

CITATION: [2011] NTMC 006

PARTIES: POLICE

V

SARAH ANNE BRIDLE

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 21015270

DELIVERED ON: 18 March 2011

DELIVERED AT: Darwin

HEARING DATE(s): 10 & 11 February 2011, 9 & 14 March 2011

JUDGMENT OF: Mr Daynor Trigg SM

CATCHWORDS:

*Drug offences – “supply” – “offer” to supply ecstasy
Misuse of Drugs Act s3(1) – meaning of “supply”
Misuse of Drugs Act s5 – offence to supply
Ecstasy or some other illegal drug not actually “supplied”
mens rea – ultimate supply intention irrelevant - nature of item actually
supplied irrelevant - Dendic & Mazzeo (1987) 34 ACrimR 40 followed*

REPRESENTATION:

Counsel:

Prosecution: Mr Ledek

Defendant: Mr S Lee

Solicitors:

Prosecution: Police Prosecutions

Defendant: Robert Welfare

Judgment category classification: C

Judgment ID number: [2011] NTMC 006

Number of paragraphs: 140

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

No. 21015270

[2011] NTMC 006

BETWEEN:

POLICE
Informant

AND:

SARAH ANNE BRIDLE
Defendant

REASONS FOR DECISION

(Delivered 18 March 2011)

Mr Daynor Trigg SM:

1. The defendant was charged with the following charges on information:

On 19 March 2010 at Palmerston

1. unlawfully supplied MDMA, a dangerous drug specified in Schedule 2, to another person, an Under Cover Operative

Contrary to *Section 5(2)(a)(iv)* of the *Misuse of Drugs Act*

AND FURTHER

On 16 April 2010 at Darwin

2. unlawfully supplied MDMA, a dangerous drug specified in Schedule 2, to another person, an Under Cover Operative

Contrary to *Section 5(2)(a)(iv)* of the *Misuse of Drugs Act*

AND FURTHER

On 6 May 2010 at Darwin

3. unlawfully supplied MDMA, a dangerous drug specified in Schedule 2, to another person, an Under Cover Operative

Contrary to *Section 5(2)(a)(iv)* of the *Misuse of Drugs Act*

2. The matter came before me for a 2 day hearing commencing on 10 February 2011. At the commencement of the hearing each of the three charges were read, and the defendant pleaded not guilty to each charge. Mr Ledek (counsel for the prosecution) then read onto the record particulars in relation to each charge. (In the particulars there is a reference to “UCO” which is a reference to an undercover police officer. On 10 February 2011 I made an Order under *section 26* of the *Misuse of Drugs Act* prohibiting the publication of the name of this officer or any of her evidence in this proceeding. For the purpose of these reasons I am obliged to refer to her evidence, but hereinafter in these reasons I will refer to her as “UCPO”). These particulars were as follows:

Count 1

On 19 March 2010 Bridle offered to supply ‘e’s’ in ‘caps’ for \$10 each through numerous text messages sent from her phone to a police UCPO. The deft ultimately arranged to meet the UCPO at the Hungry Jack’s car park in Palmerston. At approximately 9.50pm the deft arrived with another female person who used her body to shield the transaction between the deft and the UCPO. The deft offered 20 red capsules to the UCPO in exchange for \$200. The deft reached into her bag and gave 20 red capsules in a clip seal bag to the UCPO. The UCPO gave the deft \$200. The deft and her companion then left the area in a vehicle.

I digress to note that the subsequent evidence will show that the original offer to sell was not sent to the UCPO, but information was passed to police which led the UCPO to then contact the defendant’s phone by text message, following which there were then a series of text messages between the two phones.

Count 2

On 16 April 2010 the same UCPO contacted the deft by text asking to buy more of the same capsules. The deft agreed to supply 20 more capsules of the ‘same stuff’ as before to the UCPO. The deft arranged to meet the UCPO at the Winnellie Shops, Stuart Park. At approximately 7.15pm the deft alighted from her grey Toyota Hilux with Kyle Armstrong and together they approached the UCPO. A conversation took place between the three. Kyle Armstrong gave the

UCPO an empty Winfield Gold 25's cigarette packet with 20 red capsules in a clip seal bag stuffed inside which the deft had made up for Kyle Armstrong. Kyle Armstrong gave the packet with the red capsules to the UCPO. The UCPO gave \$200 to Armstrong who gave the money to the deft a short time later. During the meeting it was arranged that the deft would supply another 100 capsules at a later date.

Count 3

On 4 May 2010, the same UCPO contacted the deft by text asking to buy the 100 capsules arranged on 16 April between them. Numerous text messages across the next three days went between the deft and the UCPO and ultimately it was arranged that they meet again at the Winnellie Shops, Stuart Highway on 6 May 2010. At approximately 1pm on 6 May 2010 the deft arrived at the Winnellie Shops in her grey Toyota Hilux. The UCPO approached the deft who was in the drivers seat. The deft showed the UCPO a container which had a large quantity of red capsules in two clear plastic bags stuffed inside. The deft confirmed with the UCPO that it was the 'same as before' and handed it to the UCPO who handed the deft \$1000. The deft counted the money before driving away.

3. *Sections 5(1) and (2) of the Misuse of Drugs Act state as follows:*

(1) A person who unlawfully supplies, or takes part in the supply of, a dangerous drug to another person, whether or not:

- (a) that other person is in the Territory; and
- (b) where the dangerous drug is supplied to a person at a place outside the Territory, the supply of that dangerous drug to the person constitutes an offence in that place,

is guilty of a crime.

(2) A person guilty of a crime under subsection (1) is, subject to section 22, punishable on being found guilty by a maximum penalty of:

- (a) Where the amount of the dangerous drug supplied is not a commercial quantity:
 - (i) where the dangerous drug is a dangerous drug specified in Schedule 1, the offender is an adult and the person to whom it is supplied is a child – imprisonment for life;
 - (ii) where the dangerous drug is a dangerous drug specified in Schedule 1 and subparagraph (i) does not apply – imprisonment for 14 years;
 - (iii) where the dangerous drug is a dangerous drug specified in Schedule 2, the offender is an

adult and the person to whom it is supplied is a child – imprisonment for 14 years; and

(iv) where the dangerous drug is a dangerous drug specified in Schedule 2 and subparagraph (iii) does not apply – **85 penalty units or imprisonment for 5 years**, or if the drug is supplied to a person in an indigenous community, 9 years.

(emphasis added)

4. Mr Ledek commenced his case by tendering 3 certificates under the hand of Neil Campbell (an analyst apparently employed by Chemistry Centre (WA)). These were tendered by consent and became ExP1. Each certificate purported to be made under “*Customs Act 1901 s.233BA*”. At the time of the tender I queried how a certificate under Commonwealth legislation became admissible in a NT prosecution. I received no explanation, but both counsel appeared happy (for reasons that will later appear) for the documents to go in and be relied upon in the case.
5. On the face of ExP1 the following was disclosed:
 - On 9 June 2010 Campbell received a sealed bag tag no. 053867 from Narelle Moss per TNT Failsafe in relation to Forensic Chemistry NT reference 100840, containing a plastic bag marked “JM/SA/02” and enclosing a quantity of red capsules and eight plastic bags each containing two red capsules, and the capsules contained a beige powder;
 - On 9 June 2010 Campbell received a sealed bag tag no. 049009 from Narelle Moss per TNT Failsafe in relation to Forensic Chemistry NT reference 100895, containing a red plastic jar containing fifty plastic bags each containing two red capsules, and the capsules contained a beige powder;
 - On 9 June 2010 Campbell received a sealed bag tag no. 053858 from Narelle Moss per TNT Failsafe in relation to Forensic Chemistry NT reference 100896, containing a plastic bag

enclosing ten plastic bags each containing two red capsules, and the capsules contained a beige powder;

- He examined the items and identified “caffeine” as a component of the beige powder.

6. In addition, and at the same time a statutory declaration under the hand of Narelle Moss (hereinafter referred to as “Moss”) was tendered and became Exp2. This statutory declaration disclosed that:

- On 28 April 2010 Moss received a sealed NT police security bag 020932 labelled in part “forensic number 100622 promis number 4497039 exhibit number 322475 defendant name Sarah Bridle @ Armstrong” from Natalie Best;
- It contained ten press seal plastic bags each containing two red capsules;
- One of the capsules containing light brown powder preliminary identified to contain caffeine.

7. As a consequence of subsequent evidence in the case it appears that the following chain of evidence occurred in relation to charge 1:

- On 19.3.10 the defendant handed items (paragraph 31 of Exp8) to the UCPO;
- The UCPO handed the items (paragraph 36 of Exp8 and paragraph 7 of Exp6) to Detective Senior Constable First Class McKellar (hereinafter referred to as “McKellar”);
- McKellar entered the items under seizure number 322475 and sealed them in drug security bag 020932 and secured them in the DES exhibit room (paragraph 9 of Exp6);
- On 6 April 2010 McKellar conveyed seizure number 322475 drug security bag 020932 from the DES exhibit room to the Forensic

Exhibit reception where he handed them to Erwin Fermin (paragraph 11 of ExP6);

- On 28 April 2010 Moss received 020932 from Best and analysed it as containing caffeine.
8. The evidence is silent as to what Fermin did with the item, and how Best got the item that she tested. The chain of evidence is therefore broken.
 9. Further, as a consequence of subsequent evidence in the case it appears that the following chain of evidence occurred in relation to charge 2:
 - On 16.4.10 Kyle Armstrong (hereinafter referred to as “Armstrong”) handed items (paragraphs 25 and 26 of ExP9) to the UCPO;
 - The UCPO handed the items (paragraph 34 of ExP9 and paragraph 17 of ExP6) to McKellar;
 - McKellar entered the items under seizure number 324230 and sealed them in drug security bag 053858 and secured them in the DES exhibit room (paragraph 18 of ExP6);
 - On 11 May 2010 McKellar conveyed seizure number 324230 drug security bag 053858 from the DES exhibit room to the Forensic Exhibit reception where he handed them to Natalie Best (paragraph 33 of ExP6);
 - On 9 June 2010 Campbell received 053858 supposedly sent by Moss and analysed it as containing caffeine.
 10. Accordingly, what Best did with the item is unexplained on the evidence, as is how it came to be sent to Campbell, and who by. The chain of evidence is therefore broken.
 11. Further, as a consequence of subsequent evidence in the case it appears that the following chain of evidence occurred in relation to charge 3:

- On 6.5.10 the defendant handed items (paragraphs 25 and 26 of ExP9) to the UCPO;
- The UCPO handed the items (paragraph 32 of ExP10 and paragraph 27 of ExP6) to McKellar;
- McKellar entered the items under seizure number 325396 and sealed them in drug security bag 049009 and secured them in the DES exhibit room (paragraph 32 of ExP6);
- On 11 May 2010 McKellar conveyed seizure number 325396 drug security bag 049009 from the DES exhibit room to the Forensic Exhibit reception where he handed them to Natalie Best (paragraph 33 of ExP6);
- On 9 June 2010 Campbell received 049009 supposedly sent by Moss and analysed it as containing caffeine.

12. Again, what Best did with the item is unexplained on the evidence, as is how it came to be sent to Campbell, and who by. The chain of evidence is therefore broken.
13. It is apparent from the above that the certificate from Campbell (part of ExP1) relating to sealed bag tag no. 053867 appears to have no relevance to any of the charges before the court. I therefore do not understand why this was tendered, and disregard it.
14. It is further apparent from the above that there is not an unbroken chain in relation to any of the items seized and the items eventually analysed. If the prosecution was attempting to prove that the item seized was a dangerous drug then this break in the chain would be fatal to their case. However, the prosecution accept that the defendant did not in fact supply any illegal drug to the UCPO. In particular, the prosecution accept that the defendant did not actually supply the MDMA with which she has been charged. Mr Lee (counsel for the defendant) took no issue with the break in the chain and made no submissions concerning it. In my view, this was an

understandable and appropriate stance to take. There was no evidence to suggest that the defendant actually supplied any illegal drug specified in *schedule 2* of the *Misuse of Drugs Act*. In addition, as will appear later in these reasons, there was no evidence to suggest that the defendant ever intended to actually supply any illegal drug specified in *schedule 2* of the *Misuse of Drugs Act*.

15. In pursuing these three charges against the defendant the prosecution rely upon the extended meaning of the word “supply” in the *Misuse of Drugs Act*.
16. “**Supply**” is defined in *section 3(1)* of the *Misuse of Drugs Act* to mean:
 - (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 in paragraph (a),
and includes barter and exchange.

(emphasis added)
17. The prosecution further rely upon the NSW Court of Criminal Appeal decision of *Dendic & Mazzeo (1987) 34 ACrimR 40*. That was a decision of Street CJ, with whom Slattery CJ at CL and Wood J both agreed. In that case the two accused were found guilty of supplying heroin. The offence arose out of a conversation in a restaurant between the two accused and a man named Tony (who was working with police) and an undercover police officer, Drury. Drury said he said to both defendants “well, what’s happening with the heroin, what’s the price?” and was told it was \$72,000. Drury agreed to the price but said “you’ve got to guarantee me of the quality” to which Mazzeo said “it’s light brown rocks, there’s no powder in them, the best, I guarantee you of that”. A time for the transaction was then arranged. Drury gave evidence that “light brown rocks” was a reference to what is known as number three South East Asian heroin which has a heroin

concentration from 40 to in excess of 50 per cent with a very high concentration of caffeine. The next day Tony and Drury attended and met the two accused who showed them the contents of a briefcase. Police then converged. The two accused denied it was heroin or that they dealt in heroin or intended to. It appeared that the two accused regarded Tony as owing them a substantial amount of money, and hence why they proceeded. The briefcase was found to contain glucodin powder. The Crown case was that the two accused had "offered to supply" heroin in their conversation at the restaurant. Under the legislation there being consideration "supply" was defined as:

'Supply' includes 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 such acts or things."

18. Relevant to the present case (and to the decision in *Dendic & Mazzeo*) is the portion of the definition of supply which includes "offering to supply". At page 45 of the decision Street CJ stated as follows:

It has been vigorously argued by Mr Toomey, both orally and in writing, that in order to constitute this offence it must be shown that the appellants intended to supply heroin. There was in this case a dearth of evidence to sustain a proposition of that nature and, if that were a necessary element in the proof of the offence, then the convictions could not be permitted to stand. It seems fairly plain that the appellants intended what is known in the drug traffic as a "rip off".

In the view that I hold the way in which his Honour put the matter to the jury on 9 September was correct. I would make this one extension of the directions that his Honour gave in relation to the genuineness of the offer. An offer, in order to fall within the statutory definition in the Poisons Act, must be an offer which was intended to be regarded as genuine by the offeree. The distinction matters little - indeed not at all in the present case. Apart from that minor change I would assent to his Honour's directions as being correct in law for the purposes of the evidence that the jury were required to consider in this case.

The relevant intention or mens rea that must be proved where there is a charge of supply involving an offer to supply is the intention inherent in the making of the offer. It must be a genuine, intended

making of an offer with the intention that it is to be regarded as genuine by the offeree. The relevant intention in order to bring conduct within this particular portion of the Poisons Act does not involve any intention of ultimate supply. The intention, I reiterate, is bound up with the making of the offer itself. It was on that basis that his Honour first directed the jury and, as I have said, in my view his Honour's direction in that regard was correct.

It is further contended by Mr Toomey that the provision in s32(4), enabling a falsified substance to be regarded for certain purposes as being a prohibited drug, was not available in this case. On the view that I take the question of the availability of s32(4) did not arise. Subs(4) of s32 provides: "32 (4) Any substance (not being a prohibited drug) which, for the purpose of its being supplied, is represented (whether verbally, In writing or by conduct) as being a particular prohibited drug shall, for the purposes of subs(1), be deemed to be that particular prohibited drug." If the Crown case had been focussed upon the events on 4 August when the briefcase containing the Glucodin had been produced, and if that had been identified as the offer of supply, then significance would have attached to subs(4).

Having taken the view that I have stated, namely that the offence was for all practical purposes complete when the conversation at the restaurant came to an end, it is not relevant to consider the precise significance of the contents of the briefcase being Glucodin, any more than it is relevant to take note of the evidence pointing to the fact that the Glucodin which was in the briefcase was purchased after the conversation, so that it could not be said to have been a specific substance in contemplation at the time of the conversation.
(emphasis added)

19. I note that there does not appear to be a section equivalent to section 32(4) of the NSW legislation in the *Misuse of Drugs Act*. Mr Lee did not suggest that the decision in *Dendic & Mazzeo* was not good law or that it had not been followed or had been overturned subsequently. In fact it has been cited with approval and applied in *Addison v R* (1993) 70 ACrimR 213; *Peirce* (1994) 90 ACrimR 134; and *R v Swan* (2003) 140 ACrimR 243. I respectfully follow and adopt Street CJ's decision as representing good law in the NT (save that the issues raised by section 32(4) in NSW do not appear to arise in the NT) given the relevant similarities in the definitions.
20. Accordingly, I find that the fact the defendant did not actually supply MDMA to the UCPO is not relevant to the charges. The issue is what (if anything)

did she “offer to supply” to the UCPO, and was the offer genuine. Namely, did she make an offer to supply a dangerous drug specified in *schedule 2* of the *Misuse of Drugs Act*, and (if yes) did she intend, when making the offer, that it was to be regarded as genuine by the offeree, namely the UCPO.

