

TAB	DOCUMENT	DATE	DOC ID
VOLUME 3			
	Transcript of District Court Proceedings Day 15 to Day 21 S. Day 15 T. Day 16 – Summing Up U. Day 16 V. Day 17 – Summing Up 2 W. Day 18 X. Day 19 Y. Day 20 Z. Day 21	17 August 2022 – 25 August 2022	S. AST.002.004.0020 T. AST.002.004.0021 U. AST.002.004.0022 V. AST.002.004.0023 W. AST.002.004.0024 X. AST.002.004.0025 Y. AST.002.004.0026 Z. AST.002.004.0027

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IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

5 JUDGE O'ROURKE SC
AND A JURY OF FIFTEEN

FIFTEENTH DAY: WEDNESDAY 17 AUGUST 2022

10 **2019/00056907 - R v Wayne Gregory ASTILL**

**STATUTORY NON-PUBLICATION ORDER RE IDENTITY OF
COMPLAINANT**

15 **CLOSED COURT FOR COMPLAINANT'S EVIDENCE**

20 IN THE ABSENCE OF THE JURY

HER HONOUR: Are we ready to continue?

CROWN PROSECUTOR: Yes, your Honour.

25 HER HONOUR: Mr Crown, can you just clarify for me; in relation to count 10 for the misconduct charge in relation to K, you just refer in your closing to other sexual acts. Can you outline to me what you're actually relying upon to constitute that charge?

30 CROWN PROSECUTOR: Yes, your Honour.

HER HONOUR: Because the other sexual acts, are you meaning, for example, the part of in the BIU where she alleges Clarke comes in?

35 CROWN PROSECUTOR: Yes, that's right. That's part of it. And the other--

HER HONOUR: All I'm saying is, if I'm a bit confused as to what the Crown's relying upon--

40 CROWN PROSECUTOR: I understand..(not transcribable)..complete that sentence. I'll go back and clarify that with them. So can I say to this to your Honour: count 10 relies on misconduct, including that incident which was happened upon by Mr Clarke, and the other acts.

45 HER HONOUR: So, the other acts. When you say, "Other sexual acts", are you referring to the other counts, 8 and 9?

CROWN PROSECUTOR: Yes. And the shredding.

50 HER HONOUR: And then there's also the - you said the shredding?

.17/08/22

717

VIQ:SND

D15

CROWN PROSECUTOR: Yes.

5 HER HONOUR: What about the evidence led of the note where it's - it's no
definitive that that was from the accused, the "Hi, Sar Bear".

CROWN PROSECUTOR: No, it wasn't.

10 HER HONOUR: You're not relying on that?

CROWN PROSECUTOR: I'm not going to rely on that.

15 HER HONOUR: What about the grabbing of the crotch, "That's exactly where I
want you"?

CROWN PROSECUTOR: Yes.

20 HER HONOUR: All right. It's just, "The other sexual acts", didn't really help
much.

CROWN PROSECUTOR: Yes, your Honour, I'll clarify that.

VIQ:SND

D15

IN THE PRESENCE OF THE JURY

HER HONOUR: Good morning, ladies and gentlemen. Mr Crown's going to continue with the closing address. Yes, thank you, Mr Crown.

5

CROWN PROSECUTOR: Members of the jury, in my address to you yesterday, I've reflected on what I've said to you, and I just wanted to clear up a couple of things in case it was not clear. And I hope I've been clear. Can I just say on this, closing addresses are never a substitute for the evidence. I've sent to you, if you asked for it, a transcript, you'll receive it, and may I be so kind as to encourage you to do so, if you feel, and I suspect you would that that's going to assist you. So far as what the evidence is, the evidence is, not the addresses, although I'm endeavouring to assist you as to what the Crown case is, and what some of the relevant evidence is.

15

Count 10, and don't worry, I'm not going to then move on to 11 and go through them all again. But count 10 was a misconduct charge, if I can put it that way in shorthand. Relating to K. K was the witness, the complainant who said, among other things that the accused did to her, slapping her on the backside. There was one where Mr Astill's said to have jacket over the side of him, and gone through in the reception area and grabbed her on the bottom. That's the witness I'm talking about.

20

As to the misconduct, those things are relied upon, as well as the charges of indecently assaulting as forming part of the misconduct. As is for that misconduct, the incident that Mr Clarke happened upon in the cells where Mr Astill was there, and you'll remember Mr Clarke said, he mumbled something, didn't make sense, and then he left when he was in the cell in the BIU with K. That incident I rely on as well.

30

So misconduct covers, if you like, a multitude of sins. The totality of misconduct in his public office. Grabbing his crotch saying, "That's where I want you", to K. Offering to shed paperwork for this charge, whether trump up or not. And as I say, those other sexual acts which I've referred to, including the one Mr Clarke described. They all go towards the misconduct relied upon for count 10.

35

The misconduct then captures where there's a misconduct charge, and there's charges or counts, of indecent assault. The behaviour relied on for the indecent assault is partly misconduct. Misconduct goes broader than that however. It goes to his failure to execute duties in particular cases as I've particularised things that he's done at odds with his, you know, grossly I say, at odds with his duty as a correction officer, indeed a senior corrections officer. That clarifies count 10.

45

Members of the jury, I'll just give you a quick summary of what I'm going to say to you this morning. I'm going to go through the evidence which you may consider relevant to the determining the counts on the indictment, being counts 46 through end, and that is with respect to the witness, A, Ms A, was the last complainant to give evidence, and S, who came very late in the trial as

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VIQ:SND

D15

well. I'm then going to speak to you about some admissions that I rely upon by the accused. That is admissions, things that he said which the prosecution relies upon.

5 Proof of guilt with respect to particular counts on the indictment. I'm going to speak to you about lies. I said that to you yesterday. Lies the prosecution said which were told by the accused, which affect his credibility when you come to assess his denials, his accounts to the police. Affects his credibility, the fact that he's lied on a number of occasions about relevant matters.

10 And also I'm going to go through and point out, albeit in a shorthand form, what various witnesses have said so far as by way of making complaint about conduct, or as to how a particular witness feels with respect to Mr Astill at particular times. For example, H saying to a number of people that he made
15 sleezy, or what have you. So that's the way I propose to go through it this morning, and talk to you about that body of tendency evidence, which I hope to do in way which is understandable. But there's a number of categories I have to go through. Categories of evidence because there's various tendencies that are relied upon. So I'm going to headline for you, if you like, as to what's relied
20 upon in that regard.

Ms A, she was, as I say, the last complainant to give evidence. She might have impressed to you, members of the jury, as a relatively unsophisticated, subtle. And please remember my opening words to you yesterday, that
25 unsophisticated people could be compelling truth tellers. I suggest to you, A is one of them. Before I go on, can I just say something, as I finished up yesterday, and you might've heard me say I was a little exhausted, and I reflect and just want to say this about N. I said about N that she appeared confused at times about the evidence.

30 Please don't think that I am miscounting her evidence in anyway, or inviting you to do so. I'm simply acknowledging that witnesses present differently. N, in fairness to her, you need to please have regard to, as I said yesterday, the fact that witnesses are being asked to recount things of sometime ago now,
35 asked to recount things which, if accepted, would necessarily be traumatic. In her case, directly towards her, and groping of her and the like.

As to timing of events and the like, you might well think it's understandable from a human nature point of view, with witnesses generally I say this now,
40 that we can be a little confused about when things happened, the order of things and the like. But ultimately you'd need to satisfy, of course, that witnesses are reliable and truthful in the material respects about those elements of the offences with which Mr Astill's charged, and which you are considering in each particular case.

45 Back to A. She said this: towards the end of 2018 she was in low needs. She had some personal difficulties with inmates. So she went to see Mr Astill about the problem. Now, you'd think that this is precisely the sort of thing that inmates should be able to go to the chief correctional officer about harmony in
50 the jail. It's something you might expect is an ongoing challenge. Indeed,

.17/08/22

720

(CROWN PROSECUTOR)

VIQ:SND

D15

Mr Astill said in different terms in his record of interview, was constantly problems, that constantly tied in, there's problems with - and you might not find that surprising, and I'm not just talking about women in jails, by the way, but generally people away from their loved ones, they're in close proximity to one another and tension, you might expect would be a frequent feature of jails and between inmates. Perhaps no surprises there.

I mention that because it goes to this duty, the public duty of Mr Astill had when this young woman, A, goes and says there's personal difficulties with inmates. What does Mr Astill do? A told you he wasn't interested, effectively. Not interested at all, at least not in the personal problems. He was interested in her, of course, and she said this, that he was standing behind his desk, he starting touching his penis, and she said, "Look, I'm here to discuss issues with you", and he said, "Do you want to have sex?", and she said, "No".

She said he approached her and she, you'll recall it was a cupping action, she described, and said basically groped me, when a cupping action around her breasts. Assaults, indecent, unwelcome. He's in authority. She comes there for the purpose of this senior member of the jail to help her in some respect. There's a stark again, I don't apologise for using the expression, power imbalance, that's what this is, with large.

She goes there, she is down here, members of jury, and he's up there. Assault under authority, indecent, cups his hand around her breast. Her words. Often had sex with her and started touching her bottom, and she described him reaching around her, facing her and started to touch her bottom at that stage. That's count 46, the touching on the breasts. Touching her bottom, count 47. And she said she removed his hands from her bottom and ran out. She said she didn't report it then. Why not? She said she was afraid. What were you afraid of? Just getting in trouble other inmates.

Members of the jury that may, again, be ringing in your ears, maybe a sense of déjà vu when you heard that because you've heard from various witnesses effectively, that there are plenty of reasons why women in this situation would not come forward. You might well think as you reflect in an enlightened way upon how women in the community might not feel comfortable coming forward when an authority figure does something to them, multiply that by a factor of how many. We've got an inmate in a gaol. There's a culture. It's blue versus green, members of the jury.

Then you've got other inmates. We've heard the expression screamers. They don't want to talk. People follow a particular protocol in gaol, you might well think, forged by the very nature of the place. It's the place where you've heard evidence of some of it. There's fights, there's distrust, there's disharmony. These women, members of the jury, were especially vulnerable. As to count 48, the misconduct, there's a combination, again, of the sexual access, groping the breasts or the buttocks. It's complete and abject failure to deal with her inquiry. She's saying personal problems here. Mr Astill, what does he do? He doesn't answer it at all, she said. Didn't follow up on it. You might think that reflects his attitude towards his duties at that time, not there for the

VIQ:SND

D15

purpose of serving the public in the way he's required to do, his office demands of him.

5 Ms S. She was 49 through 51. She was in medium needs in 2018, she was working in buy-ups. That didn't require her to clean at all, let alone the chief's office but sent there, she was. Went there four times, she said. The first two times she just spoke with N and Mr Astill. N seemed to be a common creature at these meetings with S. Mr Astill said that he'd remembered her from 2016 and you'll recall that she was there at Dillwynia previously. She didn't
10 remember him, but those first couple of meetings, it was just meetings when they were together, you could call them meetings, but when they were together.

15 There was nothing which arose which featured on the indictment. Third time she went in with N again. Mr Astill, she said, had his feet up on the desk. Ms N and Ms S were on the other side of the desk. N went out to clean and Mr Astill sat on the desk right in front of S. She couldn't remember what Mr Astill said but said that there were things which were inappropriate which made her feel uncomfortable, was the word she used, and she knew that so she got up
20 and walked away. But he pulled her back, put her in a bear hug which might sound familiar to you in this trial. She wriggled. This was from behind. She felt something hard in her back. Count 49, members of the jury, just a couple of minutes, she said. She thought it was a couple of minutes.

25 For anybody in this trial, where the witnesses are favourable to either party or no party, please bear in mind from the human experience again, that where people are trying to put time frames on these things, you might not expect them to be precise, and no one's got a stopwatch. But she thought it was a couple of minutes. She could feel the erection coming on. She wriggled out
30 and left, and she said that she told N, let's go. You'll recall, N, and I spoke to you about this yesterday, had some coppers say, made some observations of S in particular. She went back a few days later to his office. Why? She said this, because of his ranking. How high he was. "Because I was asked to - so in gaol, we get punished if you don't do what officers tell you to".

35 Members of the jury, you might think that that's fair enough. Can I say this to you? I have said to you on a number of times, about this power imbalance and why different women have said that they were unable to come forward and I said, I don't apologise for it. I don't want to sound like a broken record, but this
40 is my last chance to address you and I want you, members of the jury, when you're deliberating on the verdicts to, as I've said, bring your life experience. And by that, I mean be realistic. Put yourself in the position of those women to the extent that any of us can and what world they're living in. You might think it's not really in our world. They're in this situation, they are, you might think,
45 I'm speaking generally, in an impossible situation.

She goes back with N again. She said there was some talk, chat, but it was mainly between Mr Astill and N, and she said N and I went outside to clean, Mr Astill called her back in and he said to her, "Why are you so shy?" He's
50 blinking his eye, blowing kisses. You might have thought she met winking but

VIQ:SND

D15

in any event, she said blinking his eye. There was an offer of tobacco. She said he had it inside his shoe and she could see it and he said, "Do you smoke?" That's the offer of tobacco. That's a part of that offer of tobacco, part of the misconduct. He's not supposed to be doing that. He's not supposed to
5 be giving gifts, including tobacco, to inmates and the context here of him making the offer is relevant too.

He's not seeing her upset and saying, "Look, here's a smoke," in the smoking area or something, "Here, have a smoke, you know, you're upset about something". You might think that's very different than what's happening here. The context is, I'd ask you to accept, (1) what had gone before in terms of the contact, that account of the meeting a few days earlier and his purpose for doing that, he was trying to ingratiate himself. That is the offer of tobacco. So the offering of the tobacco is along with the other sexual acts of which he gave
10 evidence. What I rely on as being the basis of the misconduct charge.

So I'm discussing the count 51, the misconduct. She said this. After there was the, what I suggest, was an offer of tobacco, she said, "I went to walk out and he pulled my arm, held quite firm, put hands up top and down the back and
20 down my pants". At this stage, she said he was kissing the neck. Please look at the transcript yourself, but this is the effect, kissing her neck, saying you're looking good and had an erection against her back. Again, that's count 50. And she said, "I yelled quite loud to stop". She said to him, "Why are you doing this?" And he'd said to use an in-house voice. As to the timing, she said
25 it was definitely after work. That's count 50 on the indictment.

I want to talk to you about D. I had spoken to you about D, but that was at the very beginning, and it was in a more general sense, and I was giving the example of how unsophisticated witnesses could sometimes be most
30 compelling, even if it is in circumstances where they're being, you heard, disrespectful, being rude, certainly to Mr Tyler-Stott and to the Court when she ran out. But I said to that it was a raw honesty in the case of D. And she gave evidence, she said that she went to Dillwynia on two occasions. Firstly, she went there in 2018, and the day before that, in fact she found out she was
35 pregnant. She went in those circumstances. And you'll recall that she had a partner, John Hill, who gave some evidence, and was then her support person.

She gave evidence that she wanted to telephone him whilst she was at the jail. He was not in jail. He was out. She was out of credit, and there was this
40 Arunta system, and an OIM system, which is the OIMS, the offender inmate system. But there was rules as to who you could call, and whether persons on there registered. Some you can contact some people, don't just ring the Pizza Hut, or willy-nilly making phone calls to anyone without the jail being aware of it. She says this: there was an occasion when she was in medium needs.
45 She went to see Mr Astill about a phone call, and she said, "I was just...to my boyfriend?" And Mr Astill said, "Is he on Arunta?" And she said yes, and he said, "I can't just let you call anybody". They checked on the computer and she was allowed to make a phone call after he made contact with John Hill, and spoke for, she thought it was for about 10 or 15 minutes.

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.17/08/22

723

(CROWN PROSECUTOR)

VIQ:SND

D15

Calls were ordinarily for about six minutes, but the evidence is - you might conclude that this was not an ordinary phone call, because she was given an extra privilege on this particular occasion. She goes back, she says, about two weeks later. She went in, she didn't see anybody in there, she couldn't see.

5 Mr Astill was inside, N was inside, they were a bit chatty, asked me how I was going, and she asked "Can I ring John again?"

Mr Astill she said, got on the phone again, "Its Wayne Astill from Dillwynia", and puts him on. And she said on that occasion she spoke for about

10 10 minutes. After she hung up she says this: "I just stood...me from behind". And I asked her to clarify, to elaborate. "He pulled me...with my vagina". Members of the jury, that was count 44 on the indictment, it is. And she said - at this stage of the evidence, you'll recall that Mr Hill went out, and you'll recall this evidence that she gave, and how she gave it, she appeared upset during

15 it. matters that you're entitled to take into account, as the witness' demeanour. It's appropriate that you do so to the extent that it could assist you in assessing her credibility, whether she's telling you the truth.

She said it felt like it went on forever. "It felt like...that he stopped". She said

20 this, "No-one find out...know about it". She said this, he said to her, "He like pretty...me a favour". Members of the jury, count 45 on the indictment, his misconduct. So we've got count 44 as I recounted to you, sexual intercourse without consent. It's not free and voluntary consent. He must've known that. He's misconducting himself. He's granting favours which he later says are

25 favours, "I've done you a favour", says something about his real purpose in allowing her to make that phone calls, doesn't it.

The sexual act itself without her consent forms part of this misconduct, gross misconduct and topped off, you might think, with this threat. You'll recall that

30 she said this, "I told him...no-one would know". Intimidation, other examples of which I'll come to before too long, and the purpose of which you might've thought was to keep her quiet, and itself a part of the misconduct. There with a duty of care to an inmate, what do you do, sexually assault her, threaten her by implication with these nefarious characters, affiliated with bikies and the

35 granting her favours. He called them favours himself.

I'll now move, members of the jury, to the other matters that I had raised with you which I said I'd move to. Mr Brumwell of course in his evidence referred to the accused saying that he, Mr Astill, ad slapped her on the arse, being the

40 words being a reference to the witness, K, you'd be satisfied, as Mr Brumwell recounted it. "She just walked away". That members of the jury, you can take and use as being an admission to count 8 on the indictment, or possibly 9.

Either way you're entitled to use it. You might well think that it applies to

45 count 8, but it fits directly with that. That's the incident where she's walking out, she says she was slapped, and she just kept walking. She didn't do anything. That fits perfectly with count 8. But count 9 is the incident in reception where he's got the jacket and she said he reached under and grabbed her on the backside.

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VIQ:SND

D15

You might think that it'd be splitting hairs to distinguish a huge difference between a slap and grab, where a slap may well turn into a grab. But in any event, the prosecution relies on Mr Brumwell in that sense. Mr Brumwell didn't report it at the time. What he'd said, but he said a number of things which
5 were not challenged. There's no suggestion that, with respect to a number of the things he said, that it was the truth. Obviously there was this conversation. He didn't report it to authorities. They were friends at the time. That might not reflect well of Mr Brumwell, but it's not to the point, members of the jury. This was his friend. He gave evidence, and it's consistent in a very real way,
10 particularly with that incident with K. And he mentions of course, H.

Now H, belatedly you might think in the record of interview, the recorded record of interview. You might've heard us refer to it as an ERISP. Another acronym, electronic record of interview with suspected person. ERISP,
15 recorded interview. Where he initially having denied having had any sexual contact with any of the women after the audio is recorded, is played to him, he admits to having the sexual intercourse with her on a number of occasions, and including exactly how H said, so far as ejaculating in her underwear. Ejaculating in her mouth. Of course at that stage, Mr Astill says, "Well she
20 wanted that". what you make of his denials, members of the jury, as I've said, you might think they are effected not only by the evidence of the women and other evidence you've heard in the case, but of matters which you would conclude safely, are lies by the accused.

25 Mr Astill said it to a number of people, that he had ED erectile dysfunction, and there's some evidence about that. there's some agreed facts of medical evidence of Dr Corbell about that. Members of the jury, look closely at that, and can I suggest this to you. That to the extent that he said things like, "I can't get...on this medication". That's what he said to Vergel, for example, on
30 7 February 2019. On his own admissions, he's had sexual intercourse on a number of times with H. And you might think that what he was doing when he has claimed that he was unable to have an erection - he did qualify that at different times, but to the extent that he was suggesting that he was incapable of getting an erection was a lie, and it's a lie which you would simply use to
35 assess his credibility, as to how much can you believe this man.

There's evidence of him complaining about a poor perfect. Nobody's suggesting that he had some remarkable extraordinary staying power, as it were, but it's simply not the case that given the sexual acts that he admits to,
40 and the zeal you might think, with which he pursued some of these women. Ms O, you might recall witness who he said - complainant rather, who said "You're so soft and smooth", smooth being a reference used by Mr Brumwell. It was suggested in cross-examination of O, there was a concession that there was sexual intercourse with O. Of course he could get an erection, members of the
45 jury.

You'll recall a conversation, but particularly on 13 February 2019 Mr Schreiber, the then governor spoke to Mr Astill. He was referring to shit coming in, and you might recall Mr Schreiber said a number of times, effectively, "I don't care

VIQ:SND

D15

about that stuff", being the women. He was playing a part, to be fair to Schreiber, when he said that, but he was saying to Mr Astill, I don't so much care about that. I don't want shit coming on. His words, not mine. And Mr Astill said this, "I don't bring...bring it in". Goes on to reinforce that, you might think, he says, "I've got a...I do this?". Of course he does, he is doing that. He has done that. He's admitted to doing that. Exhibit L, the facts in any event with E. That's what he's done.

He says this on 15 April there's a telephone call in evidence, "I took tobacco in to save her skin". More lies. And denied all relations with H. Denied them to Mr Virgo. Stephen Virgo on 7 February. Denied any sexual touching or inappropriate touching of H when he responded to the complaint, to the extent it was investigated by Mr Bartlett. Said in his record of interview, "Initially as I...place with H". Obvious lies in light of the evidence, in light of what he has since said. In the context of this conversation with Schreiber on 19 February, he says this, "Never touched", Schreiber, you don't. Astill, C. Okay. No. Any of the others", Mr Astill says, "No, no". It goes on, "But you know...done anything with". And you know, even on what Mr Astill says, that's a lie.

Other telephone intercept recordings, 22 February. "There was one girl, and that's it" he says at one point. "There's only one...and any sex". You might think he repeatedly lies. And you might think there's a good reason for that. But in any event. What are you to make of his denials. It's got to be seen through the prison, through the lens of Mr Astill having, I'd suggest, very little credibility. He said in the latter part of his ERISP, recorded interview, with the police. He's talking about this approach by DD. This is the incident involving Pat Kogan. He said this, this is referring to DD; "And then sent...be by Wednesday". Of course when he says, "I wish I kept it", he told DD to delete it. "Delete the message you sent me". And you have that, members of the jury.

In short, Mr Astill's somebody who you would look at his denials and I'm not going to be so inflammatory as to say take whatever he says with a grain of salt. It's a matter for you, members of the jury, but you would, I'd suggest, where he denies things which are in conflict with other evidence, other sworn evidence, you need to look at that very carefully and look at that through the context of somebody who lies, was happy to lie to the police in an interview until confronted with incontrovertible evidence from his own mouth as to mainly the evidence with respect to H.

I'm going to move now to some evidence of complaint. With respect to C, you'll recall that there's evidence from U that C told U that Astill had touched her breasts, thigh and would have explicit conversations with her. With respect to K, Glenn Clark, you know that she's mouthed the word, "help," and I won't go over that again as to what happened there and she says, "Nothing happened yet but thank Christ you turned up".

Renee with K, Renee Berry, K had told Ms Berry, according to Ms Berry, that she was uncomfortable around Astill and that he'd shown her a photo of him in a police uniform and she told K to stay under the cameras and the evidence

.17/08/22

726

(CROWN PROSECUTOR)

VIQ:SND

D15

from Judith Barry is that K told her that Mr Astill had slapped her on the backside. Glenn Clark, so far as H is concerned, this is around May 2018, he said that H had told him that she was afraid of Astill. Told him that Astill disgusted her, that she was afraid of him, told Clark as she later told Mr Virgo
5 that he'd made her drink from the cup and what it was inside the cup. She told P, this is evidence from P, that she had to bring other inmates with her to Astill's office because he was being sleazy. Said that Astill creeped her out, she didn't want to be alone.

10 Ms MM gave some evidence, you'll recall, she gave evidence that H told her that she felt uncomfortable talking to Astill and going to his office alone. Z was told by H, Z told you this, that she didn't want to be alone with Mr Astill. She was one witness who referred to this red rash on H's neck when he would come around.

15 Ms FF, she was very anxious, H, around Astill, and was very adamant that she did not want to be alone with him. Flirtatious, I've said to you yesterday, you need to look at this in context, people in a gaol setting trying to get by, but the evidence is overwhelmingly, she was telling everybody she didn't want to go
20 there and she's got a physical reaction to it. Didn't want to go to see Mr Astill. Didn't want to go to see him, members of the jury, you would come to the irresistible conclusion, didn't want to go and see him because of what was happening. That's why she didn't want to go and see him. It wasn't for fear of being done favours, it was because of what was happening.

25 Ms M, you've got the phone call, the recording of the phone call with M's mother. M's mother gave some evidence about it. She was upset. She didn't say it on the phone. Some evidence that she was concerned - she says in the call, "I can't talk about it on the phone," she's calling from the gaol. And she
30 says, "Oh, one of the girl's hear crying". You'd be satisfied was R, now R, while M is making the phone call, R there with her. A few days later, they go and that's where M says to her mother, "That's him there," and M's mother said there was an altercation.

35 M said she'd said that's what happened. In any event that she'd identified what in fact had happened, in any event, you'll recall that that she said there's people around, that they're not allowed to whisper in there during the events. You might think, for good reason. Evidence from a number of witnesses about
40 M in a state of distress, going to the room of B, V and in the case of B and others, said that Mr Astill had held her hand, tried to kiss her, that she was shaking, she started to cry, B said.

Ms R, who was known as R, told you that M had told her that she'd been in
45 Astill's office and that he'd, "locked me up in there and tried to kiss me and pushed his body against me". D told Renee Berry. She also spoke to BB, her friend, you'll recall some short evidence about that as to in general terms what had happened to her while she was in custody.

SHORT ADJOURNMENT

.17/08/22

727

(CROWN PROSECUTOR)

VIQ:SND

D15

IN THE ABSENCE OF THE JURY

HER HONOUR: Mr Crown, there's been a request from the jury that you keep your voice up, thank you.

5

CROWN PROSECUTOR: Yes, I heard that. Thank you.

HER HONOUR: How long do you have to go, do you think?

10 CROWN PROSECUTOR: I'll be done by midday, I would've thought, your Honour.

HER HONOUR: Okay. I'll give them a short break. You wanting to start then?

15 TYLER-STOTT: Yes, your Honour. Your Honour, I have some documents I'd like to show on the screen. I've printed them out into one document, that I hope be marked as an MFI so I can take the jury through these particular photos on the screen.

20 HER HONOUR: Are these proceedings photos of the exhibits tendered?

TYLER-STOTT: Correct. May I approach your associate, your Honour?

HER HONOUR: Yes.

25

MFI #20 DOCUMENT

Also we do need to deal with errata.

30 CROWN PROSECUTOR: Yes.

HER HONOUR: You have to put that on the record, which is going to take sometime.

VIQ:SND

D15

IN THE PRESENCE OF THE JURY

CROWN PROSECUTOR: Members of the jury, just before I move to that body of tendency evidence. I referred before the break, and reminded you, albeit in
5 very general terms, of some evidence of BB who you'll remember gave some evidence about D, telling her what she said Mr Astill had done. I just want to remind you of some of that evidence now before I move on to tendency. She told you that she'd gone to Dillwynia in October 2020. That she'd saw D. She said after a bit of time she wasn't herself anymore. She become really
10 depressed, very anxious, that is D, pretty much like she's really traumatised. And she's told you that she spoke to D about how she was going. And she used the words, that she checked in.

Sorry, members of the jury, I'm conscious of your request, obviously fair as it is
15 that I keep my voice up, so I'll try to remember to do that of course. She said this, "D told her...the correctional centre". And she said this when she spoke to D. D said this, that, "She was locked...to her partner". So this is what BB's being told by D. And BB said, "Don't know if...was really traumatised".

20 That's the key part of that evidence, and you can go to it all, but I'd suggest so far as that complaint made by D, and note that that came about because she was asked, and D was asked by this young person, BB, because she was distressed and seemed down, "What's up?", and that's the circumstance in which it came out. Complaint, you might think, consistent with what she told
25 you, and consistent with it having happened, what she described Mr Astill having done to her.

There's a number of tendencies. I'm going to go through something of a
30 checklist, if you like. A lot of this evidence I will have already spoken of, so I will refer to it only very briefly. The purpose of this part of my address is to let you know what evidence I rely on to establish particular tendencies on the part of the accused so far as he behaves - how he had a tendency to behave. Her Honour will give you very clear directions on this area, and will tell you how you are permitted to use the evidence. But it's proper that I identify now that which
35 I rely on for that purpose to establish a tendency, and there's various tendencies.

The first one's this, the tendency to give favourable treatment, that is Mr Astill's
40 tendency to give favourable treatment to an inmate, including the provision of contraband. And this I rely on as being relevant to the counts on the indictment of misconduct. With respect to C, the evidence he shared a can of coke with C. The evidence of C that he gave her the underwear. The evidence of Officer Berry that the accused would allow C to sit on his desk with access to confidential information, or in a position where she was able to
45 access that should she chose. Officer Berry's evidence that the accused aggressively intervened to try to ensure that C could keep the ring, and I've told you about that at some little length yesterday.

Evidence of this category of favourable treatment, including contraband, so far
50 as K concerned, the evidence of her that K was told that - he told K that he

VIQ:SND

D15

could remove a charge against her, and said, "I can get rid of this, I'll shred it". Obviously an improper favour being offered. Said he'd help K to get her job back. He gave H pain medication. The evidence to that effect. O offered to get a lawyer to help her. Said to O that he could make a complaint against her
 5 go away, and you'll recall that is the Michael Weatherly actor comment about - she'd like to date the other officer if she saw him on the outside.

Ms G, favours from the accused to help her contact - and offers to help her contact the stepdaughter. And saying to her that, "I've done favours for you",
 10 and requiring of her, seeking sexual favours in return. M, there's evidence that the accused left M and R alone in his office with no staff around, with access to his phone and computer. N, contraband including the Dencorub, which I referred to yesterday, and she said on three occasions providing tobacco in a bag. S, her evidence I recounted this morning of the offer of tobacco in his
 15 office. E, exhibit L, which you have. Agreed facts. It's agreed that E was provided with contraband including hair dye, tobacco, a new MIN card.

Ms F, and this is a plea of guilty, but the evidence in exhibit Y is relevant to the misconduct counts to which he's pleaded not guilty. That he agrees that he
 20 provided contraband including makeup to F. Allowing F and GG to look at his computer. D, permitting the phone calls in those circumstances to which he later referred to them as favours, in which you'd accept were longer than those usually permitted. Q, "If you do...favours for you".

Members of the jury, there's another tendency which the prosecution relies upon. Is a tendency to make sexually suggestive comments to the inmate. And I remind you of these. C reference to "He'd like to see my tits with tan lines". That he wanted to see her on a boat, preferably topless. Regular
 25 comments, she described them, to F "In regards to my arse". Exhibit C, item 30 1, the note, "Knickers look hot. Feel amazing under your shorts". K gave evidence that he said to her, "Look after that arse of yours". K gave evidence of where he was standing with his crotch close to her face, his hand on his fly area, "That's where I like you".

With respect to H, comments about her vagina, asking how her vagina was. A joke about checking crystal balls in the context that it was made. The comment, "Think of me when you play with it later". A reference to his semen, which features in the evidence. O. O told you that Mr Astill said that I'm
 35 attractive, and he said that I'm an attractive woman and he never seen 40 someone have smooth body like me. He like my hair. M, the accused asked the M, "What would I do if you tried to kiss me?". "He asked me if I liked him back". "He told me...beautiful smile again". Suggest that the inner context of that was a suggestive comment in the context of what was taking place.

The accused told M that, "He missed me", stroking her hand. N, a comment that he said he like big breasts. This was in the context of what she described as the assault on her. S, comments like, "Hey sexy". Comments to S to the effect that, "I looked good". I rely on that category of tendency evidence with
 45 respect to all the trial counts.

