SUPREME COURT OF QUEENSLAND

CITATION:	*R v Walton* [2016] QCA 317
PARTIES:	**R** **v** **WALTON, Timothy Mark** (appellant)
FILE NO/S:	CA No 149 of 2016 SC No 58 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Townsville – Date of Conviction: 10 May 2016
DELIVERED ON:	29 November 2016
DELIVERED AT:	Brisbane
HEARING DATE:	31 October 2016
JUDGES:	Morrison and Philip McMurdo JJA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against conviction dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was found guilty of cannabis related offences – where the prosecution case was based largely on the appellant's admissions – where the appellant asserted there was contradictory evidence about another person of interest – where the issue for the jury was the truthfulness of admissions the appellant made in an interview with police – where the trial judge addressed the contradictory evidence in summing-up and the appellant did not request any redirection – whether the conviction was unsafe or unsatisfactory CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – CONDUCT OF PROSECUTOR OR PROSECUTION – where the prosecution provided the appellant's solicitors with a copy of the indictment prior to the presentation of the indictment – where the solicitors were subsequently given leave to withdraw and the appellant represented himself at trial – whether the loss of legal representation triggered a fresh obligation on the prosecution to disclose the indictment directly to the appellant

MFA v The Queen (2002) 213 CLR 606; [2002] HCA 53, considered
R v Walton [2016] QCA 17, related

COUNSEL: The appellant appeared on his own behalf
D R Kinsella for the respondent

SOLICITORS: The appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** I have read the reasons of Mullins J and agree with those reasons and the order her Honour proposes.

[2] **PHILIP McMURDO JA:** I agree with Mullins J.

[3] **MULLINS J:** Mr Walton was found guilty after trial of trafficking in the dangerous drug cannabis between 30 November 2011 and 13 December 2013 (count 1), possession of the dangerous drug cannabis, (count 3) possession of things that he had used in connection with the commission of the crime of producing a dangerous drug (count 4) and possession of things for use in connection with trafficking in a dangerous drug (count 5). The date each of the possession offences was committed was particularised as 12 December 2013. The place of offending for all offences was particularised as Crystal Creek which is north of Townsville. Prior to the trial Mr Walton pleaded guilty to count 2 on the indictment which was unlawful production of the dangerous drug cannabis between 30 November 2011 and 13 December 2013 where the quantity exceeded 500 grams. The applicant applied unsuccessfully to withdraw his guilty plea to count 2 and was also unsuccessful in applying for an extension of time for leave to appeal against the conviction on count 2: *R v Walton* [2016] QCA 17 (the extension reasons).

[4] Mr Walton conducted his own defence at the trial and represented himself on this appeal.

[5] The grounds of appeal identified in the notice of appeal are:

(1) The conviction of Mr Walton is inconsistent with other evidence adduced by the prosecution and is therefore unsafe and unsatisfactory.

(2) The prosecution failed to produce a copy of the indictment to Mr Walton.

The nature of the prosecution and defence cases at trial

[6] The prosecution case was based largely on the admissions made by Mr Walton when interviewed on 12 December 2013 and the observations made and evidence obtained by police officers who attended on site on 4 and 20 October and 12 December 2013. In October 2013 the police officers observed a plantation of cannabis plants approximately 110 metres long and 10 metres wide. When police attended the site on 12 December 2013, they covertly recorded Mr Walton tending the crop which had grown. There were 976 plants located, of which some were about two metres high, but many were smaller, including 207 seedlings. Police deployed a "flashbang" device (which is a sound and flash grenade) and apprehended Mr Walton. When interviewed on site, Mr Walton told police that the crop belonged to him alone, he had been growing at the site for a couple of years, and he had grown two crops previously.

[7] Mr Walton did not adduce evidence at the trial, but made a lengthy opening statement to the jury at the commencement of the trial informing the jury that he had pleaded guilty to producing a dangerous drug for what he had done in tending the crop and asserting that they would be satisfied there were others involved in the crop. Mr Walton contended before the jury that he may have sustained a concussion, shock or other injury from the flashbang device that disoriented him and affected his cognitive functions on the day of his arrest. His case was that he had lied, when he answered the questions asked of him on site by the police, and that was apparent from the ridiculous statements he made in the interview, and that he was protecting "mates" who were the real owners.

Ground 1 – whether conviction is unsafe and unsatisfactory

[8] Although Mr Walton's written and oral arguments focused on specific aspects of the evidence and the directions given to the jury, his challenge to the jury verdicts requires the court on the hearing of the appeal to consider the whole of the evidence before the jury, in order to ascertain whether or not the evidence was sufficient to satisfy the jury beyond reasonable doubt that Mr Walton was guilty of each of the charges: *MFA v The Queen* (2002) 213 CLR 606 at [25]. I will therefore summarise the evidence that was before the jury.

