

District Court
New South Wales

Case Name: R v Haouchar

Medium Neutral Citation: [2025] NSWDC 47

Hearing Date(s): 17, 18, 19, 20, 21, 24, 27 February 2025

Date of Orders: 10 March 2025

Decision Date: 10 March 2025

Jurisdiction: Criminal

Before: Grant DCJ

Decision:

1. The accused is found guilty of Counts 3,5,6 and 7.
2. The accused is found not guilty of Counts 1,2, 4, 8,9,10 and 13.
3. The accused is found not guilty of Count 11, but guilty to the statutory alternative of deemed supply of a commercial quantity (of cocaine).
4. The accused is found guilty of Count 12, supply of 188.5 grams (of methylamphetamine).

Catchwords:

Judge alone trial – firearms and drugs found on unoccupied property – firearms, drugs and participation in criminal activity offences – joint criminal enterprise – circumstantial case – accused’s DNA and fingerprints found on various items within property – DNA of known and unknown persons found of various items within property – DNA and fingerprint evidence not challenged – defence case of “transference” – verdicts of guilty and not guilty.

Legislation Cited:

Crimes Act 1900 (NSW)
Criminal Procedure Act 1986 (NSW)
Drug Misuse and Trafficking Act 1985 (NSW)
Evidence Act 1995 (NSW)
Firearms Act 1996 (NSW)
Weapons Prohibition Act 1998 (NSW)

Cases Cited: Barker v The Queen (1975) 133 CLR 82
Fleming v The Queen (1998) 197 CLR 250
R v Markuleski (2001) 52 NSWLR 82
The Queen v Baden-Clay (2016) 258 CLR 308
Wiggins v The Queen [2020] NSWCCA 256

Category: Principal judgment

Parties: Rex (Crown)
Mahamad Haouchar (Accused)

Representation: Counsel:
Mr A Norrie (Crown)
Mr R Pettit (Accused)

Solicitors:

Ms Ossatjyz (Crown)
Mr Hill (Accused)

File Number(s): 2023/00122599

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JUDGMENT

INTRODUCTION

1 The accused, Mahamad Haouchar, stands before me for trial by Judge alone. On 17 February 2025, the accused was arraigned and pleaded not guilty to the following 13 counts, namely, that he,

- (1) on or about 1 December 2020 to 28 April 2021, at Yagoona in the State of New South Wales, did participate in a criminal group, knowing that it was a criminal group, and knowing that his participation in that group contributed to the occurrence of criminal activity, contrary to s 93T(1) of the *Crimes Act 1900* (NSW),
- (2) on or about 28 April 2021, at Yagoona in the State of New South Wales, did possess more than three firearms, one of which was a pistol, namely, four firearms, namely a DENIX imitation self-loading pistol, a Smith and Wesson revolver, a Harrington & Richardson Arms revolver, and a Heckler and Koch .45 pistol, that were not registered and he was not authorised by license or permit to possess them, contrary to s 51D(2) of the *Firearms Act 1996* (NSW),
- (3) **in the alternative to Count 2**, that on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a pistol, namely, a DENIX imitation self-loading pistol, not being authorised to do

so by a licence or permit, contrary to s 7(1) of the *Firearms Act 1996* (NSW),

- (4) **in the alternative to Count 2**, that on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a pistol, namely, a loaded Smith and Wesson revolver, not being authorised to do so by a licence or permit, contrary to s 7(1) of the *Firearms Act 1996* (NSW),
- (5) **in the alternative to Count 2**, that on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a prohibited pistol, namely, a loaded Harrington & Richardson Arms revolver, not being authorised to do so by a licence or permit, contrary to s 7(1) of the *Firearms Act 1996* (NSW),
- (6) **in the alternative to Count 2**, that on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a prohibited pistol, namely, a loaded Heckler and Koch .45 pistol, not being authorised to do so by a licence or permit, contrary to s 7(1) of the *Firearms Act 1996* (NSW),
- (7) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a stolen firearm, namely, a loaded Heckler and Koch .45 pistol, contrary to s 51H(1) of the *Firearms Act 1996* (NSW),
- (8) on or about 28 April 2021 at Yagoona, in the State of New South Wales, did possess a stolen firearm, namely, a loaded Smith and Wesson .38 special revolver, contrary to s 51H(1) of the *Firearms Act 1996* (NSW),
- (9) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did possess a prohibited weapon, namely, two metal rifle magazines with a capacity of greater than five rounds, without being authorised to do so by a permit, contrary to s 7(1) of the *Firearms Act 1996* (NSW),
- (10) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did supply a prohibited drug, namely, heroin, an amount not less than the small quantity applicable to the prohibited drug, contrary to s 25(1) of the *Drug Misuse and Trafficking Act 1985* (NSW),
- (11) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did supply of an amount of a prohibited drug, namely, cocaine being an amount which was not less than the large commercial quantity applicable to that prohibited drug, contrary to s 25(1) of the *Drug Misuse and Trafficking Act 1985* (NSW),
- (12) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did supply of an amount of a prohibited drug, namely, methylamphetamine being an amount which was not less than the indictable quantity applicable to that prohibited drug, contrary to s 25(1) of the *Drug Misuse and Trafficking Act 1985* (NSW),
- (13) on or about 28 April 2021, at Yagoona, in the State of New South Wales, did supply a prohibited drug, namely, 3,4-methylenedioxymethylamphetamine, an amount which was not less

than the commercial quantity applicable to that prohibited drug, contrary to s 25(1) of the *Drug Misuse and Trafficking Act 1985* (NSW).

Agreed facts pursuant to s 191 of the Evidence Act 1995 (NSW)

- 2 For the purposes of these criminal proceedings, the accused, upon the advice of his lawyer, and the Crown have agreed upon the following facts pursuant to s 191 of the *Evidence Act 1995* (NSW).

Introductory matters

- 3 The accused, Mahamad HAOUCHAR (**HAOUCCHAR**), was born on 29 January 1998.
- 4 Moustafa MARIAM (**MARIAM**) was born on 25 October 1984. At the time of the alleged offences, MARIAM resided at [redacted].
- 5 Shade SALEH (**SALEH**) was born on 17 March 1984. At the time of the alleged offences, SALEH resided at [redacted].
- 6 Ismael RATEL (**RATEL**) was born on 4 March 1998. At the time of the alleged offences, RATEL resided at [redacted].
- 7 Ahmad DABBOUSSI (**DABBOUSSI**) was born on 26 June 1991. At the time of the alleged offences, DABBOUSSI resided at [redacted].
- 8 HAOUCHAR and RATEL were known to one another:
- (1) On 14 May 2020, HAOUCHAR and RATEL were identified by police as the occupants of a motor vehicle during a vehicle stop.
 - (2) On 11 June 2020, HAOUCHAR and RATEL were identified by police as the occupants of a motor vehicle during a random breath test.
- 9 RATEL and SALEH were known to one another.
- 10 MARIAM and DABBOUSSI were known to one another and are relatives.
- (1) On 29 April 2015 MARIAM and DABBOUSSI were identified by police as the occupants of a motor vehicle during a vehicle stop.
- 11 MARIAM and RATEL were known to one another.
- 12 MARIAM and SALEH were known to one another:
- (1) On 19 January 2021, MARIAM and SALEH were identified by police as the occupants of a motor vehicle during a vehicle stop.
 - (2) On 27 April 2021, SALEH was pulled over for a random breath test.

- (a) Police conducted checks on SALEH and found:
 - (i) SALEH was the registered owner of the vehicle.
- (b) SALEH's vehicle was searched. Inside the vehicle police located:
 - (i) Cash in the amount of \$41,030 (XD000199387) inside a hidden compartment at the base of the centre console.
 - (ii) 2 x Samsung mobile phones and a paper ledger (X0004188520) at the base of the centre console.
 - (iii) In the front passenger door pocket police located a post-it-note pad with graphic design on it which matched the paper located in the hidden compartment at the base of the centre console.
 - (iv) Cash in the amount of \$4380 (XD000199386) inside a bag.
 - (v) 1 x Diazepam (XD000199386).
 - (vi) 3 x Samsung mobile phones (X0004188519).
- (c) During a conversation caught on BWV, SALEH informed Police that the vehicle was registered in his name but was owned by MARIAM.
- (d) DNA and fingerprint testing was conducted on the paper ledger:
 - (i) MARIAM's reference DNA profile was identified in a mixture from a tape lift (XF000812471) from the paper ledger (X0004188520; Item R1). The mixture originated from at least three (3) individuals and MARIAM cannot be excluded as a major contributor to this mixture.
 - (ii) MARIAM's fingerprints were located on the paper ledger (Graph F1 - left thumb x 2).
- (e) DNA testing was also conducted on the two (2) Samsung mobile telephones:
 - (i) MARIAM's reference DNA profile was identified in a mixture from 2 x tape lifts (XF000812472 and XF000812473) from each of the two (2) Samsung mobile phones seized (X000418850; Items R2 and R3). The mixtures on each of these mobile phones originated from at least two (2) individuals and MARIAM cannot be excluded as a major contributor to each of these mixtures.
 - (ii) During the search, SALEH's iPhone 12 was seized. A Cellebrite of the phone (X004188519) revealed the following:
 - 1 The phone belonged to SALEH.
 - 2 A text message conversation between 1 March 2021 and 4 April 2021, between SALEH and a

contact named Ali Darwich ([redacted ending in 444]).

3 A WhatsApp message conversation between 12 April 2021 and 20 April 2021, between SALEH and a contact named Ali Darwich ([redacted ending in 444]).

4 Internet searches included:

- “Bassam Hamzy,”
- “Mustafa Mariam news,”
- “Shooting in Yagoona”, with a search date of 14 April 2021,
- “Gangster arrested.”

Yagoona Property including items seized by Police

13 The property at 28 Saltash Street, Yagoona (**Yagoona Property**) consisted of a single-story clad house with three bedrooms on a 615 square metre block.

14 The property is owned by Saifedine ALI (**ALI**) and Canan GUNESTEPE. ALI informed Police that he purchased the property on 25 September 2020.

15 ALI also informed police that in January 2021 the owner ALI entered into a verbal lease agreement with someone he knew as Scott LAUREN to rent the Yagoona Property for \$350.00 per week, paid in cash, for an initial three-month term.

16 ALI also informed police that in late February 2021, the tenant stopped paying rent and could not be contacted when ALI tried calling him.

17 ALI also informed police that in late March 2021, he shut off the power to the Yagoona Property.

18 At about 7:20pm on 28 April 2021, Police from the South West Metropolitan Operational Support Group (SWM OSG) attended the Yagoona Property in order to execute a search warrant SW1051/2021.

19 The Yagoona Property was unoccupied when Police attended.

20 The items which were seized by Police during the execution of the search warrant are set out in the following table:

	Description	Exhibit No.	Location found
(1)	99.6 grams of sulphate (cutting agent) (later tested to be MDMA)	X0004241022	Kitchen cupboard
(2)	29.75 grams of sulphate (cutting agent) (later tested to be MDMA)	X0004241023	Kitchen cupboard
(3)	11.56 grams of methylamphetamine (later tested to be 11.32 grams)	XD000199301	Kitchen cupboard
(4)	23 grams of cocaine	XD000199302	Kitchen cupboard
(5)	2.92 grams of MDMA	XD000199303	Kitchen cupboard
(6)	2.35 grams of MDMA	XD000199304	Kitchen cupboard
(7)	Prohibited drug (other)	XD000199305	Oven in kitchen
(8)	1.5 L of black liquid	X0004241024	Oven in kitchen
(9)	Plastic PVC pipe	X0004241025	Top right kitchen cabinet