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VIQ:SND

D15

Next tendency on the part of Mr Astill the prosecution for which there's evidence, the prosecution relies on to establish, is a tendency to put himself in a position where he's alone with a female inmate or inmates with a possibility of being interrupted. With respect to C, Z was told by the accused to leave C and the accused on their own. C requested a phone call to her brother who was in hospital, you'll recall.

The accused, she said, "Took me into the room behind the high needs office". "It's a smaller...and my thigh". Members of the jury, K being visited on those occasions to the BIU, she told you about, including that which Officer Clark uncovered, you might think. H, the accused entered the photocopier room and was alone with H. Going into the SAPO area with H, closing the door behind them. There was evidence from X, also known as X. The accused was at H's door after lock-in.

There's evidence of I and J, part of exhibit L, as to the accused engaging in sexual acts there, but relevant to this, you'll recall Mr Astill told Mr Brumwell - this is Mr Brumwell's evidence, that "He used to...close the blinds". G visiting him in the office alone in the circumstances that she described. So it's not just he's got them in the office to talk to them about their release date or something, in the circumstances. M told you that she attended the office, entered while R waited outside and that was where he tried to kiss her.

Ms S going to the office on four occasions where she told you those things happened to her, which I've outlined this morning, being the counts on the indictment, at a time where N was, by inference, just outside the office. D and A, again, being examples of him having them in his office alone and in circumstances where there's a possibility of being interrupted.

The next headline, if you like, the tendency, the next type of tendency, the tendency to engage in sexual acts with inmates, including requests for sexual activity, sexual touching and sexual intercourse, and to do so without the consent of inmates. This relates to all trial counts. When I say trial counts, the counts which you are asked to determine. The counts on the indictment to which Mr Astill's pleaded not guilty. I'm going to put these in some subcategories. Putting his crotch in inmates' faces. Seen by Y was where he's put up on the steel benches, one leg up, with H and he's in close proximity, his groin's in close proximity to H.

Evidence from X that she was on a steel bench and he had his crotch up close to her face. The comment, "That's where I like you," made to K as the accused stood with his crotch close to her face and his hand on the fly area. Touching or stroking inmates' hands and arms. Again, this is another subcategory of that tendency to engage in acts, as I outlined without consent, those sexual acts.

Stroking M's hand when he said he'd miss her and she said he did that on multiple occasions. Softly touching C's arm, and that was the evidence of U. Taking Q's hand, patting it while suggesting she do favours for him. Another subcategory is touching inmates' backsides. K, counts 8 and count 9, in

VIQ:SND

D15

particular. That's the slapping and grabbing on the buttocks and the jacket incident with count 9. Indeed, the admission made by Mr Astill to Mr Brumwell that he'd slapped K on the arse, evidence of a tendency to engage in such behaviour. X gave some evidence in this category that she was tapped on the bottom, with the accused brushing against her.

Ms H with respect to account of the material and evidence relied on in count 11. Grabbing her by the buttocks. AA gave evidence of H having her leg and bottom touched. I reminded you only this morning of A's evidence where the accused has put his arms around her and grabbed her on the buttocks. The subcategory of that was putting various people's hand on his penis where he's had these inmates' hands on his penis. C said on multiple occasions, he grabbed her hand and put it on the front of his pants, on top of his penis. Placing H's hands on his crotch, placing N's hand on his penis, count 40.

Further subcategories, touching inmates in other ways, sexual ways, including breasts and vaginas, kissing them. Pressing up against them. C said that it was a hug, almost like a cuddle action, she could feel he had an erection, that was count 1. Count 4, touching genitals with respect to O, touching her breasts. H is observed by O being touched from the groin area to the lower back about which a complaint was made.

Exhibit Y, agreed facts about F being touched on the vagina. Mr Astill admits to that, while she was sitting on his knee. M. Among the evidence she gave was during the attempted kiss, he pushed his erect penis up against her hip or stomach area. S. There was evidence I went back to this morning, you'll recall. There was this evidence of pushing his erect penis against her back, at her back. Another subcategory, requesting that inmates expose themselves to him through cell windows. There's evidence from C that Mr Astill requested that she show herself wearing the underwear he gave her, count 5 on the indictment. Count 14, H requesting that she expose her breasts through the cell window.

Evidence that Mr Astill would go to I's window after locking, wink at her. Make a gesture for her to lift her shirt up. There's various evidence which is amply identified in the counts of vaginal intercourse without consent. Bearing in mind, it's - in each case - in a gaol setting. Prison officer with an inmate, I rely on those acts as tendency. This category of tendency evidence, I rely on with respect to each of the trial counts. That is a tendency to engage in sexual acts without the consent of inmates. There's a number of subcategories there, but the broader category is that tendency to engage in sexual acts with the inmates, including requests for sexual activity, for example, of flashing and the like, and to do so without the consent of the inmates and I rely on that with respect to all counts.

Members of the jury, I'm almost done. Simply, I say this, before when you deliberate, it's obviously an onerous task. These are plainly serious matters, and you need to, and I'd ask you to look at the evidence of course very closely and no doubt, you will and you'll take your oaths very seriously. Can I suggest

VIQ:SND

D15

that in this case, of course, you've got to look at all the evidence and there'll be evidence which, as I've just gone through, that tendency evidence, I'm not going to go to the law on that.

5 That's her Honour, her Honour's the judge of the law as to how you can use that. But there is support to be found for what these various women have said. Some find support in the admissions, what Mr Astill said at the Orlando Bar to Mr Brumwell, the complaints that are made soon after in some cases, some case sometime after. Some support found by other officers as to their own
10 observations. In particular, Mr Clark, Ms Berry, Ms Barry in the case of the slapping on K's backside. Think of the demeanour of the various witnesses as they gave their evidence.

15 And there's some evidence here of people who have various complaints having done the wrong thing in the past, and they're in jail. They're in jail serving sentences. There's no question about that. But please don't look at this simplistically, they're in jail, that doesn't mean that these things didn't happen, and I don't say that to distract you for a moment. You need to be
20 satisfied beyond reasonable doubt, but when you look at the compelling accounts that have been given to work out what happened, how the evidence was given, conduct of the accused to be used in a particular way as her Honour will tell you, you can use them. What he said to Mr Brumwell.

25 When you assess his credibility and look at the plethora of lies that he's told, and when you listen as you have, and you reflect upon what these various women in particular have told you, and looking at their accounts realistically, making due allowance for the human failings, that people don't remember
30 everything exactly the same, the same time, trauma that people have gone through. If what is said to have happened has in fact happened, then you'd be satisfied, I'd suggest of each of the counts on the indictment, the misconduct, and that these acts, 1, the sexual acts, they all happened, and they happened without consent.

35 Her Honour will talk to you about what consent means in the eyes of the law. Members of the jury, I simply say this, this is not consent. It's the jail. He's a senior corrections officer. These woman, as I said before, they're down there, and he's up there, and please think long and hard, when those women have variously said, this is why I didn't come forward, I'd suggest to you that that is
40 well and truly understandable. When you look at it in their shoes as best any of us can.

45 When you look at those misconduct charges, having to be satisfied as you have of the serious nature of it, that you reflect on Mr Astill's duty. What was he required to do here. What did he not do. What did he do, not just not promoting the objectives of the corrections system, including rehabilitation. What did he do which worked against it, against rehabilitation. What did he do which far from preparing inmates for release to go back in the community, with the ideal at least, perhaps it is idealistic, that they go back in the community as
50 rehabilitated people, as some people can, despite what the Daily Telegraph might have us believe. Not everybody leaves jail of course, and goes on to be

VIQ:SND

D15

a lifelong criminal. Sometimes people get on with their lives. That's the aim.

5 What message did he send, members of the jury, in his misconduct. You go
back in the community knowing that the system is broken, that you can't trust
the system, that authority figures not to be trusted. That just doesn't promote
rehabilitation, it pushes directly in the opposite direction. So I raise that in
particular with respect to the misconduct. And I raise it for this purpose only,
it's not to appeal to your emotions. It's because that misconduct has to be of a
10 particular seriousness, and I suggest to you for the reasons I've said, it is that
seriousness, including his high rank, their role. Not employer/employee.
Jailor/prisoner. His actions were not welcome. There was not consent. His
misconduct was serious.

15 Members of the jury, I respectfully suggest when you reflect on the evidence,
you reflect on what I've said, indeed what Mr Tyler-Stott says, and of course,
the all important summing-up, and those all important directions of law her
Honour will give you, that you return verdicts of guilty on each count,
notwithstanding and no doubt - I don't get to go last, but no doubt Mr Tyler-
Stott quite properly will point to things and say, well this is different, and this, or
20 this, this couldn't have happened here. When you reflect on that as you
properly should, remember that there are frailties in memory that people are
recalling things.

25 I've said it before, this is very important. It's not apply a higher standard to
people trying to recall events than we would apply to ourselves. Whether their
sophisticated soles, perhaps not very intelligent soles, whatever. People trying
doing their best to recall what happened, and I simply ask that you make
proper and due allowance for that, bearing in mind all the while, and I don't shy
away from it. You'll be told again several times, and rightly. You have to be
30 satisfied beyond reasonable doubt, and members of the jury, I suggest to you,
you would be satisfied beyond reasonable doubt of all the counts on the
indictment. Your Honour, that concludes my address. Thank you for your
attention, members of the jury.

35 HER HONOUR: Yes, thank you. We might have a break, ladies and
gentlemen, before we commence Mr Tyler-Stott's closing address.

VIQ:SND

D15

IN THE ABSENCE OF THE JURY

TYLER-STOTT: Your Honour, I say hope only because I need to check the technology. That's the only thing.

5

HER HONOUR: That's okay. Like I said, if you wanted them to have a bigger break between the addresses, I understand that, but I only said that because I understood from yesterday you'd rather start a bit before lunch.

10 TYLER-STOTT: Only just because they might be a bit fresher, your Honour. They might wain towards the afternoon. I might ask for an early mark.

HER HONOUR: Up to you.

15 SHORT ADJOURNMENT

SPEAKER: The jury, your Honour.

HER HONOUR: Yes.

VIQ:SND

D15

IN THE PRESENCE OF THE JURY

HER HONOUR: Yes. Thank you, ladies and gentlemen. Yes, Mr Tyler-Stott.

5 TYLER-STOTT: Thank you, your Honour. Ladies and gentlemen, the term
beyond a reasonable doubt has been used often. It is the highest standard
known to law. That's the standard that you must apply when considering your
verdicts. The picture on the screen is from exhibit A, p 45. This is J-right.
10 Ms Barry gave some evidence about this, where she said that this is where
they congregate. It's where they watch movies. It's where they cook. It's
where they clean. It's where they play games. Look at that area, ladies and
gentlemen, there's not a lot of secrets that can be kept. They are captives.
They are prisoners. If there's something salacious, something interesting,
everyone's going to know about it.

15 Information would spread like wildfire. So when you're considering the
tendencies that the Crown is putting forward to you, consider where the
information came from. Whether or not there's a prospect of contamination,
whether or not the rumours and innuendo, the false complaints, have actually
20 created a picture of a man that is false. It's very true that Mr Astill didn't do his
job properly. That's very clear by his pleas to the misconduct counts. But
when confronted, and it took a little while, yes, but when confronted with the
evidence, particularly the conversation with Mr Schreiber, he came clean. In
his record of interview, at least, with Ms H and toward the end of it, the end of
25 that record of interview, he was saying it was like his world was falling apart.

That's why he lied in various respects. And you might understand that. True it
is. He shouldn't have put himself in that position, but he did. In his record of
interview he talks about the loss of his wife, Margaret, to motor neurone
30 disease in 2016. And that was the precursor to the relationship with H. That
has a little bit of - you can picture that happening. He's lost someone very
dear. And he was receiving some welcome support from H. He said that in his
record of interview. And it just simply makes sense, ladies and gentlemen.

35 Ladies and gentlemen, I'll just move to the next slide, which just has the
J unit-right from another angle. They're not expanse - it's not expansive
accommodation. It's almost like a social experiment to a degree. People on
top of each other. You heard Mr Crown say the tension, the boil over, the
40 fights. This is the context in which these complaints come. Now, if we start
looking at the evidence you might remember, Ms C very first complainant to
give evidence. And I've taken this from exhibit C p 14. You all have this. And
you can refer to it, no doubt, in your own time. But this particular - of course
my computer would pack up just when I'm trying to make a closing to you, but
I'll labour on if I can.

45 Ms C talked about 19 March being a day on which she found out her brother
'WITNESS C'S BROTHER'S NAME' was going in for an operation. When I
cross-examined her, "Yes, that is stuck in my mind", I paraphrase. But it was
very clear to her. And on that day, she said Mr Astill took advantage of her,
50 started rubbing her thigh. Now if I just go down a touch, you'll see just where

VIQ:SND

D15

I've got the mouse cursor under the 19th, which is a Saturday "RPA hip Op", sad face, "Call". She was very clear about that.

5 But when we look at the rosters for the day, the third entry down 19 March 2016, rest day. We've looked at two competing pieces of evidence. It doesn't make sense. It doesn't mean that there was nothing that happened with Mr Astill on other occasions. But what it does depict is someone who is trying to back capture, and paint a picture that is false. I'd say that that is something that is completely open for you to conclude when you analyse the evidence.
10 And that is exhibit v the rosters, and that is p 13.

I'll move to the next diary entry of C being 21 January 2016. Well, you notice the title, photograph of diary of C 21 January 2016. AX push up, under the 21st. She says that these kisses, or attempted kisses happened on three to
15 six occasions. We have one entry. She's trying to back capture and failing dismally. You look at his rosters. And when I was cross-examining her, she sort of prevaricated a little bit, and "Oh, it I could have been the 21st or 22nd". She would not nail the colours to the mask (as said) because she could see what was coming. This is p 11 from exhibit V. And if we go down, 21,
20 22 January, both days, he's on a rest day. And thereafter he's on visits. It doesn't correlate. This is when we start analysing the evidence from the very first of the complainants.

Now, you would think, and she gave evidence that this was likely the first
25 occasion that there was any touching, that you would make an entry on the day if it was so abhorrent to you. She has not done that and that much is clear when you look at the rosters. 30 November 2015, asked comments, DVD. I think she ended up saying that it wasn't, in re-examination, it wasn't necessarily 30 November because it just happened so frequently.
30

30 November, you'll see there, ladies and gentlemen, the previous page – p 8 of exhibit C. This p 10 of exhibit V and it shows that he is on annual leave and days off for effectively two weeks, if not more. She's not finding any support whatsoever. This diary is a construct. A further diary, and this, ladies and
35 gentlemen, is 27 and 28 August 2015, p 5 of exhibit C, where she has, "Picture you on boat," and you can see that at the bottom of the screen. When we move to the rosters, you can see there sick leave, rest day. He's nowhere near it. Ladies and gentlemen, C is trying her best to extract money from the state with her false complaints.
40

Next we have 12 August 2015, further diary entry. Page 4 of exhibit C, all over
tan, and that appears under 12 August and he's a supervisor, medium needs. Ladies and gentlemen, we're not saying that there wasn't something that happened with C. He's pleaded guilty to that particular count concerning his
45 misconduct with her. There was an inappropriate sexual relationship but that does not lend weight to the remaining six counts on the indictment concerning C. When you look at her evidence, she talked about Mr Astill grabbing her vagina, compared against hot slicing, completely different terminology, completely different actions.

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737

(TYLER-STOTT)

VIQ:SND

D15

She talked about Mr Astill always offering her things. It does not appear in her statement, which she confirmed, that was eight pages and 34 paragraphs. She also said that whatever happened took place after U left. She left on 29
5 January and we have a diary entry which says AX on 21 January. She's all over the place. You cannot accept what she has to say concerning the actions of Mr Astill. Thereafter, you have the request for money which went through Mr Kogan. DD requesting \$50,000 before Friday. DD, in her evidence, said,
10 "Give us the money and C will keep her mouth shut". That's extortion. There's no other word for it. Wasn't another means to get compensated, it was extortion. She knew it.

You cannot accept much of what C has to say. Ms C, and I'll come back to it, C talked about the flirtatious nature of H. That is a bit of a theme amongst
15 witnesses, which I will take you to in due course. What I hope to do, ladies and gentlemen, is to take you through the primary principal witnesses. I'm not going to be referring to specific counts. I'm going to be talking about their evidence, what you can and what you may not accept.

20 Ms K, I would suggest that there's a lot of moving pieces, a lot of moving parts in this particular matter that's demonstrated by the length of the trial, the number of names that have been mentioned. V's name came up a couple of times. It was a feature of Mr Astill's record of interview. It was a feature of what he had to say to Mr Schreiber and just because he's told lies in some
25 cases, doesn't mean you'd outright reject what he has to say. You might remember that V committed a fraud and a murder. The murder was related to the fraud.

I'd submit there's not too many lengths that she wouldn't go to - to throw
30 someone under the bus if she could achieve it. She had plenty of time to think about it, and she occupies a reasonably senior, if you listen to the record of interview, position within the gaol, a respected position within the gaol, so much so that M and R went to speak to her. Seeing Mr Astill's record of interview, he said he took away V's power. She smashed up her room. B was
35 the one who cleaned it. I beg your pardon, it was in the listening devices, exhibit S and the transcript was S1, p 32. After she says, "It's not over, I'll ruin you".

I would submit that K falls under V. K's initial complaints are also a little bit
40 unclear. K said she was in a room with V, B, W. She didn't say anything because she was too embarrassed. That's not what W says. W said she made a complaint. I'd submit that what it shows is the opportunity to talk, to get stories straight, to think about how to put Mr Astill in the firing line, which probably wasn't too difficult given the situations he's put himself in.

45 Was it a slap? Was it a grab? The first incident? Very different things, I would submit to you. You might think that something like that occurring, you would be able to accurately describe what has actually taken place. You would know the difference between a slap and a grab. It's a matter for you, ladies and
50 gentlemen, how you assess her evidence. And I'll come back to K a little bit

VIQ:SND

D15

later. Ms H, and I'll move to the next photo shortly, denies being flirtatious in her evidence, in crossexamination, she denied being flirtatious. That sits in contrast to the evidence of

5 P, X, C, and I gave some evidence that she saw interactions between Mr Astill and H on a number of occasions, and she did not look uncomfortable. If anyone was going to pick it up, it would have been I. This rash, the protestations, the excuses, when did they occur? Did they occur early? Did they occur mid-2017? Did they occur in 2018?

10

The evidence, I'd submit, isn't particularly clear on the point. And you might understand why. People are trying to remember things that happened many, many years ago. But just because someone had an aversion, a rash, a nervousness, doesn't mean that at some stage there wasn't a willing and consensual relationship. Perhaps it dawned upon H that what she was doing wasn't the best idea. She was being looked upon, frowned upon by her inmates. Perhaps that's what caused her reaction sometime later.

15

You need to look at the evidence of this flirtatiousness. And why did she deny it? She said "No, I wasn't flirtatious" in complete contrast with a number of other witnesses. If she makes that concession, it creates the door which opens to the relationship. We move to the diary of H - I beg your pardon, the calendar, rather. And before I get there, obviously, she has marked a number of dates in January. Mr Astill was working. No question about that.

20

She's also marked a date in December 2016. He was working. No doubt about that. Because his name appears, doesn't mean that what took place wasn't consensual. She might have been suspicious. She might have been covering her tracks. She might have been curious. It might have been exciting. Gaol is, no doubt, a boring place to be. You've heard it said that Mr Astill occupied a high position. Perhaps there's some willingness to try and curry favour with a man in power. It doesn't mean it's not consensual.

25

But when we move to August 2017, there is absolutely nothing. Nothing in her calendar. She says, "Well, I didn't have access to it", which I'd submit is false. You can see there's a number of entries on that particular calendar. There's nothing that would indicate that she hasn't been making entries on the days the calendar represents. And this is a time when the incident, the encounter in the BIU occurred. We agree that there was something that happened in the BIU, it just didn't happen in the way that H said it did.

30

35

And this, ladies and gentlemen, is exhibit G. There was a curious feature of H's evidence about this. Mr Astill, a man in a position of responsibility, he's been around the gaol, he knows the ins and outs, asks H, "Are these cells camera-ed?". That makes no sense. H apparently said "Not unless there behind that mirror", or whatever it was. And, no doubt, you'll go to exhibit A and have a look at the rooms in the BIU, and you'll see that reflective mirror. Mr Astill knew they were not camera-ed.

40

45 It was rather H who didn't. She'd just come back, she was new to this

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VIQ:SND

D15

particular area. You might understand that it might have been her who would query whether or not they are under camera. It just makes no sense that Mr Astill would ask H for that piece of information. And Mr Astill gave - well, participated in a phone call which was recorded. This is exhibit X. The transcript is X2. And on p 2, he says,

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"So I've fucking opened the door and said, 'Oh, how you going?' I've got those forms for you.' She virtually grabs me and pulls me into the cell and says, 'Is there any cameras in here?' I said, 'Oh, how you going? How did you go to trial?' She said, 'Oh, I got, you know, fucking eight years because, you know, whatever, whatever, whatever. No. I got convicted of, um, manslaughter with excessive force.' I said, 'Oh, that's - okay, it's better than murder' 'Yeah' and then she pulls me towards her and says 'Oh, is there any cameras in here?' I said 'No, they're outside, you know.' She said 'I've missed you and I've missed this', rubbing me up, grabbing me on the cock, you know?"

And he goes on to give this little piece of information,

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"So we, um, this is - this is what - what did occur. So, you know, she fucking gives me a rub up, fucking and - and - and the kiss, but the peak on my cap hit her in the forehead, right? Yeah. So she reached up and turns my hat around."

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And he goes on to describe what took place in the BIU, which I'd submit has a ring of truth about it. When you consider the camera comment, it just makes no sense. And that little detail about the cap, it just gives it the ring of truth. If it wasn't consensual, why doesn't it appear on the diary? She says she didn't have access to it, it's pointless. Not particularly satisfactory explanations, I would submit to you, particularly when you look at what follows. The cucumber incident, the cup of seminal fluid, which is denied. Both of those incidents is denied, or are denied.

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You might think the horrific nature of that might warrant a mark in a calendar. But there is nothing. Nothing to reflect that. She has an entry on 6 September, periods, 21st, got monthly pills. Nothing about a cucumber, nothing about a cup of seminal fluid. It doesn't make sense, ladies and gentlemen, why you would not? When you have access to a document you can make notes contemporaneously, why you would not? Things on her version are escalating and escalating significantly.

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I'd submit that H was duplicitous. She acted one way in front of the inmates and another in front of Mr Astill and another in front of you, ladies and gentlemen of the jury. She made a claim for compensation. I'm not saying that a claim for compensation means you're lying but it's something that you need to consider in the overall context. She was unemployed. She had, you'd see, a conviction for a very serious offence. You might remember in evidence she had a sentence for another offence while she was in custody and her complaint against Mr Astill was a factor that was taken into account on her sentence as far as the onerousness of her conditions in custody. These are

VIQ:SND

D15

things that need to be taken into account. It's not a matter for the defence to prove the motivation but I'd ask you to consider it when you're thinking whether or not she is a reliable and credible witness.

5 Mr Brumwell, he gave some evidence and we agree with this, that when they were in Orlando, 2018, Mr Astill told him of a consensual relationship. If it was non-consensual, why would he tell Mr Brumwell what was going on underneath his own nose and knowing that Mr Brumwell has an ethical obligation to raise it, which he ultimately did in January of 2018, '19, rather, and it is H who
10 directed O in Mr Astill's direction for assistance.

If she was being treated, if she was so uncomfortable, if she had such an aversion to Mr Astill, why would she send O in his direction? There was the complaint that was lodged by O and T. H was well aware of that and when
15 spoke with O, O said she was bullied. She had some corroboration there. She could have gone somewhere with that complaint. She didn't. Why was that? Because it was a consensual arrangement between the two of them.

20 And when you're being asked to apply your common sense and everyday experience and collective wisdom, that might be a very difficult task because your experience is nowhere near, I would submit to you, anything that these witnesses have gone through. They're all in gaol for various crimes, have all had various upbringings and in that gaol, no doubt it's survival of the fittest.

25 Be cautious when you're applying or seeking to apply your common sense, collective experience and wisdom. You might remember Q. She was touched on the back of the hand and the wrist. She was stroked, she says. Peter Foster, the officer took a complaint and recorded stroking of the arm. Q said that it definitely wasn't the arm, it was the hand. It didn't change.

30 You might remember that she had a number of fraud offences, a number of matters of dishonesty on her record, a totalling of \$200,000 and she used a previous name that she went by, Q as a referee when she was applying for a job. You're very cautious and circumspect when you approach
35 your evidence and Mr Astill made some reference for this young lady in his phone calls, please bear with me, which I'll come back to but what he does, and I think it's in exhibit X and the transcript is number 1X1, talks about Q and her biting her fingers and him telling her that it was an unsanitary thing to do. That was an unguarded comment that he made to someone on the phone
40 when he didn't know he was being surreptitiously recorded. It's at p 4 and I thank my solicitor, 11 March 2019.

45 "Now I grabbed her hand because she had it in her mouth and working among inmates' linen and dirty clothes and that. I said, 'Don't' and her nails were bit back to the quicks and I said, 'Don't fucking do that, Q. You'll catch germs in here, man, you know?' and while she's claimed I stroked hand."

He's provided an account which is completely contradictory to what she says

VIQ:SND

D15

and in the circumstances of her record and the inconsistencies I'd submit you'd have difficulty accepting what she has to say. Your Honour, I was about to start on O. Is that a convenient time, because she'll be a little while.

- 5 HER HONOUR: Yes. The jury have been listening attentively for some time now to both of you, yes. Ladies and gentlemen, would you like to go out for lunch and we'll resume at 2 o'clock, thank you.

VIQ:SND

D15

IN THE ABSENCE OF THE JURY

HER HONOUR: Yes, thank you. Will you finish this afternoon or how long did you want to go for?

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TYLER-STOTT: Your Honour, is it possible to go for about 45 minutes to an hour and then perhaps come back and wrap up in the morning?

HER HONOUR: Yes. You got any objection, Mr Crown?

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CROWN PROSECUTOR: No objection.

HER HONOUR: Yes, I suppose in line of, I suppose, the speed the trial has been going and the fact that there's a fair bit to listen to, okay, so we'll go for another block this afternoon and then we'll call it a day and then you can complete tomorrow. Just both of you need to remind me about the ballot before I send 15 out to consider but I think I'll be a little while anyway in, summing up, so I will have a break after you because I need to plug in some of the things that you say in any event, so okay, we'll take it as we go but yes, it's fine.

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TYLER-STOTT: Thank you, your Honour.

HER HONOUR: I'll adjourn.

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LUNCHEON ADJOURNMENT

Mr Tyler-Stott, I'll let you just indicate when you wish to cease for the afternoon.

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TYLER-STOTT: Thank you, your Honour.

VIQ:SND

D15

IN THE PRESENCE OF THE JURY

HER HONOUR: Good afternoon, ladies and gentlemen. What we're going to do now, Mr Tyler-Stott's going to continue with his closing address and he's going to go to a time where, probably another 45, 50 minutes and then we'll see, but we might call it a day then because it's hard listening to everyone speak to you so intensely so just so we don't get the late afternoon distractions for yourselves. Mr Tyler-Stott will then complete his closing address in the morning and then I'll commence my summing up. There may be some gap between his closing address and my summing up because there'll be a few things that I need to put in my summing up after his closing address but we'll at least commence the summing up tomorrow. Yes, thank you, Mr Tyler-Stott.

TYLER-STOTT: Thank you, your Honour. Ladies and gentlemen, I was just about to start on with O. You might remember that she gave some evidence about Mr Astill withholding some birthday cards; her birthday was on 15 September 2017 and if you have a look at these, I'll just move to the roster records, you'll see that Mr Astill was on leave for a very lengthy period of time over the September period so whatever O attributes to Mr Astill certainly wasn't by design and it's disputed. I finish with that now so what I might do is just close that. That was p 26 and 27 of exhibit V. X gives some insight into O. It was a bit of a running joke, apparently, she gave some evidence on 4 August this year and said,

“It always, I suppose, a little bit of a joke when Mr Astill was working in our area. O would always put make up on and make her hair look nice and things like that. So and then 99% of the time, Mr Astill would turn up in the high needs area.”

This is an observation of X, give it the weight you think it deserves, but it certainly stood out in her mind. She made a connection and we don't have a great deal of evidence surrounding O's interactions with Mr Astill so I urge you to give that some consideration when you're considering the interactions with Mr Astill and O. O, her first language wasn't English, it was Arabic. She had the assistance of an interpreter. Her first statement, which she gave in 2019, made no reference to anything sexual with Mr Astill.

It was some two years later, after she approached the police, that she made these disclosures about Mr Astill. That is plenty of time to cook up a story in Dillwynia where there are already a number of allegations made, rumours floating, no doubt rife. Mr Astill wasn't at the centre anymore so there should have been no fear of retribution. He left the centre in about February 2019, hasn't been back after he was charged. O provided her statement on 16 July 2019.

HER HONOUR: What was the date, sorry?

TYLER-STOTT: 16 July 2019. It wasn't until, I believe, it was September 2021, I'll check that overnight, but I believe it was September 2021, when she provided a statement to police outlining the disclosures. There was a claim for

VIQ:SND

D15

compensation in the mix and I'd submit that's a very real consideration in this, giving the length of time it took O to go to the police and make the statement that she did.

5 O was hoping to have an appeal. You heard that she was sentenced, that legal aid had refused to represent her on the basis of merit, that was her evidence. She was looking for outside sources. Mr Astill was attempting to provide details. You might think that may have been a significant incentive for her to ingratiate herself to Mr Astill. It may not have been at all Mr Astill's
10 intention to provide money, to provide legal representation but O may have perceived that it was.

Now, it was said that her evidence was raw. You would pay some attention to her demeanour. She gave evidence through an interpreter, you'll remember,
15 and her evidence in chief in the questioning from the Crown was very different to cross-examination. Her demeanour completely changed. At one point she apologised for, it would appear, losing a temper.

As Mr Crown said, there were some witnesses who were better than others. O
20 was one of the better witnesses but what you might expect is that a performance such as that where O's statement was in front of her. You'll remember she asked for a break. She appeared to be struggling if you read the transcript. She had a break. All of a sudden she was going gangbusters after that. She had a statement next to her and she was looking down at it. I
25 suggested that to her in cross-examination and she said, "Yeah, well, I was looking at it but I wasn't reading it".

Bear that in mind when you come to assess her evidence, please. Most
30 witnesses don't have the benefit of a document in front of them. They give their evidence from their memory as best they can and it's only under certain circumstances with permission that one is able to refresh their memory from statements.

Mr Brumwell provides some insight into Mr Astill's interpretation of what was
35 going on. He made a statement about her anatomy, how smooth she was and that's very clearly consistent with, Mr Astill would think, a consensual relationship and again I asked a rhetorical question, why would Mr Astill tell a fellow employee or colleague of a non-consensual sexual relationship? Why would he put himself in such jeopardy? It seemed humorous to Mr Brumwell
40 and that's because it was a consensual relationship. He didn't seem to have too much of an issue with it and just in closing on O and I'll revisit these in very brief terms tomorrow. Just remember, there is a claim for compensation.

There's a two year gap in providing a statement. X said that she seemed to be
45 fond of Mr Astill and O certainly didn't have any support or anyone in close proximity to her. She didn't have children. She didn't have family. Mr Astill seemed to be, perhaps shouldn't have been, but may have represented to her a little bit of hope and when things don't come to fruition she attempts to use the situation, as many others have, including Miss H and Miss C.

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.17/08/22

745

(TYLER-STOTT)

VIQ:SND

D15

Ms M. I just want to turn to - excuse me for a moment, exhibit X1 is the transcript and you'll see at p 4 he's talking about his interaction with the police, that a brief of evidence is being prepared and he says that they questioned him about three girls in particular and you'll see that one of those girls was indeed M and that's at p 38 of Mr Astill's record of interview and he says this about M, I'd ask you to conclude. "Now, one of them come to my office one day and we kissed. Yeah, and she sort of freaked her out a bit. So that was the end of that. We talked and she went." So that was Mr Astill's account of what he says took place with M.

