

CITATION: *Police v Holden and Griffen (No. 2)* [2007] NTMC 031

PARTIES: ROBERT ROLAND BURGOYNE

v

SHANE LLOYD HOLDEN

AND

BARBETTE GRIFFEN@ SCHAFTE (NO 2)

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction – Alice Springs

FILE NO(s): 20611738 / 20611742

DELIVERED ON: 15 June 2007

DELIVERED AT: Alice Springs

HEARING DATE(s): 15 & 16 March 2007, 13 April 2007

JUDGMENT OF: M Little SM

CATCHWORDS:

REPRESENTATION:

Counsel:

Prosecutions:	M Heffernan
Defendant Holden:	R Goldflam
Defendant Griffen:	T Stevens

Solicitors:

Prosecutions:	ODPP
Defendants:	NTLAC

Judgment category classification:

Judgment ID number: [2007] NTMC 031

Number of paragraphs: 46

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20611738/20611742

BETWEEN:

ROBERT ROLAND BURGOYNE
Plaintiff

AND:

SHANE LLOYD HOLDEN
Defendant
And
BARBETTE GRIFFEN @ SCHAFFE
(NO 2)

REASONS FOR DECISION

(Delivered 15 June 2007)

MS MELANIE LITTLE SM:

1. This decision is to be read in conjunction with reasons for ruling delivered on the 30 September 2006 (*Police v Holden and Schaffe* [2006] NTMC O92). Those reasons for ruling related to a voir dire conducted on the question of the admissibility of evidence of a search and seizure at room 29 Mount Nancy Hotel. I ruled the search warrant valid and the hearing of the charges then resumed.
2. The defendants are jointly charged as follows:
 1. 29 April 2006 at Alice Springs unlawfully possessed methamphetamine, a dangerous drug specified in schedule 2 and the amount of a dangerous drug was a trafficable quantity, namely 17.448 grams pursuant to section 9(1) of the *Misuse of Drugs Act*.
 2. 29 April 2006 at Alice Springs being a person who unlawfully supplied methamphetamine, a dangerous drug which is specified in schedule 2 to another person pursuant to section 5(2)(a)(4) of the *Misuse of Drugs Act*.

3. 29 April 2006 at Alice Springs unlawfully possessed cannabis plant material, a dangerous drug specified in schedule 2 of the *Misuse of Drugs Act* pursuant to section 9(1) and (2)(f)(ii) of the *Misuse of Drugs Act*.
3. As a consequence of the ruling made on the 30 November 2006 both defendants entered pleas of guilty to count 3, the charge of possessing cannabis. The hearing then resumed on 15 March 2007 with respect to counts 1 & 2.
4. Prosecution bears the onus of proof with respect to each and every element of the offences. If they do not prove each element beyond reasonable doubt the defendants are entitled to be found not guilty. The defendants have been jointly charged on information and the matters were heard together. The evidence in the matter will be evidence as against each other save that the material in the records of interview is only evidence as against the person who made the record of interview. All evidence has been taken into account in reaching this decision. I now summarise the evidence.
5. The evidence taken on the 8 November 2006 from Officers Dole, Carbone and Sims became evidence in the hearing proper and the transcript of that evidence was exhibited P1. It is unnecessary to recount the summary of that evidence, it being contained in the decision of the 30 November 2006. Officer Sims was then re-called. He gave evidence that after Room 28 Mt Nancy Motel was entered he assumed the role as an exhibits officer during a search of the room. He borrowed Detective Carbone's notebook and made notes of items as they were identified to him. He made notes on the day of the search, namely the 29 May 2006 and the notes in the notebook became exhibit P2. Exhibit P2 sets out as follows:

29/4 Dole - SH1 – loose cannabis in steel box on table.

Dole - SH2 – loose cannabis in a clipseal bag approximate ounce on table.

Dole - SH3 – black and gold table salt located on main bed by Dole - Table Salt container contains 8 clipseal bags with clipseal bags inside that contain a white powder.

SH4 – 1 x packet small clipseal bags bedside draws (sic) – Sims.

SH5 – 1 packet glucadin located by Sims cupboard next to fridge.

SH6 – 1 packet clipseal bags large – Dole – located on bed 2.

SH7 – small electronic scale located by Dole on bed 2.

SH8 – Dole located note containing amounts on bed 1.

SH9 – scales electric Plummier on bed 1 in a box.

SH10- clipseal bag containing white powder – indicated by SH on floor of room 28 Mt Nancy Motel.

In the side column are the words 1.1 grams given by Griffen

3 x bundles of cash 5600/3800/1000

There is a small hand written plan on part of the notes.

Officer Sims took photographs during the investigation and they became exhibit P3. Description of the photographs are as follows:

Photo 1 a small amount of loose cannabis on what is said to be a table. That is in a round metal bowl.

Photo 2 loose cannabis in a clipseal bag on the table.

Photo 3 a “Black and Gold” salt shaker with clipseal bags containing white powder lying to the side. The note to this photograph says the salt shaker was located on the main bed by Dole and 8 clipseal bags were inside containing white powder.

Photo 4 shows there are eight clipseal bags next to the salt container.

Photo 5 is a packet of small clipseal bags.

Photo 6 is a packet of glucedin.

Photo 7 a packet of large clipseal bags.

Photo 8 small electronic scales in a box.

Photo 9 a note containing amounts found on bed no. 1.

Photo 10 electronic scales located on a bed in a box.

Photo 11 a clipseal bag containing white powder which is said to have been found on the floor but is not photographed in situ.

Photos 12, 13 and 14 show bundles of cash \$5600, \$3800 and \$1000 respectively.

Photos 15, 16 and 17 show bundles of cash inside socks in and around a blue carry bag.

6. Exhibit P4 is a total of eight photographs also taken by Officer Sims. A further seventeen photos were marked for identification (MFI P5). Officer Sims gave evidence as to the small drawing he had put in the police notebook at page 14. The doorway at the left side of the drawing is the main entrance to room 28. The main bed is directly in front of the doorway. To the right of the doorway are two single beds he marked 1 and 2. A small circle with a dot on is the table which has been referred to in the photographs. When the search was being conducted the defendant, Shane Holden was seated approximately one to one and a half metres from the main bed. Officer Sims marked a red cross where he said the defendant, Shane Holden, was seated during the search. That mark was placed on a photocopy of the plan he had drawn which had been part of P2, and that became ex P7.
7. Officer Sims gave evidence of his experience in drug investigations including the past four to five years in the drug intelligence unit in Alice Springs and before that in special operations section attached to organised crime unit in Darwin. He has also undertaken an illicit drug laboratory course dealing with the manufacture of amphetamine type substances. His evidence was that glucedin is one of the most common cutting agents found within amphetamine type substances. His evidence was that it was used to

breakdown pure amphetamine to add weight to the product which ultimately makes for better commercial gain. The glucedin located in the search had been opened and was closed with a small bulldog clip. The packet of glucedin was exhibited and became exhibit P6. He stated that 'whiz' and 'goey' are the two most common terms for amphetamines in the Alice Springs region.

