

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
(Not) Restricted
(Not) Suitable for
Publication

Case No. CR-14-01407

DIRECTOR OF PUBLIC PROSECUTIONS (VIC) &
DIRECTOR OF PUBLIC PROSECUTIONS (CTH)

v

DUC HAI NGUYEN

JUDGE: HER HONOUR JUDGE DOUGLAS
WHERE HELD: Melbourne
DATE OF HEARING:
DATE OF SENTENCE: 19 October 2016 and 2 November 2016
CASE MAY BE CITED AS: DPP (Vic) & DPP (Cth) v Nguyen
MEDIUM NEUTRAL CITATION: [2016] VCC

REASONS FOR SENTENCE

Subject:
Catchwords:
Legislation Cited:
Cases Cited:
Sentence:

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr M. Regan	Office of Public Prosecutions
For the Accused	Mr A Patton	Haines & Polites

HER HONOUR:

1 Duc Hai Nguyen, on 1 August 2016, you pleaded not guilty to an Indictment containing eight charges, Charge 8 was an alternative charge to Charge 7. A jury was empaneled, and on 25 August 2016, you were convicted on Charges 1-7 inclusive.

Background

2 On 3 August 2015, you were arraigned on Indictment C1409624 with a co-offender, Quoc Huy Nguyen. On that Indictment, you pleaded not guilty to the charges relevant to you, which are the same offences on the Indictment before the court currently. A jury was not empanelled as I acceded to an application made on behalf of Quoc Huy Nguyen. On 13 August 2015 an order was made for the severance of the charges on the Indictment.

3 An Indictment was filed in respect of two charges in relation to Quoc Huy Nguyen, and Indictment C1409624.1 was filed in relation to you.

4 On 19 August 2015 a jury was empaneled in relation to Indictment C1409624.1. However, during the course of the trial, I ordered that the jury be discharged without verdict as evidence was given by a witness which was of little probative value, and I ruled there was a risk it would be used against you, notwithstanding a judicial warning. On 31 August 2015 a second jury was empaneled. I ordered that the jury be discharged without a verdict as during the course of the trial significant evidence had come to light which had not come to the notice of the Australian Federal Police prior to that time. Consequently, your trial was adjourned to this year.

5 Quoc Huy Nguyen pleaded not guilty to trafficking in not less than a large commercial quantity of heroin, which is his involvement in Charge 1 on the current Indictment. He pleaded guilty to trafficking in a small quantity of heroin as well, you were not involved in that charge.

6 A jury was empanelled and on 22 November 2015 he was convicted on each charge. On 26 November 2015, he was sentenced to 12 years' imprisonment, and I ordered that he serve a minimum of eight years' imprisonment before he was eligible for parole.

7 My task is to sentence you in relation to each of the following charges for which the jury convicted you.

- Charge 1, between 22 November 2013 and 5 February 2014, trafficked in not less than a large commercial quantity of heroin.
- Charge 2, this is the Commonwealth offence of trafficking in a controlled drug (MDMC) in a commercial quantity between 26 November 2013 and 5 February 2014.
- Charge 3, between 26 November 2013 and 5 February 2014, trafficked in a drug of dependence (Ephedrine).
- Charge 4, between 26 November 2013 and 5 February 2014, trafficked in a drug of dependence (cocaine).
- Charge 5, between 26 November 2013 and 5 February 2014, trafficked in a drug of dependence (methylamphetamine).

Charges 1-5 arise from the same set of circumstances. Charges 6 and 7 arise from circumstances on a separate occasion.

- Charge 6, on or about 5 February 2014, trafficked in a drug of dependence not less than a commercial quantity (heroin).
- Charge 7, knowingly deal with proceeds of crime on or about 5 February 2014, namely, \$169,900.

8 Charge 1, trafficking in a large commercial quantity of heroin, the maximum penalty is life imprisonment. The quantity was 4.812 kilograms of heroin mix, which is 4.8 times a large commercial quantity, which is 1 kilogram.

