

28 February 2017

The Parliament of Australia

**Subject: Australian Parliamentary Joint Committee  
/Australian Federal Police and Australian Border Force Corruption  
/ACLEI**

Outline of Content

Page 2 : Introduction to previous correspondence of corruption Operation Collage/Bergonia.

Page 3 : 18/08/2011 Brisbane Committal transcript      WIT: BURGESS A J

Page 4 : 22/08/2011 Brisbane Committal transcript      WIT: READ L R

Page 5 : 22/08/2011 Brisbane Committal transcript      WIT: MAZLIN K L

Page 6 : 15/08/2011 Brisbane Committal transcript      WIT: MIRA J P

Page 8 : 03/08/2015 Brisbane Supreme Court              WITNESS A McGilvray

Page 9 : 15/08/2011 Brisbane Committal transcript      WIT: MCGILVRAY A I

Page 11: 22/08/2011 Brisbane Committal transcript      WIT: MAZLIN K L

Page 12: 27/07/2015 Brisbane Supreme Court              WIT: O'SHEA L R

Page 26: 16/08/2011 Brisbane Committal transcript      WIT: BEGBIE C L

Page 26: 25/08/2011 Brisbane Committal transcript      WIT: WYND S P

Page 27: 27/07/2015 Brisbane Supreme Court              WIT: WYND S P

Page 27: 29/07/2015 Brisbane Supreme Court              WIT: GEISSLER C A

Page 31: 18/08/2011 Brisbane Committal transcript      WIT: BURGESS A J

Page 32: 18/08/2011 Brisbane Committal transcript      WIT: COSGROVE D M

Page 38: 27/11/2014 – Mistrial / Non Disclosure

Page 38: Perjury on appeal. Failure of CDPP obligation of disclosure to the court. ACLEI inability/reluctance to act.

Page 39: Extracts of ACBPS Internal Minute and email chains Integrity and Professional Standards

Attachment 1 :      Redacted Customs list

Attachment 2 to 9 : Redacted copies of Customs officers diaries

Dear Honourable Member / Commonwealth Ombudsman

Information here shows crimes, perjury and non disclosure previously not provided and to add to prior correspondence to Parliament which can be viewed on [simonxgolding.com](http://simonxgolding.com)

It shows a body of evidence showing police non disclosure and deliberate attempts to obscure the investigation with accused left to "fossick" for proper discovery, leaving a fundamental departure of requirements for a fair trial.

It is also information for Foreign Parliaments to show that Australia is a corrupt country where investment should be avoided. A review and investigation should be made on Australian law enforcement officers as many Australian Federal Police and Australian Customs officers work within your borders. This corruption is happening in countries such as USA, Indonesia, Timor, India China, PNG and Colombia. Some of this corruption is opportunistic whilst some is meticulously planned by law enforcement officers working with criminals for drug trade to Australia.

I thank the Parliamentary Joint Committee for their letter dated 7 February 2017 after I have raised and given proof of serious corruption within Australian Federal Police and Australian Border Force.

ACLEI have had 7 years now to act accordingly in regard to corruption in Operation Collage/Bergonia. The Commonwealth Ombudsman has previously passed obligation onto ACLEI just as the Parliamentary Joint Committee has recently. I have mentioned in previous correspondence that everyone who should act on this is merely passing obligation to another which is why I have, and shall continue to lobby the Australian Parliament and now Foreign Parliaments. Parliament is obligated to act on this corruption when ACLEI and the Commonwealth Ombudsman are ignoring it.

ACLEI remains silent on the corruption of Australian Federal Police (AFP) and Australian Border Force (ABF) officers despite years of investigation which is completely unsatisfactory. The Australian Government has failed in its duty to act against systemic and incessant corruption of the AFP and ABF.

In Operation Collage/Bergonia and subsequent case 864/11. Australian Federal Police made no mention of the fact that up to 20 Customs officers were present at the Scarborough marina on the 12<sup>th</sup> October 2010 until the absolute last moment at my second trial. This was done to hide corrupt acts, much of which is covered in previous correspondence along with photos of AFP with blocks of cocaine under their shirts which can be found on [simonxgolding.com](http://simonxgolding.com)

This letter is compiled of mostly transcripts, showing police completely misconducted themselves and did not take any steps of the governance of their own Commissioners instructions that are required by them. It also shows clear perjury of AFP members.

Operation Collage case officer Aaron James Burgess and Luke Read stated that they started work around 4am on the 12<sup>th</sup> October 2010 despite their copy pasted identical statements starting at midday. They make no mention of returning to the marina in their statements because they returned to the marina to steal evidence. Over a phone call to another AFP member en-route to the marina it was stated that "we are coming back to pick up the bags". On arrival to Morgans seafood restaurant car park just after midday, about 300 meters away and around the corner from the entrance of the Scarborough marina is where 3 other AFP officers were met by Burgess and Read. This was done away from the crime scene.

AFP Karen Mazlin, Carmen Begbie(Reads fiance) and Angus McGilvray hand large bags that were from the yacht Mayhem of Eden to AFP Luke Read and Aaron Burgess who then place them into their vehicle. The smell of cocaine fills the AFP vehicle as they put stolen evidence into the very same car as accused. Burgess then states "its a pity you guys didn't let us know, we could have worked something out".

**18082011 D.3 T(2)25-26/SJK(TWB) BRIS (McGrath, Magistrate) WIT: BURGESS A J**

*Because I was going to suggest to you that you did travel with him and Reid in the same vehicle and go back to the marina?-- Yes.*

*And at the marina, correct me if I'm wrong, it was Reid that left the vehicle for a period of time or was it you?-- I can't recall.*

*All right. One of you, either you or Reid, left the vehicle for a period of time?-- I can't recall.*

*Can you say how long it was that you - this - this return to the marina lasted for?-- No.*

*Is the return to the marina referred to in your statement?-- I- I don't recall whether it is. We can have a look if you like. No, it's not.*

*See, your statement at paragraph 6 says at 1.10 p.m. - this is the 12th of October ?-- Yes.*

*you - you and Reid departed the area with Elfar in custody, meaning that Kippa-Ring area; yes?-- Yes.*

*And the next - the very next paragraph is that 12.35 p.m., you and Reid and Elfar - with Elfar in custody arrived at the AFP building.*

*BENCH: 12.35. 2.35.*

*WITNESS: 2.35.*

*MR THOMAS: Sorry, 2.35.*

*WITNESS: That's correct.*

*MR THOMAS: Did I say 12.35?*

*BENCH: 12.*

*MR THOMAS: Oh, 12, did I?*

*WITNESS: That's correct.*

*MR THOMAS: I do make the occasional mistake but - at 2.35, on the 12th? Mr Rice isn't laughing but okay, we'll - we'll crack him soon. All right. So, if we take your - take your statement as gospel, what's - what's left out of it is that you actually did a detour back to the marina site?*

*All right. Was Officer Reid with you or at the marina?-- I can't recall.*

*Who was in your vehicle?-- I can't recall who I was with.*

*So you can't say whether Castles was at the marina or in your vehicle?-- That's right, I can't.*

McGilvray? With you or in your ?-- He was there. I was actually at the marina at one stage in the morning as well so that might have been at 3 or 4 in the morning. I'm not sure when I was there.

On the 12th of October?-- Yeah.

At the marina?-- Yeah. But not actually at the marina, in a car park near the marina. So whether that refers to being a car park there, I - I never went in that marina on that day.

But you were certainly there ?-- Yep.

in the vicinity ?-- Yep.

at about 3 or 4 a.m.?-- well, I was there - I was around that area

\* \* \*

**22082011 D.5 T(0)02/KDB(MKY) BRIS17 (McGrath, Magistrate) WIT: READ L R**

Sir, I suggest to you that you were gone with the key for some significant period of time, in excess of 10 minutes?-- No, I wasn't.

Right. You had left their immediate possession?-- I moved within probably 10 metres.

Where did you go?-- Just the car park.

Yes, but where? The car park is a big place. You're in the car park and you go to the car park, you say. Where in the car park did you go?-- The middle of the car park.

The middle of the car park. As opposed to?-- The edge.

The edge. All right. The edge of the car - well, thanks, for- you've made everything very, very clear for me now?-- Very good.

You were at the edge of the car park and you went to the middle of the car park. Who did you meet ?-- Federal Agent at the middle of the car park?-- Federal Agent Maslin.

Maslin. And was that by some arrangement?-- Yes.

Between? Who made that arrangement?-- I did. It was Federal Agent Maslin and Begbie, and I'd rung one of them, I don't recall which one

Yes?-- and arranged to meet them to give them the key.

Right. So it was your initiative, was it?-- Yes.

It was your initiative to contact either one of them, you don't remember whom ?-- Mmm-hmm.

and travel to the Scarborough Marina for the purpose of delivering possession and control of the key?-- Yes.

And to change vehicles.

Do you anywhere in your diary refer to your attendance at the Scarborough Marina and the delivery of possession, custody and control of the key to someone else on the 12th of October 2010?-- No.

Why? Was that not a duty you were performing?-- Yes.

It was a duty?-- Yes.

Was it a place that you had visited?-- Yes.

Was there not a person that you had seen at that time, as you've told us, being an officer to whom you delivered the key?-- Yes.

So they were all things that you did that day at the Scarborough Marina on the 12th of October 2010 that you accept should have been put in your diary?-- Yes.

Are you going to tell me that you didn't have your diary with you when you went to the middle of the car park at Scarborough Marina on the 12th of October?-- Yes.

But you did make other entries in relation to this matter in your diary for the 12th of October?-- Yes. Not on that day.

On the 13th of October?-- Well, yes, around

Is that the day you made the entries?-- I don't recall the exact day, it was in those days.

In those days sometime. So you have - you have access to a diary?-- Yes.

And you made entries at a time approximate to the events that you were making entries about; is that right?-- Yes.

Right. And whether you made an entry on the 12th of October or the 13th or some other time point approximate to those dates, you made no entries about the attendance at the marina and what you did with the key on the 12th of October?-- No.

Was that by design or you just forgot and left it out?-- Just an oversight.

An oversight?-- Mmm.

Right. And it was - was it just an oversight that you didn't include any of that material in your statement?-- Yes.

\* \* \*

AFP Karen Mazlin stated at committal that the entire day of the marina CCTV footage was maintained but then later stated that "only relevant footage was maintained".

**22082011 D.5 T(0)19-20/HS(MKY) BRIS17 (McGrath, Magistrate)WIT: MAZLIN K L**

We requested that the CCTV footage be maintained until we could get an actual copy of it. Okay. And obviously the interest of the CCTV footage would have been two fold, to identify the people coming off the boat; correct?-- Correct.

we requested that all footage from the period we requested be maintained. Yes.

Would you recall what periods were requested?-- I guest that - that day.

The whole day?-- Yeah.

Because obviously that would have been relatively important to have as much of that evidence as possible; correct?-- Correct.

So your understanding in relation to CCTV footage is there had been directions made to somebody, more likely Mr Mira; correct?-- Yes. Yes.

That the entirety of the CCTV footage for that day is to be maintained; correct?-- Correct.

Are you - are you aware of anybody who followed that request that they actually obtained the CCTV footage?-- Yes, I believe I obtained that CCTV footage from Mr Mira.

\* \* \*

Mr John Mira who was the marina manager stated:

**15082011 D.I T(0)22-24/DJB(TOWN) BRIS17 (McGrath, Magistrate) WIT: MIRA J P**

Now, with respect to the footage, were you asked to secure the footage by the police, were you?-- Yes, I was.

When were you asked to do that?-- On the very day.

I was requested to secure the footage that was relevant to the pathway from the marina to the precinct. That is why it is only cameras 1, 3 and 5.

See, it seems, if you might not agree or disagree with this, but there's footage seized, or secured, between 11 a.m. and 12 midday and 2 p.m. to 3 p.m. Do you agree with that?-- I do.