8. The witness conducted a record of interview with Shane Holden at 8:25am on the 30 April 2006. The record of interview became exhibit PSH8- it being evidence against the defendant Shane Holden only.
9. The electronic record of interview was played in Court and an aide memoire was available. I checked the aide memoire with the tape as it was being played. I now summarise the electronic record of interview material. The defendant was born in 1977 and was currently residing in Room 28 Mt Nancy. He had been at that address for three or four days and prior to that had been staying with mates and camping. He had not had a fixed place of abode for five or six months. Over that time he had travelled to Adelaide about three times. He had reached the end of term 2 at Year 11 high school. He is unemployed and the last time he was employed was a good year ago. Back then he was subcontracting himself as a landscape gardener. He was working for seven to eight months when he was working for himself. His current sources of income were doing little odd jobs here and there. He agreed his last job was about twelve months ago but just been doing little jobs and stuff and he was not on Centrelink benefits. He is in a de-facto relationship with Barbette Griffen and he has been with her for fourteen years. She is on Centrelink disability payments. The defendant did not deny that there was cannabis located on the table and in the room. At the time of the search the defendant had told the police officers that the cannabis was his and he confirmed that in the record of interview. He said the amount of cannabis found would have been about half an ounce which is about 19 grams. That was in a sandwich bag and he agreed some of it was

outside the bag as he was topping up the smoke that he was smoking. That was found in a silver bowl on the kitchen table. He got the cannabis off his mate and he declined to answer who that person was. He identified exhibit SH1 as the cannabis in the bowl that he was about to smoke. He identified SH2 as the cannabis in the clipseal bag which was on the table of the room. He was asked as to what was inside a black and gold salt shaker and he answered “well I didn’t know what was in it at the time but after you had opened it there was some little satchels with other satchels in it and I presume that would have been whiz or something like that”. He was asked why he presumed that and he said being white, that they looked white from a distance. He said he did not see the police officers remove the clipseal bags containing the white powder from the salt shaker. He denied these were his drugs, and said he did not know whose drugs they were. He had seen the salt shaker once in the fridge and he agreed he thought that it was unusual to see salt in a fridge. The only other person who lives at the room is his de-facto Barbette. He was then shown exhibit SH10 which was a clipseal bag with white powder in it said to have been located on the floor of the main bedroom. He agreed that he identified the location of the bag to the police during the search saying that was when the police picked up the mattress. He presumed it was the same as what was in the other bag. He had not seen that clipseal bag before and that was why he pointed it out when he had seen it. He did not know how it came to be in the main bedroom. With respect to the scales he said that the bigger scales were used for weighing his half ounces and ounces when he gets them and also for weighing bait. The small scales were used for seed collecting when propagating plants. He would weigh his ounces and half ounces to make sure he was not being ripped off. He would pay \$175 for half an ounce and \$350 for a full ounce. The large number of clipseal bags were said to have been used for fishing. The smaller clipseal bags had been there for a while just buying bags from other peoples “twenty fives” and they build up so we just chuck them into another bag. He denied he or Ms Griffen used amphetamines. He agreed he had

received a text message from Barbette Griffen and that message said flush it. He presumed the message was about the pot that had been sitting on the table, that he had just bought. Text messages from his mobile phone were read to him and he agreed the one message related to a person name Hayden seeking to get an ounce of cannabis from him. He was not in a position to obtain that cannabis. He denied he supplied cannabis in Alice Springs. He said that with respect of friends if he's bought an ounce or something and they can't find any I'll probably give them some which they give back to me later but there is no money involved but rather mates looking after mates. He denied that he had been travelling to Adelaide to obtain dangerous drugs and bring drugs back to the Northern Territory. He said it was too risky because of the shit they have got at the border. He explained the cash that was located as being moneys he obtained from doing odd jobs. He had worked 50 to 60 hours in the last month at \$25 per hour. The Nissan Extrail located outside the room belonged to Barbette. He agreed that a blue sports bag located in the vehicle was his bag and he agreed that a quantity of cash was located in that bag. The cash was located in various socks in the bag. There was also \$435 located in his wallet. The money had been saved up from when he was doing contract work at Ilparpa Nursery, four or five months ago. He was working 12 or 13 hours a day, 7 days a week at \$17.50 an hour. As his parents had never used banks he was in the habit of leaving money lying around in bags such as this. His expenses each week are mainly rent and food. He was paying \$68 a night at Mt Nancy but before that they had been staying at a few mates' places. He spent \$100 to \$120 a week on food. He presumed the note that set out names and amounts owing would be money people owed for cannabis. He denied it was his note but agreed he had seen it before. He did not know whose white powder it was and that it was the first time he had seen it. He declined to name any of the persons he had undertaken work for in the past month as he was concerned it would affect his business. That concludes the summary of the record of interview with the defendant Shane Holden.

10. A record of interview with the defendant Barbette Griffen was tendered and became exhibit PBG9, admissible only as against Barbette Griffen also known as Barbette Schaffe. An aide memoire was also handed up and as the video was being played I checked that as against the aide memoire. I now summarise the electronic record of interview. The defendant Barbette Griffen was born in 1976 and she had been residing at the Mt Nancy Motel for three to four weeks. Prior to that her last fixed place of abode was two years ago in Bougainvillea Street. She has been in the Alice Springs region save and except for some trips to South Australia and Darwin during that time. She reached year 9 at high school. She is not employed and was last employed in October of 2005. She had been working doing landscape work. She is currently on sickness payment from Centrelink. When the police had arrived at the motel she was near her car. She had been told to sit on the bonnet of her car and because they were not willing to say what they were doing, she bolted. She denied any knowledge of the cannabis found in the room either in the bowl or the clipseal bag. She denied knowledge of a salt shaker which contained small clipseal bags containing a white powder. She did not know whose drugs they were and had not seen them before. She denied seeing the salt shaker before. She ran because she did not know who the people were and they could be anybody. She denied knowledge of a clipseal bag found on the floor of Room 28 saying she did not even know what the police were talking about. She said the scales were used for weighing fish and making sinkers for fishing. Both scales belonged to her. When asked if she'd sent a test message to Shane whilst the police were searching the property she replied she did not know and then said that sometimes she sat on her phone and it does weird things. It was put to her that a message was sent from her phone to Shane's phone saying "flush it" and she was asked whether she had any comment to make on that. She said "no coz I say that a fair bit actually". She said the message could have been left on her phone and she accidentally sat on the phone. When put to her it had been sent twice she replied "then I was sitting on my phone". She was

