, Sally Ann Hicks of Epiq, hereby certify that on Wednesday, 4 December 2019, I transcribed the evidence of:

Officer GEN9 from page 254, line 21 to page 309, line 19.

Officer GEN10 from page 311, line 38 to page 334, line 16.

Officer GEN11 from page 334, line 23 to page 374, line 26.

Officer GEN12 from page 375, line 2 to page 410, line 6.

Signed *Sally Ann Hicks*

Dated. *4/12/2019*