Where's the footage from 12 midday to 2 p.m.?-- I've no idea.

Because what I wanted to suggest to you is that, on the video we have, this portion's not part of the video evidence that we have. Is that fair to say?-- It's fair to say, yeah.

Two hours we do not have?-- Most probably not, no.

And that includes all of the movements of the police when they first got there, until about 2 p.m.?

Well did the police tell you not to secure that portion?-- No,

All right. Did they tell you to secure between certain times though?-- They did.

All right, and you did that?-- Yes.

And I take it it's too late now for us to get the footage between 12 midday and 2 p.m.?-- Yes, it is.

Because it's only kept for a month?-- Yes.

All right. You did all that you did to comply with the police requests. Is that fair to say?-- I surrendered control of the area to the police. It's my duty to do so.

Who - who approached you with a view to providing a facility?-- Not certain, sir.

Male or female?-- Think one of each. I think would have been Officer Paul from customs and Officer Karen from AFP.

Right. So, if - I think you - you - you said earlier in response to a question from my learned friend that the reason why you provided the particular footage from certain cameras in between those times, 11 and 12 and 2 and 3 p.m., was because that is what was requested?-- That is correct.

Even taking the 1800 hours as the point where the room was made available, that's certainly completely outside of the period for which the video footage was supplied?-- Yes, sir, and the video footage does not show that room.

I - I appreciate that. But the video footage would have at least been an accurate recording if it was supplied. If it were requested and supplied, it would have been an accurate recording of all of the movement of items down the pathway, into the office area. Correct?-- Very good assumption.

Hundred per cent. Yes?-- Yes.

Thousand per cent. Yes? Because, at the very least, the camera that was over the gate, which would have caught the movement of people carrying items, or moving items through -through the - the - the - the area of importance of that camera?-- Yes.

What do you say to the proposition that some in excess of 300 kilograms of packages wrapped in plastic, dark black, grey, brown or combinations thereof were moved from the boat and placed in a room within the - administration building?-- Not a chance. Didn't happen. Those packets that you refer to, they left in a dark blue police van later - much later in the evening.

And where were - did you see them make their way into the blue police van?-- I saw the video the next day.

You saw the video?-- The next day.

Did you see the video because someone wanted you to see the video or did you see the video out ?-- I was curious.

of your own curiosity?-- I was curious. The next day when I went to work I wanted to know

I love it?-- what happened.

You were curious the next day, so you had a look?-- Of course I did.

No-one told you to get that part of the video, ?-- No.

did they?-- no.

You had a look and - and what - and you were surprised when you saw it?-- Well, was a lot of packets.

Right. And ?-- But they were never in the room, sir.

They were never in the room?-- And never in that room.

Did you save the video?-- no.

What, it's lost forever?-- Pretty much.

Come on?-- Pretty much.

What time approximately was it, according to the video that you were viewing the following day

that you saw these ?-- I - I saw the following day packages?-- this merchandise that left through the marina gate into this waiting blue van would have been between

- you have to give me some latitude. I saw it the next morning, would have been 9, 10 o'clock at night, 21, 2200 hours.

And ?-- Approximate. Very broadly. I don't recall

That's fine?-- getting the time.

That's fine. What time did you finish up?-- On that day?

On the 12th?-- On the 12th? Is it the 12th? Yes, the 12th.

The 12th was the day that you were ?-- Yeah. Of the raid.

\* \* \*

AFP Angus McGilvray does not state that AFP boarded the yacht Mayhem of Eden in his statement along with other AFP such as Mazlin and Begbie. McGilvray also states for the first time in 5 years at the 2<sup>nd</sup> trial that Customs were present and briefed on the initial search of the yacht Mayhem of Eden on the 12<sup>th</sup> October 2010.

**0150803/D8/BSO/SC/3/Atkinson J WITNESS A McGilvray**

Just left it to her to ensure accuracy?---Yes.

And did you ever check Officer Begbie's notes – that they were accurate?---No. I did not.

Just left it to her to ensure accuracy. Is that true?---Yes.

Were you aware subsequently – that is, on or about the 14th of October – that Federal Agent Wynd had been fingerprinting the Corolla downstairs in the AFP car park?---Yes.

As far as you're aware, there was no – nothing came of that. Is that true?---Sorry. I don't understand the question.

Nothing came of the fingerprinting exercise?---I'm not sure.

Now, do you know a person called Daniel?---Sorry?

Daniel. Do you know a person by the name of Daniel?

In relation to the – either Operation Bergonia or Operation Collage, do you know a person called Daniel?---No, I don't recall that name.

And – now, I think you were telling me – telling us – perhaps you weren't. I'll ask the question anyway. Were there Customs officers from Sydney up at the marina on the 12th of October 2010?---I'm not sure.

How much information were you given as to what role the Customs officers were playing at the marina?---Well, it – during the time prior to – after I arrived and during the search warrant, I was responsible for the search of the vessel. So any involvement Customs were going to have in the

search of the vessel would have had to go through me.

Right. And did anything go through you in terms of requests or discussions with Customs officers about that very exercise?---Yes.

And what was that discussion?---I don't recall the exact details of the conversation and the name – the names of who it [indistinct] but there was discussion around how the vessel would be searched, and the Australian Customs Service had a particular skill to be able to what they – do what they call a deep search. So we – there was discussions around how that would practically be done.

With you?---Yes.

So there was one Customs officer discussing it with you? Or was there a couple, and you - - -?--- As I said last week, there was a police forward command post, so I was speaking to the forward command post and they were having discussions at a higher level with various agencies, Customs and others. So I was speaking to them about it and then, if I recall correctly, I was speaking to a Customs officer at the marina about it as well to work out the best way that that could be – that search could be undertaken.

Can I suggest to you that there were at least two plainclothes – plain clothed – that's a better way – Customs officers there in the early afternoon. What do you say? That is, at the marina?---I – I don't recall. Sorry.

And so the officers that you were talking to: were they in plainclothes?

HER HONOUR: Well, he didn't agree "officers", so just be careful in the way you ask the question.

MR FOSTER: Thank you. Yes. Thank you, your Honour.

The Customs people you were speaking with: were they in plainclothes?---I'm not sure. Sorry.

Now, are you aware of any Customs officer or person in Sydney who was arrested some days later after this operation?---Yes.

What do you know about that?

MR RICE: I object to the relevance, your Honour.

HER HONOUR: Yes. What could the – do you want to argue that it's admissible, that you can ask the questions?

MR FOSTER: Yes, your Honour. Well, your Honour, I'll leave it. I'll leave it until perhaps 1 o'clock.

**15082011 D.I T(0)7-9/DLM(TOWN) BRIS17 (McGrath, Magistrate) WIT: MCGILVRAY A I**

All right. Now, just let me clear this in my mind because it is troubling me, did you suggest earlier in your evidence, that when you went down into the boat, you made no record anywhere of the event of going down into the boat, is that right?-- That s correct.

And just tell me this also, while you were own there, inside the boat, doing whatever it was that you were doing but on your evidence you were making visual observations, as I understand it, you didn't make any note anywhere of that either?-- No.

Right. Did - were you - were you senior to Federal Agent Karen Maslin, Federal Agent Carmen

Begbie?-- Yes.

Right. Did either of those two agents make any notes or records while you were all together in the body of the vessel?-- I believe they did. Yes.

Sorry?-- I believe they did. Yes.

What do you believe they did?-- Took notes in relation to the events on that day.

What, took - took notes while you were there together in - in the - making observations?-- Yes.

Where, what was it, what was the note?-- I haven't seen the notes, they re not my notes.

Did you direct them to take notes?-- I directed Federal Agent Maslin to take notes, at some point, on that day.

No. No, don't worry about some point on that day because the day's got a lot of hours in it, just - just focus in - on the time that you went down into the body of the vessel, before you had any search warrant in your hand, being the time that you haven't referred to, at all, in your statement, focus on that for me for a moment. How long were you down there?-- A few minutes.

Right. To your knowledge, were you the first officer who had boarded this vessel?-- No, I was not.

Look, let me cut to the chase, you go on board and you make note or record or take any video footage or photographs, is that right?-- That's correct.

Before you go on board, other officers, federal agents, who are subordinate to you, tell you that they've gone on board, is that right?-- That's correct.

And they don't take any notes or records, video footage or photographs of what is contained on board this vessel either, is that right?-- No, I can't answer that question, I don't know what notes they took.

What, did they take any photographs?-- No.

Or video?-- No.

All right. They being fairly good ways to - to depict the - the scene of - of the crime scene, would you agree with that?-- Yes.

Right. So am I right to say this, that we don't get to the point of having any photographs or video footage, until hours and hours and hours later, is that right?-- That's correct.

While this thing's sitting at a mooring, is that right?-- Yes.

Apparently, being secured or protected by a whole bunch of Australian federal police officers, is that right?-- Thats correct.

Let me ask you something, are you aware of any allegation that an Australian federal police officer and/or a customs officer, had converted, that is, treated as if it were there own, any of this cocaine product?-- No.

Are you aware of any Australian federal police officer or customs officer, having been charged with a criminal offence, that concerns cocaine from within this shipment?-- no.

Not aware?-- No.

Right. Do you agree with this proposition, that your last sentence of paragraph 14 is wrong because it suggests that during 1.43 p.m. and 7.30 p.m., no persons were permitted to enter the boat and the fact of the matter is, that a number of people entered the boat, you for one, Maslin for another, Begbie for another, a scientific officer or officers for others, that's correct, isn't it?-- Yes.

And do you accept that paragraph 14, in its entirety, is highly misleading because it suggests that during this period of hours between 1.43 p.m. and 7.30 p.m. on the 12th of October, no person had entered the boat, when they had, what do you say to that?-- Yes, you make a good point.

Well, what explanation do you give to the Court, on your oath, as to why paragraph 14 is in the form that it is in, when you know, full well, that you and others had entered the vessel during 1.43 p.m. and 7.30 p.m. on the 12th of October?-- I - it's obviously an oversight on my part.

\* \* \*

**22082011 D.5 T(0)15-16/LJO(MKY) BRIS17 (McGrath, Magistrate) WIT:MAZLIN**

Right. So, what was the purpose in you going on board?-- I was following Federal Agent McGilvray I know, but you didn't?-- on board, yes.

go on board and actually locate any particular item that you bagged?-- Yes.

Did you make a record of anything that you had seen on board?-- No.

So, your statement includes no data in relation to anything that you claim now to have seen on board?-- Correct.

Or where it was?-- No.

Or what it was in particular?-- No.

Does your statement refer to you having gone on board?-- No, it doesn't.

You left that out of your statement quite deliberately?-- no.

You were performing a function when you went on board?-- Yes.

And was that a function as a Federal agent?-- Yes.

So, there was a good reason for you having gone on board?-- Yes.

But the very good reason and event of you going on board, was left out of your statement for the purpose of these proceedings?-- Correct.

You left it out of your statement because you didn't want it to be suggested that you had gone on board absent the existence of a search warrant; what do you say to that?-- No.

Did you consult any officer of the Australian Federal Police about whether or not you should include the event of you going on board the Mayhem of Eden prior to obtaining or any execution of a search warrant in respect of that vessel?-- No.

So, you made the decision all by yourself?-- Yes.

I mean, it's not as if you'd forgotten that you'd gone on board?-- No.

So, you decided - knowing full well that you'd gone on board before the execution of the warrant, you decided all by yourself to leave it out?-- Yes.

\* \* \*

AFP Luke O'Shea and Simon Castles are the AFP in the photos attached to tweet 1, original Parliament letter at attachment 1 on twitter simonxgolding and also in "Photo's" at simonxgolding.com. O'Shea and Castles stated at Committal that they did not go to the yacht until around 7pm but in the early afternoon the edited marina CCTV still showed these officers walking to the yacht without bags but then walking out of the marina precinct multiple times with bags and square blocks under their shirts. The photos and CCTV footage reveal that it is very easy to distinguish if they are entering or leaving the marina gate from the yacht. O'Shea states they did not leave the marina but this is a lie. The video and photos show them walking to the yacht empty handed, then exiting around 7 minutes later with bags and bulging shirts and then through the marina car park and out of the marina precinct multiple times.

