SUPREME COURT OF QUEENSLAND

CITATION:	*R v Tesic* [2019] QCA 195
PARTIES:	**R** **v** **TESIC, Ivan** (appellant)
FILE NO/S:	CA No 22 of 2019 SC No 675 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Conviction: 14 February 2019 (Martin J)
DELIVERED ON:	24 September 2019
DELIVERED AT:	Brisbane
HEARING DATE:	5 June 2019
JUDGES:	Morrison JA and Lyons SJA and Boddice J
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – OTHER MATTERS – where the appellant was tried on a two count indictment – where the appellant was convicted on count 2 of possessing dangerous drugs but discharged on count 1 as the jury could not reach a verdict – where the drugs were concealed in a hidden compartment in a utility owned by the appellant – where the witness drove the utility with the methylamphetamine oil bottles in the hidden compartment from Sydney to the Gold Coast – where the witness also had drugs in his utility – where the witness was known for dealing drugs – where the Crown argued at trial that the drugs in the utility were under the control of the appellant – where the witness gave evidence pursuant to s 13A of the *Penalties and Sentences Act* – where the prosecution case relied wholly on the evidence of this witness – where the jury were given extensive directions and warnings about scrutinising the witness's evidence – whether it was open to the jury to be satisfied of the appellant's guilt beyond reasonable doubt – whether the verdict is unreasonable or insupportable having regard to the evidence *Criminal Code* (Qld), s 59A *Penalties and Sentences Act* 1992 (Qld), s 13A

M v The Queen (1994) 181 CLR 487; [1994] HCA 63, cited
R v Baden-Clay (2016) 258 CLR 308; [2016] HCA 35, cited
R v Black [2019] QCA 114, cited
R v Falzon [1990] 2 Qd R 436, cited

COUNSEL: S C Holt QC, with F Maghami, for the appellant
D Meredith for the respondent

SOLICITORS: One Legal for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** I have read the reasons of Lyons SJA, in which her Honour details much of the evidence given at the trial. I am able to adopt that analysis of the evidence. I have also read the reasons of Boddice J, with which I respectfully agree. That allows me to express my own reasons in short form.

[2] There were a number of aspects of the evidence where facts were uncontested, even in the face of the many inconsistencies in Bradley White's evidence,[1] and the degree to which he accepted that he had lied in one account or another. I have endeavoured to set them below. Those matters were ones which the jury could have accepted to the requisite standard and which enabled them to accept White's evidence as to the count of possession of dangerous drugs on which the appellant was convicted.

[3] White was a friend of Novak Tesic, the appellant's brother. Their friendship had lasted some 14 years.[2]

[4] That White dealt in drugs was not in dispute, nor that on several occasions he had transported methylamphetamine oil for the person called Ross. However, it was put to White, and accepted by him, that the six bottles of methylamphetamine oil which he had brought back from Sydney in the appellant's silver utility was the biggest quantity of methylamphetamine oil that he had ever moved.[3]

[5] It was not in contest that the silver utility was owned by the appellant and used by him when he was on the Gold Coast.[4] The vehicle had been purchased by the appellant's brother Novak and White, and White had put his own brother's details on the transfer forms.[5] Notwithstanding that, it was not in contest that it was, in fact, owned by the appellant.

[6] Before modifications were done to the silver utility, White took it to the property at 108 Amalfi Drive.[6] It was accepted at the trial that the house at 108 Amalfi Drive was owned by the appellant.[7] The appellant's degree of control over White's actions was indicated by: (i) the appellant directed him from time to time to do handyman work at that property,[8] and work on the cars that were there from time to time, and

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1 A pseudonym, Order dated 4 February 2019 of Martin J.
2 Appeal Book (**AB**) 388-389; 548.
3 AB 617 lines 34-38.
4 For example, AB 556 lines 32-47.
5 AB 434 lines 25-45.
6 AB 404 line 43.
7 AB 537 lines 34-43, AB 549.
8 AB 538 lines 23-35, AB 541 lines 6-22, and AB 546 lines 7-33.

White did so;[9] (ii) White had to ask the appellant for permission to use the appellant's boat stored there;[10] (iii) White asked and was denied permission by the appellant to register a jet-ski stored there.[11]

[7] White's own vehicle, a burgundy coloured utility, had a similar secret compartment to that which existed in the silver utility.[12]

[8] It was put to White, and accepted by him, that he had used the silver utility on the Gold Coast, but only for the purpose of running errands.[13] There was no suggestion at the trial that White had ever used the silver utility for his own drug dealing or for drug deliveries for anyone else, with the exception of the trip back from Sydney which ended in the police raid.

[9] It was accepted at the trial, as White said, that he drove the silver utility to Sydney, taking it to the appellant's residence.[14] Given that White's own utility was available to be used, and was left at 108 Amalfi Drive, his use of the appellant's vehicle was more consistent with his account of the arrangements than the defence case (that White went down simply to help move wheels and rims for Novak Tesic and bring some of his personal goods back).

[10] There was no dispute at the trial that whilst in Sydney White took the appellant's silver utility to the appellant's residence, where it essentially stayed until White drove it back to the Gold Coast. There was no suggestion that anyone else drove it while it was in Sydney. That part of the activities which were at the heart of the defence case, namely relocating wheels and tyre rims, and collecting some of Novak Tesic's personal items, was done utilising a rental truck, not the silver utility.

[11] There was no contest at the trial that while he was in Sydney White was in contact with the appellant as well as Novak Tesic. There was also no challenge to White's evidence that the appellant was absent when he first arrived, and only returned after having been at a Formula 1 event in Melbourne.

[12] White's evidence was that of the six bottles of methylamphetamine oil in the storage compartment, three were to be delivered to the person Ross. He drove straight back from Sydney to the Gold Coast[15] and went to his parents' house where he slept until about midday. He sent Ross a message which went unanswered. After that he took the silver utility to 108 Amalfi Drive. There he parked the vehicle in front of a neighbour's house,[16] went into 108 Amalfi Drive and then the police raid occurred.

[13] Once the police had raided the house and searched the cars, revealing the drugs and cash in White's own utility, the jury may well have considered it an important factor in assessing whether to accept White's evidence on the possession charge, that White steadfastly maintained that the drugs and cash in his own car had nothing to do with the appellant.[17] It might be thought to defy logic that if White was going to implicate

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9 AB 552.
10 AB 557 lines 7-19, AB 561 line 10.
11 AB 561-562.
12 AB 396 lines 28-36, AB 398 line 32 to AB 399 line 6.
13 AB 555.
14 AB 416-417.
15 AB 427 line 23; a point not challenged.
16 AB 428 line 13.
17 AB 470-474.

the appellant in the possession of the methylamphetamine oil, that he stopped there and not attribute all of the drugs and cash to the appellant.

[14] The defence case was that White's trip to Sydney in the silver utility had two purposes, and only two purposes. The first was to assist the appellant and his brother Novak to move tyres and rims, that always being the plan;[18] and secondly, to move Novak Tesic's personal items to Queensland.[19] If that were true, and it was not simply the cover story which White explained in his evidence,[20] the jury may well have considered it a puzzling thing that White went to Sydney so far in advance of Novak Tesic, and in the absence of the appellant. It is in that context that the telephone contact to which Boddice J refers could have been seen by the jury as a reason to doubt the defence explanation, and to accept White's version of events.

[15] When one examines the telephone records,[21] acknowledging that they are in reverse chronological order, and 11 hours out on the time stamp, there are a number of aspects about what was said that, in my respectful view, may well have led the jury to accept White's version of events. Put another way, those factors lead to the conclusion that it was open to the jury to accept White's version and reason to a verdict of guilty on the possession charge.

[16] First, as Boddice J points out, there is the question asked by Novak Tesic at 5.52 pm on 17 March as to whether White would be there tomorrow, to which White replied "Don't know". White was in Sydney at the appellant's house at the time. The jury may well have asked why that question would be asked if the entire reason for White's trip to Sydney was to assist Novak Tesic and the appellant in moving the various items.

[17] Secondly, the response from Novak Tesic, when told by White that he did not know if he would be there the following day, was that he (Novak Tesic) would be there at 11.30. White's response was that Tesic could not do that because a floor sander was coming to 108 Amalfi Drive in the morning. The jury could have accepted that exchange as signifying that Novak Tesic was not then in Sydney and was yet to come down. The jury may well have seen that as being completely at odds with the suggestion that there was the one central purpose for White's trip to Sydney.

[18] Thirdly, the exchanges then continue in a way which indicated that Novak Tesic had not left the Gold Coast, and was debating when the best time might be to do so, according to work that had to be done at 108 Amalfi Drive. None of that was consistent with the purpose driven trip which was the heart of the appellant's case.

[19] Fourthly, it was the following afternoon when Novak Tesic arrived in Sydney, but clearly the details were not known by White, who had asked Novak Tesic when he was arriving, only to be told that he was "Driving now".[22]

[20] Fifthly, the arrival in Sydney of the appellant was signified by the text exchange to which Boddice J refers. That starts with the appellant directing White to buy him some food and becoming annoyed when it was not done in a timely way. The exchange continues with the White explaining that he was "Now sorting storage" and

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18 AB 580 lines 21-40.
19 AB 581 line 29, AB 612 line 35 and AB 613 line 19.
20 AB 581 line 31 and AB 584 lines 1-4.
21 AB 707-712.
22 AB 711.

that he "… didn't know we were coming here".[23] That message, sent by White, does not sit consistently with the case for a purpose driven trip.

[21] Sixthly, it was uncontested that once various items were put in the silver utility White left immediately and drove non-stop to the Gold Coast. If the defence case as to the purpose driven trip was correct, it was hard to explain why White needed to leave immediately. The defence suggested that the six bottles of methylamphetamine oil had nothing whatever to do with the appellant, and was something known only to White and those he was dealing with. However, there was no evidence at the trial that White had ever used the appellant's silver utility before to transport drugs, let alone methylamphetamine oil in that quantity. It was only ever put to him and accepted that he had used the silver utility for running errands. Further, the jury may well have reasoned that White was hardly likely to use the appellant's vehicle for drug transportation without his permission, when for some years he had been a close friend of the appellant's brother, and had worked at the appellant's direction running errands and doing handyman work around 108 Amalfi Drive and assisting to fix cars, and needed to seek the appellant's permission for much more mundane matters.

[22] Sixthly, when White arrived back on the Gold Coast he made no attempt to transfer the six bottles of methylamphetamine oil to his own vehicle.

[23] These matters, and those identified by Boddice J, lead me to conclude that it was open to the jury to accept White's evidence on the possession charge, even with all the flaws that his evidence contained in other respects. The jury were given the sternest possible warning about the need to be careful with White's evidence. The addresses, quite apart from the progression of White's evidence, highlighted the difficulties confronting acceptance of his evidence on a number of scores. However, the factors identified by Boddice J and referred to above gave the jury an independent basis, or an accepted basis of fact, upon which they could conclude that the six bottles of methylamphetamine oil were in fact those of the appellant.

[24] In making the assessment of the evidence required of this Court when the ground urged on appeal is that of an unreasonable verdict, I have been conscious of the need to avoid converting a trial by jury into a trial by appellate court. The question is, as McMurdo JA posed in *R v Black*[24] not whether this Court has a doubt about the appellant's guilt beyond reasonable doubt, but rather whether it was open, on the whole of the evidence, for the jury to be satisfied of the appellant's guilt, having regard to the advantage it enjoyed over this Court.

[25] I agree with Boddice J that the appeal should be dismissed.

[26] **LYONS SJA:** On 14 February 2019 the appellant was found guilty by a jury of one count of unlawful possession of the dangerous drug methylamphetamine in excess of 200 grams. He appeals that conviction on the ground that the verdict is unreasonable and cannot be supported by the evidence.

[27] On 20 March 2014 six bottles of methylamphetamine oil had been found in a secret stash compartment of a silver utility owned by the appellant, which had been driven from Sydney by White and parked outside a house owned by the appellant at Amalfi Drive on the Gold Coast.

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23 AB 710.

24 [2019] QCA 114 at [36].

[28] The appellant had been the target of an extensive and lengthy surveillance operation. The evidence at trial, which was a retrial, depended substantially however on the evidence of White who had given evidence pursuant to an undertaking under s 13A of the *Penalties and Sentences Act* 1992 (Qld). It was uncontroversial that White had a strong motive to lie and in fact was found to have lied under oath on a number of occasions in the trial. The appellant argues that there was no independent corroboration for the charge and the verdict cannot be supported by the evidence.

[29] The Crown argues that the jury had the advantage of assessing White's evidence and that there was sufficient evidence linking the appellant to the vehicle where the drugs were found.

[30] The approach this Court must take in determining whether a verdict was unreasonable was discussed by the High Court in *R v Baden-Clay*,[25] where it was held that the ultimate question for the appeal court "must always be whether the [appeal] court thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty."[26] This is a question of fact which this Court must decide by making its own independent assessment of the evidence.[27] To this end it is necessary to consider in some detail the evidence given at the trial as well as the history of the charges.

History of the charges

[31] The appellant was charged on a two count indictment with:

(i) Count 1 - Unlawful trafficking in the dangerous drug methylamphetamine between 31 March 2011 and 21 March 2014 pursuant to s 5(1)(a) of the *Drugs Misuse Act* 1986; and

(ii) Count 2 - Unlawful possession of the dangerous drug methylamphetamine in excess of 200 grams at the Isle of Capri on 20 March 2014 pursuant to s 9(1)(a) of the *Drugs Misuse Act* 1986.

[32] The first trial had commenced on 25 May 2017 in the Supreme Court at Brisbane. After a 12 day trial the jury was unable to reach a unanimous verdict on either count and were discharged.

[33] On 4 February 2019 the second trial commenced. Prior to the commencement of addresses, the Crown was granted leave on 11 February 2019 to amend Count 1 on Indictment to reduce the period of the trafficking from a period of approximately three years to a period of almost eight months being the period between 31 July 2013 and 20 March 2014.

[34] On 13 February 2019, the jury indicated it had been unable to reach a unanimous verdict on either count. A Black Direction was given by the learned trial judge. On the afternoon of 14 February 2019 the jury once again indicated it could not reach a unanimous verdict on either count. As the prescribed time had elapsed pursuant to s 59A(3) of the *Criminal Code* (Qld), the judge directed that the jury could return a majority verdict if eleven of them could agree. A short time later the jury indicated

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25 (2016) 258 CLR 308.
26 At [66].
27 *M v The Queen* (1994) 181 CLR 487 at 492.

that they could not reach either a unanimous or a majority verdict in relation to Count 1 but they were able to reach a majority verdict in relation to Count 2. The jury then returned a majority verdict of guilty of Count 2, possession of methylamphetamine in excess of 200 grams.

