SUPREME COURT OF QUEENSLAND

CITATION:	*R v Stevens* [2017] QCA 61
PARTIES:	**R** **v** **STEVENS, Brett Raymond** (appellant/applicant)
FILE NO/S:	CA No 212 of 2015 CA No 305 of 2015 SC No 686 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Conviction: 2 September 2015; Date of Sentence: 20 November 2015
DELIVERED ON:	11 April 2017
DELIVERED AT:	Brisbane
HEARING DATE:	16 September 2016
JUDGES:	Morrison and McMurdo JJA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed.** **2. Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of trafficking in a dangerous drug, producing a dangerous drug and supplying dangerous drugs after a 28 day trial – where the ground of appeal was that the jury's verdict is unsupportable and against the weight of the evidence – where the appellant was producing, trafficking and supplying dangerous drugs with help from a number of persons – where the other persons gave evidence that the appellant owned a pill press and directed the drug operation – where one witness gave evidence to the Crime and Misconduct Commission – where the appellant argued that the witness' evidence could not be accepted because the witness had reasons to reduce his own involvement in the trafficking scheme and his evidence was therefore incredible and unreliable – where the trial judge directed the jury that it would be dangerous to convict on the evidence of that person alone unless the jury found that it was supported by other

independent evidence – where other evidence included cash, drugs and things used to produce drugs seized by police, recorded conversations and text messages – whether the verdicts were supported by other evidence – whether it was open to the jury to be satisfied beyond reasonable doubt, that the appellant was guilty

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where the applicant was sentenced to 13 years imprisonment for carrying on the business of unlawfully trafficking dangerous drugs – where a conviction was recorded but there was no further punishment for the count of producing a dangerous drug – where the applicant submitted that the sentence is manifestly excessive when compared to sentences imposed on co-offenders, related offenders and in similar cases – where the applicant did not complain about the facts considered by the sentencing judge but contended that the sentencing judge erred in their application of the parity principle – where the respondent submitted that the applicant was higher in the organisational chain than related offenders – where the court should only interfere with a sentence where there has been a departure of principle by the sentencing judge – whether the sentence is comparable to those imposed on offenders in similar cases – whether the sentence is manifestly excessive

Criminal Code (Qld), s 632(1)
Penalties and Sentences Act 1992 (Qld), s 13A

Barbaro v The Queen (2014) 253 CLR 58; [2014] HCA 2, followed
Director of Public Prosecutions v Hester [1973] AC 296, cited
Doney v The Queen (1990) 171 CLR 207; [1990] HCA 51, followed
Gilbert v The Queen (2000) 201 CLR 414; [2000] HCA 15, cited
Lowe v The Queen (1984) 154 CLR 606; [1984] HCA 46, followed
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, followed
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, followed
R v Baden-Clay (2016) 90 ALJR 1013; [2016] HCA 35, followed
R v Barker [2015] QCA 215, distinguished
R v Floyd [2014] 1 Qd R 348; [2013] QCA 74, followed
R v Gordon [2016] QCA 10, distinguished
R v Jenkins, Rollason & Brophy [2008] QCA 369, followed
R v Nguyen [2016] QCA 57, followed
R v Pham (2015) 256 CLR 550; [2015] HCA 39, followed
Robinson v The Queen (1999) 197 CLR 162; [1999] HCA 42, cited

SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, followed

COUNSEL: W Terracini SC, with E Nicolsen, for the appellant/applicant
D C Boyle, with C W Wallis, for the respondent

SOLICITORS: Archbold Legal for the appellant/applicant
Department of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** After a 28-day trial Mr Stevens was convicted on three counts:

(a) trafficking in a dangerous drug, namely 3, 4-methylenedioxymethamphetamine (**MDMA**), between 1 August 2007 and 4 February 2009;

(b) producing a dangerous drug (exceeding 2 grams), namely MDMA, between 1 August 2007 and 4 February 2009; and

(c) supplying dangerous drugs, namely methylamphetamine, on 21 July 2008.

[2] He was sentenced to 13 years' imprisonment.

[3] Mr Stevens appeals against his conviction on the ground that the verdict was unreasonable and cannot be supported by the evidence. He also seeks leave to appeal against the sentence imposed, on the basis that it is manifestly excessive.

[4] These reasons deal with the appeal against conviction and the sentence application.

The applicable legal test

[5] In a case where the ground is that the conviction is unreasonable or cannot be supported having regard to the evidence, *SKA v The Queen*[1] requires that this Court perform an independent examination of the whole evidence to determine whether it was open to the jury to be satisfied of the guilt of the convicted person on all or any counts, beyond reasonable doubt. It is also clear that in performing that exercise the Court must have proper regard for the pre-eminent position of the jury as the arbiter of fact.

[6] In *M v The Queen* the High Court said:[2]

> "Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it 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. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations."

[7] *M v The Queen* also held that:[3]

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1 (2011) 243 CLR 400, at [20]-[22]; see also *M v The Queen* (1994) 181 CLR 487, 493, 494.
2 *M v The Queen* at 493. Internal citations omitted. Reaffirmed in *SKA v The Queen* (2011) 243 CLR 400.
3 *M v The Queen* at 494.

> "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 experienced 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."

[8] Recently the High Court has restated the pre-eminence of the jury. In *R v Baden-Clay*[4] the Court said:

> "[65] 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. Further, the boundaries of reasonableness within which the jury's function is to be performed should not be narrowed in a hard and fast way by the considerations expressed in the passages from the reasons of the Court of Appeal explaining its disposition of the appeal.
>
> [66] With those considerations in mind, a court of criminal appeal is not to substitute trial by an appeal court for trial by jury. Where there is an appeal against conviction on the ground that the verdict was unreasonable, 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.'"

[9] The trafficking charge related to a period between 1 August 2007 and 4 February 2009. The direct evidence for the first part of the period (from August 2007 to March 2008) came from the witness YBS. It is therefore appropriate to commence with his evidence.

YBS's evidence

First trip to Sydney

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4 [2016] HCA 35, at [65]-[66]. Internal citations omitted.

[10] YBS met Stevens in June or July 2007. He described the first time he was asked by Stevens to do a trip for drugs. Stevens invited him to Sydney, to a race meeting and asked him if he could deliver something to his home address at Burpengary, saying it was just car parts.

[11] He described the arrangement: "I was to meet someone … across the road from Eastern Creek Raceway, outside the front of the pub. Someone was going to give me a box, and … I was to drive it back and leave it on the table or on the verandah of his house and … He asked me if could pick up the box of parts off someone and drop it back to his house in Burpengary ... and leave it on … the back porch."[5]

[12] The box weighed about a kilogram, and was about the same size as a sports-shoe box. It was sealed with tape around it. YBS believed he was taking car parts back to Brisbane. He delivered them to Stevens' house and left them on the back verandah.

Second trip to Sydney

[13] YBS went to Sydney a second time. Stevens asked him to pick up a backpack from a man who was going to meet him at a particular location on Parramatta Road, near a kebab shop. YBS was then to drive back to Brisbane to deliver it. He drove down to Sydney, picked it up and drove it home. It weighed about two kilograms.[6]

[14] YBS explained why he did it: "At the start of our conversations I thought I might be able to work with his race team".[7]

[15] Stevens asked him if he could sell some ecstasy pills. He told Stevens that he had a friend (Kieran Brown) who could move large quantities of ecstasy pills. Stevens wanted to meet Brown, so he introduced them.[8]

The pill press

[16] Stevens spoke about bringing a pill press up from Sydney, to make more tablets.[9] YBS saw it when it arrived on the back of a ute. He described calls he received from Stevens about the pill press:

> "The only phone call I got between when I actually saw the pill press and the conversation when [Brown], [Stevens] and myself were at [Stevens'] house at Burpengary, [Stevens] rang me to say that … the ute that was bringing the pill press up … was out of registration and the police had pulled it over and the pill press was on the back and he was getting quite abusive at me because the car was out of registration because I'd borrowed it a couple of days prior before the pill press was coming up. … I think it was around Newcastle …[10] Then he said the car couldn't be moved from the location on the side of the road until it was registered, and then the next thing … he rang me to say that the car had then been registered and they were allowed

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5 AB 370-371.
6 AB 372-373.
7 AB 373.
8 AB 486.
9 AB 374.
10 AB 375.

> to move the car and the girl continued driving up towards Queensland".[11]

[17] YBS related the description of the pill press, given to him by Stevens: "[Stevens] said to me it weighed 300 kilos. It was stainless steel, had a perspex box on the top with Perspex sides and a merry-go-round looking wheel with shafts coming off it and … two knobs at the front with a little light-up box. … The perspex was … on top of the machine and the rest of the machine … looked like stainless steel to me".[12]

[18] When the machine was unloaded Stevens, YBS, Brown and a person known as "Jewish"[13] were there. There were 60 kilos of lactose powder, coloured chalk and some other boxes which had different stamps to make different shapes. The lactose powder was in another box in front of the pill press. Once the pill press was inside the bedroom Stevens was fiddling with it and putting different amounts of powder and colouring in to make different sized pills.[14]

[19] Stevens told YBS that he had paid $20,000 a bag for the lactose powder, and he needed to make $9 a pill: "he could get the MDMA to make the ecstasy pills, and he was paying $90,000 a kilo, so he needed to get $9 back per pill".[15] The machine could pump out 5,000 or 10,000 pills per hour.[16]

[20] Stevens said that Brown and Heilbronn were making the pills at the property; and once the pills were made they were divided up: "if you needed pills between certain amounts you would just say I need [5,000] pills or 10,000 pills, and [Brown] or Jewish usually would drop them off[17] … We were to sell them … [Stevens] was to get nine dollars … per tablet, and we were to sell them. Whatever we sold them after that was our profit."[18]

Third trip to Sydney

[21] Stevens asked him to go to Sydney and bring back 25 kilograms of MDMA crystal. He was to fly down and drive back with a suitcase. He met Stevens in Sydney and took the suitcase, in which there was four or five blocks of brown solid crystal.[19] He then drove back to the Gold Coast, where he gave the suitcase to Brown. Once the suitcase went to Brown "then there was a mass produce (sic) of pills made and … the product had to be moved each week … trying to move a certain amount of pills each week", because Stevens said the Sydney people had to be paid;[20] Stevens called them the Serbians.[21]

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11 AB 375.
12 AB 376.
13 His real name was Nick Heilbronn.
14 AB 376.
15 AB 376, 382.
16 AB 377.
17 AB 378.
18 AB 378.
19 He saw this because Stevens opened the suitcase. That fact was not included in his CMC statement: AB 477.
20 AB 378-380.
21 AB 383.

[22] Brown and Heilbronn were making the pills: "We were all selling them and distributing them. And then … the money from the pills I sold I would drop to … Stevens' … home address". That went on for six months[22] during which YBS estimated that he made $800,000.[23]

[23] YBS made a profit of 50 cents per tablet.[24] He was selling between 5,000 and 20,000 pills a week, and getting pills twice a week: "When I received the pills from [Brown] I would already have someone lined up … to buy them. … I would specify a quantity to him. He would bring that to me, and … I would sell it". The money would go back to Stevens.[25]

[24] After about six months, in January or February, there was a change:

> "… it was … getting out of control. And there was … too many pills getting produced. I couldn't move the quantity that was asked of me. I was giving most of the pills … back to [Brown] or not even accepting them at all. … it was getting out of control. … too many tablets made. And there was no way possible I could move the quantity. The quality of them was getting less and less. And so I … was sort of steering clear of it for a while".[26]

[25] Stevens began abusing YBS and threatening him because he had introduced Brown and the amount of drugs being made "was out of control".[27] The threats were to do with the fact that the pill press was missing from the house where the pills were being made.

[26] A fourth trip to Sydney was made, to pick up 10,000 pills. YBS drove down in a utility. Stevens provided the money, about $80,000.[28]

[27] YBS said there was a confrontation one night when Stevens arrived at YBS's house with some men in balaclavas. YBS ran off when he saw them. Stevens called him and said the men were looking for their money and the pill press. Threatening words were exchanged with the men, and YBS called the police.[29]

Cross-examination of YBS

[28] The cross-examination of YBS highlighted his criminal activities in his self-confessed drug trafficking, and his inconsistent statements concerning it. For example, he was confronted with his previous testimony at the committal hearing and what he said to the CMC. Early in the cross-examination it was established that he had been sentenced to about two months' imprisonment and had two properties seized.[30] It was put to YBS that he, and not Stevens, was the real drug dealer, and that he had falsely accused Stevens to extract himself from his legal problems. YBS denied both.[31]

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22 AB 382, 400.
23 AB 386, 400.
24 AB 382.
25 AB 383, 387.
26 AB 387.
27 AB 395.
28 AB 396-397.
29 AB 397-398.
30 AB 400, 401.
31 AB 401, 432.

[29] YBS said in his CMC statement that at the Winternationals (a racing meeting) in 2007, he "saw [Stevens] on this occasion, but I was not formally introduced". He could not remember if that was accurate as it "was too long ago".[32] He denied suggestions that the first trip (when he took back what he believed were engine parts) was one where he was not invited, but just showed up, and that no parcel was collected.[33]

[30] As to the trip when YBS said he drove down and collected a backpack, he said he could not recall if the car was a hire car or his own. He said that trip was before Christmas that year. He denied that the trip was nothing to do with Stevens.[34]

[31] YBS said that when the pill press arrived he was already selling MDMA pills for Stevens.[35] He was confronted with what was in his statement to the Crime and Misconduct Commission on this issue, and answered that he was already selling pills, and that the sequence in the statement was "a bit back-to-front":

> "And then at paragraph 45, do you accept you say this: On the next occasion that I caught up with [Stevens], he told me that he had some pills. I thought that [Brown] had made them. [Stevens] said words to the effect of who can you get rid of pills through and you replied I don't know anyone.
>
> ?---All right.
>
> So what I'm putting to you there is that that's – paragraph 45 of your statement - - -?---Okay.
>
> - - - is the first time that you are selling pills or you're asked to sell pills for… – Mr Stevens. What do you say? That's the first time in your statement you discuss that?---First time in my statement what, sorry? I discuss what?
>
> That you discuss actually selling pills for Mr Stevens at paragraph 45?---No, that wasn't the first time.
>
> No, I'm talking about your statement?---As I already told you, some in this thing is a bit back-to-front. It's not exactly how everything, bit by bit, panned out. It was to the best of my knowledge at the time. I've already told you that."[36]

[32] The sequence of events in the statement was the subject of further explanation by YBS, when he was referring to the timing of the pill press arriving and asking others to help sell the pills:

> "Do you accept that it's after Mr Stevens asked you if you know anyone who can get rid of pills through? You reply I don't know anyone and it's then in your statement at paragraph 46, you speak about making inquiries with this Mike?---Yeah, Mike was towards the end though so I don't know why – why I said know anyone. Mike was towards the end after I asked around because this was after – in between the pill press arriving and this conversation. There had already been a phenomenal amount of pills made and sold so I don't

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32 AB 446.
33 AB 465-466.
34 AB 467.
35 AB 468.
36 AB 468 lines 24-43.

> – I don't know why that's in there like that. Mike was the last person I dealt with with the pills.
>
> So you were selling pills to other people before you started using Mike?---There was – yes, that's right, the people that were on that sheet, and that was in between getting this machine and this conversation so I don't understand why that's like that."[37]

[33] He said the press arrived before Christmas.[38] YBS denied the suggestion that there was, in truth, no pill press.[39]

[34] He was cross-examined about the incident where he said the car bringing the pill press up from Sydney had been pulled over because of problems with its registration. It was put to him that if there was a conversation between him and Stevens it was in the context that YBS had used the car to move house, and crashed it, but not told Stevens. YBS said he had crashed the car, but he did tell Stevens.[40] He said:

> "Well, do you recall the car being pulled up for [being] unregistered and Mr Stevens - - -?---I don't recall. I recall the phone call of the car – that I got about the car being pulled up because I wasn't driving it. A woman was driving it.
>
> And that Mr Stevens asked you about it because you were the last one to have had the car?---I was the last one to have had the car. Yeah.
>
> And that - - -?---But that wasn't before – I don't think that was before it was crashed. When the – I don't know the lady's name, whoever picked up the pill press and the car was out of registration. I think I crashed it after that, by memory."[41]

[35] He also denied borrowing a utility from Stevens to move to a unit on Chevron Island, saying he bought new items for that unit.[42] He agreed that he had crashed the utility but could remember very few details of how the resultant claims were resolved. He could recall being sent a message from Stevens that said: "Can you get him to sort out the car. If the cunt doesn't do anything, I will break his fucking neck." He said that was to do with fixing the horn on the vehicle.[43]

[36] YBS denied that there was no talk of a pill press being on the back of a utility, and that if Stevens said anything was on the back it was car motors.[44]

[37] YBS was cross-examined on his criminal record, which included a conviction in November 2014 for burglary and robbery. The events surrounding that offence were explored, including: his denial to police of being involved in the robbery,

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37 AB 469 lines 25-36.
38 AB 468.
39 AB 470.
40 AB 469-470.
41 AB 470 lines 38-47.
42 AB 483.
43 AB 484-486.
44 AB 471.

notwithstanding that he later pleaded guilty; and the psychological report used in mitigation of his sentence for that offence.[45]

[38] YBS's house was searched by police in May 2008, only a few days after he and his partner had returned from a three week overseas trip. He was found to have 98 ecstasy tablets and $105,000 in cash.[46] He said the $105,000 came from the pills sold for Stevens.[47] He said he used some of the drug money to go overseas.[48] YBS said that there was no deal with the (then) prosecution and investigators that, out of the police search of his house, he would face only a charge of simply possessing the pills.[49]

[39] A "tick sheet" was also found during the May 2008 search.[50] YBS agreed he had lied about that tick sheet during the committal, when he said it was not his, nor was the writing his.[51] In fact the handwriting was his.[52] At the committal he also denied knowing the people on the tick sheet, when it was true that he knew some of them. YBS said he lied about that to protect the people on the sheet.[53]

[40] The tick sheet recorded 18 entries for the sale of 21,000 pills in total, for between $200,000 and $250,000.[54] YBS maintained that he had stopped selling the drugs in January or February 2008, before he left for the overseas trip.[55]

[41] YBS had reached an agreement with the Crime and Misconduct Commission[56] to give evidence against Stevens, and signed an undertaking to that effect.[57] He gave a 25-page statement to the CMC on 10 October 2008.[58] The trigger for that was that YBS's home was invaded one night by people wanting money in relation to some "dud pills", and a person called Lee Capper was held at knifepoint. As a result YBS rang an officer with the CMC.[59]

[42] He agreed that in his CMC statement he said that some of the $105,000 was his own money that he had taken out of an ANZ bank, and that only $40,000 of the money was drug-related. He said he could not be sure just how much of that money was drug money.[60]

[43] YBS was given an undertaking by the Attorney-General on 25 May 2009, that any evidence given by him (or derived from his statement) could not be used against him.[61]

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45 AB 401-405.
46 AB 405, 425.
47 AB 406.
48 AB 427.
49 AB 426.
50 AB 408.
51 AB 409.
52 AB 420.
53 AB 425.
54 AB 421.
55 AB 422.
56 Later the Australian Crime Commission.
57 AB 407.
58 AB 426.
59 AB 432-433, 441.
60 AB 427.
61 AB 429.

[44] YBS denied that he had posted a Facebook message in August 2009, which said: "Hey, sorry doggin [Stevens], but I had to get off my charges somehow. I want to kill the cunt anyway and I will sooon (sic)". He admitted that it was sent from his Facebook, but that Lee Capper had admitted hacking into his Facebook and sending that message.[62] He denied that he was "doggin" Stevens to get off his own charges.[63]

[45] YBS had an interest in drag-racing cars before he met Stevens. He accepted that he would have spent about $100,000 to $150,000 over the years, modifying his racing car.[64] YBS said that he and Stevens discussed Stevens' building a car for YBS to race in. He denied that it was a car to purchase, that the price was $350,000, or that a quote was done. He repeatedly denied that a form of quote addressed to "PT" was to him, or that he had previously seen it.[65] YBS denied that any repayment he made to Stevens was in respect of a racing car being built for him by Stevens.[66]

[46] YBS said his own arrangements were that everything was in his partner's name (YBT), as he had been bankrupt in 2003, when he was 25 or 26.[67]

[47] YBS was asked about the trips to Sydney and their sequence, going through his CMC statement. He was unable to remember some details as it was too long ago:[68]

> "Was there two occasions you'd been in Sydney - - -?---There were other trips. I can't remember. You're asking me questions I can't remember. It was too long ago.
>
> Well, when discussing your trip, with Mr Boyle, to Sydney involving Troy and a utility, you did not mention Nick or Kim?---Okay.
>
> Was that deliberate? Were you protecting them the same way you were looking at protecting people at the committal hearing?---No.
>
> So it's either a different trip or you've forgotten. Which is it?---It might be both."[69]

[48] YBS denied the suggestion that he did not speak to Stevens by phone while in Sydney on the first trip down. He said he did speak to him and explained that while he might not have good recall on some things, he did on others:

> "Well, I'm putting to you whoever it was you spoke to on the phone was not Mr Stevens. What do you say?---I don't have anything to say.
>
> And that trip to Sydney with you and Nick and Kin and Troy did not involve Mr Stevens at all?---I don't know. I spoke to a Brett Stevens on the telephone.

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62 AB 431.
63 AB 432, 498. It is fair to assume that "doggin'" was a reference to revealing Stevens' drug-related conduct to the CMC.
64 AB 442.
65 AB 450-452, 464.
66 AB 488-490.
67 AB 443-444.
68 AB 446-448.
69 AB 448 lines 37-46.

> And just out of curiosity - - -?---Sure.
>
> - - - you didn't mention Kin and Nick being involved in that trip to Sydney when you were giving evidence to Mr Boyle?---Yesterday? That was a particular trip that – it must have been a different trip. As I said, the – the way it shows in here after having a bit of a read, is what – what happened – I mean, it's been a while since, I mean, the exact event. Event by event, I might be a bit confused with. But apart from that, everything else is true."[70]

[49] YBS could not recall whether airline tickets to Sydney or hire cars had been booked in his name or not.[71]

[50] YBS accepted that the sentence imposed in July 2010 for possession of 98 pills was 12 months' imprisonment, suspended after 53 days. However his memory or understanding was not good, as when he was shown the sentencing remarks:[72]

> "So that doesn't refresh your memory about the penalty that was imposed? You're shaking your head?---It sheds a bit of a light on it. I don't really understand it too much.
>
> No. But do you accept that those things are in your document I just put to you?---No. But I accept the things on the bit of paper in that document. Yes."[73]
>
> and
>
> "And in the closed court, do you recall the judge saying to you: *The sentence that I have imposed has been reduced under section 13A of the Penalties and Sentences Act.*
>
> ?---I don't remember her saying all this to me. It was five years ago but if it's on here, that's what she said.
>
> Well, do you accept that sentence is on that document?---Sure.
>
> And then the justice goes on: *But for section 13A, the sentence that I would have imposed would have been a sentence of imprisonment of 18 months suspended after four months for an operational period of two years.*
>
> Do you accept that's in the document?---That's what it says.
>
> Do you recall that being said?---No."[74]

[51] Stevens lent YBS some money for the deposit on a unit. Stevens executed a Statutory Declaration in respect of it, dated 1 November 2007, and referring to a sum of $179,500. The Statutory Declaration referred to it as a gift.[75] That amount was not repaid.[76]

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70 AB 463 lines 28-41.
71 AB 449.
72 AB 459-460.
73 AB 460 lines 29-34.
74 AB 461 lines 26-44.
75 Exhibit 2, AB 2626.
76 AB 399.