shown the exhibits from the search and denied seeing either the cannabis or amphetamines previously. She denied using amphetamines and denied selling amphetamines. She said that she did not even know what amphetamines were. She denied that those were her drugs. She stated she did not know where the large number of small clipseal bags came from. Her explanation for the large amounts of cash was that Shane's wages get saved he does not put them in the bank. He has been doing jobs on the side getting cash in hand, landscaping work. This money had been saved up over six to eight months. A mate by the name of Tasha Barsh had owed quite a bit of money and she had started paying it off. This was for landscaping work. She had paid four to five thousand dollars. She denied that she was in possession of amphetamines for sale. She denied knowledge of a text message with respect to a "quarter". She denied any knowledge of what that text message related to. With respect to a message asking "can you do us a bag on tic?" The defendant replied "could be do I have a mate who can get them some weed on tic, obviously doesn't say that I actually have it. Its saying can I get them one". When asked who this might be from she said "could be anyone half the town smokes". A further text message says "sis can I get a tic Freddy?" The defendant replied that could mean anything and then there is an inaudible part of the answer. A further text message says "Barbette can you do 25 for me Donna". She replied that meant can you lend me twenty five bucks. A further message said "can you get one" she said that pretty much don't mean anything that could mean anything. It was put to her that it may relate to getting one gram she said "no I don't sell that shit I already said that before". A further text message said "Shane can you drop off another one Daniel". She said that could be dropping anything off. It was put to her that these text messages relate to the supply of dangerous drugs to other people she said "I don't know how it can say what, it doesn't say nothing about drugs and I think that what you're talking about that other stuff would it be worth more than that". She denied selling amphetamines. She denied selling cannabis and said she smoked cannabis. She denied any

knowledge of the drugs located in the room at 9:30pm on the 29 April 2006. She was asked further about the money owed by Tanya Barsh and she said the job related to costs such as pvc piping and that costs a fair bit. One reason they didn't put money into bank accounts was because moneys owed on credit cards which are overdrawn and that Shane owes money on his car so he does not want money sitting in the bank to be seen. Some of the money was also from other cash jobs. As to the current living expenses she said that if "we can afford it we stay at the hotel for a couple of days, we'll stay there but most of the time I sleep out in the bush in a tent". She would spend approximately \$50 a week on cannabis. That ends the summary of the tape record of interview with respect to Barbette Griffen.

11. A one page document with names and amounts in handwriting was exhibited and became exhibit P10. This had been located during the search of the room. The names on the sheet are as follows: Fred – Cam \$50.00, Mark \$50.00, Haydon \$55.00, Tish \$50.00, An-Jakiy \$50.00, Lizzy \$30.00 and Orgery \$25.00. No finger prints were taken off any of the seized items. Forensic testing was undertaken of the white powder. A certificate of scientific test was tendered and became exhibit P11. Kathleen Poel has certified that a scientific examination was made of the plant material and white powder and that these were found to contain cannabis and methamphetamine respectively. Both are listed in schedule 2 of the *Misuse of Drugs Act*. A ruling was made in respect to this Certificate at the no case to answer stage and I will elude to that ruling and the matters flowing from it later in these reasons. Custody records with respect to Ms Griffen were marked for identification P12. A bag containing numerous small clipseal bags was tendered and became exhibit P13. This was obtained during the search of the room. Tanya Barsh was located but she declined to provide a statement to police. The officer said that the term "quarter" is used to describe a quarter of a gram of amphetamine. It is often sold in quarters,

halves or eighths. The term “tic” is used to describe on credit, that is drugs that one sold on credit to be paid later.

12. Officer Martin Dole was then interposed and his statutory declaration of the 23 June 2006 became exhibit P14. A summary of the statutory declaration is as follows. The officer has been a member of the Northern Territory Police since January 1997 and in the Alice Springs CIB since August 2003. He has undertaken an illicit drug laboratory course and also a drug investigation course. Since May 2004 he has been working in the field of drug investigation. He sets out that cannabis is sold in various weights including \$25.00 for a small clipseal bag, \$50.00 for a small clipseal bag and an ounce of cannabis with a price varying from \$350 to \$450. These can be referred to as 25s, 50s or ozzies respectively. Amphetamine is sold and bagged in .1 of a gram, half a gram or a full gram weights. These are sold for \$50 - \$70, \$150 and \$300 - \$400 respectively. His statement includes material with respect to the initial arrival at the room and the prior to the search. Once the warrant had been obtained Officer Sims, Carbone and Dole entered the room with Shane Holden and two other police officers Smith and Dalgeash. Whilst Officer Dole was in the room Shane Holden received two text messages which had been opened in the presence of Officer Dole. The messages came up as being received from Barbette and read “flush it”. Officer Dole located an amount of cannabis on the lounge room table. He then located a black and gold brand salt shaker on the bed. Upon opening the salt shaker he saw it contained numerous clipseal bags which in turn contained roled up clipseal bags containing white powder substance. Officer Dole and Constable Dalgeash lifted up a mattress from the bed and at that time the defendant Shane Holden indicated to them another bag which had appeared on the floor near where he was seated. The bag was apparently the same as the clipseal bags in the salt shaker and also contained a small amount of white powder. Officer Dole also noted a large quantity of clipseal bags of varying sizes and several sets of scales within the room. All

these items were exhibited. The defendant Shane Holden was then arrested. He later saw several large amounts of cash which were located by Officers Carbone and Sims. After returning to the station he received a call that Barbette Griffen had attended at the front counter of the police station and wished to hand herself in. She was then arrested. The mobile phone belonging to Ms Griffen was seized and examined and text messages were downloaded from the phone. These were exhibited to the statutory declaration and rulings were made as to which messages were admissible against the various defendants. In cross examination the witness agreed that an ounce can refer to cannabis as well as other illicit drugs. He also agreed that expressions such as a “half” or a “quarter” can also refer to cannabis.

13. Officer Carbone was then called. A statutory declaration of Officer Carbone dated 17 June 2006 was tendered. The first part of the statement relates to matters prior to the commencement of the search and will not be summarised here. He located bundles of cash in the amounts of \$5600, \$3800 and \$1000 in clothing found inside a bag inside the motor vehicle. He also located \$435 in a wallet that belonged to the defendant Shane Holden. He was acting as exhibits officer. Upon attending at the police station the bags containing white powder were weighed and the statutory declaration sets out the various weights. The single bag of white powder found on the ground weighed .4 grams. The majority of the individual bags contained within the other eight clipseal bags weighed .4 or .5 of a gram. One bag weighed .6 of a gram. There was a total of 52 small clipseal bags containing white powder divided into the eight clipseal bags. Clipseal bag SH1 contained 23 grams of cannabis. There was 1.7 grams of cannabis plant material in SH2. A further plastic bag containing 1.1 grams of cannabis plant material related to material handed over by the defendant Griffen when she was surrendering herself. On cross examination Officer Carbone agreed the two persons who had been located near the room had mentioned a fishing trip. It was put to them that they were going on a fishing trip with Shane Holden and he said

that as far as he was aware that was correct. He agreed that the vehicle was packed in a way that would suggest that a person was going to take a trip. He could not recall if there was any fishing gear in the car. He agreed there were no fingerprints taken at the scene and he could not explain why that was.