[9] On 4 October 2013 **Senior Constable Place** was working with Detective Senior Constable Squire, Sergeant Goff and Constables O'Brien and Morris and given the task to locate a cannabis crop in the Paluma National Park. Senior Constable Place wore a GoPro camera attached to a head mount that he activated when he saw something to film. The crop site was located about 40 metres from a dry creek bed near Crystal Creek. He observed a large number of small cannabis plants growing in the ground and some seedlings in small containers. No persons were present other than the police officers. The footage he filmed was copied onto a DVD (exhibit 1) which was played for the jury which showed the crop and an irrigation system with sprinklers, bags of fertiliser and a campsite, including a tent containing bedding and a kitchen set up.

[10] During cross-examination by Mr Walton, Senior Constable Place accepted that the real owner of the crop could have been there when he and the other police officers arrived, snuck away, and would have known that the crop was compromised.

[11] **Detective Sergeant Phelps** of the Townsville Drug Squad returned to the cannabis crop site on 20 October 2013 with Detective Squire. There were no other persons at the site and Detective Phelps operated a video camera to film the site and the items located. On this occasion the plants ranged from very small seedlings up to possibly two foot high plants. The site was about 110 metres long by about 10 metres wide. The crop site was well established with wire netting across it, weed matting and sprinkler systems. There was a petrol-powered pump and two large water storage tanks. The DVD of the recording taken by Detective Phelps on 20 October 2013 (exhibit 2) was played for the jury.

[12] Detective Phelps returned to the site with Detective Squire on 12 December 2013 and some members of the Special Emergency Response Team (SERT). They ascertained there were no other people on site. Detective Phelps observed the plants had grown significantly since the last visit. Some plants were up to two metres tall, but otherwise the site had not changed a great deal. They had arrived early in the morning and took

up positions around the site. Detective Phelps activated the video recorder, when he observed a person moving amongst the plants who turned out to be Mr Walton. The recording taken by Detective Phelps on 12 December 2013 (exhibit 3) was played for the jury. Detective Phelps had Mr Walton under observation for about 20 minutes, before the flashbang was used to assist in apprehending Mr Walton. Mr Walton was seated in a chair and given a drink of water.

[13] As exhibit 3 was being played, Detective Phelps pointed out black crates which he described as commonly used to dry cannabis head prior to packaging, seed-raising mix, chemicals, fertilisers, watering-cans and a rotary hoe. A number of photographs were taken at Detective Phelps' direction of the plantation site and the plants after removal (exhibit 4). Detective Phelps explained how he separated samples of the plants from the different stages of growth and the different areas of the site for transfer to the analyst. Other bundles of photographs of the plants, the scene and equipment, the pipes leading to the tank area, the water tanks, the creek and the water pump, the campsite and the mound of cannabis plants to be destroyed were tendered as exhibits 4 to 10. Detective Phelps took with him the samples of the plants for analysis and the remainder of the plants were burnt and destroyed. Detective Phelps counted 976 cannabis plants of which 207 were small seedlings.

[14] The analyst's certificate was tendered (exhibit 11) which showed that the analyst macroscopically examined 134 plants in total and confirmed they were cannabis. The weight of the plants examined (with roots removed) was six kilograms.

[15] During cross-examination, Detective Phelps accepted there were two mattresses in the tent and confirmed that he found a notebook in the camp area. A photograph of two pages where there were two sets of handwriting became exhibit 12. Detective Phelps accepted that the notes that appeared to be instructions were written by Mr Walton and that the writing on the other page that reported what had been done was "possibly written by a separate person". Detective Phelps also accepted that "it's quite obvious that there was someone else at the crop" and that by the questions in the interview, Detective Phelps explained:

> "We were intimating to you that we knew that there was other people involved in this. And that was your opportunity to tell us, and you didn't take that opportunity."

[16] This exchange also occurred in cross-examination:

> "You're aware, Mr Phelps, that the SERT officer who threw the stun grenade – it's been alleged in this courtroom that we can't see his statement, because it names another person of interest. Is that correct? No, sorry. It identifies another person of interest?--- No, I'm not aware of that.
>
> What? You're the super cop. You were in charge of this investigation. By the way, I'll ask another question: does the SERT team play any part in the investigation after the incident?--- No.
>
> So for that to be claimed in this very courtroom in writing by the prosecution that this jury can't see evidence because it identifies another person of interest, they must've known something somebody [indistinct] before you even got me. Is that correct?--- Obviously, we have information prior to attending the site. We have suspects that we think may be responsible, and that may be what you're referring to. I don't know; I haven't seen the statement."