[35] On 18 February 2019 the appellant was sentenced to a period of imprisonment of eight years and nine months, with a declaration that 427 days could be declared as time served towards the sentence. On that date the Crown entered a Nolle Prosequi in relation to Count 1 as this was the second jury that could not agree on a verdict.

[36] In order to determine this appeal and to understand the full context of the evidence it is necessary to consider not only the evidence with respect to the possession charge on Count 2 but also to consider the evidence presented in relation to the trafficking charge on Count 1.

The evidence at trial

[37] The evidence at trial consisted of the evidence of five police witnesses, photographs of vehicles, houses and items found during searches, certificates of analysis, receipts, schedules of phone calls and texts, as well as a list of agreed admissions and a DVD of video recordings. That evidence clearly established that six bottles of methylamphetamine oil in excess of 200 grams had been found in a silver Commodore utility on 20 March 2014 at the Gold Coast. The only other evidence presented in the trial which implicated the appellant in the possession of those bottles came from an indemnified witness White.

The surveillance evidence

[38] Detective Sergeant Bryce Nielson gave evidence in relation to the investigation and the strategies used.[28] He stated that between August 2012 and March 2014 police were conducting a major operation investigating the trafficking of dangerous drugs. Police and other authorities from Queensland, New South Wales and the Commonwealth were involved in the operation which included physical surveillance teams in both New South Wales and Queensland as well as access to dogs trained to detect drugs and cash. Specialist surveillance teams were involved in the operation as well as expert IT analysts.

[39] Detective Nielson stated that the appellant had been under investigation for some time and police ultimately obtained warrants to intercept telephone calls and texts from two phone numbers used by the appellant during various periods of time. He agreed that a total of about 39,000 calls were intercepted and analysed. Warrants were also obtained to intercept the calls of a number of other persons including White, Darren Dark and Shaun Beechey. He stated that specialist teams installed multiple listening devices and video cameras at or near an address at Amalfi Drive which also covered movements in the street outside the property. That video surveillance was in place during various periods and specifically included the period between 16 September 2013 and 8 April 2014.

[40] Detective Nielson confirmed that the listening devices installed by police were very sophisticated and were able to pick up conversations from some distance away. In particular he stated that the listening devices which were near the garage door were

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28 Appeal Record Book (ARB) 211-309.

designed to pick up conversations in that area and the front door area. He stated that there was no indication the appellant was aware of the presence of the devices and despite the devices being in place for some period of time they revealed nothing of significance.

[41] He also confirmed that in terms of physical surveillance it was clear that the appellant was a target of the operation as was White, whose movements were the subject of significant focus between 17 and 20 March 2014.

The searches and events of 20 and 21 March 2014

[42] The surveillance in various forms which had commenced in July 2013 continued until the residence owned by the appellant at Amalfi Drive was searched pursuant to a warrant on 20 March 2014. The appellant's brother Novak was living at the house and a number of items including mobile phones and SIM cards were seized. Detective Nielson gave evidence that when the residence was entered at around 3.40 pm the appellant was not in Queensland but that White and the appellant's two brothers, Novak and Vlad Tesic, were present. Shaun Beechey was also found in the vicinity on the premises at some point during the search. A further search warrant was subsequently obtained in relation to a silver Holden utility and a purple Hilux utility which were parked near the premises. A number of items of interest were found. White told police that the purple Hilux belonged to him and initially stated that the silver Holden probably belonged to a neighbour.

[43] Detective Nielson stated that White had been seen entering the house with a Louis Vuitton bag which contained clothes belonging to the appellant. He was found with $18,500 in cash in the pocket of his cargo pants and a Blackberry phone. Whilst he provided the passcode, when police accessed the phone it had been wiped clean remotely. Detective Nielson said that White had told him during the search that he recently arrived from Sydney and he gave him some details of the flight which he knew was a lie given the extensive physical surveillance that had been in place.[29]

[44] A sum of money, cocaine and some ecstasy pills were found concealed within hollowed out secret compartments of White's purple Hilux utility. There were 13 ecstasy pills as well as four clip seal bags each containing 28 grams of cocaine with a purity of around 60 to 62 per cent. The total pure weight of cocaine was approximately 68 grams. Detective Nielson confirmed that the total value of the cocaine was around twenty five to thirty thousand dollars. It was not alleged that any of the items found in the purple Hilux had any connection to the appellant.

[45] Detective Nielson gave evidence that White was arrested and transported to the Southport Police station and that he was ultimately interviewed in the early hours of the morning of 21 March 2014. White was charged with possession of dangerous drugs. He gave evidence that he did not recall making an offer to White to cooperate in return for a reduction in a likely sentence, he agreed however that at the time he was arrested the law in Queensland was that a circumstance of aggravation could be added to a charge. It was called a VLAD circumstance of aggravation which meant that a term of between 15 and 25 years imprisonment could be added to the sentence. He confirmed that a way to avoid such a circumstance of aggravation was to cooperate with police and make what is called a s 13A statement.

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[29] ARB 297 ll 1-5.

[46] Detective Nielson gave evidence that another house belonging to the appellant at Piper Street in Sydney was subsequently searched. The appellant was arrested at the Sydney Domestic airline terminal on 4 April 2014 carrying $43,000 in cash together with a receipt from the ANZ Bank showing a recent withdrawal of a substantial sum of money. He stated that the residence at Amalfi Drive was again searched on 1 May 2014 and an amount of $3,000 was found in a cupboard under a staircase. No drugs were found in the property. Police also seized a hard drive of a CCTV system that had been installed at the residence by the occupants which recorded movements from four cameras at the property from 6 March 2014.

[47] Detective Nielson also produced into evidence an invoice made out to the appellant for suspension works that had been undertaken on the silver Commodore utility on 8 November 2013.[30] He also produced video surveillance photographs which showed the silver Commodore outside the Piper Street residence of the appellant at 10.11 am on 22 February 2014,[31] and on 17 March 2014 at 4.11 pm.[32]

Detective Mooney's evidence

[48] Detective Mooney explained that he was in charge of coordinating the search on 20 March 2014 but that the first couple of hours of the search at Amalfi Drive were not recorded because he had difficulties with his recording device. The evidence he gave at trial essentially confirmed the evidence of Detective Nielson as to the items that were seized during the search and who was present. He stated that White was initially charged with possession of cocaine on 21 March 2014. The next time he had any involvement with White was on 5 April 2014 when he attended at the station with his solicitor to be questioned in relation to the more serious charge of drug trafficking. He attended voluntarily but declined to be interviewed. He was arrested on charges of drug trafficking and placed in the Southport watch house.

[49] He spoke to White again the following day, Sunday 6 April 2014 at the watch house in the company of Sergeant Chan. On that occasion he stated that White was prepared to give them a statement regarding his knowledge of the drug trafficking syndicate although he didn't actually sign it until the following day 7 April 2014. On 16 April 2014 he stated that another lengthy statement was taken from White.

[50] Under cross examination, Detective Mooney accepted that when White was charged with trafficking on 5 April 2014, it was with the VLAD circumstance of aggravation which would attract at least an extra 15 years of actual custody. He also confirmed that when he had attended with his solicitor he refused to be interviewed and had clearly indicated through his solicitor that he was not going to make a statement.

[51] Detective Mooney confirmed that after the solicitor left on 5 April 2014 he had a conversation with White in the watch house and he outlined three things to White: firstly, that he was facing something like 25 years in prison;[33] secondly, that he had some "awesome evidence against him"[34]; and thirdly, that there was a "way out of it" which was to make a statement.[35] Detective Mooney also accepted under cross examination that he made it clear to White that he would have to give information

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30 Exhibit 17.
31 Exhibit 18.
32 Exhibit 19.
33 ARB 326 ll 43-44.
34 ARB 326 ll 46.
35 ARB 327 ll 1-2.

"against Ivan or words to that effect".[36] He agreed that on that day he said words to the following effect:[37]

> "*Bradley, you're facing 15 years. The only way that gets removed is if you make a statement. The statement should be made against Ivan Tesic.*
>
> Your answer:
>
> *That would be about right, yep.*"

[52] Detective Mooney also confirmed with Counsel for the appellant that he did not ask White to give evidence about anyone other than the appellant. Detective Mooney agreed that despite the significance of his conversations with White he did not make a note of it in his notebook, police diary or record it on his digital recorder. He also agreed that at the end of that conversation on 5 April 2014 White again declined to make a statement. Detective Mooney confirmed that on that night an undercover police operative was deployed in the cells to pretend to be a prisoner and to speak to White.

[53] Detective Mooney stated that on 6 April 2014, after he and Sergeant Chan had spoken to White for about eight hours, he agreed to make a statement. He also agreed that his express purpose for seeing White at the watch house was to get a statement against the appellant.[38] Detective Mooney agreed that once again his recording device failed and it did not record for the first three hours. He also confirmed that when he commenced recording it was a covert recording that neither Sergeant Chan nor White was aware of at the time. Detective Mooney also conceded that he did not disclose the existence of the covert recording prior to the committal hearing even to Detective Nielson, the officer in overall charge of the case.

[54] Detective Mooney also agreed with Counsel for the appellant during cross examination that when White first made his s 13A statement, he told him that the $18,500 found in his pocket was his personal savings and had nothing to do with drug trafficking. He also told him in some detail that the savings had come from handyman work and carpentry work. Detective Mooney accepted that it was a "bald face lie" and that White explicitly lied in his s 13A statement.[39] Detective Mooney agreed under cross examination that he said, "It is a difficult position, Bradley. We understand you know, but realistically, you're looking down the barrel of 25 years."[40] He explained that the 25 years comprised of the 10 years he would expect from the trafficking charge and the 15 years for the VLAD circumstance of aggravation.

[55] Detective Mooney also agreed that on 6 April, Sergeant Chan had said to White, "There are people definitely providing other statements other than yourself"[41] at a time when no one else had in fact provided statements. He confirmed that about three hours into the recorded conversation, he told White that if he made a statement his safety would be looked after and that whilst the VLAD circumstance of aggravation was currently on the charge he would try and get it removed. He told him that whilst the decision as to whether the circumstance of aggravation would be removed was a decision for the Commissioner, he said words to the effect of, "What you're giving us

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36 ARB 327 ll 46-47.
37 ARB 329 ll 4-10.
38 ARB 333.
39 ARB 341 ll 35.
40 ARB 344.
41 ARB 344 l 25.

I can nearly guarantee that you will"[42] and "Okay if it's not…I'm going to find a new job if it's not".[43] Detective Mooney agreed that in essence what he said to White was, "… it's 15 years extra prison time unless you make a statement against Ivan Tesic and if you do, I guarantee it'll be waived".[44] He also agreed he and Sergeant Chan told him "You've got to look after yourself".[45]

[56] Detective Mooney agreed that he made the following statement:[46]

> "You either have the option to get in the chair or you do extra 15 – you do an extra 15 years. Mate, with this and everything else we've got, like, we would both be amazed if it goes to trial. But obviously, we can't give you that guarantee at the same time, so."

[57] Detective Mooney confirmed that the appellant was refused bail on 7 April 2014. A further statement was taken from him on 16 April 2014 which took about six hours. White signed the statement on 17 April 2014. Bail was subsequently granted. Detective Mooney gave evidence that White ultimately received a sentence of five years wholly suspended which meant that by signing the s 13A statement, White served about a month in custody rather than a possible period of 25 years imprisonment for the charge of trafficking with the VLAD circumstance of aggravation.

The evidence of Sergeant Chan

[58] Sergeant Chan confirmed her involvement in the search of the premises at Amalfi Drive as well as the events of Saturday, 5 April and Sunday, 6 April 2014. She indicated that she recalled taking White's statement on 6 April 2014 with Detective Mooney and that it took a long time. She confirmed White was not willing to sign the statement that day. She was then present on 16 April 2014 when a further statement was taken. She agreed that White was told how strong the evidence against him was and that he had been the subject of surveillance. She also agreed that they highlighted the seriousness of the offences to him and told him that he was facing an extra 15 year jail term on the top of any other term of imprisonment that he received.

[59] Sergeant Chan confirmed with Counsel for the appellant that she and Detective Mooney explained the VLAD circumstance of aggravation to him and told him that one way out of it was to make a statement. She also agreed that she told White, "It'll have to be information against Ivan".[47] Sergeant Chan also agreed to the content of the recording that was made from around 6.10 pm on 16 April 2014. She also stated that when she told White that there were other people definitely providing statements to the police it was not correct.

[60] Sergeant Chan also stated she recalls the following conversation with White:[48]

> "Okay, anything else? Any other instructions? This isn't the important stuff, you know. It's him having direct control over what's

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42 ARB 345 ll 43-44.
43 ARB 347 ll 36-40.
44 ARB 347 l 47 – 348 l 2.
45 ARB 348 l 40.
46 ARB 350 ll 5-8.
47 ARB 368 l 11.
48 ARB 378 ll 29-32.

> going on. That's – that's, to us, really important. So you know, if – if there was any other sort of instructions that he gave you –."

[61] She stated that she was just trying to get White to expand on what he had already told them. Sergeant Chan also agreed that during the conversation with White, she stated, "The problem is the context and increasing Ivan's period".[49] She also agreed that she also asked him, "I'm just trying to put him in control of that car when you weren't around, Bradley".[50]

The Silver Holden Utility

[62] The silver Holden utility which was parked outside Amalfi Drive on 20 March 2014 was found to have concealed compartments in the airbag cavity and behind the passenger seat. After receiving assistance from Fire and Rescue personnel Police ultimately found six, 1.25 litre soda bottles concealed within that secret compartment. It was discovered that the compartment could be opened by means of a concealed switch.

[63] White's fingerprints were on two of the bottles and the liquid within the bottles was analysed and found to contain methylamphetamine with a total weight of 3680.2 grams of substance.

[64] The charge of possession of dangerous drugs which is Count 2 on the Indictment relates to those six bottles of methylamphetamine oil that were found by police on 20 March 2014 in the covert stash box in the silver Holden utility White had driven from Sydney to the Gold Coast.

[65] There was no dispute that the appellant was in Sydney when the vehicle was searched. The Crown case was that the appellant had directed White to take the bottles to the Gold Coast and that he was the one exercising control over the bottles when they were in Queensland by virtue of his ability to give White directions about them. The only evidence in relation to the appellant's control over those items came from White himself.

White's evidence

[66] As already noted, notwithstanding the intense and long-term surveillance of the appellant, nothing of substance was revealed and this was conceded by the Crown at trial. The Crown also accepted in its opening that the only evidence in relation to the appellant's alleged activities came from White's testimony.

[67] White's testimony at trial was therefore of great significance and the jury were directed in the opening by Mr Saul Holt QC that White's credibility was the real focus in the trial. Mr Holt QC urged them to consider whether there was any "independent evidence that supports White's account" with Counsel contending that there was simply no such evidence.