14. Officer Sims was then recalled and was cross examined. He said that he had found the glucedin on a cupboard within the kitchenette area adjacent to the fridge. He could recall fishing gear in the motor vehicle.
15. Officer Dalgeash was called next. He assisted in the search of another vehicle which did not locate items of interest and then he assisted in the search of Room 28. He saw Officer Dole open the lid of the salt dispenser and a number of plastic bags with white substance in them was found. There was about 10 to 15 large bags with about 3 or 4 little bags inside each one. Whilst continuing with the search they lifted up the mattress of the double bed and Shane Holden was sitting next to the bed. Shane Holden put his leg out and put his foot up onto the bed. He demonstrated this action using his right leg. He looked under the mattress and there was nothing there and as he put the mattress back on the floor, near where Shane Holden had put his foot, was a tiny plastic bag with a white substance in it. Shane Holden then said "Oh look at that" or indicated to them that the thing was on the floor. In cross-examination he agreed that between where Mr Holden was sitting and the bed there was a chest of drawers and a side table. He agreed that Shane Holden was handcuffed. The witness demonstrated using his elbows on the side of the chair to show how Mr Holden had moved himself. A photograph showed Mr Holden sitting in situ with handcuffs on became exhibit DSH16. It was put that he could not have lifted himself the way it was suggested if he was handcuffed. The witness said that it was a very exaggerated movement and that's why he considered it strange. The witness said that Mr Holden did move his backside off the chair to reach his leg over the mattress and that was what caught his attention.

16. The next witness called was Michael Smith. He is a member of the Police Force and on the night in question went with Constable Dalgeash to the Mt Nancy Motel. He took part in a search with respect to two male persons who were near the room and he also searched their vehicle. Nothing of interest was located in those searches. He then assisted in the search of Room 28 and first saw Mr Holden seated in a chair just inside the entrance. He located a set of scales in a large brown box at the end of the bed. The scales were located at the end of the single bed to the right of the room. He also noticed a small number of plastic clipseal bags in the box. He was present when Constable Dole located some further plastic bags. He saw those bags came from a salt container, a “black and gold” salt container that was on a table near the back of the room. Whilst Officer’s Dalgeash and Dole lifted the mattress off the double bed he noticed Shane Holden put his foot on the bed. He was about a metre and a half away from Shane Holden when this occurred. He demonstrated the movement saying that Shane Holden was handcuffed and that he moved his hips forward and put his leg out. His foot ended up on the top of the mattress. When Shane Holden removed his foot from the bed a small clipseal bag that had some white stuff in it fell from the bed. He then said words to the effect of “look at that”. There were then rulings made with respect to which text messages were admissible. That was then the end of the prosecution case.
17. No case submissions were then made by the defendants and I found there was case to answer. An issue was raised at the no case stage which was also raised in final submissions. The issue related to the exhibit P11 and whether it could be used to find there was a case to answer on charge one and would impact on the seriousness of the charge of count 2. The question to be resolved was whether there was a case to answer on the quantity of methamphetamines as charged. In schedule 2, methamphetamine is defined as a trafficable quantity between 2 grams and 100 grams. Exhibit P11 is a certificate of scientific tests by Ms Poel. It is alleged in the charge sheet

that the quantity was 17.448 grams, that quantity is within the trafficable quantity range. The substance was found and bagged and labelled 8 x SH3MD3. That bag contains 9 bags each which they themselves contain other numerated bags. The total quantity of the powder was weighed and came to 17.448 grams. I calculated the total amounts as set out in P11 and it came to the figure as charged on count 1. The question arises is whether the analyst certificate certifies that there was a trafficable quantity of methamphetamines. Section 29 of the Misuse of Drugs Act sets out:

“In proceedings for an offence against this Act, the production of a certificate purporting to be signed by an analyst in relation to an analysis or examination made by the analyst is, without proof of an analyst signature or that he or she is an analyst, evidence of:

- (a) the identity and quantity of the thing analysed or examined and
- (b) the result of the analysis or examination and of the matters relevant to the proceedings stated in the certificate,

and in the absence of evidence to the contrary, is conclusive evidence.”

18. As section 29 sets out, the certificate will be conclusive evidence of the identity and quantity analysed in the absence of evidence to the contrary. There was no examination undertaken of the deponent of the certificate in P11 and there were no questions raised as to the methodology of the testing. Nonetheless the question raised by defence is one which the prosecution bears an onus. It is not that evidence to the contrary was called but rather the meaning of the certificate which was raised in submissions. P11 is to be considered and in particular the statement at page 3 of the statement where it states “the white powder in the plastic bag labelled in part 8 x clipSH3MD3 contains methamphetamine”. It is submitted that it does not specify where the white powder the subject of the examination was located within the various bags. It is submitted that there is no clarity on this question and therefore must be decided in favour of the defendants. I have looked at P11 in its entirety and specifically looked at the statement containing “the

identity and quantity of the thing analysed or examined”, these being the words which are used in section 29 of the Act. I found that the link with the white powder can be made by reading the certificate P11 in its entirety and in particular at point 2.5 where the contents of the bag are set out in full. When section 3, the definition section, and section 29 of the Misuse of Drugs Act are considered and when the certificate is looked at in its entirety, I can see no ambiguity. The plastic bag referred to in the Certificate on page 3 is one and the same as on page 2 of P11. It is a thing which is capable of being described as one whole thing and is so described in the Certificate of Analysis. I was satisfied that there was a case to answer on the question of the quantity of methamphetamine as charged. There being no other issues raised on the no case submission, I found there was a case to answer on counts 1 and 2 with respect to both defendants.

19. The defendant Barbette Griffen then gave evidence. On the night of 29 April 2006 she was staying at the Mt Nancy Motel in Room 28. She is in a de-facto relationship with Shane Holden. That night there was two other people there named Brad and Haydon together with Shane Holden. The police came to the motel and she ran off. She freaked out because she thought that she was getting into trouble and ran into the bush. She spoke to Sarah, the boss of ASYASS. She handed herself into the police about a day and a half later. At that stage she undertook a record of interview and she described her attitude in that record of interview as pretty bad. She was upset and tired because she had had a long night in the cells and was feeling a bit sore. She had taken some medication for pain relief which she had obtained from the police. Her arm was hurting as she had had a fracture to her arm and she has had a plate put in it. She had not told the truth in her interview because she was freaking out. When she was being searched she handed over some cannabis. She agreed that she had sold cannabis in the past. It was the idea of both herself and Shane to do this and they sold it to friends and family. She was asked about the piece of paper with names and