10 Then he goes on to say, "Now, another girl, I grabbed her hand" and I think I've already gone over this and the police questioned Mr Astill about Q at q 434, I believe, of his record of interview. He goes on at p 16 and at times it may be difficult to pick up who he's talking about and, well, it begins at the top of p 16 and I'll read it to put it in context. "Yeah, and this...of the year," goes on, "and the other one's a fraudster". You might remember Q had committed frauds to the value of in excess of \$200,000. "She's probably already out and the other girl I kissed, she's out. Oh, okay, and she'll probably never come back to gaol again. She is a nice young girl. What she initiated frightened her." That's how Mr Astill perceived what took place with M.

Mr Astill concedes a kiss. M does not. It's interesting that when M's mother, her mother, comes to visit her on the Mother's Day weekend, M's mother said that she was told by her daughter M that there was an altercation. Doesn't say a kiss. An altercation. On p 437 in the evidence in chief,

30 "You mentioned that she had told you about an altercation with a guy. When did she first mention there being an altercation? When we first went in there, when we first went in to do the visit and I could speak to her and she was, we were at the table".

Inconsistent with what M says took place. Give that some thought when you come to consider the strength and voracity of her evidence. M, when she was giving evidence, had no recollection of a ring that she'd worn that came from Mr Astill. Her friend R gave evidence that, yes, she put on a ring from Mr Astill and according to R, stroked her hand. Why don't you remember something like that? Something clearly significant. It might reflect a degree of reciprocity and perhaps that's why she wants to paint a false picture of what took place in that room. She was also confused about the locking of the door, whether he followed her with keys and then she speaks with V and everyone else and it flows on from there. She had also made a claim for compensation, which I'd ask you to give consideration when you come to consider her evidence.

I move now to N. Her name comes up quite a bit. She provided an original statement on 30 April 2019. She does not say anything about any sexual touching whatsoever. 28 April 2021, another statement, and she does. She also had, you might remember, some difficulty when she was giving evidence, despite the significant opportunity to remember one of the allegations, which was her hand on Mr Astill's penis. She was asked, "Well how did you know if he had an erection?", thinking perhaps it'd trigger her memory. "Oh yeah,

.17/08/22

746

(TYLER-STOTT)

VIQ:SND

D15

because I had my hand on his penis". It didn't eventuate, and it wasn't until the following day, "I can't remember if it was the following day, or the adjourned period, I'm sorry. I'll reflect on that overnight." Yes, first thing she says, "Oh yeah, now I remember the hand on the penis". She then also got the order
 5 mixed up. I asked her on page 498,

"Q. Ms N, just finally, if I can just please have the order of the touching of your breasts, the touching of the penis, and the touching of your genital region. In what order did it take place?
 10 A. He touched my breasts first. He then put his hand up my shorts to my vagina second, then he grabbed my hand and placed it on his penis third."

Then I ask her to just turn to her statement of 28 April 2021, paragraph 4. I
 15 ask her to have a look at paragraph 4. My question,

"Q. You say that he had the arm, and that wasn't against your throat. He touched you on your breasts with the same hand. Is that correct?
 20 A. Yes."

It goes on if you read through.

"Q. You then say he took hold of your left arm, pulled it towards him to make you touch his penis. Is that correct?
 25 A. Yes, it is."

Q. Then finally at paragraph 5 you say, 'He was really close to me up against the wall, and I could feel he had an erection. I was wearing shorts and a T-shirt at the time. Mr Astill put his hand between legs and left it there."
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So she got the order wrong. The description's quite different, and you might remember when she was demonstrating the touching of her breast or breasts, it was a very loose description, if I can put it in that euphemistic way. So I'd
 35 submit that her evidence wasn't particularly convincing, and you take those particular features into account as well as the fact that she has also made a claim for compensation. I know I may sound like a broken record, but it is an important feature that I'd ask you to think about when you're assessing these witnesses. These witnesses who have, it would appear, significant criminal
 40 histories. Probably very little prospects once they get out of jail, and thinking, what do I do once I get out. Here's a golden ticket, and it's Mr Astill. Hence the significantly delayed complaint.

I might move past V. I'll touch upon her tomorrow to some degree. It won't be
 45 long. There was EE. She gave some evidence about S. And what she described doesn't appear, if you accept it, to have been a non-consensual relationship, or non-consensual touching. She did say that she felt quite disgusted in herself, and when she was asked what S had told her, S had told her, she said, "Well, Mr Astill made her", and then she corrects herself, says,
 50 "Asked her to sit on his knee" and thereon it goes. If you accept that, there's

VIQ:SND

D15

an absence of - well, I'll rephrase that. It would appear completely consensual.

And I'll come to S shortly, but before I do that, D. She had her head down most of the time. You're being asked to assess a witness on their
5 presentation, their appearance, their demeanour. Very difficult to do in circumstances where she had her head down pretty much the whole time. She appeared to not be paying attention to what was going on, even in questions from my learned friend, Mr Crown. Then from me also, and she might have appeared to you to have been under the influence of something.

10 You need to take this into account when you're assessing her evidence, and the best form of defence is perhaps attack, and that's what occurred when I went to the particular allegation. You might think it shouldn't have come as much of a surprise that I'd be suggesting that it didn't happen, but yet we got
15 that very extreme response. You heard some evidence that she'd been fallen foul of the law and stolen an ice pipe. It gives you an insight into perhaps the type of drug that she may have been on. She did not appear to be completely - I'd suggest to you that she appeared to be intoxicated by some substance. And that was put to her, she denied it.

20 There was also not a great deal of detail on the actual sexual encounter itself, and how it finished. And on top of that, my broken record again, there was a claim for compensation. Please take that into account when you are coming to her evidence. Ms S. When she was giving her evidence initially, she
25 demonstrated when she was being held that she pushed her hands outwards in front of her in - please bear with me one moment. Yes, outwards in front of her. It was the bear hug from behind.

30 When she was demonstrating in cross-examination, she pushed downwards where the hands were likely to be across her navel. She had a significant criminal history. She was there that day for a break, enter and steal, that she entered a plea to. She had 60 frauds on her record. And she had stolen from various storage units. This must be relevant when you come to consider the character of the person who was giving evidence before you, who you're asked
35 to accept beyond a reasonable doubt. There was no evidence of a claim for compensation. That doesn't mean it's not going to come.

Ms A. In her evidence in chief, she described one push, that is her on
40 Mr Astill. She originally said that Mr Astill asked her sex before there was any touching. Then when Mr Crown further questioned her about having been held, she said that Mr Astill asked her sex while she was being held. In cross-examination, she said it was before she was being held and sex was only mentioned once. She also gives evidence of two pushes in
45 cross-examination. She's very inconsistent, in my submission to you. Yes, people will make mistakes but on significant issues such as those, I'd submit that you're entitled to take that into account when considering the veracity of her evidence.

She also, when she was describing a push or demonstrating a push, at 649, I

VIQ:SND

D15

was describing it for the record, and I said, "The witness has placed her hands near her breasts but not touching her breast with the palms facing inwards, sort of a clasping motion. And then you moved your arms outwards." and then she shows that but then resiles from that in a few questions concerning how the actual push took place.

These are important matters, and they're matters of which you're entitled to take into account when you're considering your verdicts. My computer wasn't working earlier. It's now working, and I just wanted to take you to a few, and then I'll wrap up for the day if her Honour pleases and I'll be quite brief tomorrow, just with a summary. I referred to various people describing, and I'm going back to H just briefly. Various people describing H and her flirtatious manner. 258, and this is in P's examination-in-chief. In terms, this is a question from the learned Crown in terms of her personality,

15 "Q. Was she quiet? Was she loud? Was she friendly? What was she like with the women in gaol?

A. Friendly, friendly.

20 Q. When you said she was sometimes flirtatious, did that ever include with Mr Astill?

A. Yes.

25 Q. What other officers did you say that included?

A. Just Astill."

In cross-examination, 261 of the transcript, "P," this is a question from me,

30 "Q. Ms P, what was inappropriate and disgusting that you saw?

A. Just the way she'd hang around him and laugh and carry on and get stuff off him.

35 Q. And how often did you see them hanging around and carrying on like you've just described?

A. Every time that he was the chief in the high needs for the day.

40 Q. And around this time, did you observe whether or not P left the unit to go and see Mr Astill?

A. No, it was the times when we were out on the compound and he would call her to go inside, go to the seniors' office."

Ms C, p 96,

45 "She'd seemed quite flirtatious with him and would spend periods of time hanging around outside his office or just talking to him in the compound. And I noticed that at times he was hanging around her cell area, which, to me, because I had experienced it, I could identify, was inappropriate."

50 She went on to say, in answer to a question,

VIQ:SND

D15

“Q. When you say she appeared flirtatious, what sort of thing did you see happen?

5 A. I had seen her body language. Yeah, her body language was quite flirtatious. She would pose herself in a way that looked inappropriate between an officer and an inmate, and she would flick her hair and she would be really giggly. Yeah, in my opinion.

Q. Beg your pardon?

10 A. Yeah, my opinion was that it was openly flirtatious type behaviour.”

Just moving to Ms X. “I beg your pardon, Ms C,” in cross-examination at 116, 35, I asked,

15 “Q. What did you say to her?

A. I said to her that he's not the person you think he is. It's a game she shouldn't be playing. That everybody on the wing is watching her behaviour and it causes problems. And I spoke to her from the way that without telling her exactly what had gone on that I experienced and I was struggling to manage him myself and I didn't want that for her.

Q. Did you talk to her about flicking her hair and sticking her arse out?

A. Did I say that to H?

25 Q. Yes.

A. Possibly.

Q. Was that based on observations?

A. Correct.

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Q. Where did you make those observations?

A. Outside her cell, when she was in the smoke out, during lunch break. When we go out for lunch break outside the high needs office, yeah, in those places.”

35

And then Ms I, I asked,

“Q. Did you witness many interactions between Ms H and Mr Astill?

A. Yes.

40

Q. What sort of frequency?

A. On a weekly basis.

Q. Did you see them interact?

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A. A couple of handful times a week.

Q. And did you ever - I beg your pardon, I interrupted you.

A. She said she would go in.

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Q. She would go, you mentioned.

VIQ:SND

D15

A. Into his office, clean his office, bend over in his office. I saw him touch her on the bottom several times in the office.

Q. And did you witness H's response to being touched?

5 A. No, not really.

Q. In the interactions, is it fair to say Ms H didn't appear uncomfortable when dealing with Mr Astill?

10 A. Correct.

Q. You were in the J unit from 15 May 2017 through to 9 November 2018. Is that about right?

A. I believe so, I've - yep, a reasonably lengthy period of time."

15 Direct observations at a time when these allegations, non-consensual allegations that are said to have taken place, you have direct evidence from Ms I. You have evidence from others leading up to these where she was flirtatious. She was open. There's no evidence from these witnesses that she was guarded in any way with Mr Astill. It's quite the opposite. Your Honour, I
20 know that was brief, but I don't think I've got long to go. If I could have tomorrow and I'll be probably briefer.

25 HER HONOUR: Yes. Okay, ladies and gentlemen, you've heard that, we'll let you go now. Please, of course, we're at the critical stages of the trial and I will be commencing my summing up at some stage to you tomorrow after Mr Tyler-Stott has finished. Please have a good night tonight and we'll see you for a 10.00 start tomorrow morning. Thank you very much.

VIQ:SND

D15

IN THE ABSENCE OF THE JURY

HER HONOUR: Yes, thank you. Take a seat, Mr Astill. I'm going to use just the time now to hopefully just get this errata done so that going forward -
 5 because I am imagining that there's going to be a request for transcript pretty soon. In relation to the first few days, I'll read on record, and I've also put in the aspects that I had seen as well.

THE FOLLOWING ERRATA WERE NOTED:

- 10
1. Page 1 to 5, the date in the bottom left "17/07/22" amended to "27/07/22".
 2. Global change, "H" to read "H".
 - 15 3. Page 14 line 13, "C another inmate" amended to "C and another inmate".
 4. Page 15 line 7, "she had several rolls" amended to "she had several roles".
 5. Page 15 line 39, "what I want you to do" and then "and you have heard that
 20 he has done a similar thing on other occasions".
 6. Page 18 line 31, "Shirley" amended to "Cheryl".
 7. Page 24 line 15, "Schmack" amended to "SMAP".
 - 25 8. Page 29 line 9, "tired" amended to "tried".
 9. Page 31 line 13, "her" amended to "him".
 - 30 10. Page 32 line 44, "V" amended to "V".
 11. Page 33 line 7, "V" amended to "V".
 12. Page 37 line 28, "I" amended to "I and J".
 - 35 13. Page 39 line 2, "thousand" amended to "to."
 14. Page 39 line 4, "he engaged inappropriate" amended to "he engaged in
 40 inappropriate".
 15. Page 39 line 34, "intimidation is not a count on the indictment"
 16. Page 41 line 23, "he'll probably get you for this" amended to "he'll get you
 45 for this".
 17. Page 42 line 20, "will" amended to "were".
 18. Page 43 line 25, amended to "as witness will give evidence there".
 - 50 19. Page 49 line 44, "1 August 2022" amended to "1 August 2018".

.17/08/22

752

VIQ:SND

D15

20. Page 59 line 15, "securely" amended to "security".
- 5 21. Page 50 line 50, "have that brought in" amended to "have any items brought in".
22. Page 51 line 4, "has" amended to "hasn't".
23. Page 52 line 17, "may" amended to "they".
- 10 24. Page 59 line 4, amended to "the go to low needs".
25. Page 75 line 23, "o'clock" amended to "All right".
- 15 26. Page 81 line 9, "28" amended to "128".
27. Page 83 line 49, "23(?)" amended to "23".
28. Page 90 line 50, amended to "My father is - my father on one of his visits".
- 20 29. Page 91 line 43, "and sometimes" amended to "aerobics style exercises".
30. Page 92 line 3, amended to "leggings".
- 25 31. Page 92 line 32, "A" amended to "A"
32. Page 93 line 11, amended to "am I allowed to refer".
33. Page 93 line 18, "as" amended to "a".
- 30 34. Page 104 line 43 "nickers" amended to "knickers".
35. Page 104 line 44, "earning" deleted.
- 35 36. Page 108 line 30, amended to "avoid going".
37. Page 109 line 11, "had been up on our wing, that is possibility" amended to "had been up on our wing, that is possibly"
- 40 38. Page 109 line 17, "say" amended to "stay".
39. Page 109 line 43, "did you say that to me" amended to "did you say that to him".
- 45 40. Page 109 line 48, "my" amended to "me".
41. Page 110 line 44, amended to "pick them up".
42. Page 111 line 14, amended to "a equals all over tan".
- 50

.17/08/22

753

VIQ:SND

D15

43. Page 112 line 28, "asked" amended to "arse".
44. Page 112 line 35, "in" amended to "on".
- 5 45. Page 113 line 32, "A" amended to "A".
46. Page 121 line 31, "asked" amended to "arse".
47. Page 122 line 7, "my mother" amended to "her mother".
- 10 48. Page 130 line 6, amended to "Q. You were".
49. Page 133 line 24, "a equals all over tan"
- 15 50. Page 134 line 49, "can" deleted; to read "did you make".
51. Page 140 line 44, "he answer" amended to "her answer".
52. Page 148 line 17, "and see and there" amended to "and see from there"
- 20 53. Page 150 line 27, amended to "would be thrown out would you like them".
54. Page 150 line 35, "is there another way to get sweaty" amended to "I can think of another way to get sweaty".
- 25 55. Page 156 line 19, "short" amended to "sort".
56. Page 157 line 32, "interrupted" amended to "intercepted".
- 30 57. Page 157 line 42, amended to "phone call about".
58. Page 173 line 38, amended to "Italian equals Indian".
59. Page 175 line 24, amended to "an Indian not Italian".
- 35 60. Page 175 line 36, amended to "it was where".
61. Page 181 line 46, "it" amended to "was it".
- 40 62. Page 185 line 13, amended to "friendship with JJ".
63. Page 185 line 29 and 30, page 186 line 3, "V" amended to V".
64. Pages 202 to 253 footer, "H" amended "H".
- 45 65. Page 184 line 39 and 41, "Barry" amended to "Berry".
66. Page 187 line 31, "Barry" amended to "Berry",
- 50 67. Page 188 line 5, amended to "Barry".

.17/08/22

754

VIQ:SND

D15

68. Page 189 line 45, amended to "her".
69. Global change, "H" to read "H".
- 5 70. Global change, "Z" to read "Z".
71. Global change, "Y" to read "Y".
- 10 72. Page 208 line 23, "want - want to moo" amended "wanna move"
73. Page 211 line 34, "where" amended to "were".
74. Global change, "jail" to read "gaol".
- 15 75. Page 222 line 24, "strikeout section" amended to "[STRIKEOUT BEGINS]
And the look that Mr Mirza had given to myself and to Mr Astill - he knew
something wasn't right. [STRIKEOUT ENDS]".
- 20 76. Page 226 line 29, "address" amended to "dress".
77. Page 226 line 31, "fear of being able" amended to "fear of not being able".
78. Page 227 line 32, "I stop because" amended to "I stop you because".
- 25 79. Global change, "X" to read "X".
80. Global change, "CC" to read "CC".
- 30 81. Page 230 line 7, "Again, had been turned around" amended to "Again, had
me turned around".
82. Global change, "Vergo" to read "Virgo".
- 35 83. Page 240 line 46, "shipped out to SMAP" amended to "shipped out of
SMAP".
84. Global change, "C" to read "C".
- 40 85. Page 242 line 8, "subsequent" amended to "subsequently".
86. Page 247 line 49, "Mam" amended to "Ma'am".
87. Page 249 line 27, "ever seen" amended to "overseen".
- 45 88. Page 252 line 15, "relevance" amended to "reference".
89. Global change, "O" to read "O".
- 50 90. Global change, "G" to read "G".

.17/08/22

755

VIQ:SND

D15

91. Global change, "F" to read "F".
92. Global change, "E" to read "E".
- 5 93. Global change, "D" to read "D".
94. Global change, "A" to read "A".
- 10 95. Global Change, "S" to read "S".
96. Page 286 line 12, amended to "Original office".
97. Page 293 line 31, amended to "This side of Mr Astill"
- 15 98. Page 294 line 40, amended "Saw the her packing".
99. Page 295 line 35, "2" amended to "to".
- 20 100. Page 295 line 44, amended "Don't know how".
101. Page 296 line 23, "Can't" amended to "Can".
102. Page 296 line 34, amended to "Forms are for".
- 25 103. Page 296 line 46, "Smack" amended to "SMAP".
104. Page 297 line 33, "Them" amended to "The".
- 30 105. Page 298 line 10, "Recognition" amended to "Recollection".
106. Page 301 line 28, amended to "From the governor".
107. Page 301 line 39, "You've" amended to "Interview".
- 35 108. Page 302 line 37, "Some amended to "Same".
109. Page 303 line 9, amended to "You don't have a copy".
- 40 110. Page 303 line 18 to 19, amended to "O".
111. Page 303 line 38, amended to "Inappropriate".
112. Page 304 line 14, amended to "Accidental".
- 45 113. Page 304 line 27, amended "Both had an".
114. Page 304 line 28, amended "Some sort of".
- 50 115. Page 304 line 28, amended "Her to get her moved".

.17/08/22

756

VIQ:SND

D15

116. Page 304 line 44, amended to "He not a chief".
117. Page 305 line 14, amended to "Tania".
- 5 118. Page 305 line 24, amended to "Leanne".
119. Page 306 line 10, amended to "Securely for an evening".
- 10 120. Page 320 line 41, amended to "Support of".
121. Page 324 line 28, "Of a" amended to "At".
122. Page 325 line 36, amended to "She had needed".
- 15 123. Page 326 line 15, "J block; for high".
124. Page 327 line 32, "Works" amended to "Work to".
- 20 125. Page 328 line 12, amended to "Because I wasn't".
126. Page 328 line 17, "Part of" amended to "Pardon".
127. Page 333 line 27, "Service" amended to "Inmate".
- 25 128. Page 335 line 40, "Get my number" amended to "Get a number".
129. Page 341 line 29, "I'd try" amended to "I tried".
- 30 130. Page 342 line 5, "Crutch" amended to "Crotch".
131. Page 342 line 25 and 37, "X" amended to "X".
132. Page 344 line 17 and 25, "Suggest you" amended to "Suggest to you".
- 35 133. Page 345 line 4, "Write" amended to "Wrote".
134. Page 345 line 29, "X" amended to "X".
- 40 135. Page 346 line 36, "E" amended to "E".
136. Page 347 line 8, amended to "Tania".
137. Page 351 line 40, 42, "Berri" amended to "Berry".
- 45 138. Page 365 line 22, "The girls" amended to "The other girls".
139. Page 368 line 18, "..(not transcribable).. " amended "Bully".
- 50 140. Page 370 line 8, "Not your" amended to "Not use your".

.17/08/22

757

VIQ:SND

D15

141. Page 373 line 9, "..(not transcribable).." amended to "This was.
142. Page 375 line 9, "..(not transcribable).." amended to "Door locked".
- 5 143. Page 376 line 25, "Lawyer" amended to "Liar".
144. Page 376 line 38, "Check on" amended to "Check if you were on".
- 10 145. Page 377 line 18, amended to "Back to muster".
146. Page 378 line 46, "Catch" amended to "No...for me it felt like lifetime".
147. Page 380 line 32, "You'll be" amended to "You can".
- 15 148. Page 383 line 30, "Needs" amended to "Feels".
149. Page 383 line 37, "..(not transcribable).." amended to "Same".
- 20 150. Page 385 line 29, "..(not transcribable).." amended to "I threw it in the bin".
151. Page 385 line 43, "..(not transcribable).." amended to "End".
- 25 152. Page 386 line 23, Delete "A witness".
153. Page 388 line 34, "Provided with you" amended to "Provided you with".
154. Page 390 line 3, amended to "Ma'am".
- 30 155. Page 392 line 36 to 39, "..(not transcribable).." amended to "High needs".
156. Global change, "R" to read "R".
- 35 157. Page 402 amended to "Buy ups".
158. Page 403 line 29, "The" amended to "My".
159. Page 405 line 26, "Mr" amended to "Ms".
- 40 160. Page 405 line 41, "Demonstrate then by ducking" amended to "Demonstrated then by ducking your"
161. Page 414 line 32, "Did you say" amended to "Did he say".
- 45 162. Page 419 line 48, amended to "MIN".
163. Page 420 line 46, "An afternoon" amended to "Nap".
- 50 164. Page 438 line 20, "B" amended to "B".

.17/08/22

758

VIQ:SND

D15

166. Global change, "Berri" to read "Berry".
167. Page 449 line 12, "Assist" amended "Assistant".
- 5 168. Page 455 line 44, "Mean" amended to "Meant".
169. Page 455 line 46, "And" amended to "An".
- 10 170. Page 459 line 23, amended to "Bathroom break".
171. Page 468 line 10, "Austen" amended to Austin".
172. Page 471 line 14, amended to "GG".
- 15 173. Page 472 line 7, "Way" amended to "Where".
174. Page 482 line 30, "So just not" amended to "So just now".
- 20 175. Global change, "D" to read "D".
176. Page 567 line 31, "Tessariero" amended to "Tesoriero".
177. Page 597 line 9, "Marywade" amended to "Mary Wade".
- 25 178. Page 617 line 28, "I was, yes" didn't say should be ruled out.
179. Page 617 line 16, amended to "Exhibit R played to Court".
- 30 180. Page 625 line 10, "Evidence with" amended to "Evidence which".
181. Page 625 line 10, amended to "And what they should".
182. Page 625 line 36, "Asher" amended to "Usher".
- 35 183. Page 628 line 29, amended to "This is 5 January".
184. Page 642 line 25, amended to "Mr Plunt".
- 40 185. Page 642 lines 27, 34, 44, 47, "PLUNT" amended to "CROWN PROSECUTOR"
186. Page 643 lines 30, 32, "Ground" amended to "Crown".
- 45 187. Page 645 lines 26, 37, "Astor" amended to "Astill".
188. Page 659 lines 10, 22, "Kogan" amended to "Cogan".
189. Page 664 line 4, "Blakefield" amended to "Blunt".
- 50

.17/08/22

759

VIQ:SND

D15

And that's it.

CROWN PROSECUTOR: Just to come to the - there's a couple--

5 HER HONOUR: I'll just have a look at those ones that you're in dispute about. And there was another one, wasn't there, that I raised with you.

CROWN PROSECUTOR: You did, your Honour, there's two.

10 HER HONOUR: Gosh that's an arduous process, but yes.

CROWN PROSECUTOR: It is. There's two your Honour raised at page 156, 19, it should read "Sort"--

15 HER HONOUR: Thank you. The other one was?

CROWN PROSECUTOR: --conversation. The other one was 320, I think your Honour raised, line 41, "Support off", that was the governor, "Support off the governor".

20

HER HONOUR: So it is "off" rather than "of". Just sounded odd.

120. Page 320 line 41, "Support off".

25 That's that done, thank goodness. Anything else? I'm going to have a verdict document that I'll show you at some stage tomorrow, but I'm trying to get the elements document done tonight. So I might have that emailed later on or first thing in the morning to have a check.

30 CROWN PROSECUTOR: Yes.

HER HONOUR: As I said, after you give your closing address, Mr Tyler-Stott, I probably will take a little time, or I might start, and then have a break, just so I can make sure that I've put in what you both said. Is there anything else?

35

CROWN PROSECUTOR: Not for the Crown's part, your Honour.

HER HONOUR: No, okay. The errata can be put under the same as the first section of errata, whatever that was. Just add that new document on to that.

40

ADJOURNED TO THURSDAY 18 AUGUST 2022

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APT:SND

D1

TR66082
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IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF FIFTEEN

THURSDAY 18 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL**NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****SUMMING-UP**

IN THE PRESENCE OF THE JURY

HER HONOUR: Thank you, ladies and gentlemen. I am going to commence my summing up to you now.

Before I do that, can I just raise the fact that I have read your jury note and understand that you are seeking a copy of the transcript as a whole. That is fine and it is getting prepared for you. So what will happen, it is quite lengthy, of course, as you would appreciate, I will have, provided to you, two copies of the transcript of the evidence of each of the witnesses. It is getting processed. It may take a little while but you will have it, we hope, before you start deliberating.

What I propose to do is effectively break up my summing-up into three main areas. It is going to be firstly the general and then the more substantive directions in law that you need to listen to and then it is going to be this afternoon at some stage, the elements of each offence. What happens with that is that I have prepared a written document and that is what we have been discussing in relation to that. It is quite a lengthy document because you know that there are basically 44 charges on the indictment that you have to decide upon. And what it does is break down into each of the counts and each of the

APT:SND

D1

TR66082
REVISED

complainants, so I have basically broken it up into the complainant by complainant so that you can deal with it that way.

That is going to take a little time for us to go through this afternoon and it is pretty heavy going. So, if we get through to the end of that, I will be happy. The final part of the summing-up tomorrow morning, I am hoping, will be just a summary of the closing addresses of both Mr Crown and Mr Tyler-Stott. Now, they have only been recently done so do not worry too much. I am not going to be going into every aspect that they spoke to you about but it is just their main points that I will be reminding you of, and then giving you some final directions and then, of course, because there are 15 of you and you know that there is a jury that decides by law of 12, we will have to be doing the ballot before I send you out to retire to consider your verdict. So all of that is going to take place tomorrow. So the jury of 12 will be considering their verdict tomorrow at some stage, probably in the morning. So we will get to that and see how we go. Maybe I am underestimating how long I am going to take but that is what I am hoping.

So, members of the jury, the accused stands before you on an indictment which now ultimately has listed 44 counts of allegations of sexual assault and misconduct charges concerning ten complainants and that is what you have to decide. To each of these charges you have heard that the accused has pleaded 'not guilty'. And, of course, the seven counts on the indictment that he has pleaded 'guilty' to do not require your consideration nor a verdict from you.

So, it is now my duty to sum up the case for you and to direct you on the issues of law. At the end of the summing-up, you are going to retire, 12 of you, where it will be your duty and your responsibility to consider whether the

APT:SND

D1

TR66082
REVISED

accused is guilty or not guilty of the charges and return your verdicts according to the evidence that has been presented in the courtroom over the last few weeks.

Now, I will take this opportunity of reminding you at this stage, that at all times you are free to ask any questions about the legal directions that I am about to give you and you can ask as often as you like or as often as you need.

Now, I am going to start, as I said, with a number of general directions, some of which will mirror those that I gave you at the start of the trial. And it is important that I do that again, not just to remind you of what I said, but also to place those directions in the context of the trial now at this stage, so that it makes more sense to you.

The reason for the repetition is that it is fundamental to the performance of your duties as jurors that you understand the role that you must play in this trial and the way that you are to decide the issues that are in dispute and ultimately whether the accused is guilty or not guilty.

So, what I said earlier was, in a sense, an explanation to you of the part you are expected to play in the trial and to tell you that it was necessary for you to participate in the determination of the factual issues in this trial.

Now, the first direction I give you is that you must accept these directions of law. That is because my responsibility as the presiding Judge in this trial is solely in the area of the law. So during the trial so far, that has involved me ensuring that the rules of evidence and procedure have been followed. And you no doubt appreciate the number of times that you have been sent out of the courtroom so the questions of law can be dealt with - the fact that

APT:SND

D1

TR66082
REVISED

argument also occurred in your absence also reflects the difference in our respective roles. Now, I am required to give directions of law that bind you and you must accept the law as I state it to be.

Now, the next direction I wish to give you concerns your functions in this trial. It is your responsibility to decide or determine the factual matters that are in dispute, so when reaching your verdict, you go about that by applying the principles of law which I give you, to the facts of the case, as you find them to be. The facts of the case and the verdict you return is for you and you alone to decide because you alone are the judges of the facts.

In deciding what the facts of the case are, you must have regard to the whole of the evidence. If I happen to express any views upon questions of fact, you must ignore those views. That is what I mean when I say that you are the judges and the sole judges of the facts of this case. If you think I am hinting one way or another about how you should find a fact, I am not. I am entitled to express a view. I do not, however, propose to try to persuade you one way or the other in this case. That is not my task. I may, though, when a particular issue arises, suggest to you that there is no real dispute about it, so that you might understand. That, of course, is my view, and it is open to you if you wish to reject that view if it does not match up with your own independent assessment of the evidence as it stands.

Now, it is also up to you to evaluate all of the evidence you have heard in this case and to decide what evidence you accept and what evidence you reject. It is up to you to decide what weight or importance you give to any particular piece of evidence or what inferences you can draw from that evidence. Now, I will tell you how to approach inferences shortly. What I

APT:SND

D1

TR66082
REVISED

propose to do, is focus attention upon the parts of the evidence in this trial that will assist you in understanding the directions of law that I give you. Of course, it is necessary for you, in deliberating, to consider the totality of the evidence and not only the evidence to which I refer to, or which has been referred to by counsel. So you will be relieved to know that I am not going to go through each witness and summarise their evidence.

Your fact-finding, which is entirely your role, will depend upon your assessment of the witnesses. The assessment of a witness is a matter of commonsense and experience, which is informed by the evidence. You are expected to use your general knowledge and your life experiences, your understanding of people and human affairs and your ability to judge your fellow citizens, even those that are in a custodial setting. You have to determine whether you accept the witness as being honest and accurate in the account that they have given you, in other words, is the witness whose evidence you are considering both truthful and reliable? Bear in mind that truthfulness or honesty on the one hand, and reliability on the other hand, are not necessarily the same thing. You can have the most honest witness who is trying his or her hardest to give you an accurate account of the events as that witness perceived them, but such a witness might be seriously mistaken in his or her observation or memory.

It is open to you to accept some only of what a witness says and to reject another part of what the same witness says. So, the fact that you think that a witness is being honest and reliable at some part of their evidence does not mean that you have to accept everything that that witness says, and the opposite also applies. The decision about what evidence you accept and what

APT:SND

D1

TR66082
REVISED

evidence you reject can be based on all types of things, including what the witness had to say, the manner or way in which the witness said it and the general impression which he or she gave you when giving their evidence. You may take into account the demeanour or the behaviour of witnesses but do bear in mind that witnesses are unfamiliar mainly with giving evidence, and may find the environment in Court difficult or unnerving.