[17] Mr Walton relies on that exchange as showing that Detective Phelps was not aware that there was another person of interest. Strictly speaking, the proposition that was put to Detective Phelps to which he responded that he was not aware of that was that Mr Walton could not see the statement of the SERT officer who threw the stun grenade, because it identified another person of interest. That is not equivalent to Detective Phelps giving evidence that he was unaware that there was another person of interest.

[18] Mr Walton was referring to the outcome of his application for a pre-trial ruling before the Chief Justice on 20 November 2015, when he questioned Detective Phelps about not being able to see the statement of the SERT officer who threw the stun grenade, because it named another person of interest. The Chief Justice had been provided with the unredacted version of the report and ruled that Mr Walton be provided with a redacted version on the basis the Chief Justice was "satisfied that the complete document contains names of persons and methodology which ought not in the public interest to be disclosed and should be redacted to that extent before disclosure".

[19] Detective Phelps also conceded in cross-examination that to get all the property on site through the bush and over the rocks would have been very difficult and that Mr Walton would probably have had to ask someone for help in order to carry the pump up 400 metres of rocks. In re-examination, Detective Phelps stated that he was "flabbergasted" when Mr Walton was trying to claim that he was responsible for the site and how all the material had got there, as there were hundreds of metres of irrigation pipe to be carried across a creek and over a kilometre through the bush, before being set up.

[20] **Detective Squire** explained that he attended on 4 October 2013 to locate the crop site on the northern side of Crystal Creek, as Constable Place had received information about a crop site in that location. He gave evidence of what he observed on that occasion. He returned on 20 October 2013 with Detective Phelps and observed the growth in the plants, that further seedlings had been germinated, and further plants had been planted into the ground. On 21 October 2013 Detective Squire made inquiries of Bunnings at Domain about a sale of the two water tanks he had observed at the crop site and Mr Mark Edwards was able to identify the sales and the related CCTV footage.

[21] Detective Squire attended the crop site on 12 December 2003 with Detective Phelps and members of SERT and observed that the plants were between 1.5 and two metres tall and quite healthy. Detective Squire observed Mr Walton walking through the plants for about 35 minutes. Detective Squire was in the bushland when the flashbang device was deployed and then made his way to where Mr Walton was detained. Mr Walton was on the ground, lying on his side and handcuffed. Mr Walton was concerned about the whereabouts of two dogs that had accompanied him. Detective Squire assisted Mr Walton to get up from the ground and accompanied him to the kitchen area of the campsite where Detective Squire activated his recording device. The CD of the audio of the field interview (exhibit 16) was played for the jury.

[22] In the course of the field interview with Detectives Squire and Phelps that took almost an hour, Mr Walton admitted that the crop site and little camp area was his enterprise, stating "It's only mine" and that it had been going for a year or two, "but it mostly fails". When Detective Squire commented that there were several mattresses in the tent, Mr Walton responded "Only because the big one's uncomfortable" and "it's easy to sleep on the hard floor". He also said "I've come in by meself, usually". On further

questioning about the length of time of the enterprise, he stated it was "probably two wet seasons ago" and agreed with Detective Squire that was the wet season of December/January 2011/2012. Mr Walton stated he started with seeds which he had obtained from people who smoked marijuana and in relation to the current crop had planted the plants a few months previously. He added fertiliser before he planted. He watered the plants using the pump, taking water from the creek. He said he bought the pump second hand from a mate and would not disclose the name of the mate. He stated he owned the water tanks and he had bought them from Bunnings at the end of this dry season which he estimated was in October 2013.

[23] Mr Walton was asked what he intended to do with the plants and he responded "Well, I wasn't gonna smoke them". He was then asked why he intended to sell them to which he responded "Well, I'm sick of being poor, I s'pose". He said that last year, he only covered his costs and did not make enough from the crop to buy a car and, when pressed as to what amount of money that was, he estimated it was $3,000 or $4,000. When asked what he had been doing, as he walked through the plants on that morning, he explained he was checking for male plants and putting pink tape on the ones that he was not sure about, so that he could check on them again. Mr Walton stated he came to the site "probably twice a week" and that what he did was to check for male plants and he agreed with the suggestion from Detective Squire that he watered and fertilised. Mr Walton estimated that he harvested one or two pounds of cannabis from the first crop in 2011/2012 and three or four pounds from the second crop in 2012/2013. In relation to the previous crops, Mr Walton stated that he dried it and "sold it as a pound to a mate" and that he was selling it for $2,000 or $2,500 per pound, depending on the quality. He had not made any money, as he had spent the proceeds on equipment.