21. Mr Lee, as part of his submissions contended that based upon the last paragraph of that portion of the decision in *Dendic & Matteo* that I have set out above, that charges 2 and 3 should be dismissed. As I understand the argument, Mr Lee was suggesting that as the offence for charge 1 was complete once the agreement was made all evidence thereafter was irrelevant. I am unable to accept this argument. If the evidence had been that at the initial stage there had been a specific agreement to supply MDMA on 3 separate occasions to the UCPO then the argument may have more force. However, as the evidence will later disclose, it is the prosecution case that there were 3 separate agreements made in 3 separate months (although on the second occasion a discussion was held about possible further supply).
22. In my view, if it was the prosecution case that there were 3 “offers to supply” to 3 different “buyers”, then each instance would have to be looked at separately. But even then the 3 events might be heard in the one hearing as evidence of “tendency” or to rebut any suggestion of innocent intent. In the instant case, where the prosecution case is that the “offer” was made to the same “buyer” over 3 separate months then, in my view, each “offer” is a separate offence. Hence, the defendant is charged with 3 separate offences. In addition, what has gone on between the parties previously would, in my view, be relevant and admissible as part of the course of dealings between them, as it would be relevant to their state of mind and intent.
23. Before turning to the evidence in relation to the three charges it is necessary to go into some of the background history, and also what was going on in the life of the defendant leading up to her eventual arrest on 6 May 2010.

24. The defendant spent some of her early high school years in Western Australia, and she had a boyfriend (Andrew Fengler, hereinafter referred to as "Fengler") when she was about 12. She then moved to Darwin and continued her schooling. At school in Darwin she met a girl named Clancy Wakefield (hereinafter referred to as "Wakefield") in about year 10. At all material times Wakefield had a mobile phone with the number 041494683 (hereinafter referred to as "...683"). The defendant and Wakefield started "hanging out" together in about 2008, and subsequently became (and remain) best friends.
25. At all material times herein the defendant had two mobile phones. The main one that she used had the number 0410948294 (hereinafter referred to as "...294"). The other phone had the number 0403349727 (hereinafter referred to as "...727") and was said to be used for Kyle Armstrong (hereinafter referred to as "Armstrong") to phone the defendant when he did not have credit on his phone. An analysis of the various phone records (referred to in more detail later) would confirm this appears to generally correct. It appears that when Armstrong sent a text to the defendant it was to phone ...294, but whenever he actually rang her it was usually to phone ...727.
26. Armstrong was at all material times a soldier in the Army, based at Robertson Barracks, and he had a mobile phone with the number 0421791583 (hereinafter referred to as "...583"). He met the defendant in 2008 and they entered into a relationship. The relationship appears to have developed relatively quickly and they commenced living together, initially in Woodroffe but they then moved into defence accommodation at 7 Careela Street, Eaton on 27 September 2009. They married at the registry office in Darwin on 30 October 2009, and Wakefield was the defendant's maid of honour and witness. At the beginning of November 2009 the defendant discovered that she was pregnant and informed the defendant the same day.
27. Due to the pregnancy the defendant and Armstrong discussed the need to have some extra money to buy things that they would need for the baby. An

internet search (whether the search was by Armstrong or the defendant is, in my view, of little relevance) on the defendant's computer discovered an American site which was promoting a caffeine based product called "XTZ" which claimed "you can enjoy the same effects (as ecstasy) but without the fear of going behind bars". A decision was made to order some "XTZ" from America and this was paid for on 17 November 2009 from Armstrong's account (ExD1) for \$181.64. Again, in my view, whether the decision to purchase was made by the defendant or Armstrong was of little relevance. They both were aware of the purchase. In or about December 2009 the "XTZ" arrived at the home of the defendant and Armstrong. They received about 360 capsules (defendant's EROI, ExP4). There the capsules appear to have remained for some time.

28. Circumstances then changed for the defendant. On 25 January 2010 (Australia Day) the defendant met Fengler again, after he had contacted her. Fengler had joined the army and was also now posted to Robertson Barracks. Sometime in February 2010 the defendant travelled to Perth to terminate her pregnancy (but her reason for this was not explored in evidence). The evidence however did disclose that this was not at the urging of or with the approval of Armstrong, who had wanted the defendant to keep the baby (and in XXN Armstrong agreed that this was quite a cause of some friction between them). The defendant was spending time with Fengler, including going out for drinks with him. Armstrong did not approve of their association and was suspicious of it. This was a further source of conflict between Armstrong and the defendant. At some stage (and this was before the eventual break-up of her marriage) the defendant informed Wakefield that her feelings for Fengler had returned.
29. Hence, it appears that from the time Fengler came back into the life of the defendant significant changes and problems began in her marriage. Things came to a head in April 2010, when Armstrong said he found out the defendant was cheating on him with Fengler. In his evidence in chief he said:

So a week prior to - if I say that that was 6 May and you agree, so a week prior to that was when she'd left?---In April some time, yes.

Okay. And what were the circumstances of her moving out, did you help her move out?---No. I caught her cheating on me with a Andrew Fengler, 2 CAV. I walked in and found them. He helped her move, apparently, with some stuff and then - and also her parents helped her move. I didn't have anything to do with her.

Okay. The situation that you became aware of, how much earlier than that day when she moved out did that occur?---I'm sorry, could you - - -

Sorry, I'll rephrase the question. You said that she moved out a week prior to the arrest?---Yes.

When did you become aware of the situation between Sarah and this other person?---A few weeks prior to that. There was tension and everything like that. We wanted to try and work it. Thinking to take - taking it as, like, one of those mistakes - stupid me, shouldn't have trusted that and, yeah, then - marriage was off.

So that would have been around April - - -?---In April. Most - all this occurred in April, pretty much, the whole catching and - this whole thing.

Okay. Do you remember the date exactly?---No, I don't, sir.

Okay. Was it directly in the middle or earlier in the month or later in the month?---About - earlier in the month. I was on guard - that's the whole reason I remember because I was on - working - and I saw him pull out of the Base. I followed because I thought, 'Hang on, this is not cool'.

30. In XXN he was asked about this further and gave the following evidence:

Now you know Andrew Fengler as a trooper at 2 Cav?---No, I know him as a person that slept with my wife.

So you say he slept with your wife?---Yes. I caught them.

When was that that you caught them?---It was some time in April.

April last year?---I was on guard. I was actually working and I came home to collect movies - just for guard in the evening - and I saw his car outside. It was a weekend. It was a Sunday. And I caught them coming out of the bedroom, her tits hanging out, him fixing his pants up and no shirt on.

31. So in XN he said he had followed Fengler from the base, but in XXN he said he had gone home to collect movies. The two versions are not wholly consistent but in my view make little difference as his evidence was not challenged. In particular, Armstrong's evidence that when he entered the house he saw the defendant exit the bedroom "with her tits hanging out", was not challenged in XXN. Nor did the defendant give direct evidence to dispute this evidence. The closest she came was to make a general denial that she was having a relationship with Fengler (which denial on all the evidence I am unable to accept). In addition, Armstrong's evidence that he saw Fengler exit the same bedroom "fixing his pants up with no shirt on" also was not challenged in XXN.
32. It appears that the "catching out" of the defendant with Fengler may have occurred sometime around the middle of April, but when in relation to the events that gave rise to charge 2 is unclear.
33. As a consequence of this Armstrong told the defendant in late April 2010 (most likely before she went off to Rochampton with Wakefield) that she was no longer welcome at the house (and effectively "kicked" her out). The defendant moved in with her parents. The defendant's mother had a mobile phone with the number 0407683610 (hereinafter referred to as "...610" or "mother's phone") and the defendant's parents house had a landline with the number 89312471 (hereinafter referred to as the "mother's landline").
34. In or about late April 2010 the defendant drove to Rockhampton, towing a horse trailer to buy a horse. Wakefield went with her. The defendant couldn't get the horse that she wanted, so they drove back to Darwin. They were away for about a week. An analysis of the Vodaphone records forming part of ExP7 discloses that from 17:40:13 on 28 April 2010 the "time zone code" is given as "QLD", until the next recording of "NT" at 11:32:55 on 2 May 2010. Further, during this period there are no calls made or text sent from the defendant's phone to Wakefield (whose phone number was ...683). Accordingly, it is likely that it was during these dates that the defendant and Wakefield were in Queensland together (although it doesn't assist in the actual dates that the defendant left and returned to Darwin).

35. About 1 week before her arrest on 6 May 2010 the defendant told Armstrong that she wanted a divorce. Armstrong had made an appointment to see a lawyer later on 6 May 2010 in relation to a divorce. The defendant said she commenced moving her belongings (with the help of her parents) out of 7 Careela on 8 May 2010. However, in his evidence Armstrong said that by 6 May 2010 the defendant had moved out all of her possessions (with the help of her parents and Fengler) with the exception of the remainder of the red capsules. When the actual move occurred is not particularly relevant. What is relevant is that (and I find) the marriage had seriously broken down and was headed for divorce (by the end of April 2010 and) before the events of 6 May 2010. Subsequently the defendant changed her surname back to her maiden name of Bridle.
36. It appears that the relationship between the defendant and Armstrong has not improved since. Despite this, it is clear from evidence that will be referred to later, that they were together in the same motor vehicle at the time the events the subject of charges 2 and 3 occurred. This seems somewhat inconsistent with their then non-relationship status, but on the evidence of Armstrong and the defendant it appears inevitable that they will divorce once they have been separated for more than 12 months.
37. When Armstrong came into court to give evidence the defendant made a point of moving from where she was sitting in the court towards the wall, so as to distance herself from the witness box. She appeared to be visibly shaking and distraught during the early stages of Armstrong's evidence. Either the defendant was acting (very well) or she has a real fear and/or loathing of Armstrong. During his evidence Armstrong made no attempt to conceal his contempt and dislike for the defendant.
38. Shortly after the events on 6 May 2010 that form the basis of charge 3, the defendant and Armstrong were stopped by police and arrested. \$1,000 cash was recovered from the centre console of the Toyota that was being driven by the defendant. The defendant and Armstrong were then taken to the residence at 7 Careela, where a search warrant was executed. During the execution of the search warrant the defendant and Armstrong were

together on a balcony of their premises in the presence of police. They were then conveyed together into the Darwin watch house.

39. Armstrong said in his evidence that: "We were taken to the watch-house in the city just here. I was put in a big double cell while she was segregated away. I just - I sat in there for a few hours until they came and asked for me to do my interview." Yet in XXN the following was put to him:

You were then both - once they had finished the search they both - they took you both in the same vehicle back to the watch-house here in Mitchell Street?---Yes, in Mitchell Street.

Now before you were interviewed you were with Sarah, weren't you - this is back at the police station here at Mitchell Street?---Yeah, in one of those little - I don't know what you'd call it - the little cells when you first get in there. They sit you down to get processed. I don't know what you call it.

Yes. Now Sarah was quite distraught, wasn't she, she was crying, scared- - -?---Yeah, she was.

- - - cold, about the whole episode just unfolding. Now you told Sarah for her to take the whole blame for this, didn't you?---No, I didn't.

You also said that it was better for her to take the blame because you had a career and you stood to lose the most, isn't that the case?---No, it's not the case.

40. In her evidence the defendant also said they were placed into a room together before they were separated and placed into separate cells. If indeed they were not kept separate at all times (which appears may have been the case), this would seem most unusual, and not good police practice. In her evidence in chief the defendant gave the following evidence in relation to this:

And what happened when you got to the Darwin watch-house?---We came into the undercover parking thing and they walked us into a little room and I could see the carpark on one side and a police desk and stuff on the other side. And then Kyle and I were in there, like, they put us in there and went off and did whatever they do.

And how long did you remain there?---Like, 15 minutes.

Was it just the two of you?---Yes.

And what was going on?---I was really scared and I was in a lot of pain.

How were you feeling at this point in time?---Really sick and I was really scared. I was praying and just freaked out. Kyle was trying to comfort me and like he was just whispering in my ear that it's going to be okay and everything. And then I made a little joke about how they're actually eating donuts because I thought it was - - -

Who was eating donuts?---The police officers.

All right?---Because I thought it was like a movie thing, but it's real.

Okay?---So I made like a little joke about that and then Kyle was telling me how that it would be better if I took the blame because we needed the money coming in from his salary. Even though I'd asked him for a divorce, he was still thinking about us and everything, and that if he got in trouble for it, he'd lose his job and then we'd lose the money from his job. (emphasis added)

41. Yet in XXN she went on to say:

Ms Bridle, right now I bet you're thinking this was a really, really bad idea; the whole thing was a really bad plan?

HIS HONOUR: You need to answer yes or no?---Yes.

MR LEDEK: Whoever decided it, whether it was between yourself and Kyle or you brought it up or Kyle brought it up, the idea of passing off herbal drugs which are legal, you can get them off the internet, like you found, and passing them off as Ecstasy, it had really backfired?---Yes.

Something that you thought if he even got busted for it, that you couldn't really get into any trouble because what you were dealing with wasn't Ecstasy?---That's what Kyle said.

And that was the safety catch, wasn't it? And that was what you agreed to in the plan, that even if you did get busted, nothing was going to happen because it wasn't really Ecstasy?---Yeah.

That's what you agreed to?---After I asked Kyle.

HIS HONOUR: Sorry?---Because I was really scared.

Sorry, I can't quite hear?---After I asked Kyle, because I was really scared about getting in trouble, he explained that because it's only herbal stuff that we couldn't get in trouble.

So it was a win-win situation. Even if the cops did get involved and you did get busted, you'd be all right because you weren't dealing in Ecstasy. That's right, isn't it?---Yes.

And you'd discussed that around about November?---Yes.

The previous year. Yes. And maybe in February or some time before?---I believe so.

Because the pills, they arrived around about – before Christmas, didn't they?---Yes.

And you knew what those pills were because you'd seen them on the website, okay, and they'd been ordered and they'd arrived?---Yes.

And they were sitting there and you just had to work out a time or an idea how to send that message out. How were you going to sell that product?---I wasn't sure.

Because you'd never done anything like this before, had you?---No.

But you agreed to be a part of this plan?---Yes.

So that's why when you were as scared as you were with the police station, the first time you've ever been in trouble with any police, at all, there you are with Kyle, sitting there in that room, thinking about what you're going to tell the police. And you decided: 'I'm going to come clean and tell them everything,' didn't you?---I was going to tell them everything, anyway.

That's right?---Because you've got to tell them the truth.

That's right, and you said: 'I will tell them the truth and I will make it clean-breasted; I'll let them know exactly what happened.' Okay?---And then Kyle started talking to me.

Yes, he did and just – he said that everything was going to be all right. He tried to comfort you. Even though he said to you two days before that: 'I want a divorce.'?---I said to him I wanted a divorce.

You said a divorce?---Yes.

You wanted a divorce?---Yes.

Even though you'd spent a week away from him because he'd kicked you out because of what he'd found out about what you'd done with Andrew?---Yeah.

It's pretty hard to talk about, isn't it?---Not really.

No?---Because nothing happened between me and Andrew.

No?---Nothing happened.

But Kyle thought so, didn't he?---Yes he did, because I'd approached him about what he'd done with Danielle.

So there was things going backwards and forwards on both sides. You weren't very happy with each other?---I was extremely not happy.

Yes?---Because she's the same age as my little sister.

Well that makes it worse, doesn't it?---Yeah.

So Kyle's at fault about all of this, isn't he?---I'll take part of the blame.

But really, Kyle brought it on himself, just as much as anything that you were to blame for?---Yeah.

And there he is, now that you're caught by the police, down in the cells, and he's comforting you and trying to be nice to you. And he says to you, even after you've said that you want a divorce, which meant that that was the end of your marriage, you didn't really want to have anything to do with each other any more, that was the end, he suggested to you that you should take the blame, okay, because you needed the money that he was going to be earning, that you were no longer going to be able to have access to. Is that what you're suggesting to the court?---Yes.

Okay. But really, you'd made your mind up beforehand and right then and there that you were going to tell the police the truth, everything. Is that right?---I told them everything. (emphasis added)

42. At about 1626 hours on the same day (6 May 2010) the defendant voluntarily took part in an electronic record of interview (hereinafter referred to as an "EROI"). This EROI was played in court and then tendered as Exp4. Mr Ledek provided the court with a transcript of Exp4 for the assistance of the court as an aide memoire. I am grateful for that assistance. The transcript appeared to be an accurate transcription of what

I heard on ExP4. It was clear from ExP4 that the defendant was in some emotional distress and sniffed regularly and appeared upset by her situation. However, her answers to questions appeared generally to be responsive and spontaneous. Her account gave the appearance of being honest. In addition, her answers fit with the other objective evidence in the case.

43. But as noted above, the defendant says that she was not telling the truth when she spoke to police in her EROI, but wants the court to accept that what she now says in evidence is the truth. If the defendant was in fact lying in her EROI then she is a very convincing and skilled liar. In which case it would be very hard to work out when she was actually telling the truth. At the time she did the EROI she had very little time to concoct a lie, whereas she has had many months before giving evidence to do so. I will deal with the issue of her credit throughout these reasons.
44. What the defendant said in her evidence is different to what she said in her EROI, and both versions cannot be true. Therefore there are only 3 options, either:
 - What she said in her EROI is true and her evidence in court was untrue;
 - What she said in her evidence in court is true and her EROI is untrue; or
 - She has not told the complete truth in either her EROI or her evidence in court.
45. Whichever option is the right one, by her own admission she is a liar, either to police, to the court or both. Her stated reasons for “lying” in the EROI do not ring true, in my view, when the evidence is looked at as a whole. These stated reasons appear to be as follows:
 - Kyle was telling me that it would be better if I took the blame because **we** needed the money coming in from his salary;

- Even though I'd asked him for a divorce, he was still thinking about **us** and everything;
- that if he got in trouble for it, he'd lose his job;
- and then **we'd** lose the money from his job.