In dealing with the evidence of people who are describing their experiences during a stressful event, you take into account the circumstances they were in at the time, as well as the stress that they were under. Some details may impress themselves on the memory of a witness. Some may escape their attention altogether. The details they observe will depend on what is engaging their mind because, of course, our minds are not a video camera recording. You may also consider the actions or the conduct of witnesses at the time of the alleged incident and afterwards, to assess whether what they did is consistent with what they said has happened to them. Apply your common sense and experience of life - is that how you expect the individual to react if what they said was true? Remember, though, that it may not necessarily be how you would react. We are all individuals and we all have our own individual responses.

You should take into account the insight that you have gained during the trial about the individuals in question and the custodial setting in which many of the witnesses are based in, the age they were and the circumstances they were in at a particular time. Consider also any inconsistencies between accounts that were given and accounts which may have been given on a previous occasion, for example, in statements. If you find that there may have

APT:SND

D1

TR66082
REVISED

been inconsistencies, it is you who determine the extent of any inconsistency and whether that has any bearing on your assessment of the reliability of the particular witness's evidence.

All of these matters - the honesty or truthfulness and the reliability of witnesses - are for your assessment and your assessment only. Consider all of the evidence in the case, rely on what you believe is true and reject what you disbelieve. Give each part of evidence the importance which you, as judges of the facts, think it should be given and then determine what, in your judgment, are the facts.

There is no special skill involved, apart from careful attention - and your common sense is often a very useful guide. In particular, and I cannot stress this too strongly, you are expected to use your commonsense and your ability to judge your fellow citizens so that you bring to the jury room, during the course of your deliberations, your own life experiences, which must necessarily be as different as there are 12 of you at that time. It is that concentration of your own experience and your own individual qualities, wisdom and commonsense which is the critical foundation of the whole of the jury system.

Now, the next direction I must give you is that being sole judges of the fact, you must act as judges are required to act. Acting judicially requires that you act dispassionately, without emotion and act on the evidence according to reason. You have very important matters to decide in this case, important not only to the accused but also to the whole community. The privilege which you have in sitting in judgment upon a fellow citizen is one which carries with it corresponding duties and obligations.

APT:SND

D1

TR66082
REVISED

In deciding the factual issues, you must not act irresponsibly or irrationally - this is an exercise in assessing the evidence clinically and without emotion. You are not entitled to find, as a fact, something you would like a fact to be, rather you are obliged, by the oath that you gave or the affirmation that you took, to determine all relevant issues of fact according to the evidence that has been presented in the course of the trial over the last three weeks and you must be scrupulous about that.

The random selection of persons within our community to sit as jurors in a criminal trial is adopted not only to ensure that a jury is impartial, but also to ensure that it is representative of the community in general. You are all of different ages, different backgrounds, different upbringings and you no doubt represent a cross-section of the community's wisdom and sense of justice. You each bring with you to the jury room and you are expected to use your individual qualities of reasoning, your commonsense, your experience and your understanding of people and human affairs. You each have something valuable to offer and you each have an obligation to listen to one another's opinions in order to resolve the issues that you are here to decide.

Now, the most fundamental and important features of our criminal justice system are the subject of the next directions I am going to give you. One is called the presumption of innocence.

It is, and always has been, a critical part of our system of justice that people tried in this Court are presumed to be innocent unless and until they are proved guilty beyond reasonable doubt. That is known, as I said, as the 'presumption of innocence'. What it means is that a person charged with a criminal offence is presumed to be innocent unless and until the Crown

APT:SND

D1

TR66082
REVISED

persuades a jury that the person is guilty beyond reasonable doubt. The accused has the benefit of that presumption, as does every other accused in Australia.

At no stage of this trial is there any onus or obligation on the accused to prove that he is innocent. The job of proving guilt rests on the accuser in our system and that accuser is the Crown. Now, Mr Crown appears on behalf of the Director of Public Prosecutions and has assumed the role in this trial, as the prosecutor does in any criminal trial, of proving the guilt of the accused.

It is precisely because the Crown bears the onus of proof that there is no burden of proof on the accused to prove he is not guilty. Simply stated, it is not for the accused to establish his innocence but rather for the Crown to establish that he is guilty beyond reasonable doubt.

In a criminal trial, there is really only one ultimate issue. Has the Crown proved the guilt of the accused beyond reasonable doubt? If the answer is yes, the appropriate verdict is guilty. If the answer is no, the verdict must be not guilty.

The expression "beyond reasonable doubt" is the subject of my next direction. It is the standard to which the Crown must prove the guilt of the accused. The expression "proof beyond reasonable doubt" means what it says and requires no explanation. Indeed, trial judges are not really allowed to explain it any further. But it does not mean that the Crown has to prove the truth of every statement made by each and every Crown witness, nor does it mean that you have to find in favour of the Crown on every issue or fact that arises and is disputed by the defence, nor do you have to attempt to resolve every apparent conflict in the evidence that might arise. What the Crown must

APT:SND

D1

TR66082
REVISED

prove and prove beyond reasonable doubt are the essential ingredients or the elements of each particular charge on the indictment which I will get to this afternoon.

At this stage, your decision as to the proper verdict on each count must be a joint decision. That means that your verdict, whether it be guilty or whether it be not guilty, must be unanimous - that is the verdict of you all. You must all agree that the accused is guilty before that can become your verdict. Likewise, you must all agree that the accused is not guilty before you can acquit him of a count on the indictment. It is not the case that because you cannot agree that he is guilty, that you must find him not guilty. A finding that the accused is not guilty is just as much a verdict, which must be unanimous, as a finding that he is guilty.

This requirement that your verdict be unanimous does not mean that each of you must agree upon the same reasons for your verdict. What you must all agree upon is what the verdict should be, but you do not have to agree on the reasons why you consider that verdict to be appropriate.

As you may know, the law permits me, in certain circumstances, to accept a verdict which is not unanimous, but those circumstances may not arise at all in this trial. So when you ultimately retire, the 12 of you, I must ask you to reach a verdict upon which each one of you is agreed upon. Should, however, the time come when it is possible for me to accept a verdict which is not unanimous, I will then give you further directions.

It is also very important that you reach your verdicts based upon the evidence in the trial and only on the evidence - not speculation, not suspicion,

APT:SND

D1

TR66082
REVISED

not even grave suspicion and not any extraneous material that was not part of the body of the evidence that is now before you.

So the evidence is comprised of the exhibits that have been tendered and marked, for example, exhibit A, and the oral evidence of each of the various witnesses whom you have seen and heard and what has been recorded on the transcript. The evidence was given from the witness box and from the AVL screens and from documents - there are photographs, DVDs, listening devices and telephone intercepts. All of that you have copies of and that you will have the original, for example, the CDs and the DVDs with you in the jury room when you retire to consider your verdicts.

I do not intend in this summing-up to refer to all the evidence that is before you. Any attempt by me to summarise the evidence will necessarily be selective and would carry the risk that I might convey an unbalanced picture of the evidence. I will, however, refer to those parts of the evidence in order to place my directions in context for you, so that they are more easily understood.

As you have also requested, you can have a transcript of the evidence of each of the witnesses that have given evidence. But in relation to the transcript, I again remind you about the potential of inaccuracy. It is recorded, the evidence of any witness that has been given in the Court and we have checked the transcript of the evidence each night. We check it to try and make sure that it is as correct and accurate as possible. But, as I said repeatedly throughout to you, it is other humans that are doing the transcribing. They do a fantastic job but, of course, there is going to be some errors. So if, for example, you were not confident that a word on the transcript is actually a word that a witness had said, all you need to do is let me know and we can

APT:SND

D1

TR66082
REVISED

listen to the evidence again and confirm what the accurate word is. So if that arises, just please let me know.

Now, I want to tell you about some things that are not evidence. A few things that you have heard during these last few weeks are not evidence. This summing-up is not evidence. The actual questions of counsel are not evidence. So, something suggested by a lawyer in a question of a witness, particularly this might occur in cross-examination, which is usually with the preamble, "I suggest to you" or "I put to you" is not evidence of that fact suggested or proposed, unless the witness accepts the suggestion as being true or unless there is evidence about that fact from another source.

So let me give you a practical example. Imagine a lawyer asks a witness, "I suggest to you that you were at the SCG last Sunday when Collingwood beat the Sydney Swans." Now, if the witness was to say, "Yes, I was there on last Sunday at the SCG," then you have evidence that that witness was there on Sunday watching the AFL game. If, however, the witness was to say, "No, I wasn't there," at that stage of the trial, you have no evidence that that witness was there at the SCG last Sunday watching Collingwood. Unless, for example, later on in the trial, there was further evidence, for example, CCTV footage, or the person sitting next to the person gave evidence that they were there at the SCG. So the question itself is not evidence. It is the answer that is given that is evidence.

So you will recall also that I told you that the purpose of a Crown opening was to outline the Crown case and the nature of the evidence intended but the Crown opening itself is not evidence in this trial, and nor are the closing addresses of both counsel. They were their arguments and their submissions

APT:SND

D1

TR66082
REVISED

to you, based upon the evidence which you may properly take into account when evaluating the evidence, but the extent to which you do so is entirely a matter for you. Each of the closing addresses were intended to assist you and it is important that you consider all that each party said to you. You do not need to accept any submission or argument counsel made in their closing addresses. But if, having independently reviewed the evidence, you agree with a submission put to you by either counsel, you can adopt it. In effect, it becomes your own argument. If you do not agree with a submission counsel has made to you, then you simply put it to one side.

As I have told you, you alone are the judges of the facts. So whilst I will also endeavour in the summing-up to summarise the main arguments put to you by each counsel in their address, I certainly do not intend to repeat or refer to every submission each made. Nevertheless, you should bear in mind all that counsel have said, and not allow yourself to be influenced by the fact that I do or do not refer to a particular submission or argument that counsel have made.

Now, types of evidence. There is some evidence that might prove a fact directly. So a person who saw or heard or did something may have told you about that in their evidence and whether you accept that evidence is a matter for you to decide. Documents, photographs and items such as interview recordings put into evidence as exhibits may also prove a fact directly.

But in addition to facts proved directly by evidence, you are also entitled to draw inferences, that is deductions or conclusions, from facts that you find established by the evidence. There is nothing extraordinary about that. We do it consciously or otherwise in our everyday lives.

APT:SND

D1

TR66082
REVISED

If you are satisfied that a certain thing happened, it might be right to infer that something else occurred, and that is a process of drawing an inference from facts. So let me give you a practical example. Suppose you went to sleep. It had not been raining for weeks on end. It was a hot night, but when you woke up, you saw that there was water all over your driveway and over your clothes and over your car. Now, the inference or the deduction or the conclusion that you may make is that it had rained overnight or rained just earlier in the morning and you missed it whilst you were asleep.

As far as the law is concerned, it makes no difference whether a fact is proven by direct evidence or by the proven by the drawing of inferences. Although people often think that facts proved by the drawing of inferences is weaker than facts proved by direct evidence, that is not necessarily so. What ultimately matters is how strong or weak the particular evidence is and not what type of evidence it is. You are entitled in your role as judges of the facts to draw inferences or conclusions from direct evidence in order to find another fact proven or, indeed, in order to find an element of an offence proven.

However, before you do draw any conclusion or inference in that regard, you must ensure that the conclusion or inference that you make is valid, justified and reasonable. So, going back to the rain example, when you think about it, you might realise that the possible inference I suggested, that there had been rain overnight, might be questionable. Perhaps for the first time the neighbour put on his sprinkler and it went too close to your yard and put water all over your driveway, over your car and over your clothes, so that that initial inference that you drew - that it had rained - was invalid, it was unjustified and it was unreasonable.

APT:SND

D1

TR66082
REVISED

So it is important when drawing inferences from evidence you accept in order to find an element of an offence alleged, the final conclusion you seek to draw must be one that is reached beyond reasonable doubt.

In determining whether an inference or conclusion has been proved beyond reasonable doubt, you are entitled to look at the combined force of the pieces of evidence of facts and circumstances and consider them together. You do not look at one piece of evidence in isolation and ask whether the conclusion that the Crown asks you to be drawn can be drawn from that piece of evidence alone. It may assist you to consider the pieces of evidence to be like pieces of a jigsaw puzzle. While one piece on its own is not very helpful, when more than one piece is put together, that puzzle may start to become clearer.

When putting pieces of evidence together to draw an inference or a conclusion, you must be careful not to jump to conclusions. It is sometimes easy for a person to be persuaded of a fact on the basis of insufficient evidence or evidence that turns out to be coincidental or wrong. Once convinced of that fact, the person may then seek support for that fact in other evidence, perhaps by distorting the evidence to fit their theory or perhaps by disregarding inconvenient facts, so please make sure you do not do this.

Keep an open mind, be prepared to change your views if necessary, and you must not use guesswork when you are drawing conclusions from evidence. While we might be willing to act on the basis of guesswork or speculation in our everyday lives, it is certainly not safe to do so in a criminal trial.

APT:SND

D1

TR66082
REVISED

Now, the next direction I must give you relates to the right to silence and the fact that the accused waived this right to participate in a recorded interview on 20 February 2019, which is exhibit W before you, and he elected not to be a witness in the trial by giving evidence in response to the Crown's case. There are a number of important directions of law which I must give you in relation to those two facts.

All people, ladies and gentlemen, in this country have a right to silence - that is, to choose not to answer questions put to them by police - except I think there is a certain couple of traffic ones. But it would be quite wrong if an accused exercised his right to silence - a fundamental right that every one of us holds - and it was used against him by the jury in any way at all. So under our law, an accused person has that right to silence.

You have heard that the accused waived his right when he participated in a recorded interview with police, and you have that before you as exhibit W and the transcript W1 (and, of course, remember what I said about transcripts generally). He gave his account of the certain allegations that were put to him at the time. Of course, he was not cross-examined on his account at that time. In the end, of course, it is for you to determine whether or not you accept his account in whole or in part and what weight you give it.

Flowing from that fundamental right to silence is that although an accused person is entitled to give or call evidence in a criminal trial, there is no obligation for him to do so. As I have already pointed out, the Crown bears the onus of satisfying you beyond reasonable doubt that the accused is guilty of the offences charged. The accused bears no onus of proof in respect of any fact that is in dispute. I remind you that he is presumed innocent until you have

APT:SND

D1

TR66082
REVISED

been satisfied beyond reasonable doubt by the evidence led by the Crown that he is guilty of a particular offence charged. Therefore it follows that an accused is entitled to say nothing and make the Crown prove his guilt to the high standard required. I direct you, as a matter of law, that the accused's decision not to give evidence in the trial cannot be used against him in any way at all during the course of your deliberations. That decision cannot be used by you as amounting to an admission of guilt. You must not draw any inference or reach any conclusion based upon the fact that the accused decided not to give evidence. You cannot use the fact to fill in any gaps that you think might exist in the evidence tendered by the Crown, and it cannot be used in any way as strengthening the Crown case or in assisting the Crown prove its case beyond reasonable doubt. You must not speculate about what might have been said in evidence if the accused had elected to give evidence.

It is important to remember in the context of this direction regarding the facts that the accused participated and elected to participate in a recorded interview. That is, the Crown must still prove the accused's guilt beyond reasonable doubt. It is not for the accused to prove his innocence, and that fundamental principle has not changed or been qualified in any way simply because he elected to participate in a recorded interview.

So, this means that you must not find the accused guilty merely because you reject his account that he gave in the recorded interview, if you do. To find the accused guilty of the offences alleged against him, you must be satisfied that the Crown has proven all the elements of that particular offence being considered beyond reasonable doubt.

APT:SND

D1

TR66082
REVISED

If, having considered all of the account the accused gave and the submissions of counsel in relation to such evidence, you all accept the account he gave, then of course your unanimous verdicts would be 'not guilty' because it would follow that the Crown had not established all the essential elements it must prove. If, having considered the account the accused gave in the interview and the submissions in relation to such evidence, you all find that you do not positively accept the account he gave in the interview but you nevertheless hold a reasonable doubt as to whether the Crown has proved any element of any particular charge it must prove, then likewise you must find him 'not guilty'.

In other words, it is not the position that you have to believe that he is telling the truth before he might be entitled to be acquitted because, as I have directed you many times now, there is no obligation on the accused to prove anything at all, and that includes that he carries no obligation or burden to persuade you to accept this evidence, nor does he carry any obligation or burden to locate evidence, locate witnesses or prove anything at all. Simply put, the Crown must satisfy you beyond reasonable doubt that you should reject the accused's account as being a reasonable possible version of the facts, and furthermore that the evidence that the Crown relies upon to prove the particular offences is reliable.

Flowing from that, it would not have escaped your collective observation that there is conflict between the evidence of each complainant (in various ways) and the account given by the accused, for example, in relation to the nature of their relationship, and his behaviour towards them.

APT:SND

D1

TR66082
REVISED

But it is most important that you understand that you are not here simply comparing competing versions as to what occurred and then merely selecting the version that you might prefer. Even if it be the case that you prefer the evidence relied upon by the Crown to prove the particular charges on the indictment, you cannot convict the accused unless you are satisfied beyond reasonable doubt as to the reliability of the evidence relied upon by the Crown to prove that count, in particular the evidence of each complainant. Now, that task is a very different one to simply comparing versions and then picking one that you might prefer. It all goes back, ladies and gentlemen, to the onus on the Crown to prove each count and each element of the count beyond reasonable doubt.

Now, in this case as well you have also heard and seen many complainants and many other witnesses give their evidence in a remote room - the CCTV room or AVL room or interstate and even internationally - and some with a support person present and some others without. It is important that I remind you that this is a standard procedure for matters of this type and, for the current state that we now live in due to COVID. So you must not draw any inference against the accused or give the evidence of any greater or lesser weight simply because of the adoption of this standard procedure or the presence, for example, of a support person in the room.

Now, I will go on for probably another five minutes, five to ten minutes, and then we will have a break and we will come back for 2 o'clock.

Now, as I said, the trial involves 44 counts on the indictment for your consideration and it relates to ten complainants. Now, that is as a matter of convenience and because there is a connection between the allegations made

APT:SND

D1

TR66082
REVISED

against the accused - all were female inmates at the Dillwynia Correctional Centre, where the accused was working as a senior correctional officer. But you must, of course, subject to my direction on tendency, consider each charge separately on the indictment, as I directed you earlier. And giving separate consideration to the individual counts means that you are entitled to bring in verdicts of 'guilty' on one count and 'not guilty' on some other counts if there is a logical reason for that outcome.

In relation to the counts which involve a particular complainant, for example, counts 1 to 6 in relation to C, if you were to find the accused not guilty on one of those counts - and particularly so if it was because you had doubts about the reliability or the credibility of the complainant's evidence - then you would have to consider how that conclusion affected your consideration of the remaining counts concerning that complainant. And, for example, if you were to find the accused not guilty on one of the counts concerning, for example - and I am just plucking the complainants out of the air - N, if that was because you had doubts about the reliability or credibility of that particular complainant's evidence, then you would have to consider (it is really just common sense) how that conclusion affected your consideration of the remaining counts on the indictment, considering, for example, that complainant N.

Now, the next direction I wish to give you is that you have heard that it has been suggested by the Crown that the accused lied during the trial, and he basically points to three areas of lies. One, the accused's assertion that he suffered from erectile dysfunction to the extent that he was incapable of obtaining an erection - and that was to Officer Virgo on 7 February 2019, which

APT:SND

D1

TR66082
REVISED

is exhibit R; to Governor Shriber on 13 February 2019, which is exhibit S; in his ERISP initially or through his ERISP on 20 February 2019, which is exhibit W. Yet you have heard that the accused admits to having sexual intercourse with H, O, I, J, E, and the agreed fact document, exhibit Z, that the statin medication could have no effect on his erectile function.

The other area or the other lie is that he never brought tobacco or contraband in the Dillwynia Correctional Centre for the inmates, and that was to Governor Shriber on 13 February, exhibit R; to DD in the phone call on 13 February 2019, exhibit F; and yet in exhibit L and exhibit Y, the accused has agreed he brought in make-up and tobacco to inmates E and F, and also in the telephone intercept X3, he said that he was pressured in bringing in tobacco by E.

The other lie the Crown relies upon and says is a lie is that he said that he had no sexual relations with H to the Correctional Officer Vergo, exhibit R; to the Manager of Security, Mr Bartlett; and the early part of his ERISP in exhibit W; and only had sex with one inmate to Governor Shriber in exhibit U and his ERISP, yet he has admitted a sexual relationship with H, O, E and I and J by virtue of his agreed facts and his conversation with Mr Brunwall.

Now, whether the accused did lie is still a matter for you to decide, though it does not seem to have been greatly challenged. But to decide that a lie was told, you must be satisfied that the accused said something that was untrue, and that at the time of making that statement he knew it was untrue. Saying something that is untrue by mistake or out of confusion or forgetfulness is not a lie. If you decide that a lie was told, however, you cannot use that fact in support of a conclusion that the accused is therefore guilty. A lie cannot

APT:SND

D1

TR66082
REVISED

prove the accused's guilt and nor can a lie be used in conjunction with the other evidence that the Crown relied upon to prove the accused's guilt. The only use you can make of the fact that the accused told a lie is in your assessment of his credibility. If you are satisfied that he did lie, then that may be considered by you as having a bearing upon whether you believe the other things that he has said.

Also, the Crown has relied upon evidence from Mr Brunwall that whilst in Orlando, Florida, the accused stated that he - and I use words to the effect of - "smacked her on the arse", being K, and that "she just walked away". The Crown submitted that that statement by the accused to Mr Brunwall is an admission by the accused that he did touch the complainant K on the bottom as she alleged. The accused submitted to you, effectively, that he did have a conversation with Mr Brunwall in Orlando but he did not speak about K or make such a statement, submitting to you, that why would he when he was discussing the sexual intercourse he had with H and O.

Now, before you could use this statement in the way that the Crown submits you would use it, there are several steps you must go through in relation to this piece of evidence. Now, first you must ask yourselves whether you were satisfied that that particular statement relied upon by the Crown was in fact said. If you are not so satisfied, then you must put the statement completely to one side and not allow that evidence to form any part of your consideration as to whether the Crown has proved the counts concerning K. If you are satisfied this statement was said, you must determine what the statement meant and what the accused intended it to mean. If you are not satisfied it has the meaning contended for by the Crown, then again you must

APT:SND

D1

TR66082
REVISED

put it aside completely and not allow that evidence to form any part of your consideration of counts 8 to 10. If you are satisfied that the statement was made and for the meaning contended for by the Crown, and that the accused intended that statement to have that meaning, you must consider the weight or significance you attach to that statement.

Understand that I am not telling you that you should regard that evidence as being unreliable. The reliability of the evidence is a matter for you to decide. I cannot make that decision for you and nor am I trying to suggest what decision you should make. It is, however, my duty to warn you of the possibility that evidence of this kind may be unreliable and to explain why that is so. As you will know here, it is a conversation between two men who have then fallen out, and of course it was not recorded. But, it is up to you to decide whether you accept this evidence and what weight or significance it has, and you must further understand that the evidence itself is incapable of proving the guilt of the accused on counts 8 to 10, and that is because irrespective of the weight or significance you attach to the statement, as I have told you several times, a finding of guilt on counts 8 to 10 is only possible if you accept the evidence the Crown relies upon to prove those counts, in particular the evidence of the complainant K, as being sufficiently reliable and credible.

Now my last direction before lunch. Delay - now, many complainants gave evidence that they told no one about what they said occurred to them at the hands of the accused during their time in custody at the time of the alleged incident, and something was made of this in the closing address by Mr Tyler-Stott on behalf of the accused in relation to the vast majority of the complainants, submitting ultimately that it would affect your assessment of

APT:SND

D1

TR66082
REVISED

them. Consequently, there is a direction I must give you in relation to this issue of delay in complaining. The delay in making a complaint about the alleged conduct of the accused does not necessarily indicate that the allegations that the offences were committed are false. There may be good reasons why a victim of sexual assault may hesitate in making or may refrain from making a complaint about such an assault. In relation to each of the complainants, their evidence concerning this topic or whether or not they ever told anyone, and, if so, the response they received was as follows, and this is in a very shortened form.

C, at page 98, stated she did not report it, you will remember, as she was worried about being punished by officers, simultaneously ostracised or bullied by the inmates.

K told you, "I was scared to, I was scared to say anything. It's a gaol. It's an officer."

H stated to you that she did not tell anyone due to pure fear - he was in a position of power.

O stated that she did put in a report about H with T and she was scared to do that but was told that no one would ever know about it, but then nothing was done about it and that the accused and H found out about it - so, she said she had no one to tell, no one would believe her, she was scared, she was terrified.

You would also understand that M's evidence was that she did tell people at the time in gaol, and in relation to D, she stated that she did not think anyone would believe her.

APT:SND

D1

TR66082
REVISED

A told you that she was too afraid to tell anyone, and S told you that she told her partner at the time but finally came forward because she had daughters aged 14 and 16 and basically was due to considerations of them going through something similar.

So, ladies and gentlemen, that is where I am going to end it now. There are a few more directions I need to give you after lunch and then we will hit the document, which will take some time. But once we have finished that, I am going to call it a day. But that will probably take another hour, hour and a half, and then I will finish off tomorrow morning. I am on schedule, you will be relieved to hear, so tomorrow morning we will have you sent out. So if you would like to go out for lunch now and we will resume at 2.00. Thank you.

Whilst you go, before you go, I will also let you know I have prepared as well a verdict document for you and I am going to give you that once the ballot has been done, but basically it contains all the charges, it contains the counts, the offence alleged, the conduct, transcript references, an area for you to write notes, and then what the ultimate verdict is. So when your foreperson comes out, they will have a document in their hands that they can read from and make it a little bit easier. So that will be provided to you as well. Yes, thank you, ladies and gentlemen.

IN THE ABSENCE OF THE JURY

Anything to raise, Mr Tyler-Stott, Mr Crown?

TYLER-STOTT: No, your Honour.

CROWN PROSECUTOR: No, your Honour.

HER HONOUR: No. Okay. So far, so good. Okay, I'll adjourn. 2pm.

LUNCHEON ADJOURNMENT

APT:SND

D1

TR66082
REVISED

What I propose to do is to go through a couple more directions and then go through the elements. I am going to save the tendency till tomorrow. I want them fresh. I think it's just too much to absorb all in one hit. At least with the elements document, they've got something in writing in front of them, and then if I get through this elements document this afternoon, we should only really have them for about half an hour or 40 minutes tomorrow morning before we do the ballot.

IN THE PRESENCE OF THE JURY

Good afternoon, ladies and gentlemen. I am going to give a few more directions now. The one on tendency, which you have heard referred to throughout the course of the trial, I am not saying that it is complicated but I am going to do that tomorrow morning when you are fresh.

So I will deal with some more directions now and then we will get through to the elements document.

So as you may have realised, that throughout the questioning of most of the complainants, it has been asserted to them by Mr Tyler-Stott, a motive to lie, that is, stating to them that they have or suggested to them that they have falsely concocted or alleged that the accused had sexually assaulted them in order, the vast majority of it was to receive monetary compensation from the State, for the purpose of putting in a compensation claim.

Now, the evidence of the complainants when such was put to them is, for example, when it was put to, C, she denied making the allegations up as a means to get some money from the system, as it was put to her. K denied that she was making up a false account at the behest of V. She stated that she had not spoken to V in years and that she knew her but was not friends with her, in any event. H denied the proposition that she had falsely stated her interactions were non-consensual in order to obtain compensation. O denied that she had falsely claimed her interactions with the accused were non-

APT:SND

D1

TR66082
REVISED

consensual in order to obtain compensation from the State. G denied falsely claiming the repeated conversation requesting a 'hand job' or a 'head job' in order to receive compensation. M denied constructing a false complaint in order to receive compensation, as did N, she denied making it up as to the indecent assault allegations accounts in order to obtain compensation. D denied that she had made it up in order to obtain compensation as did A, who also denied making it up to seek compensation. It was not put to S.

That's correct, is it not, Mr Tyler-Stott?

TYLER-STOTT: Yes.

HER HONOUR: Yes.

So those are the things that were put to those complainants, that they had a motive to lie for those reasons. Now, you must remember though, harking back to what I said to you this afternoon, the central tenant in the criminal trial is that it is for the Crown to prove its case beyond reasonable doubt. It is not for the accused to prove that the complainant actually had a motive to lie. So the accused does not have to prove that the complainant or any of the complainants had a motive to lie and bears simply no onus to do so. So if you, as the jury, ultimately reject the assertion that the complainants did have a motive to lie, as submitted by the defence, then that does not mean or necessarily justify a conclusion that the evidence of the witness the complainant is truthful on that basis alone.

It would be wrong to conclude that the complainant is telling the truth simply because there is no apparent reason, in your view, for them to lie. People, as you know, lie for all sorts of reasons and sometimes it is apparent and sometimes it is not. Sometimes the reason is discovered and sometimes

APT:SND

D1

TR66082
REVISED

it is not. You cannot be satisfied that the complainant is telling the truth merely because you find, if you do, that there is no apparent reason for her to have made up the allegations.

Here, as well, the Crown seeks to establish the guilt of the accused with a case based largely or exclusively for each count on a single witness for each particular count, that is the complainant, because there are no real eyewitnesses to any of the counts. So they are based largely or exclusively on that evidence being accepted of the complainant.

Therefore it is important for me to remind you that you must be satisfied that the particular complainant that you are considering is an honest and accurate witness in the account that she has given you before you could convict the accused, and that just again harks back to the Crown's onus to prove the case beyond reasonable doubt.

So in any criminal trial, where the Crown case relies solely or substantially upon the evidence of a single witness, a jury must be satisfied of their evidence beyond reasonable doubt simply because of the onus and the standard of proof that is placed upon the Crown.

The Crown submits, however, here, that you would find each complainant to be honest, reliable and credible and some, he concedes, are more impressive than others. He points to, for example, generally, the way in which each complainant gave their evidence, their demeanour and their manner, the rawness - for example he described D - in which they gave their evidence, and your observations of them when they gave their evidence and were cross-examined.

APT:SND

D1

TR66082
REVISED

The tendency evidence the Crown relies overall, including the agreed facts that have been tendered, which include exhibit L, exhibit Y and exhibit Z, as to having sexual intercourse and engaging in sexual acts with inmates and bringing contraband in to the gaol.

The admissions made by the accused by virtue of his plea of guilty to various counts concerning that relevant complainant, for example, count 24 concerning H, O, C and M.

the listening device material, that is, the conversations that the accused had that have been captured and that you have seen and heard with him and Corrective Officer Virgo and the Governor Shrieber.

The evidence of Mr Brumwell and the conversation he had with the accused in Orlando.

In relation to particular complainants, the Crown submitted, for example, C - her evidence in support included the diary notes she made, the notes left to her by the accused and the complaint evidence of U, evidence of Renee Berry and Peter Barglik and the telephone intercept, the call between herself and the accused.

In relation to K, the Crown also says that you can look for support in her account in the evidence of Glen Clark, of Judith Barrie in relation to a conversation that she had with her, the evidence of Renee Berry, the one who was her supervisor or her boss in the reception area and the complaint evidence of various witnesses, including R, V, W and, finally, the evidence of Mr Brumwell, as to the conversation he said he had with the accused in Orlando concerning smacking her on the bottom.

APT:SND

D1

TR66082
REVISED

In relation to H, the Crown says that she finds support in her account in the admission by the accused of a sexual relationship with her, albeit, he says, by consent, the observations of other inmates as to her reaction to the accused when he was coming in to her area of the gaol, an unwillingness of hers, she said, to attend his office or to see him, the observations by T and O, which made them give a report as to their observations of the interaction between the accused and H in the room and the observation of AA, with the hand going up the leg.

In relation to O, the Crown relies on the evidence of Mr Brumwell as corroborating her account and, of course, the plea of guilty to an admission of a sexual relationship, a consensual sexual relationship, the accused says, between him and O during those nominated times in the indictment.

M - the Crown says you would find support of her account in the phone call to her mother and the distress that she expressed during that phone call, the complaint evidence from various other inmates and the accused's description of her in the LD material.

In relation to D, the Crown says that you would also find support in the evidence of her partner, John Hill, and the evidence of BB as to what she said to her that had occurred.

So that is really regarded as complaint evidence, which I will get to shortly.