[24] Mr Walton then answered questions about notes in a notebook that Mr Walton said that he brought to the campsite from home. There were entries that appeared to be reporting on what had been done to the crop and entries that appeared to be instructions as to what to do. Mr Walton said they were notes to himself and denied they were notes for a third person or from a third person to him.

[25] After this field interview was played for the jury, two additional photographs of pages from the notebook that were the subject of questions in the interview were identified by Detective Squire and incorporated into exhibit 12. Detective Squire also identified photographs of four jars and a plastic bag containing seeds that were located in the kitchen area (exhibit 17). An analyst's certificate stating that the seeds in the four jars and plastic bag were cannabis seeds was tendered (exhibit 21).

[26] After leaving Crystal Creek on 12 December 2013, Detective Squire went with Mr Walton to his unit to execute a search warrant. Nothing of interest was found during that search. Detective Squire checked whether Mr Walton had any cars registered in his name and confirmed that he had none registered to him.

[27] Detective Squire was cross-examined by Mr Walton about another person of interest in the investigation in these terms:

> "Are you aware that the SERT team officer identified another person of interest?---No.
>
> What? Aren't you the head investigator in this ---?---Yes.

> ---so-called crime?---There was nobody else located on site, and there was nobody else located at any other times we were there.
>
> Are you aware that evidence was withheld from this jury, because the prosecution put a written submission to this court that they couldn't produce the evidence, because it identified another person of interest?---I'm not aware of that at all."

[28] It is apparent that Detective Squire was at first answering Mr Walton's questions on the basis that it was being suggested to him that a SERT officer had identified another person of interest at the site.

[29] Detective Squire was also cross-examined by Mr Walton on whether, during the field interview, he accepted Mr Walton's answers in respect of some answers he gave, including when he responded that he usually came by himself to the campsite, when it was apparent from the set up of the mattresses and pillows in the tent that there were two separate sleeping areas. Detective Squire responded that he had a feeling that Mr Walton was not acting alone and that was why he questioned him in relation to the bedding, but he accepted Mr Walton's answer that he was the one who slept in the tent. When cross-examined on his questioning of Mr Walton about the notes in the notebook, Detective Squire acknowledged that he found Mr Walton's answers to be "wanting in relation to the way the notes were written, and that's why I was clarifying your answers".

[30] Mr Walton's texts on his mobile phone were checked by the police and nothing of interest to the investigation was found.

[31] **Mark Edwards** was the operations manager at Bunnings at the Domain Central Shopping Complex in Townsville, when he was requested by Detective Squire to search for sales of a 300 litre Maze brand water storage tank. He caused the invoice from a sale made on 11 October 2013 to be reprinted which was for two such storage tanks and for some tank fittings (exhibit 22). The tax invoice shows that the goods were paid for by credit card. Mr Edwards was also able to identify the CCTV footage on the Bunnings system that covered the subject transaction (exhibit 23).

[32] **Mr Grant Austen**, a bank officer employed by the Commonwealth Bank of Australia was able to identify the full card number of the credit card used for the transaction at Bunnings and the relevant merchant reconciliation report was tendered (exhibit 24). An employee from the Australia & New Zealand Banking Group Limited, **Mr Avinash Sharma**, confirmed that the credit card number shown on exhibit 24 was held by its customer Mr Walton and the verifying screenshot from the bank's computer system was produced (exhibit 25).

[33] **Operator 67** from SERT participated in the search of the crop site on 12 December 2013. He activated a hand held video recorder when a male person attended at the crop. He recorded for about 30 minutes, before he left the camera to support the rest of the SERT members when the flashbang device was activated. His film was copied onto a DVD (exhibit 26) that was played for the jury. The camera was still activated when the flashbang device went off, so the jury heard the sound of the flashbang device.

[34] **Operator 136** from SERT also participated in the operation at the crop site on 12 December 2013. He described how a male person was kept under surveillance and then apprehension was initiated by the sound and flash distraction device to divert

Mr Walton's attention from the approach of the SERT officers. Operator 136 actually deployed the device by throwing it to the left of Mr Walton (but over his head) and it landed about 10 metres away from him. Nine sound and flash events occurred. The device started emitting sound and flash half a second after Operator 136 released it from his hand, which meant that it was emitting sound and flashing as it flew through the air. Operator 136 together with Operator 135 approached Mr Walton and handcuffed him. Operator 136 described himself as a medic with a certificate IV in health plus ongoing medical certification who had done training with Queensland Ambulance Service. He used the "AVPU" test to determine that Mr Walton was alert. AVPU stands for "Alert, Verbal, Pain, Unconscious". When asked whether he had any medical concerns or conditions, Mr Walton responded in the negative. Operator 136 described Mr Walton as "obviously shaken", but that, when he responded to Operator 136, he spoke normally to him.