9 Charge 2, the Commonwealth offence of trafficking in a commercial quantity of MDMC. The maximum penalty is life imprisonment or 7,500 penalty points, or both. The quantity was 4.475 kilograms pure MDMC, which is 5.9 times a commercial quantity of 750 grams.

10 Charge 3, 4 and 5 are trafficking in a drug of dependence. The maximum penalty is 15 years' imprisonment.

- 11 Charge 3 trafficking in Ephedrine, the quantity involved was 39.3 grams pure Ephedrine, which is 1.96 times the trafficable quantity, 20 grams.
- 12 Charge 4, trafficking in cocaine. The quantity involved was 34.8 grams, which is 11.6 times the trafficable quantity, namely, 3 grams.
- 13 Charge 5, trafficking in methylamphetamines. The quantity involved was 29.5 grams of methylamphetamine mix, which is 9.8 times the trafficable quantity, namely, 3 grams.
- 14 Charge 6, trafficking in a commercial quantity of heroin. The maximum penalty is 25 years' imprisonment. The quantity involved was 524.8 grams of heroin mixture. This is 1.04 times the commercial quantity, which is 500 grams. Applying the provisions in the *Sentencing Act* 1991 (Vic) in relation to a serious drug offender provisions, you will be sentenced on Charge 6 as a serious drug offender.
- 15 Therefore, in relation to Charge 6 on the Indictment, s.6D and s.6E of the *Sentencing Act* (Vic) applies.

"If the County Court in sentencing a serious offender for a relevant offence considers that a sentence of imprisonment is justified, the Court, in determining the length of sentence:

(a) must regard the protection of the community from the offender as the principal purpose for which the sentence is imposed;"

- 16 The prosecution does not seek disproportionate sentence to be imposed in relation to Charge 6.

- 17 Section 6E:

"Every term of imprisonment imposed by a court on a serious offender for a relevant offence must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term."

18 Charge 7, knowingly deal with proceeds of crime. The maximum penalty is 15 years' imprisonment.

19 You have a criminal history attached to the Indictment. On 5 March 2001, you were convicted of trafficking in heroin, possession of heroin and possess money being proceeds of crime. You were sentenced to an aggregate sentence of two months' imprisonment to be served by way of an Intensive Correction Order.

The prosecution case

20 The prosecution case is set out comprehensively in a document filed with the court, which will be annexed to these sentencing remarks. The prosecution case is that you were involved in the offending in relation to Charge 1 with Quoc Huy Nguyen, although you each had a different role.

21 On 26 November 2013, you rented a Kennards storage unit in Maribyrnong. On 27 November 2013 you placed a number of boxes in that unit, some of which contained the drugs which are the subject of Charges 1-5.

22 On 4 February 2014 you placed another box in that unit containing drugs and cash, the subject of Charges 6 and 7.

23 The prosecution case is that the heroin, which is the subject of Charge 1, had been prepared at a Housing Commission flat in Holland Court, Flemington. That flat was rented in the name of Quoc Huy Nguyen's partner, Loam Nguyen. She is the sister of the woman with whom you were in a relationship at the time of the offending, Ha Tran. CCTV depicted Quoc Huy Nguyen and others entering and leaving that Holland Court flat.

24 On 21 November 2013, he was arrested by police and was remanded in custody until 4 December 2013 when he was granted bail.