46. Whilst it is not unheard of for a spouse to tell untruths in order to protect the other, it is less common for this to occur after the relationship has broken down. There was no "we" or "us" in this case. At the time of the EROI:

- Armstrong had caught the defendant cheating on him with another man;
- Armstrong had thrown the defendant out of their home;
- The defendant was living with her parents;
- The defendant believed Armstrong had done something with another female (the age of her sister);
- The defendant had already terminated her pregnancy in February, so there were no children of the relationship to be provided for financially;
- There was no evidence of any mortgage (they were living in accommodation provided by Defence), loans or other joint financial obligations that they may have had;
- The defendant had already decided she wanted a divorce and had told Armstrong this;
- The only motor vehicle that they had appeared to belong to the defendant, as Armstrong did not have a licence in any event;
- There was no evidence to suggest that Armstrong had made any financial contribution to the defendant at all after their separation

(which was about a week before the EROI), or that he had ever offered to do so;

- There was no evidence to suggest that Armstrong had given the defendant any money after their separation, either from his salary or anywhere;
- There was no evidence to suggest that there had been any discussion about Armstrong ever giving any money (voluntarily or otherwise) to the defendant from his salary then or in the future; and
- There was no evidence to suggest that Armstrong has (in fact) ever given the defendant any money from his salary from the time of separation until the time of the hearing herein.

47. I am unable to accept that the defendant had any reason (relevant to Armstrong) to lie in her EROI. In addition, the defendant's suggestion that she lied in the EROI, to take the blame is not consistent with what she actually said in her EROI. At no stage did she say in her EROI that it was all her doing, and Armstrong had nothing to do with the matter. Nor did she suggest that Armstrong knew nothing about it, and in fact she stated that he did know. I do not accept the defendant's evidence that she lied in her EROI in order to protect Armstrong.

48. In addition, as noted above, the EROI fits with the objective evidence in the case. Mr Lee did not take me to one single thing that the defendant said in her EROI and suggest that it could not be correct because of other evidence. Mr Lee did not suggest that there was any text or phone call made from the defendant's phone ending ...294, that the defendant could not have made (or was unlikely to have made, as a matter of logic). Nor was I directed by Mr Lee to any text or phone call from the defendant's phone ending ...294 that Armstrong must have made (or was likely to have made as a matter of logic). On the contrary, as will appear later, I find that the history and sequence of text messages and calls to and from the defendant's phone ending ...294 are readily explained by the defendant

being the sole user of that phone. However, for Armstrong to have been a user of this phone (for the important text messages the subject of the charges) a breach of “Occam’s Razor” (an ancient philosophical principle often attributed to William of Occam 1285 – 1349), namely that “no more things should be presumed to exist than are absolutely necessary”, is required.

49. Allegedly due to “technical difficulties” (paragraph 7 of ExP7) SMS messages were unable to be downloaded from the defendant’s Nokia mobile phone, being the number ending ...294. However SMS messages from the phone used by police to converse with ...294 were able to be downloaded and were annexed as part of ExP7. As will appear later in these reasons the times shown on the call records for ...294 do not appear to be in Northern Territory time (as per the evidence of the UCPO) but initially 90 minutes ahead, and later 30 minutes ahead.
50. Phone records for Armstrong’s phone with Optus were also tendered and became ExD3. The affidavit of David Finlay from Optus Administration Pty Ltd annexes the various records. In that affidavit Finlay states that the records generally contain the time and date records, but he does not say what the time is a reference to (for example he does not say whether it is the actual time at the place the call or text was made from, or based on “eastern standard time” or whatever). As there was no text communication between the UCPO and Armstrong’s phone at any stage the UCPO is unable to assist in the actual times that things occurred. Accordingly, is there any other way from the evidence that I can resolve this difficulty?
51. I know from the evidence of the UCPO (ExP10) that the defendant and Armstrong arrived at the Winnellie shops at 1259 on 6 May 2010 for the final “supply”. I also know from the evidence of McKellar (ExP6) that Armstrong and the defendant were arrested by police after they left the Winnellie shops on 6 May 2010 at either 1301 or 1302 hours. I also know from the evidence that the defendant had collected Armstrong in her car from Robertson Barracks before driving to the Winnellie shops. From ExD3 Armstrong sent a text to the defendant on ...294 at “1219” on 6 May, and

the next use of his phone was at “1918”. Accordingly, the text to the defendant must have been before he had been collected by her as there would be no point sending her a text after they were together (unless it was to give her a copy of another text or a phone number etc for her information, which is possible). No daylight saving would have been operating in May. If the time shown was “central standard time”, then the text would have been sent 40 minutes before arriving at Winnellie, which would be clearly possible. If the time shown was “eastern standard time” then the text would have been sent only 10 minutes before which would be less likely. Even if the text was sent just as the defendant collected Armstrong this would only have allowed 10 minutes to drive from Robertson Barracks to Winnellie shops. There was no evidence as to how long such a drive would actually take, but it seems a very short period.

52. I was to deliver my decision herein on 9 March 2011 at 0900, but because of this difficulty I raised the matter with both counsel on 9 March. Neither counsel was able to point (without notice) to any evidence that would enable me to conclude the time Armstrong sent any text or made any call from ...583 was in actual NT time. Mr Lee wished to consider the issue further and accordingly, I adjourned the matter to 14 March 2011 at 0930 (and excused the defendant) to give both counsel an opportunity to address on this aspect further. I indicated to counsel that if I could not be satisfied as to the actual NT time relating to ExD3 then I may have to exclude that evidence from my deliberations. Mr Lee suggested that given the messages are picked up by a tower, I could assume that the times were the times applicable to the location of that initial tower. However, if that were the case then there wouldn't have been the 90 or 30 minute time discrepancy in relation to the defendant's phone records for text messages that she sent from the NT to another phone in the NT. And the evidence clearly was that this discrepancy did exist.
53. When the matter resumed for further submissions on 14 March 2011 neither counsel was able to point to any evidence that would assist. Accordingly, during the period that daylight saving was in operation (and

there was no evidence as to when that ceased in 2010) the times shown on ExD3 could be:

- In actual NT time;
- in the time applicable to the state that the message or call is sent from;
- in some other unknown time.

54. Accordingly, I disregard the times shown in ExD3, and am unable to include these times as part of any analysis of the evidence. However, where appropriate I can still rely upon the date of any such phone call or text.
55. Detective Sergeant Glenn Leafe (hereinafter referred to as "Leafe") gave evidence in the prosecution case that MDMA is commonly referred to as "ecstasy", but may also be called "bickies", "pills", "caps" or "eccies". He said that they used to be in tablet form but now it is more commonly in capsules with the powder inside. In XXN he said that the street price for ecstasy at a nightclub was \$50 per tablet. Leafe went on to say that if a person was buying say 200, then could expect a price of around \$25 to \$30 each. He was asked if a price of \$10 would raise a suspicion in a buyers mind, and he said that it wouldn't as it may indicate that the buyer was just starting up, or the tablets were going "off" a bit by crumbling or something similar.
56. The UCPO also gave evidence before me. She said that the phone she used throughout had the number 0439893932. She also stated that prices varied for "ecstasy" but \$10 was on the cheaper side. She also said that "e's" was a common usage term for ecstasy.
57. The evidence of how the capsules the subject of this charge came to be in the possession of the defendant comes from a number of sources. In her EROI (ExP4) the defendant stated as follows (and the "letter" appearing at the left of any question or answer is a reference to the speaker, with "L"

being a reference to police officer Leafe; “K” being a reference to police officer Kelly; and “B” being a reference to the defendant):

At T7-9:

K: Ok. And the ecstasy you referred to ---

B: (inaudible)

K: ---in that text, what can you tell me about that?

B: Um – **that was just stuff that (sniff) I got off the internet.**

K: Yep.

B: (Sniff) Um – as far as **we** were at, it was just herbal and **we** **figured it was a quick way to make some cash** ----

K: Yep.

B: ---‘cos we had a baby coming (sniff).

K: Alright. And do you recall – um – what it was, what the name of the product is?

B: Um – X-T-Z (sniff)

K: Yep. And what – ah – what were the ingredients of these tablets?

B: I’m not sure.

K: Ok.

B: They were just like, yeah, reading on the website it was just – um – like pretty much they just said they were like energy pills ---

K: Yep.

B: Um – but I don’t know **the website ‘cos it’s saved on my computer.**

K: Yep ---

B: (sniff)

K: --- Ok. And how much did you pay for them?

B: **I paid two hundred dollars.**

K: And how many did you get for that?

B: Um – I think (*sniff*) we got six bottles in.

K: Six?

B: Yeah.

K: Alright, so many was in each bottle?

B: Um – I think the packet said sixty.

K: Sixty in each bottle?

B: Yeah

K: So you had, got three hundred and sixty all up?

B: (inaudible) six, yep.

K: And, and how many times have you ordered ---

B: Just once.

K: --- from over there?

B: (*sniff*) (emphasis added)

58. The defendant made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI. It is clear that the defendant moves from the personal pronoun (for things that she did, as highlighted in bold) to the collective (for things that she and Armstrong both did, as highlighted by underlining). Hence the defendant was not suggesting that Armstrong was not involved in the plan to sell the capsules, but nominated herself as the person who:

- Got the capsules off the internet;
- Paid the \$200 for the capsules;
- Had the website saved on her computer.

59. In my view, this is not consistent with a person who was supposedly going to take the blame. If Armstrong was to be kept out of the blame then presumably the defendant would not have suggested that he was a part of the plan from the beginning. But she did suggest this. I do not accept that in the EROI the defendant was “taking the blame” for something she hadn’t done. At no stage in the EROI did the defendant suggest that Armstrong was an innocent party, or that he knew nothing of the arrangements to sell (which would have been difficult given, as will appear later, that he was present at the time of the transactions the subject of charges 2 and 3).
60. I bear in mind throughout this decision what Brennan J said in *Liberato v The Queen* (1985) 159 CLR 507 @ 515:

When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question: who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issues which it bears the onus of proving. The jury must be told that, even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue.

61. In his evidence Armstrong touched upon this topic a number of times where the following evidence was given:

Okay. Now the pills that she put into your cigarette packet, did you know what they were?---They were caffeine - red cap - red capsules of caffeine - and everything like that, and I’m like, right.

Do you know where they had come from?---Yes. She ordered them over the internet, she told me to - actually told me - sorry - she told me that she ordered them over the internet using my card.

Your card?---My credit card - the debit card.

All right. And when did she tell you she’d done that?---Couple of days after the fact that she did - I can’t remember a date, I’m sorry.

Was it before this time that you were in the car meeting Ang?---Yes, it was way before that, it was a good couple of months, I think.

Good couple of months before that - - -?---Maybe January, if I - Jan/Feb.

So she used your card to buy these pills, did she tell you why she was buying these pills?---No, she didn't tell me why she was buying these pills. I just thought, 'Well, herbal, caffeine thing. Yeah, it's like a No-Doz. She can use that if she wants to use it herself, it's just a No-Doz'.

So she never told you why she was buying those pills?---No.

Did she tell you how much it was going to cost?---Yeah, she did. She said it was about 200 or so dollars, and I went.

Would that be normal between yourself and Sarah to discuss purchases and the amounts that things would cost?---Yeah, it would. I'm quite tight-arse when it comes to money.

As a young married couple. But that was the pattern of your behaviour?---Yes.

So the \$200 purchase, you gave that the green light?---Yes, I did.

And at another part of his evidence.....

So when this took place, this deal, had you spoken to Sarah about this before that?---No. Wait, hang on. No, sorry. Yes, I did, actually, sorry. I spoke to her one time about selling herbals to people, so like - just like a natural energy hit.

And that was something that you and Sarah had decided, is that what you were saying?---We were discussing.

Discussing, sorry?---Hadn't decided anything. And then - yeah.

When had that discussion taken place?---Just before I was due to head off to South Australia for three to four weeks.

Okay. When was that?---I can't recall, sorry. It's a fair while back.

Was it in February, was it in March, was it in April?---I think it was more - March - February - maybe late February, early March, heading off.

So the discussion you had about selling the herbals, that took place before you left for South Australia?---Yes, that's correct.

Why did you go to South Australia?---For work. I had a training exercise down there for three to four weeks and then, yeah, so I was down there and just working down there for three to four weeks.

And do you remember when you returned from South Australia?---Start of April - just before - just start of April.

Did you have any other discussion about the possibility of selling these herbal pills?---No, I had very little contact down there with the phone. I got maybe once - couple of days, I could talk to her about it, like, just talk to her and pretty much most of the time I was out - didn't have access to anything like that.

So in South Australia was your relationship still on foot?---To a degree, yes. I was having my suspicions around that time that something may be happening while I'm away. But it was still strong in all respects.

So Sarah had no reason to believe that there was anything - that you had any other thoughts other than the marriage was going well?---No.

So in terms of the discussion that you had that was before you went to South Australia and that was about selling the pills. Okay. Now who initiated that discussion?---Sarah did.

Did she suggest how much they should be sold for?---She said a price of about \$10 - \$15 a cap, and I went - for herbal. Well - - -

Did she speak to you about any more of the details about how she intended to sell it?---Nothing in the details of how she would sell it, no.

Did she tell you whether she'd made a sale?---No, she hadn't told me whether she made a sale at all.

62. Accordingly, Armstrong effectively denied any real involvement, apart from agreeing with the purchase and some general discussion about selling the capsules. But in this evidence he makes no mention that he knew or understood that the capsules might be represented as anything other than "herbal".

63. Police became involved in this matter following some information received by them. Apparently an initial text was sent out from the defendant's phone number (ending ...294) on 19 March 2010. In paragraph 2 of the statutory declaration of the UCPO of the 23rd of March 2010, she stated:

2. On Friday 19th March 2010, I was rostered on duty from 2pm that day. Upon my arrival at work I was informed by my Sergeant, Joseph CARBONE, that information had been received that an anonymous person called to say they had received a text message from an unknown person who was advertising the sale of ecstasy and using the phone number 0410948294.

I digress to note that this evidence is not evidence of the truth of the assertion being made, namely that a person was advertising the sale of ecstasy. Further, I was not told what time the initial text (offering to sell ecstasy) was sent out, but it presumably must have been before 2pm when the UCPO commenced work. The time of this event becomes a bit clearer later.

64. Although this text did not make its way directly into evidence in written form, the defendant said the following about it at pages 6-7 of her EROI (Exp4):

K: Ok. Um – can you tell me **your mobile phone number?**

B: Zero-four-one-zero-nine-four-eight-two-nine-four.

K: Ok.

L: Can I just get that again sorry?

B: Zero-four - - -

L: Yep.

A: - - - one-zero-nine (*sniff*) four-either-two-nine-four.

L: Cheers.

K: Alright. Sarah, as I said, I wanna' talk to you today about –um- a number of things leading up to ---

B: Yep.

K: --- to today's events - um – and basically they started – um – on the nineteenth of March – um – whereby a – ah – text, text message ---

B: *(sniff)*

K: --- was **sent from** –um- a mobile phone number, or **a mobile phone with the same number that you just provided us.**

B: Yep.

K: Ok? Um – and the message read –ah- '**Got some ecstasy, need to get rid of it, ten dollars each tonight only, text this number and we'll give you the location. If not interested, delete this message and don't save number,**' Ok, what can you tell me about that?

B: *(sniff)* **I sent it.**

K: You sent it?

B: Yeah.

K: Ok. And when you sent that, did you get any, any responses?

B: No. Not straight away. I got one –ah- later on ---

K: Yep.

B: --- and just, that was it. No one else got back to me *(sniff)*.

(emphasis added)

65. Accordingly, the defendant made full and frank admissions to her sending the text from her phone. However in her evidence before me she sought to withdraw this admission, and (as will be addressed in more detail later) she suggested that it was in fact not her who had sent this text, and the only other person who might have is said to be Armstrong. It was therefore necessary for Armstrong to have been in Darwin on 19 March 2010 (and/or to have had use of her phone ending ...294) to have made it “possible” for him to have done this. I will consider this shortly. As noted previously, the defendant's EROI gave the appearance of being an honest account of events.

66. Why the defendant had two mobile phones was never fully explained in evidence, save that one of them may have been a gift. The defendant's evidence as to Armstrong's access to the phone ending ...294 was vague. Apparently there was a problem getting reception in their house, so that the phone had to be in a certain location, and held (or placed) in a certain way. The defendant was able to work this out, but she suggested that Armstrong wasn't as good at this. It was not specifically stated by the defendant that Armstrong had any particular access to her phone, or that he was in the habit of using it. Armstrong on the other hand suggested in his evidence that the defendant kept her phone to herself, and he only accessed it towards the end of their relationship, when he was trying to check up on the contact she was having with Fengler.
67. I turn to consider the evidence specifically in relation to charge 1.
68. It is clear from ExD2 that from 2000 hours on 12 March 2010 until 1800 hours on 17 March 2010 Armstrong took part in a "crew commanders course", which he said (and this evidence was not challenged) took place (at a place called Cultana) near Port Augusta in South Australia. It is also clear from ExD2 that on 19 March 2010 Armstrong signed and dated (even though it purports to have been recommended and approved on a typed date of 18 March 2010) a leave application for "mid exercise stand down" from 19 March 2010 with a return to work on 23 March 2010. On that form he gave his address whilst on leave as "Keswick Barracks, Adelaide" when he could have "ticked" a box that said "home address" if he was in fact intending to return to Darwin. It is further clear from ExD2 that Armstrong took part in a field exercise "EX SR10 – CCC" which he again said was in South Australia (and this evidence also was not challenged) from 1100 hours on 23 March 2010 until 2000 hours on 30 March 2010.
69. In his evidence, Armstrong said that he was in South Australia and did not return to Darwin during the break from 18 March until 22 March inclusive. Records for one of Armstrong's DEFCREDIT accounts (20760674) from 3/9/09 until 30/4/10 were tendered into evidence as ExD1. Those records showed a transfer from "S A Armstrong" (who I find is the defendant herein)

of \$100 into this account on 18 March 2010. There was then a further deposit of \$100 into the account on 19 March 2010 (but I do not know who made that deposit, where from, what time or by what method). This then put the account into credit in the sum of \$200.53. There was then an ATM deduction for \$200 (with a \$2 fee) from Rundle Street in Adelaide on 19 March 2010. I do not know what time this deduction was made. Armstrong said he made this withdrawal and then used the money to go drinking with friends before staying the night at Tea Tree Gully. He nominated the name of the friends he spent the night with. The next entry was for a \$2 charge for an ATM at Port Wakefield on 21 March 2010. Armstrong said he made that entry when he checked his bank balance on his way back to Port Augusta.