[52] As to the loan of $175,000 from Stevens, YBS said that the wording on the statutory declaration "was the way it had to be worded to get the finance".[77] He could not get finance himself.[78] He was asked why he had to get the loan and why he did not use drug money:[79]

> "So if you're selling pills to Mr Stevens, why did you need to borrow money from him to buy this unit. Why couldn't you just use your drug money?---At the start, … there wasn't really much money getting made. … I don't think the pill press … was around this time. I can't remember much about it, and this doesn't really have much to do with me. This is between YBS and [Stevens] … it doesn't have my name on it, does it? No. So it's nothing to do with me."

[53] YBS was unsure of the delivery location for the pill press:[80]

> "And when it was delivered to this address, am I right in saying you believe the address to be at the back of Aspley somewhere?---I don't know the exact location.
>
> Again, if I can take you to the spot. Do you recall, in your statement, that you believe the suburb where the pill press was delivered to was Albany Creek?---It might have been the back of Albany Creek, yeah.
>
> Do you accept that's in your statement, though, that it might have been Albany Creek? I can - - -?---Yeah, I would accept that. I don't know the exact suburbs. It would be around that area."

[54] YBS said he watched Stevens test the pill press which was how he could relate the details of its construction and working.[81] He denied that the press had nothing to do with Stevens.[82]

[55] As to the trip when YBS said he brought back a suitcase with 25 kilograms of MDMA in it, he said that his previous police statement (that he did not know what was in the suitcase) was mistakenly untrue.[83] He also agreed that the statement did not record that Stevens opened the suitcase in his presence, which, he said, was something he forgot.[84]

[56] He was asked about an occasion referred to in his statement when he said he took MDMA pills to a "Mike". YBS could not remember the address where he went to take pills to "Mike", saying it was on a canal in an area towards Runaway Bay. He denied that he was making up that allegation as part of an attempt to cover for someone else, and said he showed officers from the CMC where it was.[85]

[57] YBS denied the suggestion that he never left things for Stevens on his back verandah.[86]

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77 AB 471, 490.
78 AB 489-490.
79 AB 472 lines 1-6.
80 AB 474 lines 14-23.
81 AB 474-475.
82 AB 475.
83 AB 476.
84 AB 477.
85 AB 478-479.
86 AB 479-480.

[58] It was Brown who introduced YBS to Heilbronn. YBS said he did not know his name, only that he was called "Jewish". He said he mostly dealt with Kieran Brown.[87] He agreed that there were only a couple of times that Stevens met Brown in YBS's presence, and that was at Stevens' properties.[88]

[59] As to the confrontation at his house, YBS agreed that it was about January 2008, and said that it concerned the pill press that went missing and poor quality pills. He denied that there were no balaclavas worn, and denied that Stevens did not threaten him.[89]

[60] YBS denied the suggestion that Stevens: "never had any drug related conversations with you"; never arranged (directly or indirectly) to get pills to him; had no involvement in the pill press; had no involvement in the trips to Sydney that YBS had related; had no dealings with YBS beyond discussions about a racing car.[90] He denied that he had made false allegations against Stevens to get himself out of trouble.[91]

[61] As to the incident when Stevens' utility was pulled over by police in New South Wales, this exchange occurred:[92]

> "That – excuse me – just one thing, the talk involving you and Brett and the talk about a car being picked up in New South Wales, carrying something in the car, being stopped because it was unregistered, that only occurred the once, didn't it?---The talk about the car being unregistered?
>
> Yeah. Not as if there were, as far as you understood - - -?---There was one phone call about that, yeah.
>
> Not as if, for example, there were two occasions when cars connected with… Stevens were pulled over in New South Wales because they were unregistered and had something on the back of them?---That's the only one I remember.
>
> Just the only one. Well, I put it to you that occurred and the car, being owned by Mr Stevens, or connected with Mr Stevens, was pulled over in New South Wales on 20 January 2007. Can you comment one way or the other?---I don't know - - -
>
> 2008 – 2008. Thank you, Mr Boyle?---I don't know when the rego was due on it, no."

Re-examination of YBS

[62] In re-examination YBS said that the pills reflected in the tick sheet came from Brown and were manufactured on Stevens' pill press. The majority of the money recorded was not YBS's profit, but went back to Stevens.[93]

[63] YBS explained why he went to the CMC:[94]

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87 AB 487.
88 AB 488.
89 AB 492.
90 AB 494-496.
91 AB 497-498.
92 AB 495 lines 1-17.
93 AB 499.
94 AB 499 line 40.

> "[Stevens] said he had fixed the problem with the 25,000 pills that were duds. Nothing was getting fixed about it, and people were coming and threatening myself and my fiancée, and I'd had enough."

[64] He was shown the document said to be an invoice for building a car, and said again that there were no discussions about building a car, though there were discussions about driving a car.[95]

Police and other evidence

[65] A number of police officers and officers with the Australian Crime Commission gave evidence as to: the issuing of telecommunications interception warrants; the installation of intercepting surveillance, and tracking and listening devices; phone investigations and phone recordings; surveillance logs; their observations while on surveillance; recordings of intercepted calls, texts and video footage of meetings and events; and the documentation of all the foregoing. That evidence included the identification of particular vehicles and people concerned with them. The people identified included Vlatko Tesic. Warrants were issued in respect of Vlatko Tesic, Katherine Stevens, Heilbronn, Kevin Marshall and Troy McLean. The warrants covered a number of telephones.

[66] An officer of the Crime and Corruption Commission gave evidence of installing surveillance devices in a particular hotel room. He identified the recording of the intercepted conversation between Stevens and his employee, Krystal Carroll. That conversation was captured on 9 January 2009.

[67] The telephones included a number belonging to Stevens, but also mobile numbers in other names.

[68] Extensive evidence was given as to the way in which calls were monitored and recorded, and subsequently listened to by officers. Evidence was given as to the way in which the transcripts of intercepted phone calls and conversations were made. That included the identification of various parties as "M1" or "M2" and so forth. The intercepted calls were on CD's, and arranged in a spreadsheet which was identified.

[69] The evidence referred to above provided a very complete coverage of the provenance and integrity of the evidence as to: surveillance; interception; search warrants; identification of persons, times and places; search results; scientific analysis; and identification (to the greatest extent possible) of conversations between Stevens and others, and various combinations that excluded Stevens.

[70] A police officer gave evidence that he stopped a Ford Falcon utility on 20 January 2008, when it was travelling north near Nerong (in New South Wales). The utility had a Queensland registration number. Two large wooden packing crates were on the back tray of the utility. The driver produced her drivers' licence. The vehicle's registration had expired in December 2007. Because of the isolated area and the weather, the police decided to escort the vehicle to the nearest town, Bulahdelah. The driver was directed to leave the car there and not drive it any further until registration had been effected.

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95 AB 501.

[71] The police recording of the encounter became Exhibit 5. It revealed that one of the boxes had strapping over it. The larger of the boxes was about one metre in depth and the smaller of the boxes somewhat narrower.

[72] An officer of Queensland Transport gave evidence that the registration on the Ford Falcon utility was paid on 21 January 2008. The records indicated that one Katherine Stevens[96] paid the registration renewal. The utility was not registered in her name, but in the name of "Dion Prowse" at an address in Everton Hills.

[73] A police officer gave evidence that he intercepted a vehicle being driven by Heilbronn and a person, Sean Beachy, on 18 October 2008. As a result of their investigations they executed a warrant at an address in Rebecca Court, Broadbeach Waters. There they found a large mechanical pill press, and a quantity of drugs. In addition, another pill press was found in a bedroom of the same premises. The larger pill press was one that could press out multiple pills at the same time, whereas the smaller press could only do one pill at a time.[97]

[74] Police enquiries revealed that the house where the pill presses were found was rented by Heilbronn under a false name. Searches were also conducted at Heilbronn's other residence and at premises occupied by other persons.

[75] In cross-examination the police said that Stevens became part of the surveillance because of the conversations he was having with Vlatko Tesic, that Stevens was of "extra interest because it was identified he was supplying drugs to Vlatko Tesic".[98] It was put, but denied, that there was interest in Stevens because he was a celebrity drag-racer.[99]

[76] It was confirmed in cross-examination that the premises where the pill press was found by police were not being used to live in, but just to make pills.[100] DNA and fingerprint examination did not return very good results, inferentially because there were plenty of disposable gloves around the place.

[77] Police officers were called to testify to the continuity of possession and proper treatment of seized items.

[78] A police officer gave evidence under the name of Symonds. He had been an undercover officer involved in transactions with Vlatko Tesic for the purchase of methylamphetamine. His evidence concerned recordings made of those meetings and his identification of the meaning of various things said in the conversations. He also identified Tesic from photographs.

[79] Officer Symonds identified that a reference in the conversations with Tesic to "elbows" was a reference to the weight of methylamphetamine, where an "elbow" was a "pound" in weight. His evidence also included various drug deals done with Tesic.

[80] In cross-examination, Officer Symonds said there were ten drug purchases from Tesic. He said there were about 20 purchases of MDMA pills, at about 1,000 pills at a time. During the period of this operation (11 months), Officer Symonds did not

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96 Stevens' wife.
97 AB 808.
98 AB 819.
99 AB 819-820.
100 AB 824.

meet Stevens. Further, Tesic did not directly refer to Stevens, although he mentioned drag-racing one weekend and a "Steve-o".[101]

[81] Another officer gave evidence concerning her operational control of Officer Symonds for a period of time. She took possession of substances purchased by Mr Symonds which, on testing, revealed that it was methylamphetamine. She also gave evidence of the identification of Heilbronn as the person from whom Mr Symonds obtained the drugs.

[82] An Australian Crime Commission officer gave evidence that concerned identification of persons from the surveillance carried out. Matters referred to included:

(a) on 18 August 2008, at 4.51 pm, Stevens left his vehicle and entered a public telephone box; after using it for some minutes he exited the telephone box at 4.56 pm and returned to his vehicle and departed;

(b) at 5.01 pm the same day, Stevens left his vehicle to enter a different public telephone box, where he used it for three minutes, exiting and returning to his vehicle;

(c) at 5.42 pm the same day, on the evening of the same day Stevens was seen in the company of Tesic at a restaurant; video footage suggested that Tesic threw a punch at Stevens; also present was Tesic's brother; video footage showed Tesic's brother throwing a punch at Stevens, following which there was an animated and heated conversation with Stevens in front of the restaurant.

[83] Police also gave evidence of a meeting between Stevens and a Darren Dark on 24 August 2008. That meeting was at about 7.04 pm and it was followed about an hour later by another meeting at a Shell Service Centre, when Stevens and Dark had a brief conversation. Following the conversation each returned to their vehicles and continued driving. Shortly thereafter, Dark's car was intercepted by Police. They recovered a bag which contained $200,000 in zip-sealed large plastic bags.

[84] An officer with the Australian Crime Commission gave evidence of his involvement in surveillance duties concerning Stevens. He referred to 30 July 2008 when he observed Stevens going to his car at the Brisbane Airport. Krystal Carroll went to the passenger side of the vehicle. An hour later Stevens' vehicle neared a car wash on the Gold Coast and Stevens exited the vehicle. He met Tesic at the car wash.

[85] He also gave evidence that on 18 August 2008, Stevens drove from his unit to a public telephone booth at Broadbeach where he appeared to use the phone for one minute. After leaving the telephone box Stevens drove back to his unit.

[86] Police gave evidence that a property at Enoggera Terrace, Red Hill, was searched on 19 December 2008. Two pill presses were found.[102] The discovery came after a vehicle was intercepted by police, and the driver was one O'Campo, and the passenger one Dacombe. O'Campo's fingerprints were found on one of the pill presses in the premises.[103] There was no link to Stevens in that house.[104]

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101 AB 614.
102 AB 1131.
103 AB 1132.

[87] Various samples were taken from the Enoggera Terrace residence, and revealed methylamphetamine.[105]

[88] Evidence was also given by a forensic and scientific officer that analysis on the pill presses seized at Rebecca Court revealed MDMA traces.[106] The evidence was that the multiple pill press can produce 5,000 tablets per hour.[107]

[89] The foregoing is merely a synopsis of the type of evidence given to ground the surveillance and phone interception evidence. Quite a number of police officers or officers of the Australia Crime Commission were called to testify to various aspects of the surveillance efforts. Separate identification or further elaboration of their evidence is not necessary.

Evidence of YBT

[90] YBT, YBS's partner in 2008, gave evidence. She said that she met Stevens when she and YBS went to a drag-race meeting in Sydney.[108] She said when they drove back to the Gold Coast they took a cardboard box about the size of a shoe box. She could not recall how they came to have possession of it.[109] She did not know what happened to the cardboard box.

[91] She recalled that she had been to Stevens' house, which she said was at Burpengary. This occurred between four and six times. The visits were short, taking between a few minutes and 10 minutes,[110] with the longest one being about 20 minutes.[111]

[92] She came to know Brown, meeting him through YBS. She could recall only one occasion when they met, at a service station where YBS obtained a plastic bag containing drugs in the form of pills. That was at the Mobil Service Station at Coomera.[112] Other meetings occurred at a service station and Hungry Jacks. The meetings between YBS and Brown were short (up to 10 minutes) and usually YBS would get out of the car, speak to Brown then return to the car.

[93] YBT was unable to recall some details, particularly the time frame of events.

[94] She recalled the purchase of her first house, at Chevron Island. She said YBS had a bad credit rating so everything was put in her name.[113] The deposit consisted of a cheque that was picked up from Stevens' house and she thought it was for something like $179,000.[114] She did not know the arrangements by which the cheque was obtained, except that YBS told her to go and pick it up.

[95] She was shown the Statutory Declaration relating to the "loan" between Stevens and YBS, identifying it as the document she had seen. She could not recall any dealings with Stevens about the document.

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104 AB 1135.
105 AB 1139-1140.
106 AB 1142.
107 AB 1145.
108 AB 1060-1061.
109 AB 1061.
110 AB 1062.
111 AB 1062.
112 AB 1062-1063.
113 AB 1064.
114 AB 1065.

[96] She and YBS bought a second house at Rudd Street, Broadbeach. She could not remember the purchase price or the deposit. She thought that the funds for that purchase came from drug dealings.[115] YBS provided all the money for the purchase, but she could not remember exactly what the figure was.[116] There came a time when she and YBS were getting a number of threats. They went to the USA for about two and a half to three weeks. After that the threats continued. Eventually the police executed a search warrant at Rudd Street, Broadbeach and found money and drugs.[117] She was charged with possession and YBS was imprisoned.

[97] After YBS was released she, YBS and Stevens went to dinner in Carseldine. YBS and Stevens went outside to speak to each other and then came back in. At one point Stevens "said something along the lines of, if you make a deal with anyone I'll kill you or shoot you, or something like that, and then I walked out".[118] The next day they received a summons from the CMC. It was the continued threats that led she and YBS to speak to the CMC.[119]

Cross-examination of YBT

[98] She could not recall whether there was more than one overseas trip, but thought that they needed to go away just before the police raid.[120]

[99] She said that YBS did not have a good credit rating so he could not get approval for any finance, which is why things were placed in her name.[121] YBS contributed about $600,000 to the Rudd Street property, in cash.[122] In addition, there was a cheque for $60,000. She got a loan from a bank, which YBS repaid.[123]

[100] She identified the "tick sheet" as being in YBS's writing, and agreed that the police found $105,000 in cash. She understood that to be drug money.[124] When the Chevron Island house was bought, they had new furniture for it, paid in cash by YBS.[125]

[101] She was unable to say whether YBS was dealing in drugs before she heard of Stevens. The only time she saw YBS given drugs was the one occasion when Brown gave him a plastic bag full of tablets.[126] She could not recall the names Heilbronn or McLean. She did not see Stevens supplying drugs to YBS, nor giving him money, nor did she hear any "drug talk".[127] She accepted that in her statement she had recorded the first instant as being at Eastern Creek Raceway in Sydney, and that when they left YBS was in possession of a cardboard box.[128] Beyond that she could not remember any details.

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115 AB 1065-1066.
116 AB 1066.
117 AB 1067.
118 AB 1068.
119 AB 1068-1069.
120 AB 1071-1072.
121 AB 1075.
122 AB 1076.
123 AB 1077.
124 AB 1078.
125 AB 1078.
126 AB 1080.
127 AB 1081.
128 AB 1082.

[102] She could not recall much of what was put to her about various aspects of the dealings. She could recall that YBS was in possession of pills other than those given to him by Brown.[129] She also confirmed that there was a home invasion when they were at Rudd Street.[130] It was after that that she got in contact with an officer from the Australian Crime Commission and cooperated with that body. She denied that YBS ever discussed with her that he would falsely accuse Stevens of misconduct to get himself out of trouble.[131]

Evidence of Szczepanski

[103] Mr Szczepanski was a mechanic working for Stevens. In November 2008 Stevens asked him to go to Western Australia to pick up some money. He gave him a piece of paper with a person's name on it, and a phone number to call him. His instructions were to go to Perth, then drive south to Mandurah, get a hotel, and then call the person and in doing so to use a pay phone.[132] The instructions from Stevens were to tell the contact in Mandurah that he (Szczepanski) was there to catch up for a beer and "he would know what that meant".[133]

[104] Szczepanski travelled to Perth, hired a car and then drove to Mandurah. He used a pay phone to call the person indicated on a note given to him by Stevens, that person being referred to as "Single". Single met him in the car park of the hotel and told him to see a movie and that he would then give him a call. That was the extent of the conversation.[134]

[105] Szczepanski went back to the hotel in the afternoon and was met by a man, not Single, who gave him a bag with money in it. That also occurred in the car park of the hotel. The man said that he was $20,000 short, and that Szczepanski should follow him "back to the club house".[135] He did so and received a plastic shopping bag with further money in it.

[106] He returned to Brisbane and as he was driving away, police intercepted his vehicle and seized the money, which totalled $99,700.[136] When Szczepanski told Stevens what had happened and that the money had been confiscated, Stevens said it was "quite strange because … it's for a sale of a motorbike".[137] Stevens did not seem to be overly worried or concerned about the confiscation as it was for the purchase of a race bike and he would get the money back because it was not illegal to carry money.[138]

[107] Szczepanski identified the person "Single" as a drag-racer. Szczepanski said he did not know Single, but had found out since that his surname was Ashelford. He understood Ashelford to be a drag-racer with his own racing bike team.[139]

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129 AB 1085.
130 AB 1086.
131 AB 1087.
132 AB 1091.
133 AB 1093.
134 AB 1094.
135 AB 1095.
136 AB 1096.
137 AB 1096.
138 AB 1097.
139 AB 1099.

[108] In cross-examination it was put to him that Stevens did not tell him to use a pay phone. Szczepanski denied that, saying that was his instruction.

Evidence of Krystal Carroll

[109] Stevens' private assistant and events manager, Krystal Carroll, gave evidence of her involvement with him. She commenced work for him in June 2008 and ceased when police raided his premises in February 2009.[140] In addition to being his PA, she commenced a sexual relationship with Stevens. Relevant aspects of her evidence included the following:

(a) there were numerous occasions when she travelled with him, to work or otherwise, when he would meet various people; she was always directed to wait in the car while he went to meet the relevant person; those meetings could last a few minutes to a maximum of 20 minutes; she never went to any of the meetings;[141]

(b) she questioned him about what he was doing and he responded that it was about money, which he needed otherwise he would lose his trucks;[142]

(c) at one point he told her that there were drugs, but "he would never touch them, he was like the middle guy";[143]

(d) the people that Stevens was meeting did not, to her knowledge, have anything to do with his racing or other businesses;[144]

(e) she could recall him meeting with someone that she had not seen before, namely a man of Indian appearance; the meeting was on the way to the Gold Coast on the highway at a place near a fish and chip shop; she waited in the car while he got out and met the man; he was a few minutes (maybe 10 minutes) and then he got back in;[145]

(f) she recalled an occasion when approximately $100,000 in cash was seized and she spoke to Stevens about it; Stevens said that he was going to lose his trucks if he did not have the money; he did not say the money was drug related, but she could recall that Stevens said he told the police the money was a deposit on a race car;[146]

(g) she referred to one of the recordings of a conversation between her and Stevens where Stevens said "remember all that stuff I told you about. I was getting something to make money"; she said that related to a conversation she had had with him asking what would he do if he was caught, and he said that "he wasn't touching anything";[147] she understood the reference to his "not touching anything" to be talking about drugs;[148] she recalled Stevens tell her that he was getting something that could make him money, but he never said what that was, simply

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140 AB 1201.
141 AB 1186-1189.
142 AB 1188, 1193.
143 AB 1188.
144 AB 1189.
145 AB 1191-1192.
146 AB 1192-1208.
147 AB 1195.
148 AB 1197-1198.

that he was not touching anything and that is why he would not be caught;[149]

(h) when cross-examined about his response, that if he was caught that he was not touching anything, it was suggested that she assumed he was talking about drugs; she agreed, but said she could not think what else it would be; she accepted it was a possibility that that was a view she had formed in hindsight;[150]

(i) Stevens had a number of phones at any one time; his main phone was a Blackberry, but he also had prepaid phones; when she asked why he had the other phones he answered that it was because he could smash them once he had used them and that way "they couldn't find the serial number on the phone";[151] in cross-examination as to that, it was put to her that that was only in the context of him being angry and throwing them; she denied that, saying "he wanted to get rid of them";[152]

(j) in cross-examination she denied the suggestion that Stevens "never admitted to you that he was involved on any level with drugs", saying "he spoke of drugs"; however, she agreed that he did not say that he was involved with distributing drugs;[153]

(k) she agreed that he was trying to source money from non-conventional lenders and had been trying to arrange finance;[154]

(l) in cross-examination she denied the suggestion when it was put to her, that she had never waited in the car on the Gold Coast while Stevens met with people;[155]

(m) she agreed that she had never seen him possessing drugs, even for his own use;[156]

(n) she denied the suggestion that when he talked about getting something to make money, that was a scheme to offload his trucks;[157] and

(o) in re-examination she reiterated the conversation where Stevens said, in respect to drugs, that he would not touch them, but he was the middle guy.[158]

Financial evidence

[110] A forensic accountant, Ms Linklater, gave evidence of her analysis of all the financial information in respect of Stevens' companies and personal accounts, as well as those of his partner, Katherine Stevens. She described the process of identifying bank accounts, assembling bank statements supplied by all the banks, then analysing the data to see if a source for the deposits into accounts could be

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149 AB 1198.
150 AB 1215-1217.
151 AB 1200.
152 AB 1214.
153 AB 1203.
154 AB 1206.
155 AB 1213.
156 AB 1215.
157 AB 1217.
158 AB 1220.

identified. This included companies which were controlled by Stevens or his wife, as well as their personal accounts. The source material for the data relied on was tendered, as were the reports prepared by her.

[111] In some cases Ms Linklater extracted further information from the banks, namely underlying transaction records, such as bank vouchers and transfer reports. Those that could be reconciled by the documents were eliminated, leaving a subset of transactions for which there was no description in a bank statement or on any of the other bank documents. The methodology employed was to see if there was any indication on a transaction voucher or in the MYOB records to suggest where the funds had come from, and if there was, that transaction would be excluded from the calculation of unsourced income. In that way, income from the sale of merchandise was eliminated.

[112] By reference to a number of transactions, Ms Linklater showed the jury how she went about her task and what the various entries were taken to mean. For example, the jury followed the tracing process in respect of loans by Stevens to any of his companies, and deposits made to bank accounts.

[113] Ms Linklater had prepared schedules for the jury's use, so that the various transactions could be followed. The schedules showed the date of the transaction, the amount, the memo in respect of that transaction as it appears in the MYOB accounts from the Stevens' premises, the memo as it appears in the MYOB accounts from the accountants, bank accounts and any reference number for MYOB files. The schedule identified 67 transactions where the descriptors were quite vague and she could not determine the purpose of the transaction.