(10)	46.11 grams of methamphetamine	XD000199306	Top right kitchen cabinet
(11)	1.3 grams of 3 x tablets (inconclusive)	XD000199307	Top right kitchen cabinet
(12)	0.32 grams of cocaine	XD000199308	Top right kitchen cabinet
(13)	3.42 grams of heroin	XD000199309	Top right kitchen cabinet
(14)	1 x Woolworths plastic bag (containing items in 15 below) [first bag]	X0004241026	Under the sink
(15)	1 x plastic bag containing 28 x 3.8 cal rounds in 3 x plastic bags	X0004241027	Under the sink
(16)	Tray containing 47 rounds of Magtech 25 auto	X0004241028	Under the sink
(17)	1 x blue Chux cloth (wrapped around firearm)	X0004241029	Under the sink
(18)	2 x clear latex gloves (wrapped around	X0004241030	Under the

	firearm)		sink
(19)	1 x silver revolver (Firearm 1)	X0004241031	Under the sink
(20)	5 x .38 cal rounds	X0004241032	Under the sink
(21)	1 x black sock (wrapped around Firearm 2)	X0004241033	Under the sink
(22)	1 x HK Model 23 .45 calibre hand gun with serial number 23/020465 (Firearm 2)	X0004241034	Under the sink
(23)	1 x black magazine (from inside Firearm 2) with 3 rounds inside	X0004241035	Under the sink
(24)	1 x black and green sock (wrapped around Firearm 3)	X0004241036	Under the sink
(25)	1 x black Smith + Wesson 38 Special Firearm with serial number 5026250 (Firearm 3)	X0004241037	Under the sink
(26)	6 x 38 Special Federal Brand ammunition	X0004241038	Under the sink
(27)	1 x black and yellow	X0004241039	Under the

	sock (wrapped around magazine)		sink
(28)	1 x black magazine (found inside black and yellow sock)	X0004241040	Under the sink
(29)	1 x pink towel (wrapped around mobile phones)	X0004241041	Under the sink
(30)	5 x mobile phones and 1 x set of digital scales	X0004241042	Under the sink
(31)	1 x cloth	X0004241043	Under the sink
(32)	1 x latex glove and 1 x clear plastic bag (found inside bag)	X0004241044	Under the sink
(33)	35 grams of possible tobacco	XD000199310	Under the sink
(34)	1 gram of methylamphetamine	XD000199261	Under the sink
(35)	1 x Bulldogs bag	X0004241045	Under the sink
(36)	1x Woolworths plastic bag (drugs found inside) [second bag]	X0004241046	Under the sink
(37)	299 grams of cocaine	XD000199262	Under the

			sink
(38)	69 grams of cocaine	XD000199263	Under the sink
(39)	300 grams of cocaine	XD000199264	Under the sink
(40)	1 x Coles plastic bag	X0004241047	Under the sink
(41)	195 grams of methylamphetamine	XD000199265	Under the sink
(42)	1 x Gatorade bottle (converted into bong)	X0004241048	in a lower cupboard immediately to the right of the oven
(43)	2 x Allen keys	X0004241049	In bedroom 3
(44)	1 x water bottle	X0004241050	Near toilet
(45)	2 x empty magazines	X0004241051	Inside car in garage
(46)	1 x plastic bag (containing ammunition)	X0004241053	Inside car in garage
(47)	Assorted Ammunition	X0004241054	Inside car in garage
(48)	Assorted ammunition	X0004241055	Inside car in

			garage
(49)	1 X black sports bag	X0004241056	Inside boot in car in garage
(50)	1 x white towel wrapped around firearm	X0004241057	Inside black sports bag found inside boot of car in garage
(51)	1 x black magazine (spare magazine)	X0004241058	Inside black sports bag found inside boot of car in garage
(52)	1 x black PK firearm with serial number 382480 with 1 x magazine (Firearm 4)	X0004241059	Inside black sports bag found inside boot of car in garage
(53)	2 x bottles of bleach, 2 x cans of Glen 20, 5 x bottles of methylated spirits	X0004241060	Inside black sports bag found inside boot of car in garage

21 While in the kitchen of the Yagoona Property, Police located a Bulldogs bag concealed in the lower kitchen cupboard to the left of the sink.

22 Inside the Bulldogs bag Police located the following:

- (1) A package wrapped in a blue Chux brand cloth (X0004241029). Inside the cloth was a silver revolver wrapped in two (2) latex gloves

(X0004241030). The barrel of the revolver was fully loaded with five .38 calibre rounds. The firearm was rendered safe, seized in an exhibit bag with exhibit number X0004241031 (**Firearm 1**).

- (2) A black sock (X0004241033). Inside the black sock was another firearm fitted with a magazine (X0004241035) containing a number of rounds. The firearm was rendered safe, seized and put in an exhibit bag with exhibit number X0004241034 (**Firearm 2**).
- (3) A black and green sock (X0004241036) wrapped around a black revolver with a brown stock. The barrel was fully loaded with six (6) rounds of .38 special calibre ammunition. The firearm was rendered safe, seized and placed in an exhibit bag with exhibit number X0004241037 (**Firearm 3**).
- (4) A black and yellow sock (X0004241039). Inside the sock, police located an empty pistol magazine (X0004241040).
- (5) A pink towel (X0004241041) wrapped around a number of mobile phones and a set of digital scales (X0004241042).

23 The first Woolworths shopping bag (X0004241026). Inside the bag was located:

- (1) A box of Magtech .38 calibre ammunition cartridges (X0004241028)
- (2) Three (3) other plastic bags, one of which appeared to be a shower cap containing a total of 28 rounds of .38 calibre ammunition (X0004241027). The ammunition was examined and confirmed to be ammunition as defined in section 4(1) of the *Firearms Act 1996* (NSW).

24 A gold-coloured knife wrapped around tissue paper (X0003990475).

- (1) A plastic bag, knotted, with vegetable matter (XD000199310).
- (2) A plastic bag, knotted, with white powder, later confirmed as methylamphetamine (XD000199261).

25 In one of the upper kitchen cupboards, police located several resealable bags, knotted at the top, next to a digital scale, scissors, a plastic spoon and a cup with white residue.

26 Testing of those items revealed the following:

- (1) A clear freezer bag inside the upper kitchen cupboard, containing 11.32 grams methylamphetamine (XD000199301).
- (2) A clear freezer bag of yellowish powder, seized and marked, containing 22.1 grams cocaine (XD000199302).
- (3) A clear, knotted freezer bag containing a powdered substance, containing 2.77 grams 3,4 methylenedioxymethamphetamine (MDMA) (XD000199303).

- (4) A clear, knotted freezer bag containing a powdered substance, containing 1.36 grams 3,4-methylenedioxymethamphetamine (XD000199304).
- 27 During the search, in the kitchen cupboard, police located two (2) bags which they initially labelled as a cutting agent (X0004241022 and X0004241023). The contents were re-tested and re-labelled as (XD000173893 and XD000173894). The bags were tested to be:
 - (1) A bag containing 98.9 grams of 3,4- methylenedioxymethamphetamine (XD000173893, formerly X0004241022).
 - (2) A bag containing 28.8 grams of 3,4- methylenedioxymethamphetamine (XD000173894, formerly X0004241023).
- 28 In the oven, located close by the cupboard where the items listed above were located, police located a Coles re-usable bag, inside which were:
 - (1) Two (2) clear freezer bags holding a sticky brown substance (XD000199305), which was later tested in separate exhibits. The forensic testing revealed:
 - (a) 125.7 grams of cocaine (XD000199305/1.1) with a purity of 24.5%.
 - (b) 228.3 grams of cocaine with a purity of 22.0% (XD000199305/1.2).
 - (2) a 1.5L Cool Ridge brand water bottle full of a dark brown liquid (X0004241024), containing 1228 grams of cocaine with a purity of 1.5%.
- 29 Police also located a cardboard bag filled with loose freezer bags in one of the upper cupboards.
- 30 Inside the top right kitchen cupboard, next to the upper kitchen cupboard described above, police located further a plastic PVC pipe with lids on all exits (X0004241025). Once opened, the PVC pipe was noted to have contained:
 - (1) A clear freezer bag with white powder, containing 1.19g of cocaine (XD000199308).
 - (2) A clear freezer bag, containing 43.8 grams of methylamphetamine (XD000199306).
 - (3) A small clear freezer bag containing a brownish substance, containing 3.42 grams of heroin (XD000199309).
 - (4) Three (3) blue tablets in a resealable plastic bag (XD000199307).
- 31 Inside the same cupboard, police located:

- (1) Loose freezer bags and supermarket reusable bags.
 - (2) Two (2) containers of methyl sufonyl methane (MSM).
 - (3) Three (3) digital scales.
 - (4) Car keys for Lexus Motor Vehicle.
- 32 In a cupboard under the sink, next to the cupboard where police located the Bulldog bag containing the three (3) firearms, ammunition, and a knotted bag with 0.35 grams "amphetamine-type substances" (XD000199261), police located:
- (1) The second Woolworths re-usable bag (X0004241046) containing a total of 615.3 grams of cocaine made up as follows:
 - (a) Open vacuum bag containing 55.9 grams of cocaine (XD000199263).
 - (b) Sealed vacuum bag containing 279.6 grams of cocaine (XD000199262).
 - (c) Sealed vacuum bag containing 279.8 grams of cocaine (XD000199264).
 - (2) A Coles re-usable bag (X0004241047) containing 188.5 grams of methylamphetamine (XD000199265).
 - (3) A plastic bottle converted into a 'bong' like apparatus (X0004241048).

Lexus motor vehicle including items seized by Police

- 33 While at the Yagoona Property, Police observed a silver Lexus IS250 sedan with NSW Registration CI58DK (**Lexus motor vehicle**) in the separate garage. The vehicle is registered in the name of Housam ORFALI.
- 34 A search of the Lexus motor vehicle was conducted. During this search, Police located the following:
- (1) A large Glad brand white plastic bag located on the rear seat.
 - (2) A black and tan sports bag located in the boot.
- 35 Inside the white plastic bag were some other plastic bags and 13 individually duct-taped bundles which contained the following:
- (1) 2 x metal rifle magazines.
 - (2) 15 x .308 calibre Winchester rounds of ammunition.
 - (3) 55 x 9mm Luger round of ammunition.
 - (4) 34 x .44 calibre Magnum rounds of ammunition.

- (5) 50 x 9mm Luger rounds of ammunition.
- (6) 35 x .32 Auto calibre rounds of ammunition.
- (7) 46 x .32 calibre Smith & Wesson rounds of ammunition.
- (8) 2 x pistol magazines.
- (9) 3 x 12-gauge shotgun shells.
- (10) 52 x .45 calibre rounds of ammunition.
- (11) 26 x .308 calibre Winchester rounds of ammunition.
- (12) 1 x P22 .22LR pistol magazine.
- (13) 30 x 9mm rounds of ammunition.
- (14) Approximately 60 x .22 LR rounds of ammunition.
- (15) 19 x .22 LR rounds of ammunition.
- (16) 47 x 22 LR rounds of ammunition.

36 The plastic bag was seized and divided into two exhibit bags marked X0004241054 and X0004241055. Upon forensic testing the above items were divided and numbered so that identification photographs could be taken.

37 Inside the black sports bag Police located the following:

- (1) 1 x black DENIX imitation self-loading pistol
- (2) 1 x magazine (spare magazine).
- (3) 1 x black and white towel
- (4) 1 x green towel
- (5) 2 x bottles of bleach.
- (6) 2 x cans of Glen 20 brand disinfectant.
- (7) 5 x bottles methylated spirits.
- (8) 1 x balaclava.
- (9) 1 x pair rubber gloves.

38 The above items were seized and placed into exhibit bags.

39 **Firearm 4** was given exhibit number X004241059.

Forensic testing of items seized by Police from the Yagoona Property and the Lexus motor vehicle

40 DNA and fingerprint testing was conducted inside the premises and on the exhibits:

- (1) Forensic results for known persons connected to the Bulldog bag which contained Firearms 1, 2 and 3 and ammunition:
 - (a) MARIAM's reference DNA profile was identified in a mixture from a trace tape lift (XF000813692; (Item R38) of the middle front of a Chux cloth (X0004241029) used to wrap Firearm 1. The mixture originated from at least four (4) individuals and MARIAM cannot be excluded as a contributor to this mixture.
 - (b) RATEL's reference DNA profile was identified in a mixture from a trace tape lift (XF000813700; (Item R29) of the exterior side of the black and green sock (X0004241036) containing Firearm 3. The mixture originated from at least four (4) individuals and RATEL cannot be excluded as a contributor to the mixture.
 - (c) SALEH's reference DNA profile was identified in a mixture from a trace tape lift (XF000755098; (Item R67)) of 11 cartridges of ammunition (X0004241027) which were found inside the Bulldogs bag. The mixture originated from at least two (2) individuals. The major contributor to the mixture has the same profile as SALEH.
 - (d) HAOUCHAR's reference DNA profile was identified in a mixture from a trace swab (XF000813697; (Item R43)) of the interior side of latex glove A (X0004241030) which was wrapped around Firearm 1. The mixture originated from at least two (2) individuals and HAOUCHAR could not be excluded as the major contributor to the mixture.
 - (e) HAOUCHAR's reference DNA profile was identified in a mixture from a trace swab (XF000813693; (Item R61) of the inside the foot end of black sock (X0004241033) which wrapped around Firearm 2. The mixture originated from at least four (4) individuals and HAOUCHAR and an individual B could not be excluded as contributors to the mixture.
 - (f) HAOUCHAR's fingerprints were identified on a magazine (Graph F2 – left thumb; Graph F4 – left middle and left little fingers; FCN4203254, AJ01091985) from Firearm 2 (X0004241035).
 - (g) Mounin HAOUCHAR's reference DNA profile was identified in a mixture from a trace swab (XF000813701; (Item R30) of the exterior side of the black/yellow sock (X0004241039) which contained empty pistol magazine (X0004241040). The mixture originated from at least four (4) individuals and Mounin HAOUCHAR could not be excluded as a contributor to the mixture.
- (2) Forensic results for known persons connected to other items located inside the Yagoona Property:
 - (a) Ahmed JINDI's fingerprint was identified on the underside (Graph F12 – left thumb; FCN4203254, AJ01092114) of closure tab on

- box of tray containing 47 rounds of Magtech 25 auto ammunition (X0004241028).
- (b) Milad YOUSSEF's reference DNA profile was identified in a mixture from a trace swab (XF000755171; R96) of the green handles of the second Woolworths bag (X0004241046). The mixture originated from at least two (2) individuals and YOUSSEF cannot be excluded as a contributor.
 - (c) HAOUCHAR's reference DNA profile was identified in a trace swab (XF000755092) of the hammer of Firearm 4 (X0004241059; Item R61). *(The Crown inserted this portion of the facts elsewhere. The strikethrough text has been kept to accurately reflect the facts agreed between the parties.)*
 - (d) HAOUCHAR's fingerprints on the underneath (Graph F1 – right palm; Graph F3 – right ring and right little fingers; FCN4010213) of the second Woolworths shopping bag (X0004241046).
 - (e) HAOUCHAR's Fingerprints on the B side handle (Graph F4 – right ring finger; FCN4010213), the upper right of side A (Graph F5 – left ring finger; FCN4010213), underneath (Graph F6 – left thumb; FCN4010213) and on the inside middle upper half of side A (Graph F7 – left index finger) of the Coles shopping bag (X0004241047; FCN4010213).
 - (f) HAOUCHAR's partial reference DNA profile was identified from a trace swab (XF000755174; Item R99) of the mouthpiece and upper half surface of an empty water bottle (X000424050).
 - (g) Fingerprints attributed to HAOUCHAR on the lower half (Graph F8 – left thumb; Graph F11 – left ring and left little fingers; FCN4010213) and upper half (Graph F10 – left thumb) of a Gatorade bottle located in a lower cupboard immediately to the right of the oven (X0004241048; FCN4010213).
- (3) Forensic results for known persons connected to the items located inside the Lexus motor vehicle:
- (a) MARIAM's partial reference DNA profile was identified in a trace swab (XF000756579; Item R19) of two (2) magazines located inside a white plastic bag found in the rear of the Lexus motor vehicle (X0004241054/3.7).
 - (b) RATEL's fingerprint was identified on the exterior surface (Graph F8 – right index finger; FCN4203254, AJ01092086) of a white plastic bag found in the rear of the Lexus motor vehicle (X0004241053).
 - (c) RATEL's reference DNA profile was identified in a trace swab (XF000755166; R91) of the top two zipper puller and two handles of black sports bag (X0004241056). The mixture originates from at least two individuals and the major contributor to the mixture has the same profile as RATEL.