amounts on it (exhibit P10) and she said that was for money owing to Shane and herself for cannabis. She said that Shane had written the names on the piece of paper. The paper did not refer to any other type of drug and in particular did not refer to amphetamines. With respect to some text messages on her phone she agreed that they related to the sale of cannabis. She denied that they related to amphetamines or any other drugs. She was shown a photograph which had small scales on it and she identified the scales and being kitchen scales which belonged to both Shane Holden and herself. She said the scales were used for fishing and also weighing cannabis. She denied the scales had ever been used to weigh amphetamines. She denied the small scales had been used to weigh any other drugs including amphetamines. With respect to the photograph of glucedin, she described it as glucose and said that Shane used it by putting it on to his cereal and putting it in his juice or drink. It had been purchased by both of them but she had not used it. She had not used the glucedin to mix with amphetamines or with any other drugs. She agreed that amphetamines were found in her hotel room and she denied using or selling amphetamines. She was looking after the amphetamines for another person. She had been given the substance about a week before the police undertook the search. She had been given the amphetamines by a man to look after because he was unable to have them at his home. She agreed she did have a choice whether she accepted the amphetamines and did so because she thought she was doing a favour to the man. She received them in a salt container and there were bags inside a salt container. She was shown a photograph and agreed that the salt shaker in the photograph was the one which she had received from the man. She denied that she'd sold any of these drugs to anyone and denied she had any intention of selling drugs to anyone. She denied she'd used any of the drugs herself. She said that Shane Holden knew she was holding the drugs for this other person. She agreed she had sent the text message "flush it" when the police arrived. She was referring to the cannabis when she'd sent that message. She was then cross-examined by Mr Heffernan. She

agreed that in her record of interview as well as in evidence she had said that she was referring to the cannabis when she'd sent the text message to Shane saying "flush it". She agreed that when she sent the text message she knew that there was a substantial amount of amphetamine in the room. When asked who she got the amphetamine from she said "I'm not able to say that". When asked why she could not say who she'd got the amphetamine from, she said because it's putting me and my other half at risk. She was fearful of what they are capable of. It was put to her that this version of events had been made up and she denied that.

20. She agreed that she told the police that she knew nothing about the drugs when she was questioned. This was because she was "freaked out" about the situation. She agreed she did not tell the police her version of events at the time. She admitted in evidence that she knew they were police who had arrived at the motel. She ran for the amount of drugs that were on the premises. The man who gave her the salt shaker with the drugs in it arrived at their apartment about a week before she got busted. His misses was freaking out and he didn't want it on his premises, he wanted it stored somewhere else. She did not know when he would be wanting the return of the drugs. He was trying to find somewhere else to store them. He had asked her to do a favour to hold on to the speed. He had produced a salt shaker from his car and the drugs had been left in her room for the week after he had handed them over. She thought the salt shaker was located in the fridge when the police arrived. In answer to the question did you ever have a look inside to see what was in there, the defendant answered no but I'd seen them. The person who had asked her to look after the amphetamines was aware that she was involved in the supply of cannabis. She denied that she had possession of the amphetamines for sale and she denied they were her drugs. She denied knowing that glucose can be used to cut speed. The last she had known the amphetamines in the salt shaker was in the refrigerator. She had handed over a small amount of cannabis when

she surrendered herself at the police station. She and Shane were the occupants of room 28. Brad and Hayden had been there earlier in the day. They were asking if Shane and she were going fishing. She was packing the car but she did not propose going fishing. Shane, Brad and Hayden were going. She did not pack Shane's bag although she was aware of the large amount of cash that was found in the bag. She said Ms Barsh was paying them in advance for the renovations she was having done. Shane did landscaping and gardening work. Shane Holden does not have a place of business and he had been keeping his tools at the Ilparpa Nursery, then they were at 37 Bloomfield Street. The witness thought that Shane had sold half of his tools as they were thinking about leaving town. She agreed that she had not answered truthfully as to how Shane's telephone had had a text message "flush it" on the screen. She agreed the small clipseal bags which were located in the room were similar to the bags found in the salt shaker. She denied getting them off the other person. The small bags were for cannabis, sometimes they put cannabis in them if they sell some. When asked what the glad bags were for she said ounces and for bait. As far as she knew the amphetamine was not going to be taken by Shane or his friends. She did not know how the salt shaker might have gotten out of the fridge. She said the text messages received on her phone related to people ringing up about cannabis. When asked what the message "can you get one" meant she replied a bag of cannabis. She denied it meant one gram of amphetamine. She stated she did not know how much the amphetamine was worth.

21. She was then cross-examined by Mr Goldflam. In answer to a question as to what was her intention with respect to the speed the police found in her motel room, she said that her intention was to hold it until the man came to pick it up. Shane Holden had no role to play in the holding of the amphetamines. She had not seen Shane Holden handle any of these drugs or the container that the speed was in. She had kept the container in the fridge.

She was not sure if the container had been taken out and placed on the main bed in the motel room. Books relating to Shane Holden's landscaping business became MFI's and were later tendered in evidence. She explained a quotation book is a book of quotes of jobs that people want done. Both she and Shane had undertaken those jobs, being landscaping jobs. The invoice book was an invoice of payments that were made for jobs that were done. The receipt book was for people who wanted receipts. She said that the small clipseal bags for selling cannabis would be sold for \$25.00. That bag would be called a gram or a 25 bag.

22. In light of the books which had been presented after cross-examination by the Crown there were further questions by the Crown. She said that sometimes Shane wrote the quotations out but the majority of the time it was her. Sometime Shane would do jobs for cash. She could not recall details with respect to some of the quotations. With respect to a quotation at Spicer Crescent she gave details of that transaction. She agreed that there were only three receipts provided saying some people ask for receipts. She said Shane was working up until the time they got busted and he was doing some cash jobs. That was in the evidence of the defendant, Ms Griffen.
23. Ms Griffen then entered a plea of guilty to count one as a consequence of the no case submissions being unsuccessful. Subsequently that guilty plea was withdrawn, after an application was made and leave was granted for the plea to be withdrawn.
24. The defendant Shane Holden then gave evidence. He had a business name registered and that was exhibited. He agreed that in his record of interview with the police he said that he did not deal or supply cannabis and that this was not a true statement. He made an untrue statement to the police because he was scared. He was shown exhibit P10 a list of names and he indicated that that was his handwriting. He indicated this was a list of people who owed money to them for the sale of cannabis. The numbers on the paper

indicated the amounts that were owed. The numbers or names of people on the paper do not relate to any other drug other than cannabis. At the time he was arrested he was staying at room 28 Mount Nancy Hotel and he was aware that there was white powder in that room. A friend came around and asked if we could look after it for him. He did not have any involvement in looking after the white powder and he did not handle the white powder. He did not handle any of the containers that the white powder was found in. He was present when the arrangement was made for the white powder to be kept in their room. His understanding of the arrangement was that “the man was having problems with his misses and he is a chronic user himself, he asked if we could look after it for him and he would come around and see us when he wanted to pick it up”. The man asked both the defendant and his de-facto Barbette. The defendant’s only involvement in the situation was the knowledge of where it was being kept – “it was being kept in the fridge”. He had no recollection of where the container with the white powder in was found when the police arrived. In particular he could not recall if it was found on the double bed. He did not put it on the bed before the police arrived in the room. He saw a small bag falling on the floor near the double bed when the police were searching and he pointed it out to them. He did not have this bag hidden in his clothes or on his person when he was arrested. He could not remember putting his leg out when the police were doing the search. The kitchen scales belong to Barbette and himself. They were used for weighing ounces and also fish bone. They were also used for weighing seeds that he collected for propagating plants. He did not know how long he had had the small scales. He used the glucedin to sprinkle over his cereal. He did not use the glucedin to mix with white powder and has never done that. He has a level one and two in horticulture and he does landscaping. He has done this type of work all his life and worked at a variety of locations. In or around August 2005 he decided to start up his own business. He was shown the invoice book, quotation book and receipt book. He went through various invoices in the invoice book. I have taken