[114] Ms Linklater stepped the jury through various entries in the schedules, identifying the figures shown there, the methodology, the source documents and explaining why certain entries were made. Other schedules were prepared dealing with other transactions, in much the same way. The schedules identified and analysed deposits from one company to another, entity loans, depositor details, bank locations, and many more details concerned in her analysis.

[115] Ms Linklater also dealt with some specific deposits and was able to demonstrate that the analysis could show a source for them. She also identified cash withdrawals by Stevens which, over the period 1 July 2007 to 4 February 2009, totalled $361,809.94.[159]

[116] Exhibit 107 was the schedule produced by Ms Linklater, which was a summary of all the information that she had given to the Court. The total of all transactions for which she was unable to determine a source, was $1,569,192.15.[160] If one takes the figure for cash withdrawals out ($361,809.94), the total of the unsourced transactions was $1,207,382.21.[161]

[117] She identified the documents relating to the $100,000 which Mr Szczepanski had retrieved in Western Australia. That consisted of an invoice to Attitude Racing for an amount of $100,000, less a deposit of $10,000.[162]

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159 AB 1337.
160 AB 1338.
161 AB 1338.
162 AB 1339-1340.

[118] She was unable to find YBS's name in any of the books of account, or any of her records. There was, however, one reference to "P" in the documents concerning cash cheques. That was a cash cheque for about $175,000 with the reference "Cash P". That particular item was excluded from the unsourced income figures, because she was aware that Stevens had given YBS $175,000 (approximately) towards the purchase of a house.[163]

[119] In cross-examination Ms Linklater conceded that she had not conducted an audit of the accounts. She also said that she did not, as part of the investigation, work out what sort of business Stevens was conducting, how many trucks took part, how many race cars, and so forth. She also accepted that the turnover of the businesses associated with Stevens was, in the 2007/2008 financial year, in the millions.[164]

[120] In the course of cross-examination, Ms Linklater identified some entries in journals which she described as "very unusual" and reflecting a "very unusual transaction".[165] What she was referring to were entries which purported to move money from directors' loans to income. It was unusual "because it's reducing a liability and, all of a sudden, making an income".[166]

[121] She also referred to that particular entry in the accountant's MYOB version which said "Brett said make it up??" In her view that entry signified that the equivalent entry in the accountant's version was "FD". Ms Linklater's view was that it signified that the Stevens' accounts has been altered.[167]

[122] Ms Linklater agreed that her investigations revealed that Stevens obtained loans from non-bank lenders. She was taken to about five transactions, totalling approximately $1million, and agreed that they were not unsourced funds because the source could be identified.[168]

[123] Ms Linklater agreed that she had not looked at the sponsorship agreements that Stevens had, nor was she able to note which company was associated with which merchandise.[169] She agreed she had no knowledge of the actual sponsorship agreements, as she only focussed on funds coming into a bank account. She said that the fact that some entries were for merchandise did not cause her to explore what the merchandise agreement was, what he was selling, when he was selling it and how often, because that was not the purpose of the analysis she was conducting.[170]

Admissions

[124] Formal admissions were made: Exhibit 111. They were to the effect that YBS was sentenced on 13 July 2010 to one count of possession of a dangerous drug, at which time he was sentenced to 12 months imprisonment, suspended after serving 53 days. Further, the sentencing judge stated that but for undertaking to cooperate with law enforcement agencies (pursuant to s 13A of the *Penalties and Sentences Act* 1992),

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163 AB 1340.
164 AB 1351.
165 AB 1364.
166 AB 1364.
167 AB 1365.
168 AB 1372.
169 AB 1375.
170 AB 1375.

a sentence of 18 months imprisonment suspended after four months would have been imposed.

[125] The other admission was that on 3 May 2007, Brown was charged with possession of 20,000 tablets of ecstasy (MDMA), the offence having happened on 19 April 2007.

Evidence of Stevens

[126] Stevens' evidence included a history of his involvement in businesses concerning the sale of second hand Harley-Davidson motorbikes, drag-racing cars and drag-racing bikes. He detailed how he started by selling a number of second hand Harley-Davidson motorbikes, progressing to drag-racing using motorbikes, until eventually he conducted a large racing enterprise with multiple sponsors bringing him about $2million per year. In addition to that, he received product from the sponsors which he estimated at well over $1million per year.

[127] Stevens ran his operation from his house at Narangba. In the period in question, between July 2007 and February 2009, he attended a number of race meetings and other events where his racing bikes and racing cars would be shown. He estimated that he would attend about 12 large race meetings or substantial events, to which all of his racing vehicles would be taken. That involved five B-Double semitrailers to take the various cars and bikes and merchandise.

[128] Stevens gave evidence of his other businesses, namely a tattoo shop and a transport company which had a fleet of about 15 trucks. In addition, he operated a business whereby he would build race vehicles for others, at a cost of around $350,000 for a car, and about $120,000 to $140,000 for a bike. At its height, his businesses employed about 30 to 40 people, he said, and for that purpose their employment was through a separate company, Brett Stevens Employment.

[129] He said that in 2007, with the rapid expansion of his race team, he became asset rich but cash poor. He neglected the businesses. He paid more attention to the race team aspect of his businesses, and neglected the trucking business. He said he got a taxation bill for $800,000, at about the same time as work available through his trucking business began to slow because major projects had died off. As a consequence, he sought finance through standard sources, then turned to non-bank sources when that was not successful.

[130] In that context he borrowed from his father ($590,000) and a person called Hocking ($395,000). In addition he borrowed money from Tesic. That finance arrangement was for him to borrow $300,000 in cash and repay it in four months with interest. His evidence was that the interest component was to be satisfied by Stevens' building a "rolling chassis" for a race car. The other unusual aspect of the Tesic transaction was that he had to make four or five separate trips to Sydney to collect the total amount.[171]

[131] Another non-standard finance source was arranged through a person called "Dessman", who was a friend of one of his staff members. That involved Stevens flying to Melbourne to negotiate with a company called State Securities. He was looking to

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171 AB 1402.

borrow $500,000, and to repay in six months with an additional $100,000 interest.[172]

[132] Stevens said that eventually he made the decision to retire because rumours were being spread about him. He said he made the decision to retire during a visit to a friend of his (Ashelford, or "Single") on a trip to Perth on 28 and 29 October 2008.[173]

[133] In his evidence he detailed how his businesses sold merchandise and souvenirs when they were at race meetings and other events. Stevens said he played no role in the disposition of the cash they received from such sales, that being looked after by his wife. Further, he did not have any role to play in the entry of data in MYOB, or in paying bills, or in conducting any banking.[174]

[134] Stevens' evidence about the loan from Tesic was that the agreement did not proceed as planned. Tesic decided he did not want the racing car and asked for his $400,000 back. Stevens said that the altercation between he and Tesic, seen on the intercept videos, consisted of Tesic trying to stab him in the neck with something he had picked up off a table, either a knife or fork. He said it was in that context that he received a text message shortly after that, about Tesic wanting his "400" back (meaning $400,000).[175]

[135] Stevens denied meeting YBS in the way YBS said. His evidence was that YBS wanted a drag-racing car built for him. The particular type was debated and eventually Stevens produced a quote for the job. YBS made payments under the arrangement, totalling $220,000. At one point YBS said that his girlfriend was not happy with him spending all his money on a drag-racing car, that he (YBS) had invested in a Low Doc loan and "needed some … proof or evidence or something that he had the deposit that wasn't money that he'd borrowed for the deposit …"[176]. That was the context, according to Stevens, in which Stevens provided him with a statutory declaration (Exhibit 2). Stevens said that when he provided the statutory declaration he did not expect to actually have to part with the money.[177]

[136] Contrary to his expectation, Stevens paid $175,000 approximately to YBS. Just how that came about was not really explained. He said:

> "I couldn't really say no, because he'd given me over $220,000. So, in fact, it was his own money."[178]

Stevens kept the difference between that sum and $220,000.

[137] As to the first time they met, Stevens' evidence was that YBS simply turned up at the Western Sydney International Dragway, and it was not as a consequence of being invited down by Stevens. Stevens denied knowing he was coming or spending any time with him, and denied providing him with a package to take back to Brisbane. He also denied ever asking YBS to travel to Sydney to collect a package on his behalf, or giving him a suitcase full of powder.[179]

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172 AB 1403.
173 AB 1404.
174 AB 1416.
175 AB 1418-1419.
176 AB 1421.
177 AB 1420-1422.
178 AB 1422.
179 AB 1423.

[138] Stevens was asked in his evidence-in-chief about the occasion on 20 March 2008 when he was seen in a car with YBS and YBS's twin brother, driving slowly in the area of Chermside and Wavell Heights. The car was intercepted by police because it was driving suspiciously slowly through the back streets of Chermside and Wavell Heights.[180] He said he had no recollection of the event, but did not dispute that it was him in the car. He speculated that he might have been looking for Brown because he "wasn't real happy with him".[181]

[139] Stevens was asked about a meeting between himself, YBS and YBT, after YBS had been arrested. He said YBS told him the police wanted to know why he (Stevens) had given him money for the deposit on his unit. Stevens' response was:

> "[W]ell, tell the truth about it. Don't get me wrapped up in your shit … I probably said I'd kill him if he did."[182]

[140] Stevens denied any involvement of the production or supply of ecstasy tablets or any involvement in any drugs whatsoever.

[141] In relation to Brown, Stevens said that he met him through YBS at about the same time he met Heilbronn. He said that he discovered at one point that Brown had his (Stevens') utility. He described the encounter in this way:

> "By accident I saw him walking down a road near the Eagle Farm Racecourse … [a]nd pulled up and got out and confronted him because I was told he had my ute … [a]nd Brown got defensive and was being smart … [a]nd pushed me. So I punched him in the head, knocked him out."[183]

[142] Stevens said his involvement with Heilbronn was limited to lending him $25,000. He said this was simply to help him out as he had "got himself in a bind".[184] Stevens said he lent $25,000 and Heilbronn was to pay back $35,000 over a couple of months.

[143] Stevens said he met Philip Main and Teymar Lewis who were involved or working for somebody (he did not know who), who had dealings with YBS. He said Main and Lewis "had purchased a large amount of pills from YBS that, apparently, weren't what they were supposed to be and when they approached YBS, TBS told him that [they] were mine".[185] He denied that the pills were his, saying that he had met Main and Lewis a few times and sorted it out, to the extent they became casual acquaintances or friends.

[144] Stevens said that he did use prepaid phones, and explained that was because he was annoyed at how many times his normal phone would ring. In addition, he was then having an affair with his PA and did not want his wife reading the calls listed on the phone bill.[186] He said that if he smashed any phones it was only in anger and he

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180 AB 1298.
181 AB 1424.
182 AB 1425.
183 AB 1427.
184 AB 1430.
185 AB 1432.
186 AB 1432-1433.

"probably had four or five drawers full of them at home".[187] He denied ever telling Krystal Carroll that he smashed a phone or phones in order to hide the SIM number or serial number on the phone.

[145] Stevens said that as a result of the violent altercation with Tesic, he tried to pay back $200,000. That cash was intercepted by police on 24 August 2008, six days after the altercation with Tesic. Stevens explained where the money came from and why it was paid in cash:

> "Where did you get the $200,000 from?---We would have had – may have had some of it at home from – left from merchandise money. I borrowed money. I just got it from wherever I could to get that amount together.
>
> Right. And why cash? Why did you want to give Ivan Tesic - - -?---Well he gave it to me in cash."[188]

[146] Stevens said that the intercepts which concerned a reference to "Shetland ponies" in conversation with Marshall was actually in relation to Shetland ponies as he wanted to buy one for his daughter.[189] He went on to explain that the conversation with Marshall seemed strange to him because Marshall had contacted him out of the blue. He did some investigations and discovered that Marshall did not own the property which he indicated that he owned. He then went on to explain what happened next:

> "Yes? ---So that raised my suspicion. I think it was Nick Heilbronn that informed me that Marshall and Kieran Brown were setting me up.
>
> Why? Did you get told why you might be set up?---They probably thought - - -
>
> Well, did you get told why?---No, they – he just said they were – they're setting you up.
>
> And what did you have in your mind as being set up? What did that mean?---It was either to bash me or something worse or to rob me.
>
> So you had that belief, that Marshall might have been involved with Kieran Brown, so what did you do then?---I played along with what he was doing for a while.
>
> And does that explain that conversation that's captured in the listening device, conversation 182?---Yes.
>
> You talk in some detail there about pills and the capabilities of pill presses. Do you recall going into that detail?---I don't recall those actual – that actual conversation, but I know I did speak about that sort of stuff. I was talking it up to try and get them to believe me, because I had my own idea.

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187 AB 1433.
188 AB 1436.
189 AB 1437.

> And what happened after that conversation? Where did all of that go?---Nowhere. The last time I saw Marshall was at a fish and chips shop behind the Beachmere Tavern.
>
> Yes?---When I got there, he gave me some fish and chips – that's the white package.
>
> So this is, again, something that was under surveillance? You and Mr - - -?---Yeah, and I don't know what he told me. He definitely didn't tell me he was leaving at that stage, but he disappeared after that."[190]

[147] Stevens denied supplying Marshall with a pill press.

[148] He also denied hearing YBS speak about being present when a pill press was set up, and denied testing it. He said that the utility that was then intercepted by New South Wales police on 20 January 2008 was, in fact, carrying racing car motors and engine parts in the crates on the back.[191]

[149] Stevens said that there were other motors that he had brought from the same source as those that were on the utility. He had expressed an interest in buying them and then four engines turned up at the workshop of a friend of his in Sydney. He said he could not remember how they got to Brisbane, but he tried to "move them on", meaning sell them. He had not done much about that because he was busy and then pressure started about him paying for the engines. He then gave this evidence to explain the conversation between Wayne Newby and himself in the intercepts:

> "Did you realise that someone was in partnership with Eddie[192] in relation to these motors?---Not at all.
>
> Did you later realise?---Yes.
>
> How did you realise that?---When his partner went into Wayne's workshop and stuck a gun to the side of his head.
>
> And that's that conversation we can hear when Wayne Newby called you?---Yes.
>
> So once that happened, what did you do?---Tried to sort it out as best I could and I went down and met with this so-called partner.
>
> Yes?---Made arrangements to pay the money."[193]

[150] Stevens said that the four engines were never unpacked, but just stacked on a pallet. He ended up giving those motors to Heilbronn, to help him. Stevens' idea was that Heilbronn could sell them at a profit and pay Stevens back. However, that did not happen.[194]

[151] As to Szczepanski's trip to Western Australia, Stevens said that it was in relation to the purchase of five prime mover trucks.[195] Stevens was "acting as a middle man" because some of the persons in the arrangement were from the motorcycle club, the

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190 AB 1437-1438.
191 AB 1440-1442.
192 Identified as a mate of Wayne Newby, a person known to Stevens.
193 AB 1443.
194 AB 1444.
195 AB 1449.

Bandidos. His evidence was he and Single (Ashelford) had some previous involvement with motorcycle clubs and did not get on with the other persons. It was in that context that Stevens referred to a "slopey-eyed guy" in one of the intercept phone calls.

[152] Szczepanski's trip to Western Australia was simply to collect money that was being paid for the sale of a bike. Stevens asked Szczepanski if he would fly over and pick up the money for him and come back.[196] Stevens denied that he instructed Szczepanski to use a public phone or a phone box rather than his mobile phone.[197]

[153] Stevens explained that the conversation recorded between he and Krystal Carroll at the Watermark Hotel was, in fact, him simply referring to an arrangement for the sale of trucks. The reference to "you know how I told you he owes me money", was to Heilbronn. The reference to "his mate's got something", was a reference to a person called Bruce Kong, a financier who could do the finance. The reference to "I know someone that wants that and then I've got to put them together", was to him (Stevens) acting as a middle man and getting a commission.[198]

Cross-examination of Stevens

[154] In cross-examination Stevens said that of all the telephone intercepts and text messages, only one or two involved drugs. One of them involved Kevin Marshall and the other Heilbronn.[199] He maintained that none of the meetings that were arranged in those calls and texts, and none of the meetings that were seen in recorded videos, related to drugs.

[155] He said that apart from his normal phone, he used four or five different mobile phones, and a public phone on very rare occasions.[200]

[156] In relation to the occasion when Szczepanski went to Perth to pick up $100,000 from Ashelford, Stevens explained that Ashelford rang him and asked him if he could get someone to pick it up: "he was paying cash, and … he rang me and asked me if I could get someone to pick it up, because he couldn't get there".[201] He said it did not occur to him as being odd that he wanted to pay in cash, as they dealt in cash a lot. He said that it was for the purpose of purchasing a motorbike, and he was not interested in the source of funds or the nature or identities of the syndicate which Ashelford told him was behind the payment.[202]

[157] Stevens agreed that he had many meetings of short duration, but that was the way he did business. He denied that he talked in coded terms on the telephone and said that he did not like doing business on the phone. As for the phone calls where meetings were arranged, but nothing was discussed on the telephone about what the meeting was concerning, he explained that that was because the people he was speaking to knew what was being spoken about.[203]

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196 AB 1450.
197 AB 1450.
198 AB 1455.
199 AB 1458.
200 AB 1458.
201 AB 1459.
202 AB 1460.
203 AB 1461.

[158] Stevens could not explain why the phone with the number ending in 775, used by him, was registered in the name of John Browning at Lismore. The best he could offer was that it may have been a phone that one of his truck drivers left in a truck, though he could not remember the name John Browning. Nor could he remember the phone number of the phone ending in 626 or why it was registered in the name of Ralph Murphy at Beenleigh. Similarly, he had no explanation for why the phone ending in the number 987 and used by him was registered in the name of Adrian Welsh at Beenleigh.[204]

[159] Stevens was given the opportunity to comment on the fact that he had used a number of phones in false names, and he said that he could not comment as he could not remember the numbers or the names that were being put to him:

> "I can't comment on that as I've just explained to you … [w]hat I said was if I have made an admission that I have used those numbers, I have listened to phone calls or recordings, and it's connected to that number, yes."[205]

[160] Stevens denied using phones registered in false names as a means of preventing surveillance, and denied deliberate destruction of phones to avoid being traced.[206]

[161] Stevens denied telling Krystal Carroll that he smashed phones because then the serial number could not be traced. However he said that he was concerned about whether he was under police surveillance:

> "So you have no concerns about police [may be] listening to phones?---Yes, I do – did have concerns.
>
> In what way?---Because I was unsure of the people that I was dealing with what they were doing.
>
> So who did you have concerns about?---Everybody I speak to.
>
> All of them?---I don't trust anybody.
>
> What about Heilbronn?---Yeah.
>
> You didn't trust him?---No."[207]

[162] Stevens said that in a conversation with Heilbronn on 17 January 2009 his comment, "I can't say much, because I think that you're phone's fucked at the moment", meant that he knew Heilbronn's phone was being monitored by police.[208] He said that Heilbronn wanted to borrow money from him, and for Stevens to introduce him to people who would lend him money, which Stevens refused to do. He told Heilbronn that he would have to wait until he (Stevens) came to see him in person, explaining that:

> "If he was the reason that [Troy McLean's] house was raided, because of him and Troy talking to each other and if Troy suspected that Heilbronn was under investigation and his phone was bugged,

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204 AB 1463.
205 AB 1464.
206 AB 1464.
207 AB 1465.
208 AB 1466.

> the last thing I'd want to be doing is talking about giving him money and lending him money over the phone."[209]

[163] Stevens could not recall, and did not deny, that the call which was made to Heilbronn in that situation was one made from a public phone. The call was not from one of his normal numbers and he could not explain why he was ringing from that particular number.[210] He accepted that he rang from another phone because of his concern about police surveillance, saying: "I think that's evident of what was in the call".[211]

[164] Stevens was questioned about the occasion when he said a racing engine was brought up from Sydney on the utility, having been bought from a man known as Eddie. In that context he was asked about call number 416 in the intercept list. He agreed that it was a conversation between himself and Eddie. He was asked to explain why he said in that conversation: "Yeah, just don't say nothing on the phone 'cause it's red hot". Stevens responded:

> "I was under a fair bit of scrutiny at that stage. It was at Indy, and I had been arrested the night before for doing a promotion on the third floor of the building with my street fight, and handcuffed, and walked down the street … I was arrested for being in charge of a vehicle whilst under the influence … [d]ue to the rumours that had been circulated, and what had happened that night, and the rumour mill on the internet, one, my phone didn't stop ringing all day, and, two, I was suspicious of something going on."[212]

[165] He denied the suggestion that the phrase "red hot" meant that the phone could be bugged saying it was because he was getting so many phone calls on it. He denied the suggestion that he was saying do not talk on the phone because of police surveillance.[213]

[166] He said that at one stage he became concerned about police surveillance on his phone, but could not specify when that was, or why it was.[214]

[167] He was questioned about text 674 sent by him to Tesic. In that text he said "have a concern because police are following me". He said he had simply made that up because he did not want to meet with Tesic alone as they had had a previous altercation. He said his concern was not that police might be following him, and said that he did not, in fact, think he was being followed.[215]

[168] In relation to Heilbronn, Stevens said that he had no connection with the motor industry or Stevens' racing car business, nor any of his businesses, and his dealings with him were confined to: (i) lending him some money, and (ii) on one occasion getting him to drop some tyres off to Tesic. Notwithstanding that, there were 52

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209 AB 1466.
210 AB 1471.
211 AB 1472.
212 AB 1474.
213 AB 1475.
214 AB 1475-1476.
215 AB 1476.

calls or texts between Stevens and Heilbronn.[216] Stevens did not accept that this showed a deal of contact between himself and Heilbronn.

[169] Stevens responded in cross-examination when asked about having gone through all of the intercept phone calls and texts, that he had listened to the transcripts with his legal team, and made admissions as to the ones that involved his own voice, but made no admissions other than that.[217] Further, he did not accept that it was probably him that made or initiated the calls to Tesic.

[170] Stevens resisted the suggestion that he was using prepaid phones in false names to make it difficult for police to intercept calls.[218] When it was put to him that the phone ending in 802 was registered to him, he did not respond, nor would he accept that it was him involved in the phone calls from that phone. He could not suggest anyone else who would have been using the phone.[219]

[171] Stevens could not explain why it was that the phone registered in the name of Browning was registered on 18 September 2008, and the first call was to Heilbronn on 24 September 2008. After some questions he suggested maybe the truck driver who owned the phone registered it on 18 September 2008 and finished working for him on 25 September 2008, leaving it in the truck. He could not respond to the suggestion that it was then used 65 times until 15 November 2008.[220]

[172] Cross-examination then continued to the phone registered in the name of Murphy, which Stevens said he knew nothing about. He could not explain the fact that it was registered on 15 November 2008 which was the last day that the phone in the name of Browning was used.[221]

[173] Stevens also could not comment or explain how it was that the phone in the name of Welsh was registered on 9 December 2008, two days after the last use of the phone in the name of Murphy. He denied that he was deliberately swapping phones to throw police off any intercept.[222]

[174] Stevens was cross-examined about a recorded conversation with Ashelford in which he said "Go on. Shove that. Just shove that in your gob". Stevens denied that that comment referred to drugs (either ecstasy or methylamphetamine) that he was offering for tasting. He said that was actually referring to a particular type of fuel for a racing engine, called nitromethane.[223] He went on to say that the comment "the real clear one's you can get", was referring to the nitromethane that came out of China, and the comment "I've got two lots of people working on it", referred to the chemical analysis of nitromethane that he was conducting.[224]

[175] I pause to note that no evidence was adduced to show that what Stevens said about nitromethane was correct, nor that he ever had two lots of people working on the chemical analysis.

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216 Exhibit 20; AB 1478.
217 AB 1480.
218 AB 1482.
219 AB 1483.
220 AB 1483.
221 AB 1483-1484.
222 AB 1484.
223 AB 1488-1489.
224 AB 1489-1490.