- (d) HAOUCHAR's reference DNA profile was identified in a trace swab (XF000755092) of the hammer of Firearm 4 (X0004241059; Item R61).
 - (e) DABBOUSSI's fingerprint was identified on a cartridge (Graph F12 – right ring finger; FCN4203254, AJ01092177) found in a white plastic bag found in the rear of the Lexus motor vehicle (X0004241055/4.1).
- (4) Forensic results for known persons connected to the Yagoona Property:
- (a) SALEH's reference DNA profile was identified in a mixture from a trace swab (XF000524518; Item R8) of door handle #7 to the kitchen cupboard underneath sink. The mixture originated from at least three (3) individuals and SALEH cannot be excluded as a contributor to the mixture.
 - (b) SALEH's fingerprints were located on:
 - (i) The interior front timber door below deadbolt (Graph F3 – right index finger; FCN4221133).
 - (ii) The interior side of back timber door between deadbolt and door handle (Graph F4 – right middle finger; FCN4221133).
 - (c) HAOUCHAR's fingerprint (Graph F1 – left index finger, FCN4221133) was located on interior side of front timber door above deadbolt.
 - (d) Haouchar's partial reference DNA profile was identified in a mixture from a trace swab (XF000524512; Item R2) of door handle #1. The mixture originated from at least two (2) individuals and HAOUCHAR and individual J cannot be excluded as contributors to the mixture.
 - (e) Partial DNA attributed to HAOUCHAR's reference DNA profile was identified in a mixture from a trace swab (XF000524513; Item R3) of door handle #2). The mixture originated from at least two (2) individuals and HAOUCHAR cannot be excluded as a contributor to the mixture.

Examination of Firearms and ammunition seized by Police from the Yagoona Property

- 41 Ballistics examination was conducted on Firearm 1. This examination determined Firearm 1 to be a Smith & Wesson calibre Harrington & Richardson Model 1904 revolver with serial number 45308. Firearm 1 was test fired and confirmed to be in working order. Firearm 1 was found to be reasonably capable of being raised and fired by one hand. Firearm 1 did not exceed the prescribed dimension of 65cm in length. Its barrel was less than 100mm.

- 42 Firearm 1 meets the definition of a prohibited pistol as described in section 4C of the *Firearms Act 1996* (NSW).
- 43 Firearm 1 had a revolving cylinder which has the capacity to hold five (5) .38 Smith & Wesson calibre cartridges.
- 44 The five (5) rounds inside Firearm 1 bore the Winchester Western headstamp and consist of a cartridge case fitted with a primer and projectile. They were designed for use in weapons chambered for .38 Smith & Wesson calibre cartridges.
- 45 The cartridges meet the definition of ammunition as defined in section 4(1) of the *Firearms Act 1996* (NSW).
- 46 Ballistics examination was conducted on Firearm 2. This examination determined that Firearm 2 to be a .45 Automatic calibre Heckler & Koch Model Mark 23 self-loading pistol with serial number 23-020465. Firearm 2 was test fired and confirmed to be in working order. Firearm 2 was found to be reasonably capable of being raised and fired by one hand. Firearm 2 did not exceed the prescribed dimension of 65cm in length.
- 47 Firearm 2 meets the definition of a prohibited pistol as described in section 4C of the *Firearms Act 1996* (NSW).
- 48 Firearm 2 was recorded as stolen on 21 November 2019 in Western Australia.
- 49 Firearm 2 also had a detachable magazine with a capacity to hold ten (10) .45 Automatic calibre cartridges. Inside the magazine was located three (3) .45 Automatic calibre cartridges.
- 50 On 4 May 2021, the Ballistic Investigation Section of the New South Wales Police Force obtained Firearm 2 (X0004241034), and test fired it. Test fires were marked J2021/450/T1 to T3. The test fires were then compared with a fired cartridge exhibit (J2021/380/9 XF000471798), which had been recovered by police on 12 April 2021 at 20 Emery Avenue, Yagoona in connection with a shooting incident. A microscopic examination revealed that the exhibit fired cartridge (J2021/380/9 XF000471798) was discharged from Firearm 2.

- 51 Ballistics examination was conducted on Firearm 3. This examination determined Firearm 3 to be a Smith & Wesson Model 10-8 .38 special calibre revolver with serial number 5D26250. Firearm 3 was test fired and confirmed to be in working order. Firearm 3 was found to be reasonably capable of being raised and fired by one hand. Firearm 3 did not exceed the prescribed dimension of 65cm in length.
- 52 Firearm 3 meets the definition of a pistol as described in section 4C of the *Firearms Act 1996* (NSW).
- 53 Firearm 3 had a revolving cylinder with the capacity to hold six (6) .38 Special calibre cartridges. Inside the cylinder, police located six (6) cartridges which were given exhibit number X0004241038.
- 54 Firearm 3 was recorded as stolen on 12 May 2009.
- 55 Ballistic examination was conducted on Firearm 4. This examination determined that Firearm 4 was a DENIX imitation self-loading pistol. Firearm 4 was initially seized by Police as a Walther PPK Model self-loading pistol and given exhibit number X0004241059. The magazine located next to it was determined to be from a different firearm and given exhibit number X0004241058.
- 56 Firearm 4 meets the definition of an imitation firearm as described in section 4D(3) *Firearms Act 1996* (NSW) given its similarities to the Walther PPK pistol.
- 57 Firearm 4 is also taken to be a pistol given the operation of section 4D(2) of the *Firearms Act 1996* (NSW).

Examination of magazines and ammunition seized by Police from the Lexus motor vehicle

- 58 Two (2) magazines (X0004241051) located inside the white plastic bag at the rear of the vehicle were examined and determined to be detachable box magazines. The magazines are designed to suit a centre-fire .308 Winchester calibre VALMET Model Hunter self-loading rifle. One magazine has an actual capacity of twenty (20) cartridges while the other magazine has an actual capacity of nine (9) cartridges.

- 59 Each magazine is a firearm part as defined in section 4(1) of the *Firearms Act 1996* (NSW).
- 60 As each magazine is capable of holding more than five (5) rounds, they are also a prohibited weapon as defined in section 4(4)(b) of Schedule 1 to the *Weapons Prohibition Act 1998* (NSW).

Cocaine seized by Police from the Yagoona Property

- 61 The total amount of cocaine located in the kitchen of the Yagoona Property was 2200.3 grams.
- 62 The cocaine which was seized by Police is summarised in the following table:

	Description	Exhibit No.	Location found
(1)	22.1 grams of cocaine	XD000199302	Upper kitchen cupboard, clear freezer bag of yellowish powder
(2)	125.7 grams of cocaine with a purity of 24.5%, and 228.3 grams of cocaine with a purity of 22.0% (354 grams total).	XD000199305	Oven, in Coles re-useable bag in 2 freezer bags
(3)	1228 grams of cocaine with a purity of 1.5%.	X0004241024	Oven in Coles bag in Cool Ridge bottle
(4)	1.19g of cocaine	XD000199308	Top right kitchen cupboard, in

			PVC pipe, in clear freezer bag
(5)	55.9 grams of cocaine	XD000199263	Cupboard under the sink in second Woolworths bag
(6)	279.6 grams of cocaine	XD000199264	Cupboard under the sink in second Woolworths bag
(7)	279.8 grams of cocaine	XD000199262	Cupboard under the sink in second Woolworths bag

Methamphetamine seized by Police from the Yagoona Property

- 63 The total amount of methylamphetamine located at the Yagoona Property was 243.97 grams.
- 64 The methamphetamine which was seized by Police is summarised in the following table:

	Description	Exhibit No.	Location found
(1)	11.32 grams of methylamphetamine	XD000199301	Upper kitchen cupboard, clear freezer bag

(2)	43.8 grams of methylamphetamine	XD000199306	Top right kitchen cupboard, in PVC pipe, in clear freezer bag
(3)	188.5 grams of methylamphetamine	XD000199265	Cupboard under the sink in Coles bag

3,4-methylenedioxymethamphetamine (MDMA) seized by Police from the Yagoona Property

65 The total amount of MDMA located in the kitchen of the Yagoona Property was 131.83 grams.

66 MDMA which was seized by Police is summarised in the following table:

	Description	Exhibit No.	Location found
(1)	2.77 grams of MDMA	XD000199303	Upper kitchen cupboard, clear freezer bag
(2)	1.36 grams of MDMA	XD000199304	Upper kitchen cupboard, clear freezer bag
(3)	98.9g of MDMA	XD000173893X00042 41022	Kitchen cupboard
(4)	28.8g of MDMA	XD000173894X00042 41023	Kitchen cupboard

Heroin seized by Police from the Yagoona Property

- 67 The total amount of heroin located in the kitchen of the Yagoona Property was 3.42 grams.
- 68 The heroin which was seized by Police was inside a clear freezer bag which was inside a PVC pipe which was located in the top right kitchen cupboard.

No firearm licence or permit

- 69 During the period between 1 January 2021 and 28 April 2021, HAOUCHAR, MARIAM, SALEH, RATEL and DABBOUSSI were not the holders of a licence or permit to possess any firearms, imitation firearms, firearm parts or ammunition.

Arrest of HAOUCHAR

- 70 On 23 December 2022, Police received an EFIMS notification relating to the identification of a DNA profile located during the Search Warrant 1051/2021 at the Yagoona Property on 28 April 2021. The person identified was HAOUCHAR.
- 71 On 17 April 2023, Police attended upon HAOUCHAR and placed him under arrest.
- 72 HAOUCHAR declined the opportunity for an electronically recorded interview.
- 73 HAOUCHAR consented to forensic procedure. A buccal swab and fingerprints sample were subsequently taken.

THE ALLEGATIONS

- 74 A police search warrant was executed at 28 Saltash Street, Yagoona on 28 April 2021. The premises were in an unoccupied state. The Crown case is that the accused and at least four other persons, namely, Mustafa Mariam, Shade Saleh, Ismael Ratel and Ahmad Dabboussi, were in joint possession of the items seized by police in the Yagoona property and the Lexus vehicle and had an agreement to use the Yagoona property as a "safe house" (a 'safe' place to store firearms, ammunition and drugs) in order to facilitate the supply of prohibited drugs and/or possession of prohibited firearms and/or supply of prohibited firearms, and for the more general purpose of perpetuating organised crime activity in South Western Sydney and elsewhere.

- 75 The Crown alleges that the accused participated in the joint criminal enterprise by,
- (1) Having access to the Yagoona property,
 - (2) Being present at the Yagoona property,
 - (3) Storing and concealing firearms at the Yagoona property, and
 - (4) Storing and concealing a magazine (weapon) at the Yagoona property.
- 76 The Crown also relies on points (1)-(4) outlined above in its case against the accused regarding Count 1 (participation in a criminal group).
- 77 The Crown case is a largely circumstantial one. The Crown relies on the forensic evidence connecting the accused to the Yagoona property (DNA, fingerprints) and asks me to draw what it says is the reasonable and appropriate inference that he had access to, and was present at the Yagoona property, and that he had access to the Lexus motor vehicle within which several items relating to the offences on the indictment were found.

GENERAL DIRECTIONS

- 78 In accordance with s 133 of the *Criminal Procedure Act 1986* (NSW), and as required by the decision of the High Court in *Fleming v The Queen* (1998) 197 CLR 250, I remind myself of the following principles of law.
- (1) A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person. Any such finding has, for all purposes, the same effect as a verdict of a jury.
 - (2) A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relies.
 - (3) If any Act or law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.
 - (4) I remind myself of the requirement to state findings on the main grounds critical to the contest between the parties and on which the verdict rests.
- 79 In my role as the judge of facts, I can draw inferences from the direct evidence from experiences had in my own life. Inferences may be valid or invalid, justified, or unjustified, correct or incorrect. Noting the requirement to be satisfied beyond reasonable doubt of the guilt of the accused, there is an

additional requirement, among other things, to be extremely careful about drawing any inference. Any possible inference will be examined to ensure that it is a justifiable and rational inference in the circumstances.