**20150727/D4/BSO/SC/3/Atkinson J XXN: MR FOSTER WIT: O'SHEA L R**

Now, the - there are various items, and they bear a number. I'll just ask you - the numbers are shown on the left in a little sticker with a number on the left borders. So I'm just going to take you through some of them. If you'd like to turn that, and just show them to yourself. Turn that first page over. Now, there's a large one underneath. Yes, don't show it. Just to yourself?---Yep.

All right. Now, do you recognise - just say yes or no. Do you recognise anything there?---It looks like myself. Hard to tell, but possibly Federal Agent Castles as well.

And, looking at that, do you accept that was taken on the 12th?---It's dated the 12th. Yes.

Do you accept that's an accurate dating?---I would assume - yeah, I assume it would be, yes.

Early afternoon, do you say?---From the - it looks like the - yeah, the daylight, yeah.

And - right. Then does it depict you - does it show you carrying anything?---Yeah.

It looks like a clear bag, possibly. It looks like our seizure bags, but it's hard to tell.

Now, does it depict you carrying anything?---That was who I was referring to, me, with something in my left hand. It looks like a clear item, possibly. Yeah. It looks like our search - our clear search bags, seizure bags.

Is there anything off the boat?---No.

Certainly nothing of your personal gear, your accoutrements or anything of that sort?---In my left hand.

Yeah?---No.

Because you said to us earlier that you left them out on the - in the car park, in a car or something perhaps?---No, I didn't say that.

You didn't say that?---I didn't say I left my accoutrements in the car park, no.

And - now - all right. Can you go to the next document underneath that. Does that have a number on the left hand?---Number 3.

Sir, would you mind just putting them flat. Can you turn them over and just put them flat, please. Yes. Flat. Thank you. The next one you see, does it have a number on the left-hand side?---  
Number 3. Number 3.

Number 3. And do you accept that is a photo of 5 you?---It's the top of me, yes.

And do you accept that is taken on 12 October?---Yes.

In the early afternoon?---Yes.

Around about what time, do you say?---Off memory, I've got no idea. Early in the afternoon.

And are you heading – are you carrying anything in that photo?---I can't see.

Are you heading in the – which direction do you say that shows you heading?

Toward the boats or away from the boats?---It looks like I'm heading back to the marina office, but I can't tell from that photo.

Right. Next one. Just put that flat again. Does that have a number?---Number 6.

Does that show you?---Yes.

Does it show Officer Castles?---No.

Are you carrying anything in that photo?---Yes.

Looking at it, what do you say?---I'm carrying a black bag. It looks like a black bag in my left hand.

A black bag?---Yes.

And are you heading towards the boats or away from the boats?---A dark bag.

Again, I'm not sure which way or direction, but I think it's towards the marina office.

Right. So, again, is that away from the boats or toward the boats?---It looks like it's away from the boat, but I can't tell from the photo.

And so in that photo is there anything on your hands?---It's hard to tell from that.

Hard to tell from the photo.

Turn to the black bag. You say it shows you, you think, carrying a black bag?---Yes.

It's not one of the bags you've been speaking about, obviously, from the boat?---No.

Not – not from – nothing from the boat, no.

So where did you get the black bag from?---It may have been one of the search bags. It may have been one of the bags that I had, my personal bag. As I've said, I didn't have a search kit. I don't know what time this was, but maybe I was taking it to the search of the bins. I've no idea. Video bag. Not sure.

Video bag?---Yes.

*Just turn to the next one, please. Does that show you?---Yes.*

*Are you carrying anything?---Yes.*

*What are you carrying in that one?---It's a black bag.*

*Does that have a number on the left-hand side?---Five.*

*Black bag?---Yes.*

*And are you heading away from the boats or towards the boats?---Again, I'm not sure where the video or the camera is for this, but it looks like I'm walking from the boat back towards the office.*

*And in relation to the black bag, how do you explain that?---I don't understand the question.*

*Well, did you say you were carrying a black bag in that photo?---Yes.*

*Yes. What do you say about that? Where did you get that from?---As I said before, possibly a search kit, or, as I mentioned, I don't know the time. Maybe it was my personal bag that was from when I arrived earlier, putting it back in the car. I'm not sure.*

*Sir, in relation to that, didn't you say to us earlier that you were initially on another boat?---Yes.*

*You had a backpack and perhaps another bag with accoutrements?---No. I had the – probably my accoutrements in my backpack, and the black bag would've been my – all I remember – my backpack would've been my accoutrements, wallet, phone, things like that. In the other bag I would've had to have items of clothing and toiletries and things like that.*

*Right. But didn't you say you put them somewhere in the car park in a vehicle in the car park?---That would've been, yeah, possibly the ones with the clothes in it, but I would've needed the backpack with my accoutrements. I'm sure I put them on at some stage, but my phone, my wallet, my notebook. I had a backpack on me most of the day.*

*Right. But you didn't have – you wouldn't have carried your personal bag through the gate toward the boat. Isn't that what you said before?---Possibly, yeah. When we arrived we didn't know where the boat was, and no one was around. We had to get access to a car. I wasn't going to leave my bag hanging around, so more than likely I would've.*

*More than likely?---More than likely, yes.*

*Is that your bag? Is that your bag?---I don't know.*

*Well, you tell us that you would've had a bag. You tell us that you wouldn't have left it anywhere. You tell us that you were carrying it from a boat, yet you see yourself holding a bag, and you can't identify whether it's the one you had on the day?---It was nearly five years ago. I don't remember what bag I took. Sorry. I don't remember.*

*Is there another – just turn that one over then, please, sir. There's another one, you see, with a number at the back?---Number 4.*

*Number 4. What do you say about that?---I'm wearing a backpack. That's the one I still own.*

*Are you carrying a bag in your hand?---Can't – too hard to tell. I can't tell.*

*And is Officer Castles in that one?---No.*

Are you heading toward the boat or away from the boat?---Again, I can't tell from this photo, but I think it's back towards the boat.

Right. Turn up another. Does that next one have a number on the left-hand side?---Number 2.

And do you see yourself in that one?---Yes.

Are you carrying anything?---Seems like that sort of clear, possibly seizure bag, but there's something in my right hand.

Is Officer Castles there?---Yes.

And is he carrying anything you can see?---It's hard to tell from the photo, but it doesn't look like it, no.

Are you walking away from the boat or toward the boat?---Again, can't tell from the photo, but possibly back towards the office, away from the boat.

Do you accept that they show you on the 12th of October 2010 in the marina?---Yes.

And in the early afternoon on that day?---Yes.

Do you accept that?---Yes.

And – now, if I might have that MFI – AG – please, returned for a moment, please, your Honour.

I'm going to hand the MFI back to you, and I want to draw your attention to a small – smaller photo. It's the very top one. We haven't looked at it yet. See that?---Yes.

This paper one?

Yes?---Yes.

Just look at it yourself. And you recall I asked a question earlier about what you were wearing, and I think your answer was you weren't quite sure. You couldn't remember?---Yes.

Do you identify the clothing in that photo as the clothing that you were wearing?---Yes.

On that day?---Yes.

What was it?---It's a – looks like a dark brown or dark T-shirt and sort of olive green/green pants.

So does that accord with your memory, perhaps having been refreshed a little bit from the photo?---Yes.

And anything else you were wearing that day?---I don't recall.

So just looking at the upper part of your body – your torso – you see the Tshirt?--- Yes.

And it was October, so it would have been fairly warm, I imagine, on that day. Do you remember?---I don't recall. I think it was, yeah.

And do you see the T-shirt looks rather – I'll withdraw that. Would this be an adequate or an appropriate description of you in the photo, that you appear to – your clothing appears to be rather

bulky on your torso?---I can see that it – I'm wearing my accoutrements with my shirt over, and it's hitched exactly where my firearm is on the left and where my OC spray is on the right. It's just the shirt pulled over onto my accoutrements.

Right. And around the chest area, would it be an appropriate description that that photograph might suggest you were wearing – the clothing around your chest area was rather bulky?---I wouldn't say that, no.

Did you have anything underneath your T-shirt?---No.

Are you sure?---Yes.

Can you go to the photo with the number 4. Number 4. It's one of them?---Yeah.

You see that?---Yes.

Do you identify yourself there?---Yes.

Do you identify your hands?---Yes.

It's correct, isn't it, that that photographs depicts you with white gloves?---I can't – I can't tell there. I don't know if it's the sunlight or what it was. I'm – I can't tell what that is, no.

Right. But do you say that in the early afternoon on the 12th of October, you would not have been wearing white gloves? Is that what you're saying?---I don't know if I did at the garbage search. I'm – I don't recall. I may have wore them at the garbage search. I'm not sure.

But the garbage search, as you've indicated, is out in the car park, well away from here; isn't that the case?---It's not far from there, but I may have come and gone, but I – I can't tell what that is in the photo, no.

What about the photograph with the number 5? See that?---Yes.

Same thing. You're in the photo, and does it depict you wearing white gloves?---I can't tell. Possibly, but I can't tell.

Well, you'd agree with me, wouldn't you, that looking at number 4 and now number 5, a suggestion that perhaps there might have been a reflection of something would be incorrect?---I can't tell. I can't tell from the – the photos what it is.

Do you accept that the photographs show you wearing white gloves?---As I said, I – I can't – I can't say what – what I'm wearing there, if – if I am even wearing anything. I may have been going to a search with gloves on. I – I can't tell from that photo.

Photograph number 6. Do you see that?---Yes.

Do you see yourself?---Yes.

Are you wearing white gloves in that photo?---I can't tell.

Are you sure you can't tell?---I can't tell if I'm wearing gloves or not, no.

Do you agree with the proposition that the photograph might suggest you were?---It might suggest, but I can't tell.

Now, yesterday you were giving some short evidence toward the end of the afternoon. Does your Honour have exhibit 62? Exhibit 62? It's the CCTV that we were looking at yesterday afternoon.

HER HONOUR: Yes.

MR FOSTER: So I want to take you, while that's – I'll ask you a question in a moment. Now, yesterday afternoon you were telling us that you were – you had been teamed up with Officer O'Shea, and so can you tell me, then, just to refresh our memories, when it was that you first arrived at the marina on the 12th of October?---It would have been roughly – it was around 2 pm.

And you were in the company, of course, of Officer O'Shea?---Yes.

Now, did you see any officers, say, between 2 and 5 o'clock, removing any items from the boat?---No.

Did you ever enter or leave – I'll withdraw that. You entered, obviously, the marina at about 2 o'clock?---Yes.

Did you ever leave before, say, 7 o'clock?---I don't recall leaving the marina.

All right. Did you observe Officer O'Shea to ever leave the marina, say, between 2 and – 2 o'clock in the afternoon and 7 o'clock?---No.

And did you ever observe Officer O'Shea to enter the marina between, say, 2 and 7 o'clock?---We arrived together, so, yes, I do remember him arriving.

Right. And apart from that event, did you see him enter at any other time?---No. I don't recall.

So – all right. You know there's a jetty, with the boat moored at J2?---I remember the boat was along the jetty. Yes. I remember that.

And you know – do you recall there was a security gate through which you had to pass at the beginning of the – of all the jetties?---Yes. I remember a security gate. And you went through that to get – did you, to get toward the boat?---Yes.

And then – so you think that was around about 2 o'clock mark?---It was roughly 2 o'clock.

And then after that, did you leave through that security gate before, say, 7 o'clock?---I don't recall, but I could have. But it was a long time ago. I don't really remember.

All right. And – all right. Might the witness be shown, your Honour, from exhibit 62, CCTV of the 12th of October.