[68] White gave evidence over two days of the trial during which he was extensively cross examined. He stated he had been a long term friend of both Novak and Vlad Tesic. In his evidence in chief, he admitted that he had a history of drug trafficking and that he initially became involved in drugs when he met the appellant's younger brother,

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49 ARB 379 l 16.
50 ARB 379 l 36.

Novak. Through Novak he met Shaun Beechey and Gianni Santanoceto. He said he started distributing ecstasy for Santanoceto and did that until he was charged and sent to jail. He was sentenced to four years imprisonment and spent 16 months in custody. He was released in 2011.

[69] On release, he worked as an apprentice carpenter for about six months and worked on renovations at the house at Amalfi Drive. At first he was not aware that the appellant was the actual owner of the house as he lived in Sydney and would only stay there when visiting his family. He subsequently agreed that about $300,000 worth of renovations were done and that he played a significant role in the renovations and had an ongoing role in relation to the maintenance of the house. He would arrange for tradesman to come as required.[51] He also agreed that the appellant's primary residence was in Sydney but he would at times come to the Gold Coast for a week or weekend.

[70] He stated that after his release in 2011, after six months work as a carpenter he started working in an auto shop for the Glassford brothers who he had met through Shaun Beechey. He started work as a courier delivering methylamphetamine through a drug dealer called Dean Cauchi. He would pick up methylamphetamine from him and take it to the Glassford brothers. Sometimes he would pick up money in return. He would meet Cauchi at various places, including Amalfi Drive, where he would pick up green plastic bottles containing 100 to 200 millilitres of methylamphetamine from a concealed wall space in the vacuum cleaner cupboard or from under the kitchen sink.

[71] White said he would do this on a monthly or fortnightly basis and that he also did deliveries for Shaun Beechey. He recalled going to Amalfi Drive on 10 or 12 occasions to pick up the bottles of methylamphetamine which he would then place into the concealed space in his Hilux car. The modifications to his car had been arranged by Shaun Beechey. He subsequently agreed that he first started moving methylamphetamine oil for Shaun Beechey and that he was paid about $1,500 per delivery.[52] He stated that he would either use his car or another modified car supplied by Shaun Beechey for the deliveries. He stated that Shaun Beechey had access to three or four modified cars. He agreed under cross examination that he continued to courier for Shaun Beechey and was doing so essentially up to the time of the execution of the search warrant on 20 March 2014.[53]

[72] He stated he would be able to gain entry to the house at Amalfi Drive by using a buzzer for the panel lift doors that had been given to him by Dean Cauchi. He would also deliver the end product, namely "ice", to people "between Brisbane and the Gold Coast"[54] and he normally delivered about 28 grams at a time. He gave evidence that in late 2013 he was using his car to deliver methylamphetamine for Shane Ross.[55]

[73] In relation to the silver utility, his evidence was that before Christmas 2013 he went with Novak Tesic to buy the vehicle and Novak paid $10,000 in cash for it. He said that Novak asked him to put the car in his brother's name and consequently that the paperwork was put in the name of his brother, Charles.[56] He accepted that he had lied

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51 ARB 493 l 28.
52 ARB 496 ll 1-5.
53 ARB 497 ll 8-10.
54 ARB 397 ll 24-25.
55 ARB 399 ll 30-31.
56 ARB 434.

to his brother about the reasons for putting it in his brother's name. The vehicle was taken to Amalfi Drive and then to Carters Customs for modifications to be done. He explained the modifications made to his utility and other utilities which allowed items to be concealed. The modifications were generally to the passenger airbag in the dashboard with a concealed switch hidden near a boot lever "that would operate a heavy duty ram that was on a cover and it'd open up a little hatch and you could put stuff in there and close it off".[57]

[74] White's evidence during cross examination was that it was the appellant who directed Shaun Beechey to have the modifications done on the silver Holden utility,[58] and that he was privy to a conversation where that instruction was given. The following exchange with Mr Holt QC followed:[59]

> "- - - and I want to put it to you because I'm as close to certain as I can be about this, that at the previous trial on this very point you agreed that you had never in fact heard such a conversation. Now what do you say? I will just give you a chance before we find it and I won't have to go through the process?---Okay.
>
> You previously said there was no such conversation where Ivan – you've actually heard Ivan give any direction of that kind?---I was given a description for the ute. But I could be wrong, Mr Holt.
>
> Well, it's just you said it with such certainty?---Yep
>
> So I asked you questions at the previous trial about precisely this issue?---Okay.
>
> About whether there was a direct conversation by Ivan Tesic to you to that effect and you said, "Not that I can recall."?---Okay.
>
> Right. Just no more than a minute or so ago you are confidently saying that Ivan gives that direction in a conversation you are privy to, right?---That was the whole purpose of that ute, yes.
>
> Not my question?---Okay.
>
> No more than a minute or so ago you very confidently say to this jury that there was a conversation you were privy to where Ivan gives a specific direction that he wants the ute modified, right?---Okay.
>
> And you've previously said you don't recall any such conversation?---Okay.
>
> Because you're just making this up, aren't you, Mr White?---No, I'm not."

[75] The Crown case, as it was opened to the jury, was that the appellant's drug trafficking occurred between 2011 and 2014 but that was amended at the close of the Crown's case because White's evidence did not implicate the appellant until August 2013 at the earliest. White's evidence of his activities in relation to delivering drugs in the two year period from mid-2011 to August 2013 made no mention of the appellant but rather related to activities he was conducting on behalf of Cauchi, Beechey and Ross.

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57 ARB 396 ll 30-33.
58 ARB 558 l 2.
59 ARB 558 ll 8-36.

[76] White's evidence at trial was that it was not until a couple of months before the December 2013 trip to Thailand that the appellant directed him to pick up the crystal form of methylamphetamine in a tub from Shane Ross at his Harbourtown address and deliver it to the "boys".[60] He stated he was given instructions to do this on four occasions.

[77] Accordingly, due to the change of evidence from White, the trafficking period was reduced from four years to a period of almost eight months. The case for trafficking in the period from August 2013 to March 2014 was founded on a number of acts, all of which relied wholly on the evidence of White.

[78] White stated that after the purchase of the silver Commodore utility, he next saw the vehicle about a week before he went to Thailand which was around two or three weeks after it had been delivered to Carters Customs. He saw modifications to the passenger-side air bag and behind the passenger seat. He said:[61]

> "The same as – as I described for my ute earlier. The airbag compartment had been removed, steel box put in there, like a – pretty much like a safe in the dash, and it had a flap with a ram, and the airbag pad off the dash was retained so you couldn't tell the mod – like, from the naked eye, you couldn't pick the modification had been done."

White's confusion about the trips to Sydney

[79] In his evidence in chief, White gave evidence that he went to Thailand for two weeks with the appellant, Novak and his girlfriend Natalie. After he returned he was asked by the appellant to drive the Silver Commodore to Sydney which was his first involvement with the utility.[62] He stated that he got his instructions from the appellant via an encrypted message on a Blackberry phone that had been given to him by Nicky Hatton. He stated he was given instructions by the appellant to drive to an address at Hoxton Park New South Wales. When he arrived the appellant was home and he saw the appellant move the utility off the road into the garage as he went upstairs to sleep. He did not see him take anything out of the car. White stated he then flew back to the Gold Coast from Sydney with the appellant.[63]

[80] He stated that a week later he returned to Sydney after receiving a text on the Blackberry from a person whose identity he could not recall. When he arrived at the house at Hoxton Park he found out he was to deliver a Range Rover from that address to the appellant's parents on the Gold Coast.

[81] He then gave evidence that in February 2014 he received a text message on the Blackberry from the appellant and he was asked to go to Amalfi Drive and take some money to Sydney. The appellant was at the address and he gave White "a JB Hi-fi bag full of money" which he put it in the rear stash compartment of the silver utility".[64] His evidence was that he saw the money bundled up with rubber bands and thought that there was over $250,000 in the bag. He drove to Sydney. There was no one at the address when he arrived so he waited. A couple of days later the appellant who

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60 ARB 400 l 6.
61 ARB 405 ll 42-46.
62 ARB 407 ll 20-23.
63 ARB 411 ll 5-6.
64 ARB 417 ll 13-14.

had been on a "bender down at the Formula 1"[65] turned up and he gave the money to him. His evidence was he saw the appellant take it out of the bag and put it on the office desk.[66]

[82] White said that he stayed a couple of days and whilst he was in Sydney he was told by the appellant to go and collect five kilograms of pseudoephedrine powder from an address. He stated he then took the powder to an apartment in Woolloomooloo and gave the powder and a 600 millilitre bottle of methylamphetamine oil to a man called Allatt who put them in his BMW.[67] He then went back to the Hoxton Park address and helped Novak move some wheels and other items from a storage unit. When he returned to the Hoxton Street address he said he got instructions from the appellant to drive some methylamphetamine oil to the Gold Coast.[68] His evidence in chief was as follows:[69]

> "Recall what you were instructed or what you were told?---I was advise to pick up a - from – so inside the house, it was discussed, and they said about taking a couple of bottles of meth oil, but larger bottles. So about 1.25s, and they were in a Jim Beam cooler bag, and he told me to go get the cooler bag and go put it in the back of the ute. So I did that."

[83] His evidence therefore was that the appellant told him to take a Jim Beam cooler bag containing the six green bottles of methylamphetamine oil to Queensland. He said that he placed the bottles in the back of the utility. He subsequently clarified that he collected the cooler bag from "near the internal passage door at the garage" and that the utility was outside on the roadway "slightly on the – on the right hand side out the front of the neighbour's place".[70] His evidence was that the lids had different colour tape on them and he was instructed to take three bottles with a particular colour lid to Shane Ross who would contact him. He said the appellant paid him $5,000 for the trip which he put in his bum bag. He said he left about 9.30 that night and got to the Gold Coast at around 5.00 am and went to his parent's home at Burleigh Waters.

[84] He gave further evidence that when he woke up around lunchtime, he tried sending a message to Ross on the Blackberry and when he could not contact him he stated he drove "my silver ute"[71] to the house at Amalfi Drive and parked outside. When he arrived he said he went in and spoke to Vlad and Novak and then went out and "got money out of the purple ute" which he had previously left parked outside.[72] He said that it was about fifteen thousand dollars and when he went inside "Vlad counted it".[73] He also subsequently said that the money "was from dealings with Ivan's brother, Vlad".[74] It was at that point that the police arrived at the house to execute the search warrant.

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65 ARB 418 l 10.
66 ARB 418 l 24.
67 ARB 423 l 32.
68 ARB 425 l 7.
69 ARB 425 ll 9-13.
70 ARB 425 ll 15-22.
71 ARB 428 l 11.
72 ARB 428 l 25.
73 ARB 428 l 38.
74 ARB 436 l 21.

[85] During his evidence in chief a covert recording of a conversation on 21 February 2014 at around 6.50 pm was played to the jury. White stated that he recognised the voices of Novak Tesic and Shaun Beechey during the playing of the recording. Another recording was played which was made at around 8.50 pm the same night during which White stated that he recognised the appellant's voice say "yeah, you're not going to be down there till the morning".[75] His evidence was that this related to the second trip to Sydney.

[86] Under cross examination White agreed that he only drove the Silver Commodore to Sydney twice. He also agreed that his evidence was that the recordings he had heard "appeared to be recording a meeting about the last time" that he had travelled to Sydney[76] and that he was in Sydney for no more than six days before he went back to the Gold Coast. When it was made clear that the recording on 21 February 2014 was made around a month before the last trip he said "No, it wouldn't have been then".[77] He then stated that his evidence was that instructions for the first trip had actually come from a face to face meeting with the appellant rather than via a BlackBerry text message. His evidence was as follows:[78]

> "Face-to-face meeting, so not by a BlackBerry message?---I don't recall exactly how it was arranged, but that meeting was – the audio you heard was regarding that.
>
> So do you now say that the audio we've heard is, in fact, the first meeting when you first down to Sydney, not when you second went down to Sydney?---Yes.
>
> Okay. Good. And that's the occasion, is it, that Ivan tells you to take the money to Sydney?---Yes.
>
> And where did we hear that on the - - -?---No, that's not the occasion he told me to take the money to Sydney. He was talking about driving down there, and I was to drive down there. The occasion I took the money, I received the Blackberry message and went and spoke to Novak. Like I say, you're trying to confuse the issue with the two occasions."

[87] White also agreed under cross examination that when the recordings were played at the first trial he did not identify the voice of the appellant at any point. When the recordings were played to him again he agreed that the voice of the appellant could not in fact be heard.[79]

[88] Under cross examination White was again taken to the first trip to Sydney in February 2014 when he went to Piper Street with the money in the concealed space in the silver utility. His evidence was that he had spoken to the appellant personally at Amalfi Drive about transporting the money to Sydney and initially he said the conversation was in the garage of the house but then said it could have been somewhere else.[80] The following exchange occurred:[81]

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75 ARB 447 l 5.
76 ARB 450 l 26-27.
77 ARB 451 l 44.
78 ARB 452 ll 31-44.
79 ARB 458 l 23.
80 ARB 566 l 20.
81 ARB 566 ll 24-40.

> "- - - was it - - -?---Could've been on the footpath out the front of the door, could've - - -
>
> Mr - - -?---In the vicinity of that area, yes.
>
> Can I just suggest something to you?---Yes.
>
> The reason why you're now backing so furiously away from the proposition it was in the garage is because you now know from the things that were played to you that the garage was being bugged, right?---I knew that.
>
> You know that, don't you?---Yeah, I do know that.
>
> And, therefore, you know, right – you know, don't you, that this notion that there was a conversation between you and Ivan where Ivan tells you to drive to Sydney, that there's money in the ute, and to turn off your iPhone is complete nonsense, isn't it?---No, it isn't."

[89] White agreed that the conversation that was played would have been on 21 February 2014, immediately prior to leaving for Sydney given the garage door was heard to open and the conversation referred to him not getting there until four in the morning. He agreed the only people heard in the conversation were Shaun Beechey and Novak Tesic and the appellant's voice was not heard. He also agreed that at the committal hearing he had referred to receiving a text via the Blackberry in relation to the first trip and that the appellant was not present. The following exchange then occurred:[82]

> "Yes?---So that there was no recordings of these conversations to make it difficult to prove in a court of law that that was actually said.
>
> But you know that the police were actually recording every single one of them, don't you?---Recorded every single thing, I don't think so.
>
> Every single thing in the lounge and the garage?---So the whole vicinity of the whole property, you're telling me.
>
> The lounge - - -?---They had recordings of everything.
>
> The lounge and the garage, Mr White. You know this?---We'll see. And like I said to you, conversations occurred out the front across the road in the park, where the police didn't happen to have a recorder, did they? Like I'm saying, Mr Holt, there was many conversations and not every single one of them could be captured by a listening device.
>
> I understand. What I'm trying to understand is what your evidence is as to how you were directed to Sydney because, let's be clear, there appear, don't there, to be accounts? One is you receive a BlackBerry message and then have a discussion with Novak and then go; right?---Okay. Yes.
>
> That's one account you've given previously?---Yes.
>
> There's another account which says that you – there's another account that says that you go to the property and have a conversation with Ivan where Ivan directs you face to face to drive to Sydney. Now, you

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82 ARB 571 l 19 - 572 l 13.