80 I now direct myself to the burden of proof of the guilt of the accused. To prove the accused guilty of each count, the Crown must prove beyond reasonable doubt each of the elements of each offence. That burden is placed squarely on the Crown and is in respect of every element or essential fact that makes up the offence. There is no stage where that burden is shifted to the accused to prove any fact or issue that is in dispute.

81 Beyond reasonable doubt are ordinary words that carry their everyday meaning, and that is how I understand them. If, at the end of my deliberations after considering the evidence and submissions made by the parties, I am not satisfied beyond reasonable doubt as to any one or more of the elements, a verdict of not guilty must be returned.

82 I direct myself to the presumption of innocence. The accused is presumed innocent unless the Crown satisfies me that the accused is guilty beyond reasonable doubt.

83 I direct myself in accordance with *R v Markuleski* (2001) 52 NSWLR 82. The accused is charged with 13 counts. I must give separate consideration to each count. I must consider the evidence in respect of each count separately. I am entitled to bring verdicts of guilty on some counts and verdicts of not guilty on other counts if there is a logical reason for that outcome.

84 I direct myself that the availability of an alternative count is not an invitation to compromise my verdict.

85 The prosecution must prove each element of the offence beyond reasonable doubt. The accused has no onus of proving anything. I do not act on suspicion. I do not act on what I believe might probably be the case. I can only return a guilty verdict if I am satisfied the prosecution has proved each critical element of the offence charged beyond reasonable doubt. If the prosecution fails to meet that high onus, if I have doubts about their case, the accused must have

the benefit of any reasonable doubt, and I must return a verdict of not guilty on that count.

SPECIFIC DIRECTIONS

Circumstantial case direction

86 I direct myself regarding the circumstantial nature of the Crown case. The Crown lacks direct evidence regarding the allegations and asks me to rely on circumstantial evidence. I direct myself that the Crown case is not necessarily weaker because it lacks direct evidence. In a circumstantial case, no individual fact can prove the guilt of the accused. Where the Crown case depends wholly (such as this case) on circumstantial evidence, my task involves reasoning in a staged approach.

- (1) I must first find certain facts are established from the evidence. I do not have to be satisfied beyond reasonable doubt of these facts.
- (2) I must then infer certain conclusions from those facts. Drawing a conclusion involves logical and rational reasoning. It does not involve speculation, conjecture or supposition.

87 The ultimate inference that the Crown asks me to draw from these facts is that the accused is guilty of the offences charged. I must be satisfied of his guilt beyond reasonable doubt. I must consider the evidence as a whole; it would be wrong of me to consider any particular fact in isolation and infer from this fact alone that the accused is guilty. Before I can conclude that the accused is guilty, I must first consider whether there is any other *reasonable* conclusion that can be drawn from the established facts. If there is a reasonable conclusion that arises that is consistent with the innocence of the accused, then the Crown's circumstantial case fails, and I must find the accused not guilty.

Joint Criminal Enterprise Direction

88 The Crown is relying on the concept of joint criminal enterprise in the case against the accused. The law is that, where two or more persons carry out a joint criminal enterprise, each is criminally responsible for the acts of the other or others in carrying out that enterprise. This is so regardless of the particular role played in that enterprise by any particular participant.

- 89 The Crown must prove *beyond reasonable doubt* each of the following elements:
- (1) the existence of a joint criminal enterprise between the accused and the other person(s) in each offence I am considering, and,
 - (2) the offence subject of the joint criminal enterprise was in fact committed,
 - (3) the accused was a participant in the joint criminal enterprise in each offence I am considering. The person must be a party to the agreement and participate in accordance with the agreement to commit the offence alleged.
- 90 A “**joint criminal enterprise**” exists where two or more persons reach an understanding or arrangement amounting to an agreement between them that they will commit a crime.
- (1) The understanding or arrangement does not need to be express, and its existence may be inferred from all the circumstances.
 - (2) The agreement does not need to have been reached at any particular time before the offence is committed. It is enough that at the time of the commission of the offence, the participants have agreed that the offence should be committed by any one or all of them.
 - (3) The circumstances in which two or more persons are participating together in the commission of a particular offence may themselves establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that offence.
- 91 I can be satisfied that the offence subject of the joint criminal enterprise was “**committed**” only if I am satisfied that each element of each offence has been proven by the Crown beyond reasonable doubt, regardless of who actually committed them. The elements of each offence are set out later in the judgment.
- 92 A person “**participates**” in the joint criminal enterprise either by committing the agreed crime itself or is a party to the agreement and participates in accordance with the agreement to commit the offence alleged.
- 93 The Crown must establish **BOTH** the existence of a joint criminal enterprise (agreement to commit the relevant offence) **AND** participation by the accused beyond reasonable doubt. I cannot be satisfied that a joint criminal enterprise exists on the basis of presence alone. I must be satisfied beyond reasonable doubt of **ALL** elements (1)-(3) in order to find that a joint criminal enterprise existed.

- 94 It does not matter whether the agreed crime is committed by only one or some of the participants in the joint criminal enterprise, or whether they all played an active part in committing that crime. All of the participants in the enterprise are equally guilty of committing the crime regardless of the actual part played by each in its commission.

Possession Direction

- 95 I direct myself that possession, in the context of this trial, refers to the accused **intentionally** having **control** over the relevant objects (subjects of the counts on the indictment) at the relevant time. Possession can be exercised alone or jointly with other persons. The accused (and/ or other persons) must have the right to exclude others from possession of the relevant object(s). The object(s) do not have to be in the proximity of the accused (and/ or other persons) for possession to be made out (for example, in their pocket or bag). The accused (and/ or other persons) need not own the object(s) for possession to be made out. Possession can be temporary, and for a limited purpose.

Deemed Supply Direction

- 96 The Crown case is that the accused did not *actually* supply the drugs referred to in the indictment, rather that the drugs were found in such quantities that I would deem it was for the purposes of supply (deemed supply). The Crown must prove beyond reasonable doubt that the substances found within the property were prohibited drugs (which is agreed), that the accused was in possession of them (I have directed myself regarding possession), and that the accused was in possession of them *for the purposes of supply*.
- (1) It is not in dispute that the substances found in the Yagoona property were prohibited drugs.
 - (2) Regarding possession (for the purposes of an offence of deemed supply of prohibited drug(s)), I direct myself as follows:
 - (a) The Crown must prove that the accused intentionally had the object(s) (the substances) in some place to which he had access and could go to in order to obtain physical control of them to the exclusion of other persons, either alone or together with some other person acting jointly with him in possessing the substance.
 - (b) The Crown must also prove that in intentionally having such custody or control of the substance, the accused knew or believed at the time that the substance was a prohibited drug.

The Crown does not have to prove that the accused knew that the drug was the particular one specified in the charge, but it does have to prove beyond reasonable doubt that the accused knew or believed that it was a prohibited drug. The Crown may do so by proving the accused actually knew or believed that what he had custody or control of was a prohibited drug or was aware that there was a significant or real chance that it was.

- (3) Regarding supply (for the purposes of an offence of deemed supply of prohibited drug(s)), I direct myself as follows:
- (a) The Crown does not require proof that the accused actually supplied somebody with the drug. The ordinary definition of “supply” (to provide) does not apply in this case. The law provides for an extended definition of supply. “Supply” for the purposes of this case, means *possession for the purpose of supply*. This is because the law provides that if an accused person has in their possession a specified quantity or more of a prohibited drug, then they are regarded as having possession of that drug for the purpose of supply it; that is, to give it or provide it to some other person. It is not in dispute that the quantities of drugs found in the Yagoona property meet the relevant threshold for deemed supply.

Direction Regarding Failure of Accused to Give Evidence

- 97 The accused has not given evidence in response to the Crown case. There are a number of important directions of law which I must follow in relation to that fact.
- 98 Although an accused person is entitled to give or call evidence in a criminal trial, there is no obligation upon him to do so. As I have already pointed out, the Crown bears the onus of satisfying me beyond reasonable doubt that the accused is guilty of the offence charged.
- 99 The accused bears no onus of proof in respect of any fact that is in dispute. I remind myself that he is presumed to be innocent until I have been satisfied beyond reasonable doubt by the evidence led by the Crown that he is guilty of the offence charged.
- 100 Therefore, it follows that the accused is entitled to say nothing and make the Crown prove his guilt to the high standard required. I direct myself as a matter of law that the accused’s decision not to give evidence cannot be used against him in any way at all during the course of my deliberations. That decision cannot be used by me as amounting to an admission of guilt. I must not draw

any inference or reach any conclusion based upon the fact that the accused decided not to give evidence. I cannot use that fact to fill in any gaps that I think might exist in the evidence tendered by the Crown. It cannot be used in any way for strengthening the Crown case or in assisting the Crown to prove its case beyond reasonable doubt. I remind myself that I must not speculate about what might have been said in evidence if the accused had given evidence.

Expert Evidence Direction

101 I direct myself regarding the expert evidence in this trial. An expert witness is a person with specialised knowledge based on their training, study or experience. They are entitled to express an opinion, unlike other witnesses. The value of the expert's opinion depends on the reliability and accuracy of the material which the expert used to reach their opinion. It also depends on the degree to which they analysed the material and the level of skill and experience applied in formulating their opinion. Experts can differ in their experience, but each can be qualified to give an opinion where it is based on their specialised knowledge.

102 The expert evidence is before me to assist me in considering the evidence regarding the presence of the accused's DNA and fingerprints on various items. Specifically, it is to assist me in determining whether the presence of the accused's DNA on these items may be as a result of transference, or whether it is more likely that the DNA is on the items as a result of the accused's direct contact with them.

103 I direct myself that I am entitled to reject the expert evidence, and that I am entitled to take into account my common sense and my own experiences that are relevant to the issue to which the expert evidence relates (DNA and fingerprints).

ELEMENTS

Count 1: Participate in a criminal group

104 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

(1) There was a criminal group,

- (2) The accused participated in that group,
- (3) The accused knew, or ought reasonably to know, that it was a criminal group, and
- (4) The accused knew, or ought reasonably to have known, that his participation in that group contributed to the occurrence of supply of prohibited drug or possession of prohibited firearm or supply of prohibited firearm.

105 In this trial, the Crown says the criminal activities available for consideration are the supply of prohibited drugs, possession of prohibited firearms, and the supply of prohibited firearms.

106 I must be satisfied elements (1)-(4) have all been proven by the Crown beyond reasonable doubt.

107 **“Criminal group”** means a group of 3 or more people who have as their objective or one of their objectives obtaining material benefits from conduct that constitutes a serious indictable offence. A group of people is capable of being a criminal group whether or not;

- (1) Any of them are the subordinates of others,
- (2) Only some members of the group are involved in planning, organising or carrying out any particular activity,
- (3) Its membership changes over time.

108 **“Serious indictable offence”** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. The offences of supply prohibited drug, possession of prohibited firearm and supply of prohibited firearm are serious indictable offences.

Count 2: Unauthorised possession of firearms in aggravated circumstances

109 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused was in possession of more than 3 firearms,
- (2) any one of these firearms was a pistol, and
- (3) the accused was not authorised by a licence or permit to possess the firearms.

110 I must be satisfied elements (1)-(3) have all been proven by the Crown beyond reasonable doubt.

111 **“Possession”** of a firearm includes any case in which a person knowingly,

- (1) Has custody of the firearm,
- (2) Has the firearm in the custody of another person, or
- (3) Has the firearm in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person.

112 **“Pistol”** means a firearm that,

- (1) Is reasonably capable of being raised and fired by one hand, and
- (2) Does not exceed any dimension prescribed by the regulations.

113 **“Licence”** means a licence in force under the *Firearms Act 1996* (NSW).

114 **“Permit”** means a permit in force under the *Firearms Act 1996* (NSW).

Counts 3,4,5, and 6: Unauthorised possession of a pistol

115 Before I can return a verdict of guilty to the abovenamed counts, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused possessed a pistol, and
- (2) The accused was not authorised to do so by licence or permit.

116 I must be satisfied elements (1)-(2) have both been proven by the Crown beyond reasonable doubt.

117 **“Possession”** of a pistol has the same meaning as it does for Count 2.

118 **“Pistol”** has the same meaning as it does for Count 2.

119 **“Prohibited pistol”** means any of the following kinds,

- (1) a pistol with a calibre of more than .38 inch,
- (2) a self-loading pistol with a barrel length of less than 120 mm,
- (3) a revolver with a barrel length of less than 100 mm,
- (4) It does not include a black powder pistol. Reference to a pistol includes a prohibited pistol.

120 **“Licence”** of a pistol has the same meaning as it does for Count 2.

121 **“Permit”** has the same meaning as it does for Count 2.

Counts 7 and 8: Possession of a stolen firearm

122 Before I can return a verdict of guilty to the abovenamed counts, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused possessed a firearm, and
- (2) The firearm was stolen.