HER HONOUR: What time, Mr Foster?

MR FOSTER: If the witness could be taken to two – I'm sorry – 1409.

### **RECORDING PLAYED**

MR FOSTER: Tell me if you recognise anybody in this piece of film. We're playing it from 1409 forward. If it could be paused for a moment there. Do you see a fellow in a white – almost entirely covered in white overalls and pants?---Yes.

Do you recognise him?---Not particularly. It's quite blurry. Right. But, obviously, he's covered almost from head to foot in a white fabric?---Yes.

Right. Was he Forensics?---Don't know. Could have been. I can't -- I can't tell you. Do you remember seeing him down toward the boat?---Not really. May have been there and -- I -- I can't recall.

Right. You agree with me he stands out rather starkly against anybody else you would have seen that day, because of his attire?---Yes.

So you're saying that you don't remember anybody like that on the day with your own independent memory?---Like I said, it was five years ago, so I -- I'm sure at the time he would have stood out but now, looking back at it, he doesn't. He doesn't stand out now.

All right. We'll take it a bit further, please.

### **RECORDING PLAYED**

MR FOSTER: All right. If that pauses there. Do you recognise the person -- we're stopped at 14.09.13. Do you recognise the person in the blue top?---No. It's quite blurry. I'm sorry, but I don't.

All right. Perhaps it could be just rewound one frame. I just want to see if we can see the person there. We've missed him again. Did you recognise the person at the front walking past at all?---Not with that imagery. I'm sorry. I can't.

All right. Well, let's play -- were they AFP officers?---They could have been. I don't know.

All right. Let's continue playing, please.

### **RECORDING PLAYED**

MR FOSTER: All right. If it could be paused now. Do you recognise either of those two people?---I do recognise those two people.

Who are they?---That would be myself at the rear in the blue and the green pants, and it looks like Luke O'Shea at the front in the black shirt and the green pants and the AFP cap.

Right. All right. Perhaps it could be played just a little bit to bring them past the gate region, if that's possible. Pause. So that's Federal Agent O'Shea?---Yes.

You were with him, obviously. What was he carrying?---It looks like clip seal bags and a black backpack.

Right. Clip seal bags: what do you recall the clip seal bags were containing?---I have no idea. I'm sorry.

Right. Well -- --?---You can't -- you -- I can't identify it from there and, as a matter of fact, they actually look empty.

They look empty, do they?---Well, maybe one of the bags I can see may have something in it, but it's very hard to distinguish what's in there.

Right. Well, he was your team colleague -- --?---Yes.

-- -- on that day. Did you see what he put in his backpack?---I wouldn't know what's in there. I'm sorry.

All right. Might the witness be shown -- --

WITNESS: Could have been a property kit. Could have been his personal backpack with his accoutrements in it. I'm not sure.

I just want to show you a document from that identification number?---Thank you.

Do you see that? It's a smallish photo?---Yes. I see it.

Do you accept that that is an extract from the CCTV?---That looks a little bit further on than that footage but, yes, I accept that.

All right. Well, perhaps we might just run the footage one frame forward?---It's says on here it's at 2.10 and 31 seconds.

Thirty-one. All right. Clearer shot, do you say, of yourself with Officer – Federal Agent O'Shea?---I wouldn't say clearer, but it's another shot. Yes.

Right. So there you see him carrying the – something in his right hand again?---Yes. Do you adhere to the evidence that you gave a short time ago that it was – that there were some bags?---Yes.

Right. Are you carrying anything in that frame on that day?---From what I see there, I don't see me carrying anything.

Right. Were you – why were you going with Officer O'Shea at that particular moment?---We could have been tasked with something together, so, therefore, we were exiting together. I don't really recall exactly why we were together at that stage.

What sort of clothing were you wearing on your torso?---Do you mean underneath my shirt or - - -

Yes?---I would say my accoutrements.

What are accoutrements?---A nine-millimetre Glock, OC spray, handcuffs, baton, torch.

You wear them at that time. Did you wear them normally under T-shirts?---Well, when we're going out in public, we normally cover them up, yes.

Why did you have that sort of – those sort of accoutrements at the marina on the 12<sup>th</sup> of October at around about the 2 o'clock mark or so? Why did you have them? Why would you have had them?---Because I'm a police officer and I'm required to carry my accoutrements on me at all times when I'm working.

Right. So when you say your accoutrements, do you mean to say that those items that you've just enumerated could have been underneath your T-shirt?---Yeah.

Around my waist. Absolutely.

It's up toward, is it not – up toward your chest area?---I disagree.  
Would you agree with the proposition that the material under that T-shirt is sort of square and brick-like?---That's around my chest region.

Square and brick-like?---Yeah, well, I go to the gym. I work out, so it's not surprising.

But you don't have square muscles, do you?---No. But the squareness is lower than that, around my waist, where my accoutrements lie.

So on that day, you would have been aware, wouldn't you, that there was nobody else on the boat? There was nobody on the boat?---At that stage?

Yeah?---I don't remember anybody being on the boat at that - - -

Weren't you told by another federal agent that people had already previously been on the boat and had a look around and there was nobody else there?---At what time – so are you – can you repeat the question, please?

Yeah. Had you not been told, prior to when you're seen leaving, that other officers had already been on the *Mayhem of Eden*, they had already checked it out and that there was nobody else there, nobody on board?---I don't remember, but I do remember a female federal agent being tasked with recording anybody that went on the boat, and I'm – as far as I'm aware – that she's already been questioned, so you'd already have that evidence. So – but in terms of me, the question you just asked, I don't recall.

Right. You see - - -?---That question.

What I'm wondering is, if it were the case that you were aware there was nobody on board the boat, there would have been, effectively, no necessity for you on that day to have been carrying torches and Glocks and other accoutrements, as you say you might have been doing?---No. But it's – it's part of our duty to carry our accoutrements. So regardless of whether you say we needed or didn't need to go on the boat, that's our job. We're required to carry our accoutrements. So I don't accept that.

All right. What about Officer O'Shea in the front, in the brown T-shirt? You see him?---I do.

And, similarly, is it the case, looking at that, that Officer O'Shea also had sort of a bulky chest area?---I – from this image, it looks like his shirt is a little bit skew whiff, but other than that - - -

Well, do you agree with the proposition that the photo suggests quite clearly that his chest and torso area was sort of puffed out as if there was something stuffed underneath it?---I accept that. Quite possibly could have had his accoutrements on as well. I would say he did.

So if he had his accoutrements on, then the accoutrements wouldn't have been in his backpack, or do officers get issued with two sets of accoutrements?---No. Only one set of accoutrements. I can't tell you what was in the backpack, and I don't know – I can't speak for O'Shea as to what was around his waist, but he would have had his accoutrements on him.

So, looking at that, does that still and the CCTV which you've seen shown for a short time take your mind back to that specific part of the afternoon?---Looking at the photo, I accept that that's both of us walking out there, but in terms of what was happening at that stage five years ago, sorry

---

And you don't remember, do you, where you went after you passed through the gate?---No. I'm sorry. I can't tell you where we went.

And did you observe where Officer O'Shea went after he passed through the gate?---No.

Can I just ask you a couple of questions about the accoutrements. You were talking before about your waist area?---Yes.

So in the normal course, and in – I'll withdraw that. On that day, how would you have attached, for example, your Glock?---It would have been in a holster connected to my belt.

Right. Your OC spray?---In a holster as well, connected to the belt.

Your torch?---In, possibly, a little holster connected to the belt.

And handcuffs? Did you – would you have had handcuffs, do you think, perhaps?---And – and same again. It's the same for all my accoutrements. They are in a little holster, and they are all attached to a belt.

Right. And, obviously, the belt would have been in your waist area?---Correct.

So none of those explanations would have applied to explain a puffiness higher than the waist. True?---I think that they would, to be honest, so I disagree with you.

All right. Well, how so? If they're around your waist, how would they explain a puffiness further up your torso, on your chest area?---Well, like I've stated to you earlier, I believe that the puffiness is around the waist, where the accoutrements are.

But that certainly doesn't look the same case with Officer O'Shea, does it?---I believe it does.

You do? All right. Could it be that you actually did have something other than accoutrements under your shirt?---No. It definitely was accoutrements in – in my – for me – I can speak for me only. It was accoutrements.

And – all right. Well, I – we've just heard what you said, but could it have been that Officer O'Shea had more than accoutrements under his T-shirt on the 12th of October as he was passing through the gate?---I don't believe so, but I can't speak for Federal Agent O'Shea.

Is it possible – all right. Is it possible that there was material being transported from the Mayhem of Eden at around about the 2 o'clock mark on the 12th of October?---No. I don't think so. We hadn't received the warrant by that stage.

Right. But the reason why you're saying you don't believe so is merely because a warrant hadn't been issued. Is that what you're telling us?---Yes.

So if, for example, I said to you the fact that there had not been a warrant issued had not prevented at least – at least four, if not more, officers, federal agents, boarding the boat, if I suggested that to you - - -?---Well, I believe that - - -

I'll just finish the question. The fact that there was no warrant issued would not have, in itself, prevented any officer getting onboard the boat. True?---I don't remember anybody getting on the boat before the warrant. It could have possibly, but I believe that there was a female federal agent, like I've stated before, that noted the times of everybody that boarded the vessel and what times they boarded the vessel. And I believe that that document may have already been tendered to the court. So if you're asking me that question, I'm sorry, I can't tell you.

All right. I just want to show you – now, I just want to show you this document from MFIAG, for the record. It's got a number 1 on the left-hand border?---Thank you.

Do you recognise that?---Thank you.

Do you recognise that?---Yes.

And is that still taken from the part of the CCTV that you've just seen?---Yes. It looks to be a little bit earlier. And looking at the times, it looks six seconds earlier than this frame.

*Right. When they're on the other side of the gate?---Yes.*

*Can I show you another document from MFIAG. It has the number 3 marked on it.*

*Do you see that?---I do.*

*And do you recognise that?---Yes.*

*What do you say that is?---It is a very blurry image of myself and Federal Agent O'Shea.*

*Do you recognise that taken from the CCTV?---Yes.*

*This – more or less at this point in the CCTV or at another time altogether?---Well, judging from the camera timing, it's one second after this frame.*

*Right. I'll show you another document from MFIAG. It has the number 2 on the left-hand border?---Thank you.*

*Do you recognise that?---Yes.*

*And what do you say about that? Do you recognise it from CCTV?---I do, yes.*

*Around about this point, or before, or after, or a different time altogether?---It looks to be exactly the same as this frame here.*

*As the earlier one you saw, that is, the very first one?---Yes, as the bit of paper that is not laminated. Yes.*

*Right. Okay. Now, did you or Officer O'Shea perform any forensic tasks at around about 2 o'clock or so 2.20 perhaps?---Forensics, I don't think so.*

*You're not a forensic person?---No.*

*That is, in terms of your job role?---Yes. No, I don't recall doing any forensics around that time.*

*On that day, what was your designation?---I had just received from – about this time, I had – just arrived at the marina from another location from another vessel. I was – both Federal Agent O'Shea and myself were aboard another vessel.*

*And then you came straight to the marina?---Yes.*

*Did Federal Agent O'Shea have any baggage with him when he arrived?---It's quite possible. We both had baggage on our way from the other vessel to the marina as we were onboard the other vessel for several days.*

*All right. And so you were called from another vessel and your task was to search?---Well, we arrived and we attended the location, rendezvoused with whoever would have been in charge at that time – I can't recall exactly who was in charge – and then from there we would've been tasked.*

*But by the time you were leaving this jetty as shown at 14.10.31 on exhibit 62 for the film, I think, number 5, you had already been tasked. Is that the position?---We could have been at that time. But I can't recall exactly what time we were tasked.*

*In any event – in any event, whatever your task was, you didn't perform any forensic duties or jobs. Is that true?---Well, I – I don't know. I don't think so but I can't tell you whether we were or weren't*

tasked with any forensics. But I can't recall.