25 The following day, 22 November 2013, in the early hours of the morning, you unsuccessfully tried to enter in to that Holland Court flat. Later that day, you

- entered the flat a number of times with Dat Nguyen, who is the father of Loam Nguyen, and removed certain items.
- 26 There is no evidence linking you to the Holland Court flat prior to the arrest of Quoc Huy Nguyen. The prosecution case is that his involvement ended on the day of his arrest, and that at that time you became involved.
- 27 After his arrest, the police searched the Holland Court flat. Evidence was given as to the observations made inside that flat, and photographs were tendered. It is clear that the premises were not used for purposes other than for preparation of drugs. A hydraulic compression press and jacks were located in the Holland Court flat. The press was tested by a tool mark examiner Sergeant Olinder of the Australian Federal Police. He gave evidence that some of the heroin which is the subject of Charge 1, which was in the form of discs and fragmented discs, had been compressed by that hydraulic press.
- 28 On 27 November 2013, you left Melbourne and travelled to Vietnam. On 4 February 2014, you returned to Melbourne. On that day you placed the box containing the drugs and cash, which are the subject of Charges 6 and 7 into the Kennards storage unit.
- 29 On 16 December 2013, investigators first entered the storage unit at Kennards and took control of the contents of that storage unit. The drugs of dependence and controlled drugs were replaced with inert substances to resemble the drugs, and the contents of the boxes located in the storage unit were replaced in the same order as they were located, so as to not cause any suspicion when you returned. The investigators included members of the Victoria Police, Australian Crime Commission and the Australian Federal Police.

The offences

- 30 The offending is in relation to serious offences committed in serious circumstances, in particular the quantities of drugs in Charges 1, 2 and 6.

31 I take into account the provisions in the *Sentencing Act* (Vic) as to Charges 1,
3, 4, 5, 6 and 7, and the provisions of the *Crimes Act* 1914 (C'th) as to Charge
2. I also take into account the common law.

32 The maximum penalty for each offence reflects the seriousness of these
offences, as I stated, in particular Charges 1, 2 and 6.

33 In the circumstances, I must give a significant amount of weight to general
deterrence, protection of the community, specific deterrence, just punishment
and denunciation. I also must take into account matters of rehabilitation.
General deterrence is an important sentencing factor in this case, as I, a
sentencing judge, must send a message to other like-minded people in the
community that involvement in trafficking in drugs of dependence or controlled
drugs may seem an easy way to profit.

34 As to Charges 1, 2 and 6, the trafficking was in relation to a large commercial
quantity and a commercial quantity. The use of drugs of dependence and
controlled drugs often results in an escalation of crime as people who are
desperate to have these drugs often commit further crimes.

35 In a decision of *R v Dawid* [2013] VSCA 64, Kaye AJA said this:

“The nature and pervasive extent of drug trafficking of the type
engaged in by the applicant is such that, on sentencing, the
principles of general deterrence and denunciation assume
substantial prominence. It is the large profits, which can be gained
from trafficking in drugs that attracts people, such as the applicant,
to engage in the type of offending for which the applicant was
sentenced. It is important that persons like the applicant, who
contemplate embarking on such an enterprise, do so in the clear
knowledge that, if detected, they will be sentenced to lengthy terms
of imprisonment.”

36 In *Barbaro v Zirilli* [2012] 288, the Court of Appeal of Victoria endorsed the
sentencing judge's remarks in that case as to the seriousness of the offending,
in which it was upheld a life sentence for the Commonwealth offence of
conspiracy to traffic in a commercial quantity of MDMA. The sentencing judge
in that case said this:

“The community will not tolerate, and the courts will reflect that, massive commercial exploitation of the younger members of our community to enable you or others like you to accumulate vast amounts of money.”

37 The sentencing judge went on to say this:

“This is what is referred to as organised crime. It has international links, it is professional, it is contemptuous of our police, our laws and our society, and it cannot and will not be tolerated by our society, as demonstrated by Parliament or the courts. It merits punishment appropriate to the level of criminality and demonstrated attitude to this society by those involved in this very cynical money making exercise.”

38 The impact of trafficking, in particular, in amphetamine-based drugs, has been referred to in the decision of the New South Wales Court of Criminal Appeal, *R v Kalache* [2000] 111 A Crim R 152. His Honour Hulme J said at p.192:

“However, it is not inappropriate to observe that no long experience in the courts or other areas of society is needed to become aware both of the grave harm that amphetamines, cocaine, ecstasy and cannabis do to the minds and lives of many who use them, and of the consequential damage that such users then inflict on the rest of society, either in obtaining the funds to feed their habits or in consequence of the irrational or anti-social behaviour which such drugs can induce.”