70. In XXN, Mr Lee suggested to Armstrong that he had given his card to some (unidentified) person who made these transactions. Armstrong denied this. It would, in my view, be very unusual for Armstrong (or anyone) to give their keycard (and presumably their pin number) to another person for a period of several days. There was no evidence to suggest that Armstrong was in the habit of doing this, nor that any person with him in South Australia was of such closeness (in terms of a friendship) that he might have done it on this occasion. There was therefore no evidence that Armstrong gave his card to anyone on this occasion.
71. As will appear later, the defendant suggested that rather than go out drinking with friends in Adelaide, Armstrong (somehow) returned to Darwin and in fact went out drinking with friends here. Wherever he went out drinking, he would need money and/or access to money. I am unable to accept that either of the two ATM transactions on 19 and 21 March 2010 were not made by Armstrong. It was not up to the defendant to prove that the transactions were not made by Armstrong but just to raise a reasonable doubt that they were. I find beyond all reasonable doubt that they were in fact made by Armstrong and he was not in Darwin at the time these two ATM transactions occurred. I consider these ATM records to be compelling. I therefore specifically find beyond all reasonable doubt that:

- Sometime on 19 March 2010 Armstrong was in Rundle Mall, in Adelaide, South Australia and withdrew \$200 from his account (ExD1) from an ATM; and
- Sometime on 21 March 2010 Armstrong was on his way back to Port Augusta from Adelaide and checked his balance at an ATM at Port Wakefield.

72. It was suggested by Mr Lee that somehow Armstrong managed to fly from Adelaide to Darwin sometime in the morning of 19 March (presumably after withdrawing \$200 from Rundle Mall) and then somehow fly back to Adelaide sometime on 21 March (arriving presumably in time to start travelling back to Port Augusta and to check his balance at Port Wakefield). Whilst this is theoretically possible (since I do not know the time that the two ATM transactions occurred) the only evidence to suggest this comes from the defendant and her best friend, Wakefield. Armstrong denied that he returned to Darwin and I have no reason not to accept his evidence in this regard. It makes good logical sense, and is consistent with the objective evidence in the case. A \$200 withdrawal would not be sufficient to buy an airfare to Darwin, let alone a return one.

73. During the course of the evidence Mr Lee drew specific attention to a series of text messages (two text messages to 4 separate phone numbers) from the defendant's phone ...294 sent between "14:00:20 and 14:00:51". Mr Lee specifically asked Armstrong about these texts, as he did the defendant. He did not specifically identify this series of texts as the source of the "offer" that was passed onto police, but that appears to have been the inference from the evidence as a whole. Hence, the following evidence was given by the defendant in her XN:

MR LEE: could you look at those records? Now your page numbers are going to be different to mine, but if you go to the column, 'local calls start date' and look for 19 March 2010. Once you get there, I'll give you some time to look for it?---Okay.

If you can go to 1200 noon, 40 seconds past noon on 19 March?---Yep.

There's a number that appears there 0401 494 683. Do you know who that is?---Yes.

Who is that?---That's Clancy.

She was the girl that gave evidence, yesterday?---Yeah, she's my best friend.

Now below that, there's another call made at – so, did you make that call to Clancy?---Yes.

And there's another number below that that ends in 583?---Yep.

Who's the number – who holds that mobile phone number?---Kyle does.

And that was you to Kyle?---Yes.

Then below that, there's another number ending in 683?---That's Clancy again.

Clancy again. And then 1259, so it's 58 minutes later, there's a 583 number again?---That's Kyle.

That's Kyle again. And then below that – what's this new number, the 610 number?---That's my mum.

And what's your mother's name?---Monica.

And then below that at 1302 there's another call – yes to 583. That's Kyle again?---Yep.

Then there's a landline number that appears at 1303?---That's my home number.

That's your home number. When you say home, is that where you - -?---Mum's house.

Your mum's house. And then there are a succession of three calls out to 610. That's your mother, again?---Yep.

Where were you when you were making these? Are they calls or - -?---Some of them are calls. The landline is the call and the other ones are texts.

Where were you when you were making these? Are they calls or - -?---Some of them are calls. The landline is the call and the other ones are texts.

Where were you when you were making these?---In the car park at Robbo.

Which carpark?---5RAR parking lot at the back gate of the compound.

And why were you there?---**I was there because Kyle told me I had to pick him up.**

When did Kyle tell you you had to pick him up?---**He gave me a phone call while I was out shopping with Clancy.**

Where were you shopping with Clancy?---At Casuarina.

And was it a call or was it an SMS?---It was a phone call.

Phone call. Do you remember at what time that was?---No.

So would it have been before - - -?---I was **after we had lunch.**

So you had lunch with Clancy and that was at Casuarina?---Yes.

Then the call from Kyle comes through to you?---Yes.

And **you're still at Casuarina?---Yes.**

So you go from there to? Where did you go?---**I dropped Clancy off.**

Dropped Clancy off?---Because she can't get on base because she doesn't have an ID.

Where does Clancy live?---She lives in the Narrows, but I dropped her off at Luke's house.

And where is Luke's house?---Luke's house is **in Palmerston.**

And then you went from Luke's house to?---Robertson Barracks.

And when did you arrive at Robertson Barracks? When – or let me rephrase that. When you made the call through to your landline, your mother's telephone number, do you recall where you were?---I was already in the carpark because I don't like talking on the phone and driving.

No, that's a good idea. Now then there were some mobile phone calls, three of them to your mother. So you're in the carpark?---Text messages.

Text message, sorry. Now when you received the call from Kyle to say: 'Come and pick me up,' did you receive it on this 294 number or on the other phone numbers that you had, the 727 number?---I can't remember.

If we'd just go back to the 18th, was there any correspondence or texting or phones between yourself and Kyle?---Yes.

Now nowhere in that – on the 18th – at no time on the – when did Kyle first tell you he was in Darwin?---When he called me.

HIS HONOUR: Sorry? Sorry? That's a big jump.

MR LEE: Okay.

When did you find out that you had to pick him up?---When he called me when I was at Casuarina.

You had no knowledge of that on the 18th?---Mm mm.

What's the nature of the contact between you and Kyle on 18 March?---Mostly discussing how bored he was in Cultana.

All right?---And how I was feeling.

And how were you feeling?---I was really upset.

And why were you upset?---Because in February I had to travel to Perth for a termination.

This is the child that - - -?---Yep.

All right. Now you relayed that state of how you were feeling on the 18th to Kyle?---Yes.

Now you were – the following day on the 19th, you were out at Casuarina with Clancy, took a call from Kyle?---Yes.

Was that the first time you had established that he was coming back?---Yes.

And how did you feel once you took that call?---I was really happy. I was excited and I was a bit surprised.

Why were you surprised?---Because he wasn't due back until the end of the month.

When did you actually physically see him on the 19th?---About 2-ish.

And is he changed and got out of uniform, has he - - -?---No, he was still in uniform. He stunk.

And he had all of his equipment with him?---Yes.

Let's just come back. Now who's driving – well, leaving the car park, who's driving?---Me.

And is there anyone else in the car?---No, it's just Kyle and myself.

So where's Kyle seated?---In the passenger's seat, as always.

And what's the nature of the conversation between you and Kyle?---Just making sure that I was feeling okay because I wasn't looking very good. I'd been crying a little bit and we were talking about how Cultana was and how his course went.

And where did you go from the carpark at the back of 5RAR?---We went home.

To the house in 7 Careela?---Yes.

And what did you do with the phone, the 294 phone?---I leave it sitting in the console because I don't exactly have a phone thing and I don't normally use a handbag.

So did it stay in the centre console the whole period?---No.

What happened?---Kyle was using it.

What was he doing?---Well, he was checking to see who I'd been talking to. I think he talked to my mum and I know he sent a message out to one of his friends.

Were you talking with him as he was doing it, sort of this is - - -?---Not really.

No?---I was more concentrating on driving.

Now you were driving on that occasion?---Yes.

Do you drive all the time or some of the time?---All of the time but Kyle drove occasionally because he didn't have a licence or he wasn't supposed to drive.

Now have you still got the document for the phone calls out of the mobile phone ending 294, there?---Yes.

If you go to 1420 seconds and go right to the bottom of the page excluding the bottom one there – there are numbers that double up – do you recall any of these numbers? Do you know the owners of any of these numbers?---No.

Do you know who sent these numbers?---No. I believe it was Kyle because he's the only other person that uses my phone.
(emphasis added)

74. The consequence of this evidence is that the defendant is setting out a clear time schedule for events that occurred on 19 March, as follows:

- Armstrong is in South Australia for work and is not due back until the end of the month;
- She goes to Casuarina shopping with Wakefield;
- They had “lunch” together at Casuarina;
- After they had lunch and whilst still at Casuarina she receives a phone call from Armstrong to tell her to pick him up as he is in Darwin;
- The defendant drives to Palmerston and drops Wakefield off;
- The defendant drives to Robertson Barracks to the 5RAR parking lot at the back gate and waits for Armstrong;
- Whilst waiting for Armstrong she makes a series of text and phone calls (which she says she commenced at 1200 hours according to the times shown on her phone records – ExP7);
- She actually physically saw Armstrong “about 2-ish”;
- Whilst driving Armstrong home he was accessing her phone ...294; and
- Therefore she believes that Armstrong sent the text messages commencing at “14:00:20” (incorrectly recorded in the transcript as “1420 seconds”) as she didn’t know the owners of any of these numbers.

75. This evidence (if you ignore what she said in her EROI) appears plausible. However, there is a major problem, as will appear when I consider ExP8 (the UCPO's evidence) with what she says and the times shown in ExP7. The problem is that the times shown on ExP7 for 19 March 2010 are in fact 90 minutes in advance of the actual Darwin times. There are only 2 times that the defendant assists the court with. She asserts that she was only called by Armstrong after she had had lunch, and that she saw Armstrong "about 2-ish". If this evidence is correct then it would have been physically impossible for Armstrong to have sent the texts (shown as "14:00:20" etc) as they were actually sent at 1230 Darwin time and therefore an hour and a half before the defendant says she saw Armstrong.
76. Accordingly, either the defendant's evidence on this topic is badly mistaken, or she has created a lie around the call records without realising the error in the times displayed.
77. The UCPO's evidence as to charge 1 comes from paragraphs 3 to 25 of the statutory declaration of the 23rd day of March 2010, ExP8 as follows:

3. At 3:13pm, I sent the following text message to mobile phone number 0410948294. "Looking for round ones. If you have any let us no when and where I can meet up."

4. At 4:45pm (4:45pm was listed as that time on the DES undercover operative phone, although this was not the correct Darwin time), I received a reply text message from 0410948294 saying, "Sorry only have caps".

So this would have occurred at 3:15pm (see the next paragraph as to my reason for this).

5. At 3:55pm, approval was formally received from Commander Colleen GWYNNE to acquire and possess dangerous drugs.

6. At 3:57pm, I sent another text message to 0410948294 saying, "What's in em and how much?"

7. At 5:31pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "I got to move them fast so they \$10 ea not sure exact concentration but they work really well for me lol".

So this would have occurred at 4:01pm

8. At 4:22pm, I sent another text message to 0410948294 saying, "How much u got. I'm looking to get 20, are they e's tho. Where u want to meet and when?"

9. In this last text message, I queried that the capsules being sold were "e's", which is a common street level name for ecstasy, or MDMA.

10. At 5:54pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "I got bout 200 and yeah they e's beach front at 9".

So this would have occurred at 4:24pm.

11. Due to the fact that the user of 0410948294 confirmed the capsules were e's, or ecstasy, I formed the belief that the capsules I would purchase would be ecstasy, or a similar type substance, such as methcathinone. Both of these substances are listed under schedule 2 of the Misuse of Drugs Act.

12. At 4:32pm, I sent another text message to 0410948294 saying, "Cool. Meet u round the back in the car park. See u then. Cheers."

13. At 6:03pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "Just curious who gave you this number?"

So this would have occurred at 4:33pm.

14. At 5:19pm, I sent another text message to 0410948294 saying, "Steph."

15. At 6:51pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "Ok not sure who she is but ok I don't wanna go the carpark can wee meet in pool tables?"

So this would have occurred at 5:21pm.

16. At 5:25pm, I sent another text message to 0410948294 saying, "No worries".

17. Sergeant CARBONE then caused for me to be searched to ensure I had nothing in my possession and then he handed me \$200 (serial numbers recorded) to purchase the capsules as arranged. He

also gave me \$20 for expenses. I put the \$200 in the left pocket of my shorts and the \$20 in the right pocket of my shorts.

18. At 8:30pm, I left the DES office with CARBONE and McKELLAR to go to the Beach Front Hotel in Nightcliff.

19. At 8:52pm, CARBONE, McKELLAR and I arrived at the rear carpark of the Beach Front Hotel. At this time I sent another text message to 0410948294 saying, "We still on for 9pm"

20. At 10.36pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "Sorry will have to be another night I won't change price though been picked up by cops got to be careful now"

So this would have occurred at 9:06pm.

21. At 9:10pm, I sent another text message to 0410918294 saying, "That's shit, No worries. Do u no anyone else cause I've got the cash and am keen."

22. At 10:41pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "Can meet you tomorrow day I'm not going out tonight and sorry but don't know anyone else."

So this would have occurred at 9:11pm.

23. At 9:20pm, I sent another text message to 0410948294 saying, "All good. If I can't get on tonight I'll call u tom to meet up. Spouse I should be careful too so this is Sarah right?"

24. At 10:53pm (also incorrect time displayed on DES phone), I received a reply text message from 0410948294 saying, "Yeah if you can get to hungry jacks palmo in bout 20 I can get them to you."

So this would have occurred at 9:23pm.

25. At 9:25pm, I sent another text message to 0410948294 saying, "Okay be there in 20".

78. The UCPO was not challenged as to her assertion that the times shown, as to when she received a text from the defendant's phone, was incorrect. The times stated by the UCPO (as showing on the text messages she received) match with the times displayed on the Vodaphone records for the defendant's phone (part of ExP7). Accordingly, if the UCPO is correct in

her assertion (and I find that she was) as to what the actual time in the Northern Territory was (and again she was not challenged on this) then the times for 19 March 2010 on the Vodafone records would appear to be 90 minutes in advance of the actual time (based upon an analysis of the times the UCPO said she sent a text, then received a reply and the time she sent her next text). Unfortunately no affidavit or other evidence was forthcoming from anyone at Vodafone to explain their records. However, from an analysis of these records it appears that the “chargeable duration” must refer to “seconds”, otherwise the time of the next following call or text would on occasions not make sense. I find beyond all reasonable doubt that the times shown on ExP7 in or around 19 March 2010 are 90 minutes in advance of what the actual Darwin time was.

79. At pages 9-10 of the transcript to the defendant’s EROI she said as follows in relation to these series of text messages:

K: Ok (*cough*) Alright –um- and you said you only got one response to this text?

B: Yeah.

K: And can you tell me anything about that?

B: Um – they just said that they were interested and I asked ‘em where they got my number from ‘cos I didn’t now the number (*sniff*) - --

K: Yep.

B: ---and they said they got my number from Steph, but I didn’t know who Steph was, so I just (inaudible) you know (*sniff*) maybe like Lindsay gave it to one his other friends or something.

K: Yep.

I digress to note that this was the defendant’s unprompted response, and it matches the exchange of text messages as referred to in ExP8 between 4-33pm and 5-19pm. The defendant remembered and volunteered the name “Steph” even though the police didn’t refer to it. And even though she then said that she didn’t know who this person was, and she thought a “Lindsay”

may have given the number on. I find this to be an important admission. This exchange of text messages was well before the proposed venue was changed from the Beachfront Hotel. I find this also to be quite telling. I find beyond all reasonable doubt that it was the defendant who was making and receiving these text messages, otherwise she would have no reason to remember them so clearly and accurately (especially over 2 months later). She continued:

B: *(sniff)*

K: Alright. Um – that, that person who – um – who replied to you ---

B: *(sniff)*

K: ---can you tell me what their name was?

B: Um – I didn't find out till later ---

K: Yep.

B: ---um- but I found out that her name was Ange ---

K: Yep

B: ---and that was at (inaudible)---

K: Alright.

B: --- that's all I know her by.

K: Ok. I'll let you know now what Angela's a police officer, you've ---

B: Ok.

K: --- probably worked that out by now, yeah? Ok. Um – so basically what I wanna' go through is, is what's happened – um – on the couple of times that you've met Ange ---

B: *(sniff)* Yeah.

K: ---ok, and up until today. Um – ok, after that initial text---

B: Hmmm.

K: ---and you sent a couple of – ah – text messages with Ange ---

B: Yeah.

K: ---and later on agreed to – ah – to meet Angela at the – ah – at the Hungry Jack's in Palmerston?

B: Um – it was originally the Beachfront Hotel.

K: Yep, that's correct, yep.

B: *(sniff)* But ----

K: And ---

B: ---um- I couldn't make it there so I told her that I couldn't make it and we arranged to meet at Hungry Jacks.

80. The defendant again made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI. On the contrary I found her comment regarding "Steph" to be quite compelling. I find that this portion of her EROI was true, and I am unable to accept her later denials as being truthful. In her later evidence she said it was Armstrong who had arranged to meet the UCPO at the Beachfront, but then he couldn't make it so he told her that she had to. Her evidence on this was as follows:

Did you have any plans to go to the Beachfront Hotel, that night?---I didn't, no. Kyle was going there with his friends.