[176] Stevens was then cross-examined about the charge that involved supply of methylamphetamine by Heilbronn to the undercover agent, Symonds. He was shown various photographs and a video which showed a meeting between Stevens and Vlad Tesic[225] in the car park near the Lone Star Tavern. He agreed it was himself being shown in the photographs and video. He could not explain why the meeting only went 13 minutes, nor could he recall what they were discussing. Stevens said the only thing he had to do with Vlad Tesic was in respect of tyres for his bike and the fact that he was going to be lent $50,000 to get Ivan Tesic "off my back".[226]

[177] Stevens was then cross-examined about a conversation between a person called Brad Sydney[227] and Vlatko Tesic. The conversation was on the same day as the meeting between Stevens and Vlatko Tesic in the car park of the Lone Star Tavern. Stevens was asked to explain or comment upon the following things said by Vlad Tesic in that conversation:

> "Yeah. Hey, listen, fucking – I've seen – I've seen [Stevens] today.
>
> He reckons he's red hot – just red hot at the moment. Not wanting to draw heat … because they grabbed that P cunt, and brought him in for fucking interviews, and he fucking got him to roll on fucking [Stevens], apparently … Mover, shaker, blah, blah, blah. Yeah. So they're watching him, and their taping everything, so just fucking be careful."

[178] Stevens denied that he said any of those things to Vlad Tesic.[228]

[179] Stevens was asked about further conversations leading to the supply of methylamphetamine from Heilbronn to Symonds. In one of them, Stevens said to Vlatko Tesic: "Did you want them two tyres for your bike?" Following that, Stevens said to Tesic that he would arrange for "young Nick" to take them down. That was a reference to Heilbronn. Later that day Heilbronn supplied Symonds with two ounces (52.194 grams) of methylamphetamine. Stevens denied that the reference to "two tyres" was a reference to two ounces of methylamphetamine.[229]

[180] Stevens was then cross-examined about the occasion when $200,000 of his cash was intercepted, in the hands of Darren Dark, on 24 August 2008. He explained that he probably assembled the $200,000 in cash from his own funds and perhaps from borrowings from his father. He said he "got it from wherever I could because I didn't need the drama that was being created over the loan that I'd made (sic) from Tesic".[230] He said he was paying in cash because that was how he received it. He was asked to explain why he drove to the Gold Coast to meet Darren Dark, but did not take the cash with him. He said that was because of safety reasons and fear of being robbed. He agreed that the meeting he went to on the Gold Coast was supposed to be between himself and Ivan Tesic. Instead he met Darren Dark.

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225 This person is referred to as Vlad Tesic and Vlatko Tesic in the transcript. Selection of the particular variant is dictated by the passage referred to.

226 AB 1496-1497.

227 Who Stevens knew to be a mate of Ivan Tesic.

228 AB 1499.

229 AB 1501-1502.

230 AB 1505.

Stevens said he thought Darren Dark was Ivan Tesic.[231] They then drove back from the Gold Coast, stopping at a Shell service station because, Stevens said, Dark needed fuel. He then got Dark to wait at a Matilda service station while he retrieved the cash from his home, and delivered it back to Dark. Stevens said he "didn't want the man to come to my house because I didn't know him, and I didn't want anyone coming to my house".[232]

[181] Stevens said there was no reason why the $100,000 from Ashelford was paid in cash, and no reason why it had to be collected from Western Australia, rather than put into an account. He denied it was money destined for drug deals.[233] Stevens could not explain why he had instructed Szczepanski to "go to somewhere and ring [Ashelford] back on his number so you're not on yours".[234] Stevens denied that he was giving Szczepanski a form of code to use when talking to Ashelford, when he said to Szczepanski to go to a motel, then "how you going, mate? … Do you want to catch up for a beer or something?" Stevens did accept that he instructed him to drive to Mandurah, get a hotel and then call to catch up for a beer. His denials that the instructions involved a code were notwithstanding that what was said to Szczepanski was "catch … 'catch up for a beer', and he'd know what that is".[235]

[182] Stevens was cross-examined in detail about the conversation he had with Ashelford, which Stevens said concerned an arrangement to purchase up to five trucks. He maintained various parts of the conversation were merely figures of speech and did not refer to drugs, also maintaining that when the conversation referred to "things" that was really trucks. Elements of the conversation recorded were as follows:

> "I've got those five other things that we're organising. They don't want to give me that much to start with. Say, they wanted – wanted – they wanta start with one … but they – I've got to give them half of the one … they'll bring it over and wait there and bring the thing back … so I went and seen somebody today, and they'll bring it over and wait there, and bring the thing back … and I'd, like – and I've had so many, like, it will be two of them small things.
>
> [Ashelford]: Smaller ones? They ones on your arm?
>
> [Stevens]: Yeah. Alright. So as soon as you can get enough for one of them then get the one of your arms.
>
> [Ashelford]: The one of the arms?
>
> [Stevens]: If you can get enough for one of them, then I'll – they'll cover the other one. I can send two over. And if you can do that, have that here Monday or something, I can have it on its way Monday or Tuesday. And then we can just keep turning it around like that."[236]

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231 AB 1506.
232 AB 1506.
233 AB 1507-1508.
234 AB 1509-1510.
235 AB 1511.
236 AB 1518-1521.

[183] Stevens maintained the conversation did not concern drugs, that the "things" were trucks, and the reference to "ones on your arm" was not a reference to "elbows", as in pounds of drugs.

[184] Stevens was cross-examined about his meetings with Kevin Marshall. According to Stevens, Marshall just called him out of the blue on 24 August 2008, saying he was some sort of heavy from Sydney who had been asked by the family to sort out the issue concerning Stevens' utility. Marshall left the utility at a service station so that Stevens could pick it up.[237] Following that episode, Stevens met Marshall on 24 August 2008. Stevens said he met him on that occasion because he was intrigued as Marshall called him out of the blue saying that he wanted to have a chat, even though he said nothing about the topic of the intended subject. He met Marshall at the Sundowner Hotel where not much was discussed. Stevens went to look at a property which Marshall had purchased on Beachmere Road, and they discussed the fact that Marshall would give him one of the Shetland ponies on the property. Stevens said he wanted to buy a Shetland pony for his daughter and Marshall "had a heap of them there, and one was a bit of a problem child".[238]

[185] The jury may well have thought that there was an air of unreality about Stevens' account of his dealings with Marshall. One reason for that is the odd suggestion that Stevens was engaged in a charade in order to see how some unknown persons were setting him up. Another is the oddity of the account that when they referred to "Shetland ponies", they really meant Shetland ponies. Stevens' version was this:

(a) he had promised his daughter, who was just three years old,[239] that she was getting a pony;[240]

(b) he had just met Marshall, who was previously unknown to Stevens; Marshall announced himself as a Sydney heavy, there to sort out the issue of the utility; he contacted Stevens out of the blue;

(c) Stevens offered to buy a Shetland pony from Marshall who then offered it as a gift;[241] and

(d) Stevens was getting the "problem child" pony for his daughter.[242]

[186] The jury may well have wondered why anyone would have such dealings with an unknown person, let alone pick the problem pony, sight unseen, for a three year old daughter. Further, the promise of a pony to a daughter would likely be something the mother would know about, but Katherine Stevens gave no such evidence.

[187] Stevens met Marshall four days later on 28 August 2008. The recording of the conversation they had was played and Stevens accepted that he was in the conversation.[243] Stevens described what they were discussing:

> "What were you discussing?---This is a conversation after Heilbronn had come back on the scene, a couple of weeks earlier, and he knew

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237 AB 1529-1530.
238 AB 1530-1533.
239 AB 1276, 1451.
240 AB 1563.
241 AB 1437.
242 AB 1533.
243 AB 1536.

> of what Brown and Marshall were up to and told me that I was getting set up. So I played along.
>
> At that time, did you know much about pill presses?---No.
>
> For example, how they operate?---No.
>
> How many they'd make in an hour?---You can look that up on the internet and there's all different types.
>
> All different types of pill presses?---On the internet, yeah.
>
> Are there?---Okay. So was that a bit of information that you got from the internet before you went there?---It was just me – excuse the language – bullshitting my way to try and find out what they were up to and what they were gonna do.
>
> Well, how does that resolve you getting set up by saying you'll be involved in some sort of drug operation?---Because they were trying to set me up to rob me or bash me, and they thought that I had whatever they wanted.
>
> Right. Well, why did you go there Mr Stevens?---Why did I go there?
>
> Yes?---Well, I had a guy that had a go at me on the footpath, and that had stolen my ute, and I had a guy that portrayed himself as a heavy, and during one of these conversations Mr Brown had informed me that – not Mr Brown, sorry, Kevin Marshall had informed me that Kieran Brown had offered him money to do something to me with a – I don't know, shoot me or whatever.
>
> All right?---And then he said, because he refused, he then sold Kieran Brown a number of firearms. I put it down to that Kevin Marshall was a junkie, and the pair of them watched too many [U]nderbelly movies.
>
> But, you see, you'd [been] warned by Heilbronn, so why would you go there in the first place?---Because I was going to sort it out.
>
> How?---Probably give the pair of them a hiding, I suppose."[244]

[188] Stevens denied that Brown worked for him in producing the pills. He also denied that he did so in conjunction with YBS. Stevens was cross examined about the balance of the transcript of the conversation with Marshall. He challenged the accuracy of the transcript, on that basis did not agree that it was him on parts of the recording or that he had said the words attributed to him.[245] However, he agreed that the transcript recorded the words attributed to him or other parts, including that he would organise one of the machines, that they could make 5,000 an hour and discussing the need to get the "mix right", so that "it's not wet or anything", that the machine he was talking about only did one at a time, and that the price for pills was discussed including at $13 each. Stevens again explained the conversation:

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244 AB 1536-1537.
245 AB 1538-1539.

> "… I explained to you before that I do have a vague memory of a conversation similar to this with Kevin Marshall – that I was, as I said – excuse me – bullshitting my way through to try and gain the confidence of these two guys that had, I was told – had set – was trying to rip me off."[246]

[189] Stevens maintained his answers based on a dispute about the accuracy of the transcript as to parts of the conversation including the discussion of price for pills, being able to move 20,000 and his saying "I've got from Cairns to fucking Sydney covered with guys, you know". To all of those propositions he maintained the response that he had a recollection of a conversation similar to that, but he could not say they were the exact words.[247]

[190] On the following day of cross-examination, Stevens said that he no longer accepted that it was him in the recording, or that he met Marshall. This was on the basis that, according to Stevens, the chronology of the surveillance showed some confusion in what vehicle he was alleged to have driven to or from Marshall's property.[248] Stevens also said that he had convinced himself by listening to the taped conversations that it was actually him in them, and that is what he had told his lawyers, but he now doubted it was so. He was confronted with the evidence that had been led from him by his own counsel in which he had admitted that he spoke about pills and the capability of pill presses.[249] His evidence included that he was "talking it up to try and get them to believe me, because I had my own idea". Stevens said that was his evidence, but now "I cannot be 100 per cent confident that it is me in that call … I can't say to you that it is definitely me, and especially when I read the surveillance reports and you have me driving three different cars …"[250] Stevens then retreated to the position that he did not know what contact he had with Marshall.[251]

[191] What then followed was the playing of various recorded conversations, some not involving Stevens, but between Brown and Marshall, and Stevens saying that he could not recall conversations and that he could not comment on other people's conversations.

[192] Then Stevens was taken to a conversation he had with Heilbronn, in the course of which he said "you better get up here to pick it up this evening".[252] Stevens said that was a reference to Heilbronn dropping off the money to repay the $25,000 loan that he (Stevens) had made to him. He said those words used were a mistake and should have been "you better get up here to **drop it off**…". It did not refer to Heilbronn picking up drugs.

[193] Stevens could not comment about the fact that the next day Heilbronn went to Stevens' house and was there for 19 minutes.[253]

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246 AB 1539.
247 AB 1540-1542.
248 AB 1551-1553.
249 AB 1554.
250 AB 1554.
251 AB 1555.
252 AB 1560.
253 AB 1561.

[194] Stevens accepted that he could remember a conversation with Keith Dixon along the lines of some of the intercepted recordings. Dixon had some shipping containers and the police had visited his house. Dixon then had a conversation with Stevens in which, it was suggested to Stevens, he provided Dixon with a false story to tell police about the containers. The elements were that Stevens told Dixon to "just say it was a guy", giving him the name of Brown, and to say it belongs to Brown.[254] Then, in reference to Brown, Stevens told Dixon "because I think he's dead, so then it won't matter". Stevens accepted that there was a conversation to that effect with Dixon, but then backtracked saying that he could not be sure it was him and "we were just having a conversation".[255]

[195] Stevens was taken to a conversation between he and Heilbronn which he said was connected to the money which Heilbronn wanted to get back from Stevens.[256] Stevens said that he had lent Heilbronn $25,000, that he was supposed to give $35,000 in return, but only gave Stevens back the original $25,000. He went on:

> "[H]e asked me for that back again, so he could make money, and in one of the conversations – and I said to him I'm over it, you're doing dumb shit, I don't want anything to do with it, and that was that, and that's why … I gave him [$10,000] back out of the [$25,000] … [h]e was just trying to make the other money that he owed me. I didn't want to know about it. I just wanted the money he owed me".[257]

[196] Stevens was asked again about the car engines which he said he bought from a person called Eddie in Sydney. He was asked to explain a conversation to which he was a party with one Wayne Newby, where Stevens said he had tried to sell it but could not and it was still on the pallet, and then said "like, it's still in the box".[258] Stevens said that the item was unpacked, but on a pallet, shrink wrapped.

[197] Stevens then was asked to explain an offer he made to Wayne Newby, to give him $20,000 to take the engines back. He said this was when Wayne Newby's partner, who was (according to Stevens) not "a very nice person" went to Newby's workshop and threatened him.[259]

[198] Stevens was asked again about the people Philip Main and Teymar Lewis. He said he met them when they asked to speak to him "in regards to something fairly important".[260] They said they were doing something for an acquaintance or friend and that YBS had done something wrong. They explained that YBS had sold a large amount of ecstasy pills that did not contain any ecstasy. They had been to see YBS about it, and YBS told them that it was Stevens who did it.[261] Stevens' response was that it was nothing to do with him as he had not had anything to do with YBS for some time.[262]

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254 AB 1573.
255 AB 1574.
256 AB 1582.
257 AB 1582.
258 AB 1658.
259 AB 1658-1659.
260 AB 1666.
261 AB 1666.
262 AB 1667.

[199] Stevens was then asked about phone calls between Main and himself in which Main asked to catch up with him to "catch with you within the next week or something". Stevens explanation was that they "probably just wanted to check something else with me, if I knew anything … [t]hey were doing their own investigation into what was going on. I had nothing to do with it. If they heard something, they'd run it by me to see if I knew anything about it."[263] Following those conversations Stevens met Main and Lewis for 14 minutes at a service station. Stevens said that meeting involved just general conversation, and nothing in particular.[264]

[200] Stevens was asked again about a meeting between himself, Dessman and a person called Danjenovic, which took place in the car park of Hungry Jacks at Loganholme on 5 November 2008. The meeting lasted for 14 minutes.[265] He was asked to explain why it was they met to speak in the car park, and to agree that a lot of his meetings occurred in car parks. When it was proposed that if he was at Hungry Jacks he might go into the shop, Stevens responded:

> "One, it's bad manners to go and sit in someone's premises if you're not going to eat or drink in there, isn't it? I do the same thing at the Coffee Club in the morning. I don't go in there until someone that I'm going to sit and have a coffee with or whatever comes. I'm not going to sit in there and not use it … it's bad manners to go into [someone's] premises and use their facilities if you're not going to be a customer of theirs."[266]

[201] Stevens denied being present or involved in the occasion which YBS had referred to, when men in balaclavas had come to his house and threatened him, and when Stevens called him.[267]

[202] However, he agreed there was an occasion when he and Vlad and Ivan Tesic went to YBS's house. He explained that Vlad and Ivan Tesic "wanted to have a talk to him about something", but it was nothing to do with him. YBS was not at home at the time.

[203] Shortly thereafter, Stevens referred to that incident again, this time adding further detail about what Ivan Tesic told him and his own efforts to contact YBS:

> "They wanted to talk to him … actually, Ivan asked me did YBS owe me any money because he knew – somehow he knew about the race car. And I said, well, it's not even started yet, so it's not completed, so, no, in a [round about] way he didn't. And, yeah, they went – they wanted to go and talk to him. I actually tried contacting P and went there by myself before I went there with them to try and see what the issue was and what he knew about it. He wasn't home and he wouldn't answer my calls. I took them to where he lived and showed them and he wasn't home and that was that … it's over".[268]

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263 AB 1668-1669.
264 AB 1670.
265 AB 1682.
266 AB 1683.
267 AB 1687.
268 AB 1705.

[204] Stevens was cross-examined about the method he used to deposit the cash which had been lent to him by Ivan Tesic. He had received a total of $300,000 in a number of payments, he said. The three cash deposits were made on 21, 22 and 26 November 2007. In relation to that he said it was the money he had borrowed from Tesic:

> "I banked the first one in Sydney from where he was and I had left Sydney and went to Melbourne for some event – I'd have look at my calendar for that – and banked two lots in Melbourne. As stated, the $300,000 didn't come to me in one lump sum. It was over a number of payments".[269]

[205] Stevens could advance no particular reason for having split the deposits of the money. He was given $100,000 on or before 21 November 2007, banking only $20,000 of that on the first day in Sydney. Then, of the remaining $80,000 he banked only $50,000 in Melbourne, and four days later, the balance of $30,000.[270]

[206] Stevens was once again taken to the recorded conversation between he and Krystal Carroll which contained statements made by him as follows:

> "Remember all that stuff I told you about? I was getting something to make money. Well, he owes money, and his mate's got the thing, and my mates can do the thing."

[207] Stevens explained that the "he owes me money" referred to Heilbronn, and the "his mates have got the thing" referred to Bruce Kong (the financier) and finance.[271] Stevens explained it this way:

> "That conversation, if you go back to the day before when I met with Tiger – Anthony Dessman – and Vas, which is Soldo… whatever his name is … we were going to do a deal for him to buy my trucks. I then met with Vas … that evening in the bar underneath … at the bottom of the Watermark and got the okay that he wanted to do the deal … in that paragraph, well, he owes me money, I'm referring to Nick, and his mates have got the thing is Mr Bruce Kong, the financier that I'd met that was trying to do my refinance, but could organise finance for somebody else to buy all my trucks with their contracts, and it says that – so it's my mates I seen last night. Now I've got to go and see his mates, which referred to meeting Mr Kong … at Ashgrove on the way home."[272]

[208] A further part of that conversation was when Carroll asked Stevens "what if you get caught?" His response was "I'm not touching anything". Stevens explained that the "not touching anything" meant the finance was not in his name, and the "what if you get caught" comment referred to the fact that "you're not allowed to sell your Hanson contracts".[273] Stevens said that if you tried to sell your Hanson contracts, they got cancelled.[274]

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269 AB 1709.
270 AB 1709.
271 AB 1724.
272 AB 1724.
273 Hanson was a reference to the trucking company to whom Stevens' trucks were contracted.
274 AB 1726.

Evidence of Turton

[209] Mr Turton gave evidence for the Defence. He was a motorbike tyre supplier and had known Stevens from somewhere in the vicinity of 2004 or 2005, or perhaps even earlier. He was asked whether he had supplied tyres to Mr Stevens or Jack Daniels[275] in July 2008. Even as early as 2001. He was asked the value of a standard Harley-Davidson tyre about July 2008. He said that such a tyre would sell for between $299 up to $450 for the front tyre, and $180 up to $270 for the rear tyre, and $180 to $270 for the front tyre.[276] He was unable to say whether there was any supply of motorcycle tyres to Stevens in July 2008, but did say he had an outstanding invoice from Stevens dating to 1 September 2008.

Evidence of Katherine Stevens

[210] Katherine Stevens was the wife of Stevens. She gave evidence that she had no knowledge of the conduct alleged against Stevens, either in the form of drug dealing, trafficking generally, or trafficking with YBS or Heilbronn.[277] She said that she had no suspicion of any such thing. She also said that she had a suspicion that he was having an affair with one of his employees.

[211] In her evidence she detailed the relationship between she and Stevens, and the fact that they married in 2003. When she first worked for Stevens, his drag-racing enterprise was fairly small, but increased in size over time. Her own involvement was that of promotional work and sales, progressing to administration in the office and dealing with suppliers in respect of merchandise and sponsors. She said a full-time bookkeeper was employed to handle the MYOB process, and she did not access it or work on it.[278]

[212] She said that Stevens played no active role in overseeing the bookkeeping or administration of the business, and nor did she.[279] She did the majority of the banking, including filling out deposit slips and making any relevant note on the carbon copy. She was also responsible for paying most of the bills, either by cash or credit card.

[213] She said that the business generated cash, mainly from merchandise sales. In addition to that were other businesses such as the tattoo shop and a 60 foot charter boat.[280]

[214] She gave evidence of having conducted reconciliations of the MYOB reports and banking, reconciling also income listed as being sourced from merchandise. A total of $208,000 (approximately) was credited towards merchandise.[281] Mrs Stevens said that figure was not correct if it was meant to represent merchandise in an 18 month window (the period of trafficking).[282] She had conducted an analysis of the 60 events attended over that period, looking at merchandise and apparel. That

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275 Jack Daniels was a sponsor of Stevens' racing team, which was called the Jack Daniels' Racing Team: AB 158. Stevens himself was sometimes referred to as "JD": AB 157-158.

276 AB 1745.

277 AB 1747.

278 AB 1749.

279 AB 1750.

280 AB 1751.

281 AB 1753.

282 AB 1753.

analysis showed that about $322,000 worth of wholesale merchandise was purchased, and it would have retailed for just over $664,000.[283] She said at any one time they would have had $100,000 worth of wholesale merchandise in stock. Over the same 18 month period she identified non-apparel which had been purchased, totalling $24,815. That would have retailed at $83,000.[284] She also identified that there were items of merchandise sold that were not purchased in a conventional sense, identifying memorabilia and t-shirts in that category. In addition were items that had been manufactured such as fibreglass eskies, drive bars and second-hand parts.

[215] She had conducted an analysis working out the proportion of cash sales to EFTPOS sales, concluding that about $72,130 reflected the EFTPOS sales over that same period.[285] She also identified the charter boat takings at about $16,363.[286] That sum had been banked but not allocated by the bookkeeper specifically to charters.[287]

[216] She detailed that cash taken at a race meeting or in relation to the boat charters would be kept until they returned home, when she would bank what was required to pay bills or wages. Some of the cash would be expended prior to that time to meet expenses.[288]

[217] She could not explain the differences between the MYOB results from their home, and the MYOB results from their accountants, except to ascribe it to "poor bookkeeping".[289]

[218] She identified receipts from YBS. This had been achieved by going through job cards on the MYOB backup. She identified some deposits, including one that had been suggested to have been broken into two deposits and hazarded a guess as to why that might have occurred.[290] She also explained why company expenses may not have been paid through company accounts, for instance identifying those accounts that might have been paid by way of credit cards rather than in cash.

[219] The thrust of Mrs Stevens' evidence was to identify unsourced deposits and cash as probably coming from sale of merchandise and charters and the like.[291]

Cross-examination of Katherine Stevens

[220] In cross-examination, Mrs Stevens said that she did not have a heavy involvement in the books of accounts or MYOB or invoices. The business employed a bookkeeper as well as an accountant who was independent of the external accountant. She had identified a number of bank accounts and credit cards which she said that Ms Linklater had not found.[292] However, it transpired that it was just a table of statements which Mrs Stevens said had not been found, but there were no accompanying bank statements.[293]

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283 AB 1755.
284 AB 1757.
285 AB 1760.
286 AB 1760.
287 AB 1763.
288 AB 1764.
289 AB 1765.
290 AB 1768.
291 AB 1770–1771.
292 This became Exhibit 145.
293 AB 1967.