39 Further, I take into account that it is difficult for investigators to investigate offences such as trafficking in drugs of dependence or controlled drugs, as those who are involved, particularly those who purchase these drugs, are willing participants, and do not initiate an investigation by making a complaint to the police. Consequently, law enforcement agencies have to rely on investigative techniques, requiring police to use tools such as surveillance, by police and by electronic means and, on some occasions, listening devices.

40 The material provides that you were not a user of a drug of dependence or a controlled drug. In the circumstances, as you have pleaded not guilty, I do not have an explanation for your offending. I am satisfied beyond reasonable doubt on the material before me, your involvement was a business venture, the motive

being profit. It clearly was not for personal use and could not be, given the quantities.

41 Your involvement was part of an organised criminal enterprise, including Quoc Huy Nguyen and very likely, other people. The quantities were enormous and the stakes were therefore high. The estimated value of the drugs was substantial.

42 The offending involved substantial quantities of drugs of dependence and controlled drugs. The offending was carried out in a planned and careful way. The value of the drugs, in particular in Charges 1, 2 and 6, meant you were playing for very high stakes. In the circumstances, condign punishment is called for.

43 I must sentence you as a serious drug offender in relation to Charge 6, as I have stated.

44 I accept the submission made on your behalf by Mr Patton, that there is no evidence or suggestion of enrichment from the offending. I accept you had no significant material assets in your name, or that you had exclusive possession of the items in the Kennards storage unit. The prosecution sought a direction during the trial that you may be found guilty as being not only in sole possession, but also if the jury found that you were in joint possession.

45 I also accept that there is no evidence of your involvement in any other way in relation to the subject of the Indictment, other than as alleged, namely, removing items from the Holland Court flat, organising the Kennards storage unit for hire, taking boxes to that unit in relation to Charges 1-5 inclusive into the unit, and later the following year, returning to the unit leaving the box containing the drugs and cash, the subject of Charges 6 and 7.

Personal details

46 Mr Patton delivered a comprehensive plea in mitigation and tendered an outline of submissions. He also tendered references from Dr Keven Duong, who described you as a friend and a patient. He described you as a hardworking and responsible person. Mr Patton also tendered a reference from Dr Daniel Duong, a dental surgeon, a friend of yours. He also tendered a number of certificates in relation to your successful completion of programs in prison: Certificate 2 in Kitchen Operations from the Kangan Institute, Certificate 2 in Cleaning Operations, a 24-hour drug and alcohol course, and a prison education course.

47 Since the offending, you separated from your then-partner Ha Tran. You commenced a relationship with Huong Huynh during a time when you and Ms Tran had separated on a temporary basis. However that relationship ended, and at some stage after that, your relationship with Huong Huynh recommenced.

48 In 2015 you and Ms Huynh married in Vietnam. You have a daughter, Heidi, aged three, who was born on 12 April 2013. You and your wife are expecting a second child. Mr Patton tendered a medical record in relation to the pregnancy. Your wife immigrated to Australia in December 2015 and has recently been granted permanent residency. I accept that you and she have a stable relationship.

49 You were born in Saigon on 1 June 1970 and are the youngest of nine brothers, all of whom presently live in Melbourne. Your family fled Vietnam as your father had been employed during the Vietnam War by the United States Army. As a result, your family were persecuted after the war and family's property was seized. Your family fled from Vietnam to a refugee camp in Malaysia. You were then granted asylum to come to Australia. I accept that you have regular contact with some of your brothers, many are a lot older than you. One of your brothers supported you on a daily basis in this court. You lived with one of your brothers after you were granted bail. Your parents are now deceased.