And did he ever – did he tell you he was going or did he go? Did you see him leave?---He was supposed to go and his friend called up and said: 'No, we're just having drinks at my house,' or something like that. So he's like: 'Yep, okay,' and - - -

Who's 'he,' that's - - -?---Kyle.

Kyle, yes?---He's like: 'Okay, well, I'm not going to the Beachfront anymore.' I said okay. And then he's like: 'Well, you've got to go.' And I said: 'Why?' And he said - - -

Who's saying: 'You've got to go'?---Kyle.

To you?---Yes.

Thank you. Go on?---And then - - -

Did he say why?---He said it was: 'Because I had to meet someone,' and I wasn't exactly sure what he was talking about, so I asked him to explain it and he said - - -

Did he explain?---He said that he had organised to meet up with someone to give them some pills and that when I get to the Beachfront, I have to reply to this same – like, to the last message in my phone.

Do you remember which one that was?---No.

And what was the text? Did you reply to that last message in the phone?---I told Kyle I couldn't go to the Beachfront.

All right?---And I replied to the last message when I was on my way to Hungry Jacks.

81. I am unable to accept this evidence as truthful. It would seem to follow from what the defendant was now saying that it was Armstrong who was involved in some (if not all) of the text messages up until about 9-23pm when she sent the text about Hungry Jacks. As noted already, I find that the defendant was definitely involved in at least some of these earlier text messages, and for reasons that will be expanded on later I find she was involved in all of them. I reject her evidence as untruthful on this topic, and find that what she said in the EROI was in fact the truth.
82. As previously noted, for the defendant's evidence (as opposed to her EROI) to be correct it would require Armstrong to be in Darwin (and not in South Australia) and having access to and using the defendant's phone for the purpose of sending and receiving text messages with the UCPO. A comparison of the defendant's phone records (part of ExP7, with the times adjusted to show the actual Darwin time) and the UCPO's evidence for 19

March 2010 shows the following calls and text messages (in NT time) to and from the defendant's (referred to as "Def" for this analysis) phone number (ending ...294):

0937 Def rang KA and the call lasted 78 seconds

0945 text Def to KA

1017 text Def to her mother (mobile number 0407683610)

1019 text Def to her mother

1023 text Def to her mother

1027 text Def to KA

1030 text Def to Wakefield on her mobile (...683)

1031 text Def to KA

1129 text Def to KA

1130 text Def to her mother

1132 text Def to KA

1133 call from Def to her mother's landline (89312471)

1135 text Def to her mother

1138 text Def to her mother

1138 another text Def to her mother

1220 text Def to her mother

1223 text Def to her mother

1230 text sent to 4 different phone numbers

It was expressly put to Armstrong in XXN that he sent these 4 text messages from the defendant's phone, and this was expressly denied. Armstrong maintained his evidence throughout that he was in South Australia throughout this period. On the evidence of the defendant and Wakefield it was after they had lunch that the defendant received a "call"

from Armstrong to advise that he was (unexpectedly) at Robertson Barracks, and asking to be picked up. No actual time for this was given. The number of texts sent from the defendant's phone to the defendant's mother around this time would be consistent with the defendant being the person who was using her phone during this period (although it does not rule out the possibility of someone else being able to use it as well).

1248 call Def to Wakefield and the call lasted 1 second

If the defendant and Wakefield were truly together shopping and had lunch together as was stated in evidence I do not understand why this call was necessary, but the defence case would seem to be that the defendant had left to collect Armstrong.

1329 call Def to Wakefield and the call lasted 223 seconds

Again, if the defendant and Wakefield were together shopping and had lunch together as was stated in evidence I do not understand why this call was necessary, but again the defence case would seem to be that the defendant had left to collect Armstrong, had dropped Wakefield off and presumably was waiting at Robertson Barracks. If so, why she would then need to send the next 2 texts to Armstrong is unclear.

1337 text Def to KA

1340 text Def to KA

1418 text Def to Wakefield

1513 text UCPO to Def

1515 text Def to UCPO

1557 text UCPO to Def

1558 text Def to Wakefield

1558 text Def to Wakefield

1601 text Def to UCPO

I digress to note that during the brief period between 1557 and 1601 the one text was received from the UCPO, then two texts were sent almost immediately to Wakefield and then a text was sent to the UCPO. I find that it would have been the defendant who sent the two text messages to Wakefield, as this makes logical sense and there was no evidence to suggest that this was or might have been Armstrong. I reject the defendant's evidence that it was Armstrong who sent and received the text messages with the UCPO around this time. The text messages of 1513, and 1557 would have been on the defendant's phone and viewable by her when she was sending text messages to Wakefield. These sequence of messages to and from phone ending ...294 are consistent with the defendant having and using her own phone.

1622 text UCPO to Def

1624 text Def to UCPO

1632 text UCPO to Def

1633 text Def to UCPO

1719 text UCPO to Def

1721 text Def to UCPO

1725 text UCPO to Def

1745 text Def to Wakefield

1758 text Def to Wakefield

1814 text Def to Wakefield

The last text from the UCPO had confirmed the arrangement to meet at the pool tables at the Beachfront. However, rather than any phone contact from the defendant to Armstrong the next 3 contacts from the defendant's phone are all to Wakefield. Again that would be consistent with the defendant possessing and using her phone.

1919 text Def to KA

2106 text Def to UCPO

2110 text UCPO to Def

2111 text Def to UCPO

2120 text UCPO to Def

2123 text Def to UCPO

2125 text UCPO to Def

83. There was not one single phone call or text from this phone from 2123 on 19 March 2010 until 0906 on 20 March 2010 when a text was sent to the defendant's mother. In relation to the aforementioned analysis I have used a shorthand description. Clearly, when I referred to "text Def to" or "call Def to" I am not assuming that it was the defendant who actually made the call or sent the text. Rather I use that terminology as a shorthand way of recording that it came from "the defendant's" phone. However, I do find (on all the evidence in the case herein) that it was the defendant (and no-one else) who was sending and receiving text messages and phone calls from and to ...294 on 18, 19 and 20 March 2010.
84. I find beyond all reasonable doubt that when Armstrong was in South Australia he had his mobile phone with him, and had no access to the defendant's mobile phone ending ...294, as I find that this phone remained with the defendant in Darwin. Accordingly, the only way that Armstrong could have sent the texts on 19 March 2010 was if he was in Darwin (and not in South Australia) and had access to the defendant's phone.
85. The only evidence to suggest that Armstrong may have been in Darwin on 19 and 20 March 2010 comes from the defendant and Wakefield.
86. In Wakefield's evidence in chief she was asked to "cast your mind back to 19 March last year, it was a Friday, do you recall any contact with Sarah on that day?" She then went on to give evidence of a weekend when the defendant had picked up Armstrong from Robertson Barracks after she had been shopping and had lunch with the defendant. She went on to describe

seeing Armstrong the following day at about 5-ish at the Eaton address, and a night when Armstrong had cooked dinner and Fengler was there as well, and the defendant and Fengler had gone off to play some “night cricket”.

87. However, in XXN Wakefield stated that she remembered Armstrong going to Cultana in South Australia but clearly had no idea when it was as her evidence was:

Do you remember when Kyle went away to Cultana in South Australia?---Yes.

You remember that he went down on exercise for one week and for a promotions course or a crew commanders course?---Yep.

And he stayed down there for a little while longer?---Yep.

Do you remember what time of year that was?---No.

Do you think it could have been February?---I’m not sure.

March?---I really don’t remember.

88. This was a good chance for Wakefield to have said that it was around the same time as the “night cricket” incident but she did not. Further in XXN she gave the following evidence about the Hungry Jack’s incident:

Do you know any of Sarah’s friends who might drive a blue ute, a dual cab?---The only blue ute that I know of was Andrew’s.

Andrew had a blue ute, did he? Okay, I see. And do you know if that had a back passenger area - like, so it had four doors. Do you remember going out to Hungry Jack’s?---Yep. That was the night that me, Sarah went to Robertson Barracks to hang out with Andrew and a few of his friends before we went out to town.

And that night, was that the night you went with Sarah and Andrew to Hungry Jack’s in Palmerston?---Yep.

89. Again, in my view, that was an opportunity for Wakefield to say that this was the night before the “night cricket” but she did not do so. At the end of her XXN she conceded as follows:

But having a weekend with Kyle and Sarah, that wasn't out of the ordinary, was it, you'd go over to her place all the time?---Yeah.

Sometimes Kyle was there, sometimes he wasn't, sometimes you stayed and played Xbox or Wii, sometimes you just sat around and watched telly and watched DVDs?---Yep.

So that wasn't anything out of the ordinary for you to be there in those circumstances?---Yeah.

So is it possible that the weekend that you're thinking about with the fluoro cricket might have been in early April, or much later, at the end of March?---I'm not exactly sure.

Is it possible?---I suppose.

Could have even been at the end of February before Kyle went away to Cultana?---I guess so.

So it's possible?---I suppose, since I don't remember exact dates.

90. Based on that evidence, the only evidence to suggest a date came from that date being specifically led by Mr Lee. I do not accept that Wakefield had any clear recollection or memory of the date of 19 March 2010. I find that she was just adopting what had been put to her. In ReXN Mr Lee sought to strengthen the date of the "night cricket" again in a highly leading way as follows:

MR LEE: Just some clarification. The Hungry Jack's incident, was that the night before the cricket - the fluoro cricket?---From what I remember it, yeah.

So that was the following day?---Yep.

91. I am unable to accept that the incident with the "night cricket" (assuming any such incident did occur) occurred on 20 March 2010. The defendant in her evidence also referred to this same weekend and the "night cricket" and said that the following occurred that night:

So how is it between Andrew and Kyle on 20 March, last year?---There was some tension.

Why was there this tension?---I don't know. Andrew was nice and polite to Kyle, but Kyle just never liked him.

What happened on Saturday between Kyle and – anything between Kyle and Andrew that you recollect?---They got into a fight and I was - - -

What do you mean they got into a fight?---Kyle was yelling at Andrew and Andrew was just kind of trying to explain.

What was Kyle yelling at Andrew about?---The fact that I didn't come home and that Andrew was taking me away from him and that it's not right and everything like that.

And did that escalate, or what happened?---It was going to escalate. Kyle was getting really angry and I was worried that he was going to throw Andrew down the stairs.

So what happened?---I got in the middle and pretty much calmed it all down.

And did it calm it down?---It calmed it down but there was still the tension there and I was really relieved when Clancy rocked up because she helped with the – keeping them quiet and - - -

92. Yet in her evidence Wakefield described the situation as follows:

So that weekend, other than the fact that they went off to play night cricket, had you ever known Sarah to do that before?---No. They just came out with it that night.

That was the one and only night. Did anything happen between Andrew and Kyle that night?---No.

Or the next day?---They seemed pretty friendly.

They seemed pretty friendly. Everything was all above board?---Yep.

93. I find this evidence to be inconsistent. On the one hand the defendant is saying she was worried Armstrong was going to throw Fengler down the stairs, and even though the situation calmed down there was ongoing tension. On the other hand Wakefield said they seemed "pretty friendly".

94. The only objective evidence (the ATM records – ExD1; the military records – ExD2; and phone records - ExP7) all, in my view, support a conclusion that Armstrong was in South Australia on 19, 20 and 21 March 2010. Taking all the evidence into account, and even allowing for the demeanour

and shortcomings in the evidence of Armstrong (which I refer to in more detail when considering charge 2), I reject the evidence of the defendant and Wakefield and find beyond all reasonable doubt that Armstrong was not in Darwin on 19 or 20 March 2010.

95. I therefore find beyond all reasonable doubt that Armstrong did not send or receive any text messages on phone ending294 to or from the UCPO on 19 March 2010. I further find beyond all reasonable doubt that any text messages received by or sent from phone ending294 on 19 March 2010 were received by and sent by the defendant.
96. The UCPO went on to say what transpired at Hungry Jacks on 19 March 2010 as follows at paragraphs 27 to 34 of ExP8:

27. At 9:49pm, I arrived at Hungry Jacks and noticed only a couple of vehicles parked in the carpark, including an older model, dark blue Holden dual cab utility parked nose in outside the front door. There were at least 2 passengers inside this vehicle. The driver's door was open and a young Caucasian female was standing there. This female (F1) was wearing a pale coloured, patterned summer dress, was about 155cm tall, medium build, had blonde hair, fair skin and in her early 20's in age. As soon as I arrived I stood at the shop front, about 4 or 5 metres to the right of the front door and the utility described above and sent a text message to 0410948294 saying, "Am here. Wearing black check shirt, Blonde Hair."

28. Immediately after sending this message I noticed that F1 grabbed her phone from inside the front of the ute, looked at the screen, which was illuminated, and then directly walked over to me carrying a small dark coloured clutch bag.

29. I said, "How you doing?"

30. She said, "Good", and further explained she had to hide what we were doing from a male in her car. At a closer look at F1, she looked like a lighter version of the photograph I had seen for the subscriber of the phone number 0410948294, Sarah ARMSTRONG. At this time, another female (F2) walked over to F1 and I. This female was about 175cm tall, of medium build, blonde curly/wavy hair and Caucasian in her early 20's. F2 said, "I'm here to block this" and stood blocking the view of F1's vehicle. F2 appeared affected by drugs at the time as her eyes were dilated and she was overly friendly and euphoric, wanting to shake hands and slurring how pretty I was.

31. F1 appeared very nervous and I asked if she wanted to go away from her car to somewhere less obvious, but she declined and appeared to just want to quickly do 'the deal'. Her hands were shaking and she sounded nervous in her speech. F1 then opened up her clutch bag for me to look inside and said, "20 is all I have". Inside the bag I saw a clear clip seal bag with red capsules inside it. I then pulled out \$200 from the left pocket of my black shorts and handed it to F1, saying, "Here's 200 right?" At this same time, F1 took the clip seal bag containing the capsules out of her bag and handed it to me. I put the clip seal bag in the left pocket of my shorts and all three of us started walking away from the shop front, towards F1's vehicle.

32. At this time, I said to F1, "is there any chance of getting some roundies off you sometime?"

33. F1 replied, "No. I can only get these. There is another shipment coming in 6 weeks."

34. I then thanked F1 and walked back towards KFC. As I walked away I turned back to look at D1's ute to try to subtly get the registration, however, at the quick glance I only got the first three digits, 959, and noticed that it was Northern Territory number plates. (emphasis added)

97. None of this evidence was challenged in XXN, and I accept this evidence as being true. It is clear (and I find) that the "F1" referred to was the defendant and the "F2" referred to was Wakefield. I find that Wakefield was deliberately trying to block what was happening.

98. Wakefield gave sworn evidence before me in the defence case. As to what her involvement was at Hungry jacks, she said in XXN:

Did she come up to you or did Sarah and you go up to her?---Well, Sarah went up to her and then I went over to see what was going on.

And what was going on?---They were talking at the moment and then they exchanged something.

Were you close enough to hear what they were talking about?---I wasn't really paying attention.

How far away from them were you?---I was standing next to Sarah but I was looking around.

So you were right next to her?---I guess.

You were in the car park, weren't you? Was it dark roundabouts where you were?---Yeah.

And the main part of the store, you were in between it and Sarah, weren't you, say, the entrance to Hungry Jack's?---I guess so.

And did you see what they exchanged?---No.

Sorry?---No.

You didn't see it?---No. Probably the bag that they were in.

But did you actually see it?---No.

Did you see any money change hands?---No.

Did Sarah show you the money that she got?---She showed me afterwards.

And what did she show you?---I don't know how much it was.

But she showed you the money that she'd got after that?---Yeah.

Did you talk about what had happened?---Not really, because round about then Andrew and one of the girls that were on base came out with the food and we left.

So there were a heap of you in the car?---There was only four of us.

So was there another car that went with you to Hungry Jack's as well?---No.

It was just your car, or the car that Andrew was driving?---Yep.

Did you talk about what had happened with Sarah?---Not really.

Did you think what had happened was strange?---I guess so.

I mean, you were there right beside Sarah, she'd showed you these pills, they were in a little clipseal bag, she showed you money that she'd got from this transaction that had happened, did you think that was unusual?---Yeah.

Did you speak to her about it and ask her what was going on?---I did but, you know, we didn't talk about it for very long.

Is that because Sarah said 'don't worry about it - - -?---No.

- - - 'stay out of it'?---Just because it wasn't my business.

Were you worried that, potentially, your best friend was dealing drugs in a car park at Hungry Jack's in Palmerston?---I didn't think much of it because they weren't actually, like, any harmful drugs.

Had you ever seen Sarah do that before?---No.

Did she tell you why she was doing it?---I think at the time it was because they needed money.

She wasn't selling herbal tablets, was she? Well, know that they were herbal tablets because you saw the container?---Yep.

But she wasn't doing a deal for herbal tablets, was she?---I'm not sure exactly what they were saying they were.

She was selling it like something else?---I guess so.

I guess I'm asking for something a little bit more specific - - -?--- Well, I don't exactly know what she said they were, so - I'm guessing maybe she could've said that they were more than that.

So your best friend, doing a deal in a car park at Palmerston, at Hungry Jack's, changing over stuff for money and you didn't think to ask her about the trouble that she might be getting into. Is that what best friends do?---Well, of course, I was worried about her but I wasn't going to make a big deal of it if this is something that she wanted to do. I talked about it with her later but she didn't really want to talk about it that much.

Is that because you suspected that she was dealing that stuff like it was something not herbal or legal, she was dealing something illegal?---I guess so.

99. I found this evidence of Wakefield to be thoroughly unconvincing, and her demeanour to be unconvincing. As to Wakefield's knowledge and involvement the defendant said the following in her EROI:

L: And there's just one thing? (inaudible) covered our friend.

K: Hmm?

L: Do we need to cover her friend? (inaudible).

K: Alright. Who was your – ah – your friend that you had at Hungry Jacks?

B: Hmm, she's just my best friend, Clancy.