Well, at that time you did go on the boat. True?---Say again?

At that time, that is, about 14.10 – around about 14.10 – that's the time on the CCTV still, you see?---Yes.

Right. At that time you hadn't been on the boat: true or not?---I don't think so. But I can't recall.

Didn't you go on the boat late into the night for the first time?---I believe so. It was after 8 once the warrant was sworn.

Right. So at 10 past 2, you're telling us, aren't you, that you would not possibly have gone on the boat at least because there was no warrant issued at that time?---Correct.

So when you say you may have gone on the boat in response to my suggestion you hadn't, when you replied you couldn't recall, surely you would have known without a shadow of a doubt that you didn't?---Not really. Like I said, it was – it's five years ago. Whether we had stepped onto the boat at that stage I say I doubt very much because the warrant hadn't been sworn. But it doesn't – it is not clear in my mind whether I had stepped onto the boat or whether I hadn't stepped onto the boat.

All right?---But I'm only – I'm judging my questions or my answers purely on the fact that the warrant had not been sworn.

All right. Now, had you ever been tasked as a forensic before 12th of October 2010?---No.

Had you ever been tasked as a forensic subsequent to 12 October 2010?---No. I don't believe so. So it would've been highly unlikely, wouldn't it, that on the 12th of October 2010 you were tasked as a forensic. True?---Yes.

And are you aware of AFP forensic-style kits which may contain gloves and things like that for the purpose of forensic investigation?---I'm aware that forensics kits may contain gloves. Yes.

And as at the 12th October 2010, was it the position that colours of gloves would have included the colour white?---It's possible. We have many different coloured gloves in our – well, in forensics kits and also our property search kits.

Now, there would've been no reason for you to have been wearing a glove on what I might suggest was a warm October day on the 12th of October 2010 at the marina, would there?---No. I disagree.

There could've been. We could've been tasked – I remember we were tasked around this time. I can't give you an exact time, but we were tasked with searching a garbage bin located on the marina. So we would've required gloves for that search. It would've been roughly the time we arrived. So I disagree. We would have been required to wear gloves at that stage.

Just on a very different topic for a short moment, can I take your attention to the 11<sup>th</sup> of October, the day before all – the day before the events depicted on the CCTV?---Yeah.

MR FOSTER: You say you were on another vessel. True?---Yes.

And are you aware whether or not the Mayhem of Eden had called for assistance on the afternoon of the 11th of October?---I remember being aboard another vessel and the seas were atrocious. It was – it was very windy and very bumpy out there. So if the Mayhem – Mayhem of Eden had have called for assistance, I'm not surprised.

And were you on the boat Nemesis?---Yes.

At any time – I withdraw that. Are you aware, then, whether or not, just to clarify, the Mayhem of Eden did, in fact, call for assistance to the Nemesis on the 11th of October?---Recalling back, I believe that they – they did. They – they did call for assistance.

And what did the Nemesis, to your observations, do? Did it continue in the way it was going? Did it go and try and assist the Mayhem or – what?---We continued with our tasking.

Right. So in spite of an inquiry for assistance or a call for assistance from the Mayhem, no such assistance was, in fact, provided from the Nemesis. Is that what you're saying?---No assistance was provided. We continued with our task.

Who was the captain in charge of the Nemesis, do you know, on that day?---I can't recall his name. He was a member of the New South Wales Police. We had only just met him, so I don't recall his name.

All right. Police force or – I'm sorry?---He was a member of the New South Wales

Police Force. I don't recall his name.

Right. Not the AFP?---No.

No?---There was only two members of the AFP onboard that vessel.

And that was you and Officer O'Shea?---Correct.

Agent O'Shea. All right. Now, did you ever end up looking into bins?---Yes. I remember conducting a search of a green – a large green industrial-sized garbage bin.

Now, I just want to show you item number 4 – it has a 4 in the margin – from AG?---Thank you.

Do you see that?---I do. Yes.

Now, do you recognise that from the 12th of October?---I recognise that that's me.

That's yourself?---Yes.

And you're entering the gate, are you?---Yes.

Is it shortly before or – I'll withdraw that. Is it before or after the CCTV footage you see on the wall?---Seven minutes after, judging from the time I have here.

All right. Might the CCTV be forwarded to – is it 2:17?---Two seventeen and 43 seconds.

Two seventeen, 43 – so perhaps 2.17.30.

### **RECORDING PLAYED**

MR FOSTER: All right. So that's you?---Yes.

So you've left the marina with Officer O'Shea seven minutes before. True?---Yes.

And now you're turning – you're returning through the gate with - - -

HER HONOUR: Mr Foster, I did ask you to be careful about the use of the word "marina".

MR FOSTER: Okay. I remember that, your Honour.

So you're returning to the jetty?---Yeah, returning to the secure gates, which leads to the jetty. Yes.

And you're clearly depicted with a backpack?---I see a backpack. Yes.

So what was in the backpack?---Could have been personal belongings. Like I said, we had just arrived from the Nemesis, so we would have had our personal belongings from that boat with us. But you'd already passed through the gate. You'd already been up toward the boat. Why would you keep carrying your personal items around in and out of the jetty?---We might not have – we may not have set up a – like, a – a forward – you know, an FUP, which is basically a secure location for where we would set – set up our operation. So, therefore, there may not have been a position where I could securely place my bag with my personal belongings inside of it.

All right. So you saw the previous – you saw when you were leaving the jetty you didn't have anything in your hands – true – the previous screenshot?---There didn't appear to be anything in my hands, but it's quite blurry. I can't exactly see.

All right. Well, you've certainly got nothing in your hand here?---I can see a white glove.

A white glove. No baggage. True?---I can't see any baggage. No.

All right. So you're saying that the backpack may have contained your personal gear - -?---Yes. - - - from the time you were on the boat for a couple of days, the Nemesis. Is that it?---Yes.

Right?---That's what I'm saying.

So I'm assuming, then, that the only baggage you had from the Nemesis that may have contained personal items was the backpack. Is that so?---Like I said, we were – we were on the Nemesis for several days, so we could have had a backpack and another bag with our clothing in it. I'm not sure. I can't tell you. Well, if you had a backpack and another bag, and seven minutes before you left the jetty with neither, seven minutes later at 2.17, you're returning through the gate with the backpack, then you must have collected the backpack from somewhere.

True?---Well, judging from these photos back here, you can't really depict whether I had anything or – or not. There's – I could have had the backpack on at that stage as well. I don't know.

All right. All right. Nevertheless, then – but if you'd had a bag, you certainly didn't appear to be carrying a bag in your hand - - -?---Correct.

- - - in – at 14.17.42?---Yes.

And so do you recall, then, why you would have had a white glove in your right hand?---As previously stated, we were tasked around that time of – around that time on the 12th of October 2010 with searching an industrial-size garbage bin located on the marina, so the gloves could've been used for that.

Is it the case that those sorts of gloves would have a number of purposes, one of which would've been to protect the hand from abrasions, perhaps, performing a task?---It's possible.

Another function of the glove might be to ensure the – that no DNA or other fingerprints would be left on an object if it were touched by a person wearing gloves?---Correct. The – to – to basically answer, in short, your question, it's to – to stop any contamination of evidential material.

And so you were telling us before that if the backpack was containing your personal items, then at this point – 14.17 – if you were wearing it containing personal items, it would have been because you may not have had some sort of central repository to have enabled you to have taken it off and left it somewhere. Is that -- -?---I accept that. Yes.

And – all right. All right. Might the witness be shown number 6.

\* \* \*

**16082011 D.2 T(0) 19-20/KRK BRIS 17 (McGrath, Magistrate) WIT: BEGBIE C L**

You, however - correct me if I'm wrong - had never boarded the vessel Mayhem of Eden, or had you?-- Yes, I did.

When did you board the vessel?-- Earlier that day.

Is that referred to in your statement?-- No, it's not.

So earlier in the day, would that be during the time 1.45 p.m. when , together with other agents, you travelled to the marina and specifically went to J2 berth?-- It would've been around that time, yes.

Well, that's the time you got there but you then spent something like six and a-quarter hours doing something, the details of which are not contained within your statement, do you agree with that?-- Yes, it's not in the statement.

\* \* \*

Transcripts also shows forensics being present. AFP forensics Simon Wynd originally stated at Committal that he entered the yacht pre warrant and knew so. Five years on he then said that he did not enter the yacht until after execution of warrant at night on the 12<sup>th</sup> October 2010. Forensic Christine Geissler also perjured herself saying she was never on the yacht on the 12<sup>th</sup> but stated at committal that she had been on the yacht on the 12<sup>th</sup> October 2010.

**25082011 D.8 T07/ABD(IPS) BRIS17 (McGrath, Magistrate)WIT: WYND S P**

Thank you, your Honour. Federal Agent Wynd, you say that you attended the Mayhem of Eden at 2.40 on the 12th of October, correct?-- That's boarding the vessel, yes.

That's boarding the vessel, that's right. You boarded the vessel that time and you're aware then no warrant had been obtained by that stage?-- At that - prior to that stage, yes.

\* \* \*

Forensic Simon Wynd after speaking with Prosecutor Glen Rice then stated that he then did not enter the Yacht Mayhem of Eden pre warrant on the 12<sup>th</sup> October 2010 and arrived at the marina at 4.40pm and that he had got the time of 2.40pm wrong for the previous 5 years of court proceedings.

**20150727/D4/BSD/SC/3/Atkinson J MR RICE WIT: WYND S P**

I want to ask you about some duties commencing on the afternoon of the 12th of 20 October 2010.

*Did you go that day to Scarborough Marina and see a yacht called Mayhem of Eden?---Yes, I did.*

*Do you recall about what time that day you arrived at the marina?---I arrived at the marina about 4.40 pm.*

*And what was your task?---At that time, I just took general overall photographs of the outside of the vessel, as I'd been informed that the search warrant for the vessel hadn't arrived as yet.*

*So pending the arrival of a warrant, you took some photographs?---Yes. It was – obviously, being 4.40, it was starting to get late. I wasn't sure what time the warrant would get there, so I wanted to be able to use the available light to record the outside of the vessel.*

\* \* \*

*It is utterly amazing how police have a crystal clear memory of what took place when it helps their case but have no recollection or blatantly lie when it doesn't.*

**20150729/D6/BSD/SC/3/Atkinson J MR FOSTER WIT: GEISLER C A**

*Did you go to a boat at any time? The Mayhem of Eden: did you ever go there?---Go onto the boat or – go where, sorry?*

*Or down to see the boat, or near the boat?---Yes.*

*You did. When was that?---On Saturday the 16th of October.*

*And what was your purpose in going there?---To record details, take some photographs.*

*Did you go there with anybody else?---I went there with Federal Agent Wynd, and there was another – a – a – a number of other officers present when we arrived.*

*Did Ms – was it Rachael Baxter?---No.*

*Did she go with you?---No.*

*Was she there?---Not on the Saturday the 16th of October.*

*Did you go there at any other time apart from the Saturday?---I – I don't understand where you mean. Go where? Go - - -*

*Down to the boat?---I didn't go onto the boat on any other day but Saturday the 16<sup>th</sup> of October.*

*Now, I think you were telling us yesterday that you went to the marina after Kippa- Ring?---Yes, I did.*

*And is Officer Wynd – I'll withdraw that. You met Officer Wynd down there?---Federal Agent Wynd was present. Yes.*

*Right. And so is he on the same rank as you or above or below you or it doesn't work like that?---I'm his supervisor.*

*Right. So were you in a position to direct him what he should be doing?---I'm his supervisor, but at that location, he was the crime scene manager; therefore, I don't direct him how to process his own scene.*

Now, so did you go onto the boat, Mayhem of Eden, on the 12th?---No.