- 50 You left Vietnam after completing Year 5 at school. In Australia, you left high school before completing Year 12. You commenced a Diploma of Mechanical Engineering at RMIT but did not complete that course. You have been consistently employed since the early 1990s in various unskilled work in the clothing manufacturing industry and in ceramic and woodwork.
- 51 Since the early 2000s, you have been employed as a tour guide in Vietnam. During the course of the trial, you gave evidence about that employment. You have not worked since your arrest in relation to this matter.
- 52 I accept the submission made on your behalf by Mr Patton that the prior convictions in relation to heroin are of some age, 1999 and 2001, and the dispositions imposed reflect the offending was at a low level for sentencing purposes. Nevertheless, those convictions are relevant.
- 53 I take into account in your favour that there has been a delay, not of your making. On two occasions a jury was discharged without verdict, and since the jury was discharged without verdict 12 months ago, this matter has been hanging over your head. I also accept that you have been anxious as a result of that. You were arrested in February 2014, thus you will be sentenced around two and a half years later.
- 54 As you pleaded not guilty, there is no evidence of remorse. However, as the trial judge, I have noticed that through your counsel, Mr Patton, you have conducted yourself in a cooperative way, and I accept Mr Patton's submission that evidence was agreed to be read into the evidence of the trial, rather than calling witnesses, cross-examination of witnesses was solely directed to the issues, a number of matters could have been in issue and they were not, and there was no dispute that the Crown tendered many items through the informant. This saved the court the time and inconvenience of calling more witnesses, and also the cost of that.

55 The offending was carried out, as I stated, in a well-planned manner, and involved at least one other person. As to the offending, I sentence you on the basis I am not satisfied beyond reasonable doubt how many people were involved, and where you were in the hierarchy of those who were involved. It is plausible that there were others involved and I accept the submission of Mr Patton that it is likely you are not the person in charge of the criminal enterprise. You were relatively easily identified, as you personally attended at the Holland Court flat, hired the storage unit at Kennards, provided your name and some details to Kennards storage, and you were the person driving into Kennards storage on each occasion.

56 However, although I sentence you on the basis that I am not satisfied, beyond reasonable doubt, that you were a person at the top level of the criminal enterprise, I am satisfied beyond reasonable doubt that you were in a position of enormous trust, as you had in your possession a large quantity of drugs which were very valuable. I infer that you are, therefore, not in the lower end of the organised criminal enterprise, but a man considered trustworthy. In those circumstances, I sentence you on the basis that your role was in the middle level of the hierarchy of this organised criminal enterprise.

57 As to the Commonwealth charge, Charge 2 on the Indictment, I must apply the relevant provisions of s.16A of the *Crimes Act. (Cth)*. I take into account the nature and circumstances of the offence. I have annexed the prosecution opening, as the contents are comprehensive, and I have taken into account the contents of that document, as well as the evidence of the trial. I have taken into account the contents of your criminal history.

58 I have taken into account s.16A(2)(c), which states, “if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or similar character”. The conduct in relation to Charges 6 and 7 is a continuing course of conduct in Charges 1-5. Therefore I sentence you on the basis of the charges

being a continuing course of conduct. Charge 6 and 7 came about after your return from Vietnam, when you added the heroin and the cash.

59 As to s.16(A)(j) and (ja), I have given weight to both general deterrence and specific deterrence. In relation to Charge 2 and each of the state offences, general deterrence must be given a significant amount of weight, as I have stated. General deterrence and protection of the community are two important sentencing factors, as well as denunciation. I have also given weight to specific deterrence. I must take into account the need to ensure that you are adequately punished, and I have given weight to just punishment, as well as, as I stated, denunciation of your conduct.

60 As to s.16A(m), your character, antecedence, age, means, physical and mental condition, I take into account that you are still a mature man with a relatively minor criminal history who presents as an otherwise responsible person. As to your rehabilitation prospects, although you pleaded not guilty, you are now in a stable relationship. I consider your rehabilitation prospects good. I take into account, as I have stated, that you conducted yourself in a very cooperative and courteous manner throughout the trial, showing respect for the court.