The defence, however, Mr Tyler-Stott submitted that you would not find the complainants to be reliable or truthful witnesses and he pointed generally to the witnesses overall. In relation to some of the complainants - the inconsistencies between their evidence and their original statement to the

APT:SND

D1

TR66082
REVISED

police, the delay in some of the complainants reporting the allegations to police and the time in which they did make those reports, the claim for the complainants who put in and lodged a claim for compensation from the State in relation to their allegations. Specifically, in relation to C, Mr Tyler-Stott relies on the 'extortion attempt', as he describes it, of \$50,000 from the accused to undermine her credibility, the dates on her diary not corresponding with the rostered dates of the accused and these are just some aspects, and I will get to them further when I summarise the submissions of counsel.

In relation to H, Mr Tyler-Stott submitted you would consider the evidence of other inmates, such as C, T, P, et cetera, about her flirtatious behaviour and her comfortability around the accused and yet she denied acting in this way. He says that that you would find that would undermine her credibility and honesty. The fact that the notations on her calendar does not mean, he submitted, it was not consensual and that for other incidents, such as the Lebanese cucumber, there are no notations of that on the calendar, the 'weird evidence', he described, attributing the accused asking if there were any cameras in the BIU cell when he is a Senior Corrective Officer and the accused's statement in, for example, in exhibit X2, when not being aware it was recorded, about him describing the incident in the BIU with the cap on his head and her moving it, those things he said that had a ring of truth about them, and that these allegations were taken into account in her sentencing and the fact and the admission that she sent O to the accused for assistance and he rhetorically asked why would she do this if he was such a monster?

In relation to O, Mr Tyler-Stott submitted that she had her statement with her before giving evidence, she made no mention of any sexual assault in her

APT:SND

D1

TR66082
REVISED

first statement, that her birthday is on 15 September and in relation to the allegation that any birthday cards were being held by the accused - you would look at the roster for around that time and he did not return to work till around 26, 27 September, of X's evidence as to her putting on make-up and doing her hair stating it would correspond ninety-nine per cent of the time with the accused working and that she wanted to appeal her sentence, you heard, and therefore had a reason to ingratiate herself with a Senior Corrective Officer.

In relation to K, the defence submitted that she fell under V's influence, the inconsistency between her evidence and W and between the evidence and her statement, for example, a reference in her statement to being slapped whereas she referred to it as being grabbed in her evidence.

In relation to M that she had no memory about wearing his ring in an office compared to R's evidence, of her mother's evidence of her stating that she had an altercation with the accused but not saying what that was and the locking of the door, the inconsistency between what she said about locking of the door internally or not and whether she walked away or where she did when she left.

In relation to N, he submitted that there was nothing mentioned in her original statement about being indecently assaulted, that the order differed, that she did not mention her hand being placed on his penis until she had had a break from her evidence-in-chief and the description of the touching on the breast count, he submitted to you was loose or vague and submitted that you might find that Mr Astill has become her golden ticket.

In relation to D, it was submitted that her demeanour, you would consider, she had her head down for a vast portion of her evidence, her

APT:SND

D1

TR66082
REVISED

aggression in the witness box, that she seemed distracted and the limited detail, he says, of the actual assault.

In relation to A was it one push or two, did the conversation asking for sex occur before or after the cupping of the breasts?

In relation to S, the absence of any evidence from Ms N about being outside of the room, Ms EE's evidence suggesting more consensual-type nature of relationship, that her demonstration of pushing the hand away did not make sense, it was submitted, and he asked you to consider her prior convictions for fraud and break, enter and steal. Now, again, all of those things are matters for you to weigh up and to assess the significance of their weight or not.

Now, I want to move now to a complaint evidence direction. Now, it is a body of evidence called 'complaint', so basically when a complainant makes a complaint to someone about something that is alleged to have occurred to them that is called complaint evidence. I will just give you details of that briefly. In relation to C, the Crown relies on the evidence of U, who stated that she was a friend of C at the Dillwynia Correctional Centre and that in March 2019, C had told her things had progressed, that is since she had been released from custody in January 2016, from comments to a lot more touching by the accused, the grabbing of the breast, brushing on the thigh and the conversations, she said C had said, had become a lot more sexually explicit.

In relation to K, she gave evidence and said that she had told her boss Renee Berry what was going on, and she said; "When he came around, for me to stay close to her office and if I'm out the back, to come around to the office area and be close to her," and that she also told you of the incident where Mr

APT:SND

D1

TR66082
REVISED

Clark was there and he had asked, in the BIU, when he came across the accused in her cell or near her cell, "What is going on", and that the accused made up an excuse of why he was there, which was false.

In relation to K, you heard the evidence Judith Barry that she had a conversation with K where she complained to her, evidence of Renee Berry as to her conversation with K and what she had told her to do, you would find at transcript page 462.

The evidence of B as to the complaint made to her that the accused had been inappropriate with her while she was working at reception and tried to touch her on the bottom, and he would hide his hands with his jacket, so that the camera could not actually see him and she told her that when in the BIU, he came in to her cell after lock in and attempted to kiss her and was interrupted by another correctional officer, Clark - that is the evidence of B. Also, there was some evidence from W about a conversation that she had.

In relation to H, there was evidence from Y that H would call him creepy, that she was taking measures to avoid him; "Any time he came over to the unit, she would ask me to let him know that she was either in the shower or in her room asleep." That H told her that she had sex with the accused one day when her door was unlocked at muster and everyone else's door was locked "And next morning, I asked her what happened in the room and she said 'We had sex'." She agreed in cross-examination that her statement had said H never said she had sex with Mr Astill. Ms CC stated that H had told her she felt uncomfortable talking or seeing him and that Z would go with her if she had to go to his office. Z stated that H had told her that she did not want to be left

APT:SND

D1

TR66082
REVISED

alone with the accused, she used to get a rash if he came to the unit and most of the time, if she had to go down to his office, she tried to accompany her.

FF told you that H was quite hesitant to be left alone with the accused, quite skittish, very anxious, she had an anxiety rash and sweaty palms and would say to her, "Don't leave me." "It was only when he came towards the block when he was approaching us in the yard."

In relation to the complainant M, the Crown relies on the evidence of R or aka R, that the complainant had told her about an attempted first kiss. B gave evidence that there was a complaint made by K in a cell with herself M, R and others and she gave evidence of M's distress. V gave evidence that "M looked upset and came to my room" and said the accused had tried inappropriate things with her, started touching her hands, her face and stating, "I'll miss you." And then she said, "We all went to B," which was B. Mrs M's mother, that is her mother, she gave evidence, and you heard the phone call between the two, that the complainant had stated to her, pointing to the accused, "That's the guy I was talking about' because earlier, she had told me that they had had an altercation."

W gave evidence at 510, stating that in about May or June 2017, she was in her cell and M was going for trial and she said that she had approached the accused to see if he could hold her room for her and he said he would try to do that and that he would miss her and then he would bend in and try to kiss her on the mouth.

In relation to D, she also gave evidence, she said that she had told BB but did not go to any detail only told her to "watch out for the screw because she was in gaol with me and she's my cousin and I didn't want nothing

APT:SND

D1

TR66082
REVISED

happening to her. I did not go into detail because none of her business, it's mine." She also stated to you that she went down to Mr Baker's office and he was there and that he told her other people had come forward but not who and told her not to discuss it.

In relation to BB, John Hill stated that she had told him, that is her partner, how sleazy the officers were in gaol. BB at 550 stated to you that she (D) was not herself in gaol in 2020, around October 2020, so she kept basically asking her what was the matter and that she had told her that the previous time she was locked up, there was an incident which occurred in the correctional centre, that she was pregnant and wanted to get calls to her partner and that the girls had let her know that she could speak to an officer who would help her get calls to her partner and that the second or third time she had called, the officer, asked her, "What are you going to do to return the favour?" She stated to BB that "it happened so quickly, he had grabbed me from behind", pushed her across the table, pulled down her pants and had intercourse with her and she was really distraught. It was not consensual and she did not know what to do afterwards "because he was a chief or something" and "for the rest of our time there" she was really traumatised. N gave evidence that there was a time when she was there with Toni Baker in around December 2020 and that she had just been called to the hub, but she said that, this is D, said to her she could go in the hub because she started to have bad flashbacks about the accused.

So that body of evidence is effectively called complaint evidence. Now, it is for you to decide whether that complaint for each particular complainant was made and what its contents were. If you find, however, that a complaint was

APT:SND

D1

TR66082
REVISED

made in the way suggested, you can use the complaint to assess the complainant's credibility. The fact that she made the complaint and the content of the complaint and the manner in which it was made, for example, if she was upset, if she was distressed may show that her account of the events in question has been consistent. In this case, the prosecution submitted that the fact that those nominated complainants complained at the respective time and the manner in which they did makes it more likely that they were telling the truth here in Court because of the consistency of their account. The defence, however, submitted to you that a lie repeated does not make it the truth. They also submitted that in assessing the evidence of complaint that you would consider, for example, Ms Judith Barry spoke about K making a complaint to her, but K gave no such evidence as to any conversation that she had had with Ms Barry - not Berry - only in relation to Ms Berry, who in turn gave no evidence of that. So that is one example that you remember that Mr TylerStott- said when you are considering the evidence of the complaint.

Now, the defence also submitted that in assessing the evidence of the complainants, you need to consider the inconsistencies in what they said in evidence about the event described and what was in their respective statements. For example, C not mentioning the term "hot slicing" in her statements to police. K referring it to as a "slap" in a statement and yet a "grab" when she gave her evidence. And it was also submitted that the complainants had given earlier statements where they did not even mention being sexually assaulted by the accused - for example, N and O - and that there had been some delay in some of the complainants coming forward with their allegations.

APT:SND

D1

TR66082
REVISED

In relation to that, I direct you, members of the jury, that the experience of the Courts has shown, dealing with these sorts of matters involving sexual assault, that people may not remember all the details of a sexual assault or may not describe a sexual offence in the same way each time.

Further, trauma may affect people differently - including affecting how they recall events, and it is common for there to be differences (such as a gap in the account and an inconsistency in the account, and a difference between the account and another account in accounts of a sexual offence).

Both truthful and untruthful accounts of a sexual offence may contain differences, and effectively it is up to you, the jury, and entirely a matter for you, to decide whether or not the differences in the complainant's accounts are important in assessing that particular complainant's truthfulness and reliability.

Now, as I said, there is the tendency direction I will give to you tomorrow morning, but that will conclude my directions in law except for in relation to the document I am about to hand out to you. It is lengthy but we will get through it. I have marked it MFI 26. This is an MFI that you can keep, ladies and gentlemen, so you can mark that, and this is your document so you can write on it as much as you wish because I will be speaking to it and not just reading it out. Has everyone got a copy? Yes, okay.

So I direct you as a matter of law, ladies and gentlemen, that the following meaning must be attributed to the following terms, and these are terms that are frequently referred to during the actual indictment and the charges.

The meaning of "assault". An assault is the deliberate (not accidental) and unlawful touching of another. The touching need not be violent nor such

APT:SND

D1

TR66082
REVISED

that it caused any physical harm or injury. Any touching, no matter how slight, can be enough. It does not matter whether the touching was skin-to-skin or through clothing. The Crown is entitled to rely upon the same act as establishing both an “assault” and “an act of indecency”.

Meaning of “indecent”. Now, the word “indecent” means contrary to the ordinary standards of respectable people in this community. So it is for you to determine the standards prevailing in our community when deciding whether the Crown has satisfied you beyond reasonable doubt that the act alleged in this case was indecent. In my understanding of the way the case has been run, ladies and gentlemen, it is not so much whether an act or an assault, if it was proven to be committed, would make it indecent or not. It is whether the assault actually occurred. So I do not think there is a great deal of issue that the allegations being made would constitute an indecent assault if you found them proven.

But for an assault to be indecent, it must have a sexual connotation or overtone. However, skin-to-skin contact is not required. If the Crown establishes that the accused touched the complainant’s body through clothing or skin-to-skin or used his body to touch the complainant in a way which clearly gives rise to a sexual connotation, then that is sufficient to establish that the assault was indecent. If you find that the alleged touching does not carry a clear sexual connotation, the Crown must prove beyond reasonable doubt that the accused’s conduct was accompanied by an intention to obtain sexual gratification. Beyond the requirement that an act of indecency have a sexual connotation or overtone, the question of whether or not an alleged touching was an indecent one is for you to decide. In deciding whether the Crown has

APT:SND

D1

TR66082
REVISED

proved this essential element of the charge, you are entitled to take into account all of the circumstances surrounding the conduct in question (as you find those circumstances to be as judges of the facts) and that includes, for example, the accused's words, if there were any at that time, or his actions; the respective ages of the accused and the complainant if you deem that relevant; the nature of the relationship that existed at the time between the complainant and the accused; and the nature of the particular act relied upon.

Now, in many of the counts on the indictment of indecent assault, an element of the offence the Crown must prove beyond reasonable doubt is that at the time of the assault the accused committed an act of indecency on the complainant. Although a reading of that charge in the indictment might suggest that the Crown has to establish two separate acts - that is, an act that amounts to an assault and another separate act which it alleges is indecent - that is not necessarily so and it is not in this case. The Crown can rely upon the same act as amounting to both the assault and the act of indecency. So, for example, with one of the counts of cupping a woman's breasts, if that was to be proven beyond reasonable doubt, then that would constitute an assault and it would constitute an act of indecency at the same time, so it is the indecent assault.

Now, meaning of "sexual intercourse". The definition of that term relevantly for this trial, it is quite a wide definition for sexual intercourse. It is not just penile-vaginal intercourse. So sexual connection that is relevant here includes; the penetration to any extent of the vagina of a female person by any part of the body of another person - so of course that includes penile penetration of the vagina. Sexual intercourse is also penile penetration of the

APT:SND

D1

TR66082
REVISED

complainant's mouth, that is oral sex or fellatio, and also the penetration to any extent of the vagina of a female person by any object - and here the objects that have been alleged have been a cucumber or (not that that was put in that way) but a grape for O.

Now, the Crown, importantly, does not have to prove full penetration occurred or that the accused ejaculated, nor that he derived any sexual gratification for an act of sexual intercourse, so that makes it a bit different to an indecent assault - the Crown does not have to prove any sexual gratification in relation to that.

Now, the meaning of the term "under his authority". The person is under the authority of another person if the person is under the care or under the supervision or authority of another person. My understanding of this case - and I will be corrected if I am wrong - but there seems to be no issue that the complainants are under the authority, or were under the authority of the accused in that correctional centre.

The meaning of the word "incite". Incite has its normal meaning and that is simply to encourage, to urge or to persuade someone to do something, and the meaning of the word "towards" simply means "in the direction of".

So let us now deal with the first complainant, C. Now, you will see that counts 1, 2, 3, 4 and 6 are all the same. So on the dates alleged at Berkshire Park in the State of New South Wales did assault C, and at the time of the assault committed an act of indecency on C in circumstances of aggravation, namely at the time of the offence C was under the authority of the accused. Now, respectively for those counts;

APT:SND

D1

TR66082
REVISED

Count 1 relates to an allegation that the accused pressed his body up against the complainant in a cuddle action from the front and she could feel an erection. You can see there I have put the transcript references so it is easier for you to take yourself there to find the evidence in relation to that.

Count 2 relates to the allegation that while she was working in the reception area, she stood up to leave and the accused lunged onto her and put his hands on her body and pulled her in towards him and kissed her directly on the lips, with his tongue entering her mouth. And you will see the transcript reference there.

Count 3 relates to the allegation that when the complainant was unpacking items from a truck and putting them in the storeroom and placing the items on the shelves, the accused, as she said, 'hot sliced' her. That is he ran his hand up between her legs and touched her vaginal area and bottom.

Count 4 relates to the allegation that the accused called the complainant to his office, and as she was about to leave, put his hands up the front of her shorts and up under the elastic of her underwear, touching her genitals briefly.

Count 6 relates to the allegation that after calling the complainant to his office and talking to her, as she stood up from the chair opposite him, he put his hand and slid it up the front of her shorts and inside her underpants with his fingertips on the top of her vagina.

Now, this particular offence of indecent assault has five essential elements - So for count 1, these five elements. Count 2 must be satisfied of the same five elements. Count 3, count 4 and count 6, the same.

So for each particular count, the Crown must prove each essential element for each particular charge beyond reasonable doubt before you would

APT:SND

D1

TR66082
REVISED

be entitled to find the accused 'guilty'. So when we have been talking about essential elements or essential ingredients of the crime, these are the essential ingredients for the crime of indecent assault.

Element 1 - at the time and place alleged, the accused assaulted C. If you were not so satisfied that occurred beyond reasonable doubt you would simply put that count aside and return a verdict of 'not guilty' in relation to count 1. If you were so satisfied beyond reasonable doubt that the accused did assault C, then you move to element 2, that the assault was indecent. If you examine the evidence as to that and the law in relation to that, if you are so satisfied beyond reasonable doubt that the assault was indecent beyond reasonable doubt, you move on to consider element 3. If you are not so satisfied, you return a verdict of 'not guilty' and you set it aside. Element 3, that the assault was without the consent of C, and so if you are so satisfied you move on to element 4, that the accused knew that C was not consenting or he realised there was a possibility that the complainant was not consenting, but he went ahead anyway, or he did not even think about whether the complainant was consenting or not. In other words, he did not care whether the complainant was consenting. And element 5, the complainant was under his authority at the time of the indecent assault.

Now, in relation to those five counts, there does not seem to be any dispute that the allegation would constitute an indecent assault for each of those allegations, and there does not seem to be any issue that the complainant was under the authority of the accused at the time of the allegation. But, for those matters the Crown, you must remember, has to prove every one of the essential ingredients or elements, and if not, it is your

APT:SND

D1

TR66082
REVISED

duty to find the accused 'not guilty'. So you can only find the accused guilty if the Crown proves each of those matters.

So if we look at this charge particularly, and we look at element 1 for some explanatory notes, to establish this offence, the Crown must first prove beyond reasonable doubt that the accused, by his act, assaulted the complainant. And so for the meaning of the term "assault", you refer to the earlier definition in your elements document. For element 2, again, for the meaning of the term "indecent", refer to the definition as outlined in the document. For the meaning of act of indecency "at the time of the assault", see the definition of act of indecency above and remembering that the Crown can rely on the same act as amounting to both the assault and the act of indecency. So here, for example, in relation to count 1, the Crown says the allegation is that the accused pressed his body up against her in a cuddle action from the front and she could feel an erection. So that action constitutes, the Crown says, an assault and also the act of indecency.

Element 3. In order to establish that the touching was unlawful and therefore an assault, the Crown must prove beyond reasonable doubt that the accused touched the complainant without her consent, knowing that she was not consenting. Now, consent concerns a complainant's state of mind. Consent involves the conscious and voluntary permission by the complainant to the accused to touch her body in the manner that he did. Consent or the absence of consent can be communicated by the words or acts of the complainant.

Element 4 requires you to consider what was going on in the accused's mind at the time of the act, amounting to the assault alleged. You are

APT:SND

D1

TR66082
REVISED

concerned with his actual state of mind. Remember, you have not been given an impossible task when you are required to consider what is going on in the accused's mind. You must examine what the accused's state of mind was.

The Crown succeeds in proving the fourth ingredient if it proves that the accused knew that the complainant was not consenting, so that is just downright actual knowledge that she was not consenting. But the fourth ingredient is also satisfied if the Crown proves to you that the accused realised there is a possibility that the complainant was not consenting to the act amounting to the assault but he just simply went ahead anyway. The Crown can also prove the fourth ingredient if it proves beyond reasonable doubt that the accused did not even think about the question of whether or not she was consenting to the act amounting to the assault or not, treating the question of whether she was consenting as simply irrelevant. It is enough that the Crown proves beyond reasonable doubt one of those three aspects of the fourth ingredient.

In deciding this issue, you are concerned with the actual state of mind of the accused at the time of the act amounting to the assault. It is the accused's mind you should consider. It is not a question of what you or any other person would have realised, thought or believed in the circumstances in deciding what was going on in the mind of the accused. Again, you can have regard to all the surrounding circumstances. If there is a reasonable possibility that the accused honestly, though wrongly, believed the complainant was consenting to the act amounting to the assault, then the accused is 'not guilty', because if that was the position, the Crown has not proven the fourth element.

APT:SND

D1

TR66082
REVISED

For element 5, meaning of “under his authority”, refer to the definition, but as I said that does not appear to be in dispute.

So repeatedly, the Crown must prove all five ingredients beyond reasonable doubt before you can find the accused guilty on any of those five charges. The failure to prove any ingredient would mean he is not guilty of that particular offence that you are considering.

Now, count 5 is a different offence. Count 5 alleges that between those dates at Berkshire Park, which is Dillwynia Correctional Centre, he incited C to commit an act of indecency towards himself in circumstances of aggravation, namely that she was under his authority. Now, this relates to the allegation that the accused, after giving the complainant a gift of underwear, came to her cell and blew kisses at her and gestured her to lift up her clothing to show him the underwear that she had on. The complainant told you that she turned, and you will remember her demonstration of flipping up at the back of her robe to reveal the bottom of her underpants, and the transcript references are there. Now, this offence has four essential elements. The Crown again must prove each of them beyond reasonable doubt before you would find him guilty.

Element 1 is that at the time and place alleged, the accused incited the complainant to commit an act of indecency. If you consider that and you find that proven beyond reasonable doubt, you move on to element 2, towards the accused, and element 3 if you are so satisfied the complainant at the time was over the age of 16 years - I do not think there is any issue with that - and element 4, the complainant at the time was under the accused's authority. Again, no issue with that. Unless the Crown proves every one of these essential elements or ingredients, it is your duty to find him not guilty.

APT:SND

D1

TR66082
REVISED

In relation to the notes, the meaning of “incite” is referred to before in the definition above, as the same for the “act of indecency”, as the same for “towards”, which means “in the direction of”. As I said, there appears no issue that the complainant was over the age of 16 at the time of the alleged incident, and for the meaning of the term “under authority” there seems no issue with that.

You would know, though, it is the accused’s case in relation to C that there was consensual kissing between him and C and touching during the nominated period on the indictment. It is the accused’s case that any actions that were conducted between him and the complainant, C, were consensual. In relation to the aspect of this last count 5, you would remember that it is the accused’s case that the complainant, C, voluntarily lifted up her clothing to reveal her underwear to him.

Now, in relation to complainant K, she relates to counts 8 to 10. Counts 8 and 9 are the same as counts 1, 2, 3, 4 and 6 of C except they are different dates, of course, because the dates seem to relate to the period of time that each spent in Dillwynia. But, it is the same act or the same crime that is being alleged. But here count 8 relates to the allegation that the accused grabbed and pinched her bottom as she walked out of his office after he promised to shred an alleged report about her. Count 9 relates to the allegation that the accused grabbed her on the bottom as he walked past her in the reception area with a jacket placed over his arm.

Now, the accused’s case in relation to K is that on no occasion did he grab or pinch her bottom and that a document was in existence, though, concerning her comment to an Indian officer. There is, though, a denial that

APT:SND

D1

TR66082
REVISED

he did what is alleged he has done. Now, again, I am not going to repeat what I have already said about C counts, but it is the same as those counts of 1, 2, 3, 4 and 6, five elements that you must be satisfied of beyond reasonable doubt before you could convict. If you are not so satisfied, you return a verdict of not guilty.

Now, so we can skip over because that is just a repeat, effectively, page 8 and 9, and go to count 10 on page 10. But it is there for you to refer to.

Now, count 10 is one of the misconduct charges so we will take this a slower. So count 10 is between 1 August 2016 and 18 October 2018, at Berkshire Park in the State of New South Wales, the accused did misconduct himself in public office by engaging in an inappropriate sexual relationship with inmate K whilst he was a Senior Correctional Officer at the Dillwynia Correctional Centre. Now, count 10 in the Crown case relates to;

- The allegation that the accused offered to shred a said complaint;
- The evidence concerning counts 8 and 9;
- The evidence regarding the incident at the BIU; and
- The allegation of placing his crotch near her face and his comment at the time "That's where I like you."

So the Crown is relying on all of that evidence in combination to say that that amounts to misconduct in public office.

Now, the Crown for this charge must prove five essential elements and they must prove each of them beyond reasonable doubt. Element 1 is that the accused was a public official. You must be so satisfied of that beyond reasonable doubt, but as I have said below there is no issue that a correctional officer is a public official. So moving onto element 2, that at the relevant time

APT:SND

D1

TR66082
REVISED

he was acting in the course of or connected to his public office. Now, my understanding as well is that there is no issue in relation to that, that in that nominated period of time he was working as a Senior Correctional Officer, indeed a Chief, so working in the course of or connected to that public office. And element 3, that the accused wilfully misconducted himself by act or omission. Now, of course, as I have said to you, it is the defence case that he at no time indecently assaulted K. And but if you were so satisfied beyond reasonable doubt that the accused did wilfully misconduct himself by act or omission, then you move on to element 4 to consider whether there was any or was it without reasonable justification or excuse.

And if you are so satisfied of that beyond reasonable doubt, you move on to element 5 to consider where such misconduct is serious and meriting criminal punishment, having regard to the responsibilities of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those objects. You will remember, in the closing address by Mr Crown, he referred to the responsibilities and the obligations of a correctional officer in that role, and Judith Barry's evidence as to the codes of conduct and the like in relation to being a Correctional Officer in a correctional facility. Now, as I have said here, there is no issue that a correctional officer is a public official, nor that at the relevant time nominated in the indictment the accused was acting in the course of or connected to his office. The misconduct or conduct must be so far, though, ladies and gentlemen, below acceptable standards as to amount to an abuse of the public's trust in the office holder as a correctional officer. The misconduct for this charge, if found proven, must be of a sufficient seriousness that it requires

APT:SND

D1

TR66082
REVISED

criminal punishment, that is, a distinction must be able to be made from less serious forms of conduct which may give rise to civil proceedings. And that, ladies and gentlemen, is a matter for you to decide. So that is count 10.

Now, moving on to the complainant H. Counts 11, 12 and 23 are again the same as the other indecent assault counts that we have already gone through. Count 11 referred to the allegation that the accused, when leaving the lounge room where the inmates were watching TV, brushed against her and grabbed her bottom, and I think there was also a comment about "liking old ones".

Count 12 relates to the allegation that in the photocopy room, the accused grabbed her hand and placed it on his crotch and asked her if she liked it, and his penis was almost erect.

Count 23 relates to the allegation that the accused put his hand on the complainant's vaginal area to feel if the cucumber was inside her.

Now, as I have been through before, that offence has five essential elements. I am not going to repeat myself but they are set out there for you, and the definitions and the explanatory notes are connected to the C counts, so go refer back to those.

Now, the other counts in relation to H, 13, 15 and 16 to 21, they are all sexual intercourse without consent, so it is a different charge. So here, I have set out the charge, but just moving the between dates or the dates because you will remember that those different counts have different dates, so you need to consider that. Now, count 13 relates to the allegation of fellatio in the photocopier room, which occurred after count 12 in the photocopy room. Count 15 relates to an allegation that on 1 December 2016, while cleaning in

APT:SND

D1

TR66082
REVISED

the SAPO area, the accused took her into the office, closed the door and made her suck his penis, again an act of fellatio. Count 16 relates to the allegation that the accused then told her to stand up and turn around and bend over, and he then penetrated her vagina with his penis. Count 17, relates to the allegation that after a few thrusts he made her go back to her knees and fellate him until he ejaculated in her mouth and told her to swallow it. So you can see there that counts 12 and 13 are related to the same incident. Counts 15, 16 and 17 are related to the same incident. Count 18 relates to an allegation that on 8 January 2017, Officer Mirza took her to the accused in the SAPO office and he penetrated her vagina with his penis from behind, and the citations are there. Count 19 relates to the allegation that he then made her suck his penis, that is fellatio, and ejaculated in her mouth. So those two counts also relate to the same incident. Count 20 relates to the allegation that on 27 January 2017 she was cleaning and the accused instructed her to take off her vacuum cleaner and had penile-vaginal intercourse from behind and ejaculated into her underpants. Count 21 relates to the allegation that when she was in the BIU area, the accused visited her, came into the cell and he penetrated her vagina with his penis from behind and ejaculated into her underwear. Again, the references are there for you.

Now, in relation to H, as you know, it is the accused's case that he had a consensual sexual relationship with the complainant and had consensual sexual intercourse on three occasions. Now, those three occasions that the accused admits that he engaged in sexual intercourse refer to the photocopy incident time, the time where the Officer Mirza brings the complainant to his office, and in relation to count 21 in the BIU area, ejaculating into her

APT:SND

D1

TR66082
REVISED

underpants. So it is the defence case that those three occasions occurred but that they occurred with her consent. It is a denial that the other acts ever took place, and particularly a denial that he ever, for example, you will remember the incident of semen in the cup or the evidence about that, and the denial of anything to do with a lebanese cucumber.

Now, this offence has four essential elements, and again the Crown must prove each of them beyond reasonable doubt before you could find him guilty. One, at the time and place alleged the accused had sexual intercourse with H. And if you are so satisfied you move on to element 2, H did not consent to the sexual intercourse. If you are so satisfied of that, you move on. If you are not so satisfied you put the account aside, return 'not guilty'. Element 3, at the time of the sexual intercourse the accused knew H was not consenting. If you are so satisfied of that beyond reasonable doubt, you consider element 4, that at the time of the sexual intercourse H was under the accused's authority. There is no issue, I take it, that the accused was in a position of authority over H.

If the prosecution fails to prove any of those elements of the charge beyond reasonable doubt the accused must be found 'not guilty'. So look at element 1. For the meaning of the term sexual intercourse, you refer to the definitions above and note that element 1 though is then concerned only with the physical act alleged. So if the Crown has failed to satisfy you beyond reasonable doubt that there was an act of sexual intercourse he must be found not guilty of the charge. If you are satisfied beyond reasonable doubt that the accused did engage in sexual intercourse with the complainant, where be it fellatio and/or vaginal-penile intercourse, you consider the second element,

APT:SND

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TR66082
REVISED

that is whether the Crown has proven beyond reasonable doubt that the complainant did not consent.

Element 2, which is the issue of consent, and it is slightly different to the indecent assault consent so please, it is all written out, please pay some attention with this one. This concerns the complainant's state of mind. Again, the accused does not have to prove that the complainant consented. There is a difference. It is for the Crown to prove beyond reasonable doubt that she did not consent, and there is a subtle, of course, difference between the two. Consent involves a conscious and voluntary agreement on the part of the complainant to engage in an act of sexual intercourse with the accused that has been alleged, and consent can be withdrawn at any time. Consent to an act of sexual intercourse can be expressed verbally and/or by actions, but similarly, an absence of consent does not have to be expressed in words, so you do not have to be saying, "No, I don't want to have sex with you." It may also be communicated in other ways, such as the offering of physical resistance, pushing or shoving or kicking. However, the offering of physical resistance is not essential because the law specifically provides that a person who does not offer actual physical resistance to an act of sexual intercourse is not by reason only of that fact to be regarded as consenting to the sexual intercourse. Consent which is obtained after persuasion is still consent provided it is ultimately given freely and voluntarily.

The law provides that a person does not consent to sexual intercourse if the person consents to the sexual intercourse because of the threats of force or terror. In considering whether the Crown has proved beyond reasonable doubt that the complainant did not consent, you may have regard to the

APT:SND

D1

TR66082
REVISED

following matters, if you have found them proven on the evidence before you; that the complainant had sexual intercourse because of intimidatory or coercive conduct or another threat, even though that conduct does not involve a threat of force; or if the complainant had sexual intercourse because of the abuse of a position of authority or trust. It does not follow simply because you find that find proved that you should be satisfied beyond reasonable doubt that the complainant did not consent but it is a relevant fact that you should consider in deciding whether the Crown has proved this element of the offence as it must do before you can convict the accused. So if the Crown fails to satisfy you beyond reasonable doubt that the complainant did not consent, you put the charge or count aside and return not guilty. If you are so satisfied that the Crown has proven that the complainant did not consent, you move on to element 3.