> accept that's another account you've given about this conversation?---Okay. Yes.
>
> Do you agree that those two accounts are not the same?---I do agree with that, yes.
>
> Right. So can you just tell me which one you want to stick with, which is correct and which is not?---I believe the conversation with Novak would be the option that I'd pick.
>
> Okay. So you've picked that option. So the - - -?---Yeah.
>
> - - - option is, just to be clear, BlackBerry message from Ivan - - -?---Yeah.
>
> - - - conversation with Novak, no direct conversation with Ivan?---Okay. Yes.
>
> That's what you're running with?---Yes."

[90] In cross examination, White was once again taken to the first trip to Sydney in February 2014 and his evidence was that after he arrived he had gone upstairs to bed and had seen the appellant drive the utility into the garage but nothing more. He then agreed with the following proposition that was put to him:[83]

> "And at the committal hearing on oath, you said on this occasion you have an actual memory of Ivan Tesic taking a bag of money out of the car and then stashing it in the cupboard under the stairs?... --- Okay".

[91] The following exchange then occurred:[84]

> "Now, that never happened, right?---I might have got those two occasions mixed up, Mr Holt.
>
> Which two occasions?---That with the last trip.
>
> But - - -?---That him taking money out of the car and putting it underneath the cupboard may have actually occurred on the last trip.
>
> All right. But do you agree - - -?---So I may have been confused at the time, yes.
>
> Well, can we be clear though, so on an occasion – you're talking an event really important to this case, as we understand it?---Okay.
>
> And you tell the court something which didn't happen, right?---Okay, yes.
>
> So you had an actual memory that on this occasion Ivan Tesic takes this money out of – or this bag out of the car and puts it under the stairs in circumstances where that is something you actually didn't see; do you understand?---I do recall seeing it at an occasion though.
>
> Well, all right?---It mightn't happen on that exact incident. It might've happened on the later – the later trip, Mr Holt.

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83 ARB 578 ll 1-4.

84 ARB 578 ll 6-44.

> But you didn't say that, did you. You said that Ivan took the Ute – I'm sorry, you were specifically talking about a time when you were going upstairs and going to sleep?---Okay, yes.
>
> And then you said before that you sat in the lounge room and saw him do something?---Okay.
>
> But you never sat in the lounge room and saw that, did you?---I've sat in his lounge room quite a few times.
>
> On this occasion, you never sat in the lounge room and saw that, did you. Did you?---I couldn't – couldn't exactly say, Mr Holt.
>
> Again, the reason why you tell different stories – and we'll come to more. The reason why you tell different stories about critical events when you're asked about them is because you're making this up?---No."

[92] In relation to the second trip to Sydney, which occurred just before the execution of the search warrant on 20 March 2014, it was put to White in cross examination that the reason for the trip was in fact to move some wheels and tyres and bring back items from Sydney for Novak because he was clearing out his storage shed. Whilst he accepted that there were some items brought back from Sydney he stated it was just a "cover story".[85] His evidence was that he went to Amalfi Drive before the trip and was given a large quantity of cash by Novak. He initially estimated it was about $500,000 but accepted that he subsequently stated the amount was $180,000 in the first trial and then revised it to $250,000 in the second trial. He stated that he had a conversation with Novak in the garage area near the carport. White agreed that there was a conversation between him and Novak Tesic where Novak tells him explicitly that he has to take a bag of money down.[86] His evidence was that on this second occasion after his arrival in Sydney he specifically remembered the appellant taking the JB Hi Fi bag out of the ute, putting the bundles of money onto the office desk and then counting the stacks of money.

[93] White agreed that in the first trial he said he had a vivid memory of him "counting the money out on the bar in the games room near the pool table"[87]. It was put to him that his evidence had now changed. Mr Holt QC asked "Now, you say you have a vivid memory of him counting the money out on the bench in the office?" and White replied "I never said that. I said he stacked the money at one stage on the office bench".[88] The following exchange then occurred:[89]

> "I see. So what is your evidence? Do you understand those are two different things. They're two different places, right?---It's moved from one place exactly like you've just pointed out anyway - - -
>
> Yeah?--- - - - that he had taken it from out of the car - - -
>
> Again, not my question. They are – a bench in the office and a bar in a games room are two different places?---That's correct.

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85 ARB 581 l 31.
86 ARB 587 ll 15-16.
87 ARB 591 l 42.
88 ARB 592 ll 4-6.
89 ARB 592 ll 10-42.

> The last trial, you had a vivid memory of him counting them on the bar in the games room, yes?---Okay. Yes.
>
> And in this trial, you have – your memory is that he was counting them on a bench in the office?---I never said that.
>
> I'm sorry?---I said that he stacked the money in there. I didn't say he counted it.
>
> All right. Well – I'm sorry, do you not agree those are – there are two different things going on here?---Sorry?
>
> Do you not agree there are two different things going on here, right?---No, it all concerns the same amount of money that you're talking about.
>
> All right. So if I can just help you then with this. I'm back at paragraph 29 of your statement:
>
> > *I took the JB Hi-Fi bag and put it under a desk in the office. I saw Ivan go and take the bag from where I put it and separate the money in the office. I then saw him unlock the door under the stairs and spend some time inside the stairwell. There is a hidden area inside the stairwell which Ivan uses to hide money.*
>
> Now, do you agree I've read that correctly?---Yes, that sounds accurate."

[94] White agreed ultimately that he had at different points in time two vivid but different memories of the appellant stacking money and there were two different accounts of counting in two entirely different rooms.[90] He also gave evidence that a hidden area under the stairs at the Piper Street residence had been spoken about but that he had never seen it and agreed that the video of a search of Piper Street did not reveal any such hiding place.

[95] White agreed with Counsel for the appellant that his s 13A statements came after very lengthy interviews with police on 6 April and 16 April 2014, that he knew he would be required to sign that statement and that it was therefore important that it was correct. He acknowledged that he knew that it would be perjury if he didn't tell the truth and insisted that he told the truth in the statement he gave police. He ultimately acknowledged however that he was not truthful when he put in his statement that the amount of $18,500 found in his pocket on 20 March 2014 was from his own savings and he accepted it was in fact the proceeds of his own drug dealing.[91] He said:[92]

> "So at the last trial, we were absolutely clear at the time you said, "That was my savings," you knew it wasn't the truth; right?---Correct.
>
> And that remains the position: you knew it wasn't the truth when you said it?---That's – yes, correct.
>
> Right. So then can we be absolutely clear: that makes it, doesn't it, a deliberate lie to Sergeant Chan and Mr Mooney?---The process I went through with Sergeant Chan and Mark Mooney, at the time, I believe,

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90 ARB 593-594.
91 ARB 463 l 14.
92 ARB 468 l 7 - 469 l 24.

was a – sorry – trying to choose my words correctly here – a free – a free-flowing thought process to get the information to actually put my evidence into a written form for the 13A statements and – which I've done my best to – not everything that I – was discussed in that – those interviews was put into those statements.

My question was when you said, "That was my savings –" do you agree that when you said those words to Sergeant Chan, you knew they were wrong, yes?---At that time, yes.

Yeah. At the time you said them you knew that it was wrong?---Yeah.

So it was – you deliberately lied to Sergeant Chan and Sergeant Mooney. It's not hard?---Yeah, not realising that that recorded conversation was actually be submitted as evidence to the court.

Thank you. So let me be clear then. You deliberately lied to the police because you didn't realise you were being recorded and that someone like me might be able to ask you questions about it later?---No, not – there was no deliberateness in it.

Mr White, you knew it wasn't the truth, yes?---Yes.

And you said it anyway, yes?---At a point, yes.

Yes. So it was deliberately untrue; right?---Yes.

Right. So you deliberately lied to the police, yes?---At that time, yes.

Yes. And you did so because you didn't realise it was being recorded and, therefore, you could never be held to account for your lie; right?---That's – that's correct. But that was never actually into my s13A statement.

I think we - - -?---What you just spoke about.

I think we're in furious agreement about that, Mr White?---Is it – can you show me on paper in the statement where I actually wrote – where I signed saying that is my evidence I wish to testify to in court?

I see. So you say things that are untrue to the police. What you're concerned about is what ends up in a statement; is that right?---No. The – when testify in court, like I did yesterday, that that statement – that I've given the truth in court to the jury of what I've said. Nowhere in – did I know that that recorded conversation was actually going to be my evidence. I believed that the two written statements were given as my evidence to the court - - -

And that was - - -?--- - - - and that me testifying, which I have done, is my evidence.

Right. And that's why you were happy to lie with impunity to the police; right. That's why you were happy to lie openly to the police about where that money had come from?---I wasn't – not intending to lie at the time, no. I was having a - - -

But, Mr - - -?--- - - - free – free-flowing thought process that divulged 10 years of criminal involvement.

> Mr White, do I really need to go back and get you again to agree that it was a deliberate lie?---Yeah. I – I've already agreed that it was - - -
>
> That it was a deliberate - - -?--- - - - a lie at the time. Yes, I have."

[96] White agreed under cross examination that there were a number of vehicles on the Gold Coast at the time which had secret stash spots and that to his knowledge all of them had been arranged by Shaun Beechey. He confirmed that Shaun Beechey had arranged for the stash spot in his own vehicle to be done and in fact had insisted it be put in. He stated that the four clip seal bags of cocaine, worth around twenty-five thousand dollars that had been found in his Hilux on the day of the search was totally unrelated to the appellant and that it had come from "a person in Broadbeach Waters, a Lone Wolf bikie"[93] whose name he could not recall. He said it had been arranged through Vlad Tesic and not the appellant. That evidence continued:[94]

> "So you have – let's just be clear – when you are arrested by police, in your possession four ounces of high grade cocaine, 14 – 13 plus one – MDMA or ecstasy tablets, and eighteen and a-half grand, which is the proceeds from dealing in cocaine and methylamphetamine?---That's correct.
>
> And none of that had anything to do with Ivan Tesic?---That's correct.
>
> But it's all in your van outside – in your Ute outside 108 Amalfi Drive, right?---That's correct.
>
> And it had been there, by [indistinct] inference, for a number of days, hadn't it?---Correct.
>
> Because you've been in Sydney in a silver Ute?---That's correct.
>
> Now, in addition, as I – well, the eighteen and a-half thousand dollars came into Amalfi Drive on that morning, didn't it?---It did.
>
> And it came in because you carried in there in that blue bag that we've seen that was found in your pocket?---That's correct.
>
> And, as I understood your evidence yesterday, it was being counted in Amalfi Drive; is that right?---It did get counted. Yes.
>
> So I want to be clear about this. It actually got counted inside Amalfi Drive on that day?---That's correct.
>
> Right. Proceeds of drug dealing?---Yep.
>
> Nothing to do with Ivan Tesic?---That's correct."

The interviews and s 13A statement

[97] White agreed under cross examination that on 5 April 2014, after he was processed in the watch house, he was immediately spoken to by a number of police officers including Mooney and Chan and essentially told that there was a strong case against him, that his fingerprints had been found on the bottles found in the silver utility and they had a lot of physical surveillance evidence against him. He agreed that within a short period of his solicitor leaving he was told the reality of the VLAD circumstance of aggravation and that he was looking at 25 years imprisonment. He also agreed that

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93 ARB 471 l 13.

94 ARB 473 ll 16-45.

on that first day in the watch house he was told that there was a way out of it all and that was to make a statement against the appellant. He stated that he was in the watch house for over two weeks until he got bail after the statement he made on 16 April 2014. He agreed that he was told that he should look after himself as follows:[95]

> "It's you saying essentially this is about looking after myself?---Yes.
>
> And Mr Mooney says a couple of questions later:
>
> > *That's right, mate, exactly. You've got to look after yourself, in my opinion. What other options do you have.*
>
> ?---That's correct.
>
> Right. And so this was – what you're saying in this case, Mr White, is in fact all about looking after yourself, isn't it?---Yeah, that's correct.
>
> And to the extent that looking after yourself, as you were told by the police, the only way to look after yourself was to make a statement against Ivan Tesic?---That is correct.
>
> Right. The only way you could get the 15 years removed was to make a statement against Ivan Tesic?---Yes, by cooperating.
>
> And the only – and the alternative is staring down the barrel of 25 years imprisonment?---That could have been, yes.
>
> Well, not "it could have been", Mr White?---Well, that did - - -
>
> That was the alternative as it was being told to you, wasn't it?---At the time, yes."

[98] White agreed that his imprisonment in 2011 had been for trafficking in dangerous drugs namely, MDMA pills over a six month period in 2008 for Gianni Santonoceto. He was jointly charged with Vlad Tesic. He also agreed that he been couriering MDMA for Shaun Beechey during the same period and that he had been couriering between 15 to 20 thousand pills per fortnight.[96] His evidence was that about 11 weeks after his release in 2011, he had again started couriering methylamphetamine for Shaun Beechey and also Dean Cauchi who were operating separately. He confirmed that, from 2011 right up to the time of the search in 2014, Amalfi Drive was used as a base for the drug dealing operations of both Cauchi and Beechey when the appellant was in Sydney.[97] He also agreed that Amalfi Drive was a place where he, "Cauchi, Beechey, plenty of others have, essentially, continual access whether Ivan is in Queensland or in Sydney."[98] He also agreed that in his interviews with police in April 2014 he was deliberately downplaying his own involvement in drugs at the time.

[99] White agreed under cross examination that in his addendum s 13A statement on 16 April 2014 he swore that he had "never delivered methylamphetamine oil to Rossy."[99] The questioning continued as follows:[100]

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95 ARB 485 l 25 - 486 l 1.
96 ARB 492 l 4.
97 ARB 540 l 5.
98 ARB 545 ll 38-40.
99 ARB 512 l 12.
100 ARB 512 ll 15-33.