123 I must be satisfied elements (1)-(2) have both been proven by the Crown beyond reasonable doubt.

124 **“Possession”** of a pistol has the same meaning as it does for Count 2.

125 **“Firearm”** means a gun, or other weapon, that is (or at any time was) capable of propelling a projectile by means of an explosive.

Count 9: Unauthorised possession of a prohibited weapon

126 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused possessed a prohibited weapon, and
- (2) The accused was not authorised to do so by permit.

127 I must be satisfied elements (1)-(2) have both been proven by the Crown beyond reasonable doubt.

128 **“Possession”** of a pistol has the same meaning as it does for Count 2.

129 **“Prohibited weapon”** means anything described in Schedule 1 to the *Weapons Prohibition Act 1998* (NSW) and includes a centre-fire self-loading rifle magazine with a capacity of more than 5 rounds.

Count 10: Supply prohibited drug (not less than small quantity)

130 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused supplied,
- (2) A prohibited drug,
- (3) Which was not less than the small quantity applicable to that prohibited drug.

131 I must be satisfied elements (1)-(3) have all been proven by the Crown beyond reasonable doubt.

132 **“Supply”** includes to sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.

133 **“Prohibited drug”** means any substance, other than a prohibited plant, specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985* (NSW) and includes heroin.

134 **“Small quantity”** for heroin means 1.0g.

Count 11: Supply prohibited drug (not less than a large commercial quantity)

135 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused supplied,
- (2) A prohibited drug,
- (3) Which was not less than the large commercial quantity applicable to that prohibited drug.

136 I must be satisfied elements (1)-(3) have all been proven by the Crown beyond reasonable doubt. The Crown must prove an additional element beyond reasonable doubt, that the accused knew or believed at the time he supplied the drug that it was an amount which was not less than the large commercial quantity. The Crown does not have to prove the accused knew that the amount of the drug was 2200.3 grams (total amount seized by police from the Yagoona property), but it does have to prove that the accused actually knew or believed that the drug being supplied (or deemed to be supplied) was in an amount which was not less than prescribed large commercial quantity, or that the accused was aware that there was a significant or real chance that it was. The Crown must prove *the accused's* knowledge or belief, not what a reasonable person in the position of the accused may have known or believed. Knowledge or belief may be inferred or concluded from consideration of the surrounding circumstances, provided any such inference or conclusion is a rational one and is not based on speculation or suspicion. Any inference or conclusion that I draw regarding the accused's knowledge or belief must be the only rational inference or conclusion open on the evidence. In this context, I may consider

as one of the circumstances to be taken into account what a reasonable person in the position of the accused would have known or believed as to quantity of the substance being supplied.

137 **“Supply”** has the same meaning as it does for Count 10.

138 **“Prohibited drug”** has the same meaning as it does for Count 10.

139 **“Large commercial quantity”** for cocaine means 1.0kg.

Count 12: Supply prohibited drug (not less than indictable quantity)

140 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused supplied,
- (2) A prohibited drug,
- (3) Which was not less than the indictable quantity applicable to that prohibited drug.

141 **“Supply”** has the same meaning as it does for Count 10.

142 **“Prohibited drug”** has the same meaning as it does for Count 10.

143 **“Indictable quantity”** for methylamphetamine means 5.0g.

Count 13: Supply prohibited drug (not less than the commercial quantity)

144 Before I can return a verdict of guilty to the abovenamed count, the Crown must prove beyond reasonable doubt that at the time and place alleged,

- (1) The accused supplied,
- (2) A prohibited drug,
- (3) Which was not less than the commercial quantity applicable to that prohibited drug.

145 I must be satisfied elements (1)-(3) have all been proven by the Crown beyond reasonable doubt. The Crown must prove an additional element beyond reasonable doubt, that the accused knew or believed at the time he supplied the drug that it was an amount which was not less than the commercial quantity. The Crown does not have to prove the accused knew that the amount of the drug was 131.83 grams (total amount seized by police from the Yagoona property), but it does have to prove that the accused actually knew or believed that the drug being supplied (or deemed to be supplied) was in an amount

which was not less than prescribed commercial quantity, or that the accused was aware that there was a significant or real chance that it was. The Crown must prove *the accused's* knowledge or belief, not what a reasonable person in the position of the accused may have known or believed. Knowledge or belief may be inferred or concluded from consideration of the surrounding circumstances, provided any such inference or conclusion is a rational one and is not based on speculation or suspicion. Any inference or conclusion that I draw regarding the accused's knowledge or belief must be the only rational inference or conclusion open on the evidence. In this context, I may consider as one of the circumstances to be taken into account what a reasonable person in the position of the accused would have known or believed as to quantity of the substance being supplied.

146 **“Supply”** has the same meaning as it does for Count 10.

147 **“Prohibited drug”** has the same meaning as it does for Count 10.

148 **“Commercial quantity”** for 3,4-methylenedioxymethylamphetamine means 0.5kg.

THE CROWN CASE

149 The Crown called the following witnesses in the trial:

- (1) Detective Senior Constable Nathan Blake (Officer in charge),
- (2) Detective Senior Constable Benjamin Suraci (involved in the execution of the search warrant of the Yagoona property),
- (3) Leading Senior Constable Bonde Billy Solevski (involved in the execution of the search warrant of the Yagoona property),
- (4) Ms Karen Halbert (fingerprint expert),
- (5) Ms Casey Concannon Chavez (forensic investigator),
- (6) Mr Clayton Walton (DNA expert),

150 The following exhibits were tendered on behalf of the Crown:

- (1) Agreed facts,
- (2) Search warrant application regarding the Yagoona property,
- (3) Floor plan for the Yagoona property,
- (4) Property seizure form regarding the Yagoona property, dated 28 April 2021,

- (5) Bundle of stills from property search taken by Plain Clothes Senior Constable Blake,
- (6) Bundle of 31 photographs taken by Detective Sargeant Holmes,
- (7) Crime scene warrant in respect of the Yagoona property,
- (8) Statement of Senior Constable Belinda Ramage dated 9 June 2022,
- (9) Bundle of 18 photographs taken by Senior Constable Belinda Ramage depicting inside of the Yagoona property,
- (10) Notes taken by Sargeant Southall regarding examination of the Yagoona property,
- (11) Statement of Detective Siraci dated 7 November 2021
- (12) Statement of Leading Senior Constable Solveski dated 19 October 2021,
- (13) Bundle of 69 forensic images taken by Ms Gurinder Verk,
- (14) Bundle of 35 forensic images taken by Ms Dulini Muthukuda,
- (15) Bundle of 35 forensic images taken by Ms Concannon-Chavez,
- (16) Bundle of 27 forensic images taken by Mr Ardishir Akhondzadeh-Basty,
- (17) Expert report of Ms Halbert (fingerprint expert) dated 10 December 2024,
- (18) Statement of Constable Concannon-Chavez dated 12 June 2022,
- (19) Notes of Constable Concannon-Chavez dated 1 May 2021,
- (20) Expert report of Mr Walton (DNA expert) dated 20 June 2022,
- (21) Expert report of Mr Walton (DNA expert) dated report dated 8 February 2023,
- (22) Bundle of certificates for drug analysis,
- (23) Bundle of 2 ballistic reports from Andrew Cole dated 24 May 2021 and 15 February 2022,
- (24) Bundle of s87 certificates (*Firearms Act*) for this accused and the co-offenders,
- (25) Property search reports for Yagoona property from Land Registry Services,
- (26) Document for Energy Australia regarding Yagoona property dated 10 August 2021,
- (27) Registration records dated 2 August 2021 regarding Lexus vehicle,
- (28) Notes of Detective Senior Constable Olivares dated 29 April 2021,
- (29) Photographs taken by Sargeant Steven Waddington of items (cash, written notes) found within vehicle (Toyota Camry) during vehicle search and stop,

- (30) Exhibit summary of items found within Toyota Camry vehicle during search and stop,
- (31) s257 details for Toyota Camry vehicle (subject of stop and search),
- (32) Cellebrite extraction report regarding iPhone 12 seized in Toyota Camry,
- (33) Surveillance device summary, and
- (34) Statement of Crime Scene Officer Bourke and notes dated 10 June 2022.

The defence case

151 The defence called Ms Helen Roebuck (DNA expert) in the trial.

152 The following exhibits were tendered on behalf of the defence:

- 1 Expert report of Ms Roebuck (DNA expert) dated 9 December 2024,
- 2 Corrective services intelligence group-remand telephone calls detailing conversations between Mr Mariam, Mr Saleh, Mr Dabboussi and Mr Ratel, and
- 3 Search warrant video and aide setting out parts (of search warrant video) shown to witnesses.

SUMMARY OF THE EVIDENCE

153 **Exhibit 1** (the agreed facts document) is a comprehensive summation of the evidence upon which inferences may be drawn. I do not propose to summarise the evidence other than DNA (as issues have been raised about transference) and fingerprints (which is relevant to establishing the accused's connection to the premises, guns and drugs).

DNA and Fingerprints

154 The Crown called Clayton Walton, a DNA expert. The Defence called Helen Roebuck, a DNA expert. By consent, they gave their evidence concurrently (see s 275C of the *Criminal Procedure Act*).

155 **Exhibit 20** is the DNA report of Mr Walton dated 20 June 2022. **Exhibit 21** is the DNA report of Mr Walton dated 8 February 2023. **Exhibit A** is the report of Ms Roebuck dated 9 December 2024.

156 Ms Roebuck agreed with all the DNA findings and statistical analyses relating to Mahamad Haouchar.

157 The agreed DNA facts are as follows. A Bulldogs bag was found in a cupboard in the kitchen at 28 Saltash Street Yagoona. Within the bag were Firearms 1, 2 and 3 and ammunition.

Firearm 1

158 Firearm 1 is a silver Harrington & Richardson Arms revolver which was wrapped in a blue CHUX cloth and 2 latex gloves in the Bulldogs bag.

159 DNA was identified on the CHUX cloth. The mixture originated from at least 4 individuals. Mr Mariam cannot be excluded as a contributor to this mixture.

160 DNA was identified on the exterior side of "latex glove A," which was wrapped around Firearm 1. The mixture originated from at least two individuals and Mr Haouchar could not be excluded as the major contributor of the mixture.

161 11 cartridges of ammunition were found inside the Bulldogs bag. DNA was identified on them. The mixture originated from at least 2 individuals. The major contributor to the mixture has the same DNA profile as Mr Saleh.

Firearm 2

162 Firearm 2 is a Heckler and Koch .45 pistol. It was found inside a black sock inside the Bulldogs backpack. DNA was identified inside the foot end of a black sock which wrapped around Firearm 2. The mixture originated from at least 4 individuals and Mr Haouchar and an "Individual B" could not be excluded as contributors to the mixture.

163 Mr Haouchar's fingerprints (left thumb, left middle and little finger) were identified on a magazine from Firearm 2.

164 DNA was identified on the external side of a black and yellow sock which contained an empty pistol magazine. The mixture originated from at least 4 individuals and Mr Haouchar could not be excluded as a contributor to the mixture.

Firearm 3

165 Firearm 3 is a Smith and Wesson revolver. It was found inside a black and green sock inside the Bulldogs backpack. No DNA matching the accused's DNA profile was detected on or near this firearm. DNA was identified on the

exterior side of the black and green sock. The mixture originated from at least 4 individuals and Mr Ratel cannot be excluded as a contributor to the mixture.

Firearm 4

166 Firearm 4 is a black DENIX imitation self-loading pistol. It was found in a black and tan sports bag inside a Lexus motor vehicle that was parked in a car port. The motor vehicle was registered to Housam Orfali who told police he sold the car for \$4800 on the 28 September 2020 to a "Lebanese guy."

167 DNA was identified on the hammer of the firearm. The DNA is that of the accused.

Other DNA evidence

168 DNA was identified on the green handles of the second Woolworths bag. The mixture originated from at least two individuals and Milad Youssef cannot be excluded as a contributor to this mixture.

169 The accused's fingerprints (right palm, right ring and little fingers) were found on the second Woolworths shopping bag (XD0004241046). Found inside the second Woolworth's bag were seized exhibits XD000199263 (55.9 grams of cocaine), XD000199264 (279.8 grams of cocaine) and XD000199262 (279.6 grams of cocaine). See agreed facts (**Exhibit 1**) at [58].

170 The accused's fingerprint (right ring finger) was found on a handle of a Coles shopping bag. Further fingerprints of the accused (left ring finger, left thumb and left index) were found on the Coles shopping bag (X0004241047) under the sink. It contained 188.5 grams of methylamphetamine (XD000199265). See agreed facts (**Exhibit 1**) at [60].

171 The accused's DNA was identified on the mouthpiece and upper half surface of an empty water bottle found near a toilet (item 44 **Exhibit 1**).

172 The accused's fingerprints (left thumb, ring and little finger) were found on the lower half of a Gatorade bottle (X0004241048) located in a lower cupboard immediately to the right of the oven. The accused's left thumb print was found on the upper half of the bottle.

173 Mr Mariam's DNA was identified on two magazines located inside a white plastic bag found in the rear of the Lexus motor vehicle.