*If I could have a moment, your Honour.*

*So you've got a good memory about going down to the marina and going to the Mayhem of Eden boat on the 12th?---I don't have a good memory, no. But I recall going to the marina, yes.*

But not going onto the boat?---I didn't go onto the boat.

*And on the 12th, were you pretty much supervising Federal Agents Chan or Baxter at the marina?---I was supervising them at certain times. Yes.*

*Were you ever asked this question:*

*Did you go onto the boat yourself down there?*

*Do you remember being asked that question in court in August of 2011?---I don't recall.*

*If I suggested to you, you were asked this question:*

*Did you go onto the boat yourself down there?*

*You don't dispute, perhaps, that you would have been asked that question, do you?---I don't recall.*

Right. If you'd been asked that question, the answer would have been no, wouldn't it?---On the 12th of October, the answer would've been no.

*And did you actually answer:*

*I went on to the top deck, but I didn't go below - - -*

*?---It's possible.*

*- - - in August of 2011?---I don't recall. It's possible.*

I'll show you something. Toward the bottom of the page. Just read it to yourself.

Have you read that?---Yes.

On the 19th of August 2011 in court, in relation to the 12th of October 2010, were you asked:

Did you go on to the boat yourself down there?

What do you say?---According to this transcript, yes.

And did you answer, according to that document:

I went on to the top deck, but I didn't go below.

?---According to this transcript, yes.

*So today you've told the jury that you didn't go on to the boat?---Not that I recall.*

Well, today you've told the jury that you didn't go to the boat – didn't go onto the boat, didn't you?---Yes.

And you told us that yesterday, didn't you?---Yes.

*In light of what you said earlier when asked a question about you going on to the boat on the 12th of October, what do you say? Is that the truth or is what you're telling the jury the truth?---I don't recall. Today my recollection is I didn't go onto the boat. Four years ago, my recollection may have been different.*

*May have been different?---Possibly.*

*So you were asked a question four years ago where you said that you went on to the top deck. Now you say to the jury, "Well, I don't remember. Don't remember if I did, don't remember if I didn't, even though I've told the jury a couple of times that I didn't go on to the boat." Is that what you're saying?---No. That's not what I said. I said my recollection today is I didn't go on to the boat. My recollection four years ago is obviously different.*

Ma'am, can I suggest to you you had no problem with your recollections yesterday.

*What do you say? You had no problem - - -?---My recollection of yesterday?*

*No. You had no problem yesterday, when you were – when I asked you about the question of the boat, you had no problems recalling whether you did or whether you didn't. What do you say?---My recollection today and yesterday was that I didn't go onto the boat.*

*Were you asked this question yesterday:*

*Did you go there – I'll withdraw that.*

*Question:*

*Did you ever see the Corolla after it drove away?*

*Answer:*

*No.*

*Did you go to a boat at any time – the Mayhem of Eden: did you ever go there?*

*And you answered, I'm suggesting:*

*Go on to the boat or – go where, sorry?*

*Do you remember that from yesterday?---Yes.*

*Question:*

*Or down to see the boat or near the boat?*

*Answer:*

*Yes.*

*Do you remember that?---Yes.*

*Question: You did. When was that?*

*Answer: On Saturday, the 16th of October.*

*Do you remember that - - -?---Yes.*

*- - - from yesterday's questioning?---Yes.*

*Continuing:*

*And what was your purpose in going there?*

*Answer:*

*To record details, take some photographs.*

*Do you remember that question and answer from yesterday?---Yes.*

*Continuing:*

*Did you go there with anybody else?*

*Answer:*

*I went there with Federal Agent Wynd, and there was another – a number of other officers present when we arrived.*

*Do you remember that from yesterday?---Yes.*

*Question:*

*Did Ms – was it Rachael Baxter?*

*Answer:*

*No.*

*Remember that?---Yes.*

*Question:*

*Did she go with you?*

*Answer:*

*No.*

*Remember that?---Yes.*

*Continuing:*

*Was she there?*

*Answer:*

*Not on the Saturday, the 16th of October.*

*Do you remember that question and answer?---Yes.*

Question:

*Did you go there at any other time apart from the Saturday?*

Answer:

*I don't understand where you mean. Go where? Go –*

*do you remember that question and answer from yesterday?---Yes.*

Question:

*Down to the boat.*

Answer:

*I didn't go on to the boat on any other day but Saturday, the 16th of October.*

*Do you remember that from yesterday?---Yes.*

*So it's true to say to you, isn't it, that when you were answering that series of questions yesterday, you were clear in your own mind at least telling the jury that you didn't go on to the boat except for the 16th of October?---Yes. That's my recollection.*

*And you didn't qualify that by saying, "I've got a poor memory. I've got a hazy memory," or, "I can't quite remember, but, anyway, I'll give it a shot," did you?---No, I didn't.*

*No. And you're only proffering that this morning after I'd shown you, let me suggest, an answer to the contrary which you gave four years ago. True?---I don't understand the question.*

*I'm suggesting that you're proffering that as a reason why you gave an inconsistent answer four years ago?---I'm answering today to the best of my recollection today.*

*You're not making your evidence up to sort of fit the circumstances, are you?---No.*

\* \* \*

On the 15<sup>th</sup> October 2010. Three days after the raid. A bag was found by Aaron Burgess and Luke Read after 6 searches of the car on the 12<sup>th</sup> and 2 forensic team searches over the car over the next three days and no one noticed the bag with 20kg of cocaine on the rear seat of a car. The "unseen" bag was planted by AFP and showed different stamps on the blocks of cocaine than the rest of the seizure. Aaron Burgess then destroys the evidence before trial.

**18082011 D.3 T(I)27-28/TMP(TWB) BRIS01 (McGrath, Magistrate) WIT: BURGESS A J**

*MR THOMAS: Sir, you removed the bag containing the drugs from the car?-- Yes.*

*It would have been quite a heavy bag, I suggest to you?-- Yes.*

*It would have aroused in any reasonably minded police officer - and I suggest to you that it ought to if it didn't – ought to have aroused a concern in your mind that there was something in that bag that was relevant to the subject matter of the investigation?-- No, not at that stage.*

*And this whole thing about you and your offsider, Reid, removing these bags without a care in the world, thinking all you're doing is facilitating the return of the car to the owner is nonsense. What do you say to that?-- Incorrect.*

*And this suggestion that you make that it's not until the bag is opened, innocently, without any concern in the world, later on that morning on level 2 of the building that you discover the - the illicit product is nonsense. What do you say to that?-- What's the question again?*

*Well, I'm suggesting to you that you knew, or had good reason to believe that there was something relevant to the investigation contained within one or more of those bags in the back of that car for which reason you should have obtained the benefit of some video recording, or independent officer to confirm your activities.*

*What do you say to that?-- It's incorrect.*

*Did you at any time video record anything to do with the removal of items from this bag?-- No.*

\* \* \*

The continuity in this case is very significant and so amazing ridiculously absurd that this corruption has gone on for 7 years now. If it did not carry life on gaol it would be a joke that none of these corrupt officers have been made accountable for their corrupt actions.

ACLEI, the agency tasked to investigate and charge for corruption are not acting even after they are given undisputable proof and material evidence for serious charges including perjury, misleading statements, tampering with evidence, removing property under seizure, theft and perversion of justice relating to AFP officers Aaron Burgess, Luke Read, Paul Watt, Simon Wynd, Luke O'Shea, Simon Castles, Christine Geissler, Karen Mazlin, Angus McGilvray, Carmen Begbie, Kristy Lee Cressy and William Tooth as well as undisclosed Border Force officers. These officers have even been promoted.

Evidence has been cherry picked by the CDPP that was vital for a lawful trial whilst Customs disclosure has nothing to do with any ongoing investigation by ACLEI.

It is simply not good enough that ACLEI have ignored this corruption for 7 years. Pressure of accountability needs to be demanded for the corruption in Operation Collage/ Bergonia. ACLEI needs to enforce powers that they were commissioned to do and the CDPP need to be made accountable for their role in lack of disclosure and cherry picking of evidence purely for convictions. This has aided in hiding police corruption.

Below is transcript of Glen Rice not disclosing the redacted diary of AFP Denise Cosgrove. Mr Rice said he redacted the diary but then changed his mind and could not remember if he redacted or not.

**18082011 D.3 T(1) 15-16/JLM(TWB) BRIS (McGrath)MR THOMAS WIT: COSGROVE D M**

*I call for the witness's original diary.*

*MR RICE: I object to producing that, your Honour. It's not - it's no accident that there are some parts of it not disclosed. The parts that were not disclosed are not relevant and indeed would be - would be privileged. If the matter is pressed, I'll need to perhaps make that - make the original available to your Honour - not to my learned friend - so that your Honour can see what the objection is based on.*

MR THOMAS: Well, I seek to have my learned friend make it available.

BENCH: Do you have it, Mr

MR RICE: Sorry, your Honour?

BENCH: Do you have it, Mr Rice?

MR RICE: I'm not sure if I now have an unamended part but I know what the deletions are. I'll see if an unedited copy can be made available to your Honour.

BENCH: Mmm-hmm. Something else you can go on with, Mr Thomas, or

MR THOMAS: I think

MR RICE: Just - I'm sorry to interrupt. The omission - the general subject matter of the omission concerns certain activity carried out on behalf of the Australian Crime Commission which is not open for disclosure under the Australian Crime Commission Act. That's the nature of it, your Honour. If my learned friend can carry on with something else, we can try to have the original notes produced and your - and your Honour can then see that that's

MR THOMAS: well, for fear of my learned friend, having said that, falling foul of the Act himself, I think your Honour needs to make a non-publication order.

BENCH: Non-publication so that I can't see it either or

MR THOMAS: No, no, but a non-publication order within - I think it's 29A of the relevant legislation because there is not - there is a requirement that there not be any disclosure of anything - these are my words - tending to even suggest that there may be activity undertaken by that authority.

BENCH: Well, I'd make an order in respect of Mr Rice's comments [indistinct] what it relates to.

MR THOMAS: Ma'am, were you the one that edited material out of your diary?-- No.

or was it done by someone else?-- I did not do it.

Was the editing of your diary done in consultation with you or not?-- No.

**18082011 D.3 T( 1) 19-20/JLM(TWB) BRIS (McGrath)MR THOMAS WIT: COSGROVE D M**

All right. That's the only other matter, but I - I've got some - I've still got a major issue in relation to the deleted or excised material from the officer's diary and the statement that my learned friend made and, to bring your Honour's mind back to the relevance of hat my learned friend has said and this excised material, I remind your Honour of what I had stated in open Court, I think Tuesday morning if not Monday afternoon, about the need to get someone from the AGS down here because these - these issues are dovetailing into that same matter that I - as - as obliquely as I could, had referred to earlier.

MR SMITH: Could I inform your Honour that I ve been liaising with someone relevant to this topic so it may be - and I intended to speak to that person over lunch so it might be we can resolve that issue by the time we get back this afternoon.

BENCH: Yes, I was going to simply rule on it in this sense, that part of the material disclosed by the prosecution to the defence, copies of pages extracted from former Federal Agent Cosgrove's official diary, parts of those pages are blocked out so that the material is unable to be seen. Counsel for Mr Elfar has called for the original diary. The reason for the non-disclosure has been

explained by Senior Counsel for the prosecution and, in the circumstances, subject to anything else, I don't know that anything else should be done at this stage.

MR SMITH: Not at this point, your Honour, but subject to Mr Thomas' submissions, I reserve my rights about the topic

BENCH: Oh, yes, certainly.

MR SMITH: subject to what I can sort out with this organisation, if I can say that.

BENCH: I don't know that I can compel the prosecution to disclose information in these proceedings, can I?

MR SMITH: Potentially your Honour could, but I don't have any material to place before your Honour to further any application at this stage. So I reserve my rights about that.

BENCH: Mmm. All right. Mr Thomas, do you wish to be heard any more before lunch?