account of this evidence although I do not summarise it in any detail. The books are before the Court. His evidence was that sometimes he was paid in cash, sometimes by cheque. If he was paid in cash he would keep that in his wallet or in a bag. His parents had brought him up not to put money in a bank. He had debts and was worried about money being seized from any accounts if he put it in the bank. He was arrested in April 2006 and had no records after mid January '06. He said he was lazy about not filling in paperwork. Barbette helps as he can not read or write properly. He was still doing gardening work at the time of the arrest. He had sold some tools to Tony Parkins as he was looking to leave town in the next month or so. He agreed he had been selling cannabis. He estimated he had about \$1000 in his motor vehicle which had come from the proceeds of a sale of cannabis. An affidavit of Shane Holden was tendered dated the 10 July '06 and became exhibit 21. He made this affidavit when trying to get the money back with respect to the proceeds of his business. He gave evidence that approximately \$9000 of the money seized was from his business and that the affidavit was a true statement. Of the \$10,800 seized on the night of question the remaining \$800 was from Barbette's pension. He agreed that he had lied to the police when he said it was the first time he had seen the bags with the white powder when the police were at the location. In explanation as to why he had lied to the police he said that he had had enough and he didn't want to have anything to do with it. He could not say why he had lied to the police in denying that the note with the names and amounts on (P10) was his document. It was true when he had said that it was a list of money owed for cannabis. He was then cross-examined. He agreed that he had plenty of time to come up with this story about the man dropping the drugs off at the motel. When asked why he had not gone to the police to tell this account, he said he was worried he would get into more trouble as he had already lied to the police. He had not discussed with Barbette coming clean with the story. It was put to him that the story was made up about the man coming to the apartment and dropping off a salt

shaker, he said “no that happened”. He agreed that he received two text messages saying “flush it” when the police were there. The police had let him open the text message. He thought the message meant to flush the cannabis and he also presumed the speed. He never uses Barbette’s phone. He knows a few people named Daniel. In the six months from August 2005 to the time he was arrested he made around \$1000 selling cannabis. It was put that Barbette was taking the wrap and he denied that. He said he still could not recall the movement made by his foot which the police gave evidence about. He did remember pointing something out to the police. He was asked why there were scales on the bed and he said I can’t recall if they were there or not. He agreed Barbette was packing the car when the police arrived. She was not going anywhere. He said he kept his money on him, that’s why he would take the money with him. He denied he was going to buy more drugs. He was not prepared to say who the man was who dropped the drugs for the safety of himself, his wife and children. He agreed he knew what the white powder was and he agreed that one scale was for very small amounts. He did not take the salt shaker out of the fridge. There was no one else at the premises when the police were there just, himself and Barbette. He has no tax records or BAS statements and no bank records with respect to his business. He said in the long run you’ve got to pay tax but he has not filled out any forms yet. He was just selling cannabis a bit now and then. He had been undertaking other work since January 2006. As to when the man wanted his amphetamines back, he could not be sure, just that when the man would get in contact with them or come and see them. A lot of the time Barbette would do the paper. He would keep the money on him and she would do the paperwork. He was questioned with respect to some of the invoices and he agreed that materials did account for quite a bit of the monies in some of the invoices. Barbette was on a pension at the time and she was getting around about \$500 a fortnight. He was not really sure how much she was getting. He denied that the money in the car was from the selling of drugs. He denied that it was an unusual way to hide money.

When the car was taken off them there was \$11,000 owing on the car. In re-examination he said that sometimes it was true that mates would be looking after mates with respect to the cannabis. “Sometimes if I could not get some, a mate would give me some and we’d say fix me up later”. He said the mark up on goods supplied in his landscape business depends on what type of items you have, how much you could put on top. That was the end of the evidence of the defendant and the close of the case for the defendant, Shane Holden.

25. Submissions were then made on behalf of Prosecution and Defence. I reserved decision in the matter. It was agreed by the parties that Count 2 was to be considered first.
26. The prosecution relies on the extended definition of supply in the Misuse of Drugs Act. Section 3 of the Misuse of Drugs Act sets out that “supply” means:
 - (a) Give, distribute, sell, administer, transport or supply whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
 - (b) Offering to do an act referred to in paragraph (a) or
 - (c) doing or offering to do an act preparatory to in furtherance of or for the purpose of an act referred to paragraph (a)and includes barter and exchange.
27. There are factual issues to be resolved prior to consideration of the charges. The first is where the black and gold salt shaker was located by the police. I find that the salt shaker (which contained 52 bags of methamphetamine) was located on the main bed as the police entered room 28 and undertook the search. From this point in time there was no opportunity for the occupants of the room, the defendants, to move the salt shaker. I rely on the evidence

of the contemporaneous notes made at the time of the search (P2) and from Officer Dole. Officer Dole's evidence is that he located the salt shaker on the main bed. There were 52 bags of white powder located in the salt shaker at the time of the search and seizure. This white powder was methamphetamine.

28. I find that the single bag of white powder found on the floor by the bed during the search was the same style and type of bag, and packaged in the same way, as the bags found in the salt shaker. This bag contained methamphetamine. This was exhibited as SH10 and is bag no. 53. There is no other explanation for bag no. 53 being out of the salt shaker than that one of the defendants had taken it out of the salt shaker, if the account of the defendants is to be accepted. If the fact of bag 53 being out of the salt shaker and on the floor is considered without considering the account given by the defendants, then it is prima facie evidence of the items being separated at some point in time. The defendants had exclusive access to the room. They state the man brought the salt shaker to their room with the bags inside. It may have been knocked to the floor when the police picked up the mattress. The location of this item is not necessarily indicative of any particular conclusion. It is the fact that the bag containing the white powder, the 53rd bag, is separated from the other 52 which is important. It is indicative of movement of items – either in or out of the salt shaker. This casts doubt on the defendants' version. If they are fearful of the man, then, surely, on no account, would they interfere with any of the drugs. They do not know when he may call around to collect the drugs. He could have been at the door when Mr Holden opened the door to the police. It is not their property to interfere with.
29. I find that the defendant Shane Holden did make a strange manoeuvre when he saw the small bag of white powder on the floor (bag 53). When the police saw him moving, he pointed the bag out to them. I do not accept that he can not now recall making this manoeuvre. I also accept there is some

doubt about exactly how the manoeuvre occurred. The defendant Shane Holden had hand cuffs on and he could not have had both elbows on the chair. Nevertheless, I find he did move so his feet could get closer to the bag.