[221] Mrs Stevens said that from the period 2004 through 2009, MYOB was used for the Brett Stevens Racing Group and a bookkeeper entered the data. She herself could not explain the MYOB entries because she was not involved in MYOB.

[222] As for the merchandise, she said that Brett Stevens Racing bought in bulk for the purpose of distribution when orders were made at various race meetings. She identified that 60 per cent of sales in the Brett Stevens Group was from conventional merchandise (such as clothing) and 40 per cent from was from unconventional memorabilia.[294] She agreed that the exhibits she had prepared showing the lifestyle payments did not include receipts used for the sales of any items of merchandise at drag meetings. Further, any orders placed by email under the 2007 or 2008 catalogues, had not been included in her consideration.[295]

[223] She said that a manual stocktake was taken, but once they had been on the road for weeks at time it was hard to monitor exact stock levels, and they placed a lot of faith in the volunteers and employed staff to have been selling things at the right price and accounting for them later.[296]

[224] Mrs Stevens accepted that she had not looked at the receipts given for EFTPOS purchases when she prepared her tables. She also identified that there were significant purchases on 21 December 2008, totalling about $71,000, which were intended for a race meeting in early January 2009 "in which Lifestyle kept all the profits for".[297] She agreed that roughly $150,000 profit went to Lifestyle.

[225] Turning to the non-conventional merchandise, Mrs Stevens accepted that she had not retained the receipts for on-sale of various items such as posters and bar wear, which had a potential yield of $83,000.[298] She also accepted that part of her figure for unconventional merchandise was already reflected in the MYOB accounts.[299]

[226] In respect of the charter boat business, Mrs Stevens agreed that she had not looked at the various manifests of charters in compiling her assessment of income.[300] Further, she was unable to say how many cars had been made by the Brett Stevens Group in the 2007/2008 period, nor could she say how any of those were recorded in MYOB.[301]

[227] She could recall taking deposits from YBS on maybe six or seven occasions, when he came to their home.[302] The payments were recorded on a job card, but no invoices were raised or sent. She did not make the entries on the job card, but left it to a workshop manager. She had no involvement in any of the data on the document which was said to be YBS's job card. She said that a possible reason for there being more deposits into the bank (13 transactions) than the deposits by YBS, was that the money may not have been counted in its entirety all at once. She may have counted some of it, banked that and then counted more later on.[303] Likewise she said that

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294 AB 1970.
295 AB 1971-1972.
296 AB 1974.
297 AB 1976.
298 AB 1977-1978.
299 AB 1979.
300 AB 1982-1983.
301 AB 1984.
302 AB 1984.
303 AB 1987.

the deposits were made at different branches of the Bank of Queensland, possibly because they were on the way in which she ran her errands and did her shopping.[304]

[228] Mrs Stevens was cross-examined about the money paid by a direction she received from Stevens as to how to deal with certain money received from a person called "Al".[305] The message was that she should "… put half of what Al gives you in racing". Al was a customer purchasing a motorbike. Twenty thousand dollars of the money he supplied was banked, but Mrs Stevens could not identify what had been done with the other $20,000.[306]

[229] Mrs Stevens denied any knowledge of drug activities, and denied that she had conducted herself in a way that was designed to protect Stevens.

Evidence of Mr Petterwood

[230] Mr Petterwood gave evidence that he was involved in a business called Lifestyle Australia which sold promotional products and merchandise. Stevens was one of his clients through the organisation Brett Stevens Racing. Looking at the period in 2007 and 2008, he said that Lifestyle Australia supplied Brett Stevens Racing with $102,000 worth approximately of merchandise for the 2007 year, and for the 2008 year, $220,000 approximately.[307] He said that Mr Stevens was the largest customer that he had and the merchandise sales were large. The mark-up on the merchandise he supplied would be 200 or 300 per cent.

[231] He said that Stevens was always a bad payer, and he could recall receiving about $21,000 in cash on one occasion from Stevens.

[232] In cross-examination he said he was fairly certain the payment of $21,000 was in cash, though he could not say absolutely so.[308] He said that Stevens rarely adhered to the 30-day invoice period. He said that sometimes stock was returned, and he did not know what happened to it after it had been supplied. However, he saw it for sale from time-to-time.

Discussion

[233] The principle thrust of the submissions made on behalf of Mr Stevens was that YBS was a witness whose credit could not be accepted by the jury for a number of reasons which included:

(a) he had a motivation to be untruthful given that he had received the benefit of indemnities for giving evidence against Stevens and others;

(b) he had benefited from drug-related activity and therefore his veracity should be doubted;

(c) much of his evidence was uncorroborated where it might have been expected to have been corroborated; and

(d) the general manner of his giving evidence meant that there was reason to doubt it.

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304 AB 1989.
305 AB 2000.
306 AB 2000-2001.
307 AB 1775.
308 AB 1777.

[234] Those submissions were developed in detail in the appellant's written outline before this Court. It was said that the jury ought to have experienced a reasonable doubt about YBS's evidence for these reasons:

(a) he was of bad character, with involvement in drug dealing and he had also committed robbery offences;

(b) he was unreliable and vague in its chronology of events and his description of locations, particularly when it came to the address where the pill press was taken;

(c) he had a motive to be untruthful given the lenient treatment he had received as a result of providing evidence against Stevens;

(d) his account of the arrangement regarding the profit he was to make from each individual pill, together with his admissions about the extent of his profit from the arrangement, produced bizarre results;

(e) taken literally, his evidence meant that he must have sold about 1.6 million pills, which, it was submitted, was impossible in the timeframe involved;

(f) further, understood literally, his evidence of dropping off cash led to unlikely, impossible calculations of the number of times he must have done so, and would have suggested that Stevens would have received about $14 million, which was inconsistent with Stevens' financial difficulties; and

(g) he had misled the Court in the committal proceedings, and been untruthful.

[235] It is true that some of those descriptions apply to YBS. He had been, on his own account, involved in dealing in dangerous drugs, and his history included robbery offences.[309] Further, it is true that he had received undertakings on the basis that he would give evidence against Stevens. As the learned trial judge acknowledged in his summing up,[310] that could be said to provide a motive to be untruthful. And it is also true that in his evidence he admitted that he had misled the Court in the committal proceedings and been otherwise untruthful.[311]

[236] However, all of those matters were agitated at some length in addresses to the jury and the learned trial judge directed the jury that it would be dangerous to convict on his evidence, unless he was supported in a material way by independent evidence implicating Stevens.[312]

[237] The learned trial judge dealt specifically, and at some length, with the evidence of YBS. From the outset his Honour highlighted YBS's "significant involvement in drug offences, particularly in trafficking", and the fact that he had "faced some charges, but the charges which he has faced to date do not reflect the extent of his admitted involvement".[313]

[238] His Honour then dealt specifically with YBS in these terms:

> "A person who has been involved in an offence, particularly a serious offence, may have reasons of self-interest to lie or to falsely

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309 These were referred to in the summing up at AB 2102.
310 AB 2102.
311 AB 410, 425.
312 AB 2076.
313 AB 2073.

> implicate another person in the commission of the offence. You should scrutinise Mr YBS's evidence carefully before acting on it. Having been involved in serious drug offending, he is likely to be a person of bad character. For this reason alone, his evidence might be unreliable and untrustworthy. Furthermore, Mr YBS may have sought to minimise his involvement or the extent or the significance of his wrongdoing by shifting the blame wholly or partly to others, by making out someone else to be even worse than he is. Mr YBS might have sought to implicate the defendant and to give untruthful evidence because he apprehends that he has something to gain by doing so.
>
> You might consider, given the history that you heard, that he has an ongoing expectation of being dealt with more favourably as a result of his cooperation with the authorities. You have heard that he has been given what's called an undertaking by the Attorney-General, and you have that as exhibit 4. The undertaking is that any evidence Mr YBS gives or other evidence obtained as a result of that evidence cannot be used in proceedings against him except for perjury in giving that evidence. So all the things he has said about his own involvement in drug trafficking, anything obtained as a result of his giving that evidence, cannot be used against him for prosecution of drug trafficking as a result.
>
> There is a risk that having been protected from prosecution in that way Mr YBS might have an incentive not to depart from his statement – from the statement he gave to the authorities, whether it is right or wrong, so as not to arouse any suspicions of untruthfulness, and he may wish to ingratiate himself with the authorities to ensure he maintains the protection given by the undertaking. As I have said, you should scrutinise his evidence with great care. The cooperation Mr YBS has provided to the police has had the effect of reducing the sentence imposed for charges already brought against him."[314]

[239] His Honour went on to identify the particular offences with which YBS had been charged, highlighting that the jury might consider the offences for which he had been sentenced to be much less significant than the trafficking which he had admitted. His Honour went on:

> "It may be possible to identify other reasons for him giving false evidence, perhaps reasons that he has personal to himself. Because of his involvement in trafficking, his evidence, even if not truthful, has an inherent danger.
>
> … if it is false in implicating the defendant, it will nevertheless have a degree of plausibility and probability because he knows a fair bit about trafficking and the sort of trafficking he was involved in. That puts him in a position to give details of offending based on his personal knowledge, and the defence case is, in effect, that he has

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[314] AB 2073-2074.

> used that knowledge to paint in the defendant into the picture of offending."[315]

[240] The learned trial judge then spent some time summarising the matters put forward by both sides in relation to the assessment of YBS's evidence. His Honour then ended that summary with this passage:

> "So you need to weigh up all of the things that have been said by both sides when you think about Mr YBS's evidence. I should say to you, however, in view of the matters which I discussed at a little length a short time ago about this evidence and the concerns about it, it would be dangerous to convict the defendant on the evidence of Mr YBS unless you find that Mr YBS's evidence is supported in a material way by independent evidence implicating the defendant in the offending. It is a matter for you whether you accept the independent evidence. If you do accept it, then it is a matter for you whether you think it supports Mr YBS's evidence sufficiently to lead you to accept it."[316]

[241] The learned trial judge's warning was re-emphasised shortly thereafter when he dealt specifically with the evidence of YBS.[317]

[242] There is, on this appeal, no complaint about the adequacy of the learned trial judge's directions to the jury. As can be seen from the passages above, the jury were fully advised to be careful about convicting on the basis of YBS's evidence, and that it would be dangerous to do so unless it was independently corroborated. Thus it is important to examine the evidence to see whether there was independent corroboration which the jury may have accepted. In doing so, one must be mindful that the jury had the benefit, which this Court does not, of seeing and hearing YBS in evidence, and likewise seeing and hearing Stevens in evidence. This was a point made to the jury by the learned trial judge during the course of the summing up.[318]

[243] In my view, there were a number of matters which could have been accepted by the jury as corroborating the evidence of YBS. They were circumstantial matters, but that does not prevent their providing corroboration. In *Doney v The Queen*,[319] the High Court said:

> "It is not necessary that corroborative evidence, standing alone, should establish any proposition beyond reasonable doubt. In the case of an accomplice's evidence, it is sufficient if it strengthens that evidence by confirming or tending to confirm the accused's involvement in the events as related by the accomplice."[320]

[244] The first of the categories of circumstantial evidence which were capable of supporting YBS was that relating to the police interception of Stevens' utility on 20 January 2008. YBS's only likely source for that information was Stevens. Further, his knowledge of the fact that there were two boxes in the utility was only

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315 AB 2074-2075.
316 AB 2076.
317 AB 2079.
318 AB 2080.
319 (1990) 171 CLR 207, at 211.
320 *Doney* at 211. Internal footnotes omitted.

likely to have been the product of his being present when the utility was unloaded. If the boxes were, as Stevens sought to say, wholly unconnected with drugs, but rather were concerned with machine parts, engines and wholly unrelated to drug dealings, it is difficult to understand why YBS would have been told there were two crates, and difficult to understand why he found out what they contained or was present when they were unloaded.

[245] The second piece of circumstantial evidence comes from the police interception of a car driven by YBS on 20 March 2008. At that time YBS was driving, with his brother and Stevens as passengers. They were in the Chermside area. The jury may well have thought there was no plausible reason why that combination of persons would be in an area of Brisbane with which there was no connection whatever, except that they were searching for Brown, because Brown had stolen one of Stevens' pill presses, and some ecstasy as well. The jury could well have concluded that the behaviour of driving slowly through a strange suburb could be explained by little else but the reasons given by YBS. Thus it would serve to boost his credit in the eyes of the jury.

[246] The third piece of circumstantial evidence relates to the discovery of a pill press at the property at Broadbeach Waters, on 18 October 2008. The evidence established that it was similar, if not identical, to the one delivered to the different address at McDowell. That address was of a house owned by Heilbronn in a false name. YBS had no connection with the property at Broadbeach Waters, but was able to describe a pill press in terms which seemed clearly to be the pill press found at that address. The evidence from the scientific expert suggested that machine was unique. If the jury accepted that evidence, then they had compelling evidence that YBS must have seen the pill press, and his knowledge of those matters could only have come from Stevens.

[247] The fourth piece of circumstantial evidence relates to Stevens' "loan" to YBS of $175,846 on 14 November 2007. It will be recalled that the loan was evidenced in a statutory declaration,[321] in which it was described as a "gift". The payment itself, as well as the curious way of recording it in the statutory declaration, may well have been accepted by the jury as revealing a payment consistent with rewarding YBS for his drug work on Stevens' behalf. Stevens' explanation that it was necessary to record it that way in order to satisfy some "low doc" lenders requirements, could easily be rejected. At the least, the explanation was premised upon Stevens participating in a fraud on the lender, by pretending the payment was other than it was.

[248] The fifth piece of circumstantial evidence consists of the conversation recorded between Stevens and Marshall on 28 August 2008.[322] The jury could well have rejected Stevens' explanation that this was simply his engaging in some form of make believe ("bullshitting") in order to see who was plotting against him, and what they intended to do. Once they rejected Stevens' explanation for the conversation, its contents could well have been accepted by the jury as being specifically directed towards drug activities. Stevens told Marshall that he would organise a pill press which made about 5,000 pills per hour.[323] That rate of production was consistent with the evidence of the expert called in relation to the capacity of the pill press.[324]

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321 Exhibit 2, AB 2626.
322 Exhibit 37, AB 2878-2881.
323 AB 2878.
324 AB 1145.

[249] Furthermore, YBS's evidence as to how the pill press operated was corroborated by the expert evidence.

[250] In the conversation Stevens discussed pill prices and the fact that he would be able to take 20,000 per week because he had the market between Cairns and Sydney covered with his men.[325] If the jury came to the view that that was not a boast on Stevens' part, it provided cogent evidence corroborating YBS.

[251] The sixth piece of corroborative evidence comes from the expert evidence identifying unsourced deposits into bank accounts in the period 1 July 2007 to 4 February 2009. The total unsourced income was $1.2million and deposits were consistent with the banking of some proceeds that were delivered by YBS. As mentioned above, the evidence from Stevens and Mrs Stevens, in an attempt to demonstrate that the money came from sponsorships or the sale of merchandise, was not supported by documentation. In truth, it was only Mrs Stevens who was called to try and establish a legitimate basis for the income. The limitations on her analysis have been dealt with above: see paragraphs [211] to [230]. This would have left the jury with little confidence that there was a legitimate explanation.

[252] Any one of the pieces of circumstantial evidence identified above could act as corroboration for YBS's account. However, they have a cumulative effect. If the jury accepted several or all of them, they had a considerable body of evidence which supported YBS. In my view, it was open to the jury to view that evidence as overcoming the clearly identified deficiencies in YBS's evidence, about which they were warned. In this respect it may be noted that the jury requested, and were provided with, a copy of YBS's evidence.[326] There can be little doubt they considered that evidence with the stern warnings of the learned trial judge in their heads.

[253] Furthermore, as noted below, there were a series of conversations in which Stevens was a participant, and which the jury may have accepted as relating to drug dealings. In that category are:

(a) the conversation with Heilbronn on 10 November 2008, where Stevens referred to giving Heilbronn "two … on fuckin' 'tick'";

(b) the conversation with Ashelford on 3 December 2008 where they discussed getting "one of your arms" or "one on your arm"; the jury may have found it easier to accept that those phrases referred to pounds of dangerous drugs, given that that conversation was when Stevens and Ashelford discussed the arrangements for Szczepanski to travel to Western Australia and collect $100,000 in cash; those arrangements were unusual in themselves, particularly insofar as concerns the directions to Szczepanski to ensure he did not use his own phone, and the odd way in which the money was collected;

(c) the telephone conversation between Stevens and Krystal Carroll on 9 January 2009; in that conversation Stevens told Carroll that he was getting something to make money and that Heilbronn's mates "have got the thing", and Stevens' mates "can do the thing"; then when asked what he would do if he was caught, Stevens said he was "not touching anything".

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325 He said: "'Cause I've got Cairns to fuckin' Sydney covered, with my guys".

326 MFI "AA", AB 5634.

[254] The jury had the benefit of a detailed direction on the way in which they should approach the use of circumstantial evidence.[327] There is no reason to assume that they did not obey the direction and therefore weigh the circumstantial evidence in the proper manner.[328]

[255] Once the jury did that, it was, in my view, open to them to reach the conclusion that the only rational inference was that Stevens was involved in dealing in dangerous drugs, as charged. The alternative explanations for some of the conversations and arrangements, put forward by Stevens in his evidence, were improbable, and in some cases highly unusual. Once the jury rejected his explanations, as seems evident that they did, it was difficult to see that any alternative conclusion was open.

Telephone calls involving Brett Stevens

[256] The prosecution case involved a considerable number of intercepted telephone calls and recorded conversations, some of which involved Stevens and some which did not. As has been noted above, Stevens continued to dispute whether it was his voice on various recordings, and challenged the accuracy of the transcripts. However, a number of conversations should be noted, because their contents could well have been understood by the jury, if they accepted it was Stevens' voice, to have been discussions concerning drugs or drug transactions.

Conversation between Stevens and Krystal Carroll – 9 January 2009

[257] The conversation was significant because in it, Stevens identified that he intended to stop at Ashgrove to meet "that young bloke – Nick", which could only be a reference to Heilbronn. In the conversation Carroll pressed Stevens to explain why he was meeting Heilbronn and then the following exchange occurred:

> "Stevens: Remember all that stuff I told ya about? I was getting something to make money.
>
> Carroll: Yeah.
>
> Stevens: Well he owes me money – and his mates have got the thing – and my mates can do the thing. So it's my mates I seen last night (unintelligible) now I've got to go and see his mates so we can do a swap (unintelligible) this week – then once it's all set up (unintelligible) – and then (unintelligible) got someone everywhere.
>
> Stevens: What?
>
> Carroll: What if ya get caught?
>
> Stevens: I'm not touching anything. If I don't do something soon babe I'm gonna lose me trucks and everything."

Conversation with Marshall – 28 August 2008

[258] On 28 August 2008, Stevens met Kevin Marshall. There is no question that this was Stevens' voice on the recording, but he sought to explain it by saying that he was "bullshitting" in the conversation in order to discover more about whether he was

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327 AB 2055.

328 *Gilbert v The Queen* (2000) 201 CLR 414 per McHugh J at 425.

being set up. Nonetheless, if the jury did not accept that explanation, the conversation contains obvious references to drug dealing, and specific knowledge as to the pill press, including its location, capacity and the need to get the mix right:

> "Marshall: I'll just … I don't know. Look I've got … a regular client …
>
> Stevens: But he, can easily move them, but he didn't want to ring the tilt tray guy and shift it straight to here, wanted to make sure you were going to be here.
>
> Marshall: Yeah.
>
> Stevens: He'll ring the tilt tray guy and organise it and move it.
>
> Marshall: Well, which, which way are we going … at the club for the boys.
>
> Stevens: Well, you, you just work it out with him but don't mention my name in it.
>
> Marshall: No, mate, no, no, I won't, yeah, I won't. Well … do you want me to like 'cause …
>
> Stevens: **I'll organise one of these machines**.
>
> Marshall: Yep.
>
> Stevens: **I guess it makes about five thousand an hour**.
>
> Marshall: Shit.
>
> Stevens: No, no, I can show him. It's, **it's, as long as you get your mix right and it's not wet or anything** then fuckin' hell it's not hard …
>
> Marshall: Yeah.
>
> Stevens: **They're brand new from the boxes**.
>
> Marshall: Right. 'Cause … I organised him to make (unintelligible). He said 'oh I've got (unintelligible) I need two guys (unintelligible) one at a time'.
>
> Stevens: Yeah, let's just do them one at a time.
>
> …
>
> Stevens: Yer, **don't go talking around about the pill press will ya** (unintelligible) **fuckwits either** (unintelligible) **put it in the shed**.
>
> Marshall: Yeah.
>
> …
>
> Stevens: Um, I've got to go to Melbourne for now. I'll be back tomorrow and I've got a thing to do down Berkley. What about Sunday, I'll organise to get the machine … then I can hook up with him and fuckin',
>
> Marshall: **Yeah, if you just tell him how to work the machine you know**.

Stevens: **Yeah, it's nothin'**.

Marshall: And he can, he can (unintelligible).

Stevens: **Yeah, as long as they're good quality, mate, I can, he won't have to take none to Melbourne. I can move the cunts fuckin' on. Shit load of them**.

Marshall: **Well, you know he was getting prices like thirteen dollars something like that**.

Stevens: **Oh that's just crap, what thirteen dollars each?**

Marshall: Mmm.

Stevens: **Nup no way**.

Marshall: **And I said oh you can't get that up here** (unintelligible).

Stevens: **Not down there, you won't get it either**.

Marshall: 'Cause a lot of them are going to (unintelligible).

Stevens: Yeah, **one at a time or two at a time but but fuckin' and it used to be the same in Western Australia. You used to be able to get like fifteen dollars for them over there and sell them in bulk. Now you can only get fuckin' eight for them**.

…

Stevens: **I could move probably at least, right, being confident, at least twenty thousand a week. … Yeah, that's like start, money paid everything, every week, you could probably do twenty thousand, easy 'cause I've got from Cairns to fuckin' Sydney covered with my guys you know**. … You know that guy up in Cairns he'll take ten thousand straight away and I've got a guy on the Gold Coast who'll take twenty thousand straight away, any time. … Yeah, so, what do you do you know, is it the safest way to do it, I don't know about havin' it down there, if it's gonna be out in the open.

Marshall: No, no, no.

Stevens: Or you've got a shed or something?

Marshall: Got a shed.

Stevens: Okay that's alright, because the best way to do it is (unintelligible).

Marshall: Oh I can be organised, I can, I can, I've got a container and I can bury it under the ground."[329]

Conversation between Stevens, Heilbronn and Mrs Stevens – 2 December 2008

[259] In the course of this conversation in which Stevens berated Heilbronn because Heilbronn owed him money, the following was said:

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329 Emphasis added.

"Stevens: Fucking stuff, because I've had to pay 200 dollars and I fucking put up with all their fucking shit.

Heilbronn: Yeah.

Stevens: And I buy a downsized fucking kilo.

Heilbronn: Yep."

Conversation between Stevens and Mrs Stevens – 25 October 2008

[260] This conversation took place after it became apparent that YBS was assisting the CMC. In the passage which follows, Mrs Stevens reveals to Stevens that YBS has "rolled over". What is significant is that Stevens did not respond in any way that suggested YBS was a liar. The following extract is relevant:

"Mrs Stevens: Oh no he's bloody leaving town tomorrow … before the shit hits the fan … but both of your mates are working for the CMC. They've both rolled over. Um, and he was at, staying at Krystal's the other night, and she was in bed, and, he was bloody sleeping on the lounge and had a bloody bag put over his head and, a, bloody knife held to his throat. And they tried to steal his car. And um apparently, our property, was, he said they were told, any, like all of the hot property, the (such), that are being looked at, every mobile that enters the property? Is being recorded? And apparently our phones, even, unless you have the battery taken out, is, can be turned into like a, recorder or bloody microphone.