[35] Mr Walton was in possession of material that he claimed set out the standard tests for concussion and cross-examined Operator 136 by reference to those tests, such as whether he asked Mr Walton what the date was or give him a series of numbers and asked him to repeat them five seconds later. Operator 136 accepted that he did not do such tests, but expanded on the application of AVPU stating:

> "So alertness: you were alert. Verbal: I was able to hold a conversation with you. Pain: you didn't declare any pain, and the last one, which is unconscious, you weren't unconscious or unresponsive."

[36] In response to a question from the learned trial judge, Operator 136 conceded that he did not claim expertise in diagnosing concussion. During re-examination, Operator 136 stated that he did know what a concussion was and the symptoms were disorientation, nausea and sickness, and that Mr Walton did not display any of those symptoms.

[37] **Inspector Donni McKay** who was in charge of SERT based in Cairns was cross-examined by Mr Walton on a second statement he made to the court, in support of his reasons for not producing to Mr Walton the document that had been requested by Mr Walton which was the report of the SERT member who threw the flashbang device. Mr Walton put to Inspector McKay that he said in this statement:

> "It is impossible for police to know the relevance that the defendant could glean from this section. The section also identifies a second person of interest."

[38] Mr Walton asked Inspector McKay whether he remembered writing that in his statement and Inspector McKay responded that he did.

[39] Inspector McKay identified the technical data and information sheet relating to the flashbang device (exhibit 27). That sheet noted that personnel should be clear of a radius of five metres while the device was functioning, due to dispersing radius of cardboard fragments and that the sound intensity was a maximum of 171 dB at a distance of two metres. It was not Inspector McKay's experience, due to the distance from a person that the device was used, that concussive brain injury had resulted from the use of this device over many years, despite the description of the device in the technical data and information sheet in these terms:

> "The grenade creates distraction and disorientation by shock over pressure and brain concussion in the auricular and visual senses."

[40] **Senior Constable Uriarte** is a scenes of crime officer who attended the crop site on 12 December 2013 and looked for surfaces which were suitable for a fingerprint examination. Officer Uriarte found a fingerprint on a green mug which she photographed (exhibit 28). The green mug was beside, on or in a food box that was outside the tent, but under the awning of the tent. Officer Uriarte also found a fingerprint on a Coffee-Mate container which was photographed (exhibit 29). Officer Uriarte was not asked to collect DNA evidence at the camp site.

[41] **Constable Fisher** of the Townsville Watchhouse captured Mr Walton's fingerprints and palm prints by electronic means on the evening of 12 December 2013.

[42] Queensland Police Service property officer **Ms Korn** gave evidence relevant to the chain of custody of the exhibits relating to the charges.

[43] **Sergeant Doolan** is a fingerprint expert and had compared the photograph of the fingerprint on the green mug with the fingerprint of Mr Walton's right ring finger and concluded that the images were identical and that the fingerprint on the green mug belonged to Mr Walton. He was unable to match the fingerprint on the Coffee-Mate container with Mr Walton's prints or with any print in the national databank. He was therefore unable to identify whose print was on the Coffee-Mate container.

[44] Mr Walton in his opening statement had foreshadowed evidence to be adduced relevant to his assertions that he was helping a friend by tending the crop, that the real owners of the crop were others, and that he lied in the field interview. When he elected not to give evidence at the trial, the foreshadowed explanations for which there was no evidence and which could not be inferred from evidence that was adduced by the prosecution became irrelevant to the jury's task.

[45] The first argument of Mr Walton on the appeal is based on his submission that there was contradictory evidence from the police about whether there was another person of interest. Inspector McKay's adoption of the passage from his second statement that was read out to him by Mr Walton about a section of a SERT officer's report that identified "another person of interest" meant there was evidence before the jury that at least SERT was aware of another person of interest. It was not contradictory of Inspector McKay's evidence that Detective Squire was unaware of a written submission from the prosecution that they could not produce evidence, because it identified another person of interest. In any case, the fact that Detective Squire's knowledge of another person of interest is not the same as the knowledge of an officer of SERT does not mean there is a contradiction in the evidence. The same applies to Detective Phelps' evidence on the same topic. His evidence concerned his knowledge and it did not follow that his evidence was contradicted by that of Inspector McKay. There is no substance in Mr Walton's criticism of the trial judge's making no mention in his summing-up of what Mr Walton perceived to be the different evidence from Detectives Phelps and Squire on the one hand compared to Inspector McKay on the other hand on this topic.