30. Both defendants told a series of lies to the police in their records of interview. They had not spoken to each other before their respective interviews. Everything was denied – with respect to the cannabis as well as the methamphetamines. Ms Griffen’s explanation for these lies was that she was freaking out and fearful of the man. Mr Holden states he was fearful for himself and his family, once again this fear was linked to the man. This does not provide a satisfactory explanation as to why they would lie about the cannabis. On their version the cannabis had nothing to do with the man. They now put to the Court an account which they decline to detail to any great extent. It is an account which is not capable of being closely examined or scrutinised primarily due to the failure of the defendants to give any details. This insulates them from meaningful cross examination and any evidence in rebuttal.
31. There were numerous lies in the records of interview. The evidence in the records of interview are admissible only as against each individual defendant and the records of interview will be considered separately. In the record of interview by Shane Holden he denied he knew what was inside the black and gold salt shaker and said when the police had opened the salt shaker was the first time he was aware that there was something in the salt shaker. This is now said to be a lie. He denied they were his drugs and said he did not know whose drugs they were. He now says that that latter aspect of the record of interview was a lie and that he does know whose drugs they are (without saying who that person is). He declined to tell the police where he had obtained the cannabis. He denied supplying cannabis in Alice Springs. He then admitted some exchange of cannabis in an informal setting. On the commencement of his record of interview he said he was

doing little odd jobs here and there. Later in the interview he said that he had been working 50 to 60 hours in the last month at \$25 per hour. With respect to the note that had the names and amounts owing, he presumed that would be about money people owed for cannabis but he denied it was his note. He agreed he had seen the note before. He declined to name any of the people he had undertaken work for in the past month as he was concerned it would affect his business. Accordingly whilst not denying that he used cannabis the defendant Shane Holden was denying that he supplied cannabis (save as between mates) and denying he had anything to do with the white powder. He was not prepared to answer questions in detail with respect to people he had worked for or give any names. He distanced himself from any aspect of the supply of cannabis and he is now admitted in Court that he lied to the police in the EROI.

32. With respect to the defendant Barbette Griffen in her record of interview she said that she had bolted from the car as the police were not willing to say what they were doing. She denied any knowledge of the cannabis found in the room either in the bowl or the clipseal bag. She denied knowledge of a salt shaker which contained the small clipseal bags with the white powder. She said she did not know whose drugs they were and had not seen them before. She denied ever seeing the salt shaker before. She said she ran because she did not know who the people were and they could be anybody. She denied sending text messages to Shane Holden while the police were searching the property and in particular denied that she sent a message with the words "flush it". She then gave an elaborate version of events that the message could have been left on her phone and she could have accidentally sat on the phone. Then it was put to her that the message had been sent twice, she concluded that that meant that she had been sitting on the phone. When shown photos from the search she denied ever seeing the cannabis including what had been located in a bowl on the table. She did not know where the large number of small clipseal bags came from. She denied

knowledge of the meaning of the text messages sent to her mobile phone. She denied selling cannabis and she denied she smoked cannabis. She denied any knowledge of the drugs located in the room at all.

33. Both defendants now give evidence that they lied in their records of interview. The Court is now being asked by the defendants to accept that, whilst they lied to a great extent throughout their records of interview, that the evidence they now give is the truth. This places the Court in a difficult position. The reason they have given for lying has been set out in this decision. In some circumstances evidence can be accepted as reliable even after elaborate lies have been told on previous occasions, including lies in records of interview. Evidence must be carefully considered and assessed in circumstances such as this.
34. The defendants were cautioned prior to giving their records of interview. They lied about activities which involved only themselves, to the exclusion of the man they say they were concerned about. There is no explanation for lying in those circumstances. Had the lies been confined to where the man was involved, the explanation for the lies would have been more credible. They were not. I find these lies adversely impact on the credibility of each of the defendants. It impacts on whether the Court accepts their current version of events with respect to the methamphetamine.
35. A matter which relates only to the defendant Barbette Griffen, is the fact of her fleeing when the police arrived. Flight can be an indication of a consciousness of guilt. The defendant Barbette Griffen in her record of interview said that she did not know who the police were and that they could have been anyone. In her evidence to the Court she indicated that she had fled due to the amount of drugs in the room at the time. It was not that she did not know who they were. This is evidence of a consciousness of guilt. This material is one of the factors which will be taken into account in

consideration of the version of events given by the defendant, Barbette Griffen.

36. The objective evidence before the Court will now be considered. Firstly, I will consider the location and significance of the items such as the salt shaker, the small bags and the scales and the types of items located. The prosecution case is essentially a circumstantial case. P13 is a bag containing numerous smaller bags which was located in the bedside set of drawers. The location of the bags is not indicative of kitchen usage. The numerous small clipseal bags which were contained inside the larger clipseal bag are identical to the clipseal bags which were used to package the 52 bags of white powder found contained within the salt shaker, and the one small bag found on the floor. They were found in a separate location. I reject the evidence that they are used for the packaging of cannabis. They are very small bags, with a small opening at the top. The small electronic scales were located on bed number two within the room. The other set of electric scales were located on bed number one, in a box in the room. There is no explanation why 2 sets of scales would be found in these locations. Their location is indicative of recent handling or use. As previously stated one of the small bags containing white powder was located near the main bed and outside of the salt shaker. The location of these items are in themselves a significant part of the circumstantial case as against the defendants. They point to activity by those in the room with respect to the methamphetamines, and items which can be linked to methamphetamines. The defendants were the occupants of the room. The fact that a group of objects such as this are all found within a single small area is also a factor to be considered when viewing the evidence as a whole. These matters all point to supply within the meaning of the wider definition of the word supply in the Misuse of Drugs Act.
37. The next question to be considered is that of the text messages sent by the defendant by Ms Griffen to Mr Holden during the search. The sender of the

text messages, Ms Griffen, says that she was referring only to the cannabis when she twice texted to Mr Holden to “flush it”. The defendant Shane Holden tells the Court that his understanding of the message was that he was to flush the amphetamines and the cannabis away. It is certainly understandable that there may be a different interpretation of a message from the point of view of the sender and the receiver especially when a message is as brief as this one. To suggest that cannabis can be flushed down a toilet without leaving a residue, is a naïve and fanciful notion. The cannabis comprised small pieces of green plant material, much the consistency of large tea leaves, and would not easily flush down a toilet without leaving significant residue. They can be seen in photographs 1 and 2 as part of exhibit P3. The cannabis concerned was a relatively small quantity and, when considering the quantity of methamphetamines located in the room, it is not credible to suggest that Ms Griffen intended Mr Holden to flush the cannabis down the toilet. I find Ms Griffen’s explanation for this text message lacks credibility and I reject her version of events. I find she was referring to the methamphetamine. As the sender of the text message she was the one responsible for the message being sent and I do not draw any adverse inferences against the defendant, Shane Holden as a consequence of Ms Griffen’s failure to be frank with the Court about what she had meant by the message. Nevertheless the sending of the message does point towards a common purpose. He understood her to be talking about both types of drugs.