K: Yep.

B: (inaudible) she only did it because one of my old high school friends, Joe was there and we don't want him to know (*sniff*) ---

K: Oh, yep.

B: ---but Clancy knew because, like she overheard me and Kyle (*sniff*). But she was only there to protect me from getting in trouble from my friend.

K: Yep. Alright.

100. I find this to be the true situation and what Wakefield said in her evidence to be deliberately untrue. I do not accept Wakefield as a witness of truth. I find that Wakefield knew far more than she was willing to tell the court. I find that she knew the defendant was involved in exchanging red capsules for money and she willingly assisted in trying to block the transaction from others (as that was the what she said her purpose was to the UCPO in the UCPO's unchallenged evidence). As the defendant's best friend she was willing to help her, and I find that she was also willing to lie in court for her. I reject her evidence on this topic and generally. I am satisfied that Wakefield was prepared to lie about her knowledge and involvement at Hungry Jacks and generally. I find that she was also prepared to say whatever she thought might help her best friend (the defendant) including that Armstrong was in Darwin at this crucial time.

101. In the defendant's EROI she said the following occurred at Hungry Jacks at pages 10-12 of the transcript to ExP4:

K: Ok. And can you tell me what happened at Hungry Jacks?

B: Um – well, she got there ---

K: *(cough)*

B: ---and – um – like we introduced ourselves and everything like that. *(sniff)*. And then – um – yeah, she gave me two hundred dollars and I gave her some pills.

K: Ok, how many did you give her that night?

B: Um, twenty.

K: Ok, and they were the same tablets ---

B: Yeah.

K: --- where you were talking or pill – ah ---

B: *(sniff)*

K: --- sorry, capsules that we're talking about ---

B: Yeah.

K: Yep, ok. And what did you do with the two hundred dollars?

B: *(sniff)* Um – (inaudible) spent it on alcohol.

K: Hmm ---

B: *(sniff)*

K: --- alright. Um – can you tell me what vehicle you were in that night?

B: I was in my friend's car.

K: Ok, what's ---

B: 'Cos he ---

K: --- what sort of car is that?

B: Ah – it's a blue ute.

K: Yep. What is, would you agree with me it'd be a blue Holden dual cab?

B: Ah – could be (*heh*).

K: Ok. But ---

B: Just know it's blue.

K: --- blue dual cab?

B: (*sniff*) Yep.

K: Yep, ok. Alright – um – so that, that occurred on the – um – nineteenth of March? Ok.

B: Ok.

102. The defendant again made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI, and I accept it. It is clear from other evidence in the case that the blue utility belonged to Fengler. Given that on the evidence the defendant, Fengler, Wakefield and maybe others went out drinking in town that night her explanation that she spent the money on alcohol appears logical and most likely truthful. She later changed her evidence about what she did with the money, but I find what she said in the EROI was the truth.
103. It was the defendant's evidence that this was all Armstrong's idea, but she was left to do the transaction as he couldn't make it as he was out drinking with friends somewhere in Darwin. But she was also to be out drinking with friends in Darwin, so they were both supposedly in the same position. If what the defendant said in her evidence was true, namely that it was Armstrong who pushed her into doing this first transaction, I would expect that he would be anxious to know how it went. On the defendant's evidence she was to meet an unknown person in a car park, to exchange pills for cash, and she then went out drinking with Fengler and others, and she

didn't go home at all that night (even though Armstrong had supposedly travelled from SA to the NT to be with her, but then he was going out drinking with his friends without her), but rather she stayed at Fengler's residence (even though Armstrong didn't like him, and clearly didn't trust him) and didn't return home until 0830 on 20 March 2010 supposedly still in the company of Fengler. I find the defendant's evidence in this regard to be so implausible that I cannot accept it, and reject it. Her evidence makes no logical sense.

104. An analysis of ExP7 discloses that at 1919 Darwin time the defendant sent a text to Armstrong. There was then no phone contact between them at all leading up to and after the Hungry Jack's exchange (that occurred at about 2149) until 1851 on 20 March 2010 when the defendant rang Armstrong and the call lasted 5 seconds. Whilst I don't know the actual Darwin times for Armstrong's phone (ExD3) these records indicate the last contact between them on 19 March 2010 as being at 1617 by voice message to ...727, with no contact at all on 20 March 2010. Whatever the actual Darwin time was for the 1617 record it is most unlikely to be anywhere near the time of the Hungry Jack's incident.
105. If Armstrong was in Darwin as the defendant says (and he knew the defendant was to be involved in a "drug" deal that night), he had no way of knowing whether the defendant was alright, or whether the exchange had gone ahead. For all Armstrong would know she might be in police custody, or in difficulty. I find this absence of any contact to be inconsistent with the defendant's version, that it was Armstrong who set the whole deal up and then sent her off to meet the buyer. The lack of phone contact is more consistent with them both going out drinking (her in Darwin and him in South Australia) and catching up by phone later the next day. It is also more consistent with Armstrong not knowing about the dealings of 19 March 2010 in relation to the capsules.
106. Further, as noted earlier the defendant seemed to be suggesting that Armstrong had returned to Darwin totally unexpectedly, following her being upset the day before. Yet on her evidence they did not see each other that

night, but rather went out separately. This is inconsistent. Further, on the defendant's evidence she has gone out with Fengler (who Armstrong clearly did not like or trust) and stayed the whole night at his place, rather than going home to Armstrong who had supposedly flown all the way from Adelaide to see her. Again this makes no sense. In my view, the only way it makes sense that the defendant was out drinking with Fengler and spent the whole night with him was if Armstrong was in Adelaide and didn't know what was going on. I find that this was the true situation.

107. As earlier noted, it is unclear how Armstrong was supposed to have managed to have flown from Adelaide to Darwin on the 19th of March. There was no evidence that he had been on any commercial or military flight on this day. The defendant did not suggest in her evidence how he had allegedly managed this. Nor was there any evidence as to how he might have managed to get back to Adelaide. As previously noted, the only evidence that Armstrong was in Darwin on 19 March comes from the defendant and Wakefield. All other objective evidence in the case (ATM records – ExD1, phone records – ExD3 and ExP7, military records ExD2) strongly suggests that he was in South Australia full time from at least 12 March to 30 March 2010.
108. Again, it was not necessary for the defence to prove that Armstrong was in Darwin at this time, but just to raise it as a reasonable inference on the evidence. It was for the prosecution to satisfy the court beyond all reasonable doubt that Armstrong was not in Darwin, as the author of the original text was important in order to identify who (out of the defendant and Armstrong, as it was not suggested that it could have been anyone else) was representing the capsules as ecstasy. I am satisfied beyond all reasonable doubt that the prosecution have managed to do that in this case.
109. I reject the evidence of the defendant and Wakefield in relation to Armstrong being in Darwin rather than in South Australia (on 19 and 20 March 2010) as being deliberately false. I find beyond all reasonable doubt that Armstrong was not in Darwin at all between 12 and 30 March 2010. I

find that all phone calls and text messages from and to the phone number ending ...294 during this period were made by and received by the defendant.

110. I now turn to consider the evidence in relation to charge 2.

111. The UCPO's evidence as to charge 2 comes from paragraphs 3 to 19 of a further statutory declaration of the 27th day of April, ExP9, where she states what she did on 15 & 16 April 2010 as follows:

3. At 4:44pm I sent an SMS to 0410948294 on the DES phone saying, "Hey mate. Am back from Sydney and keen for some more gear u gave me a couple of weeks ago if still available? U free tom arvo to catch up?"

4. At 5:15pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Yeah no worries can you come to my place?"

5. At 4:50pm I sent an SMS to 0410948294 on the DES phone saying, "Depends. Do u live out palmy way or in town?"

6. At 5:21pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Raaf Base"

7. At 4:59 I sent an SMS to 0410948294 on the DES phone saying, "Ok. Can we meet up at the shops at the front of Raaf Base then. What time tom arvo suits u? Are they still going for 10 bucks ea. Do u have bickies yet or is it same stuff as before?"

8. As 5:34pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Same stuff as before. Same as before depending on how many your after? Can meet at 6 if that's ok?"

9. At 5:13pm I sent an SMS to 0410948294 on the DES phone saying, "Cool. After 20 again if that's okay? Can we make it 7 just got some stuff on earlier and might not get there by 6? Cheers."

10. At 5:46pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Ok 7 is easy done and 20 is no problems."

11. At 5:22pm I sent an SMS to 0410948294 on the DES phone saying, "Excellent. See you then."

12. On Friday 16th April 2010, I was rostered on duty from 6pm to 2am the next day. Upon my arrival at work I spoke with my supervisor, Acting Sergeant Chris McKELLAR, regarding the controlled purchase arranged for tonight's shift. During the controlled purchase I would act as an Undercover Police Operative (UCO) and purchase drugs off Sarah, the user of 0410948294. At this point, McKELLAR issued me with \$200 (serial numbers recorded) cash to purchase the drugs. I put the \$200 in the left pocket of my shorts.

13. At about 6:30pm (or 6:57pm, as it was incorrectly displayed on the DES phone), I received an SMS from 0410948294 on the DES phone saying, "Hey if you finish what you had to do early give us a text and we can meet earlier if you want."

14. At 6:40pm, Senior Constable Juanita Day cause for me to be searched to ensue I had nothing in my possession apart from \$200 for the drug purchase.

15. At 6:47pm I sent an SMS to 0410948294 on the DES phone saying, "Hey sorry just on my way now. Be about 15. See you then."

16. At 6:55pm, I left the DES office and drove towards Winnellie Shops.

17. At 7:38pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Hey where are ya?"

18. At 7:09pm I sent an SMS to 0410948294 on the DES phone saying, "Sorry mate. Winnellie now."

19. At 7:40pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Ok what car should I be looking out for?"

112. It is apparent (and I find) from the time sequences that the time difference as shown on the defendant's phone was now only 30 minutes out rather than 90 minutes as it was in relation to March 2010. This would be consistent with the end of daylight saving. The defendant in her EROI said the following in relation to this at page 12 of the transcript to ExP4:

K: Um – and then the, the next time – ah – Angela contacted you is between the –ah- the fifteenth and sixteenth of April, which is last month obviously –um- and arranged to purchase another quantity of tablets ---

B: Yep.

K: ---um- and during the course of that conversation –ah- you arranged to meet Ange at the –ah- Winnellie shops, would you agree with that?

B: Yep.

113. Again, the defendant made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI. The UCPO went on to say what happened at the Winnellie shops on 16 April 2010 as follows at paragraphs 20 to 33 of ExP9 as follows:

20. At 7:15pm, I arrived at the Winnellie Shops, Stuart Highway, Winnellie. At that time I noticed only 1 or 2 vehicles parked in the carpark, including an older model, dark grey Toyota Hilux dual cap utility, Northern Territory registration 474288. I then parked to the front side of the Hilux and stepped out of my vehicle to see two people, a male and a female walking from the Hilux towards me. The female was the same female, identified as Sarah, whom I had purchased capsules from at Hungry Jacks on the 19th March 2010. She was about 155cm tall, medium build, had blonde hair, fair skin and in her early 20's in age. The male was Caucasian, in his mid-20's, had short dark brown hair, with facial stubble and was of medium build.

21. At this time the three of us said hello to each other and as the male held out his hand to shake mine he said, "My name's Strongy. And your name?"

22. I replied, "Ange. Are you guys mates?"

23. Strongy and Sarah replied, "yeah."

24. We then spoke about general conversation including what the plans for the night were and so forth and then Strongy asked me if I wanted a cigarette. I replied, "No I'm right?"

25. Strongy then said, "No, here" and held out a packet of Winfield Gold cigarettes; 25 pack, hinting that the capsules were inside the packet.

26. I then took possession of the cigarette packet and said, “200 right.. For 20?” and handed Strongy the \$200 cash from my left shorts pocket.

27. Strongy then took the money and said, “Yeah that’s it.”

28. I said, “Is there any chance of getting more than 20?”

29. **Sarah and Strongy both replied**, “How many?”

30. I said, “100?”

31. **Sarah and Strongy both replied**, “Oh yeah, for sure.”

32. The three of us then spoke generally about the next drug shipment date not being known and how the price may have to increase to \$15 per capsule. Strongy informed me that Sarah would contact me in the next couple of days to advise me when I can purchase the 100 capsules off them. During the conversation **Sarah mentioned that the dealing side of things was Strongy’s area, but it was arranged that I was to organise my supply through Sarah.**

33. Sarah, Strongy and I then parted ways. I stepped back into the driver’s seat of my car, with a cigarette packet still in my hand, and drove away from the shops. I noticed Sarah and Strongy drove off in the Hilux and turned left heading towards the residential area of the Winnellie RAAF Base.

(emphasis added)

114. This evidence went unchallenged and I accept it. In particular, the UCPO was not seriously challenged about the involvement of the defendant, as highlighted in bold.

115. In her EROI, the defendant’s version of this meeting was as follows at pages 12-13 of the transcript to ExP4:

K: Ok, and then at –ah- at seven fifteen pm – um – you arrive there, oh sorry, Angela arrived there and you guys were already there ---

B: Yep.

K: ---and do you agree with me that –ah- Kyle was in the vehicle with you ---

B: Yes.

K: ---that time? Ok. Um – and that Kyle –ah- approached Ange and handed her a –ah- Winfield gold cigarette packet containing twenty capsules ---

B: Yep.

K: ---would you agree with that?

B: Yes.

A: Ok. And in return – um – Ange gave Kyle two hundred dollars for those caps ---

B: Yes.

K: ---caps again?

B: (*sniff*).

K: And then – ah – what vehicle were you driving that night?

B: Mine.

K: And your vehicle is the – ah – the grey dual cab Hilux?

B: Yep.

K: Ah – alright, that's – ah – Northern Territory registered four-seven-four-two-eight-eight. And is that vehicle registered to you?

B: Yes.

K: Ok. Ah – and what happened to that two hundred dollars?

B: I can't remember.

116. The defendant again made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI, and I accept it. There was

no attempt to downplay the role of Armstrong or to suggest that he didn't know what was going on. Therefore there was no indication that the defendant was trying to take the blame so Armstrong might keep his job. Armstrong gave evidence as to his involvement in this transaction in his evidence as follows:

Sorry, I should say - that's a very leading question. The person that you referred to as Ang, how did you know her?---At an - Sarah said she met a new friend called Ang, through texting and everything like that - and out on the town, apparently - this is what she told me, that she was out on the town, she met a new friend. And I went 'Oh, okay, it's good that you're meeting new friends. Good one.' So she was texting away to Ang and everything like that. And, yeah, that was my, pretty much, involvement until the night Sarah took us down to Winnellie shops to meet her.

Now let's talk about the circumstances of that day. Do you remember when that happened?---Not off the top of my head, no.

If I said it was around about April or a bit towards the end of April, would that fit with your recollection?---Yeah, that - yes.

At that time, towards the end of April, were you and Sarah having difficulties?---Yes, we were.

You say that you went down to the Winnellie shops to meet Ang?---Yes.

How was that framed, how was that put to you, why were you in the car going to Winnellie shops?---Sarah said 'Do you want to come down to the shops and meet my friend, Ang?' I went 'Okay, not a problem. More than happy to meet your friends if we're going to go out or anything like that - into town - I like to know at least who your friends are.' So went down to the shops and waited around and Ang turned up. During that time she emptied out my smoke pack and she put a number of capsules in there.

Who did that?---Sarah did.

Where did she do that?---In the console of the car. She emptied all my smokes out and they went on the console, on the floor, pretty much through the car, and then she put pills in little bags in there.

And later in his evidence.....

So those were the pills that she transferred from - where did she transfer them from into the cigarette packet?---From the centre

console - I don't know what you call it - the - there's like a little compartment there - out of there into the packet. That was in the little recess in front of that in the centre console.

So did you see what had been - what container or where those pills had been transferred from - what they'd been contained in before they went into your cigarette packet?---No, I hadn't at that time. They were all just in the glove compartment.

Do you remember the colour of the pills?---Red.

Do you remember how many was put into your cigarette packet?---No, I can't give you an exact number but there was - there was two in each bag and she put a number of bags in there, I couldn't tell you exact - probably about 15, 20.

Once she did that, what happened next?---She handed me the pack, said 'Here comes Ang. Just go give her the smoke packet - pack of smokes' and everything like that. I'm like, 'What? All right.' Didn't sound really - it sounded a bit dodgy but I went 'Okay, not a problem.' Went up to Ang, introduced myself - my nickname's Strongie so I introduced myself as Strongie - 'How you going, Ang?' and we had a bit of idle chit-chat and I've gone - 'Yeah, you want a smoke - have your smokes?'

Yes?---She's gone 'No, I don't smoke' and I went, 'No, you want the smokes' - so I 'You want smokes?'. She said 'Okay. Are they in there?' And I went 'Yeah, apparently - yes, they are.' Handed it off. She's handed me the cash. I've given it straight to Sarah, which was - she was on my right there. She's put it in her pocket and I've just walked back to the car to get a smoke, and they chin-wagged for a bit more.

So were you both outside the car, were you?---Yes, I got out of the car first and then she followed behind me because I wanted to introduce myself. I don't know her from a bar of soap so I want to get an impression and see - at that time I thought, a new friend.

So you introduced yourself to Ang?---Yes.

Sarah didn't introduce you to Ang?---No.

And do you remember what Ang said?---Yes. 'How you going. I'm Ang.' Everything like that. And then - that's about all I can remember. There was just idle chit-chat, stuff about cars or something like that.

Between Sarah and Ang?---Yeah, something like that. I was at the car when they were talking. I walked away, gave Sarah cash,

walked away to the car and they were having their little idle chit-chat.

Do you remember how much cash you received?---It was about 200.

Did you count it?---I didn't count it, no. I gave it to - it looked about - it looked like four - four fifties. It was only very small, so I was, like, right, get it to Sarah.