Stevens: Yep. They've been listening to too many stories.

…

Mrs Stevens: But your name's been, like yours is the only other name that … has been mentioned. They're waiting for um, I dunno, P's apparently getting like … indemnity or whatever it is? Which hasn't come through, so he's rolled on everyone, so's Kieran. So P's still operating on a smaller scale which he doesn't understand, but.

Stevens: How does he know all this?

Mrs Stevens: Because he's dealt with bloody P.

Stevens: Yeah well P wouldn't be tellin' him that he's rolled over.

Mrs Stevens: … and he was at Krystal's when they got invaded … three weeks ago he said that was.

Stevens: Who by?

Mrs Stevens: Oh he doesn't know. 'Cause he had a bloody bag put over his head.

…

Mrs Stevens: Yeah. Yeah. Oh because he's obviously had an association with P and YBT and the fact that he was at their house when whoever it was bloody … raided 'em the other week. Or home invasion … he said.

> Stevens: Mm. Yeah. Alright. And what, and he reckons that they've got me, they're, they're turnin' on me?"[330]

Conversation between Stevens and Ashelford – 3 December 2008

[261] This is a conversation which Stevens said was concerning the purchase of trucks. The competing propositions were that when the phrase "one of your arms" was used, it was either (on the prosecution case) a reference to the elbow, and that in turn to "LB" or pound, or (on the defence case) a reference to a tattoo on an old truck driver's arm. If the jury disbelieved Stevens' explanation for that phrase, then it was open to them to conclude that it bore the drug-related meaning that the prosecution urged. Relevant extracts of this conversation are as follows:

> "Stevens: I've got those other five things that we're organising. I met the slopey-eyed guys today. They don't want it to give me that much start with. Say, they want – wanted – they want to start with one … but they – I've gotta give them half of the one … they'll bring it over and wait there and bring the thing back. So I went and seen somebody today, and they'll bring it over and wait there, and bring the thing back … and I'd, like – and I've had so many, like, it will be two of them small things.
>
> Ashelford: The smaller ones? The ones on your arm?
>
> Stevens: Yeah.
>
> Stevens: Alright. So as soon as you can get enough for one of them and get the one of your arms.
>
> Ashelford: One of the arms mate yep.
>
> Stevens: If you can get enough for one of them, then I'll – they'll cover the other one. I can send two over. And if you can do that, have that here Monday or something, I can have it on its way Monday or Tuesday. And then we can just keep turning it round like that."

[262] The explanation for the "one on your arm" reference was that there was an old truck driver known to both Stevens and Ashelford, though Stevens could not remember his real name, and "he's got a road train tattooed the whole length of his arm". Stevens said that the phrase was "just something that Ian and I used to say when we were interested in something". We used to go "well, get that tattooed on your arm …"[331] In his evidence in the conversation with Ashelford, the phrase varied from "ones on your arm", to "the one of your arms"[332] Stevens denied that either reference was to a pound in terms of quantity of drugs, but the jury could have rejected that explanation.

Conversation between Stevens and Heilbronn – 17 January 2009

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330 The reference to "YBT" in the transcribed conversation should likely be spelt "YBT" with a "Y". YBT was YBS's fiancée. Krystal Carroll worked for Stevens, and was someone he was having an affair with at the time. In the context of the conversation, YBT is the more likely reference.

331 AB 1520.

332 AB 1520.

[263] On 17 January 2009, Heilbronn received a call from Stevens. Stevens told Heilbronn that it was a "no go today because we've had some visitors", and he said "I can't say much because I think your phone's fucked at the moment … but everything's still alright but you have to wait till I come and see you and talk to you in person … which will probably be Monday … alright but just wait till you hear don't talk on your phone". The jury may well have taken the view that if there was no innocent explanation for this conversation, thereby rejecting the evidence of Stevens, the call must have related to drug-related activities. This is because Stevens told Heilbronn that his phones were bugged, that he would need to see him in person, and until that time "don't talk on your phone". If the meetings with Heilbronn were entirely innocent, there was no need to avoid using the telephone to communicate with one another.

Meeting between Stevens and Ashelford – 25 November 2008

[264] On 25 November 2008, Stevens, Howard Wignall and Ashelford met at a residence in Caboolture. The prosecution case suggested that Stevens gave Ashelford a drug to try, that being recorded in an intercept as follows:

> "Stevens: Stick that all in your gob.
>
> Ashelford: Fuck that it would kill me my heart would stop."

[265] The conversation goes on to discuss a thing by regard to its colour, "yellow", and the fact that the "dirtier it gets the better it is".[333]

[266] Stevens insisted that this conversation was about nitromethane, used in racing car engines. However, if the jury rejected that explanation, then the contents of the conversation really only pointed one way:

> "Ashelford: Oh that's it?
>
> Stevens: Yeah, go on just shove that in your gob.
>
> Ashelford: Oh yeah right, fuckin' oath, that'd kill me. Fucking hell, blow me fucking heart up. That'd be right hey?
>
> Ashelford: … the real clear ones you can get, if it's a fairly good yellow … they reckon, that probably what it is, they reckon the dirtier, the dirtier it looks the better it is.
>
> Stevens: Yeah, that's just, you know if you get like muddy water … it looks like that, but it sets and turns into like jelly.
>
> Ashelford: Oh yeah that gel, got that coming … dark … on the internet it has a specific freezing point.
>
> …
>
> Stevens: Well I've got two people working on it, both get back to me … can do it."

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[333] Stevens' evidence was that this referred to a fuel used in drag-racing cars, which had a yellow colour. If the jury came to the view that Stevens' explanation for that conversation was incorrect, as well they might, then the conversation bears an entirely different complexion. Indeed, it bears the complexion that the prosecution contended.

[267] The jury might well have been forgiven for thinking it was highly unlikely that the conversation concerned nitromethane if someone was putting part of it in their mouth. And, the phrase "the real clear ones you can get", is difficult to reconcile with the nitromethane story, but easy to construe as relating to a discussion about pills.

Conversation between Stevens and Heilbronn – 13 October 2008

[268] On 13 October 2008, Stevens had a conversation with Heilbronn in which Stevens was pursuing Heilbronn for money which he was owed. The essential parts of the conversation are:

> "Stevens: Um you know that fuckin' that you paperwork that you owe me … you need to see if you can beg borrow or steal it from someone alright cos I've got the tax man up me fuckin' arse at the moment and I can lose everything that I got.
>
> Heilbronn: No shit, well you know what I gave you?
>
> Stevens: Yeah.
>
> Heilbronn: Then I need to get that back in order to get more money you know what I mean?
>
> Stevens: Well I'll see you when you get here.
>
> …
>
> Stevens: But you know between four people I'm owed fuckin' eight or nine hundred thousand and … I've had the bank here this morning threatening to foreclose on my properties and fuckin' I can tell you if I lose all my shit I'm not going to be happy.
>
> Heilbronn: Yeah okay listen … if you can get back what I like gave ya … then I can guarantee you know what I mean I just need that to make it for you get what I'm saying?
>
> Stevens: Yeah but how long is that gonna take?
>
> Heilbronn: Oh I don't know like a couple of weeks."

[269] If the jury rejected Stevens' evidence that there was an innocent explanation for this conversation, then they could well accept that it was drug-related activities. The evidence revealed Heilbronn as a drug dealer and in that conversation he was, if one viewed the words literally, asking for money back from Stevens in order to get more money, and that within a couple of weeks. The jury may well have taken the view that the only rational inference to be drawn from this conversation, is that it concerned the receipt of MDMA pills in order to sell them and generate cash, or alternatively, access to the pill press for the same purpose. Plainly Stevens was pressing for repayment of a debt. Heilbronn then proposes that if he can get back "what I gave you", then he could make more money. Heilbronn emphasised that he needed it "to make it for you", and that would be done within two weeks.

Conversation between Stevens and Dixon – 10 November 2008

[270] On 10 November 2008, Stevens had a conversation with Keith Dixon which was intercepted and recorded.[334] The conversation concerned containers and Stevens accepted that in the conversation he was trying to persuade Dixon to pretend that the containers were owned by Kieran Brown, and that Brown was dead. The conversation relevantly reads:

> "Stevens: All's you've gotta say … she hasn't told them that they were fuckin' mine?
>
> Dixon: I've got no idea what she said.
>
> Stevens: Fuckin' hope not.
>
> Stevens: I hope she hasn't said that they were fuckin' mine.
>
> Dixon: I don't think she would have … I think she would have just said …
>
> Stevens: … just say it was a guy that I was working with that was doing some fibreglass work with me, said he had some furniture shit or he wanted to store 'em for a couple of months and that they were coming to get it. He actually come and got one and he was supposed to come back and get the other one, and his name, um tell them it's Kieran Brown. … Say how do you know him, say I used to work with him … through fibreglassing, doing fibreglassing and he came up home asking if he could leave … cos he was moving out … haven't heard from him and I don't know how to get in touch with him. … Say I don't even know what's in 'em don't even have a key …
>
> …
>
> Stevens: Look a guy I met through, that I was doing some work with … he was fucking moving somewhere and wanted to leave them here. As far as I know … he's come back and got one and they couldn't get the other two out, so um I haven't fucking heard from him … but if they do fucking come … as long as she doesn't mention my …
>
> …
>
> Dixon: And it's Kieran Brown.
>
> Stevens: Kieran Brown … 'cause I think he's dead so then it won't matter."

[271] Stevens' explanation for this conversation was that the police were interested in the contents of containers on Dixon's property and Stevens was responding to a request for advice as to what to say:

> "He was asking my advice on what to say, and I said I didn't really know, because I didn't know what the story was. I didn't know what he'd done with the containers or hadn't done with them."[335]

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334 Item 545, exhibit 61.

335 AB 1573.

[272] It was, in my view, open to the jury to construe this as a conversation concerned with drug-related matters. The only other explanation was the one proffered by Stevens, namely that he was responding to a request for advice, but really did not know anything about what had happened. That is belied by the contents of the transcript where Stevens schools Dixon in what to say, and selects Kieran Brown as the nominee in the story. There was ample evidence that Brown's involvement in affairs to do with Mr Stevens were drug-related.

[273] If the jury rejected the Stevens account, there was little evidence that would draw away from the rational conclusion that the conversation was a response to the possible discovery of drugs.

Conversation between Stevens and Heilbronn – 10 November 2008

[274] Another conversation that the jury could have regarded as drug-related, once they accepted that it was Stevens' voice in the recording, was a conversation between Stevens and Heilbronn.[336] In the conversation Stevens expresses his anger with Heilbronn for being disorganised and then continues:

> "Mate, fuck me dead! Hey, look, you know what shitted me off? I give you the fucking opportunity to do something, right? … A fucking week ago. But you cunts are too fuckin' lazy to help yourselves. You know? And here I've given ya another fuckin' two … on fuckin' 'tick' and ya can't even fucking get …
>
> …
>
> So I got to get it from here to there … fuck, will they even say they'll do it … I know every time I see 'em, they're going get work, get work, get work. Right, but I can find out, it's no good giving me a sample of it, until I say when and how much it is … that will save our … two kilos, whatever … can't do nothin' and if we do that I've got to get it on tick 'cause I don't have that sort of money, I've got nothin', and if I had that mate I'd …"

[275] Stevens disputed, or at least would not admit, that it was his voice on the recording. However, the jury had the undoubted benefit of having heard Stevens give evidence in the box and heard the recordings. If they concluded that it was, in fact, Stevens on the recording, then the conversation really points only one way, namely to a conversation concerning drug dealing, signified by the references to "two … on tick", "two kilos" and getting it "on tick".

Conversation between Heilbronn and Grbavac – 2 December 2008

[276] A deal of evidence was tendered recording conversations between various participants other than Stevens. Many of them featured Heilbronn discussing drug-related matters with the likes of Vlad Tesic. One such conversation took place on 2 December 2008 between Heilbronn and Grbavac. It is evident from the text that Heilbronn was relating to Grbavac things that Stevens had told him. For example, at one point Grbavac expresses the view that the person they are talking about should "stop going to his stupid car racing meetings". Heilbronn relates to Grbavac,

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336 Item 549, exhibit 63.

Stevens' complaints that he has no money and his businesses are failing, and Heilbronn pleads to be given more time so that he and/or Stevens can "get it happening". The relevant part of the intercepted conversation is as follows:

> "Grbavac: Heilbronn … he goes man he goes I got no fucken money he goes my business is fucked, my life's fucked, my family's fucked, I can't even get my kid a fucken Christmas present this and that and I'm like man fucken what do you want me to do ay like.
>
> Grbavac: Well if he wants to fucken get his kid a Christmas present tell him to get me that shit.
>
> Heilbronn: Yeah that's what I said, I go man I need that, I need it … so, can you guys, can you guys get it or anything.
>
> Grbavac: Yeah.
>
> …
>
> Grbavac: What's, what's the deadline by?
>
> Heilbronn: Man, Friday bro I'm fucked otherwise I'm fucked.
>
> Grbavac: … What is it Friday though?
>
> Heilbronn: Yeah, yeah I need it by Friday man.
>
> Grbavac: OK, if he can at least help with fucken anything that's on there fucken it saves me fuck it'll save time … just tell him that and he'll, he'll have it fucken asap.
>
> …
>
> Heilbronn: … Yeah, I guess so but man if like we, if we can get it happening then he can make, you know what I mean, like …
>
> …
>
> Grbavac: Well if he expects that tell him get off his fucken arse fucken stop going to his stupid car racing meetings and fucken get some of, get some of those fucken things … he's already got one of those things as you said … you know what I mean … if he doesn't want to help then it's going to take longer … just tell him mate, just tell him straight fucken man up about it to just say you want … fucken help out.
>
> …
>
> Heilbronn: Yeah that's what I said … and he goes … he goes I'm fucken not working shit blah blah blah and I'm like …
>
> Grbavac: And fuck his mates are fucken doing it down in Sydney anyway.
>
> Heilbronn: Yeah that's what I said, so he goes oh I'm having doubts about that too blah blah blah and I'm like oh fuck here we go.
>
> Grbavac: Why is having doubts about that?
>
> Heilbronn: Oh because he goes, he goes, he goes he won't get a full thing out of it.

…

Grbavac: What do you mean?

Heilbronn: Like he goes it might, it might be half of what, ya know, what do you reckon, I go man I don't think so eh."

[277] There was no contest at the trial that that was a conversation between Heilbronn and Grbavac. It was open to the jury to conclude that it related to dealing with dangerous drugs, as signified by the references that Stevens should "get some of those fuckin' things", and "he won't get a full thing out of it … it might be like half of what … you reckon". From the jury's point of view it is difficult to know what else that conversation could relate to, given that it is reflecting some dealings between Heilbronn and Stevens, on the one part, and Grbavac on the other.

[278] Twenty minutes later there was another call between Grbavac and Heilbronn. There was no challenge at trial that such a phone call existed, nor that the words in the transcript were said. But the contents fairly plainly reflect that Heilbronn had gone back to speak to Stevens following the first conversation above, and was conveying Stevens' response. That call is but one of many examples where Stevens' business was intimately connected with that of Heilbronn who, it was accepted, was in the business of dealing in dangerous drugs. That interconnectivity in terms of dealings and contact could well have been used by the jury to reach conclusions about the true nature of Stevens' dealings.

[279] In respect of those calls in which Stevens was not a participant, it was submitted that there was no evidence independent of the communications themselves, upon which it was reasonably open to find that Stevens was a participant in a common purpose with Heilbronn or Marshall. Therefore a large number of the intercepted conversations should not have been considered by the jury and did not reasonably lead to a verdict of guilty. It was said that to reach such a verdict, the jury had to speculate.

[280] I do not accept that submission. Once the jury accepted the evidence of YBS, as it was open for them to do, then there was evidence independent of the intercepted communications (to which Stevens was not a party) upon which it could be found that Stevens was a participant in a common purpose with Heilbronn or Marshall, namely drug trafficking and drug production. Further, if the jury accepted, having rejected Stevens' account of the various conversations in which he was involved, accepted that they revealed his participation in drug trafficking and drug production, then that was an additional source of evidence which supported the conclusions they might draw from those communications in which Stevens was not a party.

[281] It is true, as was submitted, that the learned trial judge identified the three conditions necessary to be met in order for the jury to make use of communications to which Stevens was not a party. They were:

(a) an agreement to do something unlawful;

(b) Stevens was a party to that agreement; and

(c) the conversation was for the purpose of advancing what was agreed.

[282] It is also true that in a number of instances, the learned trial judge expressed the view that the prosecution had not attempted to meet the three conditions in respect

of some of the communications. However, those reservations were expressed only in relation to the following:

(a) a conversation between Heilbronn and Beachy on 3 October 2008 (intercept no. 303), and a conversation between Heilbronn and Khoury on 17 October 2008;[337] and

(b) a conversation between Heilbronn and Grbavac (event no. 707).[338]

[283] Those two conversations fall into very much the minority of the communications dealt with. For the vast bulk of them, the learned trial judge left it to the jury to decide whether the three conditions had been met. In doing so, the jury had the evidence of YBS, communications to which Stevens was a party, and (perhaps most significantly) the evidence of Stevens' conversation with Marshall in which he discussed the pill press, its production, and prices for MDMA pills. That provided an ample basis upon which the jury could conclude that the three conditions were met for those conversations to which Stevens was not a party. If the jury accepted the evidence of YBS and the truth of the conversation with Marshall, then the subject matter in context of the other communications could have been seen as falling in the same scope, in terms of the agreement to carry out trafficking and production of drugs, that Stevens was party to it, and that the calls were part of the events carried out in the furtherance of that purpose.

[284] One of many examples of a conversation between others but which, in proper context, could be seen by the jury as implicating Stevens, was this exchange:

(a) on 26 September 2008 Heilbronn met Kong for 11 minutes; Stevens rang Heilbronn who told him that "my mate's losing it at me and he goes don't come home empty handed"; Stevens then said "well I can't do anything about it"; Heilbronn then asked asked him "do you have the paper at all";[339]

(b) the same day Kong sent a text to Heilbronn asking "are you going to have the cd's tomoro?"

(c) Heilbronn then called Stevens several times and was told, in response to his question "everything cool?', "I'll just tell you when I see you";[340]

(d) on 30 September Heilbronn asked Kong if he could organise a "demo tape … like you only need, it's probably only about 100 minutes", and said he was on his way to see his mate, and it would be good if the demo tape could be ready in the next 10 minutes;[341] two minutes later Heilbronn contacted Stevens saying he needed to see him;[342]

(e) on 2 October Kong asked Heilbronn "hey did you get the CDs back yet"; Heilbronn explained that "we should have mixed tapes somethin' for ya … tomorrow I think"; Kong said he wanted to get "2 copies of the CD", and his "mate's already got it for you ready to go";[343]

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337 AB 2096.
338 AB 2097-2098.
339 MFI "D", event 270.
340 MFI "D", event 280.
341 MFI "D", event 287.
342 MFI "D", event 288.
343 MFI "D", event 300.

(f) the next day Kong asked Heilbronn "Can I get those 2, those CDs that your friend copied"; told Heilbronn that "I want to bloody buy the CDs off your friend straight away", and they arranged for Kong to come over that night to get them;[344]

(g) several hours later Kong asked whether Heilbronn had "got the CDs I asked you to copy for me", and Heilbronn said "yeah yeah as many as you want";[345] and

(h) there were then several requests from Kong to Heilbronn to get the "CDs".

[285] Given that Stevens' evidence was that his only association with Kong was that Kong was an unconventional finance broker introduced by Heilbronn as a source of finance,[346] and that the evidence did not suggest any reason for Heilbronn to have dealings with Kong unless they were drug related,[347] the jury could easily have concluded that the dealings revealed in this exchange were drug dealings and Stevens was part of it. That conclusion is the more easily drawn when one considers the utter improbability that the reference to "CD's" was actually to compact discs, or that Heilbronn actually wanted a "demo tape" truly so called.

Count 2 – Unlawful production of MDMA

[286] The basis of this count, was that Stevens arranged the delivery of the pill press to the house at Ustinov Crescent, McDowell, supplied lactose powder, used the pill press and had Brown and Heilbronn produce MDMA tablets.[348] As will be evident, the evidentiary basis for this count was the evidence of YBS, rather than intercepted conversations.

[287] That has been reviewed in some detail earlier in these reasons, but a short summary concerning count 2 is worthwhile:

(a) YBS met Stevens, Brown and Heilbronn at Stevens' house; at that time Stevens was talking about bringing a pill press up from Sydney;[349]

(b) between then and when the pill press arrived, YBS said there was a phone call he received from Stevens, telling him that the utility bringing the pill press up had been pulled over by police because it was out of registration; Stevens was quite abusive towards him because the car was out of registration and he (YBS) had borrowed it some days before;[350]

(c) YBS saw the pill press when it arrived, on the back of a utility; he could not remember the address, but it was at the back of Aspley somewhere;[351]

(d) Stevens also said that the car had been pulled up at Newcastle and it was being driven by a female and would not be moved until it was registered;[352]

(e) Stevens told YBS the details of the pill press; it weighed 300 kilograms, was stainless steel, had a Perspex box on the top with Perspex sides, and a merry-

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344 MFI "D", event 304.
345 MFI "D", event 305.
346 AB 1431, 1455, 1479, 1575, 1641.
347 Nothing in the evidence suggested that Heilbronn was in the market for overseas finance, whether as a principal or middleman.
348 MFI "P", AB 5621.
349 AB 374.
350 AB 375.
351 AB 375.
352 AB 375.

go-round looking wheel with shafts coming off it, and two knobs at the front;[353]

(f) the pill press was unloaded by Stevens, YBS, Brown and Heilbronn; it came in a big crate covered by a cardboard box;[354]

(g) in another box in front of the pill press were 60 kilograms of lactose powder which Stevens then used in the pill press;[355]

(h) Stevens started up the press and was experimenting putting different amounts of powder and colouring in to make different sizes of pills;[356]

(i) Stevens said that Brown and Heilbronn were to make the pills at that property;[357]and

(j) Stevens said that the missing pill press and its parts had to be found.[358]

[288] I have already reviewed the criticisms that were levelled at YBS's credibility and reliability, and the judge's warnings to the jury. Being properly warned, it was open to the jury to accept YBS's evidence. Once they accepted his evidence, one significant factor that might have led to that outcome was YBS's evidence about the pill press itself. His description tolerably matched the description given by the expert evidence. There was only one likely source for that knowledge, namely that YBS had been told about the pill press by Stevens, and seen it himself.

[289] If the jury accepted YBS's evidence, it was plainly sufficient to make out count 2.

Conclusion on Conviction Appeal

[290] For the reasons given above, it was, in my view, open to the jury to reach the conclusion that Stevens was guilty of the offences as charged. My review of the evidence does not lead me to be persuaded that there was a significant possibility that an innocent person has been convicted.[359]

[291] For those reasons I would dismiss the appeal.

[292] I propose the following order:

The appeal against conviction is dismissed.

Sentence Application

[293] On the question of leave to appeal against the sentence imposed, I have had the advantage of reading the draft reasons of McMurdo JA and Atkinson J. I am in agreement with those reasons for refusing leave to appeal.

[294] **PHILIP McMURDO JA:** The appellant was convicted of two offences, namely unlawfully trafficking in dangerous drugs and producing a dangerous drug. The

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353 AB 377.
354 AB 376.
355 AB 376.
356 AB 376.
357 AB 378, 382, 387.
358 AB 388-389.
359 *M v The Queen*, at 494.

drug in each case was 3, 4 methylenedioxymethamphetamine, commonly known as ecstasy.

[295] The principal witness in the prosecution case was an alleged accomplice, who is referred to in the other judgments as YBS. If the jury accepted the substance of his evidence they were bound to convict the appellant of these offences. The appellant argues that the verdicts were unreasonable, because it was not open to the jury to accept YBS's evidence or to be otherwise satisfied of the appellant's guilt.