Element 3, it may sound confusing what I am about to say, but it is written out there for you and it is not really, it is a matter of common sense, but just listen and you can reread it at times as well. Now, for element 3 the Crown must prove to you beyond reasonable doubt that the accused knew that the complainant did not consent. Now, this requires you to consider what was going on in the accused mind at the time of the act of sexual intercourse. It is his actual knowledge to which you are concerned and not what you would have realised, thought or believed or nor what some other person might have. You therefore might ask how does the Crown prove that the accused knew that without an admission from the accused to that fact. Well, the Crown asks you to infer, and that is why I gave you a direction on inferences and drawing of inferences in relation to an element of an offence. The Crown asks you to

APT:SND

D1

TR66082
REVISED

infer or conclude from other facts that it has set out to prove that the accused must have known and that he indeed know that the complainant was not consenting.

Now, the Crown has three ways of establishing this element, and it is not 'and', it is 'or'. There are three ways that it can establish it, in any one of the three different ways, namely, by establishing beyond reasonable doubt.

The first is that the accused just simply knew that the complainant was not consenting. So if the Crown satisfies you beyond reasonable doubt that this was the state of mind of the accused at the time of the sexual intercourse, then that third element of the charge has been made out and you move on to element 4.

There is another way that the Crown can establish element 3 beyond reasonable doubt and that is recklessness. So if the accused was reckless as to whether the complainant was consenting, in that he realised there was a possibility that she may not have been consenting, but he took the risk and went ahead and performed that act anyway, or he simply just failed to consider at all whether she was consenting but just went ahead with that act, even though the risk that she was not consenting would have been obvious to someone with his mental capacity had he bothered to turn his mind to it.

Or the third way the Crown can prove this element is if the accused might have believed the complainant was consenting, he had no reasonable grounds for so believing. The Crown may establish that third state of mind by proving beyond reasonable doubt either that the accused did not honestly believe the complainant was consenting or that even if he did have an honest believe in consent, he had no reasonable grounds for believing that the complainant was

APT:SND

D1

TR66082
REVISED

consenting. Now, the Crown has to establish beyond reasonable doubt that the accused did not honestly believe the complainant was consenting or if he might have believed she was consenting, that in all the circumstances he had no reasonable grounds for such a belief. Now this involves considering what the accused himself might have honestly believed and asking whether the Crown has established beyond reasonable doubt that he had no reasonable grounds for any such belief.

In considering whether the Crown has proved this element of knowledge by any one of those three ways, you must have regard to all of the circumstances that you find established by the evidence in which his act of sexual intercourse took place, including any steps taken by him to ascertain whether the complainant was consenting to having sexual intercourse with him. You should also consider the complainant's words and/or actions, the nature of the particular act in question and the nature of the relationship that existed at the time between the accused and the respective complainant, that being at the time of the actual act of intercourse, as well as the nature of the their relationship prior to that point in time if it assists you in determining the accused state of mind at the relevant time.

So if you are so satisfied beyond reasonable doubt that the Crown has proven knowledge of the accused that she was not consenting, you move on to element 4, and of course each of those elements must be proven beyond reasonable doubt and 'under the authority' and there is no real issue about that. So if all those four essential elements are satisfied to your satisfaction beyond reasonable doubt, the verdict is 'guilty'. If they are not, of any of those essential elements, the verdict is 'not guilty'.

APT:SND

D1

TR66082
REVISED

Counts 14 and 22 are an inciting charge which I have gone through, so I do not need to repeat it except to outline that allegation 14, refers to the accused being at the complainant's cell door inciting her to reveal or expose her breasts and vaginal area to him. Count 22 relates to the allegation that the accused told the complainant to insert a Lebanese cucumber into her vagina.

I will just ask, are you okay to continue or do you need a break? I shall probably be about another 20, 30 minutes. Continue? Yes.

Now, this offence, as I have said to you before, has four essential elements. I am not going to repeat myself but you know what the allegations are. Work through the essential elements remembering that you must be satisfied beyond reasonable doubt of each of them before you move to the next one. And there are notes there as to the definitions.

Now, the complainant O. Counts 25, 26 and 27 in relation to O are an indecent assault. Again, I am not going to repeat, but they relate to count 25, the allegation that the accused, in his office, tried to kiss her and touch her breasts and she pushed away. Count 26 relates to the allegation that the accused touched her breasts and vaginal area on the inside of her clothing whilst they were in the case manager's office. Count 27 relates to an allegation that he took off her pants and directed her to separate her legs to check to see whether she was menstruating. Again, that offence has five essential elements which we have been through repeatedly. I am not going to repeat myself, but refer to the earlier definitions.

Now, counts 28 to 31, those four counts are again a sexual intercourse without consent in circumstance of aggravation of being under his authority. Count 28 relates to the allegation that in his office the accused penetrated her vagina with his penis from behind. Count 29 relates to the allegation that the

APT:SND

D1

TR66082
REVISED

accused made the complainant go on her knees and fellate his penis whilst in his office and he then ejaculated into her mouth. Count 30 relates to the allegation that the accused inserted a grape into the complainant's vagina in his office. So you will notice the difference between that and the cucumber charge – and that is because the accused inserted the object into her vagina rather than giving the Lebanese cucumber to H as the other allegation - that is why they are different offences.

Count 31 relates to the allegation that he then took out the grape and had penile-vaginal intercourse with the complainant and ejaculated into the rubbish bin.

In relation to O, it is the accused case that he had a consensual sexual relationship with her and had consensual sexual intercourse, but he denies the incident concerning the grape ever occurred. I am not going to repeat myself. Those four counts, each of them has four essential elements that must be proven by the Crown beyond reasonable doubt and we have gone through them with the offences relating to H and the outline and the explanatory notes for those. So just go back to the document and refer to those when you are going through each of the counts and each of the elements.

Now, the complainant G, count 33, and that again is a misconduct in public office and the charge is set out for you, but this relates to the allegation that the accused offered to help the complainant find her stepdaughter through Facebook and police friends, that he spoke to her about personal subjects, that he made sexual demands and sought to obtain a statement from her about P, concerning another inmate to get P moved.

APT:SND

D1

TR66082
REVISED

Now, it is the accused case that he denied ever having any conversation with the complainant about giving favours in return, for example, a hand job or a head job. Now, again, for that, as I referred to in count 10, there are five essential elements that the Crown must prove. You go through those elements and refer to the notes that I have outlined for count 10 and just backtrack to those if you need to.

The complainant M, counts 34 and 35, again are an indecent assault. I have outlined the charge there. Count 34 relates to an allegation that the accused grabbed her hand and stroked it and pulled her in and pushed his penis against her hip and lent in to kiss her but she weaved, she said, she 'remembered ducking' out of the way as she demonstrated. Count 35 relates to the allegation that the accused, whilst in his office, stroked her hand, pulled her closer and tried to kiss her and make comments at the time, so all of that in combination. Now, it is the accused case in relation to M that there was a consensual kiss between them at some stage on one occasion, but that these two incidents alleged by her simply did not occur.

Again, five elements which we have gone through that the Crown must prove beyond reasonable doubt before you could convict. You will remember the other count in relation to M was a misconduct charge but the accused has pleaded guilty to that charge.

The complainant N, counts 39 to 41, are again acts of indecency. So three counts relating to the same incident that she alleges occurred where the accused, count 39, touched the top of her breasts and commented that he liked big breasts. Count 40 relates to an allegation that he placed her hand on

APT:SND

D1

TR66082
REVISED

his penis during the same incident and count 41 relates to the allegation he put his hands underneath her shorts and touched her genital area, same incident.

It is the accused case that he never indecently assaulted the complainant N, nor did he ever provide her with tobacco or Dencorub. Now, again, five essential elements are outlined there again for you which I am not going to repeat, and as I have said, refer earlier to the explanatory notes if you need to by that stage.

Count 42 is a misconduct charge in relation to N. This relates to the allegation that the accused provided the complainant with Dencorub and tobacco and the evidence that is relied upon for counts 39 to 41, that is, the incident of indecent assaults. The misconduct charge has five essential elements which must be proven beyond reasonable doubt. They are again set out for you there. I will not repeat them, and refer to the notes concerning and outlined for count 10.

The complainant D, count 44, is a charge of sexual intercourse without consent in circumstances of aggravation of being under his authority, which has been outlined there for you. Now, this relates to her allegation that the accused had penile-vaginal intercourse with her from behind after allowing her to have a second phone call in his office to her partner. It is the accused case that this incident simply did not occur. Again, for the sexual intercourse without consent, look at the outline, and the elements are set out there but for the commentary on it and the explanatory notes, go through it once again. I am not going to repeat myself but refer back to those notes made in relation to the counts concerning H.

APT:SND

D1

TR66082
REVISED

Again, count 45 is a misconduct charge. That relates to the allegation that the accused allowed the complainant D to have two lengthy phone calls to her partner and the evidence relied upon for count 44 and the intimidation, the Crown says, post the sexual assault where it is said that the accused told her that he has police friends or he was an ex-police officer and he is affiliated with the bikie gangs. Again, five elements the Crown must prove beyond reasonable doubt, refer to the notes on count 10 as you work your way through that.

Second last complainant, A. Counts 46 and 47 are indecent assault, the same as the others. The allegation 46 refers to that the accused, while seated in his office, touched his penis and asked if she would like to have sex, and then placed his hands over her breasts. Count 47 relates to the allegation that the accused touched her bottom with his hands, with his arms around her. It is the accused case that these events simply did not occur. Again, five essential elements that the Crown must prove beyond reasonable doubt before you could convict and outlined there.

Count 48 is the misconduct charge, and that refers to the allegation that the accused did what was alleged for counts 46 and 47 and that he did not deal with the issues sought to be dealt with by the inmate and he did not follow up, that is, he did not do what he was meant to do as a Corrective Officer. Again, there are five essential elements that the Crown must prove beyond reasonable doubt before you could convict, and you refer to count 10 for any explanatory notes.

Finally, ladies and gentlemen, S. Counts 49 and 50 are again an indecent assault and the charges are outlined there. Count 49 relates to the

APT:SND

D1

TR66082
REVISED

allegation that the accused, in his office, pulled her and placed her in a bear hug and that he felt his erection in her back. Count 50 relates to an allegation that the accused, a few days later, held her quite firm, rubbed up against her, kissed her neck, whispered in her ear and put his hands down her top and pants. Again, it is the accused case in relation to S that those two incidents just simply never occurred. Again, five essential elements that the Crown must prove are outlined for you in the document and explanatory notes, referred to in the earlier charges.

And the final charge is a misconduct charge concerning S, and that relates to the allegation that the accused did what is alleged in count 50 and 51 and also offered her tobacco during one of the incidents, you remember she said it was in his boot, effectively a bribe. Again, five essential elements. The Crown must prove each of them beyond reasonable doubt before you could convict him of this charge. If you need to seek explanatory notes, they are under count 10 which we have gone through. Now, those are the elements of the offences and that is a document which I hope you will find helpful during your deliberations.

I think you have heard enough today. It is exhausting. I am exhausted and I am going to let you go home. Tomorrow morning we will start at 10.00. I have one or two directions left and then just sum up or briefly refer to the closing submissions of counsel as their major arguments which will not take me long because you have heard them only recently. And then we will conduct the ballot and then we will send the 12 of you from the ballot into the jury room to go about your deliberations in any way you so find suitable.

APT:SND

D1

TR66082
REVISED

So other than that, ladies and gentlemen, thank you for attending every day so far on time. Attendance has been a hundred per cent. That ensured the trial go a lot quicker and very efficiently so thank you very much, and hopefully we will see you all then, after saying that, tomorrow morning for a 10 o'clock start. Thank you very much.

IN THE ABSENCE OF THE JURY

Okay. Anything arising? So any other directions or anything else sought apart from tendency tomorrow?

CROWN PROSECUTOR: No, your Honour.

HER HONOUR: No. Just think about it overnight. Let me know if there is anything. Send me an email, to all parties and to my associate if there's anything you can think of in relation to the tendency. I've assumed that the context is really all part of tendency.

CROWN PROSECUTOR: Yes.

HER HONOUR: Anything else?

CROWN PROSECUTOR: No. I note the transcript is ready.

HER HONOUR: Great. I suppose it can go in. I don't think they'll be interested in it tonight, quite frankly. That's great that it's there. Have you double-checked it, Mr Tyler-Stott?

TYLER-STOTT: Yes.

HER HONOUR: Great. Well, would you like to just give that to my associate when I go off the bench and we can get it to them tomorrow morning.

CROWN PROSECUTOR: Yes, your Honour.

ADJOURNED TO FRIDAY 19 AUGUST 2022

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VIQ:SND

D16

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

5 JUDGE O'ROURKE SC
AND A JURY OF FIFTEEN

SIXTEENTH DAY: THURSDAY 18 AUGUST 2022

10 **2019/00056907 - R v Wayne Gregory ASTILL**

**STATUTORY NON-PUBLICATION ORDER RE IDENTITY OF
COMPLAINANT**

15 **CLOSED COURT FOR COMPLAINANT'S EVIDENCE**

IN THE ABSENCE OF THE JURY

20 HER HONOUR: Just before we get the jury, there's just a couple of things I
wanted to raise. I have the elements document, a draft. It's quite lengthy, and
I want you both to have time to go through it before I start. So I'll have that
handed down, together with a verdict - what I've done is effectively, rather than
go through every count, I've broken it up as per complainant so that you'll see -
25 but there's definitions, and then for each complainant, if there's six counts, for
example, five counts for C as to the indecent assault, I have dealt with that first
as one sort of broad, and then refer back to - anyway you'll see it once you
receive it. I'm putting that on you right now. I'm summing-up at some stage,
but I really do need you to spend sometime looking through it so that there's
30 not - I'd rather take more time now than actually make a mistake and do
something wrong, and it all goes pear shaped.

So spend that time looking at that, I'll give you time. There's also a verdict
document that I've prepared for the jury that I propose to give to each
35 members of the jury, which outlines each count, what is the offence alleged,
what's the alleged conduct, and the transcript reference for that. An area for
jury notes and the verdict, so that when they come back, it's difficult for them if
they don't have something to write it all on. It's just easier when there's -
there's references to the counts that he's pleaded. They have been shaded in.
40 So just with an outline saying, "No verdict required", so that they're aware of
that. But when my associate comes back I'll hand those out. I just have
another associate sitting in with us today as well. So that's a verdict
document.

45 MFI #24 VERDICT DOCUMENT

Can I just ask you some questions--

TYLER-STOTT: Yes.

VIQ:SND

D16

HER HONOUR: --and I'm sorry to do that in the middle of your closing address but I just wanted to make sure in relation to this draft document, I've tried to put in for each complainant the case for the accused so that the jury
5 know and it's more balanced so that they understand what the accused case is for each complainant. I'm struggling with a couple of them.

TYLER-STOTT: Yes, your Honour.

10 HER HONOUR: In relation to, for example, particularly the ones where there's been a plea of guilty to the misconduct charge, so for C, is it the accused case that there was a consensual kiss?

TYLER-STOTT: Yes.

15

HER HONOUR: And is that really it?

TYLER-STOTT: No, there was more. There was touching and various other acts that without consent would be considered indecent.

20

HER HONOUR: So, basically, is it the accused case that there was consensual kissing and touching?

TYLER-STOTT: Yes.

25

HER HONOUR: But any incident alleging non consent did not occur?

TYLER-STOTT: Correct, yes, your Honour.

30 HER HONOUR: Just let me write that down. So I'm putting it in the document as well so that they actually know specifically what the situation is. So consensual and touching during that period of time?

TYLER-STOTT: Yes, your Honour.

35

HER HONOUR: The nominated period of time, but any incident alleging non consent did not occur. So what I suppose I'm a bit confused about is it the accused case that those incidents did occur but the touching was consensual or that there was other touching that has not been referred to, which was
40 consensual? Because I haven't got the agreed facts for the misconduct charge so it's difficult for me.

TYLER-STOTT: Yes, your Honour. If I can just leave it as simply that there was kissing and touching within that period of time.

45

HER HONOUR: I'll leave it at that. I won't say anything. So I'm not specifically saying that the incidents didn't occur?

TYLER-STOTT: No.

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.18/08/22

763

VIQ:SND

D16

HER HONOUR: So it's just that there was consensual kissing and touching during the nominated period on the indictment.

TYLER-STOTT: That's right, yes.

5

HER HONOUR: That's C. K is simply that those incidents did not occur?

TYLER-STOTT: Yes, your Honour.

10 HER HONOUR: And in relation to the shredding of the report, that there was an actual report in existence?

TYLER-STOTT: There was a document in existence. It wasn't a charge is the case for the accused.

15

HER HONOUR: So Ms K, no incident as alleged took place and in relation to reference to a report, a document was in existence.

TYLER-STOTT: Yes, your Honour.

20

HER HONOUR: Ms H is just, I've stated, that it is the accused case that he had a consensual sexual relationship with the complainant and had consensual sexual intercourse on three occasions. The accused denies placing semen in a cup and denies instructing her to put a cucumber inside her.

25

TYLER-STOTT: Yes, your Honour.

30 HER HONOUR: Ms O, I have written or I have that it was the accused case that he had a consensual sexual relationship with the complainant and had consensual sexual intercourse.

TYLER-STOTT: Yes, your Honour.

35 HER HONOUR: Leaving it at that?

TYLER-STOTT: Denies the grave incident.

40 HER HONOUR: Ms G. There is a, what? A denial of any alleged offer of favours in return for assistance.

TYLER-STOTT: Yes, that's right, yes, your Honour.

45 HER HONOUR: Complainant M, I've written that it was the accused case that he never indecently assaulted the complainant. Sorry, that's the other one. That it was the accused case that there was a consensual kiss between them and the complainant, on him and the complainant on one occasion, but the two incidents alleged by her did not occur.

50 TYLER-STOTT: Yes, your Honour.

.18/08/22

764

VIQ:SND

D16

HER HONOUR: Ms N, it was the case that he never indecently assaulted the complainant nor did he nor did he ever provide her with tobacco or Dencorub.

5 TYLER-STOTT: Yes, your Honour.

HER HONOUR: Ms D, was that the accused case that this incident alleged did not occur.

10 TYLER-STOTT: Yes, your Honour.

HER HONOUR: Ms A, is that that's simply a denial of that, the accused case of this incident did not occur.

15 TYLER-STOTT: Yes, your Honour.

HER HONOUR: And Ms S, was that the accused case that these two incidents never occurred.

20 TYLER-STOTT: Yes, your Honour.

HER HONOUR: So I put that, include that in the draft. So the draft can be handed down to you now and if the verdict document, I think it's marked MFI 24 and this one can be marked.

25

MFI #25 VERDICT DOCUMENT

MFI #26 DRAFT ELEMENTS DOCUMENT

30 We will need to print them out. It seems like they've gone missing. That's being sent through. So just have a look in the meantime to that verdict document and see if there's any issue with that. Mr Crown, if I can just raise as well in relation to, I just want to confirm the admissions Brumwell's evidence as to but really only K.

35

CROWN PROSECUTOR: Yes, it is.

HER HONOUR: And H, there's already the plea anyway. It's just confirming that, I suppose, plus with O that there was a sexual relationship.

40

CROWN PROSECUTOR: Yes.

HER HONOUR: You rely heavily on that for the K is the smacking on the bottom.

45

CROWN PROSECUTOR: That's right. With respect, as I close to the jury to the admission in the ERISP, the particularity of the admission with the belated, as I put it, admission to the ejaculation in the underwear and what have you, I have addressed them on that.

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.18/08/22

765

VIQ:SND

D16

HER HONOUR: Yes. So that goes to H as well and I suppose that encompasses also the LD in relation to the Governor, the admission there?

CROWN PROSECUTOR: The H, yes.

5

HER HONOUR: Yes, but that doesn't yet.

CROWN PROSECUTOR: It doesn't take it any further, but, yes.

10 HER HONOUR: And in relation to tendency direction, I'm proposing to give the tendency direction, or the tendency purpose of it, and the way the Crown wishes to use it in the same way that you've submitted.

CROWN PROSECUTOR: Yes.

15

HER HONOUR: So that there was five tendencies effectively, the bodies of evidence that you rely upon for that and that what you say it goes to - to proving the other counts?

20 CROWN PROSECUTOR: Yes.

HER HONOUR: Because you didn't mention the cross admissibility of one complainant on another complainant. So I'm limiting it to what you've submitted it on.

25

CROWN PROSECUTOR: Very well.

HER HONOUR: And then I'll give the steps I need to go through for each of those tendencies and then what they can and can't do.

30

CROWN PROSECUTOR: Yes, your Honour.

HER HONOUR: Lies, we know.

35 CROWN PROSECUTOR: Complaint, we went through.

HER HONOUR: I might just give some time, though. How long do you expect to be now, Mr Tyler-Stott?

40 TYLER-STOTT: Twenty minutes, half an hour, your Honour.

HER HONOUR: And after that, I might send them away for a while because I don't really want to start until I know that you two are happy with the elements document that I've prepared. And as I said, obviously you're going to be on
45 your feet, not looking at it and Mr Crown is going to be concentrating on your address so we'll give a little bit of time in between those two. Let's get the jury. I'll just have it handed down. Are you right to go, Mr Tyler-Stott?

HER HONOUR: Yes, your Honour, I am. Specifically, look, both of you, if you
50 can look at all of it but in relation to the misconduct charges, the elements that

VIQ:SND

D16

I've outlined there, I've really followed the decisions of Kwok and then Obeid and McDonald, I'm reading them. Also, just some commentary on it without - a lot of it speaks for itself but basically, to the degree of the seriousness that it must really require criminal sanction. Not rather civil sanctions so to
5 distinguish that, between it, it seems the case that also it's a trial a judge should be making some point to emphasise the difference between a civil and a criminal sanction.

10 CROWN PROSECUTOR: That's right, and the need for it to be egregious - sorry, those terms, which I hope the jury understood was the reason I spoke to the seriousness of it and that's promoting rehabilitation and the like. I hope I make clear to them that that was with respect to the misconduct.

15 HER HONOUR: Yes. No surprise, may we please have a copy of the complete transcript. Thank goodness we did the errata last night.

MFI #27 JURY NOTE ASKING FOR TRANSCRIPT

20 If your solicitor, Mr Crown, can start preparing that.

CROWN PROSECUTOR: Yes, your Honour.

25 HER HONOUR: Obviously, I'll also need the defence to go through it just to make sure there's no--

CROWN PROSECUTOR: Mishaps.

HER HONOUR: --to have a page in there where it's been in the absence of the jury so just to make sure that that's not done.

VIQ:SND

D16

IN THE PRESENCE OF THE JURY

HER HONOUR: Good morning, ladies and gentlemen. Apologise for the delay, there's just of course at this time of the trial, there's things that I need to discuss with counsel and there will be more that I do need to discuss with them, just some important areas of law and after the conclusion of Mr Tyler--Stott's closing address so you will have a bit of a break between then and the start of the summing up, just to let you know how it's going to progress today but yes, Mr Tyler-Stott.

TYLER-STOTT: I should only be around 20 minutes to half an hour, ladies and gentlemen. I wanted to start off with, I suppose, what's known as complaint evidence and perhaps, what also might be referred to as some degree of corroboration. Complaint, for example, where a complainant has told an officer that Mr Astill has done something, that's complaint evidence and might be relied on by the Crown for some degree of corroboration.

Can I say this, that a lie repeated doesn't make it true. A lie repeated on many occasions, even if it's consistent, does not make it true. I urge you to approach the complaint evidence with a degree of caution and circumspection in the circumstances where statements have been forthcoming, sometimes years after the event.

Ms Barry, she was the first Crown witness, said something about Ms K having told her that Mr Astill had touched her on the backside. Ms Ward did not give that evidence, Ms K said that she told Ms Berry B-E-R-R-Y. Ms Berry does not give that evidence. It's confusing. Approach complaint with a degree of caution, I urge you. Ms Barry also said nothing about the incident with C and the ring debacle, if I can put it in those terms.

Even though Ms Berry, even though she was a little bit avoidant when I was asking her the question of whether or not she'd spoke to Ms Barry, she eventually said that she did. No corroboration from Ms Barry. Nothing from Ms C either about this aggressive approach from Mr Astill. I urge you to give her evidence the weight you think it deserves and look at it in the framework of other evidence that might support. Did she have an axe to grind, perhaps?

Ms Berry also gave evidence that she was approached by Ms D. Ms D's complaint to Ms Berry was that Mr Astill touched her. That's as far as it went. Didn't say sexual assault, didn't say, "forced me to have penile-vaginal intercourse," consistent with the evidence she gave. "He touched me." It's interesting that Ms K, even though Ms Berry was her boss, as she put it, does not give any evidence of this complaint.

HER HONOUR: Ms Ward or Ms D?

TYLER-STOTT: Ward, your Honour. Sorry to skip around a bit but Ms Ward was the sweeper and she termed Ms Berry as her boss. There's nothing from her to corroborate the touching aspect; all she said was that she felt uncomfortable around Mr Astill. Look at Mr Clark. He gave evidence that he

VIQ:SND

D16

went to the BIU, saw Mr Astill standing almost casually with his hand on top of the door.

5 I'd say that's in contrary distinction to what Ms K says Mr Astill did and the time
at which it happened. Ms K said that Mr Astill almost lunged for her, tried to
kiss, and then at that time, Mr Clark, the knight in shining armour was on the
scene. That's not consistent with what Mr Clark says. Mr Clark, hand on the
door, speaking to Ms Ward at the threshold. It's not consistent. Mr Clark said
10 she was teary and upset, made a complaint. Ms K doesn't give that evidence.
It's bizarre. Perhaps she was still labouring under the effects of heroin. Not a
pharmacologist, there must be some explanation for it.

15 Move to Mr Brumwell. Mr Brumwell was someone who wasn't going to give an
inch, particularly on the conversations. Repeated, even tried to take sides with
the Crown when I was asking him questions. He wasn't going to give an inch.
They were talking, or Mr Astill rather, was talking about his sexual conquests.
It's rather unusual that he might start with a touching of the backside when he
had had sex with multiple women.

20 It's rather unusual also that Mr Brumwell thought it humorous that he did
nothing about it until January 2019. He made no notes; statement was
prepared sometime later, wasn't going to give an inch on Ms K when he was
challenged. He was at pains to tell you what an excellent memory he had. I'd
urge you to, as the Crown has said, and use the term, treat his evidence with a
25 grain of salt. Very clear on Ms O, Ms H. C is an unusual one.

30 Perhaps that was because that no actual sexual intercourse took place. It was
a conversation about sex. Nothing had happened with Ms C, that's why you
might think it unusual that he would talk about Ms K. He comes back to work, I
think it was October, a couple of months, no doubt, the rumours are rife. It may
have been innocent, reconstruction or deliberate. Just treat his evidence with
the weight you believe it deserves. I can't tell you how to use the evidence,
and I won't, it's your province.

35 I'm just going to speak briefly about Ms O, Ms N, Ms D, Ms G. They were all at
Dillwynia at the time leading up to these complaints. Ms O said, "I didn't know
any of the other women. I didn't speak to any of the other women". Ms N was
there and has been there since 2014. She's instrumental in all of this. It might
be difficult to accept what Ms O has to say, particularly the timing of their
40 statements. Ms O's was the 28th, at least, the second statement was 28 April
2021.

45 Ms O's, a couple of days later, 4 May 2021. That was her second statement
also. Ms D spoke to Ms N, that much is clear. She had access to her. The
allegations promote an emotional response in right-minded people. The
character of that alleged sexual assault is very different to many of the others.
In fact, all of the others, I'd submit to you. There's no negotiations. It's just
sudden, unexpected. It's just very different to the others. When you're looking
at the tendency evidence, which I'll come to shortly, just take that into account,
50 as well as the previous features that I've identified concerning Ms D's

VIQ:SND

D16

evidence.

Ms V had access to Ms W, Ms K, Ms M, Ms B, Ms R. It was very clear that she held, I'd suggest to you, a dominant position amongst the prisoners. Mr
5 Astill, first out of the gate said, V has got something to do with this. There were complaints earlier. There's obviously a dislike, a discord. I'd ask that to be given consideration when you're looking at Ms K's evidence and Ms M's.

10 The tendencies. We've pleaded guilty to a number of counts and some of those counts include the sharing of information. Obviously, that shouldn't happen. It was done. He's pleaded guilty to that. The provision of contraband to Ms F and Ms E shouldn't have happened. It did. Sex with prison inmates, consensual relations, shouldn't have happened. It did. There are rules,
15 regulations against these sorts of things, so we don't end up where we are for the protection of both inmates and also officers.

You will be told how you can take these things into account, those three
20 features that I've identified. I'd submit to you, the other tendencies the Crown have identified. Really noise, the distraction. When you come to your task. These are just submissions. You treat them however you wish. I can't tell you how to approach the evidence. Ms N, who did feature reasonably heavily and I'm sorry, this doesn't have much of a framework at the moment. I will get back on track. Ms N says nothing about Ms S. Interesting. When she was
25 apparently there, outside, when it happened.

Just coming to the demeanour. You've been asked to take that into account, the way in which a witness gives evidence. You're entitled to. How many times
30 in life have you got it wrong? You'd thought someone lied to you, you later find out they haven't. Or you thought someone was telling the truth and you find out later they lied. We get it wrong. We don't have this in-built lie detector and that's with people we know and have observed over time. These witnesses that you've seen give evidence, you've seen them for some 15 minutes, some 10, some up to two hours. It's a very small window of opportunity to discern
35 whether or not someone was telling the truth or lying or getting it wrong, just by virtue of the way in which they tell their evidence.

As I've said earlier, the allegations that are in your charge, some of them would undoubtedly promote an emotional response. You wouldn't be human if it
40 didn't. Can I urge you to please put that to one side to approach the evidence dispassionately and rationally. As I said from the beginning, focusing not on the quantity of the evidence but the quality of the evidence.

I'll finish with this, the witnesses of complaint, their evidence forms the basis
45 for the counts on the indictment. Some of them are in gaol for the most egregious crimes on the criminal calendar. Some of them are not. What is clear is that normal social rules, legal rules, are perhaps not as significant to them as they might be to others. Bear this in mind when you approach their evidence. Perhaps lying to you for whatever reason and that reason does not
50 need to be proved by the accused. Does not seem like such a big deal in the

.18/08/22

770

(TYLER-STOTT)

VIQ:SND

D16

monotony of their lives in gaol. Perhaps it's not such a big deal. Thank you for your attention.

5 HER HONOUR: Yes, thank you, Mr Tyler-Stott. So there you have it, ladies
and gentlemen, you have the two closing addresses, and we're going to move
on to the summing-up. But as I said, I have some areas of law that I need to
speak with counsel about. It may take a little while. I'm not going to give you a
time at this stage, but I'll update you. I'll get it done as soon as we can. So
10 please go out and have a morning tea and I'll let you know as soon as I know.
Thank you.

VIQ:SND

D16

IN THE ABSENCE OF THE JURY

HER HONOUR: How long do you think you might need to have a look at that?

5 CROWN PROSECUTOR: We don't have the elements document yet.

HER HONOUR: Sorry, it's about to be handed down.

10 CROWN PROSECUTOR: We're checking all the time wasters.

HER HONOUR: The verdict one.

15 CROWN PROSECUTOR: The verdict one for the references, just to double check those.

HER HONOUR: Say if we return in an hour?

CROWN PROSECUTOR: Yes.

20 TYLER-STOTT: That's plenty of time, your Honour.

25 HER HONOUR: Let's just say then, 11.40, if we return and then I've got a bit to do before I get to the elements document in any event but just in case there's anything last minute to discuss. So that's for the verdict document and that draft document. Let's say 11.40 and we'll meet and then once we've sorted out, I can get the jury and commence.

CROWN PROSECUTOR: Yes, your Honour, and the ballot, just a reminder.

30 HER HONOUR: I don't think I'll finish the summing up today.

CROWN PROSECUTOR: No, I wouldn't have thought.

35 HER HONOUR: It's supposed to be from according to 55G of the Jury Act, it's immediately before they commence their deliberations so I'm presuming they have to painfully listen to a lengthy summing-up before I can release three of them. I need to find out whether there's been a foreperson because if there is, that person is excluded from the ballot.

40 SHORT ADJOURNMENT

How did we go?

45 CROWN PROSECUTOR: Your Honour, I think, productively. Could I go firstly to the, if your Honour's happy to do it this way, the verdict document.

HER HONOUR: Yes.