- 174 Mr Ratel's fingerprint (right index finger) was identified on the exterior surface of a white plastic bag found in the rear of the motor vehicle.
- 175 DNA was identified on the top two zipper puller and two handles of a black sports bag. The mixture originates from at least two individuals and the major contributor to the mixture has the same profile as Mr Ratel.
- 176 Mr Dabboussi's fingerprint (right ring finger) was identified on a cartridge found in a white plastic bag in the rear of the Lexus vehicle.
- 177 DNA was identified on a door handle (Number 2) in the house. The mixture originated from at least two individuals and the accused cannot be excluded as a contributor to the mixture.
- 178 DNA was identified on a door handle (Number 1). The mixture originated from at least two individuals and the accused, and an "Individual J" cannot be excluded as contributors to the mixture.
- 179 The accused's fingerprint (left index finger) was located on the interior side of a front timber door above the deadbolt.
- 180 DNA was identified on a door handle (Number 7) to the kitchen cupboard underneath the sink. The mixture originated from at least three individuals and Mr Saleh cannot be excluded as a contributor to the mixture.
- 181 Mr Saleh's fingerprints were found on the interior front timber door below deadbolt (right index finger) and the exterior side back timber door between deadbolt and door handle (right middle finger).
- 182 The following was agreed between the experts.
- (1) It is not possible to review a DNA profile or the amount of DNA present and determine how the DNA was deposited.
 - (2) It is never possible to determine when DNA was deposited.
 - (3) When considering mixed DNA profiles it is not possible to determine whether all of the DNA was deposited at the same time or different times, or in what order the DNA was deposited.
 - (4) DNA can be deposited through direct contact, such as touching a person or item, DNA can also be detected when it has been transferred indirectly via another person or item.

- (5) To evaluate how the DNA was deposited and to give a likelihood, we must conduct an activity level assessment of the evidence, considering the prosecution and defence version of events.
- (6) It was not possible to conduct an activity level assessment of the DNA evidence with the material supplied.
- (7) It is not possible to age a DNA sample.
- (8) Investigator mediated contamination can involve introduction of the individual's own DNA into the crime scene. However, this form of contamination is less problematic as it can often be detected through comparison of the DNA profiles obtained against databases of police and laboratory staff.
- (9) Investigator mediated contamination also includes transferring DNA from one part of the crime scene to another (in this case within the vehicle), or from one exhibit to another. For example, this can occur as a result of not changing gloves between each sample collected, or by utilising tools that are not cleaned between exhibits.
- (10) DNA anti-contamination precautions can include wearing Personal Protective Equipment such as gloves and masks, handling objects with clean gloves and sterile implements, and using sterile packaging.

183 Ms Roebuck was asked to review and comment upon the search warrant footage supplied. She was of the opinion that generally there appears to be an awareness of DNA anti-contamination precautions with some glove changes visible throughout the search and many verbal calls from the background to 'change gloves' prior to seizing an item. At 8.10-8.29 of her report, (**Exhibit A**) she dealt with potential contamination of exhibits during execution of search warrant.

184 I was shown excerpts of the search warrant video during cross-examination of several police officers. I am satisfied of the following.

- (1) Anti-contamination procedures were performed by the searching officers during the execution of the search warrant (**Exhibit C**).
- (2) Searching officers used rubber gloves. Searching officer Suraci used double gloves (Transcript 18 February 2025, p 80) a practice described by Ms Roebuck as common place and...considered best practice (Transcript 20 February 2025, p 152).
- (3) Searching officer Suraci placed exhibits on fresh exhibit bags which had been placed on the floor to create a barrier (Transcript 18 February 2025, p 68).
- (4) Searching officers changed gloves throughout the search. This was visually depicted and heard on the search warrant video recording (**Exhibit C**).

- (5) Ms Roebuck noted an awareness of anti-DNA contamination procedures exhibited throughout the video footage (Transcript 20 February 2025, p 148).
- (6) Ms Roebuck conceded that it was not possible to quantify the likelihood of a DNA contamination scenario occurring (Transcript 20 February 2025, p 144). Indeed, Ms Roebuck noted the requirement for an activity level assessment involved consideration of both the prosecution and defence version of events (**Exhibit A** [15.3]). Furthermore, she noted that it was not possible to conduct an activity level assessment of the DNA evidence with the material which had been supplied (**Exhibit A**, [15.4]).

185 The DNA evidence must be viewed along with other forensic evidence such as fingerprints connecting the accused to the Yagoona property. The defence case is that there is a possibility of transference of DNA, that is, that the accused's DNA was 'transferred', directly or indirectly, onto items inside the Yagoona property, by a means consistent with his innocence of the offences charged. I will deal with this issue later in the judgment.

SUBMISSIONS

Crown submissions

- 186 The Crown brings its case against the accused on the basis that he was a party to a joint criminal enterprise with at least Mr Mariam, Mr Saleh, Mr Ratel and Mr Dabboussi.
- 187 The Crown says the accused and at least Mr Mariam, Mr Saleh, Mr Ratel and Mr Dabboussi agreed to use the Yagoona property including the Lexus motor vehicle as a (safe) house to store firearms, firearm parts, ammunition and drugs, and that they were in joint possession of these items. The existence of this agreement is to be inferred from the forensic evidence connecting these people to the Yagoona property, including the Lexus motor vehicle, and the items located therein.
- 188 The Crown says that this agreement was formed in order to facilitate the supply of prohibited drugs, or possession or supply of prohibited firearms, for the purposes of organised criminal activity in the South Western Sydney region and elsewhere.
- 189 The Crown says that the accused participated in the criminal group by:

- (1) Having access to and being present at the property, including the Lexus motor vehicle,
 - (2) Storing and concealing firearms at the property including in the Lexus motor vehicle, and
 - (3) Storing and concealing a magazine at the Yagoona property.
- 190 The Crown acknowledges other persons are (forensically) connected to the Yagoona property and the items seized, and it accepts these persons may have been involved (in criminal activity). The Crown submits the potential involvement of these other persons does not provide a defence for the accused.
- 191 The Crown submits that the failure of Mr Mariam, Mr Saleh, Mr Ratel and Mr Dabboussi to mention the accused in the context of their discussions about the Yagoona property matters while in the cells at the Bankstown police station on 15 July 2021 is of little importance, given their understandable reluctance to implicate themselves or each other in each other's presence, especially in a custodial setting.
- 192 The Crown submits the inability of police to find any connection to the accused on any of the seized mobile phone devices is a little importance. The accused was not a person of interest until 23 December 2022 when police received an EFIMS notification relating to the identification of a DNA profile located during the execution of the search warrant at the Yagoona property on 28 April 2021 (**Exhibit 1** at [66]). The Crown notes that a number of the mobile phones which were seized were heavily damaged: (Transcript 21 February 2025, p 197, 199).

Accused's Submissions

- 193 Mr Pettit, who appears on behalf of the accused, submitted that the Crown case is wholly circumstantial. There is no meaningful evidence tying the accused to Mr Ratel, Mr Dabboussi, Mr Mariam or Mr Saleh. The only real evidence against the accused is forensic evidence, being DNA and fingerprints found on various items and locations within the Yagoona property.
- 194 Mr Pettit submitted that The Crown's evidence, at its highest, can establish that the accused handled a detachable magazine at some point in time (which came to be present at the Yagoona property) and that he was present at some point in time at the Yagoona property. The Crown case fails if I am unable to

infer from this that that the accused, in concert with four specified others (and to the exclusion of any further persons) stored and concealed each of those magazines or firearms.

195 Mr Pettit submitted I would find that inference is not a reasonable one to draw. There is evidence that a significant number of persons were using the Yagoona property, who had associations with one another but with little connection to the accused. An individual's past handling of an item does not demonstrate present possession of it. An individual may handle another's property for many reasons. Another person may take possession of the item after the first individual possessed it. Mere presence of the property does not take the inference further, rather, it supplies credence to an explanation consistent with the accused's innocence of these charges.

196 The Crown case relies largely on proof of joint possession and joint criminal enterprise. Mr Pettit submitted that neither can be proved beyond reasonable doubt.

197 Two ingredients must be proved in relation to possession. The first is actual possession and the second is the requisite intent to possess. The Crown must therefore eliminate the following reasonable possibilities in this case:

- (1) The accused was not acting in concert with one or more of the alleged co-offenders specifically in relation to the storage and exercising control over each item,
- (2) The accused did not have the right or ability to exclude all persons from the premises other than the co-offenders, and,
- (3) That the accused did not have knowledge (applying separately and to each item).

198 There is compelling positive evidence that the accused was not tied to the co-accused. He was not a known associate of any (except for Mr Ratel) and was not tied to any of them through any of the significant mobile phone evidence scrutinised by investigating police.

199 There is no evidence as to the accused's relationship to the property. The forensic evidence can at best show that he visited the property at least once at some unknown point in time. It cannot be proved that the accused had the right or ability to exclude any persons from the premises.

- 200 Bar the magazine on which the fingerprints were found there is no evidence that the accused even had knowledge of the items found in various places within the property. The accused's DNA found in other places within the property is explicable by the reasonable possibility of secondary transfer or transfer without touch by shedding whilst the accused was present at the property.
- 201 There is a reasonable possibility that even if it was accepted that the accused used the property to store some items it would not necessarily follow that he was doing so as part of a joint criminal enterprise with the co-offenders.
- 202 Mr Pettit submitted that the case of joint criminal enterprise fails at the first hurdle because there is no proof of any such agreement nor any evidence from which such an agreement could be rationally inferred.

DETERMINATION

Forensic connection to the Property

- 203 The accused is forensically connected to the Yagoona property.
- (1) The accused's fingerprint was located on interior side of front timber door above deadbolt (immovable object).
 - (2) The accused's partial reference DNA profile was identified in a mixture from a trace swab on door handle 1. The mixture originated from at least two individuals and the accused and an "Individual J" cannot be excluded as contributors to the mixture (immovable object).
 - (3) Partial DNA attributed to the accused's reference DNA profile was identified in a mixture from a trace swab of door handle 2 (immovable object). The mixture originated from at least two individuals and the accused cannot be excluded as a contributor to the mixture.

Forensic Connection to Items Located Within the Property

- 204 The accused is forensically connected to the following items within the Yagoona property.
- (1) The accused's fingerprints were identified underneath the second Woolworths shopping bag.
 - (2) The accused's fingerprints were identified on the B side handle, the upper right of side 'A', underneath and on the inside middle upper half of side 'A' of the Coles shopping bag.

- (3) The accused's partial reference DNA profile was identified from a trace swab on the mouthpiece and upper half surface of an empty water bottle.
- (4) The accused's fingerprints were identified on the lower half and upper half of a Gatorade bottle located in a lower cupboard immediately to the right of the oven.

Forensic Connection to the Firearms

205 While in the kitchen of the Yagoona property police located a Bulldogs bag concealed in the lower kitchen cupboard to the left of the sink.

206 Inside the Bulldogs bag police located the following.

(1) **Firearm 1**

- (a) A package wrapped in a blue CHUX brand cloth wrapped in a latex glove. The barrel of the revolver was fully loaded with 5 rounds of .38 ammunition. Mr Mariam's reference DNA profile was identified in a mixture from a trace tape lift of the middle front of the CHUX cloth used to wrap Firearm 1. The mixture originated from at least four individuals and Mr Mariam could not be excluded as a contributor to this mixture.
- (b) The accused's reference DNA profile was identified in a mixture from a trace swab of the interior side of a latex glove which was wrapped around Firearm 1. The mixture originated from at least two individuals and the accused could not be excluded as the major contributor of the mixture.

(2) **Firearm 2**

- (a) Inside a black sock was another firearm fitted with a magazine containing a number of rounds. The accused's reference DNA profile was identified in a mixture from a trace swab of the inside the foot of the black sock which wrapped around Firearm 2. The mixture originated from at least four individuals and the accused, and an "Individual B" could not be excluded as contributors to the mixture.
- (b) Firearm 2 was used in a shooting on 12 April 2021. The accused's fingerprints were identified on a magazine from Firearm 2.

(3) **Firearm 3**

- (a) A black and green sock was wrapped around a black revolver with a brown stock. The barrel was fully loaded with six rounds of .38 special calibre ammunition. There is no forensic connection of the accused to this firearm. Mr Ratel's DNA was identified on the exterior side of the black and green sock.

(4) **Empty pistol magazine**

- (a) Inside a black and yellow sock police located an empty pistol magazine. Mr Mounin Haouchar's reference DNA profile was identified in a mixture from a trace swab of the exterior side of the sock. The mixture originated from at least four individuals and Mr Mounin Haouchar could not be excluded as a contributor to the mixture.
- (5) **Firearm 4**
 - (a) While at the Yagoona property police observed a Lexus motor vehicle in a car port which was damaged and looked undrivable. The vehicle is registered in the name of Housam Orfali. A search of the Lexus motor vehicle was conducted. A black and tan sports bag was located in the boot. Inside the sports bag police located a black DENIX imitation self-loading pistol. The accused's reference DNA profile was identified in a trace swab of the hammer of Firearm 4. Mr Ratel's reference DNA profile was identified in a trace swab of the top two zipper pullers and two handles of the sports bag. The mixture originates from at least two individuals and the major contributor to the mixture has the same profile as Mr Ratel.
 - (b) Also found on the back seat of the Lexus was a white plastic bag. Within the bag were numerous items. Mr Mariam's partial reference DNA profile was identified on two magazines within the bag. Mr Ratel's fingerprint was identified on the exterior surface of the bag. Mr Daboussi's fingerprint was identified on a cartridge in the bag.