[46] During oral submissions on the appeal, Mr Walton criticised the trial judge's summing-up in correcting an error which Mr Walton had made in his closing address to the jury. Mr Walton had said to the jury in making submissions on Inspector McKay's written statement about there being no written guidelines or policies about the length of time after a stun grenade incident that a person can be interviewed that "You have a copy of that statement, I believe. So, as it's in evidence, I believe you

can consider it. You have it in your evidence." There was no evidence given at the trial by Inspector McKay about the absence of such written guidelines or policies and no such written statement by Inspector McKay was adduced in evidence at the trial. The trial judge said in the summing-up:

> "In addresses, Mr Walton suggested that a statement of Inspector McKay was in evidence; there is no statement of Inspector McKay in evidence. The only evidence from Inspector McKay is the evidence he gave from the witness box."

[47] It would have been apparent to the jury that the trial judge was therefore correcting Mr Walton's error in referring them to a statement which was not in evidence about lack of guidelines or policies on the length of time that must elapse before a person can be interviewed after a flashbang device was used. Mr Walton in his oral submissions also relies on that part of the summing-up as negating the evidence that Inspector McKay gave in adopting what was in his second statement about non-disclosure of the report that would reveal another person of interest. What the trial judge said in the summing-up about Inspector McKay's evidence to correct the mistake in Mr Walton's address about a statement on one topic in no way detracted from the evidence Inspector McKay gave from the witness box adopting what had been read out to him by Mr Walton from his second statement on a different topic.

[48] Mr Walton was also critical of the trial judge in not repeating in the summing-up the gist of this evidence from Inspector McKay that SERT was aware of another person of interest. The relevance of Inspector McKay's evidence that SERT was aware of another person of interest was that it fitted in with Mr Walton's case that he was protecting the real owners of the crop. It was not necessary for the trial judge in the summing-up to recite all the evidence for the jury. Mr Walton had not himself reminded the jury of this evidence in his closing address. The trial judge was very fair in summarising Mr Walton's arguments in his closing address to the jury, even including those which were not the subject of evidence by Mr Walton, such as the reasons he proferred to the jury for lying in the field interview, namely to protect mates and from fear of being an informer.

[49] Mr Walton was also critical about the trial judge's failure to explain to the jury that Detective Phelps' evidence was "ridiculous". That was Mr Walton's contention which the trial judge canvassed in the summing-up by the following direction which was more than adequate for the purpose:

> "Now, as Sergeant Phelps acknowledged, there was the distinct possibility judging by those factors that, at different times, more than one person was involved in working on that site. Whether that contradicts the defendant's admissions is a matter for you. The defendant suggests that he was working for some mates in assisting with the production. You have to consider that possibility, or consider whether you're persuaded beyond reasonable doubt based on the admissions that it was the defendant's enterprise. When you might – and then you might think about the possibility as to whether he may have been assisted by others."

[50] Mr Walton also argues that the verdict was unsafe because the trial judge made a mistake in the course of his summing-up. In summarising the evidence of Officer Uriarte, the trial judge referred to the evidence of Mr Walton's fingerprints on a mug at the site, he then stated:

> "The issue about fingerprints is not particularly important with this case so far as it identifies Mr Walton. It's not really about a matter in issue. What's interesting about the fingerprints is the absence of other fingerprints. Mr Walton points to that. He points to the circumstance that fingerprints of another person, who can't be identified, were located at the scene, but only on the mug and on the Coffee-mate container. It's a matter for you what you make of that circumstance that no one else's fingerprints were found at the scene. Does it raise any doubt about Mr Walton's involvement or whether others were involved, or the quality of the Prosecution case. That's a matter for you. I mention those considerations in the context of fingerprint because it appeared to be relevant to mention that in the context of the expert evidence of fingerprint analysis that you heard."

[51] The fingerprint of the other person was found only on the Coffee-Mate container and the fingerprint that was on the mug was Mr Walton's fingerprint. The summing-up was delivered on the same day as the jury heard from Sergeant Doolan. There was no controversy about the identification of Mr Walton's fingerprint on the green mug and the location of a fingerprint on the Coffee-Mate container that was unidentified. It was a slip of the tongue when the trial judge referred to the fingerprint of another person being found on the mug and that would have been apparent to the jury. In another part of the summing-up the trial judge had repeated Mr Walton's argument about the lack of evidence of fingerprinting and DNA gathering and Officer Uriarte's explanation that she was unsuccessful in obtaining fingerprints from a number of items.