> "It's not – it's not a true statement of the position. It's incorrect. It's wrong?---I –yes, I mean meaning that's incorrect, yes.
>
> And you knew it was wrong at the time that you've said it?---Yes.
>
> Yes. So you deliberately put something that was wrong in your statement?---Not intentionally, no.
>
> Well, just come back a step. You knew that it was wrong. You knew that it was incorrect. Yes?---And that's what I'm saying. Not intentionally.
>
> Just wait. When you signed your statement, you knew that you had in fact delivered methylamphetamine oil to Rossy. Right?---Okay. Yes.
>
> On multiple occasions? Yes?---Yes.
>
> Right. When you said, "I never delivered methylamphetamine oil to Rossy", you knew that to be a wrong statement, didn't you? You knew it to be an incorrect statement?---And as I've said, yes."

[100] White agreed that he had deliberately withheld the name of Shane Ross from his s 13A statement and that he had done that to protect himself from Shane Ross who he was scared of and intimidated by.[101] He also confirmed that it was Shane Ross who had first arranged for him to have an encrypted Blackberry phone and not Nicky Hatton. Whilst he accepted in cross examination that most of his drug dealing at the time of the 20 March 2014 search was with Shane Ross he stated that it was at the direction of the appellant.[102] He also agreed that when he arrived at the Gold Coast on the morning of 20 March 2014 he tried to text Shane Ross without success.

[101] White also accepted that he told police that he and the appellant had a number of drug related conversations around the garage and out the front of the house at Amalfi Drive. There was no evidence any of those alleged conversations had been captured on any of the sophisticated surveillance devices.

[102] White agreed that there were parties at Amalfi Drive when the appellant was in Sydney.[103] He also agreed that during a lengthy period of time when the appellant was living in Sydney during 2011 and 2012 he, Dean Cauchi and Shane Beechey all used Amalfi Drive as a base for their own drug activities as follows:[104]

> "And you used the Amalfi Drive property as a bit of a base for that, didn't you?---Not just there, no.
>
> But you used it – well, let's put it another way. At least you could see that Mr Cauchi and Mr Beechey were using Amalfi Drive as a basis for their drug dealing operations?---Correct.
>
> Yeah. They used it as a base - - -?---Yeah.
>
> - - over that period. And you were there a lot?---I was.
>
> And you were following instructions from them - - -?---That's correct.

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101 ARB 520 ll 25-31.
102 ARB 525 l 31.
103 ARB 545 l 24.
104 ARB 540 l 1 - 541 l 1.

- - - including to assist them in their drug dealing operations?---That's correct.

And this is the lengthy period of time that Ivan Tesic is spending almost all of his time in Sydney that that's all going on?---That'd be correct, yes.

Right. And Cauchi and Beechey are basically running their methylamphetamine operation from Ivan's place?---Yes.

And you're there doing all the runs for them?---That's correct.

So, indeed, over that – at least that period through to the end of 2012, you, Cauchi, and Beechey are regularly storing methylamphetamine oil and other things at Amalfi Drive?---I had no part in the actual storing it there.

They were at least?---Yes.

Yeah. And over that len – and that's over, again, that lengthy period of time that Ivan Tesic is in Sydney, essentially, all the time?---Yeah.

Yeah. And you, in fact, even saw them dealing methylamphetamine from 108 Amalfi Drive, as I understand you've told us previously?---Yes.

Right?---I would say that's correct.

And, in particular, customers would come past and drugs would be sold by Dean Cauchi to them?---Correct.

Right. So let's be clear. Dean Cauchi says, "Come and work on this property with me"?---That's correct.

You don't even know it's Ivan Tesic's house at that point?---That's correct.

But from that point, day 1, methylamphetamine starts being sold from Amalfi Drive?---I wouldn't say day 1 but - - -

It's that - - -?--- - - - in that timeframe, yes."

[103] He also acknowledged that the appellant had an interest in cars and that he owned a number of them which he would buy and sell. He agreed with the proposition put by Mr Holt QC that "The sense we're getting here is that there multiple vehicles being bought and sold, traded, swapped, used by different people all the time?---That did occur, yes."[105] He stated that he would assist the appellant by taking care of these vehicles and by moving them around. Whilst the appellant drove the silver utility when he was on the Gold Coast, White agreed that he used the car as well, particularly to run errands.[106]

"Yeah. Thank you. Now, you drove that vehicle on the Gold Coast as well, didn't you?---I have, yes.

And it's not just for these runs to and from Sydney you've described, but you actually used it driving around the Gold Coast?---Yes.

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105 ARB 553 ll 32-33.

106 ARB 555 ll 1-14.

> And you'd do that for running errands?---Not that frequently, no.
>
> But you would use at times for running errands?---I had used it a couple of times, yes.
>
> Yeah. Sometimes you'd choose to use your own maroon ute?---That's correct.
>
> And sometimes you'd use the silver ute?---And that's correct."

[104] He confirmed that he only knew the appellant through his brother and that he was not privy to his business arrangements but accepted that the appellant had a number of businesses which included a business which imported tyre rims and wheels. White was also taken during cross examination to a series of phone calls and text messages from his iPhone in the period he was in Sydney during the second trip in March 2014. He agreed that on 17 March 2014 there are text messages between himself and Novak in relation to picking up wheels in Sydney.[107] He also confirmed that the only messages he received on his iPhone from the appellant during this period related to getting him some takeaway food,[108] or telling him he was "Now sorting storage."[109] He agreed that the message about storage was a reference to him and Novak Tesic sorting out the storage unit and that some of those items were ultimately found in the back of the silver utility. He also agreed that there were texts which referred to him going to Bunnings in Sydney at around 3.15 pm on 19 March 2014 to get the ratchet straps that were also found in the back of the silver utility during the search.

[105] White's evidence was that after Bunnings he returned to Piper Street and around 6 pm he started packing the silver utility for the trip to the Gold Coast. He stated then when he got back to Piper Street the appellant was there and he gave him the Jim Beam cooler bag containing the six bottles of methylamphetamine oil to pack in the utility. He said that the bag had been "at that internal passage door near the garage."[110] Counsel for the appellant clarified that it was "essentially by that door that goes into the garage".[111] White acknowledged however that in his first statement to police he had actually said "I was instructed by Ivan to then get the cooler bag from underneath the stairs inside the house and put the contents of that bag into the back of the ute."[112] The following exchange then occurred:[113]

> "Well, except that yesterday when you gave evidence and indeed at the last trial when you gave evidence, you described it as being in the hallway by the door to the garage?---Okay, which is, like I'm saying, the vicinity of that area.
>
> In the vicinity of that area?---Yeah.
>
> But it's not the same place as - - -?---It's still right near the doorway - - -
>
> It's not - - -?--- - - - to the garage.
>
> Well, in fact - - -?---Is - - -

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107 ARB 602 l 19.
108 ARB 607.
109 ARB 607 l 32.
110 ARB 613 l 36.
111 ARB 613 ll 40-41.
112 ARB 615 ll 3-4.
113 ARB 616 ll 22-45.

- - - did you explain to the police when you spoke with them on the 6th of April that it was under – that it was in the "compart" underneath the stairs?---I may have.

I'll read - - -?---I may have, yeah.

- - - transcript 1, page 36. You were asked this by Tracka Chan:

> *And where was the cooler bag?---On the floor, near – um, in the compart – mmm, underneath the staircase, behind the door. There's a staircase by the door. There's a staircase.*

?---Okay."

[106] White also stated that at the time he loaded up the utility it was parked in the driveway as follows:[114]

"And as I understand, again, evidence that you've previously given, firstly, there were security lights out the front of there?---There was, yes.

Yeah. So when you came – if it was anything like dark outside and you came along, security lights come on out the front?---Yes.

Yeah. And in addition, as I understand something you've previously said, though – I didn't hear you say it yesterday but correct me if I'm wrong – you said that Ivan, in these sort of situations, was pretty paranoid about things being seen?---That's correct, yes.

And, in particular, I think you've previously suggested that he told you that you need to be really careful because the neighbours had a CCTV camera, right?---That's correct.

Yeah. Now, given all of that, where do you say that Ivan Tesic tells you to actually put these six bottles of methylamphetamine oil into the stash spot in the silver ute?---Out the front - - -

Out the front?--- - - - [indistinct] Yes.

So this person who you say is so paranoid about being seen, concerned about CCTV footage across the road, and in a house with security lights - - -?---Yeah.

- - - rather than telling you to bring the car into the garage, says, "No, mate. Bradley, just do it out the front"?---There must've been something in the garage.

Well, Mr White, you had - - -?---That's – I do recall that – exactly where it was done."

Other witnesses

[107] Detective Toni Lewis who was with the Australian Crime Commission at the time of the operation also gave evidence about the number of warrants that were issued which allowed the interception of telecommunication services and the installation of optical and listening devices at various locations. Evidence was given in relation to the

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114 ARB 618 ll 13-41.

analysis of the surveillance captured by those devices as well as the analysis of the computers and laptops that were seized.

[108] Detective Butterfield from the New South Wales police gave evidence about the search at the Piper Street address at Hoxton Park Sydney on 4 April 2014 and the video which was taken during the search. A series of photos of the dwelling were tendered which included the garage, the hallway leading to the garage and a room under some stairs. He also identified a number of phones and computers that were seized at the time. He also confirmed that an area under the stairs was thoroughly searched but no hidden compartment was found. He also described finding a small black and red notebook in the bar area.

Admissions

[109] A five page list of Admissions was also tendered,[115] which set out the evidence of John Bernard Kaiser as well as admissions in relation to Charles White and Darren Glen Williams.

[110] By way of a short summary:

(i) The admissions in relation to John Kaiser were with respect to the purchase from him on 5 November 2013 of a Silver Holden Commodore utility for $10,000. The purchaser said he was buying it for his cousin Charles White[116] and the paperwork was completed in his name.

(ii) The admissions in relation to Charles White stated he was the younger brother of Bradley White and included a list of Toll Notices in Queensland and NSW in relation to the travel of the silver Holden Commodore which was registered in his name but which he did not own. They included Notices of travel in NSW on 1 March 2014. A series of admissions then related to a speeding fine at Ewingsdale NSW at 3.38 pm on 16 March 2014 and a further Notice at Westlink NSW at 11.54 pm at Pennant Hills Road. On 17 March there was a Westlink Toll Notice at 12.00 am at the M2 Interchange. On 19 March 2014 at 12.07 pm there was a Toll Notice at the M2 Interchange travelling north westerly, at 2.53 pm a Toll Notice travelling south, at 10.43 pm a Toll Notice with direction of travel north westerly and at 11.10 pm a Toll Notice at Pennant Hills travelling easterly.

(iii) The admissions in relation to Darren Williams of Carters Customs included an admission that five or six years earlier he was contacted by a man called BB who was of Maori appearance. He agreed to perform modifications by inserting storage areas for valuables in the passenger side airbags of Ford Falcon and Holden Commodore sedans and utilities. He was paid about $1,500 for the conversions and did about eight such conversions for BB. In the Commodore utility he was able to use an empty space under the ute tray on the passenger side next to the fuel tank.

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115 Exhibit 16.

116 A pseudonym.

(iv) The admission stated that Williams was subsequently contacted by BB in early January 2014 and asked to build two storage compartments in a Commodore ute. BB delivered the ute to his house and handed him the cash. He was paid $3,500 for the work which took about three weeks. BB picked up the ute once it was completed. When he was shown a photo board, the person he believed to be BB was a photograph of Shaun Beechey.

The Crown Prosecutor's address to the jury

[111] The Crown case in relation to drug trafficking was that the appellant was conducting a business which included setting up supply lines to obtain drugs, receiving orders for those drugs and then arranging for their delivery. He was conducting a business which dealt in large quantities of drugs and large sums of cash on a wholesale level. White transported the drugs on behalf of the appellant and when he was found in possession of the drugs on 20 March 2014, he was in possession of those drugs pursuant to instructions from the appellant who was the ultimate controller of the drugs given he ran the business.

[112] In relation to the possession charge, Count 2, it was argued by the Crown that there was no doubt that the evidence indicated that the amount in the bottles was in excess of 200 grams and that it was in fact the appellant who was in possession of those drugs. The appellant had those drugs under his control and he gave instructions for them to be delivered to a place in Queensland.

[113] The Crown acknowledged that the evidence in relation to both the trafficking charge and the possession charge was essentially based on the evidence of White.

[114] The Crown's summary of the evidence in support of the trafficking charge was that for three or four months before going to Thailand in 2013, White made deliveries of drugs on the appellant's instructions to Shane Ross, Billy Thomas and Nicky Hatton. He would deliver the methylamphetamine oil to Shane Ross at his house under instructions from the appellant and he would then pick up crystal meth and deliver it to Billy Thomas or Nicky Hatton. The Crown alleged that White was instructed by the appellant to make four or five deliveries of bottles of methylamphetamine oil, hidden in the compartment of his car to Shane Ross and the deliveries of the finished product to Nicky Hatton and Billy Thomas over a three to four month period.

[115] The Crown also relied on the first trip to Sydney around 22 February 2014 to support the trafficking charge. The Crown argued that White had been transporting money as well as drugs for the appellant and on this occasion he gave instructions to White via an encrypted Blackberry and through Novak, to deliver the money to a house at Piper Street in New South Wales. The money was to be concealed in the secret compartment of the silver utility. The surveillance listening device in the garage and the surveillance photograph confirmed that the car was at the Piper Street address on 22 February.[117] The Crown argued that this trip was also confirmed by conversations captured by the listening device in the garage at Amalfi Drive on 21 February 2014 at 6.50 pm and 8.50 pm where White says he was going home to get "all my shit". The Crown argued that during that conversation there was an arrangement made for White to go to Sydney.

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117 Exhibit 18.

[116] The Crown also relied on White's second trip to Sydney with the JB HiFi bag full of money not only in relation to the trafficking charge but also, it would seem, to give a context to the subsequent charge of possession in Count 2. White's evidence was that the appellant instructed him to deliver a large sum of money, the value of which was $180,000, $250,000 or up to $500,000 to him in Sydney. He received his instructions from the appellant via the Blackberry to go to Amalfi Drive where Novak gave him the money in the JB HiFi bag which was then put in the rear compartment of the silver utility. He drove to the Piper Street address but when he arrived the appellant was away on a "bender" at the Formula One. The Crown argued that this was around the 17 March 2014 given the admissions in relation to the toll movements.

[117] The Crown argues that White had gone to Sydney on that occasion with a large sum of money to facilitate the appellant's business of trafficking of methylamphetamine. The Crown also argued that White's evidence indicated that while he was in Sydney he did some high level drug dealing under instruction from the appellant. The surveillance evidence confirmed that the vehicle was being driven around Sydney on 19 March at around 3.00 pm.

[118] The Crown case on Count 2 was that on 19 March 2014 the appellant instructed White to take the Jim Beam cooler bag containing the bottles and put them in the stash spot in the vehicle and transport them to the Gold Coast. He was paid $5,000 and given instructions on how the bottles were to be delivered. Three particular colour coded bottles were to be delivered to Shane Ross. The toll notices showed that White left Sydney late in the evening of the 19 March and was travelling out of Sydney on toll roads around 10.43 pm and 11.10 pm.