Now the time that you gave it to Sarah was inside the car, is that correct?---No, I gave the money to her outside the car.

Outside the car?---Right. As soon as I received the cash I gave it straight off to Sarah.

Okay. And was Ang there when that happened?---Yeah, she was.

And did you see what Sarah did with the cash?---She put it in her pocket. I don't know which pocket it was but she put it in her pocket and started talking to Ang again.

What do you think had just happened then, Mr Armstrong?---I thought it was a deal.

A deal for what?---Drugs.

But the pills that you were handed over, what did you think they were?---Caffeine - herbal stuff - I mean, it's all caffeine-based things.

What made you think this was a drug deal?---Just the way - you don't hand over herbal stuff and it's for \$200. That day she gave - that was my first indication, like, you don't get that exorbitant amount of cash just for these things. Like, these are worth, like, a dollar, maybe. Like a hit of No-Doz. And you get No-Doz from the shop, 12 bucks.

And later in his evidence.....

So in terms of the discussion that you had that was before you went to South Australia and that was about selling the pills. Okay. Now who initiated that discussion?---Sarah did.

Did she suggest how much they should be sold for?---She said a price of about \$10 - \$15 a cap, and I went - for herbal. Well - - -

Did she speak to you about any more of the details about how she intended to sell it?---Nothing in the details of how she would sell it, no.

Did she tell you whether she'd made a sale?---No, she hadn't told me whether she made a sale at all.

So when you went to meet this friend, Ang, had Sarah said anything to you about her in relation to the pills?---No, not at that time, no. It was until after meeting Ang and that took place that I figured, 'All right, so she's a buyer and she's buying'.

Did you speak to Sarah about Ang being a buyer?---Yeah, I did.

Can you remember the words or the conversation or how you framed that?---No. No, not particularly, no.

Do you remember in your conversation with Ang whether you spoke to her about what those pills were that you handed over?---No, I can't, no, sorry.

Can you remember Ang discussing what those pills were?---I can remember that. I can remember her talking about 'what are these?' And, 'Are they bikkies?' If you call - I don't know what you call them - like if they're Ecstasy or something like that, I do believe she might've said something like that but I'm not sure on that. I remember her saying something along the lines.

Was that to you or was that to Sarah?---I think that was to Sarah.

In terms of the discussion that you had between Sarah and yourself about selling these pills for \$10 to \$15, was that your evidence?---Yes.

What was the plan, what was the point of doing this trade, or selling, did Sarah discuss it with you?---No, not at the - I believe it was for baby - so she was being - pregnant at the time, I do believe - if I can remember that far back. I believe she was pregnant, it was stuff for the kid - for the child coming.

So she told you that?---She'd use it for that sort of stuff but - - -

Was that as a part of that discussion that you'd had before you went away to South Australia?---No, it wasn't. It was after, I believe, after seeing Ang.

It was after seeing Ang?---Yeah.

She told you that that's what she was doing it for?---Mm mm.

117. I did not find this evidence to be very compelling. He was suggesting that he went along at the request of the defendant to meet a "new friend" and

yet he was the one who went to the UCPO and exchanged the cigarette packet with tablets inside for money, without being introduced beforehand, and supposedly having no idea that this was going to happen. I do not accept this as fulsome and truthful evidence, and find that he was deliberately trying to downplay his knowledge and actual role in the matter. I find that he must have known what was going on and willingly taken part, despite his disintegrating relationship with the defendant at that time. Further, it was the evidence of the UCPO that the defendant and Armstrong were both involved in the discussion about further purchases, whereas Armstrong said he walked away and returned to the car. I don't believe Armstrong in this regard and prefer the unchallenged evidence of the UCPO.

118. I find that the defendant and Armstrong were both willing and active participants in the conduct that was the basis for charge 2 (and I make that finding being aware that Armstrong was dealt with in a separate hearing and apparently was acquitted).
119. I now turn to consider the evidence in relation to charge 3, and the events of 4 to 6 May 2010.
120. The UCPO's evidence as to charge 3 comes from paragraphs 3 to 28 of a further statutory declaration of the 6th day of May 2010, ExP10, as follows, starting with the events of 4 May 2010:

3. At 3:29pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Hey I'm back in Darwin n sorry it took longer than expected you still after 100?"

I digress to note that the defendant would have only just returned from her drive to Rockhampton to try and obtain a horse. Also, this was after she had been kicked out of the house by Armstrong, and after she had told Armstrong she wanted a divorce (as she said she did that a week before her arrest, yet as will appear later she changed that to suggest she asked for a divorce on 4 May).

4. At 3:03pm I sent an SMS to 0410948294 on the DES phone saying, "Hey mate. Yeah still keen for 100. U right to catch up tom sometime?"
5. At 3:35pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Hey yeah sure thing what time suits you?"
6. At 3:11pm I sent an SMS to 0410948294 on the DES phone saying, "Is about 1pm okay. Same place?"
7. At 3:42pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Yeah 1 is fine same place is ok"
8. At 3:13pm I sent an SMS to 0410948294 on the DES phone saying, "Cool. See you then."
9. On Wednesday 5th May 2010, I was rostered on duty from 8am to 4pm. Upon my arrival at work I spoke with my supervisor, Acting Sergeant Chris McKELLAR, regarding the controlled purchase arranged for today's shift. During the controlled purchase I would act as an Undercover Police Operative (UCO) and purchase drugs off the user of 0410948294, believed to be Sarah ARMSTRONG, the defendant in this matter. At this point, McKELLAR issued me with \$1,000 (serial numbers recorded) cash to purchase the drugs. I put the \$1,000 in the inner pocket of my shorts.
10. At about 12:51pm I arrived at the Winnellie Shopping Centre, Winnellie and waited for Sarah to arrive.
11. At 1:03pm I sent an SMS to 0410948294 on the DES phone saying, "Hey Sarah. Am at shops. In white 4WD. See you soon."
12. At 1:35pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Hey sorry running a little late."
13. At 1:07pm I sent an SMS to 0410948294 on the DES phone saying, "That's cool. I'll be here. Let me no if yr going to be a while. Cheers."
14. At 1:38pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "Just left work got to swing past home and get your stuff be about half hour sorry finished work late."
15. At 1:10pm I sent an SMS to 0410948294 on the DES phone saying, "No worries. See u soon."

16. About 1:30pm, I saw the vehicle registered to Sarah ARMSTRONG, being a grey Toyota Hilux Ute – NT registration 474288, drive into the entrance of the RAAF Base residential area.

17. At 2:01pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, “Hey sorry Strongy has my stuff I can’t get hold of him I’ll give you a text later and re organise I’m really sorry.”

I digress to note that this is consistent with the defendant having been kicked out of the house by Armstrong before this date, and the capsules still being at the house.

18. At 1:35pm I sent an SMS to 0410948294 on the DES phone saying, “Okay”.

19. A few minutes later I saw the grey Hilux – NT registration 474288 drive out of the entrance of the RAAF Base towards the Stuart Highway. I then drove from the Winnellie shops and returned to the DES office and returned the \$1,000 drug purchase money to McKELLAR.

20. At 5:09pm “(which is not the correct time, but was the time listed on the phone), whilst officially off duty, I received an SMS from 0410948294 on the DES phone saying, “Hey sorry about earlier I got your stuff did you still want it?”

21. At 7:21pm I sent an SMS to 0410948294 on the DES phone saying, “Hey that’s cool. Yeah still keen but have to be tom now if yr free. Same time and place ok?”

22. At 8:04pm (which is not the correct time, but was listed on the phone), I received an SMS from 0410948294 on the DES phone saying, “Yeah no probs.”

23. On Thursday 6th May 2010, I was rostered on duty in DES from 8am until 4pm. At the commencement of my shift I informed McKELLAR that I had arranged with Sarah to complete the controlled drug purchase at Winnellie Shops at 1pm today.

24. At 12:20pm, Senior Constable Juanita BAUWENS (aka DAY) caused for me to be searched to ensure I had nothing in my possession. At this time I was also issued with \$1,000 (serial numbers recorded) cash to purchase the drugs by McKELLAR. I signed for the possession of this money, counted it as being \$1,000 and placed it in my left shorts pocket.

25. At about 12:30pm I drove from the Peter McAulay Centre towards the Winnellie Shops.

26. At about 12:50pm I arrived at the Winnellie Shopping Centre, Winnellie, parked in the centre carpark area on the Stuart Highway side and waited for Sarah to arrive.

27. At 12:52pm I sent an SMS to 0410948294 on the DMS phone saying, "Hey Sarah. Am at shops now. Cheers."

28. At 1:24pm (which is not the correct time, but was the time listed on the phone), I received an SMS from 0410948294 on the DES phone saying, "K be bout 2 mins."

121. This evidence went unchallenged and I accept it. It is apparent (and I find) from the time sequences that the time difference as shown on the defendant's phone was now only 30 minutes out rather than 90 minutes as it was in March 2010 (and this difference would be explicable by the cessation of daylight saving).

122. In her EROI the defendant's version of this appears at pages 13-14 of the transcript to ExP4 as follows:

K: Ok. (*cough*) Alright – um – and then – ah – yesterday you spoke -

B: (*sniff*).

K: ---or-ah-had communication with Angela ---

B: Yes.

K: ---ah-in relation to – um – to meeting up at the same ---

B: Hmm.

K: ---place again, is that right?

B: (*sniff*) Yes.

K: And, and you agreed to meet her at, at one o'clock?

B: Yeah.

K: ---at the Winnellie shops ---

B: (*sniff*)

K: ---and for some reason --ah- something happened?

B: Yeah, I forgot and I was running late and then (*sniff*) – um – Kyle and I had a fight and I ended up being locked out of the house so I couldn't get inside.

K: Ok. And then you arranged --ah- for that same meeting to take place today?

B: Yeah.

123. The defendant made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI, and I accept it. I find that the defendant and Armstrong had separated before 4 May 2010, and were now living separate and apart. The defendant was living with her parents, and Armstrong was still living at their former Eaton address. The marriage had irretrievably broken down and the defendant had (before 4 May 2010) indicated to Armstrong that she wanted a divorce. I find beyond all reasonable doubt that it was the defendant (unprompted by Armstrong) who initiated and took part in the text exchanges between 4 and 6 May 2010. I find this was her idea alone, and was to acquire money. The defendant was unlikely to receive any financial support from Armstrong given the unhappy state of their (now) former relationship.

124. The UCPO went on to say what happened at the Winnellie shops on 6 May 2010 as follows at paragraphs 29 to 35 of ExP10 as follows:

29. At 12:59pm I saw NT 474288, a grey Toyota Hilux dual cab utility with a fibreglass canopy, enter the Winnellie Shops complex. The driver of the vehicle was Sarah and the passenger was Strongy, who was wearing a Military camouflage uniform. Sarah parked the vehicle to the rear left side of my vehicle and I subsequently walked to Sarah at the driver's door of her vehicle, which was now open.

30. At about 1pm, the three of us said our hellos and Sarah showed me a red and green rocket shaped container that she had in the car. I asked Sarah what the container was and she replied that it was a firecracker and that she didn't have anything else to put the gear in.

31. I then asked Sarah, "Is this the same stuff as I've been getting off you?"

32. Sarah replied, "Yeah the same as before – they are in packets of two," and pulled off the lid to the container. Inside I saw a large quantity of red capsules packages into clear plastic bags in lots of two. Sarah then placed the lid back on the container and handed it to me. At the same time as this I removed the \$1,000 cash from my left shorts pocket. I asked Sarah to check that all the money was there as she grabbed hold of the money. Sarah then, still sitting in the driver's seat, counted the money next to Strongy and said it was "all good".

33. Sarah then said to me, "If you need anymore give us a call."

34. I replied, "Sure, I'll let you know when I need more."

35. I then returned to my vehicle and drove away behind Sarah and Strongy's vehicle. Sarah turned left from the carpark entrance and drove towards the RAAF Base entrance and I turned right towards the Stuart Highway traffic lights.

125. Again this evidence went unchallenged and I accept it.

126. The defendant's version of this meeting appears at pages 14-15 of the transcript to the EROI as follows:

K: Alright. Um – and then at about one o'clock today, can you tell me what happened then?

B: Um – well, we drive up and found a parking spot and then Ange walked over to us (*sniff*) and like we talking for a little bit, just like 'How's it going?' and stuff like that. And then (*sniff*) –um- we started talking about the pills and then (*sniff*) –um- she handed me some money and I counted it out and then gave her the pills (*sniff*).

K: Ok. And how many did you give her today?

B: Ah – a hundred.

K: Ok. And – ah – how much money did she give you in return?

B: A thousand dollars.

K: Alright. And do you agree that that thousand dollars was the money in the centre console of the vehicle ---

B: Yes.

K: ---when we pulled you up?

B: *(sniff)*

K: Ok. Um – can you tell me what happened after you, you gave the capsules to Ange?

B: Um – *(sniff)* well she headed back to her car and we headed home 'cos Kyle felt sick.

K: Yep.

B: *(sniff)*

K: And what happened then?

B: Um – we got pulled over.

K: Ok. And do you agree that Detective Leafe and I were there?

B: Yes.

K: Ok, and as a result, we, we told you what was happening and searched your car?

B: Yes.

K: Ok, and we found –ah- the thousand dollars?

B: Hmm.

K: Ok, and that's the thousand dollars from Ange ---

B: Yes.

K: ---the same type of capsules, thee was another –ah- hundred and seventy-six of them?

B: Hmm, ok (*sniff*) I don't know how many there was left.

K: Ok, would, would you agree with that?

B: Um – yeah, ok (*sniff*).

127. The defendant again made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI, and I accept it. In his evidence Armstrong confirmed that he was feeling unwell this day. He said he took no part in the transaction, and that generally accords with the evidence of the UCPO. Clearly the marriage was over by this time, yet Armstrong was still using the defendant to meet his transport needs from time to time. There was only one vehicle between them, and that was the defendants. It appears that Armstrong may not have had a driver's licence in any event.

128. In her evidence before me the defendant gave the following evidence in relation to this last transaction:

The third and final occasion, the time when you get pulled over by the police - - -?---Yes.

- - - what are the arrangements prior – leading up to that physical meeting?---We were supposed to meet the day before.

And what - - -?---And Kyle organised it all and said: 'Yep, this is where the stuff is. You've just got - - - '

Who's he saying that to?---To me. Saying: 'This is where it is. This is what time and just pick it all up.' But, I'd asked him for a divorce on the 4th and - - -

4 May?---Yep, and then he obviously decided the night of the 5th that he didn't – well, the morning of the 5th, that he didn't want to go ahead with what he'd already planned.

All right?---So when I went to the house to get the stuff that – from where he said it was, it wasn't there.

Where did he say it was?---He said that it was sitting on the bench.

At 7 Careela?---Yes.

So where in fact was it? Did you - - -?---I couldn't find it in the house.

Okay?---And I just – I told them that – I'd sent a message explaining that I couldn't find it and that Kyle had it.

And so what happened after you sent that text?---I think we just rescheduled it.

For which day, the - - -?---The 6th.

Now were you aware of an appointment with a local lawyer in relation to the divorce?---No.

How was Kyle health-wise on the Friday, 6 May?---He had a cold.

Had a cold, all right?---He was being a big sook about it.

Now where did you – where was he, was he at work that day?---Yes, he was.

And what did you do?---That day?

Yes?---Not much, I think I was sleeping.

And how did he get home from work?---I picked him up and drove him home, but when I picked him up, he said we had – he reminded me we had to stop off at the shops.

Okay?---To meet up - - -

The Winnellie shops?---Yep, to meet up with Ang. So I did and he pulled out a container from his dope bag - - -

Yes?---That had the pills in it, and he sat them at his feet.

What's the container?---It's like a fireworks container.

And did you know what was inside the container?---I guessed that it was the pills because that's what he put them in before.

Now who's using the phone 294, at this point on the - - -?---Kyle, because I was driving.

Who arrives first at the Winnellie shops on the third occasion?--- Believe that Ang arrived before us.

And did she – what happened when you got there?---We pulled up and then she approached Kyle but he sent her to come around to my side. So she did and then chat and Kyle was talking to her over me.

Across the front of you?---Across me, yep, and then - - -

And who handed?---Kyle handed me the fireworks container.

The what, sorry?---The fireworks container.

Yes?---And then I handed it to Ang, and she handed me a big heap of money.

And did you pocket that money?---I put it in the centre console because there was all of our phone and wallets in there.

Just lying loosely, there?---Yes.

Did you remain there for much longer, after that?---No.

Where did you go?---We went – or we started to go home and then we got pulled over.