[52] In the course of giving the usual direction about expert evidence, the trial judge identified Sergeant Doolan and Officer Uriarte as experts and then stated:

> "As well as that, though operator 136 is a medic, and a little bit of his evidence related to his medical evaluation of the defendant after the flash-bang or the stun grenade, whatever you call it, went off. So his evidence had a quasi-expertise basis to it."

[53] Mr Walton's criticism of this part of the summing-up is that the reference to "quasi-expertise" was nebulous or confusing and that, in any case, Operator 136 had no expertise in diagnosing concussion. All that the trial judge was pointing out to the jury in respect of Operator 136 was that he was the "medic" amongst the SERT members and on that basis had undertaken what was described as an evaluation of Mr Walton when he attended on him immediately after the flashbang device had been deployed. No doubt the trial judge used "quasi-expertise" to refer to the minimal training that Operator 136 had as the SERT medic. On analysis, however, the evidence given by Operator 136 was little more than the observations he made of Mr Walton by applying the AVPU test which he had explained in his evidence and was simply an acronym to remind him of the observations he should make. It was Mr Walton's contention that Operator 136 should have examined him to see if he had suffered from concussion. Operator 136 was not purporting to give evidence as an expert in diagnosing concussion. There was no room for the jury to be confused by the term "quasi-expertise" having regard to the basis on which Operator 136 gave his evidence on his observations of Mr Walton. To the extent that Mr Walton contends that the trial judge was asserting that Operator 136 had quasi-expertise in diagnosing concussion, that misrepresents the trial judge's direction.

[54] Mr Walton also submitted on the appeal that a specific direction should have been given by the trial judge that exhibit 27 was written by experts. Mr Walton has misunderstood the purpose of the usual expert evidence direction that relates to the oral evidence given by expert witnesses. The trial judge's reminder to the jury in the course of the summing-up about the statement in exhibit 27 that sound and flash grenade can cause "brain concussion in the auricular and visual senses" was more than adequate.

[55] On the hearing of the appeal, the respondent's counsel made the point that to the extent there was any substance in Mr Walton's complaints about the summing-up, which were not conceded as being fundamental or as misleading the jury on the key issue of the truthfulness of the admissions in the field interview, there was no request made by Mr Walton at the conclusion of the summing-up for any redirections. This resulted in the submission by Mr Walton on the appeal that there was a miscarriage of justice as the trial judge should have advised him as an unrepresented defendant that he had the right to ask for redirections.

[56] At the conclusion of the summing-up, after the jury had retired, the trial judge asked this question "Any applications for any directions?". That request was not directed specifically to the prosecutor. It was clearly an invitation for both parties to indicate to the trial judge whether any further directions should be given to the jury. It was treated as such by the prosecutor who mentioned two or three exhibits on which the trial judge had not given any directions and some discussion ensued about that. Mr Walton did not raise any aspect of the summing-up that concerned him. The summing-up was given on day five of the trial by which time Mr Walton was engaging vigorously in the trial process and was not reticent about raising any issue he had with the trial judge. No specific instruction had been given by the trial judge to Mr Walton on his right to seek redirections in respect of any aspect of the summing-up, but in the circumstances of this trial, the general question asked by the trial judge at the conclusion of the summing-up was sufficient.

[57] There was unequivocal evidence of Mr Walton's involvement with the enterprise at the crop site from his purchase of the tanks on 11 October 2013 that were observed at the crop site on 20 October 2013 and his conduct on site in tending the plants, before he was apprehended on 12 December 2013. In order to establish his guilt of each of the four charges before the jury, the prosecution case depended on the jury accepting the truth of the admissions made by Mr Walton in the course of the field interview relevant to each of the charges and particularly that it was his enterprise and about his involvement in selling the cannabis from the first two crops, acquiring equipment, and intending to harvest and sell the current crop. In the absence of evidence from Mr Walton that he had lied about these matters in the field interview, the jury was faced with either accepting some or all of the statements he made in the course of the field interview that amounted to admissions relevant to the charges as true and accurate or rejecting some or all of those statements as true and accurate and considering the case against Mr Walton without taking those rejected statements into account.

[58] The trial judge explained to the jury in the summing-up the importance to the prosecution case of the answers given by Mr Walton to the questions asked during the field interview. Mr Walton's putting in issue the truth of his answers was the main issue that the jury had to consider. It was made clear for the jury in the direction given by the trial judge:

> "Importantly, in this trial you also, in order for the Prosecution to rely on it, they must satisfy you that the answers were true. Now, this is the issue that in large part Mr Walton takes issue with. You will recall his address this morning. As he went through quite a number of points where he pointed to certain circumstances that indicated that he may not have been thinking properly, and that he was not telling the truth when he apparently made admissions. Now, it's a matter for you to decide whether you're satisfied that when he made the admissions that he apparently made they were true, and that's a matter for you to decide, and the Prosecution must satisfy you of that."