[119] In his address to the jury the learned Crown prosecutor accepted that White's memory was not perfect and argued that he was not a good story teller because he was heavily involved in alcohol and drugs when the events occurred. He was a person who had survived by dealing in drugs for a long time. The Crown noted that White had himself admitted that when he spoke to Detective Nielson on 20 March 2014 he was trying to distance himself from the vehicle by saying he had flown up from Sydney, knowing that was incorrect. The Crown argued that overall he was remembering as best he could something that had had happened over five years ago.

[120] The Crown accepted that White had made mistakes in his evidence but the Crown prosecutor urged the jury to consider the consistency of some of the things he said. First, it was argued that he had been working for years as a drug courier and that having done that sort of work for years and years, he would not remember specific events. It was also argued that White gave ground at times and accepted that he was mistaken. The Crown also argued that White accepted that he was looking after his own best interests when he agreed to give a statement to police. He had been in the criminal justice system before and he knew what a predicament he was in given he had been found with six bottles of methylamphetamine.

[121] The Crown also accepted that White had left names out of his first statement including the name of Mr Shane Ross and that he lied about the $18,500 found in his pocket, but that he corrected himself. It was also accepted by the Crown that White was downplaying his own drug dealing but that he subsequently admitted it. The Crown argued that whilst he gave two different versions about getting the instructions for the

first trip that it didn't matter and that it wasn't a big lie such that it would cause the jury to place no weight on the evidence of White.

[122] In terms of whether it was $180,000, $250,000 or $500,000 which was allegedly taken to Sydney on the second trip, the Crown prosecutor argued that it did not really matter how much money was involved because it was a lot of money and he was just the delivery man. Furthermore, it was argued that it did not matter where the money was counted and whether it was in the bar or in the office or whether there was a hidden area under the stairs. The Crown prosecutor also argued that the reason why no information was found on the listening devices or phones was because all of the parties spoke in an obscure way or used encrypted Blackberries.

[123] The Crown prosecutor emphasised that White did not have any trappings of wealth and lived with his parents. He was just a trusted drug runner and was not the organiser or the main person running the business. The fact that the appellant had a house on the Gold Coast, one in Sydney, a number of vehicles, a Rolex and a lifestyle that involved motor racing was then referred to. The Crown emphasised that White was a personal assistant for the appellant. The jury was reminded that the appellant was in possession of an encrypted Blackberry when he was arrested and nine phones were found in the search of his two residences. The Crown argued that those items were an essential part of the drug trafficking business.

[124] The Crown also argued that the change in the odometer reading in the silver utility from 94,923 when purchased in late 2013, to 122,000 kilometres on 20 March 2014 supported White's evidence that he used it to travel to and from Sydney. The Crown also argued that the list in the little red and black book found at Piper Street was a list of people who owed money to the appellant.

The Defence case

[125] Counsel for the appellant argued at trial that the Crown case "stands and falls on the evidence of Bradley White",[118] and that many of the matters the Crown prosecutor relied upon to support White's evidence were either wrongly put or were invitations to speculation. It was argued that the independent evidence in the case overwhelmingly demonstrated that White had lied to the jury and had lied repeatedly. The jury were reminded that before they could convict the appellant of either or both counts on the indictment, they would have to be satisfied beyond reasonable doubt of White's truthfulness and reliability, on the key issues in the case. Counsel argued that the Crown had not done so. In this regard the jury were reminded that White's lies were significant and that the problem was that "lies have a tendency to unravel".[119]

[126] Counsel for the appellant laid out the extent of White's lying in great detail to the jury. In particular, his lies in the s 13A statement about the sum of $18,500 he had in his pocket on 20 March 2014 and his lie that he had never delivered methylamphetamine oil to Shane Ross were referred to. His attempts to distance himself from any involvement in drug trafficking and his motive to lie so as to obtain the benefit of a reduced sentence for himself was also referred to. Counsel noted in particular White's inconsistent versions of critical events including whether the appellant had directed Shaun Beechey to have the modifications made to the silver utility. Other inconsistencies were also referred to including his various accounts as to who

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118 ARB 48 l 17.

119 ARB 59 l 25.

gave him instructions for the first trip to Sydney and where the money was counted on the second trip. His changing accounts of where the Jim Beam cooler bag came from were also highlighted. The defence argument to the jury was in essentially the same terms as was argued in this appeal, which was that White's evidence was incapable of proving the case beyond reasonable doubt particularly when there was no corroborative surveillance evidence despite an extensive and covert police operation.

[127] In his address to the jury, Counsel for the appellant had reminded the jury of White's extensive involvement in drug trafficking prior to his involvement with the appellant as well as his own involvement in drug activities that were independent of the appellant. White's acknowledgment that the drugs in his purple Hilux and the money he was found with during the search had nothing to do with the appellant were also specifically referred to. I shall refer to those arguments in more detail shortly.

The Summing Up

[128] No argument is advanced on appeal that the there was any error or misdirection in the Summing Up by the learned trial judge. In this regard the judge gave the jury complete directions in relation to the law that applies to trafficking and possession. The critical issue for the jury on Count 2 was of course whether the Crown had proved beyond reasonable doubt all of the elements of the offence of possession. Those elements were outlined by the trial judge as follows:[120]

> "The second charge is that the defendant possessed methylamphetamine in an amount exceeding 200 grams. There are two things that you must consider. First, did the defendant possess any methylamphetamine on that day. Second, if you are satisfied that he did, then was it in an amount exceeding 200 grams. It's a crime unlawfully to have possession of methylamphetamine because it's a dangerous drug. If the defendant had possession of that drug, that possession could not be lawful. The central issue in the case therefore concerns possession.
>
> Possession under the law is more than just having it in your pocket, having it in a briefcase or something like that. It is more than that. It denotes physical control or custody of a thing with the knowledge that you have it in your control or custody. You don't possess a thing unless you know you have it or else can actually exercise power over it. In this case the prosecution must satisfy you that the defendant had control of those six bottles of methylamphetamine. It's for the prosecution to prove the defendant's knowledge of the bottles which contain the liquid in which methylamphetamine was present. It is not necessary to establish that the defendant knew that the substance was methylamphetamine. If you're satisfied that the defendant had control of those six bottles, then you have to decide whether the prosecution has proved that the amount of methylamphetamine was more than 200 grams. The only evidence on that is exhibit 5, which is not challenged, and which shows the total weight of methylamphetamine in the six bottles was 3680.2 grams."

[129] The learned trial judge then referred to a summary of the evidence and reminded the jury that they could accept or reject his comments on the evidence given they were

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120 ARB 93 l 36 – 94 l 9.

the sole judges of the facts. He indicated however that "while there was evidence from a number of witnesses, this case really boils down to two issues: What was Bradley White's evidence and do you accept it?"[121] He also reminded them of the importance of the absence of certain evidence and referred in this regard to the absence of any significant surveillance evidence:[122]

> "As you know, both the house at Amalfi Drive and the house at Piper Street in Sydney were rigorously searched. Items such as mobile phones and SIM cards were seized and examined. You know that after the search of 108 Amalfi Drive the defendant's solicitors contacted the police and asked if they wanted to talk to Mr Tesic. The point that arises out of this and which you might consider important is that notwithstanding the lengthy intense and sophisticated surveillance of the defendant, the only evidence of any substance against him comes from Bradley White's mouth. All other investigations came up empty."

[130] As well as giving a summary of the evidence, the trial judge gave the jury very explicit warnings in relation to the evidence of White in the following terms:[123]

> "He agreed that he deliberately withheld information from the police in his first section 13A statement because he was trying to protect himself. He did not give the name of Shane Ross to the police, although he knew that name, and he deliberately withheld the identity of that person from the police. You will have gathered by now, from listening to the evidence of Mr White and from Mr Holt's address and what I have just said, that Mr White either was caught in a series of lies while he was giving evidence before you or he accepted that he had told lies or not the complete truth to the police and on other occasions. You will recall that he lied to his brother about why he needed to use his name for the transfer papers for the Commodore ute. He agreed that he told deliberate lies in the statement he gave to the police, he said, to protect himself. You will recall that following the execution of the search warrant at Amalfi Drive when he was speaking with Detective Nielson and they were having a cigarette outside the house, that he lied about how he got from Sydney to Melbourne, in order to protect himself. Ladies and Gentlemen, in the light of all his lies, half-truths and deceptions, you may find it difficult to accept anything he has said."

[131] The trial judge also gave very explicit warnings about the need to scrutinise White's evidence with great care given he had made a statement pursuant to s 13A of the *Penalties and Sentences Act* as follows:[124]

> "Now, it is clear, I am sure, to you that the evidence of Bradley White is an important, if not vital, part of the prosecution case. You know that Bradley White gave two statements to the police which eventually had the effect of reducing his own sentence. You've heard these referred to as 13A statements. 13A is the number of a section in a particular statute which deals with this. Under Queensland sentencing

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121 ARB 94 l 16.
122 ARB 94 ll 32-39.
123 ARB 105 l 44 – 106 l 11.
124 ARB 91 l 23 – 92 l 25.

law, sentences may be reduced by the court where an offender undertakes to cooperate with law enforcement authorities by giving evidence against someone else. You've heard that White was sentenced to five years imprisonment, but that sentence was fully suspended, and he walked free.

If an offender receives a reduced sentence because of that sort of cooperation and then does not cooperate in accordance with his undertaking, that is what he's promised to do, the sentencing proceedings he went through may be reopened. He can be brought back to court and the judge can reconsider the sentence and a different sentence can be imposed. He could, in those circumstances receive a heavy term of imprisonment. You can see therefore, that there may be a very strong incentive for a person in that position to implicate the defendant when giving evidence. You should therefore scrutinise his evidence with great care. You should approach your assessment of his evidence with caution. A person who has been involved in an offence may have reasons of self-interest, to lie or to falsely implicate another in the commission of the offence. I repeat, you should scrutinise his evidence carefully before acting on it. Bradley White, having been convicted of the offence of drug trafficking is likely to be a person of bad character. For this reason, his evidence may be unreliable and untrustworthy. Moreover, he may have sought to justify his conduct or at least to minimise his involvement by shifting the blame wholly or partly to others. Perhaps he has sought to implicate the defendant and to give untruthful evidence because he believes that he has something to gain by doing so.

In this case there is also something else, and that's the evidence of the police, Mooney and Chan, who offered White inducements to make the statements. In particular, he was told on a number of occasions that if he gave a statement against the defendant, a VLAD extra 15 years would disappear or be likely to disappear. In those circumstances he gave a statement to the police which had the effect of reducing his own sentence. The reference to VLAD, V-L-A-D is shorthand that lawyers use to refer to a particular statute that was in force at that time and the act has a long name, so that's why it is called the VLAD circumstance and so on.

Now, if an offender receives a reduced sentence because of that sort of cooperation and then does not cooperate, as I've told you, the sentencing proceedings may be reopened. That's where there is a strong incentive to implicate the defendant. You should only act on Bradley White's evidence after considering it and all the other evidence in the case and if you are convinced of its truth and accuracy. While it is possible to identify some reasons which he may have for giving false evidence, there may be other reasons for giving false evidence which are known only to him. His evidence, if not truthful has an inherent danger. If it is false in implicating the defendant it will nevertheless have a seeming plausibility about it because he will have familiarity with at least some of the details of the crime. I'm going to refer to some of his evidence later. So I remind you ladies and gentlemen, you should only act on the evidence of Bradley White, if,

> after considering it and all the other evidence in this case, you are convinced of its truth and accuracy."

[132] Notwithstanding those directions and explicit warnings the jury returned a majority verdict of guilty on Count 2.

This appeal

[133] The sole ground of appeal is that the verdict is unreasonable and cannot be supported with regard to the evidence. The relevant legal principles are well established and were explored in some detail in *M v The Queen*[125] where the High Court endorsed the fundamental role that the jury plays as the tribunal for determining issues of fact in a criminal trial. This was more recently emphasised by the High Court in *R v Baden-Clay* when it was held that a court of criminal appeal is not to substitute trial by an appeal court for trial by jury as follows:[126]

> "It is fundamental to our system of criminal justice in relation to allegations of serious crimes tried by jury that the jury is "the constitutional tribunal for deciding issues of fact". Given the central place of the jury trial in the administration of criminal justice over the centuries, and the abiding importance of the role of the jury as representative of the community in that respect, the setting aside of a jury's verdict on the ground that it is "unreasonable" within the meaning of s 668E(1) of the Criminal Code is a serious step, not to be taken without particular regard to the advantage enjoyed by the jury over a court of appeal which has not seen or heard the witnesses called at trial…" (footnotes omitted)

[134] As Brennan J stated in *M v The Queen*,[127] this is particularly so when adequate warnings have been given by the trial judge. The majority in that case however made the following important qualification to that statement:[128]

> "In most cases a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced. It is only where a jury's advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred. That is to say, where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experience by the court is a doubt which a reasonable jury ought to have experienced. *If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence.* In doing so, the court is not substituting trial by a court of appeal for trial by jury, *for the ultimate question must always be whether the court thinks that upon the whole*

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125 (1994) 181 CLR 487.
126 (2016) 258 CLR 308 at 329 [65].
127 (1994) 181 CLR 487 at 503.
128 At 494-495.

> *of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty.* Although the propositions stated in the four preceding sentences have been variously expressed in judgments of members of the Court in previous cases, we have put aside those differences in expression in order to provide authoritative guidance to courts of criminal appeal by stating the propositions in the form in which they are set out above." (my emphasis) (footnotes omitted)

[135] Counsel for the appellant argues that having regard to those specific factors the verdict of the jury is unreasonable.

[136] I propose to determine that issue by an analysis of the specific categories outlined by the High Court in *M v The Queen*.

(i) Does the evidence lacks credibility for reasons not explained by the manner in which it was given?

(ii) Does the evidence display discrepancies?

(iii) Does the evidence display inadequacies?

(iv) Is the evidence tainted or does it otherwise lack probative force?

Does the evidence lack credibility for reasons not explained by the manner in which it was given?

[137] There can be no doubt that the credibility of White was seriously in doubt given that he accepted that he had deliberately lied to police on the day of the search on 20 March 2014 when he said that he had flown to the Gold Coast and that one of the neighbours probably owned the silver utility parked outside.

[138] White's credibility was further strained when he said that after arriving at Amalfi Drive on 20 March 2014 he had gone to his purple Hilux, obtained the $18,500, entered the house and counted the money with Vlad Tesic in the kitchen before police arrived. White's movements at Amalfi Drive that day were captured on video and no evidence was led that such an event occurred. Furthermore, given the time period in which that sequence was supposed to have occurred the whole account was simply improbable.