The 'Defence' of Indirect Transfer of DNA

- 207 The accused submits that the expert evidence in this case makes it clear that indirect transfer is a real phenomenon which may affect the *reliability* of DNA evidence. Reasonable alternative hypotheses based on indirect transfer have led to acquittals in a series of cases. A reasonable alternative hypothesis will emerge where there is an explanation which arises from the evidence (beyond mere speculation) as to how the relevant DNA could either have been indirectly transferred to where it was found or an innocent explanation for any direct transfer.
- 208 The accused submits that the 14 DNA results described in the agreed facts had at least four contributors (only one could be identified). One had at least three contributors (only one could be identified). Six had at least two contributors (only one could be identified) and three identified only one contributor. This suggests other (unknown) people were present at the property and potentially involved with the items.

209 The Bulldogs bag was found in a cupboard next to the cupboard under the sink (on the left). The cupboard under the sink contained the second Woolworths bag and a Coles bag (the shopping bags) which contained cocaine and methylamphetamine respectively.

210 The Bulldogs bag contained three firearms, magazines, digital scales, ammunition and cartridges, a knife and prohibited drugs.

211 The forensic evidence implicating the accused in the offences is:

- (1) Fingerprints on a magazine from Firearm 2.
- (2) DNA profile in a mixture from the inside of the foot of a black sock wrapped around Firearm 2 (originating from at least four individuals), and
- (3) DNA profile in a mixture on a latex glove wrapped around Firearm 1 (originating from at least two individuals).

212 The DNA of Mr Mariam, Mr Ratel, Mr Saleh and Mr Mounin Haouchar were also found on items in the Bulldogs bag.

213 The accused submits that an inference is reasonably open in that he, at a point unknown prior to deposit, touched Firearm 2's magazine. Firearm 2 was fired on 12 April 2021, the accused's contact may have been either before or after this. Because of the interchangeable nature of firearm magazines and the fact they cannot be forensically linked to a particular gun or a bullet fired from that gun, the contact may not have involved the accused touching, seeing, or even having knowledge of Firearm 2 itself.

214 As to Firearm 1, the mere fact that the accused's DNA was present on the glove used to wrap the firearm is explicable either by indirect transfer or by contact at some time prior to deposit.

215 The accused submits there are four possibilities in relation to how the accused's DNA came to be on the hammer of Firearm 4 found in the sports bag in the boot of the Lexus.

- (1) The accused handled or was in the vicinity of (noting the prospect of direct transfer without contact by shedding) Firearm 4 at a time unknown, but prior to Firearm 4 being placed in the back of the Lexus on the Yagoona property, or,

- (2) Indirect transfer, either by secondary transfer through other persons, or tertiary transfer, led to the deposit of the accused's DNA at an unknown time.
- (3) Direct transfer via contact between Firearm 4 and the gym towel that was found sitting on top of it, and which was then moved and wrapped around Firearm 4 by a searching police officer, or,
- (4) Indirect transfer via that same officer to the towel in which Firearm 4 was wrapped.

216 The accused submits there is the reasonable prospect of indirect transfer, which is supported by the DNA evidence suggesting that Mr Ratel handled the black sports bag, and the presence of Mr Mariam and Mr Daboussi's DNA on other items in the Lexus. That could occur either by those persons interacting with the accused or interacting with his DNA at other places on the property (tertiary transfer), noting that his DNA was present at other places on the property.

217 In *The Queen v Baden-Clay* (2016) 258 CLR 308 the High Court quoted the joint judgment of Gibbs, Stephen and Mason JJ in *Barca v The Queen* (1975) 133 CLR 82 at 104 at [46]:

"[46] When the case against an accused person rests substantially upon circumstantial evidence, a jury cannot return a verdict of guilty unless the circumstances are such as to be inconsistent with any reasonable hypothesis other than the guilt of the accused: *Peacock v King*. To enable a jury to be satisfied beyond reasonable doubt of the guilt of the accused it is necessary not only that his guilt should be a rational inference but that it should be the only rational inference that the circumstances would enable them to draw: *Plomp v The Queen*; see also *Thomas v The Queen*.

[47] For an inference to be reasonable, it "must rest upon something more than mere conjecture. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence". Further, "in considering a circumstantial case, all of the circumstances established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence". The evidence is not to be looked at in a piecemeal fashion, at trial or on appeal."

218 In *Wiggins v The Queen* [2020] NSWCCA 256 Simpson AJA (Fagan and Ierace JJ agreeing) at [65] said,

"When an accused person, in answer to a circumstantial case, advances 'an hypothesis consistent with innocence', the hypothesis must be consistent with the evidence in the case and go beyond "mere conjecture". That does not entail any obligation on the accused person to adduce evidence to prove or support the hypothesis. It is sufficient if such a hypothesis can be derived,

reasonably, from the evidence in the Crown case. No standard of proof applies. All that is necessary is that the hypothesis be such as to raise a reasonable doubt that the accused person has been proved guilty. Nor is it incumbent on an accused to establish that some inference other than that of guilt should reasonably be drawn from the evidence”.

219 I apply the above principles in considering the question of transfer of DNA.

220 I am satisfied that the police officers who conducted the search wore gloves and changed their gloves regularly to lessen the chance of contamination.

221 I find that the circumstances postulated as to how the accused’s DNA (for example the gym towel touching the hammer of Firearm 4) was found on items by reason of indirect transfer or innocent explanation for any direct transfer are mere conjecture and speculation. No inference consistent with innocence reasonably arises upon the evidence as a whole.

Connection of the Accused to Others

222 Mr Haouchar and Mr Ratel were known to one another. On 14 May 2020, Mr Haouchar and Mr Ratel were identified by police as the occupants of a motor vehicle during a vehicle stop. On 1 June 2020, Mr Haouchar and Mr Ratel were identified by police as the occupants of a motor vehicle during a random breath test.

223 Mr Mariam and Mr Ratel were known to one another. Mr Mariam and Mr Dabboussi were known to one another and are relatives. On 29 April 2021 Mr Mariam and Mr Dabboussi were identified by police as the occupants of a motor vehicle during a vehicle stop.

224 Mr Mariam and Mr Saleh were known to one another. On 19 January 2021, Mr Mariam and Mr Saleh were identified by police as the occupants of a motor vehicle during a vehicle stop. On 27 April 2021, Mr Saleh was pulled over for a random breath test. He was the registered owner of the vehicle. Police searched the vehicle. They found cash inside a hidden compartment, 5 telephones, a paper ledger and other items. Mr Saleh told police the vehicle was owned by Mr Mariam. Mr Mariam’s DNA was identified on the paper ledger. His fingerprints were also located on the ledger. Mr Mariam’s DNA was identified on two of the mobile phones seized inside the property.

225 As to Mr Mariam, the forensic evidence connecting him to the items within the Yagoona property is as follows.

- (1) DNA profile identified in a mixture from a trace tape lift from a CHUX cloth used to wrap Firearm 1 (inside the Bulldogs bag), and,
- (2) DNA profile identified in a trace swab of two magazines located inside a white plastic bag found in the rear of the Lexus.

226 As to Mr Saleh the forensic evidence connecting him to the items within the Yagoona property is as follows.

- (1) DNA profile identified in a mixture from a trace tape lift of 11 cartridges of ammunition found inside the Bulldogs bag,
- (2) DNA profile identified on door handle to the kitchen cupboard underneath the sink, and,
- (3) Fingerprints on the Yagoona property, on interior front timber door and interior side of back timber door.

227 As to Mr Ratel, the forensic evidence connecting him to the items within the Yagoona property is as follows.

- (1) DNA profile identified in a mixture from a trace tape lift of the exterior side of the black and green sock containing Firearm 3,
- (2) Fingerprints on the exterior surface of a white plastic bag found in the rear of the Lexus, and,
- (3) DNA profile identified in a trace swab of the top two zipper pullers and two handles of a black sports bag found in the Lexus.

228 As to Mr Dabboussi, the forensic evidence connecting him to the items within the Yagoona property is as follows.

- (1) Fingerprints on a cartridge found in the rear of the Lexus.

229 Forensic results were also procured for two further known persons in relation to items at the Yagoona property.

- (1) Mr Mounin Haouchar's DNA profile (the accused's brother) was identified in a mixture from a trace swab of the exterior side of the black/yellow sock in the Bulldogs bag which contain an empty pistol magazine,
- (2) Ahmed Jindi's DNA on a box containing 47 rounds of ammunition, and,
- (3) Milad Youssef's DNA was identified in a mixture from a trace swab of the green handles of the second Woolworths bag.

Joint Criminal Enterprise

- 230 The accused is alleged to have been involved in a joint criminal enterprise with four others to facilitate the supply of prohibited drugs and firearms or the possession of drugs and firearms and as an ingredient of liability that the accused and others had joint possession of the various items.
- 231 Proof of a joint criminal enterprise and attribution of acts done in furtherance of it to the accused requires proof of the relevant agreement and participation in the conduct the subject of that agreement.
- 232 The understanding or arrangement need not be express, and its existence may be inferred from all the circumstances. The circumstances in which two or more persons are participating together in the commission of a particular crime may themselves establish an unspoken understanding or arrangement amounting to an agreement formed between them spontaneously to commit that crime.
- 233 The accused and Mr Ratel are known to each other. The accused is forensically connected to immovable and movable items at the property including the Lexus motor vehicle. He is connected to some of the contents of the Bulldogs bag and Firearm 4 in the sports bag found in the boot of the Lexus motor vehicle.
- 234 Mr Ratel's DNA was identified on the exterior side of the black and green sock containing Firearm 3. His DNA was identified on the two zipper pullers into handles of the black sports bag found in the Lexus. This bag contained Firearm 4. The accused's DNA was identified on the hammer of Firearm 4. Mr Ratel's fingerprints were on the surface of a white plastic bag found in the rear of the Lexus.
- 235 The Bulldogs bag and the black sports bag did not enter the property by accident. I infer from the relationship between the accused and Mr Ratel and the forensic connection of both to the property and items within the property that they entered into an agreement at some point between 1 December 2020 and 28 April 2021 to store particular firearms and drugs in the property and within a motor vehicle.

236 Although Mr Mariam, Mr Saleh and Mr Dabboussi are connected to each other and connected forensically to the Yagoona property and items therein, I am not satisfied beyond reasonable doubt that the accused engaged in a joint criminal enterprise with them to supply and/ or possess firearms and drugs. Mr Ratel and Mr Saleh were known to each other and were forensically connected to the property. However, there is no evidence linking the accused to Mr Saleh and accordingly I am not satisfied that Mr Saleh was in a joint criminal enterprise with the accused and Mr Ratel.

Count 1: Participation in a criminal group

237 A criminal group refers to three or more people who have as their objective or one of their objectives obtaining material benefits from conduct that constitutes serious indicatable offence.

238 I have not been satisfied that the Crown has proved beyond a reasonable doubt that three or more people (including the accused) engaged in a joint criminal enterprise to participate in a criminal group. There was evidence before me in the trial linking the accused to Mr Ratel. They were stopped on two occasions by police in a car together. I can infer from this, together with the forensic evidence linking both to the Yagoona property and items within the Yagoona property, that there was a relationship between the accused and Mr Ratel and an agreement between them at some stage to engage in the possession and/ or supply of particular firearms and drugs at the Yagoona property.

239 There was no such evidence before me of a connection between the accused and Mr Dabboussi or Mr Saleh, from which I can infer there was any relationship or agreement. DNA and fingerprint samples cannot be aged. The forensic evidence led in the trial cannot establish that the accused and Mr Dabboussi and Mr Saleh have had contact with each other in the past, or attended the Yagoona property at the same time, from which I could infer that they had knowledge of each other's affairs within the property or that their activities were coordinated in any way. That an inference could be drawn is not the test. If there are other alternatives or inferences reasonably available,

inferences that are consistent with the accused being innocent, then the Crown has not proved its case.

240 There was evidence in the trial which demonstrated a connection between the accused and Mr Mariam. They are both forensically connected to Firearm 1. There is no other evidence connecting Mr Mariam to the accused. Mr Mariam's DNA was detected on a cloth which wrapped around the firearm. The accused's DNA was on the glove which wrapped the firearm. In due course I will outline my reasons for finding the accused guilty of the offence relating to Firearm 1 (Count 5). I do not find, however, that the accused and Mr Mariam were engaged a joint criminal enterprise with each other and Mr Ratel. I am unable to infer from these two facts alone (the fact that Mr Mariam's DNA was on the exterior cloth, and that the accused's DNA was on the glove) that there was a joint criminal enterprise between them to participate in a criminal group.

241 A joint criminal enterprise requires an agreement. The agreement does not need to be express; it can be inferred. There is no basis from which I can infer an agreement was formed between Mr Mariam and the accused. There is no evidence of any relationship or communication between them, or evidence that they attended the property at the same time, where an unspoken agreement or understanding could have been formed between them. The DNA could have been deposited onto the cloth and glove through several means. It is not my role to speculate about how traces of both Mr Mariam and the accused's DNA came to be present on the cloth and the glove respectively and infer from this that they were working in concert to commit a specific offence. It raises suspicion, but not to the level of proof beyond reasonable doubt. By contrast, there is evidence regarding the accused's relationship with Mr Ratel. In combination with forensic evidence tying the accused and Mr Ratel to particular firearms and drugs, I am able to reasonably conclude that Mr Ratel and the accused were engaged in a joint criminal enterprise to commit particular offences.