[296] I agree with Morrison JA that the appeal against each conviction should be dismissed. With the detailed description in the judgment of Morrison JA of the evidence at the trial, my reasons can be stated shortly.

YBS's evidence

[297] YBS was trafficking in ecstasy tablets and for a period of at least six months within the period of the alleged trafficking by the appellant. YBS's evidence that he was a trafficker was not challenged: rather, the defence case was that YBS was a major trafficker who had succeeded in avoiding a lengthy term of imprisonment by untruthfully implicating the appellant and undertaking to testify against him.

[298] YBS's offending and his relatively light punishment provided a substantial basis for the defence's challenge to his evidence. As the trial judge instructed the jury, YBS "had a significant involvement in drug offences, particularly in trafficking" and that a person who has been involved in a serious offence may have reasons to lie or falsely implicate another in the commission of the offence. YBS may have sought to minimise his involvement by shifting the blame wholly or partly to others. Having been involved in serious drug offending, his Honour said, YBS was likely to be a person of bad character and that for that reason alone, his evidence might be unreliable. His Honour explained to the jury that YBS had been dealt with more favourably as a result of his co-operation with the investigating authorities. He had been given a reduced sentence and an undertaking by the Attorney-General that his evidence in this case would not be used against him.

[299] As his Honour also reminded the jury, YBS had been charged with and convicted of offences which did not reflect the extent of the offending which he admitted by his evidence in this case. YBS was found at his house in possession of $105,000 in cash, 98 ecstasy tablets and a "tick sheet" showing a list of about 20 customers and their payments to him. Yet he was not charged with trafficking. Instead he was charged and pleaded guilty to lesser offences of possession of the tablets and about $7,000 in cash, for which he was sentenced to 12 months' imprisonment, suspended after the 53 days which he had then served. That was a sentence imposed under s 13A of the *Penalties and Sentences Act* 1992 (Qld) for his promised co-operation in the prosecution of the appellant. But for his s 13A co-operation, his sentence would have been a term of 18 months suspended after four months. As the trial judge told the jury, there was an incentive for YBS not to depart from his statement to authorities which had implicated the appellant.

[300] His Honour instructed the jury to scrutinise YBS's evidence "with great care", not only because of those circumstances, but because his own involvement in trafficking put YBS in a position to give detailed evidence of a trafficking enterprise into which he could then insert a participation by the appellant.

[301] The trial judge also reminded the jury of the arguments for the appellant as to certain parts of YBS's evidence which were said to make his testimony unbelievable. At least most of those arguments are repeated here. The appellant makes a particular criticism of YBS's evidence of the scale of his trafficking and his dealings with the appellant. YBS claimed to have made a profit of $800,000 from his trafficking, in which he said that all of his stock had been acquired from the appellant. He said that his profit was 50 cents a pill. On those premises he would have acquired from the appellant and resold some 1.6 million pills. He gave evidence that he paid the appellant, in cash, in amounts of up to $50,000 at a time. On that basis and with YBS's evidence that the appellant was paid $9 per pill, YBS would have delivered to the appellant payments of cash totalling $14.4 million. At an average of $50,000 per delivery, this would have required nearly 300 deliveries by YBS to the appellant over a six month period. It is argued that this testimony could not have been true and that its falsity made the entirety of YBS's evidence incredible.

[302] It is argued that YBS was vague in his detailing the sequence of relevant events and in other respects. For example his evidence was that he was present at a house on the north side of Brisbane, when a pill press was delivered there, at an address which he could describe as being "at the back of Aspley somewhere."

[303] The appellant's argument also alleges an inconsistency between certain evidence given by YBS at the appellant's committal hearing and YBS's evidence at the trial. The subject was the "tick sheet" which police had found at YBS's residence. It was within a notebook. At the committal hearing, YBS said that the book was not his book. At the trial he agreed that the tick sheet was his document. When cross-examined at the trial, YBS denied that he had been untruthful in his evidence at the committal hearing, saying that he understood that because he had not purchased the notebook, the book was not his so that he had not been untruthful.

[304] The judge's summing up referred to some other arguments about YBS's evidence. There was an inconsistency between his 2008 statement that he had not known what was in a suitcase which, on the appellant's instructions, he had brought from Sydney to Brisbane and his evidence at the trial that he and the appellant had opened that suitcase when they were in Sydney and that it contained what the appellant described as "25 kilos of MDMA [the appellant] wanted brought back up [to Brisbane]." Another matter mentioned by his Honour was the tension between YBS's 2008 statement that he had started to sell tablets after the pill press was delivered to Brisbane (which was in January 2008) and his evidence at the trial that his trafficking had commenced in 2007. His Honour reminded the jury also of evidence of a Facebook message sent from YBS's account (which YBS denied writing) which was to the effect that YBS was sorry for "doggin" the appellant, saying that "I had to get off my charges somehow."

[305] The trial judge concluded his instructions about YBS's evidence by saying that it would be dangerous to convict the defendant on the evidence of YBS unless the jury found YBS's evidence was supported in a material way by independent evidence implicating the defendant in the offending.

[306] There could be no criticism of that warning by his Honour. However it was for the jury to determine whether they accepted YBS's evidence. By s 632(1) of the *Criminal Code* (Qld) a person may be convicted of an offence on the uncorroborated testimony of one witness, unless the *Code* expressly provides to the

contrary. In *Robinson v The Queen*[360] the High Court observed that s 632(1) does not materially alter the common law, citing *Director of Public Prosecutions v Hester*, where Lord Diplock said:[361]

> "But a witness whose evidence upon a particular matter might be expected to be of doubtful reliability for reasons which did not bring him within the category of an incompetent witness was always admissible at common law. It was for the jury to determine what credence they attached to it. In law they were entitled to base their verdict upon it, and upon it alone, if they were satisfied of its truth. But in criminal cases, for the protection of the accused it became the practice of judges in the second quarter of the 19th century to warn the jury of the danger of convicting upon such testimony unless it was corroborated by evidence from some other source.
>
> …
>
> Accomplices form the commonest category of witness whose evidence in criminal cases became subject to the common law requirement of a warning to the jury as to the danger of convicting upon it unless it was confirmed by evidence from some other source, and most of the reported cases are about the evidence of accomplices."

As I will discuss, the verdicts were supported by more than YBS's evidence and it is unnecessary to conclude whether his evidence alone could have satisfied the jury, to the requisite standard, of the appellant's guilt.

[307] In addition to YBS's testimony, other evidence proved that YBS and the appellant were in contact many times over a relevant period and in a business rather than a social context.

[308] The appellant's evidence was that their dealings were attributable to a transaction under which they agreed that the appellant would build a drag racing car for YBS. It was this transaction, the appellant testified, which explained the payment of $175,846 by the appellant to YBS or (YBS's girlfriend, YBT) in November 2007. YBS's evidence was that this was a loan by the appellant. A statutory declaration, dated 1 November 2007 and admittedly signed by the appellant, recorded the payment as a gift by him to Ms YBT. The appellant said that when this payment was made, the appellant had already received from YBS amounts totalling about $220,000 towards the construction of the race car and that this was a refund of part of those payments, not because any contract for the construction of the car had been terminated but because YBS required the money for a purchase, in his girlfriend's name, of a house in which they would live. The appellant gave this evidence-in-chief:

> "Thank you. Did you have a conversation with Mr YBS on or about the 1st of November 2007 about money? This is – I'm getting towards the statutory declaration that you talk about?---Yes.
>
> What happened there?---He come to see me, I think, or rang me, and said that his girlfriend wasn't very happy with him that he was

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360 (1999) 197 CLR 162, 167-168 [18].
361 [1973] AC 296, 324-325.

spending all this money on another drag car and she wanted – and they didn't own their own home.

Yes?---That he had invested in a Low Doc loan and had needed some, like, proof or evidence or something that he had the deposit that wasn't money that he'd borrowed for the deposit so he could and what do you say, like - - -

I understand. So did you ultimately provide him with a statutory declaration?---Yes.

And you're aware that it's exhibit 2 in these proceedings?---Yes.

When you provided that, did you expect to have to honour it? Did you expect to actually have to part with the money?---No.

Things changed though, because you did part with money, didn't you?---Yes.

And if the witness can see exhibit C marked for identification, a copy of a cheque? Do you recognise that?---Yes.

Do you recognise that as being a cheque that was drawn on your business account to be paid to YBS ultimately or, perhaps not, YBT - - -?---It's a bank cheque made out to the Bank of Queensland.

But do you understand that's moneys that was to go to YBS or perhaps - - -?---I think it actually went to his solicitor as a deposit.

…

So how did you view that? How did you view giving that money to YBS or to his girlfriend or whoever it went to?---I couldn't really say no, because he'd given me over $220,000. So, in fact, it was his own money.

There's a difference there. After you've repaid the money, that $175-odd thousand and he'd given you those funds - - -?---Yeah.

- - - to purchase a race car, there's a difference of approximately $40,000 - - -?---Yeah.

- - - in that he'd given you money to build a race car and then you'd given him money as a deposit on a home?---Yep.

Did you build him a race car?---No.

What happened to the $40,000 difference approximately?---I kept it."

[309] The appellant's evidence that he was to build a race car for YBS had some documentary support in the form of a document which detailed the costs of components of a car to be built for a customer who was identified by a name very close to that of YBS. The document was described as a "quote" for a total of $350,000. It also apparently recorded some eight payments, received in a period from 23 August 2007 to 13 November 2007, which totalled $214,225 leaving a "total remaining to pay" of $135,775.

[310] The appellant's evidence in this respect was supported by evidence from his wife, who had been involved with the accounts for his (lawful) businesses, that she had

located this document in 2009 or 2010 when going through "all of the job cards of all of the jobs that had been done in the chassis shop". She said that she received cash from YBS from time to time. She was able to identify a correlation between at least one of the payments apparently recorded by the "quote" document and two cash deposits recorded in the company's MYOB system. Those deposits were amongst a total of approximately $1.2 million which a forensic accountant testified were unexplained income of the appellant or his lawful businesses.

[311] The jury was not bound to accept that evidence of Mrs Stevens. Like the evidence of YBS and the appellant, it was not incontrovertible. And the appellant's testimony on this point was not clearly compelling. He did not explain why the production of the car did not proceed or why, in that event, he had not been asked to refund the balance of what was said to have been received. Nor did he say whether anything had been done towards the production of this car. Overall the evidence of this payment by the appellant to YBS provided neither compelling proof of the appellant's guilt nor disproof of the core of YBS's testimony.

[312] There was still an association between YBS and the appellant in late March 2008, as evidenced by the police interception of a car at Chermside then being driven by YBS and with YBS's brother and the appellant as passengers. A police officer testified that this car came to his attention from the fact that it was driving through the back streets of Chermside in a slow and suspicious manner. He spoke to those in the car and the incident was recorded within police files. Another of the police officers on that occasion recognised the appellant from the appellant's racing car driving business.

[313] YBS's evidence of this incident was that the appellant had told YBS and his brother to come to his house, where they were then told by the appellant that the three were to look for two men called Brown and Heilbronn. Those men had been making ecstasy pills in a house at McDowall (to which YBS had said the appellant's pill press had been delivered). YBS said that the pill press and stamps used in the production of tablets had gone missing and that this was one of the reasons why the appellant wanted to find Brown and Heilbronn.

[314] The appellant's evidence was that he had ceased any contact with YBS by the end of January 2008. He was then asked, in examination-in-chief, whether he disputed that he was in the car stopped by police in March 2008 at Chermside and he answered "No, I just don't recall". He was asked why he would be in a car with YBS to which he answered: "The only thing I can think of is I was looking for Mr Brown … I wasn't real happy with him … things had been said." The appellant's evidence did not satisfactorily explain why he had a grievance with Brown and why he enlisted YBS and his brother to assist, when the appellant's contact with YBS had ceased months earlier.

[315] The Chermside incident indicated that the relationship between the appellant and YBS had been other than the appellant had claimed. It supported YBS's evidence that he was enlisted to find Brown because it was YBS who had introduced Brown to the appellant to become a participant in the appellant's drug trafficking enterprise and that Brown's absence had been affecting that enterprise.

Other evidence

Brown and Heilbronn

[316] Other evidence established that Brown and Heilbronn were indeed producing ecstasy tablets at a certain address in McDowall. It was an address which was within YBS's general description of the location at which he witnessed the unloading of a pill press "at the back of Aspley somewhere". YBS's evidence was that it was unpacked at that address in the presence of the appellant, YBS, Brown and Heilbronn.

[317] When police executed a search warrant at that McDowall address in October 2008, they found a number of articles, including traces of MDMA, which evidenced that ecstasy tablets had been produced in the house but the production had been discontinued. The fingerprints of Brown and Heilbronn were found there. Other evidence proved that Heilbronn had rented the house from about May/June 2007.

[318] The search of the McDowall house had followed a search by police of a house at Broadbeach Waters two days earlier, where a pill press and MDMA powder had been found. The Broadbeach Waters house was rented by Heilbronn in a false name. Police there intercepted, at 3.00 am in the street outside that property, a car carrying Heilbronn and another man.

[319] The police investigation which had preceded the search of the Broadbeach Waters house had included the interception of telephone calls which further evidenced Heilbronn's activity in the production of drugs. Police intercepted a particular call in which the appellant had telephoned Heilbronn on 13 October 2008 asking about "the paperwork that you owe me" and saying that he was owed "8 or 9 hundred thousand". This exchange was recorded:

> "Heilbronn: If you can get back what I – like what I gave you, then I can – then I can guarantee, do you know what I mean? I just need that to make it for you, get what I'm saying?
>
> Appellant: Yeah, but how long is that going to take?
>
> Heilbronn: Oh, I don't know, like a couple of weeks."

Within the formal admissions on behalf of the appellant at the trial was an admission that he was a party to that conversation. That was not the only conversation between the appellant and Heilbronn. In the period of this surveillance, there were 52 calls or texts by the appellant to Heilbronn and another 50 calls or texts from Heilbronn to the appellant. There was also evidence of Heilbronn attempting to contact the appellant through another man called McLean.

[320] The appellant's evidence as to his association with Heilbronn was that he had simply lent Heilbronn money which had not been repaid. He said that after meeting Heilbronn (and Brown) through YBS, he had had no contact with Heilbronn "for quite some time", but that Heilbronn sometimes came to "drop up to [the appellant's] workshop" with McLean, who had worked with the appellant. The appellant said that he lent Heilbronn approximately $25,000 because Heilbronn had "got himself in a bind" and the appellant "felt sorry for him and … was trying to help him out". He said that he lent him $25,000 to be repaid with $10,000 interest over a few months.

[321] The recorded conversations between the appellant and Heilbronn were in obscure terms. But they could not be explained simply as exchanges in which the appellant was seeking repayment of a loan. For example, there was a conversation between

the two men recorded in a car on 10 November 2008 when the appellant said to Heilbronn:

> "And here I've given you another fuckin' two (wds) on fuckin' 'tick' and ya can't even fuckin' get (wds)".

As to that evidence the appellant said that he could not say whether it was his voice being recorded and that he did not know what "on tick" meant. He said that it was not an expression which he would use in a conversation with Heilbronn. As to whether this was the appellant's voice in the recording, of course the jury had not only the large amount of evidence of recorded conversations to which the appellant admitted being a participant, but also the benefit of hearing the appellant's voice as he gave evidence over several days of the trial. Another example is a conversation between the appellant and Heilbronn in January 2009. The appellant telephoned Heilbronn and said that it was a "no go today because we've had some visitors … I can't say much because I think your phone's fucked at the moment … but everything's still all right but you'll have to wait … till I come and see you and talk to you in person … just wait till you hear don't talk on your phone."

[322] Heilbronn's conversations with the appellant were occurring at the same time as he was having (recorded) conversations with others about supplying ecstasy tablets. Even putting on one side the fact that many of Heilbronn's conversations with others referred to drug dealings between Heilbronn and the appellant, these other calls were yet further evidence of Heilbronn's drug trafficking, so that the coincidence of timing of these conversations and recorded conversations between Heilbronn and the appellant fortified the impression that the appellant had been discussing drug dealing with Heilbronn, rather than simply a repayment of a loan.

Other recorded conversations

[323] A large number of recorded conversations to which the appellant was not a party were played to the jury. The trial judge gave directions as to the conditions which had to be established for the use of that evidence against the appellant. Neither the notice of appeal nor the appellant's outline of argument questioned the adequacy of the directions and on the hearing of the appeal, the appellant's counsel specifically disavowed any criticism of the summing up in any respect.

[324] There is no argument that the jury might have been unfairly distracted by that material if it was not probative of the appellant's guilt. Rather, the argument is that this body of evidence could not matter to this Court in its consideration of whether it was open to the jury to convict. I have concluded that the verdicts were open, even apart from these conversations to which the appellant was not a party being used as evidence of the truth of what was said in those conversations of the appellant's participation in drug trafficking. I have found it unnecessary then to consider whether that body of evidence, or more specifically each conversation within it, was admissible as an exception to the hearsay rule according to *Tripodi v The Queen*[362] and *Ahern v The Queen*.[363] But as I have just discussed in relation to conversations between Heilbronn and others, some of that evidence was admissible upon a different basis. It established the context in which the appellant was recorded as meeting and speaking with others, namely that those others were

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362 (1961) 104 CLR 1.
363 (1988) 165 CLR 87.

trafficking in drugs, which was relevant in interpreting the effect of what was being said in conversations to which the appellant was a party.

[325] There were, of course, many recorded conversations to which the appellant was a party, (either on his own admission or as the jury could have concluded), most importantly a conversation between a man alleged to be the appellant and a person called Marshall. The conversation was recorded by a listening device installed in a car which the appellant had been seen to be driving. The conversation is set out in the judgment of Morrison JA and his Honour has explained the inconsistencies and curiosities in the appellant's explanation of this evidence. It is submitted for the appellant that the jury could not have made anything of this evidence at least because the quality of the recording was very poor so that it was difficult to know what was said. I have listened to the recording and the words attributed to the appellant can be heard clearly enough.

[326] Other evidence established that, at the same time, Marshall was discussing with Brown what appeared to be their drug dealing. Again, that status of Marshall provided a context for the jury to assess the appellant's discussions with Marshall. The effect of this conversation with Marshall, in which the appellant was apparently discussing the supply of a pill press and speaking of his drug enterprise, was clear enough. On its face it was strong evidence of the appellant being involved in an illegal drug enterprise. The only explanation by the appellant was that he believed that Marshall and Brown were setting him up, and that in the hope of learning something from Marshall, the appellant was "bullshitting my way". If the jury rejected that unlikely explanation, there was no other explanation consistent with the appellant's innocence.

[327] There was evidence that in the course of the police operation the appellant had used five mobile phones, three of which had not been registered in his name. He had also used public phones. The appellant testified that he used mobile phones which had been found in the trucks in his business. There was evidence that the appellant was conscious of the risks of telephone surveillance. According to the evidence of Ms Carroll, who had been the appellant's employee and girlfriend, the appellant told her that he would regularly destroy mobile phones so that "they couldn't find the serial number on the phone". And there were several instances where the appellant told others of possible surveillance, such as in the conversation with Heilbronn in January 2009 to which I have referred.

[328] The jury was entitled to use this evidence of the appellant's anti-surveillance measures as indicative of his participation in some illegal activity. One of the appellant's arguments is that this evidence could have resulted "in suspicion about the motives for the Appellant being secretive and conducting his communications in the manner in which he did, but that evidence could not establish beyond reasonable doubt the reason or motive for that behaviour."[364] It is said that even if the evidence was capable of establishing that the appellant was engaging in unlawful conduct of some kind, it did not establish what the conduct was and that it may have involved, for example, taxation offences.[365] But as to those submissions, the prosecution case was not that the appellant's anti-surveillance measures established, without other

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364 Appellant's Outline of Argument filed 19 August 2016, paragraph 27f.

365 Appellant's Outline of Argument filed 19 August 2016, paragraph 27g.

evidence, the appellant's guilt. Rather this was conduct which was part of a circumstantial case in addition to and supportive of the direct evidence of YBS.

Evidence of Ms Carroll

[329] Ms Carroll was called in the prosecution case. She worked for the appellant from early 2008. There were occasions when she was with the appellant when they travelled from work in a car to a place where she was then asked to wait in the car whilst the appellant had brief meetings. She was not aware of these meetings having anything to do with the appellant's business enterprise (his trucking and car racing businesses) in which she was employed. She said that she asked the appellant about the purpose of these meetings and he replied that "it was about money, that he needed money … otherwise he would lose his trucks."

[330] In her evidence-in-chief she said that at one time he mentioned "that there was drugs" and that he had said that "he would never touch them, he was like the middle guy." In cross-examination she seemed to withdraw her evidence that the appellant had mentioned drugs. In re-examination she said that she did not know "if the exact word" drugs was mentioned. She recalled that these meetings would take anywhere from a couple of minutes to 15 minutes after which she and the appellant would return to work.

[331] A listening device recorded a conversation between the appellant and Ms Carroll when the two were staying at a hotel at the Gold Coast in early January 2009. The appellant was recorded as saying that he wanted to "stop at Ashgrove on the way home" to meet "that young bloke – Nick". There was this conversation:

> "Appellant: Remember all that stuff I told ya about? I was getting something to make money.
>
> …
>
> Appellant: Well he owes me money – and his mates have got the thing – and my mates can do the thing. So it's my mates that I seen last night … then once it's all set up … I got someone everywhere.
>
> …
>
> Carroll: What if ya get caught?
>
> Appellant: I'm not touching anything. If I don't do something soon babe I'm lose me trucks and everything."

Ms Carroll gave evidence that the couple did go to Ashgrove later that day, where the appellant met two men whom police surveillance identified as (Nick) Heilbronn and a man called Kong. Other evidence established that Heilbronn's drug dealing involved extensive contact between Heilbronn and Kong. The jury was unlikely to think that this meeting with Heilbronn and Kong was simply about a loan by the appellant to Heilbronn.

Conclusion on the appeal against the convictions

[332] In my conclusion, even from the evidence which I have discussed, there was ample support for the testimony of YBS that the appellant had engaged in trafficking in the drug ecstasy within the period charged on the indictment. It was, of course,

unnecessary for the prosecution to prove that the trafficking occurred throughout the entirety of that period.

[333] To accept the core of YBS's evidence, the jury did not have to find that every detail of it was correct. For example the jury could have doubted the accuracy of YBS's claim that his own net profit was in the order of $800,000. Or they may have doubted his evidence that his profit per pill was only 50 cents. Still they could well have been satisfied that YBS was a substantial dealer regularly obtaining supplies, measured in the thousands of tablets, from the appellant which YBS then distributed. He may have exaggerated the extent of his dealings, measured in a dollar amount, but nevertheless been truthful in the substance of his evidence that the appellant was trafficking. The effect of such an exaggeration upon the core of YBS's testimony was a matter for the jury to consider, not in isolation, but in the context of the evidence as a whole, most particularly the other evidence which I have discussed.

[334] I have concluded that it was open to the jury to convict the appellant of trafficking, even without regard to the evidence in the prosecution case that there was more than a million dollars which had been banked to the credit of the appellant's business which could not be satisfactorily explained. At the trial the appellant's counsel argued that it was implausible that a drug trafficker would bank the proceeds of his enterprise and record them in his company's accounts. It was also argued to the jury that in all of the evidence of surveillance of the appellant, there was no evidence of the appellant being then in possession of any drugs, or material for making tablets. And it was argued that the appellant's apparently dire financial position was inconsistent with the prosecution case that he was making large sums from drug trafficking. These were legitimate arguments but they did not reveal a fatal flaw in the prosecution case.