50 THE FOLLOWING ERRATA WERE NOTED:

.18/08/22

772

VIQ:SND

D16

1. Global change, with respect to counts 15 and 16, “without consent, circumstances of aggravation” to read “without consent in circumstances of aggravation”.
- 5 2. Page 8, with respect to count 19, amended to “222 to 223”.
3. Page 15, “F” amended to “F”.
4. Global change, with respect to counts 39 and 41, “474” to read “473”.
- 10 5. Page 18, “E” amended to “E”.

CROWN PROSECUTOR: Could I move now to the elements document.

15 HER HONOUR: Nothing else in relation to that one?

CROWN PROSECUTOR: No, your Honour.

HER HONOUR: Thank you for that. You got the updated one?
20

CROWN PROSECUTOR: I did, I did. I know spell check - yet to go through it just p 1 is the line, it should be “the touching,” it says, “the tucking”. Spell check will take care of that.

25 HER HONOUR: Yes, no, that’s good, thank you.

CROWN PROSECUTOR: Page 11 is notes to count 10 says this and in context your Honour has already said element 5 where such misconduct is serious and “serious” needs the spellcheck.

30 HER HONOUR: So wrong, yes.

CROWN PROSECUTOR: Meriting criminal punishment. “Meriting” that’s what I’m focusing on. In the notes your Honour has the misconduct if found proven must be of sufficient seriousness to attract criminal punishment. I say it could be a number of things but should either be sufficient seriousness that it must attract criminal punishment or perhaps the same thing, or require criminal punishment or warrant or merit any of those. It is subtle.

40 HER HONOUR: That it requires? What was that first one?

CROWN PROSECUTOR: Requires, understandable.

45 TYLER-STOTT: Just that, your Honour.

HER HONOUR: That it requires criminal punishment, that is, a distinction must be able to be made from less serious forms of conduct which may give rise to civil proceedings. Yes?

50 CROWN PROSECUTOR: My friend raised one which I did not disagree with.

.18/08/22

773

VIQ:SND

D16

He might wish to do that. Mr Tyler-Stott, p 6 I think you raised.

TYLER-STOTT: In terms of element 4 on the issue of--

5 HER HONOUR: What count? Count 4?

TYLER-STOTT: Yes, count 4.

10 HER HONOUR: So count 4 p 6, yes?

TYLER-STOTT: Yes, the second dot point down, "If the accused honestly". I'd ask for the words, "If there is a reasonable possibility that the accused honestly" be inserted.

15 HER HONOUR: "In deciding the issue this issue you are concerned with the" – oh, "if the accused honestly, though wrongly, believed that the complainant was consenting to the act amounting to the assault then the accused is not guilty because if it was the position the Crown has not proved". What are you asking for?

20 TYLER-STOTT: If there is a reasonable possibility that the accused, just inserting the words there?

25 HER HONOUR: Any objection?

CROWN PROSECUTOR: No, there's not, your Honour.

HER HONOUR: "If there is a reasonable possibility that the accused"?

30 TYLER-STOTT: Yes, your Honour. The same for p 11.

HER HONOUR: Is that the same thing? It will just be repeated.

35 TYLER-STOTT: Yes, your Honour.

HER HONOUR: I've done it twice in relation to the first two complainants and then, basically, just refer them back because it's just – I just wanted to make sure that they understand by that stage.

40 TYLER-STOTT: Sorry, your Honour, it was p 10.

HER HONOUR: What page?

45 TYLER-STOTT: Page 10 second dot point.

HER HONOUR: "The accused honestly, though wrongly", yes, anything else?

CROWN PROSECUTOR: Not for the Crown's part.

50 HER HONOUR: That's good. Can I just doublecheck, though, for you,

VIQ:SND

D16

Mr Tyler-Stott? In relation to the case for the misconduct charges, as you can see I've written there that in the notes there's no issue that a correctional officer is a public official, element 1.

5 TYLER-STOTT: Yes.

HER HONOUR: "Nor that it is at the relevant time nominated in the indictment the accused was acting in the course of or connected to his office, element 2" what's your position? I did have it in and then I've removed it but is it an issue
10 that if they accept beyond reasonable doubt of the conduct that is alleged against him that that would amount to misconduct?

TYLER-STOTT: I wouldn't take issue with that.

15 HER HONOUR: So for each of those counts but then it's the other elements because you have a denial of what it is and that would mean then element 3 and 4, if believed beyond reasonable doubt the evidence of the complainants the real issue for those counts then if they were to get over that hurdle is to
20 consider whether the misconduct is so serious.

TYLER-STOTT: Yes, your Honour.

HER HONOUR: That's for each of the misconduct charges? There's K's one which relates to the shredding plus the sexual acts?

25

TYLER-STOTT: Yes.

HER HONOUR: Nonconsensual if they were to get to that stage, same running backwards Ms S, Ms A, Ms G.

30

TYLER-STOTT: Yes.

HER HONOUR: G's case, though, it does seem that your case, you didn't challenge the fact that he had offered to help with the stepdaughter.

35

TYLER-STOTT: That's right, yes. I think G also there's the threat of the bikies and the police.

HER HONOUR: That was with D. G was the stepdaughter, Facebook, police could assist and the offer of now you need to do it, hand job and then a head job. So, there's a denial of the sexual acts but there's no challenge to the aspect of helping her with her stepdaughter.

40

TYLER-STOTT: That's right.

45

HER HONOUR: I'm going to take it slowly and also moving of Ms P. There was the aspect of that. I don't know whether that was challenged in relation to her evidence.

50 TYLER-STOTT: I don't think it was, your Honour.

.18/08/22

775

VIQ:SND

D16

HER HONOUR: I'll have a look. That count was 33, wasn't it?

TYLER-STOTT: Yes.

5

HER HONOUR: It was suggested to her that the information your client provided about the daughter was information she already had and she agreed.

TYLER-STOTT: Yes.

10

HER HONOUR: And she told him this, challenged her about the sexual act not put to her, though, I have a note that he did not ask her to put in a statement about P.

15 TYLER-STOTT: Yes, your Honour. I didn't challenge that.

HER HONOUR: You didn't challenge that?

20 TYLER-STOTT: I didn't challenge that. I've just got to check my instructions on that as to whether or not that's an oversight.

HER HONOUR: If you could let me know. I'm not getting to this document, though, until this afternoon. What I hope to do is to get to this, I don't know whether I will, get to the stage of finishing the elements document and then summarise the closing addresses tomorrow morning and sending them out after the ballot. I'll go for a little while now and then I'm going to stop and then see where we get to. Thank you. Please keep an eye out if I missed, I've done the directions that you both have asked for but if there are further directions that both of you consider are appropriate, please don't refrain from letting me know.

30

TYLER-STOTT: Your Honour, can I just as far as C was concerned and the issue of the flashing of the underpants, I suggested to her in cross-examination that whatever was done was free and voluntary so I'm not suggesting that it didn't occur but it was free and voluntary and as far as H was concerned, we concede that there was one occasion where he ejaculated into her underwear but that was in the BIU. The other one was denied.

35

HER HONOUR: So the three occasions that your client agrees occurred but consensually was the BIU.

40

TYLER-STOTT: Yes.

HER HONOUR: The one in the SAPO office?

45

TYLER-STOTT: Yes.

HER HONOUR: Let me have a look at my verdict document. It might be easier. It was, is it the first occasion of sexual intercourse?

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.18/08/22

776

VIQ:SND

D16

TYLER-STOTT: That was the, was it the photocopy room where there was the—

5 HER HONOUR: The photocopy room, it's easier to think of the rooms.

TYLER-STOTT: Yes, that's conceded.

HER HONOUR: So the photocopy room incident is conceded but consensual.

10 TYLER-STOTT: Yes.

HER HONOUR: he BIU unit and the other one was the SAPO one. There was two in the SAPO office. The Mirza one.

15 TYLER-STOTT: Yes.

HER HONOUR: Okay thank you.

20 TYLER-STOTT: Your Honour, if I'm not interrupting your Honour's thought, how many copies do you want the jury to have?

HER HONOUR: Two.

25 TYLER-STOTT: Two sufficient?

HER HONOUR: That's enough. It's too many trees.

TYLER-STOTT: Yes, your Honour.

30 HER HONOUR: The complaint evidence that you rely upon that's in relation to the complainants, Ms C, Ms K, Ms H, Ms M, Ms D. Is there any others? I don't think you submitted on any others?

35 TYLER-STOTT: No, I didn't, your Honour.

HER HONOUR: Ms A, no; Ms S, no.

TYLER-STOTT: No.

40 HER HONOUR: I mean she stated she spoke to her partner at the time, but he didn't give evidence.

TYLER-STOTT: No. It's so vague as--

45 HER HONOUR: Ms N, no.

TYLER-STOTT: No.

50 HER HONOUR: Nope Ms BB was with Ms D.

.18/08/22

777

VIQ:SND

D16

TYLER-STOTT: D, yes, and I addressed on that.

HER HONOUR: So I've got Ms U with Ms C.

5 TYLER-STOTT: Yes.

HER HONOUR: Ms K that was her evidence, and the evidence of Ms Barry, Ms Berri and Mr Clark--

10 TYLER-STOTT: Yes.

HER HONOUR: --to an extent, and Ms W.

TYLER-STOTT: Yes.

VIQ:SND

D16

IN THE PRESENCE OF THE JURY

HER HONOUR: Yes, thank you, ladies and gentlemen, I'm going to commence my summing-up to you now. Before I do that, can I just raise the fact that I understand and I've read your jury note, and that you are seeking a copy of the transcript as a whole. That's fine, and it's great. That's getting prepared for you. I forgot to mention it before, but it is being prepared as we speak. It's quite lengthy, of course, as you would appreciate. I'm going to provide, or have provided to you, two copies of the transcript of the evidence of each of the witnesses. So that'll come, it's getting processed. It may take a little while, but you'll have it, we hope before you start deliberating.

PROCEEDINGS AFTER 12.06PM RECORDED BUT NOT TRANSCRIBED

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APT:SND

D2

TR66082

REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF FIFTEEN

FRIDAY 19 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL**NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****SUMMING-UP CONTINUED**

IN THE ABSENCE OF THE JURY

HER HONOUR: Good morning. We'll get the jury. Anything to discuss?
Okay.

CROWN PROSECUTOR: No, your Honour.

HER HONOUR: What I propose to do is finish off my summing-up and then send them back to morning tea to say goodbye, bring them back out with their bags and do the ballot and then send them out.

CROWN PROSECUTOR: Yes, your Honour.

HER HONOUR: I'll also give them some explanation as to why we're doing the ballot and why there was 15 because I have anecdotally - will let them know, for example, another trial that's running simultaneously had 15 and they're already down to 10 or 11. So just to explain to them as to - because I think it would be quite upsetting to be sitting here and then not being here to the end.

CROWN PROSECUTOR: Yep.

HER HONOUR: Do we have the verdict document? We'll do that as they get sent out later. Yes, the updated with those slight amendments to the verdict document, I will substitute the MFI 25 with this updated one so it remained as MFI 25.

CROWN PROSECUTOR: Yes, your Honour.

IN THE PRESENCE OF THE JURY

HER HONOUR: Good morning, ladies and gentlemen. Just before I continue and finish off the summing-up, can I just let you know how we are going to

APT:SND

D2

TR66082

progress this morning. I will complete the summing-up. It will probably only take me about somewhere between 20 and 30 minutes. What I am then going to do is ask you all to go out for a cup of tea and to basically say goodbye because you know that the ballot is going to be conducted this morning.

Can I explain to you, though, why it may seem it would be disappointing, no doubt, to the three that are not going to go forward with the verdicts and the deliberation, and I completely understand that. The reason that was done was because the estimate of the trial was six weeks. Particularly in these days with COVID and the like, and illnesses that are going around, there has to be a certain number of jurors to get a valid verdict. You know that the normal verdict is for 12 but it can be reduced by a few numbers. But in this current stage that we are in with COVID, we have had jurors and juries be reduced quite dramatically so that we may not have had enough numbers. The fear is if the trial is of a certain length that we might get to a stage where it becomes invalidated, the trial, because we do not have enough jurors. So that is why where there is a lengthy trial in progress, the application is made to have an extended jury of 15 because usually there is natural attrition that one or two or three have to be discharged due to illness or the like. So that is why there was 15 in this trial because of the estimate of the time that it was going to take.

Surprisingly, I must say, you are all still here, which is great, but it also means that for three of you, sadly, and no doubt disappointingly, you are not going to be going through to the final stage of the trial. However, can I also say that it has been very impressive to see, like I said to you yesterday, everyone turning up punctually, turning up to be here. No doubt that you have learnt something about the criminal justice system just being here. So I hope

APT:SND

D2

TR66082

to the three that do not continue on today, that you do not consider it has been a waste of time for you, because I can assure you that it has not and that you would have learnt a great deal about the criminal justice system and the way that you have given back to the community. So to those three and to all of you, I thank you very much. So that is how it is going to go, though, in any event, today.

What happens with the ballot, though, effectively, is that when you do come back in, I will ask you to bring all your bags because you won't be going back in, the three that are not chosen from the ballot. So we pick 12 out of the 15, and the three that are not will be escorted out with another court officer to leave the building.

And can I also just remind - and no doubt someone has told you - but it is very important that there is no contact. No doubt over the time friendships have been formed and no doubt you will catch up with each other at some stage, but please do not do so whilst you are in deliberation. So I will be asking that the three who are removed from the jury make no contact whatsoever over social media, over phone call or the like with the other members of the jury whilst the deliberations are continuing.

So, yes, with all of that, let me get back to the summing-up. Now, the last direction I have to give you concerns the tendency evidence. Now, in considering the counts on the indictment, you are entitled to commence your deliberations with any count and therefore any complainant you wish. It is not the case that you must follow the complainant or the counts as set out in the indictment. It is simply a matter for you as to how you go about the process. But, as I have directed you several times now, the accused is charged only

APT:SND

D2

TR66082

with the 44 alleged counts remaining on the indictment and it is upon each count that you must return a verdict in each instance of 'guilty' or not 'guilty'.

I have told you that you must give a separate consideration to each count on the indictment. Giving separate consideration to each count means that your verdicts might be the same or they might be different, and that makes sense when you think about it, because different issues are present in the evidence in relation to the ten complainants and, indeed, their individual counts. I have also directed you that subject to a direction relating to tendency evidence or tendency reasoning, you must consider and decide whether the Crown has proved each count on the basis only of the evidence directly relevant to that count and that complainant.

I have directed you that in considering each complainant's evidence and whether the Crown has satisfied you as to the honesty and essential accuracy of their evidence in relation to a particular count, you are entitled to consider whether her evidence is supported by any other evidence before you. Now, such other evidence - includes the method of reasoning referred to by the parties as tendency reasoning. It is this type of reasoning that is the subject of the present direction.

So what is tendency reasoning and how might it apply? Now, the Crown contends to you that there is evidence before you which demonstrates a pattern of behaviour, revealing that at the time of the conduct alleged in the counts on the indictment, the accused was a person who possessed certain tendencies, certain patterns of behaviour, and they were, namely;

One, he had a tendency, the Crown said, to give favourable treatment to an inmate, including the provision of contraband. Now, that was relied upon by

APT:SND

D2

TR66082

the Crown in relation to the misconduct charges, and they, for example, were counts 10, 33, 42, 48 and 51 and there may have been one other one on the indictment.

The second tendency that the Crown alleges is a tendency to make sexually suggestive comments to an inmate.

The third tendency is a tendency to put himself in a position where he is alone with a female inmate or inmates with a possibility of being interrupted.

The fourth tendency was a tendency to engage in sexual acts with inmates, including requests for sexual activity, sexual touching and sexual intercourse, and to do so without the consent of the inmates, and that was relied upon by the Crown in relation to all counts effectively on the indictment, and this tendency had subcategories, which included for example,, a tendency to require or request inmates to expose themselves through the cell windows, and that, for example, goes to the Crown says C's count 4, H's count 14 and you will also remember the evidence of I.

Now, the fourth tendency in relation to a tendency to engage in sexual acts, also includes other subcategories or common features, it was submitted, which included, for example, putting his crotch in inmates' faces, touching or stroking inmates' hands and arms, touching inmates' bottoms, putting inmates' hands on his penis, touching inmates' breasts or vaginal area, pressing up against them.

So the Crown submits that if it is able to prove the existence of these tendencies, then that would be relevant to the counts that you are considering on the indictment because the Crown says it would make it more likely that the

APT:SND

D2

TR66082

accused acted upon those said tendencies and conducted himself in the way alleged by the complainants in relation to the counts on the indictment.

But before I give you some important directions regarding tendency reasoning, let me first identify the evidence that the Crown contends reveals or demonstrates the particular tendencies it alleges.

Now the Crown Prosecutor went through with you, in some detail when he was outlining, so I do not seek to repeat every aspect of the evidence that he went through for that. I am sure that was clear to you then, but it is effectively encompassed within three bodies of evidence, and that is;

The evidence of the complainants themselves which concerns their own allegations and other acts of the accused in excess of their respective counts on the indictment but are not subject to a charge on the indictment - reference, for example, by H when she said that it happened 'multiple times', those types of answers and evidence. Secondly, the second body of evidence that the Crown relies upon is the agreed facts documents concerning his pleas of guilty in relation to those counts that he has pleaded guilty to, and they are contained in exhibit L, exhibit Y and exhibit Z. So the material in those agreed facts.

The other body of evidence that the Crown relies upon are from inmates at the Dillwynia Correctional Centre during that relevant time. That is, the evidence of Q, Y, I, X and U. None of those, of course, are complainants in the trial but they gave evidence of certain interactions that they had with the accused and their observations of him, and the Crown relies upon that body of evidence also to prove to you that the accused had those tendencies, those five tendencies as alleged.

APT:SND

D2

TR66082

There is also, of course, within the Dillwynia Correctional Centre body of evidence, the Correctional Officers Berry and former Correctional Officer Brumwell which the Crown also rely upon.

So that is, effectively, the circumstances might arise where you would be entitled to take into account the content of what, for example, one complainant said in her evidence about the conduct of the accused towards her when you are considering whether the Crown has proved the truthfulness and reliability of what the other complainant has alleged in her evidence that forms the basis of a particular count on the indictment referable to another complainant. Now, whether those circumstances will in fact arise in the trial will depend upon whether the Crown is able to prove all necessary matters it must prove before tendency reasoning can be applied by all or any of you.

So as you can see, the potential application of tendency reasoning would constitute a qualification to the direction that when you are considering whether the Crown has proved the offences alleged by one complainant, you must consider those counts completely separately to your consideration of the counts alleged by another complainant, or indeed any complaint made by some other person such as a tendency witness.

Before tendency reasoning could be used, the Crown must satisfy you of, however, two matters. So the Crown must prove - the two findings that you must make.

The first finding is that one or more of those acts alleged actually occurred. In making that finding, you do not consider each of the acts in isolation but you consider all of the evidence and ask yourself whether you find that a particular act or acts relied upon actually took place. If you find that

APT:SND

D2

TR66082

none of the acts occurred, then you must put aside any suggestion that the accused had any of those particular tendencies alleged by the Crown.

If you do find that one or more of those acts occurred, then you go on to consider whether, from that act or acts that you have found, you can conclude that the accused had the specific tendency or tendencies alleged. If you cannot draw that conclusion, then again you put aside any suggestion that the accused had a tendency that is being alleged by the Crown.

If you do not find that any of the acts - that is the three bodies of evidence relied upon for the tendency purposes - occurred, then tendency reasoning would not be available to you and you would have to disregard completely any suggestion that the accused had a particular tendency alleged by the Crown and decide the facts in dispute in relation to each count on the indictment without having regard to this method of reasoning called tendency reasoning.

However, if you, having found one or more of the acts, or one or more of the three bodies of evidence attributed to the accused occurred, then you must go on to consider the second matter the Crown must prove before tendency reasoning could be used by any or all of you. You must ask yourself whether, from the one or more acts or bodies of evidence you have found occurred, you can conclude that it or they reveal or demonstrate the particular tendency or tendencies alleged by the Crown.

Now, for example, in relation to that first question, there may not be much difficulty in finding one of those bodies of evidence has occurred because the accused has agreed that it occurred, the body of evidence being the agreed facts. In making that determination, you should consider all the circumstances relevant to the act or acts you have found proven, including circumstances

APT:SND

D2

TR66082

such as the following; the different relationship between the accused and the relevant witness at the time of the alleged conduct; where the alleged conduct was said to have occurred; the nature of the alleged conduct and the circumstances in which it occurred.

If you cannot draw that conclusion by any of the acts or bodies of evidence you have found occurred, then you must also disregard completely any suggestion that the accused had a particular tendency or tendencies alleged by the Crown and decide the facts in dispute in relation to each count on the indictment without having regard to that method of reasoning. But, if having found one or more acts or bodies of evidence attributed to the accused occurred and from that finding you conclude that the accused was a person with one or more of those tendencies alleged by the Crown, you would be entitled to have regard to that fact of the existence of that tendency or tendencies when you are determining whether the Crown has proved the accused committed the specific acts alleged on the indictment.

You should bear in mind, however, that it is just one part of the evidence relied upon by the Crown. You should give it what weight you think it deserves in the context of all of the evidence before you.

Now, having directed you as to what the Crown must prove before tendency reasoning can be used by you in your fact-finding task, I need to give you some directions how it cannot be used. It has only been placed before you for the purpose of seeking to establish the tendency asserted by the Crown against the accused, and such reasoning must not be used in any other way. So, therefore, it is completely wrong to allow tendency reasoning to support a process of reasoning that because the accused committed one or

APT:SND

D2

TR66082

more acts of a sexual or indecent nature towards one inmate, then he is in some way a person of bad character and, for that reason alone, he must have committed the offences alleged.

You cannot punish the accused for other conduct attributed to him by finding the accused guilty of the charges in the indictment on that basis alone. That is not the purpose of the evidence. You cannot use it in any way prejudicial against the accused unless you accept the Crown's argument that the evidence discloses a tendency alleged and therefore makes it more likely that the accused conducted himself under those tendencies and committed the offences charged against him.

Furthermore, evidence relied upon for the purpose of establishing a tendency on the part of the accused and in turn to provide the foundation for tendency reasoning must not be used to reason in an automatic way, namely that the existence of the asserted tendency must mean that the accused acted in accordance with that tendency or tendencies on the occasion alleged on the indictment. It may mean that he did but that is not an automatic result. For each count you need to calmly and objectively consider whether or not the accused in fact acted in accordance with that tendency by committing the particular charge alleged.

So I remind you that before the accused could be convicted of any offence alleged on the indictment, I have told you that you must be sufficiently satisfied as to the truthfulness and the essential accuracy of the complainant named on the indictment that relates to the count. Even if you are satisfied as to the existence of the tendency alleged by the Crown at the relevant times, that fact may lend support to the evidence of a complainant but it could never

APT:SND

D2

TR66082

be a replacement for a complainant should you view that she has been deliberately dishonest, or unreliable, in all or part of her evidence. So you should bear in mind again that tendency reasoning is just one part of the way the Crown seeks to prove its case against the accused. Only give it the weight you think it deserves in the context of all of the evidence before you.

Now, in relation to the accused's position regarding tendency - recognising of course that it is never for the accused to disprove anything because he carries no onus of proof but it is important that you understand his position in relation to this tendency reasoning. The accused's response to the argument advanced by the Crown is that the accused has pleaded guilty already to some of those counts on the indictment, which include, he says candidly, sharing of information, contraband and sexual intercourse with prison inmates. Consensual relationship, it is the accused's case, and he has said to you it should not have happened but it did, and that rules were there for the protection of both the inmates and the corrective officers. He said to you that the other tendencies, the ones that were not poignant to his pleas of guilty which related to the sharing of information, contraband and sexual intercourse, they are simply 'white noise' and should be disregarded as they are irrelevant to your considerations.

Now, whether in fact you find that these matters have affected the reliability of the evidence of each complainant and the tendency witnesses is solely a matter for you to consider and for you to determine.

Now, I just want to move on to the last part - summarise the addresses of counsel. Now, you have heard counsel address you upon the evidence, I am not going to repeat all of their submissions, and they have made submissions

APT:SND

D2

TR66082

to you as to how you should find facts and ultimately what your verdicts should be. They have made those addresses for your assistance and it is important for you to bear in mind the arguments and submissions made by both parties. But, just as I did not summarise the evidence you have heard and seen, I do not intend to repeat or refer to all the submissions and arguments put to you by counsel. However, you should bear in mind all that counsel have said to you in their addresses and not be influenced by the fact that I do or do not refer to some particular submission or argument that counsel has relied upon.

Firstly, the Crown addressed you on Tuesday and Wednesday morning, and initially outlined to you about how to assess witnesses and said to you that he was not suggesting that all witnesses were equally impressive, but asked you to consider that they were asked to look back years when assessing the detail given, and he also asked you to consider with their evidence and any question of delay in coming forward that they did not want to speak up in their role as inmates, and the difference of a role between a Chief Correctional Officer and the power imbalance. In relation to any fact of compensation, the Crown submitted it was their right to obtain it if what they say has happened to them, and asked rhetorically 'so what if they are?'. He submitted that the purpose of imprisonment was partly punishment, retribution, lack of liberty and to promote rehabilitation, and it is an obligation for those looking after them to ensure that they are in a safe place. He submitted to you and conceded that Mr Tyler-Stott was entitled to ask those questions and you should consider it, but that you would put it to side very quickly.

In relation specifically to the complainants, I am not going to go through their evidence and repeat what he said about their evidence. You have that

APT:SND

D2

TR66082

before you and you have heard it repeatedly. But in relation to C, he went over her evidence about her entries that she made in her diary, the plea of guilty to count 7, at odds, he submitted, to what he told the police in his interview.

In relation to Patrick Cogan, he stated that he was not an overly impressive witness as he could not remember the \$50,000, but not suggesting it was not suspicious. It was plainly not the right thing to do but the request was made and you can take it into account, but he submitted it does not mean that C was not telling the truth and said there was support for C in the tendency evidence. He then referred to the evidence of the complaint of Ms U, which I have gone through yesterday.

In relation to K, he submitted she was a very impressive witness. He outlined her evidence for counts 8, 9 and 10 and referred to Brumwell's evidence - the support in the conversation he had. He also referred you to Judith Barry's evidence and the conversation with K that the accused had slapped her on the bottom, and that complaint was made in the reception area. He submitted that K said she spoke to Renee Berry about this and also you have heard Berry's evidence about staying close to her. He submitted that you would also find evidence of support of K's account in the tendency evidence and also in the correctional officer Clark's evidence about his observations and him telling you that she mouthed the word "help" at the BIU when the accused was there. He submitted to you that the accused being there had absolutely nothing to do with what he was obliged and paid to do. He submitted that that meeting and those circumstances at the BIU were unchallenged in the trial, and you would accept Clark's evidence as being the truth.

APT:SND

D2

TR66082

In relation to the misconduct charge, he submitted it was serious misconduct, a breach of public trust and warranting punishment. Part of count 10, he submitted, was the offer to shred the complaint - and he says that says to an inmate that a complaint can be corrupted. He submitted the accused's conduct was against the objective of imprisonment, and that is why it warrants criminal punishment.

In relation to H, he went through the evidence of her relating to each count. Regarding the evidence that she was flirtatious, he asked you to consider that may not be surprising for people trying to survive in gaol, and other people were not aware of what happened behind closed doors. He also referred, of course, to the number of other people who submitted that she was fearful of him.

In relation to the photocopy room incident, he also asked you to remember there was only two protection places and she had been previously seriously assaulted and so she was terrified of being reassigned to the main section of the prison.

To the question of imbalance of power - it was submitted that she simply had no power. He referred also and took you to her exhibit G, which was the calendar with the dates specifying the incidences on 1 December, 8 January and I think 27 January. He also asked you to note Bartlett's evidence that he did not even bother asking H why she was on her knees in the accused's office and rhetorically said, "So why would inmates bother making a complainant?" in relation to addressing the issue of delay and no immediate complaint. That she had made it very clear to you that not in any way was she agreeing to any of the sexual conduct, and he asked you to consider the question of consent

APT:SND

D2

TR66082

bound up with her rash and wanting company and the way that the other inmates saw her react to him.

In relation to O, Mr Brumwell's evidence as to the conversation he had with the accused concerning O in Orlando - had similar words as to what O says the accused said to her. She used an interpreter at times and was genuinely, it was submitted, very emotional when giving evidence and that she had also been told by the accused that he could move her and that he indeed, he even went to the extent of checking her records to see if she was on contraception. She gave an account as to why she did not report it immediately, which I have gone through with you yesterday, but was submitted that she was a very impressive witness - a rawness and an honesty in her evidence.

For G, he went through her evidence about her stepdaughter and the efforts the accused said he would undertake to help find her and that personal relationships are not appropriate between correctional officers and inmates, and yet here we have an offer by the accused to have his police friends make inquiries, but that it came at a 'cost', which was a common theme of the favours that must be returned to the accused if he did so. The Crown submitted that was clearly an inappropriate relationship in what he asked her to do, what he said he would do and the favours that he sought to be returned and in the way that he sought for them to be returned.

For M it was submitted that the accused described her as a lovely young girl. He went through the evidence as to what she said and that her evidence was supported by the complaint evidence- Ms R, her mother and the like, and

APT:SND

D2

TR66082

that also you would consider the tendency evidence with the stroking of the hand, and also of course the distress in the phone call.

For N, the Crown submitted and went through the evidence for the various counts. He asked you to remember that she was asked to recount things that allegedly occurred some years ago. She was clearly confused, but he submitted you should take into account the time that had passed. He submitted there was also some evidence of from her of GG and the accused together in sexual conduct and forms part of the tendency evidence. The Dencorub that was said to be given to her by Astill was a security risk because it could be put in the eyes of the officers. That she spoke to the accused about D, that he liked D and said she was pregnant, and he said that that does not matter. She saw D's distress and having flashbacks.

In relation to A, he submitted you might have find her a relatively unsophisticated person but she was a truthful witness. He outlined her evidence in relation to her visit to him as the Chief, as to disharmony in the gaol and the issues she was having, and it was part of his role to deal with these issues, but he simply was not interested in her personal issues, he was interested in her sexually, and that was a clear power imbalance that was obvious there. He went through her evidence and informed you as to the misconduct charge as well.

Ms S, he submitted to you she was working in buy-ups, you would remember, but that did not require her to clean the accused's office, and yet she was called there to clean it four times. The first two she did not even clean but spoke to the accused with N and he told her 'general chit-chat' about remembering a time she was previously in gaol. It was the third time she was

APT:SND

D2

TR66082

asked to attend and clean his room, that it was submitted that he then sexually assaulted her and then the fourth time, and in any answer to why she would return the fourth time, he asked you to put yourself in their position and in their world, and that she was in an impossible situation because of the power imbalance and she was unable to refuse. He went through her evidence, which I won't go through.

Ms D, there are rules as to who can and how you can and the length of time for phone calls, and yet he allowed her to make two lengthy phone calls to her partner and then went through the evidence of her assault and submitted to you that she gave her evidence in a very raw manner and that her emotions and the distress was clear for you to see.

In relation to the admissions that the Crown relies on - Brumwell's evidence, which I have gone through already, and I won't repeat, and the lies.

The lies, I have spent some time on yesterday, which I won't repeat, that the Crown relies upon, but effectively the erectile dysfunction to the extent that he could not get an erection, that he did not have any sexual relationships with H, that he did not bring contraband in and that he only had sexual relations with one inmate, and the Crown relies all on those lies, it is said, for his credibility.

He went through the complaint evidence for the respective complainants, which I will not go through again because I spent some time on yesterday, and also on tendency, which I have just spent some time with you, but he outlined to you under each tendency wand what parts of those three bodies of evidence he said that the Crown are relying upon.

APT:SND

D2

TR66082

Ultimately, the Crown submitted to you that when you look at all that evidence that you would find that the complainants were truthful, they were honest, they were credible and you would find support in the tendency evidence and the complaint evidence and the other admissions and the lies, and if you put it all together in the Crown case, you would find the accused guilty on each count on the indictment.

Mr Tyler-Stott addressed you on Wednesday and yesterday. He showed you initially the picture on the screen was of the J Unit, and said that was where they all congregate and he said to you, effectively rhetorically, that not a lot of secrets could be kept there. The prospect, he said, of contamination and rumours and innuendo was a live issue.