38. As a consequence of the finding that the message related to the methamphetamine it is necessary to ask why it would be that the defendants would even contemplate flushing the methamphetamines down the toilet given their evidence to the Court as to the ownership of the drugs. It was not theirs to destroy on their version. If fear of the man was such a concern surely the destruction of the methamphetamines voluntarily by the defendant Shane Holden, on instruction from Ms Griffen, would have been more

difficult to explain to the man than the seizure of the drugs by the police. In my view, this text message is more indicative of persons who are the owners of an item than those who are holding it on behalf of someone else. I do not suggest that this is a conclusion which has a significant part to play in the decision but nonetheless is a factor which is taken into account in consideration of the case.

39. Both sets of scales are capable of weighing relatively small quantities of items. Both are located on the beds in the room. Glucadin was found in the room and there is evidence before the Court that that is used to add bulk to amphetamines to improve profits from the sale of the drugs. Once again I do not suggest this is a conclusive part of the prosecution case. Nevertheless it is a factor to be weighed into account. There is evidence of it being used by the defendant Shane Holden in another way.
40. The defendants have admitted in their evidence that they take part in the supply of cannabis. It is an admission against interest. It is not the case that this admission will lead to a conclusion that a person will necessarily take part in the supply of some other illicit drug. That would be an inappropriate conclusion to draw from that aspect of the evidence, in isolation from the other evidence before the Court. It does demonstrate a preparedness to take part in illegal activity of a similar type to the charge before the Court. They deny any involvement in the supply of methamphetamines.
41. The defendant Shane Holden was located with a quantity of money in his wallet. While it is more than to be expected to be in the wallet of someone who lives a lifestyle as deposed by the defendant's, it is not such as to cause the Court to infer that money had necessarily been received from the sale of methamphetamines.
42. The next issue to be considered is that of the money located in the car. The evidence of the defendants is that \$1000 of the monies located in the motor

vehicle are estimated to have come from the sale of cannabis. The rest is said to come from cash in hand work and some from Ms Griffen's pension. There was hesitation in detailing the business in the electronic record of interviews. This hesitation has now been abandoned. There was quite a deal of evidence about the landscaping business. Prior to this evidence, the defendant Shane Holden affirmed an affidavit on the 10 July 2006 with respect to the monies located in his vehicle. This affidavit was affirmed with respect to an application for forfeiture of property which had been seized during the search. He has estimated about \$9000 of the money seized from the vehicle was obtained from cash in hand work he undertook with the defendant Barbetta Griffen as a landscape gardener. The affidavit does not account for the balance of monies located in the motor vehicle. In particular it does not set out that approximately \$1000 of the money came from the sale of cannabis. This omission is a damaging omission. The further failure to mention that some monies came from Ms Griffen's pension is not of equivalent significance but is an omission nonetheless. The affidavit does not refer to the fact that the defendant does not ordinarily bank money but rather he prefers to keep the monies in his possession by way of cash. He does refer in his affidavit to the question of creditors and not wanting them to seize funds from his bank account, should he put money in the bank. This document was filed in the Local Court in Alice Springs in file number 20611952. In the final analysis it is unclear what to make of this evidence. On the one hand the defendant is giving a consistent account as to the amount that he estimates he earned from his landscaping business. Nevertheless he does not reveal the source of the balance of the funds when affirming his affidavit. I do not doubt that some of the monies come from a cash in hand business. There is sufficient evidence before the Court to come to that conclusion. I do not make any finding as to how much was from that source.

43. I find that prosecution has discharged its onus of proof and I find that it is proven beyond reasonable doubt that both of the defendants took part in the supply of methamphetamine. I find that that Supply is as defined in section 3(c) of the Misuse of Drugs Act namely doing or offering to do an act preparatory to in furtherance of, or for the purpose of an act referred to in (a) of section 3. I reject the accounts given by the defendants that they were doing nothing more than holding the methamphetamines for an unnamed person. I find that no arrangement was made for them to hold the methamphetamine until he collected it. I find that this account has been fabricated in the face of the charges before the Court. In making these findings I take into account the evidence in its totality, the rulings and findings made with respect to the evidence and the credit of the defendants. The accounts given to the Court by the defendants are not accepted by the Court. This being the case, I do not need to consider the cases on bailment I was referred to.
44. The next issue raised by defence was the quantity of the drugs. At the no case stage I ruled that the certificate P11 was an analysis certificate within the meaning of section 29 of the Misuse of Drugs Act and that the certificate could be taken to refer to the entirety of the methamphetamines which were seized on the 29 April 2006 in room 28 Mt Nancy Motel. For reasons given at the no case submission stage and summarised in this decision I reject the argument that the certificate does no more than give an analysis of a small portion of the methamphetamine. I find that the analysis certificate, in the absence of evidence to the contrary, is conclusive evidence that the white powder seized during the search of Room 28 Mt Nancy Motel on the 29 April 2006 was methamphetamine a substance listed in schedule 2 of the Misuse of Drugs Act. I find accordingly.
45. Count 2 does not require a finding as to the quantity the subject of the charge. Section 5 of the Misuse of Drugs Act distinguishes only between a commercial quantity or not a commercial quantity. There is no distinction

between a simple quantity and a trafficable quantity. A commercial quantity is 100 grams of methamphetamine and there is no allegation of that quantity in this case. The charge is that the defendants supplied methamphetamine without a quantity being specified. The argument put by defence went to the allegation of the quantity which was set out in count 1 of the charge sheet. On the defence argument, the certificate of analysis would not be a bar to finding count 2 was proven. Nevertheless I do make the finding with respect to the analysis certificate with respect to count 2 given that there will be need to be an understanding as to the factual basis of the finding of guilt. If I found in favour of defence on this question, the finding of guilt would relate to one of the small bags of methamphetamine. The issue being raised throughout the proceedings it is appropriate that a finding is made. I find that the white powder found in each of the 53 bags contained methamphetamine. This weighed 17.448 grams. In final submissions defence raised a further issue with respect to the question of whether the white substance was a preparation or mixture of the dangerous drug. The certificate analysis P11 sets out that the white powder contains methamphetamine. I am of the view that this analysis together with the statement that methamphetamine is listed in schedule 2 of the Misuse of Drugs Act is proof beyond reasonable doubt that the substance was a dangerous drug. That aspect of the charge is made out.

46. I find count 2 is proven beyond reasonable and record a verdict of guilty with respect to each of the defendants. As a consequence of that verdict, a verdict of not guilty is recorded with respect to count 1. Count 3 is proven.

Dated this 15th day of June 2007.

Melanie Little
STIPENDIARY MAGISTRATE