[59] The task of deciding whether Mr Walton was telling the truth in the answers he gave during the field interview was a matter for the jury. The jury had the advantage of listening to the audio of the field interview with the benefit of Mr Walton's arguments as to why they would not believe his answers and to test his answers against the other evidence that was adduced in the trial. By their verdicts, the jury must have accepted that most, if not all, of the admissions made in the field interview by Mr Walton were true. On the basis of the whole of the evidence before the jury that was not an unreasonable conclusion.

[60] The criticisms made by Mr Walton of the trial judge's summing-up or discrepancies in the evidence which were the focus of his submissions on this appeal (whether considered singly or collectively) were either insubstantial or not valid criticisms and do not undermine the jury verdicts. This ground of appeal that the conviction was unsafe and unsatisfactory cannot succeed.

Ground 2 – failure to produce a copy of the indictment to Mr Walton

[61] The gist of this ground of appeal is that Mr Walton argues that timely provision of a written copy of the indictment with time for an accused person to consider it "forms an inalienable part of the judicial process". Mr Walton makes the point that if he had been provided with a copy of the indictment before his arraignment (which I infer was the arraignment at which he pleaded guilty to count 2 on the indictment and entered pleas of not guilty to the counts on which he went to trial) that might have affected his decision making in relation to his pleas with a consequent effect on his sentencing. The relevance of the ground to this appeal against his conviction is that Mr Walton is relying on the failure of the prosecution to provide him with a copy of the indictment when he became self-represented as invalidating the trial.

[62] When Mr Walton's application for the extension of time was heard in the Court of Appeal on 11 February 2016, the prosecution relied on an affidavit of Mr Peter Negerevich sworn on 5 February 2016. Mr Negerevich is a legal support supervisor (appeals) employed in the office of the Director of Public Prosecutions with access to the documents held in the office relating to this indictment against Mr Walton. One of the documents exhibited to Mr Negerevich's affidavit is an email dated 16 September 2014 to the solicitors' firm Lee Turnbull & Co who were the solicitors on the record for Mr Walton. That email attached a copy of the indictment and notice of trial for Mr Walton. The copy of the indictment that was attached was a copy of the indictment that was presented to the Supreme Court at Townsville on 22 September 2014, when a solicitor from Lee Turnbull & Co appeared on behalf of Mr Walton.

[63] Mandatory disclosure to an accused person must be made by the prosecution of the indictment containing the charge against the accused person pursuant to s 590AH(2) of the *Criminal Code* (Qld), but pursuant to s 590AM(2) of the *Code* it is sufficient for the notice to be given in a way the prosecution considers appropriate. For the purpose of division 3 of chapter 62 of the *Code* governing disclosure by the prosecution, s 590AG provides that a reference in that division to giving or disclosing a thing to an accused person includes a reference to giving or disclosing the thing to a lawyer acting for the accused person. Sending an email which attaches a copy of the indictment to the solicitor then acting for the accused person could therefore not be disputed as an appropriate way of giving mandatory disclosure of the copy of the indictment to that accused person. The fact that the solicitors on the record for Mr Walton were given leave to withdraw on 28 November 2014 and Mr Walton was thereafter appearing for himself (and it appears those solicitors did not pass on a copy of the indictment to Mr Walton) did not alter the fact that the prosecution had previously complied with the obligation to disclose a copy of the indictment to Mr Walton. His loss of legal representation did not trigger any fresh obligation on the part of the prosecution to disclose to Mr Walton what had already been disclosed to him through his solicitors. This is reinforced by s 590AN of the *Code* which in relation to a trial on indictment (amongst other relevant proceedings) provides:

> "The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person anything the accused person or a lawyer acting for the accused person already possesses or has already been given by the prosecution."

[64] It is unnecessary to consider this ground of appeal any further, as there is no factual basis for the ground. Even if there were and it were appropriate to consider this argument again, I am of the same view expressed by Jackson J in disposing of this argument at p 3 of the extension reasons that it does not necessarily follow that a failure of the prosecution to comply with s 590AH(2)(a) of the *Code* in providing a copy of the indictment to the accused person is fatal to the validity of the trial on the indictment.

Order

[65] It follows that the order which should be made is:

Appeal against conviction dismissed.