[335] The question is not whether, as a matter of law, there was evidence to sustain a verdict; it is whether upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty.[366] Although there were some inconsistencies and apparent elements of exaggeration within YBS's evidence, there was nothing about the core of his evidence against the appellant which was so unlikely that it had to be rejected. Coupled with at least the evidence which I have discussed, YBS's evidence provided a reasonable basis for the jury's verdict on the charge of trafficking. And an acceptance of YBS's evidence meant that the second charge was also proved (save for the circumstance of aggravation which the trial judge directed the jury not to accept). The jury saw YBS and the appellant giving their evidence. It was open to them to be satisfied beyond a reasonable doubt of the appellant's guilt.

The appellant's sentence

[336] I agree with the reasons given by Atkinson J in concluding that the application for leave to appeal against sentence should be refused.

[337] I wish to add only something to what her Honour has said about the argument of a disparity between this sentence and those imposed upon co-offenders. At the sentencing hearing the prosecutor tendered a schedule entitled "Associated Offender

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366 *M v The Queen* (1994) 181 CLR 487, 493.

Sentences". It contained details of the sentences imposed upon offenders about whom there had been some evidence in the trial. When the prosecutor tendered this schedule, he described it as a list of "people arrested and charged with various offences in the course of the operation". He did not suggest that they were co-offenders or that their sentences were otherwise relevant, except for Brown and Heilbronn. In turn the appellant's counsel addressed only the cases of those two and did not suggest that even those cases had a particular importance in the sentencing of the applicant. Referring to the sentence of Brown, the applicant's counsel said that it was "difficult to try and dovetail where the offending for which he was punished … links with the offending my client's about to be punished for, but nonetheless it is relevant so far as a comparative goes". He said that "Heilbronn was involved at least in part of what Mr Stevens is to be sentenced for today".

[338] In the written submissions of senior counsel for the appellant in this Court, it is now contended that the schedule of associated offender sentences "demonstrates that the sentences imposed on all other persons associated with the criminality that was considered in the Appellant's sentence [were] markedly lower sentences". That is a submission which could not be fairly considered in this Court. It could not be considered without an understanding, in each case, of the relationship between that person's offending and the appellant's offending, an understanding which would be necessary to consider whether the other sentence was relevant and if so, whether there was a disparity of sentencing. Because this argument was not made to the sentencing judge, this Court does not have findings of fact in that respect.

Orders

[339] I would order that the appeal against conviction be dismissed and the application for leave to appeal against sentence be refused.

[340] **ATKINSON J:** I have had the advantage of reading the draft reasons of my colleagues for dismissing the appeal against conviction. Morrison JA has set out in detail the evidence given during this long trial. For the reasons given by Morrison and McMurdo JJA, I too am of the view that there was ample evidence by which the jury was entitled to be satisfied beyond reasonable doubt of the appellant's guilt and that therefore the appeal against conviction should be dismissed.

[341] I turn now to the application for leave to appeal against the sentence imposed.

[342] The appellant was sentenced to a term of 13 years imprisonment on count 1, that is carrying on the business of unlawfully trafficking in dangerous drugs between 1 August 2007 and 4 February 2009. He was convicted but not further punished on the count of producing a dangerous drug contrary to s 8 of the *Drugs Misuse Act* 1986. The only ground of appeal against sentence is that the sentence is manifestly excessive.

The applicant's submissions

[343] The applicant submitted that the sentence is manifestly excessive, firstly, when compared to the sentences imposed on the co-offenders and, secondly, when compared to the sentences imposed in other unrelated cases for similar or more serious criminal offending.

[344] In support of his argument that the sentence was excessive when one compares it with the sentence imposed upon co-offenders, the applicant referred in particular to the sentences imposed upon Vlatko Tesic and Nicholas Heilbronn and Kieran Brown. With regard to the argument that the sentence imposed was manifestly excessive with regard to sentences imposed upon other similar or more serious offenders the applicant referred to the authorities of *R v Jenkins, Rollason and Brophy*[367] and *R v Barker*.[368]

The sentence imposed

[345] There was no complaint about the facts on which the learned sentencing judge based his conclusions as to the applicant's offending. With regard to his trafficking activities, the learned sentencing judge said that the offending conduct and its scope was somewhat difficult to define. The prosecution case was that the applicant was the organiser of a substantial trafficking operation and the conviction by the jury involved, as the judge found, substantial acceptance of that proposition.

[346] The production offence, count 2 on the indictment, was an example of that. That conduct occurred around the end of January 2008 where the applicant organised the availability of a pill press at McDowell, arranged for materials to be available to be used in drug production, supervised the activities of those people, being Kieran Brown and Nicholas Heilbronn who would carry out the drug production, and then arranged the sale of the pills. There were a number of indicators that this was a large scale operation including the presence of 60 kilograms of lactose at premises at McDowall which was sufficient to produce more than 300,000 pills. There was evidence of pill presses at two other locations, two in Broadbeach Waters and two at Red Hill. At the Broadbeach Waters address some five kilograms of powder and pills were located. The materials contained the equivalent of 100 grams of pure MDMA.

[347] The learned sentencing judge concluded that the jury's verdict carried with it a finding that the applicant was responsible for the setting up of the pill presses at those premises and he had the ultimate control of their use. The inference to be drawn was that those pill presses were to be put to use for the production of MDMA tablets at each of those locations although the evidence did not make it possible to find the extent to which they were used. His Honour held that although the evidence did not directly demonstrate that the applicant was responsible for obtaining the MDMA and other materials for the production of MDMA tablets at the Broadbeach Waters and Red Hill addresses, however, given his relationship with those more directly involved with those premises and the pill presses there, in particular Heilbronn, it seemed likely that the applicant played a significant role in obtaining MDMA and other materials, although there is no satisfactory evidence to show the extent to which that occurred.

[348] There were, his Honour observed, two types of pill press involved. There were pill presses at McDowall and at Broadbeach Waters that could produce either 5,000 or 10,000 pills an hour. The evidence accepted by the jury strongly suggested that at least some of the pills to be produced were subsequently to be sold under the direction of the applicant.

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367 [2008] QCA 369.
368 [2015] QCA 215.

[349] The learned sentencing judge referred to the level of YBS's engagement in the sale of pills. He concluded that on YBS's evidence he sold several hundred thousand pills which was indicative of the level of selling in which he engaged under the direction of the applicant. The evidence showed a relationship between YBS and the applicant probably from about the middle of 2007 when YBS brought drugs back from Sydney for the defendant to the months prior to January 2008 when the pill press was set up at McDowall, such that the applicant gave YBS $176,000 for the purchase of a property in December 2007.

[350] The evidence suggested that substantial drug dealing had occurred after the arrival of the pill press in January 2008. There was a conversation in August 2008 between the applicant and a Mr Marshall where the applicant said he could move about 20,000 pills a week. The evidence led the judge to conclude that the applicant had a number of people working for him at that time to assist in the production and distribution of MDMA pills. The learned sentencing judge referred to difficulties in the production of MDMA in about October 2008.

[351] The learned sentencing judge referred to three occasions when a person who had an association with the applicant was intercepted by police carrying a large quantity of cash. Of these, his Honour said he was satisfied that the money the subject of the last two police interceptions, the first an amount of $110,000 carried by a Mr Russell Kempton, and the second, an amount of $99,700, which one of the applicant's employees, a Mr Luke Szczepanski, collected from an associate of the applicant in Western Australia, was drug related money. They also showed that the applicant's drug related activities extended to Western Australia but did not otherwise add a great deal of additional light on the nature and scope of his operations beyond demonstrating that the trafficking business "operated at a rather high level".

[352] So far as the $1.2million worth of unsourced income that the prosecution pointed to the learned sentencing judge found that on balance the better view was that not all of this money could be found to be the proceeds of trafficking but it was likely that a "non-insignificant proportion of it" was.

[353] His Honour was not prepared to act on the evidence given by YBS that he saw the contents of a suitcase in which he said there were 25 kilograms of MDMA which he brought back from Sydney for the applicant. His Honour therefore acted very cautiously in the facts on which he relied for sentencing.

[354] His conclusions were as follows:

> "The picture therefore which emerges is that at least for a substantial part of the period to which the trafficking count relates, the defendant was, through others, selling very large quantities of MDMA. That was the case, it seems to me, from around the end of 2007 well into 2008 and possibly even to the middle of that year. After the middle of 2008, the evidence suggests the defendant was not selling as many pills; indeed the number was probably significantly lower. Nevertheless, he maintained an organisation with the capacity to sell similar quantities. He was trying to utilise that organisation and in particular was arranging for the setup of pill presses for that purpose, and attempting to source drugs. It seems unlikely that he would continue to do these things throughout the latter half of 2008 if he

> was entirely unsuccessful, but it is not possible to identify any particular success in these activities."

[355] His Honour found that the applicant was not a drug addict but engaged in trafficking in drugs for profit or commercial motives given that he had financial difficulties because of what had happened in his business operations. The applicant continued in spite of the fact that he was aware of police surveillance and plainly aware that his conduct was highly illegal. On more than one occasion he was prepared to engage in threats. The period of drug trafficking alleged in the indictment was some 18 months.

[356] The applicant had been a successful racing rider and driver and had carried on a business manufacturing parts and racing vehicles as well as a relatively small tattooing business and a charter boat business. He had an earthmoving business which he built up to the point where he had 14 trucks and trailers but his heavy reliance on finance for their purchase may have been a significant contributor to his financial difficulties in the years leading up to his offending. He had built up properties in the northern suburbs of Brisbane for which he had been offered $14 million.

[357] He had a minor and largely irrelevant criminal history.

[358] The applicant had a number of factors which were taken into account in mitigating his sentence. The first was the absence of any offending since his arrest in February 2009. As a result of the publicity of his arrest, loans were called in and that resulted in the sale of assets with losses that might not otherwise have occurred. The applicant was unable to proceed with the production of a television show which he had commenced prior to his arrest. He had written a letter to the judge referring to the hardships his family had suffered and would suffer. However his Honour opined that that could not weigh greatly in determining the sentence. The learned sentencing judge also referred to evidence suggesting that he may have some health conditions including bipolar affective disorder and depression. His Honour said the major consideration in offending like this is the need for deterrence and the need to demonstrate that people who engage in trafficking activities will face very substantial terms of imprisonment.

Parity considerations

[359] The leading High Court authority on the parity principle is *Lowe v The Queen*.[369] The basis for the principle is set out in the judgment of Mason J:[370]

> "Just as consistency in punishment – a reflection of the notion of equal justice – is a fundamental element in any rational and fair system of criminal justice, so inconsistency in punishment, because it is regarded as a badge of unfairness and unequal treatment under the law, is calculated to lead to an erosion of public confidence in the integrity of the administration of justice. It is for this reason that the avoidance and elimination of unjustifiable discrepancy in sentencing is a matter of abiding importance to the administration of justice and to the community."

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369 (1984) 154 CLR 606; [1984] HCA 46.

370 At 610-611.

[360] The effect of this principle on sentence appeals was set out by Mason J at 613-614:

> "… a court of appeal is entitled to intervene when there is a manifest discrepancy such as to engender a justifiable sense of grievance, by reducing a sentence, which is not excessive or inappropriate considered apart from the discrepancy, to the point where it might be regarded as inadequate."

[361] The parity principle was further explained by the High Court in *Postiglione v The Queen*[371] where Dawson and Gaudron JJ held:[372]

> "The parity principle … is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowances should be made for them. In the case of co-offenders, different sentences may reflect different degrees of culpability or their different circumstances. If so, the notion of equal justice is not violated. On some occasions, different sentences may indicate that one or other of them is infected with error. Ordinarily, correction of the error will result in there being a due proportion between the sentences and there will then be equal justice. However, the parity principle, as identified and expounded in *Lowe v The Queen*, recognises that equal justice requires that, as between co-offenders, there should not be a marked disparity which gives rise to 'a justifiable sense of grievance'. If there is, the sentence in issue shall be reduced, notwithstanding that it is otherwise appropriate and within the permissible range of sentencing options.
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> Discrepancy or disparity is not simply a question of the imposition of different sentences for the same offence. Rather, it is a question of due proportion between those sentences, that being a matter to be determined having regard to the different circumstances of the co-offenders in question and their different degrees of criminality." (citations omitted)[373]

[362] It follows, as this Court held in *R v Floyd*:[374]

> "[M]arked disparity in the sentences imposed upon an applicant for leave to appeal against sentence and his or her co-offenders is an appropriate ground of appeal where an applicant can demonstrate an objectively justifiable sense of grievance, whether the applicant was sentenced before or after his co-offenders."

[363] It is necessary, therefore, to consider in detail the sentence imposed upon the applicant's co-offenders to determine whether there has been disparity in the sentences imposed and the reasons for any such disparity.

[364] There were a number of offenders who were caught up in the drug trafficking business with which the applicant was associated. The material before the sentencing judge showed that whilst a number of them were sentenced for related

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371 (1997) 189 CLR 295; [1997] HCA 26.
372 At 301-302.
373 See also *Green v The Queen* (2011) 244 CLR 462.
374 [2014] 1 Qd R 348; [2013] QCA 74 at 355 [34].

offending, although with the exception of Heilbronn and perhaps Brown, they could not be considered co-offenders.

[365] On 24 September 2009, Kristopher O'Campo was sentenced to one year and six months' probation on four counts of possessing a dangerous drug and one count of possessing a thing being a pill press. On 16 April 2010 Vlatko Tesic was sentenced to eight years imprisonment on one count of trafficking in a dangerous drug from 4 June to 19 November 2008 and 12 counts of supplying a dangerous drug. On 13 July 2010, YBS was sentenced to 12 months imprisonment suspended for 15 months after serving 53 days for possessing dangerous drugs. As has been noted, his sentence was affected by co-operation given under s 13A of the *Penalties and Sentences Act*. On 3 July 2012 Shaun Beechey and Ellie Khoury were charged jointly with a number of counts the most serious of which was producing a dangerous drug exceeding two grams between 7 August and 18 October 2008. Beechey was sentenced to four years imprisonment with a parole eligibility date after he had served one year and Khoury was sentenced to two and a half years imprisonment with parole eligibility after serving 12 months imprisonment.

[366] On 5 July 2012 Mahan Gheisari and Allen Hirmiz were sentenced. In Gheisari's case he was sentenced for producing a schedule 1 drug exceeding schedule 3 on or about 17 August 2008 and possessing a schedule 1 drug exceeding schedule 3 on the same date. Hirmiz was sentenced for producing a schedule 1 drug exceeding schedule 3 between 7 August and 18 October 2008 and permitting use of a place between 1 September and 18 October 2008. Gheisari was sentenced to 18 months imprisonment with a parole release date after serving five months and Hirmiz was sentenced to nine months imprisonment with an immediate parole release order. Filip Grbavac was sentenced on 13 November 2012 on one count of producing a dangerous drug to 15 months imprisonment wholly suspended for a period of 21 months.

[367] As mentioned earlier the two who might be considered co-offenders were Nicholas Heilbronn and Kieran Brown.

[368] Kieran Brown was sentenced on 10 December 2013[375] on one count of trafficking in dangerous drugs; one count of breaking and entering premises and of wilful damage; four counts of possessing a dangerous drug in excess of two grams; two counts of unlawful possession of a weapon; two counts of possessing instructions for producing a dangerous drug; three counts of possessing a thing for use in connection with producing a dangerous drug; two counts of possessing property obtained from trafficking; one count of possessing dangerous drugs; one count of producing a dangerous drug; one count of possessing a relevant thing; 11 counts of fraud; one count of possessing tainted property; one count of contravening a direction or requirement of a police officer; one count of possessing a relevant substance or thing; and one count of possessing or acquiring a restricted item. He was sentenced to nine years imprisonment with lesser concurrent sentences. His parole eligibility was after he had served four years. Two hundred days pre-sentence custody was considered but not declared.

[369] The fraud offences were committed between September 2006 and November 2007. The drug offending occurred in a three week period between 18 April and 3 May

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375 See *R v Brown* [2015] QCA 225.

2007, a six week period from 10 October to 25 November 2008 whilst he was on bail and then a further six week period between 5 March and 24 April 2010 whilst he was on two bail undertakings.

[370] On a further indictment he was charged with producing methylamphetamine between September 2010 and April 2012. Brown pleaded guilty, albeit on the date set for trial so it was a late plea. He had a minor and largely irrelevant criminal history. Brown was a drug user but his trafficking was commercially motivated. It can be seen that Brown and Stevens were co-offenders for only some of their offending. Where their offending coincided, Stevens' offending was at a higher organisational level.

[371] Heilbronn was sentenced on 22 September 2011. He was sentenced on one count of trafficking in a dangerous drug between 7 August 2008 and 18 October 2008; supplying a dangerous drug; producing a dangerous drug in excess of two grams; possessing a dangerous drug in excess of two grams; possessing a relevant thing; possessing things used in connection with producing a dangerous drug; possessing a dangerous drug; receiving tainted property with a circumstance of aggravation; possessing a dangerous drug; and four counts of possessing a dangerous drug; and one count of supplying relevant things. He was sentenced to eight years imprisonment with pre-sentence custody of 946 days declared as time served under that period of imprisonment. His parole eligibility date was 19 October 2011.

[372] The learned sentencing judge said that in determining the appropriate sentence the relevant factors were these. It was a highly sophisticated operation of considerable magnitude. Whilst the trafficking period was of relatively short duration, a little over two months, Heilbronn's conduct was persistent, including continuing to engage in that activity after being intercepted by police and placed on bail. The relevant mitigating factors were his relative youth – he was only 26 at the time of his offending – the fact that he had no relevant prior criminal history and had never previously served time in custody and that he had by the time of sentence served two years seven months in custody. He had a good employment history and had used his time in prison to work hard and rehabilitate himself. His involvement was at a wholesale level. Importantly in terms of parity Heilbronn entered a plea of guilty, was young and had demonstrated remorse and some rehabilitation while in custody. The period of his trafficking was shorter and he was not, unlike Stevens, the overall organiser.

[373] The applicant was higher in the organisational chain than Heilbronn and Brown and carried on the business of unlawful trafficking in dangerous drugs for a longer period and had none of the mitigating factors of youth or a plea of guilty. It could not be said that there was an unjustifiable discrepancy in the sentence imposed on the applicant.

Manifest excess

[374] As has been discussed, the parity principle is an example of the objective of consistency in sentencing. In *Barbaro v The Queen*[376] the High Court referred to the method by which this is to be achieved:

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376 (2014) 253 CLR 58 at 74.

> "As the plurality pointed out in *Hili v The Queen*, in seeking consistency sentencing judges must have regard to what has been done in other cases. Those other cases may well establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion. The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect."

[375] This court should only interfere with a sentence on the ground of manifest excess only in circumstances where the departure from previous sentences for similar offending is such that the court concludes that there must have been some misapplication of principle by the sentencing judge. As the High Court recently observed in *R v Pham*:[377]

> "Appellate intervention on the ground of manifest excessiveness or inadequacy is not warranted unless, having regard to all of the relevant sentencing factors, including the degree to which the impugned sentence differs from sentences that have been imposed in comparable cases, the appellate court is driven to conclude that there must have been some misapplication of principle."

[376] The applicant submitted that the sentences were manifestly excessive when compared to those in *R v Jenkins, Rollason and Brophy*[378] and *R v Barker*.[379]

[377] In addition the respondent relied at sentence on *R v Lowe* [2004] QCA 398; *R v Rodd ex parte A-G (Qld)* [2008] QCA 341; *R v Nabhan & Kostopoulos* [2007] QCA 266; *R v Markovski* [2009] QCA 299; *R v Feakes* [2009] QCA 376; *R v Johnson* [2014] QCA 79 and *R v McGinniss* [2015] QCA 34.

[378] On appeal, the respondent also relied on *R v Gordon* [2016] QCA 10 and *R v Nguyen* [2016] QCA 57.

[379] The appellate decision of *R v Jenkins, Rollason and Brophy* is particularly useful in determining the level of sentence that was appropriate in this case. Brophy was convicted by a jury on one count of trafficking in MDMA and three counts of unlawfully supplying MDMA. Jenkins was convicted by the jury of one count of trafficking in MDMA and one count of unlawfully supplying MDMA. Rollason pleaded guilty to one count of unlawfully trafficking in MDMA. They planned to distribute approximately 500,000 tablets on the Gold Coast. Ninety thousand tablets were obtained from New South Wales on 20 October and 18 November 2004. A further 298,000 tablets were found in Sydney. The wholesale trafficking business involved about $8million worth of MDMA.

[380] Brophy was the head of the Australian business and had authority over the distribution process. Under him was Rollason who was the "sales manager" of the business and aware of the full parameters of the trafficking. Rollason directed Jenkins as to the terms of distribution to dealers on the Gold Coast. Rollason had authority to set and vary prices. Jenkins had a network of contacts that were exploited in the attempted sales of stock.

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377 (2015) 256 CLR 550 at 559; [2015] HCA 39 at [28].
378 [2008] QCA 369.
379 [2015] QCA 215.

[381] Brophy was sentenced to 17 years imprisonment for trafficking in MDMA and convicted but not further punished in relation to the supply count. That sentence was upheld on appeal. Rollason was sentenced to 12 years imprisonment to be served cumulatively upon a sentence of 10 years imprisonment that had been imposed in the Supreme Court of Brisbane in November 1998. On appeal that sentence was set aside and substituted by an order that he be in prison for 11 years to account for an error in the material submitted to the sentencing judge. Jenkins was sentenced to 10 years imprisonment on the trafficking count and was convicted but not further punished in relation to the supply count. Serious violent offence declarations were made with regard to each of Brophy, Rollason and Jenkins.

[382] It can be seen that a sentence of 13 years imprisonment for Stevens sits comfortably within the sentences imposed upon Brophy and Rollason and was appropriate given Stevens' role in this drug trafficking business. Brophy's trafficking occurred in a relatively short period of about two months and Rollason's sentence took account of his plea of guilty.

[383] The applicant in *R v Barker*[380] was sentenced to 10 years imprisonment after pleading guilty to trafficking in the dangerous drug methylamphetamine and three lesser drug offences. He was given lesser concurrent sentences on the other counts. Barker engaged in a 10 month period of trafficking from 1 July 2008 to 23 April 2009. Almost $1,000,000 in cash was found hidden in the applicant's premises which the sentencing judge concluded was derived from drug trafficking. The applicant was a wholesale supplier of drugs to four individuals for commercial gain over a period of nearly 10 months. His plea of guilty was considered to be a timely plea. He was a person of otherwise good character that was not drug dependent and the only motivation was financial gain. There was no suggestion of violence or threats.

[384] The applicant in *R v Gordon* was sentenced to concurrent periods of eight years imprisonment for trafficking in cannabis and 10 years imprisonment with a serious violent offence declaration for trafficking in methylamphetamine. He was sentenced to a further concurrent period of two years imprisonment for possessing a pill press between 8 and 14 August 2010. He was sentenced to lesser concurrent periods of imprisonment for other drug related and other offences. Whilst the period of trafficking is longer than that involved in this case, he was only 21 years old when the trafficking activities for which he was sentenced began. He pleaded guilty.

[385] In *R v Nguyen* the applicant was found guilty by a jury of one count of unlawfully trafficking in heroin between 14 February and 22 June 2011 and one count of possessing a sum of money obtained from trafficking. He was sentenced to 12 years and six months imprisonment on the trafficking count. He was sentenced on the basis that he had trafficked over a four month period acting both as a wholesaler and a street level dealer. The applicant was sentenced on the basis that he had a long standing medical condition and was a user of heroin. A sentence of 12 and a half years imprisonment was not found to be manifestly excessive on appeal.

[386] When reference is had to an analysis of comparable decisions, it could not be concluded that the sentence imposed in this case was manifestly excessive.

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380 [2015] QCA 215.

[387] I would refuse the application for leave to appeal against sentence.