242 Even though many of the items were located within close proximity of each other (and in the case of Firearms 1,2 and 3, they were all found within the Bulldogs bag), an inference that the house was used as a 'safe house' by each

person to conduct their criminal ventures independently, (an inference consistent with the accused's innocence) is equally available. Accordingly, I am not satisfied beyond reasonable doubt that the accused engaged in a joint criminal enterprise to participate in a criminal group with three or more people and find the accused not guilty.

Count 2: Possess more than three firearms

243 There is no forensic connection between the accused and Firearm 3. Although Mr Ratel is forensically connected to the sock in which the firearm was wrapped, I am not satisfied that there was an agreement between Mr Ratel and the accused for the storage of Firearm 3 even though it was found in the Bulldogs bag. I am not satisfied the accused was in possession of more than 3 firearms. I find the accused not guilty.

Count 3 (alternative to Count 2): Possess a pistol

244 A Denix imitation self-loading pistol was found wrapped in a gym towel in the black sports bag in the boot of the Lexus motor vehicle. The accused's DNA was identified on the hammer of the firearm. Mr Ratel was also forensically connected to the black bag. Possession of a firearm includes having the firearm in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person.

245 I am satisfied that there was a joint criminal enterprise between the accused and Mr Ratel for storage of Firearm 4 within the Lexus motor vehicle. I have previously rejected as mere conjecture the transference of the accused's DNA to the firearm. I am satisfied beyond a reasonable doubt that the accused's DNA was deposited on the hammer of the pistol directly by him. As to when that occurred, I am unable to say, but I am satisfied that there was an agreement for the accused and Mr Ratel to possess the firearm and store it within the Lexus. On the basis of *the combination* of forensic evidence connecting both Mr Ratel and the accused to the bag and firearm within, evidence of the relationship between them, unlikelihood of transference of the accused's DNA onto the firearm, I am able to reasonably infer that there was a joint criminal enterprise between Mr Ratel and the accused to possess Firearm 4 and accordingly I find the accused guilty.

Count 4 (alternative to Count 2): Possess a pistol

246 Firearm 3 is a loaded Smith and Wesson revolver. It was wrapped in a black and green sock. Mr Ratel's DNA was identified on the sock. There is no forensic connection to the accused to Firearm 3. I am not satisfied beyond a reasonable doubt that there was a joint criminal enterprise between Mr Ratel and the accused for storage of this firearm.

247 Mr Ratel's DNA was identified on the sock used to wrap Firearm 3, in a mixture originating from at least four individuals. The accused is not one of them. I cannot infer, absent forensic evidence connecting the accused to the firearm or external sock, that because Mr Ratel and the accused were engaged in a joint criminal enterprise to possess Firearms 1 and 2 which were also located in the Bulldogs bag, and Firearm 4, which was located in the Lexus, that the accused was necessarily engaged in a joint criminal enterprise with Mr Ratel to possess Firearm 3.

248 I must give separate consideration to the evidence in support of each count. I must be satisfied beyond reasonable doubt before I can find the accused guilty of any count. I may be suspicious that the accused is also involved in a joint criminal enterprise with Mr Ratel regarding Firearm 3, but this falls short of the standard of proof required to convict the accused. Firearm 3 was found in a different sock to the other firearms. At least 4 people contributed to the DNA mixture which was eventually sampled. I cannot exclude the possibility that Firearm 3 was the subject of a joint criminal enterprise between Mr Ratel and some other individuals, and all the firearms were placed inside the Bulldogs bag, at some stage, by some other person. I cannot speculate. Although I might be suspicious about the accused's involvement with Firearm 3, suspicion is not the threshold for guilt in a criminal trial. It is proof beyond reasonable doubt. I have a reasonable doubt that the accused is guilty of this offence and the accused is entitled to the benefit of this doubt. I must return a verdict of not guilty.

Count 5 (alternative to Count 2): Possess a prohibited pistol

249 Firearm 1 is a loaded Harrington & Richardson Arms revolver. The firearm was wrapped in a CHUX cloth which had the DNA of Mr Mariam. Inside the CHUX

wipe was a latex glove wrapped around Firearm 1. The accused's DNA was on the interior side of the latex glove which was wrapped around Firearm 1.

250 I am satisfied beyond a reasonable doubt that the accused and Mr Ratel engaged in a joint criminal enterprise to store the firearm at the property. I find the accused guilty.

Count 6 (alternative to Count 2): Possess a prohibited pistol

251 Firearm 2 is a loaded Heckler and Koch .45 pistol. The accused's DNA profile was identified in a mixture from a trace swab of the inside the foot end of a black sock which wrapped around Firearm 2. The mixture originated from at least 4 individuals and the accused, and "Individual B" could not be excluded as contributors to the mixture.

252 I am satisfied beyond a reasonable doubt that the accused and Mr Ratel engaged in a joint criminal enterprise to store the firearm at the property. I find the accused guilty.

Count 7: Possess a stolen firearm

253 The firearm is Firearm 2. Firearm 2 was recorded as stolen on 21 November 2019 in Western Australia. I am satisfied beyond a reasonable doubt that the accused and Mr Ratel engaged in a joint criminal enterprise to store the firearm at the property. I find the accused guilty.

Count 8: Possess a stolen firearm

254 Firearm 3 is a loaded Smith and Wesson .38 special revolver. It was recorded as stolen on 12 May 2009. For the reason I identified when dealing with Count 4 I am not satisfied beyond a reasonable doubt that the accused has possession of the firearm. I find the accused not guilty.

Count 9: Possess two magazines with a capacity greater than five rounds

255 The two magazines subject of the count are designed to suit a centre-fire .308 Winchester calibre Valmet model hunter self-loading rifle. They meet the definition of a prohibited weapon. One magazine has an actual capacity of twenty cartridges while the other magazine has an actual capacity of nine cartridges.

256 When police searched the Lexus motor vehicle, on the rear seat was a large Glad brand white plastic bag. It contained numerous items including the two magazines the subject of the count. Mr Ratel's fingerprint was identified on the exterior surface of the plastic bag. Although his fingerprint was on the outside of the bag, he may not have had knowledge of any or all of the contents of the bag to enable him to be in possession of them. Mr Mariam's partial reference DNA profile was identified in a trace swab on the two magazines located inside the white plastic bag. There is nothing forensically connecting Mr Ratel or the accused to the magazines, or the accused to Mr Mariam.

257 I cannot infer that because the accused, acting in enterprise with Mr Ratel, was in possession at some stage of an item (Firearm 4) within the Lexus, that he would have had knowledge of other items being stored within the Lexus or that he was engaged in a joint criminal enterprise with Mr Mariam. There is no evidence of any relationship between Mr Mariam and the accused. The forensic evidence in this trial cannot establish that they attended the Yagoona property or the Lexus vehicle at the same time. The car was deemed by police to be undriveable. It can be compared to the scenario of a storage facility where different people may store different things that have no connection to each other.

258 I am not satisfied that the accused knew of the magazines or engaged in a joint criminal enterprise with Mr Ratel to possess and store the magazines. I find the accused not guilty.

Count 10: supply a prohibited drug (heroin)

259 The total amount of heroin located in the kitchen of the Yagoona property was 3.42 grams. The heroin was seized by police inside a clear freezer bag which was inside a PVC pipe which was located in the top kitchen cupboard. There is no forensic connection of the accused or Mr Ratel to the heroin. It would be wrong of me to infer, absent any forensic evidence linking them to the heroin, and in circumstances where this property was being used as a safe house for various individuals (some known, some unknown) to conduct various activities, that because Mr Ratel and the accused were present at some stage in the kitchen, engaged in a criminal enterprise to commit other offences, that they

must have been involved in the possession or supply of heroin. I must give separate consideration to the evidence in support of each count. I may return verdicts of guilty to some offences and not guilty to others if there is a logical reason for this outcome.

260 I am not satisfied beyond reasonable doubt that there was a joint criminal enterprise between them to possess the heroin. I find the accused not guilty.

Count 11: supply a prohibited drug not less than a large commercial quantity (cocaine)

261 A second Woolworths bag was found under the sink in the kitchen. It contained a number of bags of cocaine (XD000199263 – 55.9 grams, XD000199264 – 279.6 grams and XD000199262 – 279.8 grams). The accused's fingerprints located beneath the second Woolworths shopping bag. The total weight of cocaine in the Woolworths bag was 615.3 grams. The Crown in proof of the count alleges 2 freezer bags totalling 354 grams of cocaine and cool Ridge bottle in containing 1228 grams of cocaine were found in a Coles bag in the oven.

262 There is no forensic connection between the Coles bag and the accused. The bag was found in the oven. There is a forensic connection between the accused and a second Coles shopping which was found under the sink. The accused's fingerprints are on the B side handle, the upper right side of A and underneath the bag. It contained 188.5 grams of methylamphetamine (XD000199265).

263 I am not satisfied that the accused knew of the existence of the Coles bag in the oven. I am satisfied beyond a reasonable doubt that the accused and Mr Ratel entered into a joint criminal enterprise to store the second Woolworths bag containing drugs. I am satisfied that the accused possessed for the purposes of supply 615.3 grams of cocaine. A large commercial quantity is 1.0kg. I find the accused not guilty of count 11 but guilty of the statutory alternative of supply a commercial quantity of cocaine (deemed supply).

Count 12: supply a prohibited drug (methylamphetamine)

264 The Crown allege that 243.62 grams of the drug were in the kitchen. The drugs were found in three different bags. 11.32 grams (XD000199301) was found in a

clear freezer bag in the upper kitchen cupboard. 43.8 grams (XD000199306) was found in a clear freezer bag in a PVC pipe in the top right kitchen cupboard. In a Coles bag (X0004241047) in the cupboard under the sink 188.5 grams (XD000199265) were found.

265 The accused’s fingerprints were found on the B side handle (right ring finger) the upper right-side A (left ring finger) underneath (left thumb) and on the inside middle half of side A (left index finger) of the Coles shopping bag. The accused is forensically connected to the Coles bag.

266 I am satisfied beyond a reasonable doubt the accused and Mr Ratel entered into a joint criminal enterprise to store the Coles bag knowing it contained a prohibited drug for the purposes of supply (deemed). The accused is guilty of supply in the amount of 188.5 grams.

Count 13: supply a prohibited drug not less than a commercial quantity (MDMA)

267 A commercial quantity of MDMA is 0.5kg. the total amount of MDMA located in the kitchen of the Yagoona property was 131.83 grams. The MDMA seized by police is summarised in the following table:

	Description	Exhibit No.	Location found
(1)	2.77 grams of MDMA	XD000199303	Upper kitchen cupboard, clear freezer bag
(2)	1.36 grams of MDMA	XD000199304	Upper kitchen cupboard, clear freezer bag
(3)	98.9g of MDMA	XD000173893X0004241022	Kitchen cupboard
(4)	28.8g of MDMA	XD000173894X0004241023	Kitchen cupboard

- 268 There is no forensic evidence connecting the accused or Mr Ratel to the MDMA located in a freezer bag in the upper kitchen cupboard and in a kitchen cupboard in close proximity to other items which are forensically connected to the accused.
- 269 The Crown submits that the Court would reject as a matter of common sense any suggested reasonably possibility of that the accused had access to the Yagoona property, but the MDMA was left there by others. I do not accept this submission. A safe house may be used at different times, for different purposes, by different people. I cannot speculate about the accused's involvement or find him guilty based on suspicion. I cannot reason, absent any forensic evidence linking the accused or Mr Ratel to the MDMA in the freezer bags that they were engaged in a joint criminal enterprise to possess or supply MDMA, on the basis that they were engaged in a joint criminal enterprise with each other to commit other offences in the kitchen and the car.
- 270 I am not satisfied beyond a reasonable doubt that the accused entered into a joint criminal enterprise with Mr Ratel to possess and store MDMA at the property. I find the accused not guilty.

CONCLUDING REMARKS

- 271 Other people are forensically connected to the property (Mr Mariam, Mr Saleh, Mr Dabboussi, Mr Mounin Haouchar, Mr Ahmed Jindi, Mr Milad Youseff, female profile J, profile F, profile D, profile B, profile G, profile O and profile N). It does not follow that they engaged in a joint criminal enterprise with the accused and Mr Ratel. It is a reasonable possibility that some of them were engaged in their own joint criminal enterprise to use the property to store a gun and/or drugs. There is no evidence the accused knew these people or was in contact with them or that they were at the property at the same time.

ORDERS

- 272 I return the following verdicts.
- (1) Count 1: Not guilty.
 - (2) Count 2: Not guilty.
 - (3) Count 3: Guilty.

- (4) Count 4: Not guilty.
- (5) Count 5: Guilty.
- (6) Count 6: Guilty.
- (7) Count 7: Guilty.
- (8) Count 8: Not guilty.
- (9) Count 9: Not guilty.
- (10) Count 10: Not guilty.
- (11) Count 11: Not guilty, but guilty of the statutory alternative of deemed supply of a commercial quantity.
- (12) Count 12: Guilty of supply of 188.5 grams.
- (13) Count 13: Not guilty.

Amendments

10 March 2025 - 10/3/25 - Decision on coversheet amended to correct error.