MR THOMAS: I'm just - I'm just struggling with the concept of the - the excision being made by the Crown and the process that the Crown is required to undertake in order to make a decision to excise material of that kind and what - what flows from the - the disclosure being made to the Crown, whether it's as a result of its own inquiry or inadvertently but there's a disclosure made to the Crown. And I have certain instructions, your Honour, but I'm - I'm

BENCH: Certainly.

MR THOMAS: I'm hampered by non-publication directions and - and the like that I anticipate may be relevant. Your Honour's sittings at chapter 3, Commonwealth Court, and your Honour would have to be mindful of the section 71 constitutional position in relation to separation of powers, the entity that my learned friend the Crown has referred to was an administrative entity. We have a diary note, the subject of the excision. Apparently on the date of charge of my client there's a reasonable prospect that the subject matter that has been excised has - has - has taken place after a point, or reasonably approximate to a point where my client has been charged. Once my client is arrested, one can rationally say that the - that the powers of this Court, independent as it is, by virtue - by virtue of constitutional provisions is invoked, and there cannot be any interference with the processes of this Court by any other permeation of the Commonwealth, including an administrative entity of that kind. That is my concern about the excision, and that's my concern about the Crown apparently being the entity that has taken the decision to excise the material and the knowledge that the Crown has derived as part of that process. I refer your Honour to Hammond's case in the High Court, and the - late last year, the decision of the - of the ACC and OK in the full Court of the Federal Court of the ACT where these issues, the tension that - that exists between the administrative entity and a Court, independent as it is as a constitutional requirement exercising its powers to do - to administer justice fairly and properly on behalf of people such as my client. So that's the - that's the issue that has - I've been struggling with since Monday, I think it was when I raised it with your Honour. So I don't know that it's the end of the matter, but I'm - I feel that I can't advance the position unless someone from the - the AGS, at the very least, comes here. The Court needs to ensure - ensure, and satisfy itself that its processes are not being abused as well. So I don't think it's the end of the matter, but I'm limited in terms of what I can do without the AGS being here.

BENCH: You might be able to mention the matter over lunch, Mr Smith.

MR SMITH: I'm going to try and do that, your Honour.

BENCH: Yes, all right. Are you asking for the witness to be excused, Mr

MR THOMAS: I would ask that the witness not be excused, only because there may be legitimate questioning that needs to be undertaken of this witness in respect of the matters currently the subject of excision to determine in these proceedings whether the administration of justice, to be effected by this Court, has been interfered with in some way, giving rise to an abuse.

BENCH: Mr Rice?

MR RICE: I've got nothing to add, your Honour, in light of your Honour's rulings, I think. the only thing I wish to add at this stage if - if there's a request for some body of material, well, it can be advanced by some application. To date that's been confined to a small portion of a police officer's diary. I suspect that what my learned friend's interest is is rather more extensive than that, and might involve response from the Australian Crime Commission about matters that I'm not privy to. The only thing that the prosecution's privy to at the moment is this particular content of this officer's diary. And your Honour's already ruled in relation to that. Any matters beyond, though, will need to be advanced. Perhaps Mr Smith will do that in due course.

BENCH: So it's probably wise not to excuse

MR RICE: Yes, she could be stood down and recalled if

BENCH: Yes.

MR RICE: this

BENCH: All right.

MR RICE: the circumstances require it, your Honour.

BENCH: Ms Cosgrove, at this stage I won't excuse you. You are stood down. It may be necessary for you to return after lunch?-- Thank you.

Just leave all that material there, please. You can leave it till then.

WITNESS STOOD DOWN

**24082011 D.7 T(0)28/DLM(TOWN) BRIS17 (McGrath , Magistrate)WIT: COSGROVE D**

MR RICE: Your Honour, last week the witness Miss Denise Cosgrove was stood down for a time, she's available to call in now and I think my learned friend, Mr Dore, wants to ask some brief questions.

MR DORE: That's so, your Honour.

MR THOMAS: Well, this is the - just before we here from - this is the Federal agent, your Honour might recall, going back last year in respect of which the Crown had produced a diary, work diary and as I understood the position, the Crown had deleted content of the diary or excised it in the copies that were provided because the material made reference to the ACC. Can I just have the Crown, the learned Crown Prosecutor confirm that those deletions were made on his instructions?

BENCH: I think, Mr Rice had

MR RICE: I've already said that, last week, your Honour.

BENCH: Did indeed. There wasn't, sorry, although

MR RICE: Sorry, your Honour.

BENCH: I think you - you informed the Court last week that that didn't happen, it wasn't at your instructions.

MR RICE: No, I said I was aware of it, I can't recall whether I - now that your Honour mentions it, I can't recall whether I said that they were on my instructions or not. I was certainly aware of it and approved it.

BENCH: That's as my - I'm just going from my recollection, I think you said you were aware of it but you hadn't instructed.

MR THOMAS: Well, it's for that - see I was unclear about it, which is the very reason I raise the point now and now that the point's been raised, Mr Rice, who initially was dismissive, now sort of, we've reached the point where he doesn't know whether he gave the instruction or not.

MR RICE: I'm aware - I'm aware of what the deletion is, your Honour. If - if the subject is explored and there's some clarification of circumstances that Federal Agent Cosgrove is prepared to make well, it may make the reduction of her diary redundant.

MR THOMAS: No, but

MR RICE: But I'm not aware of that, at this point, and I'm not prepared to make any changes to the reductions as previously made.

MR THOMAS: See

MR RICE: And it may - it - the situation may change but I'm not in a position to change it, at this stage.

MR THOMAS: well

MR RICE: This is what the - really what the questioning is about.

MR THOMAS: Yes, well - yes - no, no. No, see it's not for my learned friend to say, I am aware

MR RICE: Does my learned friend have an application or is this speech?

MR THOMAS: Yes. Yes, my application is for us to be given the unedited document.

MR RICE: Well, I - I

MR THOMAS: Because my - just a minute let me

MR RICE: I've already said what the position is in relation to that.

MR THOMAS: It's my turn - it's my turn, Mr Rice, my turn. My friend's told the Court he's aware of the content that has been excised from the document, so why have we got a different playing field here. I get a document that is all crossed out and I don't know what the content is but Mr Rice is aware, with his particular duties of disclosure as a Crown, he's aware of the excised content and he thinks it's sufficient to tell the Court, well look Thomas can ask questions about the excised content if he wants, well, in my respectful submission, my friend bears the onus to produce and to be fair in the way that his responsibilities are discharged, as a Crown in these proceedings. If he knows what the content is, it's not for him to keep it secret to himself, he's got to disclose the

content to me.

BENCH: *I think I made a comment last week*

MR RICE: *That's - that's not true at all, your Honour.*

*Disclosure has limitations. One of the limitations is public interest. One of the limitations is disclosure which may be prohibited by law. I've no duty to make any disclosure which infringes either of those categories and, as I see it at the moment, unless and until evidence clearing the air, as it were, is given by Federal Agent Cosgrove, then I'm not in a position to make that disclosure, it's as simple as that.*

MR THOMAS: *I didn't think the issue of excision is attended to for - for - the issue of excision of material of this kin is not for the Crown to decide upon, it's normally the Australian Government solicitor that makes the decision.*

BENCH: *I think there's two aspects to this matter, one is that I don't know what my power is to compel it in the first place.*

MR THOMAS: *Well, my understanding, if I can just be of - I m trying to be of assistance to the Court, of course, is my primary responsibility, as an officer of the Court but I would've thought that there's - where there is a debate of this kind, the usual practice and procedure is for the document to be given to the Court, for the Court to then receive the document, read the document and see if there is, in fact, an issue that - that requires the - the document to remain in the excised form that it is but you can see that it's relevant and it's got to be relevant to my case.*

BENCH: *Well, we might be prohibited by law from being produced and*

MR THOMAS: *It's not for my friend to decide.*

BENCH: *until I heard argument in that regard, I don t know that I should see it.*

MR RICE: *Can I suggest this, your Honour, that it may be and I don't know but it may be that questioning of Federal Agent Cosgrove will reveal information which will be pertinent to whether or not I could be at liberty to make that disclosure but I don't know what she's going to say, I don't know what she s going to be asked nd I don't know what she s going to say and, in light of that, unless - until we know both of those things, I m not in a position to - to change the reduction of the statement which was - which I previously approved.*

BENCH: *Mmm.*

MR THOMAS: *I can't see how my friend can make the reduction, if that's the case.*

\* \* \*

The prosecution in this case have failed obligations of disclosure that have simply been ignored and hidden. Abuse of Process/ Miscarriage of Justice/ Malicious Prosecution.

**20141127/D4/BS/SC/17Atkinson J**

*"MR HOLT: Can I just indicate that on my instructions – and I hold the letter, but it will be turned in to affidavit form plainly before being filed, but I hold the letter that was provided by my instructor to the CDPP on the 4<sup>th</sup> November 2010 which incorporates a request pursuant to section 590AJ, subsection (2) of the Criminal Code that is requiring amongst other things copies or notice of any*

other thing relevant to the proceeding but not to be relied upon by the prosecution. So the scope of the required disclosure under the Code incorporates that request under section 590AJ, and its my submission that the affidavit ought cover the steps that have been taken to comply with the obligation also.

HER HONOUR; Well, was there a reply to the letter?

MR HOLT: No, your Honour. Not that I'm instructed existed, but the disclosure that followed, essentially, it would be assumed, would comply with the request. Section 590AJ, as your Honour will know, simply makes disclosure then mandatory of the category of material once the request is made."

\* \* \*

Lastly, I had my appeals hearing on the 13<sup>th</sup> and 14<sup>th</sup> February 2017, and a very disturbing piece of untrue information was told to the court by the CDPP prosecution Mr Glen Rice. Mr Rice stated to his Honours at appeals that in fact there were NO Customs agents at the Scarborough Marina on the 12<sup>th</sup> October 2010. Mr Rice stated that multiple AFP, civilians and a camera crew who all testified that up to 20 Customs agents were at the marina on the 12<sup>th</sup> had in fact got it wrong. Mr Rice then went on to call me belligerent and the trial judge said I lacked insight into seriousness, while the CDPP attempt to gladly peddle bat shit crazy blatant lies under instruction of AFP and ABF.

Robust conversation has and will take place about the corruption in this case. Mr Rice needs to get out of fairy land and deal with facts, and the facts are that up to 20 Customs agents were at the Scarborough Marina on the 12<sup>th</sup> October 2010. Some of those customs agents along with AFP officers stole evidence. AFP kept it contained whilst Customs were caught and it made the media, which was then hidden. I make no apology for aggressively pursuing my legal rights, my only request was for all evidence to be provided to me for a fair trial. This has not happened in 7 years now. If Mr Rice had supplied all the evidence in 2010 as legally required and repeatedly requested by me then he would not have to endure my so called belligerence.

Mr Rice has previously stated that I had a "sense of entitlement" and I totally agree with him. I do have every right of "law", not the contrary non disclosure and covering of corruption while he slithers around truths and the demagogue Minister Dutton ignores corruption in Border Force.

I end this letter with 9 attachments. Attachment 1 shows a redacted Customs list of 19 officers, 11 of which were at the waterfront. The other attachments are some of the redacted diaries by the actual Customs agents that show they were at the Scarborough Marina on the 12<sup>th</sup> October 2010 with some being right next to the yacht Mayhem of Eden at 1.10pm taking photos of the yachts tender. This yet again proves Customs officers were present on the 12<sup>th</sup>, that is unless Mr Rice argues that the Customs officers themselves got it wrong when filling out their own diaries.

ACBPS Internal Minutes from April and May 2011 show that an unnamed Customs officer who was part of Operation Bergonia was arrested on the 16<sup>th</sup> October and was in the company of two others. He appeared at the Sydney Downing Centre on the 27<sup>th</sup> April 2011.