He submitted and conceded, effectively, that it was very clear by his pleas that the accused did not do his job properly, and when confronted with evidence, particularly with the listening device with Schrieber, the governor, halfway through his ERISP, his 'world fell apart', and that is why effectively he lied in various respects. He should not have put himself, it was submitted, in that position but he did. He asked you to consider the state of his life at that time with his wife dying, which is a precursor, he submitted, to H relationship, which he submits was consensual.

In relation to each of the complainants, C, again I won't go through their evidence, but C, the main points that Mr Tyler-Stott raised was that the dates that she raises on her diary do not correspond with the working dates of the accused in exhibit B, and if you were to cross-check them you would find that he was not working on the dates, it is submitted, that were put in her diaries, which affects her credit. You should also consider with C, he is not saying

APT:SND

D2

TR66082

there was nothing that happened with C - there was an inappropriate sexual relationship by virtue of his plea to count 7 - but that does not lend weight, it was submitted, to the other six counts when you look at the evidence.

In addition to he asks you to consider with C's evidence the request for \$50,000 before Friday, and he said in simple terms that is just extortion, not compensation, and that you could not accept much of what C had to say.

In relation to K, it was submitted that V's name came as a feature through Mr Astill. He submitted that K fell under Ms V, that her complaints were unclear in that she said she was in a room with V, W and R and said did not say anything, and yet you have W saying that she did say something. He also raised a question of an inconsistency between the statements which I have gone through, whether it was a slap or whether it was a grab.

In relation to H, he submitted to you that she denied being flirtatious and yet you compare the evidence from the other inmates of P, C, X and I. And in relation to the rash or the excuses, he asked you to consider when did the rash start, when did the comments to the other inmates start - that the evidence was not clear on that, and just because someone had a nervousness, does not mean that at some stage there wasn't a willing consensual relationship between the two.

In relation to the calendar, the accused did work on those dates, the notations that Ms H put on that calendar. He submitted she might have been covering tracks, suspicious or it might have been just simply exciting. He was in a powerful position and perhaps she just wanted to curry favour. But he asked you to note that in August there is nothing in the calendar compared to her allegations, and also the curious nature of the BIU incident, he said that

APT:SND

D2

TR66082

they concede something happened there but not the way that she said it did.

In relation to her evidence as to whether the accused asked, "Is there cameras there?" Mr Tyler-Stott said you would consider it quite weird in the fact that he was a Senior Correctional Officer and she had just returned to the BIU.

He also asked you to look at the telephone intercepts, exhibit X and X2, and see how unguarded and when he was unaware of being recorded, what he did say about the incidents, particularly this one - about having his cap turned at her instigation, and that it had a ring of truth. And if it was not consensual, he said, why does it not appear on the diary, together with the cup of seminal fluid and the cucumber - horrific evidence given - but there are no notations on her calendar about those.

He submitted overall that H was duplicitous, acting one way in front of inmates, one way in front of the accused and one way in front of you, that she also did make a claim for compensation. He said that does not mean you are lying but it is something that you need to consider, as she was outside now, she was unemployed and had convictions for serious offences.

In relation to Mr Brumwell's evidence, he said the defence agree that they had that conversation about H in Orlando, but if it was not consensual, why would he tell him about it? He also asked you to consider it was H who directed Ms O, to the accused for assistance. He made a note in relation to H, when that complaint was lodged by T and O, she was well aware of that so why did not she do something about it? It was an opportune time for her to speak up to say that it was nonconsensual-

In relation to Q, which was one of the tendency witnesses, he said that you would note that Peter Foster said that she had said it was her arm, not her

APT:SND

D2

TR66082

hand, and also she has prior convictions for dishonesty and fraud and also again he said to look at the exhibit X about the way he spoke about Q biting her nails and telling her it was unsanitary.

In relation to O, effectively he submitted that you would not find her a reliable witness because, for example, the birthday cards in that her birthday was 15 September and yet the accused was not working for most of September. He asked you to remember Ms X's evidence as to the make-up and the hair, which I went through yesterday, and that in her first statement she made no reference to anything sexual with the accused, it was only two years later, and that she was also seeking compensation and also hoping to have her sentence and/or conviction appealed and so had a good reason to ingratiate herself with a Senior Correctional Officer. Again, Brumwell's evidence he submitted to you was consistent with a consensual relationship to which the accused has pleaded guilty to.

In relation to M, he submitted that it is the accused's case that they kissed and that it basically freaked her out and they talked and they left and that was his account and that is what he said in the ERISP and concedes that they had a kiss but that M does not put it that way. He asked you to consider the evidence of her mother that stated that her daughter had said there was an altercation and that was inconsistent with what M had said - together with the no recollection of wearing his ring compared to R's evidence. And you would also consider that after all of that, she spoke with V and then everything flowed from there, and she also made a claim for compensation.

In relation to Ms N, he said she provided an original statement in 2019, with no mention of any sexual touching but in April 2021 she does, that she

APT:SND

D2

TR66082

had difficulty with her evidence in remembering the allegation, count 40, with the hand on the penis, until the following day and then, all of a sudden, she remembered it, she got the order mixed up and differed what she said in the statement and she was not a convincing witness.

In relation to D, he said that you would notice she had her head down most of the time, it was hard to assess her demeanour, she looked distracted, you would remember that she had stolen an ice pipe which gave an insight as to what drugs that she had been or may have been on and that there was not much detail on the sexual encounter nor how it finished and also there was a claim for compensation.

Ms S, he submitted that you would also consider her criminal history with the frauds and break and enter and steal. There was no evidence of a claim for compensation but that does not mean it is not going to come.

In relation to A's evidence, he said you would remember that her evidence seemed inconsistent as she describes one push, then two and when did he ask for sex? Was it before or after he allegedly cupped her breast?

He then went through the witnesses, describing H - which I will not repeat - such as P, C and in relation to the issue of complaint evidence - it was submitted a lie repeated does not make it true and asked you to treat the evidence with circumspection.

In relation to Brumwell's evidence, he was not going to give an inch and, again, as I said, it was submitted that you would treat his evidence with a grain of salt, that all it did was confirm consensual relationships between H and O and denied that he said anything about K.

APT:SND

D2

TR66082

In relation back to D, another point Mr Tyler-Stott made was that the character of the sexual assault was very different to the others and asked you to take that into account.

In relation to Ms V, you saw and heard her. It was submitted that she had access to many inmates and held a dominant position and that the accused said straightaway that V had something to do with this and asked you to give that consideration.

The tendency, his position I have outlined just previously so I will not repeat.

Overall, he has then asked you to consider the question of demeanour of witnesses, consider how many times in life you have got that wrong when you thought someone was lying and they were telling the truth or vice versa, that you have only seen these witnesses for a short period of time, that the witnesses also - some are in gaol for the most egregious crimes and some are not but some normal social rules, it was submitted, so it may not be as significant for them as others. Overall, Mr Tyler-Stott submitted that you would have, effectively, a reasonable doubt, in relation to the counts on the indictment and return verdicts of 'not guilty'.

So, ladies and gentlemen, shortly I will complete my summing-up but before I complete it, let me return to a couple of fundamental aspects. Your verdicts must be unanimous and they must be based on the evidence that is before you. Speculation or guesswork plays no part. You will, of course, have all the exhibits, which I have told you form part of the evidence, with you in the jury room. I think you have been provided the transcript now, yes, and if at any

APT:SND

D2

TR66082

stage of deliberations, you want to have any part of that evidence checked, you just let me know.

If at any stage, as well, you wanted me or needed me to repeat or seek to elaborate upon any direction of law, please do not hesitate to ask. It is fundamental you understand it. Do not sit out in the jury room wondering what I said or did not say. The procedure though is for you to write a note to the court officer indicating that you have a question of law or that you have a question and write the question down. I would then speak to counsel about any note or any query that you have and then we will have you brought in.

The process can take a little while because it is not as though we all sit here waiting for you. We get on with other work and other matters, so you just have to be a bit patient so that we can all reconvene. Take as long as you like to reach your verdicts. You have got a few to go through. There is no rush. What normally happens at around 3.45pm I will call you in. We do not take a verdict between 1.00 and 2.00. If at 3.45pm today, you are still going, I will call you in and send you home for the weekend and return on Monday morning. When you return, if you were to return, you can start earlier than 10.00. As long as you all get here at the same time, you can start at 9 o'clock.

Now I will tell you what is going to happen when you return with your verdicts. You get returned back to the jury box. Your foreperson which if you have not chosen one now, have you chosen a foreperson? No? Your foreperson will be asked to stand and he or she will be seated where the gentleman closest to me is because of the microphone and my associate will then ask the foreperson, "Have you agreed upon your verdicts?" and, presumably, you will all be saying yes at that stage.

APT:SND

D2

TR66082

Before that you will be indicating to me that you have reached verdict by a note but not telling me what the verdicts are. My associate will then ask, "How say you, is the accused guilty or not guilty [of a particular charge]" and run through those charges and at the end of it, my associate will then ask you all, "So says your speaker, so says you all," and that is just to ensure that all of you are in agreement with the verdicts that have been announced by your foreperson and that is why, as well, I will provide the 12 of you, once we have done it, with a verdict document so you can write notes on it and the verdicts for each count, so you can follow as you go along.

Before you go, I am to ask counsel whether there is anything arising that needs clarification or correction?

CROWN PROSECUTOR: No, your Honour.

HER HONOUR: Mr Tyler-Stott?

TYLER-STOTT: No.

HER HONOUR: So, ladies and gentlemen, what I am going to do is ask you to go out and have a cup of tea. We will resume in 20 minutes for the ballot. Say your goodbyes because you will not get the chance to speak again with the three of you that will be discharged following the ballot and bring in your bags or any personal belongings with you. So have a cup of tea and we will see in 20 minutes. Thank you very much.

IN THE ABSENCE OF THE JURY

Okay. Twenty minutes. Thank you.

SHORT ADJOURNMENT

Apologies for the delay but we've had a juror note.

MFI #28 JURY NOTE

APT:SND

D2

TR66082

“Your Honour, can a juror be excused from vetting?” It means that one doesn’t want to be part of the process and wants to leave, or wants to put his hand up, apparently, to be one that goes. What do you say?

CROWN PROSECUTOR: My first thoughts is that that cannot happen, but, as your Honour well knows, there’s a particular power to discharge a juror if they are no longer engaging in the process or if they’re not bringing an impartial mind, but that doesn’t seem to be suggested here, simply that they’re--

HER HONOUR: Puts everyone in a very difficult position. My initial reaction was no as well but then I consider, well, do you really want someone on the jury that probably won’t get selected to be kicked off, do you want them in the jury?

CROWN PROSECUTOR: I might not but I don’t know that that’s where it ends, your Honour. That’s the difficulty. It’s jury duty after all. I understand what your Honour is saying but I don’t think it’s that simply, respectfully. I might need to give it a little bit of thought.

TYLER-STOTT: My initial view is the same as Mr Hughes’. I do have concerns though but I just don’t know that there’s any remedy to it.

HER HONOUR: Well, what does the section say in the *Jury Act* in relation to discharging a juror?

TYLER-STOTT: I’m just looking at--

HER HONOUR: Not under 55G but the other--

TYLER-STOTT: 53B.

HER HONOUR: I only received this as we were coming down so it’s just--

CROWN PROSECUTOR: Yeah.

HER HONOUR:

“Discharging a juror

If the juror has or in the judge’s opinion become so ill, infirm or incapacitated as to be likely to become unable to serve. It appears to the Court from the juror’s own statement that the juror may not be able to give impartial consideration to the case because of his familiarity with the witnesses, any reasonable apprehension of bias or conflict of interest on the part of the juror, if a juror refuses to take part in the juror’s deliberations, or it appears to the Court that for any other reason affecting the juror’s ability to perform the functions of a juror, the juror should not continue to act as a juror.”

Well, it falls under that, does it not?

.19/08/22

26

APT:SND

D2

TR66082

TYLER-STOTT: It possibly could but I think we might need more information.

HER HONOUR: Yes. So what am I meant to do with that though?
Cross-examine the juror as to why?

TYLER-STOTT: I think that's probably--

HER HONOUR: I suppose we probably have to. Well, what do you suggest, that we get the juror in and ask why he's asking not to be as part of the jury panel to remain?

TYLER-STOTT: Yeah, I think so, and then they can be sent out and the note--

HER HONOUR: I don't think the other jurors need to be here. Only the juror who needs to be questioned can be brought in and he can give his evidence under oath or affirmation.

TYLER-STOTT: No difficulty with that, your Honour.

CROWN PROSECUTOR: Would your Honour just remind me of the section your Honour is reading from? I've got the *Jury Act* up.

HER HONOUR: 53B.

CROWN PROSECUTOR: Your Honour, I think, yes, it would be appropriate to question the juror, but so that there's no trespassing on the deliberations and the secrecy of the jury room, your Honour would need to ask very closed questions as to whether, to establish whether he or she comes within of those--
-

HER HONOUR: Well, I have to ask why. What else can I ask?

CROWN PROSECUTOR: Do you feel able to continue to confirm--

HER HONOUR: He's able to. He doesn't want to.

CROWN PROSECUTOR: Well, if that's the case, that's the end of it. If all it is this juror has better things to do, for example, and we don't know that it's not as simple as that, then that's not good enough and the juror should remain.

HER HONOUR: Well, do you want him on the jury if he doesn't want to be there?

CROWN PROSECUTOR: It's not about whether I--

HER HONOUR: I'm sure Mr Tyler-Stott doesn't.

CROWN PROSECUTOR: That's not the question, with respect, your Honour.

APT:SND

D2

TR66082

HER HONOUR: Well, it is. It can fall under (d), can't it?

CROWN PROSECUTOR: Affecting the juror's--

HER HONOUR: Hold on just for a sec, please.

CROWN PROSECUTOR: "It appears to the Court for any other reason affecting the juror's ability to perform the functions of a juror," we're not there. We're nowhere near that.

HER HONOUR: Well, I'm not saying that we're near that yet, but I don't like the fact of having a juror on the panel, in a jury for anyone if they don't want to be there. Let's just see why. I'll ask him not to reveal any discussions within the jury panel. Yes. Thank you. I need to just ask you a few questions.

<JUROR, AFFIRMED(11.53AM)

Q. Yes, please take a seat. Can you take your mask off while you're speaking. Now, I've received a note--

A. Yeah.

Q. --that I understand is from you, that you're saying, the note is, "Can a juror be excused from vetting?"

A. Yep.

Q. Without, it's very important that you don't disclose anything that's been discussed in the jury room amongst yourselves or any deliberation that you have had with the jurors, but of course it is also of some concern to us that at this stage--

A. Yeah.

Q. --that you're expressing that.

A. Yeah.

Q. Are you able to answer why or what you're actually seeking--

A. I--

Q. --without disclosing anything that's been discussed with the other jurors?

A. Yeah, I've just, um, been working night shifts currently, and my pop, I live with my nan and pop and my pop has fallen sick, ah, recently, so I've been trying to help him as I can, and I usually work morning shifts, and this has obviously upset that.

Q. Right.

A. I would like to be able to go back to my morning and be able to help him out where I can.

Q. Okay.

A. Yeah.

.19/08/22

28

APT:SND

D2

TR66082

Q. And if you were to remain on the juror, would that be something that you would still be able to do if--

A. I could do it, yeah, it would just make it a bit easier for me to be able to look after him.

Q. Right. So that's, your grandfather's just got sick, has he?

A. Yeah, over the last week, yeah.

Q. Yeah.

HER HONOUR: Is there any questions that Mr Tyler-Stott or Mr Crown, you would like to ask of the juror?

CROWN PROSECUTOR

Q. So I don't want to put words in your mouth, but is this something, is this a great distraction for you from the task of being a juror or is it not?

A. Ah, I couldn't probably, I could still do the jury, yeah, it's just a bit more stress than need, but, ah, yeah.

Q. And I'm sorry to ask, but is your grandfather very ill? Has he taken very ill?

A. Ah, not super ill at the moment but he's just fallen and--

Q. Yeah.

A. He hasn't been eating as much as what he used to and he just hasn't been quite as mobile as what he would be, so just to help him out where I can.

Q. Yeah. Thank you, sir. That's all.

TYLER-STOTT

Q. Did you say you were working night shifts?

A. Yeah. Yeah.

Q. What hours?

A. Ah, so as soon as I finish here it's either I start at 5.00, 5.30, and then I will go through usually 10.00 to midnight, depending how far behind they are at work.

Q. And what time do you get home?

A. Ah, it would, it's usually about 20 minute travel from work to home so--

Q. And to travel to Court?

A. Ah, about 40 minutes, depending what trains I can get.

HER HONOUR

Q. How long have you been doing night shifts for?

A. Ah, since I started this.

APT:SND

D2

TR66082

Q. Right.

A. 'Cause, yeah, usually I start at 6am so, yep.

Q. Yes. Right. Okay. Would you mind just returning to there.

A. Yeah, no worries.

Q. Thank you very much.

<THE WITNESS WITHDREW

HER HONOUR: Do either of you wish to say anything?

CROWN PROSECUTOR: Can I just have a moment?

HER HONOUR: Yes.

TYLER-STOTT: Your Honour, can I just get some brief instructions?

HER HONOUR: Yes, of course.

TYLER-STOTT: Your Honour, I'm going to ask that the juror be discharged, if your Honour please. It sounds like if we select 12, there is potential his grandfather might even fall more ill and then he--

HER HONOUR: Well, the fact that he's working night shift, battling that,, then going to assist his grandfather who has only recently taken ill, I think it is quite a distraction for anyone and he obviously has been doing his level best to change his life so he can attend every single day and has reached a stage where it's become too hard and obviously I think he has the insight to see that it may be a distraction for him throughout the course of deliberations. And he has chosen to raise this on the basis that it's for the fairness to the accused and to the community quite frankly. Mr Crown?

CROWN PROSECUTOR: I agree with everything your Honour said, with respect.

HER HONOUR: If there needs to be a consideration of retaining the rest of the jury, you don't have any objection or any application for the jury, do you?

TYLER-STOTT: No, your Honour, no.

HER HONOUR: No. It is nothing to do with the jury. It's personal reasons that have just come on that have worsened that are causing some distraction to this particular juror, but there's nothing that's been discussed or affecting the jury as a whole and the jury as a whole shall remain.

CROWN PROSECUTOR: Yes, your Honour.

HER HONOUR: So I might have him brought in though and formally discharge him. He doesn't need to be discharged in the presence of the whole jury and

APT:SND

D2

TR66082

let him know and then he can be escorted upstairs, thank you, and then we'll do the ballot with the 14 remaining.

So I make that order under 53B(d) of the *Jury Act*, that, in light of the evidence of this particular juror, and his application due to the change of his personal circumstances and the illness of a family member, and the fact that he has had to be working night shift and the difficulties this creates that I will discharge him.

Yes, thank you, sir. What we will do, we've just discussed the particular situation that you have and the personal circumstances that you are currently under and the change in circumstances recently and, of course, the distraction that that may have for you and, of course, no doubt, your grandfather's elderly and the possibility that that may require more assistance by you as time goes on and the uncertainty of how long deliberations may take, that we will discharge from further service within the jury.

JUROR: Yeah.

HER HONOUR: I wish to thank you though for your service for the last four weeks and for turning up punctually and on time and every day despite working night shift and the like.

JUROR: Yeah.

HER HONOUR: And I must say that you do look quite tired.

JUROR: Very tired.

HER HONOUR: But you are formally discharged. Can you just ensure that you don't speak to any other member of the jury from now--

JUROR: Yeah.

HER HONOUR: --until the end of the trial proper?

JUROR: Yeah, of course.

HER HONOUR: And if you have your items with you--

JUROR: Yeah.

HER HONOUR: --you will be escorted to be administratively discharged as well upstairs.

JUROR: Yeah.

APT:SND

D2

TR66082

HER HONOUR: So thank you very much for your service.

JUROR: Thank you, your Honour.

HER HONOUR: Thank you.

JUROR: It's been an honour. Thank you.

HER HONOUR: Thank you.

And I make the formal order, I note there is no application to discharge the jury following the discharge of one particular juror, that the remaining jury will remain and a ballot will now take place between the 14 as there are no reasons to discharge the whole jury in light of the reasons for the discharge of this particular juror.

IN THE PRESENCE OF THE JURY

Thank you, ladies and gentlemen of the jury. As you may have realised, I have discharged one of your members for various reasons. It is nothing that you need to concern yourself about. But, of course, I ask that no contact be made with that particular juror until, after all the verdicts for this matter have come in. So what we'll propose to do now is that we will put all your numbers in the ballot and call them out, we'll call out 12 of you for the jury itself. So if your numbers are not selected, then you will be the remaining two. The remaining two will be then asked to go with the court officer to be administratively discharged and the remaining 12 will be the jury that constitutes the deliberation and the verdicts. So, yes, we will call out the numbers. We have them in the - yes. So if you have got your numbers with you? Yes. Okay. When your number has been called, would you mind please just standing up?

APT:SND

D2

TR66082

**BALLOT FOR VERDICT JURY CONDUCTED IN ACCORDANCE WITH
S 55G OF THE ACT**

To the two remaining jurors, I will ask you shortly to go out. Can I just express my gratitude again. Thank you for both turning up every day. Thank you. I know it is of some inconvenience to your lives and it is very disappointing not to have been selected. It is a process that just has to be gone through but I thank you very much. And if you could be taken up to administration and excused? Thank you very much. And can I just remind you, please, no contact with the other jurors until the completion. Thank you. Thank you, sir. Thank you very much, sir.

So ladies and gentlemen of the jury, I am going to now send you out. There is nothing that needed to be raised or explained to you. Please, as I said to you before, take the time that you need. We will not take any verdicts between 1.00pm and 2.00pm. If I have not heard from you this afternoon, we will have you back in at quarter to 4 and I will send you home for the weekend and we will reconvene on Monday morning. So with that, I ask now to retire to consider your verdicts. Thank you very much. Sorry, the verdict document will be handed out to you and, as you can see, it is quite thick but really it just relates to each count and it just outlines each count and you can write your own notes. Thank you very much.

JURY RETIRED TO CONSIDER ITS VERDICT AT 12.10PM

Okay. 12.10 the jury go out. Anything arising?

CROWN PROSECUTOR: No, your Honour.

TYLER-STOTT: No, your Honour.

HER HONOUR: I think I marked the verdict document as MFI 25. If I hear anything, you have your numbers with my associate?

APT:SND

D2

TR66082

CROWN PROSECUTOR: I'm sure I do, yeah.

HER HONOUR: And just be close by, as I said, I won't take anything between 1.00 and 2.00. And if you have not heard from me, please be here at 3.45pm and I'll send them home. Thank you. I'll adjourn.

LUNCHEON ADJOURNMENT

I have a note from the jury. They're asking for clarification of the dates for count 1 which was amended to - the January ones. What was the amended, I don't know why they all - they mustn't have had pens when I was saying it to them. Amended to the 17th to the 26th or something?

CROWN PROSECUTOR: It was the 25th, your Honour, 25 January.

HER HONOUR: Between the 17th--

CROWN PROSECUTOR: Yeah, and 25 January 2016.

HER HONOUR: 20?

CROWN PROSECUTOR: 5 January.

HER HONOUR: 20, year?

CROWN PROSECUTOR: I'm sorry, 2016.

HER HONOUR: Okay. So 17 to 25 January 2016. I just don't have the indictment in front of me. So I propose to send them home now, obviously, and advise them that they are entitled to continue their deliberations earlier than 10 o'clock on Monday, but as long as they don't start it until they're all there.

CROWN PROSECUTOR: Yes, your Honour.

JURY RETURNED TO COURT AT 3.50PM

HER HONOUR: Yes, thank you, ladies and gentlemen. Better count you just to make sure that everyone is there. Yes, it is 3.50pm. It is Friday. I am going to send you home. Please, in relation to your note, MFI 28, I have marked it, "Can we please clarify the dates for count 1." They are between 17 January 2016 and 25 January 2016. So I hope that clarifies things. I am getting lots of nods, so that seems to be a yes. So please have a good weekend. Have an enjoyable weekend, and just remember you can start earlier than 10 o'clock on

APT:SND

D2

TR66082

Monday, just as long as you are all agreed. It can be at 9 o'clock or 9.30, whatever you prefer but no later than 10.00, but as long as you remember that you do not start any deliberating on the matter until all 12 of you are there together, so do not start if one is coming still and there is 11 of you. You need to wait. But once you are all 12 there, the court officer will make a note of the time that you commenced and please continue with your deliberations. And once again on Monday, I will not bring you in. You will just go straight into the jury room and continue your deliberations. Again on Monday I will not take any verdict between 1.00 and 2.00, and if I do not hear from you through the course of the day I will bring you back at 3.45pm to send you home. Okay. So I hope that is clear. But any questions or queries, you just let me know. Other than that, please have a great weekend and we will see you at some stage on Monday, thank you.

JURY LEFT COURT AT 3.52PM

And during the course of the deliberations is there a need to amend the bail so that the accused remains within the Court precincts during deliberations or are you content with the way it is now?

CROWN PROSECUTOR: I'm content with how it is now. We don't have any problems.

ADJOURNED TO MONDAY 22 AUGUST 2022

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APT:SND

D3

TR66082
REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF TWELVE

MONDAY 22 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL**NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****SUMMING-UP CONTINUED**

JURY CONTINUED TO CONSIDER ITS VERDICT AT 10AM

HER HONOUR: Yes. We'll get the jury in. I understand that they commenced deliberating this morning at 10.00?

CROWN PROSECUTOR: Yes, your Honour.

JURY RETURNED TO COURT AT 3.44PM

HER HONOUR: Good afternoon, ladies and gentlemen. It's 3.45. I will send you home for the day. I understand that you commenced deliberating this morning at 10 o'clock. Again, I would actively encourage if you wanted to start earlier at 9.00 or 9.30 tomorrow and just let the court officer know or work it out amongst yourselves and, again, just as I said each night just not to commence the deliberations until all 12 of you are together. So other than that, please have a good night and tomorrow morning, work out what you are doing. And, again, I will not bring you in in the morning. We will just see you through the course of the day. If I don't hear from you 3.45 tomorrow. Thank you.

JURY LEFT COURT AT 3.45PM

Nothing arising?

CROWN PROSECUTOR: No, your Honour.

ADJOURNED TO TUESDAY 23 AUGUST 2022

.22/08/22

1

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D4

TR66082
REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF TWELVE

TUESDAY 23 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL**NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****SUMMING-UP CONTINUED**

JURY CONTINUED TO CONSIDER ITS VERDICT AT 9.46AM

JURY RETURNED TO COURT AT 3.44PM

HER HONOUR: Yes, good afternoon, ladies and gentlemen. Another day. I understand that you commenced deliberating at 9.46 this morning so we have just made a record of that. Again, I just encourage you for tomorrow, I know that the trains and all of that was a bit of a disturbance this morning, if there is a chance you can start earlier tomorrow, do so. Make use of the day. And I will be notified when you are all together and commence or continue with your deliberations. Other than that, have a good night tonight. Come with nice fresh minds tomorrow and we will see you at some stage tomorrow. Thank you very much.

JURY LEFT COURT AT 3.45PM

ADJOURNED TO WEDNESDAY 24 AUGUST 2022

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D5

TR66082
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IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF TWELVE

WEDNESDAY 24 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL

NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS

SUMMING-UP CONTINUED

JURY CONTINUED TO CONSIDER ITS VERDICT AT 9.48AM

JURY RETURNED TO COURT AT 3.49PM

HER HONOUR: Yes, good afternoon, ladies and gentlemen, that time again.

We can send you home. I understand that you started deliberating or continued your deliberations at 9.48 this morning. Again, as I said to you each night, feel free to start it even earlier if there is some agreement between you, but of course do not start it until all 12 of you are together. But other than that, again, please do not discuss what you have been discussing with anyone else and we will see you at some stage tomorrow. Please have a pleasant evening tonight, and as I said, we will see you at some stage tomorrow. If I do not hear from you it will be around this time again. Thank you very much.

Thank you.

JURY LEFT COURT AT 3.51PM

ADJOURNED TO THURSDAY 25 AUGUST 2022

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D6

TR66082
REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC
AND A JURY OF TWELVE

THURSDAY 25 AUGUST 2022

2019/00026907 - R v Wayne Gregory ASTILL**NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****SUMMING-UP CONTINUED**

JURY CONTINUED TO CONSIDER ITS VERDICT AT 10AM

HER HONOUR: Yes, I've received a note from the jury which is MFI 29, "We have reached a verdict." I'm presuming that means reached verdicts on all counts but I'll need to ask that.

MFI #30 JURY NOTE

JURY RETURNED WITH THE FOLLOWING VERDICTS AT 2.05PM

NOT GUILTY TO THE FIRST CHARGE

GUILTY TO THE SECOND CHARGE

GUILTY TO THE THIRD CHARGE

GUILTY TO THE FOURTH CHARGE

GUILTY TO THE FIFTH CHARGE

GUILTY TO THE SIXTH CHARGE

GUILTY TO THE EIGHTH CHARGE

GUILTY TO THE NINTH CHARGE

GUILTY TO THE TENTH CHARGE

NOT GUILTY TO THE ELEVENTH CHARGE

NOT GUILTY TO THE TWELFTH CHARGE

NOT GUILTY TO THE THIRTEENTH CHARGE

GUILTY TO THE FOURTEENTH CHARGE

.25/08/22

1

APT:SND

D6

TR66082

NOT GUILTY TO THE FIFTEENTH CHARGE
NOT GUILTY TO THE SIXTEENTH CHARGE
NOT GUILTY TO THE SEVENTEENTH CHARGE
NOT GUILTY TO THE EIGHTEENTH CHARGE
NOT GUILTY TO THE NINETEENTH CHARGE
NOT GUILTY TO THE TWENTIETH CHARGE
NOT GUILTY TO THE TWENTY-FIRST CHARGE
GUILTY TO THE TWENTY-SECOND CHARGE
GUILTY TO THE TWENTY-THIRD CHARGE
GUILTY TO THE TWENTY-FIFTH CHARGE
GUILTY TO THE TWENTY-SIXTH CHARGE
GUILTY TO THE TWENTY-SEVENTH CHARGE
GUILTY TO THE TWENTY-EIGHTH CHARGE
GUILTY TO THE TWENTY-NINTH CHARGE
GUILTY TO THE THIRTIETH CHARGE
GUILTY TO THE THIRTY-FIRST CHARGE
GUILTY TO THE THIRTY-THIRD CHARGE
GUILTY TO THE THIRTY-FOURTH CHARGE
GUILTY TO THE THIRTY-FIFTH CHARGE
NOT GUILTY TO THE THIRTY-NINTH CHARGE
NOT GUILTY TO THE FORTIETH CHARGE
NOT GUILTY TO THE FORTY-FIRST CHARGE
GUILTY TO THE FORTY-SECOND CHARGE
GUILTY TO THE FORTY-FOURTH CHARGE
GUILTY TO THE FORTY-FIFTH CHARGE

.25/08/22

2

APT:SND

D6

TR66082

NOT GUILTY TO THE FORTY-SIXTH CHARGE

NOT GUILTY TO THE FORTY-SEVENTH CHARGE

NOT GUILTY TO THE FORTY-EIGHTH CHARGE

GUILTY TO THE FORTY-NINTH CHARGE

GUILTY TO THE FIFTIETH CHARGE

GUILTY TO THE FIFTY-FIRST CHARGE

HER HONOUR: Well, thank you very much, ladies and gentlemen. No doubt it was not an easy process for you but as I have said to you throughout the whole of the trial, you turned up every day, you have turned up on time, you have clearly paid close attention to the evidence and on behalf of the criminal justice system of New South Wales, I thank you for your service that you have conducted over the last four to five weeks.

Going forward, the accused will be referred to now as the offender in relation to those counts that he has been found guilty of and a sentence date will be set quite soon in relation to hearing submissions from counsel in relation to the proposed sentence that I will impose upon him. Of course, that is a public event. If you wish to attend the sentence, as I said, it will not be today, I think they give you a number once you are discharged from service upstairs before you go away. But please know that you are free to attend that if you wish. But, once again, I thank you. I formally discharge you from your service as jurors in this trial and I wish you all well. Thank you very much.

JURY DISCHARGED AT 2.29PM