[139] He also lied in his s 13A statement when he stated that the $18,500 found in his cargo shorts pocket was his savings. He later accepted that the money came from his own drug trafficking activities which had nothing to do with the appellant. He also deliberately withheld the name of Shane Ross from his statement and lied when he stated he had not made any deliveries of methylamphetamine oil to Shane Ross.

[140] White had an overwhelming motive to lie given that he was caught with the six bottles in a car he had driven from NSW in circumstances where the surveillance and fingerprint evidence clearly implicated him. There is no doubt that s 13A witnesses have a powerful motive to lie, which is to ensure that all blame is shifted. In this case the further concern is that police specifically indicated who they wanted the blame shifted to. The issue is of course whether White gave the evidence police wanted him to give without any regard to the truth to ensure he obtained a lenient sentence for himself.

[141] In addition, as the trial judge had explained, White was a person who was likely to be of bad character as he had spent 16 months in jail for previous drug trafficking offences. White's own evidence was that he was moving drugs at the direction of Shaun Beechey eight to 10 weeks after getting out of prison in 2011. His evidence was that he had continued to do so up to the time of the search on 20 March 2014. He had therefore been engaged from 2007 to 2014 in large scale transportation of dangerous drugs despite having been jailed earlier for such offences.

[142] White's credibility was again seriously called into doubt when the surveillance evidence did not support his account of events. Listening devices were installed at the Amalfi Drive residence outside the garage and inside the lounge. Optical video devices were installed from 18 July 2013 to 8 April 2014. As Counsel for the appellant argued, Amalfi Drive was being watched or listened to for the whole of the period that White said he was transporting drugs for the appellant. Surveillance teams were on hand and tactical intercepts were available. A total of more than 30,000 calls and texts were intercepted. Despite all of those resources being directed towards this operation not one item of inculpatory evidence was found. If White's evidence was truthful it would be expected that at least some of the things he said he saw and heard at the address would have been captured by those surveillance devices. His evidence was that there were multiple face to face conversations at Amalfi Drive,[129] but somehow none were recorded. Furthermore, despite White's evidence that he and the appellant would have drug related conversations in the park opposite the house, no such meetings were captured on any of the optical devices which covered the park.

[143] White's credibility was also specifically put in issue in the trial in relation to his two accounts about who gave him the instructions to go to Sydney on the first trip and how he received those instructions. His account of his instructions changes in relation to who told him to take the money on the first trip. His account of his arrival in Sydney changes and his account of what he saw the appellant do after he drove the utility into the garage changes.

[144] White acknowledged under cross examination that he had indeed given two varying accounts on two separate occasions in relation to the first trip. Significantly on both of those occasions he was under oath. White's evidence, also under oath that he heard the appellant's voice on a recording captured on the evening of 21 February 2014 was also specifically acknowledged by him to not only be wrong but to be contrary to the evidence he gave at the first trial.

[145] Given those serious issues as to White's credibility it was important for the jury to carefully evaluate what evidence there was to independently corroborate White's account of the appellant's involvement in the possession of the drugs.

Does the evidence display discrepancies?

[146] The objective evidence in relation to Count 2 was that six bottles of methylamphetamine oil were found in a silver utility outside a property owned by the appellant at Amalfi Drive. At the time police conducted the search of that property on 20 March 2014, White was inside the property and the six bottles with his fingerprints on them were in a covert stash spot behind the passenger seat of the vehicle he had driven from the appellant's property in Sydney to the Gold Coast. The silver utility was registered in the name of White's brother Charles.

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129 ARB 528 ll 4-10.

[147] Accordingly, the only factors which pointed to the appellant's involvement in Count 2 were firstly: that a car in which drugs were found left a property owned by him and ended up at another property owned by him. There was no doubt that it was White who had driven the utility from the appellant's house in Sydney to the Gold Coast and it was White who was found in actual physical possession of those items.

[148] In order for the jury to be satisfied beyond reasonable doubt that it was the appellant who was in fact, in possession of those drugs on 20 March 2014, the jury had to be satisfied that he had knowledge of the bottles found in the secret stash spot and that he was the person in actual control of those bottles because when White was found with them at Amalfi Drive he was subject to the appellant's instructions or direction. In order to come to that level of satisfaction the jury had to be satisfied of the following matters:

(i) The appellant had knowledge and control of the six bottles of methylamphetamine oil at Piper Street.

(ii) The appellant gave those bottles to White at the house at Piper Street to conceal in the ute with instructions as to the delivery of the bottles to the Gold Coast.

(iii) The appellant was controlling the delivery of those bottles when they reached the Gold Coast and when they were outside the Amalfi Drive address.

Discrepancies in relation to who gave the instructions to make the modifications

[149] It is significant that the six bottles of methylamphetamine oil were found concealed in a car owned by the appellant. White's evidence was that the appellant told him to get the Jim Beam cooler bag containing the methylamphetamine and "put it in the back of the ute"[130] in the concealed stash spot. White's evidence was that the appellant had directed him and Shaun Beechey to get the utility modified. The question as to whether the appellant had given the directions about the modifications and the stash spot was therefore significant in relation to is knowledge of the six bottles found in the stash spot on 20 March 2014.

[150] The admissions document provided that the modifications to the ute had been commenced early in January 2014 and had taken about three weeks. The vehicle was delivered by a man of Maori appearance called BB. The cash was delivered by BB and the vehicle was subsequently collected by BB. Williams identified BB as Shaun Beechey. On my analysis of the evidence there was no direct evidence that the appellant knew of the secret compartment other than White's evidence that the appellant had instructed him to have the modifications done which is not consistent with the fact that all the arrangements and payments with Williams were facilitated by Beechey and not White. There can be no doubt that White knew of the stash spot as he accepted that he had used the car to courier drugs and money. He also acknowledged that he had a car himself with a similar modifications and that he had on other occasions driven three or four other modified cars owned by Shaun Beechey.

[151] At the second trial however White gave evidence that he heard the appellant give those instructions about the modifications to Shaun Beechey in late 2013. No such evidence was given at the first trial. In fact in the first trial White had stated that he could not recall any such conversation. Furthermore, White's evidence as to the time

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130 ARB 425 ll 11-12.

when the modifications were done does not accord with the other evidence. White stated that the car was taken for modifications before they went to Thailand in December 2013 whereas Mr Williams who did the modifications stated the car was with him from early January 2014 for two or three weeks and picked up in late January 2014.

[152] Whilst there was a November 2013 invoice which indicated that the appellant had paid for repairs to the suspension there was no objective evidence that the appellant was aware of the modifications to the utility let alone knowledge of the particular stash spot where the bottles were found. The varying accounts about the instructions in relation to the modifications must have raised concerns in the jurors' minds as to whether the appellant actually knew of the compartment and whether instructions had in fact been given to place the six bottles in the stash spot.

[153] Furthermore, White's evidence was that when he got the instructions to put the bottles in the back of the utility it was parked outside the Piper Street address. He said that he placed the bottles in the hidden stash spot whilst it was outside. As Counsel for the appellant argued, such an account was incredulous given White's own evidence that the appellant was paranoid about security. Mr Holt QC argued that such an account had to be given by White because when he made the statement he knew that any such activity in the garage would have been captured by video surveillance and there was no such evidence.

[154] Those variations and discrepancies in his evidence in relation to the modifications to the car were not the only discrepancies in White's account of events.

Discrepancies as to White's evidence about the last trip to Sydney and where he received the instructions to take the six bottles to the Gold Coast

[155] White's evidence about some of the circumstances of his last trip to Sydney in March 2104 was, as Mr Holt QC put it in his submissions in this appeal, "highly problematic". White had at two different points in time, given "two different, apparently vivid memories" of a process of stacking money which was, on one of his accounts, about half a million dollars "in two entirely different rooms".[131] His evidence in one trial was that he "had a vivid memory of him counting them on the bar in the games room" but a different memory of the same event which was "that he was counting them on a bench in the office?"[132] Furthermore there was a great discrepancy in the amount of money that White said he transported in March 2014 with the amount varying between $180,000 and $500,000.

[156] White also gave varying accounts as to where the appellant had obtained the Jim Beam cooler bag containing he six bottles of methylamphetamine oil. In his s 13A statement he said it was "underneath the stairs" whereas at trial he said it was in the hallway "near the garage door".[133] He also referred to a secret hiding space underneath the stairs which, despite extensive searches by police, was never located.

[157] There were also further discrepancies in White's evidence about the instructions he was given in relation to the delivery of the bottles. His evidence was that he was to take the bottles to the Gold Coast and that when he arrived he would receive a

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131 ARB 593 ll 45-47.
132 ARB 591-593.
133 ARB 418.

message on his Blackberry from the appellant. He was then to follow instructions about the delivery of some of the bottles to Shane Ross and another person from Helensvale. White had given evidence at the first trial that the appellant had specifically told him that he would get a text on his Blackberry from Shane Ross at about lunchtime. His evidence was however that before he went to his parent's home at around five o'clock in the morning, he had sent a text message to Shane Ross which was in sharp contrast to the appellant's instructions to await a text from him on the Blackberry. Those discrepancies were not explained.

Does the evidence display inadequacies?

[158] As already noted, given the serious concerns about White's credibility, and his strong motive to lie to gain an advantage for himself, it was important for the jury to identify evidence to independently corroborate the evidence of White. There was indeed corroboration about the dates and times White made his trips to Sydney by way of toll notices and other surveillance evidence. The dates and times of the trips however were not in contest in the trial. Furthermore at the time White made his statement he already knew that his movements had been the subject of extensive surveillance. There was therefore a very good reason therefore why the dates White gave accorded with the surveillance.

[159] The greatest inadequacy in the trial was the lack of any corroborative evidence from the video surveillance devices at Amalfi Drive or from the numerous listening devices. There was simply no substantiation of White's evidence about his numerous conversations and face to face meetings with the appellant. There were obviously inadequacies in relation to the evidence led at trial given the jury could not return even a majority verdict in relation to the trafficking charge in Count 1, which involved allegations of trafficking in methylamphetamine over a seven to eight month period.

[160] Accordingly in relation to Count 2, there was some corroborative evidence but it is significant in my view that the only corroborative evidence went to non-contentious issues in the trial. There was simply no evidence which corroborated the pivotal issues in any way. Those issues were (i) did the appellant have knowledge of the six bottles secreted in the stash spot; and (ii) did he direct White to deliver those items to the Gold Coast? The critical question was whether the drugs found in the stash spot were under the control of the appellant at the point in which they were found in the silver utility on 20 March 2014. That obviously meant he had to know that there were drugs in the bottles in the stash spot. Pivotal to that question was the evidence about the instructions White had been given about those drugs. As I have already outlined, there were discrepancies in relation to that critical evidence and it is significant in my view that White could not provide any real detail about those crucial instructions.

[161] Implicit in the allegations against the appellant was the allegation that the only reason White went to Sydney in March 2014 was to take down a large sum of money and to bring a large quantity of drugs back. There was independent evidence however that White was in Sydney for the legitimate purpose of moving tyres and rims for the appellant, assisting Novak Tesic in emptying a storage shed and moving some items to the Gold Coast. White gave evidence that he had indeed during the trip to Sydney assisted in moving a container's worth of tyres and rims using a truck hired for that

purpose.[134] Text messages in evidence showed that White was at a storage shed and was moving items for Novak Tesic. Surveillance footage captured White driving around Sydney consistent with those objectives. A reference to not expecting to be at a storage shed on a particular occasion says nothing about whether that was the purpose for the trip. When the utility was searched it contained items consistent with items taken from the storage shed in Sydney and items purchased at Bunnings. There was a purpose for White to go to Sydney other than the one advanced by the Crown at trial.

[162] The Crown case at trial was essentially that White was a lackey of the appellant and that he was under his control because he was just the courier. It was clear that White had continual access to the house at Amalfi Drive because he did work around the house for the appellant. His evidence was he could get into the house at Amalfi Drive as he had a remote control for the garage doors. White's own evidence was that he would use the house as a base for his own drug activities as did Shaun Beechey and Darren Cauchi. By his own admission as at 20 March 2014, he was a courier not only for Beechey but also for Darren Cauchi and Shane Ross. His evidence was that he would go to the Amalfi Drive address and pick up bottles from there on the instructions of Beechey. He used a modified vehicle with a stash box to collect the methylamphetamine oil which included his own ute which had concealed compartments. In my view the only available inference was that White was an independent operator who did work for a number of people.

[163] White also accepted that the four bags of cocaine, the $18,500 in cash and the 14 MDMA tablets had nothing to do with the appellant. Those items were found in a stash spot in his modified purple Hilux that was parked at Amalfi Drive. White's evidence was that he did deliveries for Shaun Beechey who was the first to become involved in the distribution of methylamphetamine oil. He stated that the stash spot in his purple Hilux had been insisted upon and arranged by Shaun Beechey.

[164] In my view, an issue which must have raised some concerns in the jurors' minds was the fact that White accepted that as at 20 March 2014 he not only had his own trafficking business operating, as was evidenced by the money and drugs found on him during the search, but he admitted that at around the same time he was moving methylamphetamine oil in the same type of bottles as those found in the silver utility for not only Shaun Beechey but for Shane Ross and Darren Cauchi. Accordingly there must have been a real question as to the appellant's control and direction of White during this period given the extent of his freelance activities at the request or direction of others.

[165] At the trial White gave evidence, and it was not in contest, that the appellant was on a bender at the Formula One Grand Prix when he arrived in Sydney on the second trip in March 2014. He stated that he had to wait several days for the appellant to turn up but that whilst he was waiting he was running around Sydney picking up drugs and dropping them off under instructions from the appellant. That evidence, on the face of it seems not only to be contradictory but also leads to another inference which is that he was in Sydney carrying out his own drug related activities. That conclusion would also be supported by the money and drugs he was found with on his return from Sydney which he stated had nothing to do with the appellant. It was clear on the evidence that the appellant did not get back to Sydney until 18 March 2014 and the

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134 ARB 589 ll 24-27.

only text message between them was a request for White to get him a grilled chicken salad which he ultimately got himself given more than an hour had gone by. That response is not the response of a 'lackey'.

[166] Furthermore, it was clear from White's evidence at trial that he was withholding information in relation to Shane Ross from his s 13A Statement because he was intimidated by him. He also he specifically denied delivering methylamphetamine oil to him which he accepted was a lie. There were clearly glaring omissions from White's statement and the jury were obviously not given the complete picture of White's activities at the time of the search on 20 March 2014.