Emails from 19 October 2010 to 13 January 2011 by ACBPS Integrity and Professional Standards show a chain of correspondence stating:

"Whilst under caution ##### did say to police, Cause I'm a Customs officer. If I was a sparky or a plumber I would have admitted to snorting it". ##### went on to say, "I was celebrating. I'm about to be commended for my involvement in the large bust. I'm good at what I do".

"I have been approached by Op Bergonia/ Collage case officer requesting assistance with a statement to be tendered that will hopefully satisfy any further efforts by defence to discredit the prosecution case".

"I am wondering whether we should get together to discuss if/what response we may provide"?

"On Tuesday 26 October 2010, media outlets (Channels 7 and 10) were reporting on the event, stating that ##### was involved in Operation Collage, and indicating the cocaine ##### was arrested with was stolen from the Collage seizure".

"This information from the media release I heard on Channel 7 was almost verbatim to the info contained in info I sent to you except for the details of the Customs officer #####"

"Further if possible could Customs please provide formal advice as to whether any other of their members involved in the resolution for Operation Collage have been disciplined and/or charged in relation to drug matters".

The names of the undisclosed Customs agents are known to ACLEI and have nothing to do with any ongoing investigation and everything to do with systemic corruption cover-ups. When are ACLEI going to release this information and act on the serious corruption in Operation Collage/ Bergonia. When is someone in Parliament going to stand up and demand accountability from Border Force and ACLEI?

AFP and Customs commit corrupt acts in 2010, ACLEI then investigate. It is 7 years after the crimes were committed now and there is still no disclosure. The Commonwealth Ombudsman passes obligation onto ACLEI and now the Parliamentary Joint Committee also shrug off obligation to ACLEI and the Commonwealth Obudsman.

It smells like a Government cover-up. 7 years is unacceptable. A couple of weeks ago ACLEI sought information details of a Fairfax journalist who writes for the Sydney Morning Herald that I had previously liaised with. Why interfere with the adversarial press?

When is a Politician going to stand up in Parliament and demand answers of hidden corruption in Operation Collage/ Bergonia?

Sincerely



Simon Golding

# ATTACHMENT 1

Operation BERGONIA Officers Involved	
<b>BRISBANE Targeted Operations Eastern Region</b>	
[REDACTED]	1
[REDACTED]	2
[REDACTED]	3
[REDACTED]	4
[REDACTED]	5
[REDACTED]	6
[REDACTED]	7
[REDACTED]	8
<b>BRISBANE Operations Eastern Region (Waterfront)</b>	
[REDACTED]	9
[REDACTED]	10
[REDACTED]	11
[REDACTED]	12
[REDACTED]	13
<b>BRISBANE Intel</b>	
[REDACTED]	
<b>COFFS HARBOUR</b>	
[REDACTED]	
<b>GLADSTONE</b>	
[REDACTED]	
<b>MACKAY</b>	
[REDACTED]	
<b>BRISBANE Operations Eastern Region (Waterfront)</b>	
<b>Supporting Roles</b>	
[REDACTED]	14
[REDACTED]	15
[REDACTED]	16
[REDACTED]	17
[REDACTED]	18
[REDACTED]	19

19 CUSTOMS OFFICERS

# ATTACHMENT 2

FOI Document #22

s22(1)(a)(ii)

12th  
REJECTED



~~1300~~<sup>PF</sup> Duties OAU . 13/10/10  
Street 0945 . Scarborough  
Marina 1555 . board vessel  
Eden Mayham . Scardrol

Hoag 1215 hrs. OP  
Bergonia. 1510 Custody  
of 5x PDE Kits 15  
Magazines Ammunition -  
Flan

Deployed to Birnie Island  
1530. 1820 Return to  
Customs House Return PDE  
to Army. Finish 1900  
12/10/10. Duties ORU  
0600 OP Bergonia  
0605 Deployed to Birnie  
In Field PDE Issues 10635

- Kit 6
- Kit 8
- Kit 9
- Kit 10

Kit 4

Hand over Kit 4 to  
at 1225

TRV Group 608 1300

Blackde Marine Scarborough

ID Tunny Inwards 1300

Photo taken 1301 Vessel

QM 580 Out Photo taken

1310 Tender In 5HP outboard

Mercury photo taken. Depart

1745 Scarborough. Return

TRV CEF. Take Officer

to Cannon Hill

Medical Centre. Arrive

accommodation 2130.

1300<sup>PF</sup> Duties ORU. 13/10/10

Start 0945. Scarborough

Marina 1555. board vessel

Eden Mayham. Scardrop

GROUP AT MARINA  
1pm

At 1:10pm customs  
took photo of  
tender tied to  
Mayham at  
Scarborough Marina

# ATTACHMENT 4

FOI Document #28

4 CUSTOMS  
DIRECTED TO  
MOVE TO  
MAYHEM

TUESDAY 12 OCTOBER 2010  
0500 - D.L.V. TO BRIBIE

ISLAND TO MEET UP WITH  
NTH BRISBANE POLICE - DEPLOY  
TROOP @ BRIBIE ISLAND WITH

0730 IN POSITION WITH TVD1  
& QWPS VESSEL - MAINTAIN  
POSITION UNTIL 11.00.

DIRECTED TO STAY OND OF  
BRIBIE TO LOCATE & OBTAIN  
BOYS WITH MARKER FLAGS  
SUPERVISED BY BRIBIE GROUND  
FORCE. 1700 RETURN TO

BRIBIE ISLAND AND DISPERSE  
& PASSENGERS. ALSO DIRECTED  
TO MOVE BY VESSEL ASAP TO  
A POSITION 500m FROM THE

50

11/10/10	ORU
0400	Depart Cofts Eureka Gold Coast Seaway.
0835	Arrive Gold Coast Seaway, stack op,
1100	Move to CH
1215	ARRIVE CH. Deployment New Karoon s. OP Bergonia
1530	Deploy Bribie Island Stack.
1820	Return to CH
1900	Finish
12/10/10	ORU @ Bergonia.
0600	Arrive CH
0600	Deploy Bribie Island
0700	TRV group OP
1230	Return Bribie Island
1300	Move to Scarborough Merina area and Stack.
1730	Move CH
2030	Finish.
13/10/10	ORU @ Bergonia
0945	Start CH move to Scarborough Merina
1555	board vessel Mayhem of Eden

# ATTACHMENT 6

FOI Document #26

12/10/10 CONT'D. REPOSITION TO  
SEARBOURGH MARINA AREA  
RETURN TO HQ. CEASE DUTY.  
13/10/10 COMMENCE DUTIES HQ AT  
0945 HRS. CEASE DUTIES 1200 HRS. —  
14/10/10 COMMENCE DUTIES 0730 HRS.  
ASSIST WITH ADMIN DUTIES. CEASE  
DUTIES 1610 HRS. —  
15/10/10 COMMENCE DUTIES 0735 HRS  
ATTEND BRIEFING AT QPOL WATER  
POLICE WHITE ISLAND RE.  
MOORING AND SEARCH OF VESSEL  
EDOLWEISS. 1500 HRS DEPART  
WATER POLICE RETURN TO HQ  
CEASE DUTY 1620 HRS. —  
16/10/10. COMMENCE DUTIES  
AT HQ 0700 HRS. 0940 HRS AT

11/10/10 COMMENCE DUTIES 0300HRS  
DEPART COIFFS HANDBAR FOR GAD COAST.  
ARRIVE G.C 0830HRS. ARRIVE  
SOUTHPORT SEAWAY, MONITOR  
ENTRANCE 1215HRS. DEPART G.C  
FOR HQ. 1330HRS ARRIVE HQ.  
CEASE DUTIES.

12/10/10 COMMENCE DUTIES 0600HRS  
OP BELGOMA. 0605HRS PDE  
ISSUED IN FIELD DEPLOY TO BRUBIE  
ISLAND. CONDUCT SURVEILLANCE  
OF AND MONITORING OF WATER  
BETWEEN BRUBIE AND SEARBOROUGH.  
WITH OFFICER [REDACTED] FROM  
RAVN IN SOUTH PART OF BRUBIE

# ATTACHMENT 8

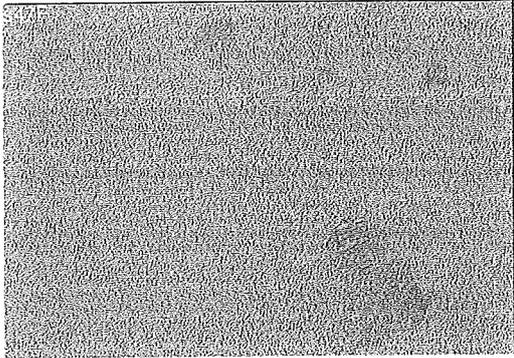
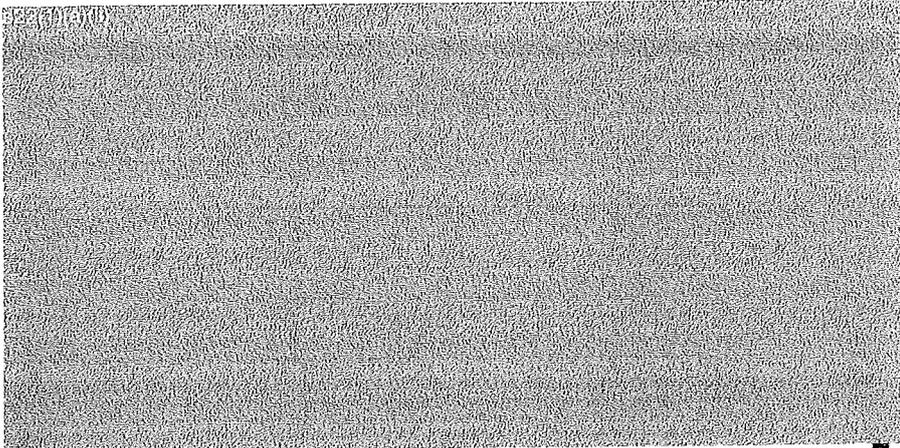
FOI Document #28

28

2:30pm  
at Marina

CONTINUED TO SCARBOROUGH  
MARINA.  
1430 MOORED AT SCARBOROUGH  
MARINA AWAITING TASKS.  
1735 DIRECTED TO RETURN  
TO BRIBU ISLAND & RECOVER  
TUBS. PRIOR TO DEPARTURE  
WHILE PROPPING VESSEL  
I SLIPPED INTO VESSEL  
& HIT MY RIGHT LEG ON  
LARGE BULKY IN BOAT.  
ARRIVED BRIBU ISLAND

# ATTACHMENT 9



0600 - 1600 OPERATIONAL  
(OP BEGONIA) [REDACTED] - OPERATIONAL  
[REDACTED] UNIT, HQ OFFICE  
PISTOL - 686  
CUFFS - 2914  
OC SPRAY - 45565  
BATON - 31430  
- 121010 - CITE  
0600 - 1200 (OP BEGONIA)  
PDE SECURED IN RW  
ARMOURY - PDE COLLECTED

15

OPPOSITE  
MARINA.

16

AND POSITIONED AT REDLINE  
IN RESTAURANT - 0600  
1200 STOOD DOWN TO  
COMMENCE SHIFT AT 2000  
- 1615 [REDACTED] CALLED  
TO ADVISE NO NEED  
FOR ATTENDANCE - 1630

## Annexure

Customs state that the officer arrested on 16<sup>th</sup> October 2010 in Sydney that was handing out free cocaine was part of operation Bergonia. others ran off when he was arrested.

Border force state that the officer had no access to the seized cocaine as he was in Port Macquarie, but Customs also previously lied in subpoena return stating that no officers were present at Scarborough Marina 12<sup>th</sup> October 2010.

Look at attachment one "Operation Bergonia officers involved". There are no Customs officers in Port Macquarie.

Who are the ingenious buffoons making blatant lies in Border Force? Why haven't they been charged with making false statements and perverting the course of justice. When is action going to be taken against the insidious corruption in Border Force and the AFP.