129. I do not accept the defendant's evidence as to how this transaction came about. Clearly, on the evidence of Armstrong and the defendant the marriage had come to an end well before 4 May. Armstrong had kicked the defendant out of the Eaton residence, and I find this had occurred (and she was living back with her parents) before she drove off to Rockhampton at the end of April with Wakefield. The defendant never suggested in her evidence that at any time after her separation from Armstrong that he had possession of her phone ending in the number ...294. An analysis of Armstrong's phone records (ExD3) leading up to this period discloses as follows (but only referring to the date rather than time, as I cannot be sure what the actual time was), and an analysis of the defendant's phone records for ...294 (in *italics*) from 1/5/10 (ExP7) also discloses:

KA made numerous text messages to ...294 up to and including 31/3/10 but thereafter contact reduced markedly

1/4/10 KA sent a text to defendant at ...294

1/4/10 KA called defendant on ...727 for 3 seconds

1/4/10 KA sent a text to defendant on ...294

2/4/10 – 11/4/10 no phone contact between KA and defendant at all, and the reason for this is not explained on the evidence;

12/4/10 – 29/4/10 regular phone calls from KA to defendant on ...727 but no text messages at all to ...294, and why this change in pattern occurred is not explained on the evidence;

1/5/10 KA sent text to defendant on ...294

1/5/10 KA called defendant on ...294 for 2 seconds

1/5/10 KA called CW twice for 5 & 8 seconds

1/5/10 KA called defendant on ...727 for 4 seconds

1/5/10 KA called CW for 3 seconds

2/5/10 @ 1107 defendant called KA for 171 seconds

2/5/10 @ 1136 defendant sent text to KA

3/5/10 KA called defendant on ...727 for 3 seconds

3/5/10 @ 1709 defendant sent text to KA

3/5/10 @ 1716 defendant sent text to CW

3/5/10 @ 1716 defendant sent text to CW

3/5/10 @ 2121 defendant sent text to KA

4/5/10 @ 1459 defendant sent text to UCPO

4/5/10 @ 1505 defendant sent text to UCPO

4/5/10 @ 1512 defendant sent text to UCPO

4/5/10 KA called CW twice for 2 seconds on each occasion

4/5/10 @ 1801 defendant sent text to CW

4/5/10 KA called CW 4 times with the longest call being for 64 seconds

5/5/10 no calls by KA to defendant or CW

5/5/10 @ 0740 defendant sent text to CW

5/5/10 @ 0741 defendant sent text to KA

5/5/10 @ 0750 defendant sent text to KA

5/5/10 @ 0751 defendant sent text to CW

5/5/10 @ 0820 defendant called KA for 2 seconds

5/5/10 @ 0822 defendant sent text to KA

5/5/10 @ 0829 defendant sent text to KA

5/5/10 @ 0903 defendant sent text to KA

5/5/10 @ 0944 defendant sent text to KA

5/5/10 @ 1305 defendant sent text to UCPO

5/5/10 @ 1308 defendant sent text to UCPO

5/5/10 @ 1331 defendant sent text to UCPO

5/5/10 @ 1639 defendant sent text to UCPO

5/5/10 @ 1934 defendant sent text to UCPO

5/5/10 @ 2123 defendant rang KA for 2,638 seconds

5/5/10 @ 2142 defendant sent text to KA

6/5/10 @ 0719 defendant rang KA for 36 seconds

6/5/10 KA sent text to defendant on ...294

6/5/10 @ 0800 defendant sent text to KA

6/5/10 @ 0915 defendant sent text to KA

6/5/10 KA sent text to defendant on ...294

6/5/10 @ 0930 defendant sent text to KA
6/5/10 @ 1118 defendant sent text to KA
6/5/10 @ 1209 defendant sent text to KA
6/5/10 KA sent text to defendant on ...294
6/5/10 @ 1222 defendant sent text to KA
6/5/10 @ 1254 defendant sent text to UCPO

130. In relation to the aforementioned analysis I have again used a shorthand description. Clearly, when I refer to “KA sent text” or “KA called” I am not assuming that it was KA who actually made the call or sent the text. Rather I use that terminology as a shorthand way of recording that it came from “KA’s” phone. Likewise, when I referred to “*defendant sent text*” or “*defendant called*” I am not assuming that it was the defendant who actually made the call or sent the text. Rather I use that terminology as a shorthand way of recording that it came from “*the defendant’s*” phone. However, a closer analysis does enable me to reach some conclusions in this regard.
131. Given the total breakdown of the marriage it is highly unlikely that Armstrong would have regular (if any) access to the defendant’s phone and vice versa. There was no evidence to suggest that either Armstrong’s or the defendant’s phones were somehow in the possession of the other for some or all of this analysis period. Further, if each of them had their own phones it would not be reasonably possible for the other to have access to or use the other’s phone between 4 and 5 May 2010 (given their separation). Further, it would be highly improbable that either of them would use the others phone (even if they did have access to it, which I find they did not) to call or send a text to themselves on their own phone.
132. It was the evidence of Armstrong and the defendant that Armstrong was working on 6 May 2010. Hence the defendant collected him from Robertson Barracks before the last offence was committed at about 1pm on 6 May. I do not know what time he started work, nor do I know how long he worked

on this particular day. I do know that he was unwell, so he may have left work early.

133. The sequence of calls and text messages leave me in no reasonable doubt that all the text messages to and from the UCPO on 4, 5 and 6 May 2010 were made solely by the defendant, and not by Armstrong. By this stage I find that the defendant was acting alone, and not in concert with Armstrong, although she made no attempt to hide the transaction from him.

134. As to her general state of knowledge and intent the defendant said the following in her EROI:

K: Ok. Um – and then later on we exec, or at about – ah – ten past one we executed a search warrant at – ah – seven Carela---

B: Yep.

K: ---and as a result of that search warrant we located –ah – a bottle ---

B: Hmm.

K: Ok? Um – that is the same, the same capsules came out of that bottle ---

B: Yes.

K: Ok. Have you tried any of these capsules?

B: No.

K: You haven't?

B: No.

K: Ok – um – what, when you were selling them when you initially got them, what did you believe them to be?

B: Ecstasy.

K: Yep.

B: *(sniff)*

K: Ok.

B: Or I think a herbal version of ecstasy, but the same thing *(sniff)*.

K: Yep. Alright, have you ---

B: (inaudible) ---

K: ---have you taken ecstasy yourself?

B: No.

K: Ok.

B: I don't touch drugs. My parents would kill me.

K: Alright. *(heh)*.

B: Yeah.

K: Um – um – had you sold any of the – um – capsules to anybody else?

B: No.

K: Or has anybody else taken any ---

B: not that I'm awake of.

K: Alright, so you, you don't know anything about the effects of these ---

B: No.

K: ---capsules?

B: No, I'm just going what's on the website.

K: Alright, what about Kyle, has he taken any of these?

B: Um – I'm not sure.

K: Alright. So you said you had – ah – you had three hundred and sixty?

B: I think so, yes.

K: What's that work out to? We got, two seventy-six plus---

L: Sure.

K: ---three ten, what is it, we're missing about fifty capsules I think.

L: Hmm.

K: Do you know what would've happened to them?

B: No. Um – I know we had a couple that had nothing in them, they were just like shells.

K: Yep.

B: They had nothing so we threw them out.

K: Yep.

B: But – um – yeah.

L: Forty-four short.

K: Ok.

K: Alright, I just want to, I just want to go back and clarify something. You, the initial text message that you sent out – um – from you telephone ---

B: Hmm.

K: ---um- do you agree with me that you stated that –ah- you have some ecstasy?

B: Yes.

K: Ok. Alright. Um – were you aware that because of the fact that you've, you've advertised them for ecstasy, ok, that people buying them are of the belief they're, they are ecstasy? Ok, so what happens because of that, is you'll-um- you'll be charged as if you were selling ecstasy.

B: Ok.

K: Understand that?

B: *(sniff)*

K: Alright, because, because the person buying them believes they're ecstasy because you've – ah – you've advertised them as ecstasy.

B: Ok.

K: Ok. Do you understand that?

B: Yeah.

K: And you understand ecstasy obviously---

B: Illegal.

K: ---illegal?

B: Yeah.

K: Ok. Have you got any other question?

L: Um – Yeah, just –um- have you got any more? We're pretty much done.

K: No, I'm just (inaudible).

L: Sarah, just –um- and same for me, you don't have to answer my questions ---

B: Hmm.

L: ---Ok? Um – you said at the start you's –ah- you got into it, you needed –um- the money? Um – specific, and obviously you said in relation to a, a pregnancy. Now – um – how much money were you looking at making?

B: (*sniff*) Um – we were thinking thirty dollars each but (*sniff*) we just decided that we don't need all that ---

L: Yep.

B: ---and we only needed enough just to get like a, a cot and stuff like that so (*sniff*) then we decided just en bucks and we'd sell what we could, the rest of it we just throw away (*sniff*).

L: Ok.

B: (*sniff*).

L: So the money you were gonna' use was to buy a cot and a few other things?

B: (inaudible).

L: Ok.

B: (*sniff*).

L: And just one last thing from me. Um – oh, it's gone I've lost it again. Oh, did, obviously if you're purporting this to be ecstasy and you're selling it to people and you, you sent the mass text out, what, did you have any concerns that people may buy this and spend that money and – um – and find it not to be ecstasy?

B: *(sniff)* At first, yeah, but then we kept like researching it on the internet ---

L: Yeah.

B: ---before we bought it, and we figured that, you know, it, it claims that everything is exactly the same, that it's just herbal and stuff like that. So we figured we'd just see what happens *(sniff)*.

L: And how come you said it was ecstasy as opposed to just saying this is a herbal thing that gives the same kick?

B: Because people won't buy it otherwise.

L: Ok.

B: (inaudible) everyone's always trying to go do like the naughty thing and stuff like that.

L: So you're worried if you said this, 'it isn't ecstasy ---

B: Hmm.

L: ---but it's herbal' they wouldn't buy it?

B: Yep. (emphasis added)

135. The defendant again made full and frank admissions, which were consistent with the other evidence in the case, and I have no reason to disbelieve what she said to police in her EROI, and I accept it. In addition, in her XXN the defendant gave the following evidence:

So when he asked you about the Ecstasy that you referred to and the stuff that you got off the internet, you told the police officer that you – that, 'We figured it was a quick way to make some cash,' okay, and that because you had a baby coming. That wasn't the truth. As of 6 May 2010, you didn't have a baby coming, did you?---
No. **When we agreed that it was a way to make cash, we did have a baby coming.**

But you didn't at that time. You knew that the – you actually flew to Perth in February, almost three months before then?---Yes.

So that's a lie about something that actually hasn't got anything to do with trading Ecstasy?---No, because **when we agreed that it was a way to make cash, we had a baby on the way.**

But that - - -?---That's what his question implied.

.....

So that was an example - - -?---Yeah.

- - - of something that you learnt you shouldn't do way before this sort of thing happened. I think the first thing we need to get down to, Ms Bridle, is about what happened on each of the nights that you know that these pills change hands with Ang, okay. On 19 March, wherever Kyle was, whether he was somewhere else in town or whether he was down in Cultana in South Australia, that was you at Hungry Jacks, wasn't it?---Yes.

You knew why you were there, though and – didn't you?---Kyle had explained it to me, yes.

That's what you were saying, but you were there with your friend, Clancy, yes, and Ang was there. She texted you, you received the text on the phone, you got out of the car, you went and did the deal?---Yes.

You supplied her those pills?---Yes.

That you knew she would expect was Ecstasy?---No. I didn't know what she thought they were.

Hadn't you talked about it with Kyle?---We talked about it.

Yes?---But he never told me much about it. He just said that this was what we were doing.

Ms Bridle, you have to remember what you said at the very start when I started speaking to you about your evidence. **You told the court that you and Kyle agreed on a plan to sell herbal Ecstasy as Ecstasy and that you agreed it was a really dumb idea?---Yes.**

This is a life example of that very intention happening right there in the Hungry Jacks carpark, isn't it?---I guess so.

So the pills that you gave over, it wasn't because they were herbal pills that you can get off the internet, it was because the other person believed it to be Ecstasy. Isn't that right?---I guess so.

And later in her evidence.....

You told the court that you actually didn't know what was in the container that Kyle gave to you, you were guessing they were the pills. Is that right?---Yes.

You knew they were the pills in the container, didn't you? Not guessing, you knew?---That's a basic assumption.

That you made, right?---Yeah.

It wasn't an assumption; you knew it. Isn't that right?---I assumed that that's what they were.

And you handed that container to Ang?---Yes.

She gave you 1000 bucks?---Yep.

And you counted all that money?---Yes.

And you said to Strongie: 'It's all good,' didn't you?---Yes.

And then you said to Ang: 'If you need any more give us a call'?---I believe Kyle said that, not me.

I'm saying you said it. Maybe Kyle said it, but you might have said it, hey? You might have said that to Ang?---It's possible.

And then she said: 'Sure. I'll let you know if I need some more.' So at that stage, you thought that this deal might be ongoing, you might get another meeting with Ang?---Maybe.

And when you were talking about the same stuff as before, it was the same stuff as before at the Winnellie shops where Kyle did the deal?---Yes.

The majority of the deal with you right beside him, and the same stuff as before at Hungry Jacks?---Yes.

That you were giving them herbal drugs XTZ that you got legally off the internet?---Yes.

That you were selling as Ecstasy?

Nodding of the head.

THE WITNESS: Yes. (emphasis added)

136. Whilst the original decision to buy the capsules off the internet to on-sell as “ecstasy” may have been prompted by the perceived need for money due to the defendant’s pregnancy, this had ceased to be an issue when the defendant terminated the pregnancy in February 2010. Accordingly, when the defendant decided in March 2010 to action the plan to sell the capsules her motivation was financial “greed”. There was no evidence that any financial “need” then existed. The fact that she commenced her efforts to sell the capsules whilst Armstrong was away in South Australia; that she was the person who was present at each of the three sales; and that all text messages relative to arranging the sales came from and went to her phone (...294) lead me to be satisfied (and for the other reasons stated herein) beyond all reasonable doubt that it was the defendant (rather than Armstrong) who was the driving force behind, and the principal offender in relation to all three charges.

137. I find beyond all reasonable doubt that:

- the defendant decided in 2009, with Armstrong to purchase herbal capsules over the internet;
- her decision to purchase the capsules was because she understood from the internet that the capsules had the “same” effect as ecstasy;
- she had decided to sell the capsules and pass them off as ecstasy in order to make money;
- the defendant believed that if she was not actually selling ecstasy she would not be committing an offence (and thus made a mistake of law);
- at the time the decision to purchase was made the defendant was pregnant;
- the capsules arrived in Darwin in about December of 2009 and were kept in the home of Armstrong and the defendant;

- after the arrival of Fengler in Darwin the relationship between the defendant and Armstrong deteriorated due to the defendant's feelings for, and increased involvement with Fengler;
- the defendant terminated her pregnancy in February 2010;
- Armstrong was in South Australia between 12 and 30 March 2010 for military exercises and courses (and spent his stand-down time in South Australia as well), and during this time the defendant continued her "romance" with Fengler;
- Armstrong did not return to Darwin anytime between 12 and 30 March 2010;
- On 19 March 2010 (whilst Armstrong was interstate) the defendant decided to try and sell the capsules and she sent out a text from her phone stating in part "got some ecstasy, need to get rid of it...";
- Information about the text made it's way to NT Police, and an UCPO replied to the text from the defendant;
- At the time of replying the UCPO reasonably believed that she was replying to an offer to sell ecstasy;
- A series of text messages were exchanged between the defendant and the UCPO (during which the defendant confirmed that it was ecstasy that she was selling) and a meeting in the car park at Hungry Jacks was arranged for 19 March 2010;
- As a consequence of the text messages the defendant intended the UCPO to believe that she was offering to sell ecstasy to her;
- The defendant attended Hungry Jacks with 20 capsules and sold them to the UCPO for \$200;
- At the time of this sale the UCPO believed she was buying ecstasy;

- At the time of this sale the defendant had represented to the UCPO that she was selling ecstasy;
- At the time of the sale Wakefield assisted in the sale by deliberately using her body to block the exchange of money and capsules;
- The defendant kept the \$200 and spent it on alcohol (at least in part);
- On 15 April 2010 the UCPO contacted the defendant by text wanting to buy more “ecstasy”;
- In April 2010 Armstrong had discovered the relationship between the defendant and Fengler, and as a result their marriage was in turmoil;
- After a number of text messages exchanged between the defendant and the UCPO a meeting was arranged at the Winnellie shops car park for 16 April 2010;
- As a consequence of the text messages the defendant intended the UCPO to believe that she was again offering to sell ecstasy to her;
- The UCPO believed that she was again negotiating to buy ecstasy;
- The meeting was arranged by the defendant for the purpose of selling what she had represented was ecstasy to the UCPO;
- The defendant and Armstrong attended and placed 20 of the capsules into an emptied cigarette packet;
- Armstrong (in the presence of the defendant) exchanged the capsules with the UCPO in exchange for \$200;

- At the time of this sale the UCPO believed she was buying ecstasy;
- At the time of this sale the defendant had represented to the UCPO that she was selling ecstasy;
- At the time of this sale a discussion took place between (and in the presence of) the defendant, Armstrong and the UCPO about the further sale of more of the capsules;
- By the end of April 2010 the defendant and Armstrong had separated and the defendant was living with her parents, and both parties wished to end the marriage and get divorced;
- On 4 May 2010 the defendant sent a text to the UCPO offering to sell 100 of the same capsules, thereby again representing them to be ecstasy;
- After an exchange of texts between the defendant and the UCPO a meeting was eventually arranged for 6 May 2010 again at the Winnellie shops;
- As a consequence of the text messages the defendant intended the UCPO to believe that she was again offering to sell ecstasy to her;
- The UCPO believed that she was negotiating to buy ecstasy;
- The defendant and Armstrong attended with 100 capsules in a container;
- The defendant handed the 100 capsules to the UCPO and received \$1,000 in cash in exchange;
- At the time of this sale the UCPO believed she was buying ecstasy;

- At the time of this sale the defendant had represented to the UCPO that she was selling ecstasy;
- The defendant counted the \$1,000 and drove off with Armstrong, when they were then arrested by police;
- Later that day the defendant took part in an EROI where she made full admissions as to her involvement in the 3 sales;
- The defendant's admissions in the EROI were voluntary and substantially truthful;
- At all material times the defendant intended the UCPO to believe that she was buying ecstasy;
- At all material times the UCPO believed that she was buying (and had received) ecstasy;
- The defendant's oral evidence before the court was deliberately false.

138. I find the defendant guilty of charges 1, 2 and 3.

139. As the defendant has pleaded not guilty to each of the 3 charges she is entitled to no discount in respect to a plea of guilty. In addition, as I have found her evidence to have been deliberately false any discount that she may have been entitled to for "character" has been substantially reduced.

140. I will hear counsel on the question of penalty and any other relevant matters.

Dated this 18th day of March 2011.

Daynor Trigg
STIPENDIARY MAGISTRATE