[167] For the jury to have convicted the appellant they must have concluded beyond reasonable doubt that not only were the drugs in the covert stash spot under the appellant's control on 20 March 2014, having been placed there on his instructions, but inevitably they must have been satisfied beyond reasonable doubt that White was operating on the appellant's instructions in relation to the delivery of those drugs when he was found with them on 20 March 2014.

[168] It would seem to me however that there was, on the evidence before the jury, another reasonable view of the evidence consistent with innocence which was that he was delivering the six bottles of methylamphetamine oil as part of his own trafficking business or he was under instructions from someone other than the appellant.

[169] In this regard I consider the actions of the investigating police in relation to their interactions with White to be critical to the question as to whether there was another view of the evidence consistent with the innocence of the appellant.

Is the evidence tainted or does it lack probative force?

[170] Not only did White's evidence lack credibility and contain discrepancies and inadequacies but in my view the circumstances in which his s 13A statement was obtained also give rise to serious concerns. White attended at the police station on 5 April 2014 in the company of his solicitor who indicated that White had declined to make a statement. He was then arrested, charged with trafficking and possessing dangerous drugs and taken to the watch house.

[171] The evidence led at trial revealed that a short time after his solicitor left the station, a number of police officers began speaking to White. He was told that they had evidence against him, that they had found his fingerprints on the bottles and that they had been surveilling him from the Gold Coast to Sydney and back. They indicated to him that it had been a significant operation and he had been a target for a long time. It was made clear to him that both charges carried the VLAD circumstance of aggravation which added 15 years to any sentence to be imposed. There was also no doubt that he was explicitly told at some point during the interviews that he was staring down the barrel of 25 years imprisonment.

[172] He was spoken to for many hours on 5 April, 6 April and 16 April 2014. The interview on 6 April went for about eight hours and the statement that was taken from him on 16 April took about six hours. Significantly it was during those early conversations on 5 and 6 April 2014 that he was given a way out. He was told to save himself by cooperating and making a statement pursuant to s 13A of the *Penalties and Sentences Act*. It was not a general request to give evidence about drug trafficking,

but rather it was a specific request to provide evidence about the appellant. Sergeant Mooney, one of the officers, accepted he said words to the effect of:[135]

> "Bradley, you're facing 15 years. The only way that gets removed is if you make a statement. The statement should be made against Ivan Tesic."

[173] The officers indicated to White that it was in his best interests to look after himself. It was very clear that it was not just any statement that he had to make, but rather a statement against the appellant. The very next day, Sergeants Mooney and Chan met with White for between six and eight hours, many hours of which were not recorded. It was that process that resulted in the s 13A statement. Part of that interview was recorded after about three hours had elapsed. That recording was kept from both prosecution and defence until it was pressed at the committal hearing. White was later sentenced to five years imprisonment, wholly suspended. It was made clear that he was liable to be resentenced if he did not give evidence in accordance with his statements.

[174] In the 1990 decision of *R v Falzon*,[136] de Jersey J (as he then was) considered an application for the exclusion of evidence obtained from a potential Crown witness in circumstances where he had been subject to extensive and gruelling questioning by officers of the Police Corruption Inquiry. He was interviewed for many hours over three days and the substantial theme of the questioning was that the officers had substantial information against him and that he would be publicly revealed as a police informant if he did not cooperate and give evidence. The witness was told that if he cooperated the officers would do their best to see that he was not charged. An application was made to exclude the indemnified witness statement as follows:[137]

> "Mr Cuthbert submits for the accused that Wallace's statement should not be received in evidence as voluntarily given. If Wallace were the accused, the statements would, he submits, be excluded because of s 10 of the 1894 Act. He submits that the statements should be regarded as having been induced by threats and promises. By parity of reasoning they should, he submits, be excluded from the evidence on the trial of this accused whom Wallace implicates. That is because having regard to the circumstances preceding the statements, they should be regarded as unreliable. Wallace would give evidence here under indemnity against prosecution in relation to his role in these alleged offences. Mr Cuthbert would submit that in light of the events that preceded the statements, the prospect of their being untrue or unreliable is such that the case could not be dealt with as in *R. v. McDonald* (1983) 77 Cr.App.R. 196, with the jury being warned about that possibility and the chance that because of the indemnity Wallace would here stick to an untrue story. Further he submits this Court should be robust and exclude evidence obtained in this way, lest its reception be seen as the Court's endorsement of such procedures. He invokes the discretion to exclude unfairly attained evidence dealt with in *R. v. Ireland* (1970) 126 C.L.R. 321, 334–335."

[175] In that case de Jersey J held that the evidence should be excluded because the statement would have been excluded from trial if the witness himself was on trial.

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135 ARB 329 ll 4-6.
136 [1990] 2 Qd R 436.
137 [1990] 2 Qd R 436 at 436 l 46 – 437 l 12.

Furthermore there was a very grave risk that the statements were not truthful and reliable "but rather his response to what he felt the inquiry officers wanted him to say". It was held that that the concern was that his response was not freely given but made compliantly out of fear and in hope of securing favoured treatment for himself.[138] It was ultimately held that the evidence had been unfairly obtained. Whilst the circumstances in that case indicate that coercion there was worse than the coercion present here the same concerns apply in relation to the probity of evidence obtained in such circumstances.

[176] I also share the concern his Honour raised in that case that the Court, by receiving evidence obtained in those circumstances, could be seen as sanctioning or at least overlooking such methods of questioning. That is clearly also a concern in the circumstances of this case given the officers gave a specific intimation to White that he had to give a certain type of evidence about the appellant. He was told that not only did the evidence have to be about the appellant but that it had to be about him giving "instructions" and being in "control" when White was not around.

[177] I consider that this evidence is not only tainted but it lacks probative force because of the circumstances in which it was obtained. The inevitable conclusion in my view is that White clearly tailored his evidence to meet the requirements outlined by the police officers.

Conclusion

[178] I consider that the evidence in this case was not only lacking in credibility given White's admitted lies but it contained acknowledged discrepancies, was redolent with inadequacies and was incurably tainted. I cannot discern evidence upon which it was open to the jury to conclude that the only reasonable inference available was that the appellant had the necessary knowledge or control of the items found concealed in the silver utility on 20 March 2014. This case is in the rare category of cases where the verdict of the jury was indeed unreasonable. The verdict is not supported by the evidence and in my view the jury must have entertained a reasonable doubt about the guilt of the appellant. I would propose the following Orders.

1. Appeal against conviction allowed.
2. Conviction and verdict set aside.
3. Verdict of acquittal entered on Count 2 of Indictment 675/17.

[179] **BODDICE J:** I have had the considerable advantage of reading the reasons for judgment of Lyons SJA.

[180] Lyons SJA's comprehensive analysis of the evidence at trial, which I gratefully adopt, allows me to shortly state my reasons for dismissing the appeal.

Ground of appeal

[181] Consideration of a ground of appeal that the verdict of a jury was unreasonable must take place in the context of an appropriate recognition that our system of criminal justice is based on trial by jury.[139] That constitutional role is not to be replaced by trial by appeal court.

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138 At 438 ll 5-24.

139 *R v Baden-Clay* (2016) 258 CLR 308 at [65].

[182] The fact that an appeal court may have concerns about the reliability of evidence, and as to the tainting effect of police conduct on that reliability, is not the question in determining whether the verdict of a jury was unreasonable. As McMurdo JA observed in *R v Black*:

> "…the question is not whether this Court has a doubt about the appellant's guilt beyond reasonable doubt; it is whether it was open, upon the whole of the evidence, for the jury to be satisfied of the appellant's guilt, having regard to the advantage enjoyed by the jury over this Court, which has not seen or heard the complainant's evidence being given. A doubt experienced by this Court, in some cases, may be resolved by recognising that advantage" (*footnotes omitted*).[140]

[183] Where a jury was given extensive directions and appropriate warnings, none of which are in contention on appeal, it is not open to an appeal Court to set aside a verdict of the jury if, on a consideration of the evidence as a whole, it was open to the jury to be satisfied beyond reasonable doubt of the appellant's guilt of the offence.

Consideration

[184] As Lyons SJA observes, there were many reasons why the jury ought to examine closely White's evidence as to the appellant's involvement in the count of which he was found guilty by the jury. Those reasons included not only his established lies, but also the circumstances in which he came to give detailed statements implicating the appellant in that offence.

[185] It does not, however, follow that it was not open to the jury, after having given a careful, detailed consideration to those matters, to be satisfied beyond reasonable doubt of the appellant's guilt of the offence of possessing dangerous drugs in excess of 200 grams. This is particularly so having regard to the detailed directions to the jury, none of which are challenged, and a forceful observation by the trial judge as to the jury having reasons why it ought not to accept anything said by White as truthful and reliable.

[186] There is good reason why the jury would not have been satisfied beyond reasonable doubt of the appellant's guilt of the offence of trafficking in dangerous drugs. The dearth of surveillance evidence, notwithstanding extensive surveillance over many, many months both of the appellant's residence and of surrounding areas, was particularly relevant to an allegation of trafficking in dangerous drugs over, initially, a period of years which was reduced in the course of the trial to a period of approximately eight months.

[187] The evidence in respect of the aggravated possession count was, however, distinctly different in nature and form.

[188] There was independent evidence linking the appellant to the silver Commodore utility used by White for the transportation of the drugs the subject of that count. That independent evidence was a receipt establishing that the appellant had paid for repairs to that vehicle shortly after its acquisition in the false name of White's brother and the fact that the vehicle was left at the appellant's house in Surfers Paradise.

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140 [2019] QCA 114 at [36].

[189] There was also evidence that White travelled in his own utility to the appellant's house in order to collect the silver Commodore utility for the trip to Sydney. It was open to the jury to find that evidence significant, in the context of evidence that White's own utility had secret compartments, rendering it unnecessary to take the silver utility unless he was under the instruction of the appellant, as claimed by White.

[190] There was evidence that on his arrival in Sydney, White travelled to the appellant's Sydney residence, despite the appellant still being in Melbourne. Significantly, upon the appellant's return to Sydney there were text messages from the appellant to White, consistent with a conclusion that White was under the direction of the appellant whilst in Sydney. It was open to the jury to find the text messages from the appellant to White inconsistent with the assertion that the real reason White was in Sydney was to transport furniture from the appellant's brother.

[191] Those text messages commenced soon after the appellant had returned to Sydney from Melbourne. The exchange occurred on the afternoon of 18 March 2014, over a period of approximately one-and-a-half hours.

[192] The exchange commenced at around 4pm:

> "Appellant: Buy me grilled chikn salad xtra chikn frm macas
>
> White: Ok with a drink?
>
> Tesic: Na. Extra extra chikn
>
> Tesic: Grilled"[141]

[193] Approximately 32 minutes later, the appellant texted White asking, "You'd far".[142] White replied approximately a minute later, "Coming back now".[143] Approximately two minutes later the appellant texted, "How long fukn starvn Marin".[144]

[194] Some 15 minutes later White responded, "15 to 20 min".[145] One minute later the appellant texted, "Wat I Fuk me 1hr later".[146] After another 25 minutes had ensued, White texted the appellant, "Now sorting storage".[147] One minute later the appellant replied, "Bro you cunts normal. Fuk it Il go get food don't wry".[148] Approximately one minute later White texted, "Ok I didn't know we were coming here".[149]

[195] It was open to the jury to find that exchange significant, notwithstanding the serious concerns in relation to White's reliability and credibility. First, it supported White's evidence that he was subject to the appellant's control and direction. Second, it supported White's evidence that assisting the appellant's brother to move items was a cover for the trip to Sydney.

[196] If the true purpose was to remove those items, the jury may have considered it surprising that White would text that he did not know he was going to sort the

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141 ARB p 710.
142 ARB p 710.
143 ARB p 710.
144 ARB p 710.
145 ARB p 710.
146 ARB p 710.
147 ARB p 710.
148 ARB p 710.
149 ARB p 710.

storage. It was open to the jury to conclude that these text messages were inconsistent with an assertion that the reason White was in Sydney was to transport item for the appellant's brother.

[197] Another particularly compelling factor in support of that inconsistency was a text message sent by the appellant's brother to White whilst he was in Sydney. That text message, sent late on the afternoon of 17 March 2014 was in the following terms, "U there tomorrow".[150] Approximately 30 seconds later, White texted, "Don't know", to which the appellant's brother replied shortly thereafter, "Coz I'll be there 11.30".[151] Approximately three minutes later White replied, "Sorting out the wheels?" adding a subsequent text, "You can't floor sander coming in morning" (a reference to work White had organised to be performed in Amalfi Drive).[152]

[198] It was open to the jury to conclude that if the real reason for White's trip to Sydney was to transport items for the appellant's brother, there would be no reason why the appellant's brother would be asking White whether he will still be in Sydney the next day.

[199] Further, there was the evidence that upon his return to Queensland, White travelled to the appellant's residence where he left the silver utility containing the drugs in question. It was open to a jury to find that evidence supportive of White's assertion that the drugs were at all times under the control of the appellant, with White acting under his directions.

[200] The fact that White texted Shane Ross on the morning of his return to Queensland did not render White's evidence as to being under the appellant's instructions improbable. There is good reason why White would want to deliver, as quickly as possible, the drugs that were to be given to Ross in accordance with the appellant's instructions. White is hardly going to want to be in possession of those drugs for an extended period of time.

[201] Similarly, the fact that White was himself in possession of a variety of other drugs and cash located in his own utility but did not render improbable his evidence that the drugs in the silver Commodore utility were in the control of the defendant.

[202] If, as was contended by the defence at trial, White's evidence about the appellant was a tissue of lies in order to ingratiate himself with the police, who had specifically sought evidence against the appellant, it was striking he did not seek to assert that these drugs and items were also the appellant's property.

[203] Finally, it was open to a jury to find the fact that the other drugs and cash were located in the appellant's utility, in circumstances where the appellant had not transferred the drugs from the silver utility to his own, upon his return to Queensland, supportive of an acceptance of White's evidence that the drugs located in the silver utility were under the control of the appellant.

[204] A consideration of these pieces of evidence, in the context of the evidence as a whole, supports a conclusion that it was open to the jury, after having regard to the extensive directions as to the elements of the offence and the need to scrutinise White's

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150 ARB p 712.
151 ARB p 712.
152 ARB p 712.

evidence with extreme care, to be satisfied that the appellant was guilty of the offence of possessing dangerous drugs in excess of 20 grams, beyond reasonable doubt.

Conclusion

[205] An independent assessment of the evidence as a whole, allowing for the significant inconsistencies, inadequacies and circumstances of White's evidence against the appellant, supports a conclusion that it was open to the jury, on a consideration of the whole of that evidence, to be satisfied of the appellant's guilt of the offence of possession of dangerous drugs in excess of the quantity in the schedule, beyond reasonable doubt.

Order

[206] I would order that the appeal be dismissed.