61 As to s.16A(2)(p), “the probable effect that any sentence or order under consideration would have on any of the person's family or dependants”, in relation to Charge 2, I take into account that you have recently married, you have a very young child, and your wife is currently expecting your second child. It is probable that your wife will be enormously affected by the sentence of imprisonment, which will not be insubstantial given the offending.

62 As to the State charges, I take into account that you will be more anxious when in prison about your wife and children than a person who does not have dependents. I also take into account that you will also be concerned as your wife will be relatively isolated given the fact that she is from another country, and she is not a fluent English speaker.

63 As to the offences overall, it has not been submitted that there is hardship, and there is not as a matter of law. But as I have just said, I take the matters in your favour into account as to your concern for your wife and children, in particular the one who is yet to be born. I take into account that your time in prison will be more difficult for you, as you are a person who has not served a term of imprisonment before.

64 As I have stated, I consider your chances of rehabilitation to be cautiously optimistic, and as I said earlier, good. As to your history and conduct overall, I consider your chances of rehabilitation good, however I am cautiously optimistic because of the large quantity of drugs.

65 You gave evidence, and you present as an intelligent man. You have the responsibility of a family, and I consider that is a positive matter in your rehabilitation. Your references describe you as a responsible and hardworking person, and I sentence you on that basis. I also consider it is relevant that you have no trappings of enrichment, so it is not the situation that you have clearly had the financial benefits from dealing in drugs, and has not been alleged.

Orders for partial cumulation

66 As to the State offences, I intend to sentence you on Charge 1 as the base sentence. Taking into account the principle of totality, it is appropriate to order partial cumulation on the sentence imposed on Charge 2, which is the Commonwealth offence, however I am using language used in relation to Victorian sentencing, as I cannot impose cumulation in the same way in relation to Commonwealth offences. I do not intend to order cumulation as to Charges 3, 4 and 5, as I accept Mr Patton's submission that those offences are part of the same incident as Charges 1 and 2. I intend to order partial cumulation as to Charge 6, as not only are you a serious drug offender for that charge, but that offence occurred on a separate occasion in February 2014.

67 As to Charge 1, as to the sentencing principle of parity, the co-offender was Quoc Huy Nguyen. I accept that as to Charge 1, your position differs from his. Although your involvement was in relation to vast quantities of drugs in relation to Charges 2 and 6, Quoc Huy Nguyen had a prior conviction for trafficking in heroin in a substantial amount, which would now be a commercial quantity. Consequently, I will sentence you to a lesser term of imprisonment for Charge 1, as I have given less weight to specific deterrence.

68 I take into account the relevant sentencing principles, as I have said, common law, the Victorian *Sentencing Act*, and the *Crimes Act (C'th)*, as well as current sentencing practices where applicable for similar offending. I therefore sentence you as follows, if you could stand up, Mr Nguyen, while I sentence you, sir.

69 Charge 1, you are convicted and sentenced to 11 years' imprisonment.

70 Charge 2, you are convicted and sentenced to 11 years' imprisonment.

71 Charges 3, 4 and 5, as to each charge, you are convicted and sentenced to four years' imprisonment.

72 Charge 6 you are convicted and sentenced to seven years' imprisonment.

73 Charge 7, you are convicted and sentenced to 12 months' imprisonment.

74 I make the following orders:

75 I order that two years of Charge 6 be cumulative with Charge 1.

76 I order that the sentence imposed on Charge 2 commence three years from today's date.

77 I order that the total sentence imposed on both Commonwealth and State, taking into account cumulation - wait a second, let me get this right. I think I have made an error Madam Associate?

78 I have missed - yes, sorry, the Federal - Charge 2- sit down, Mr Nguyen, I am sorry about this, this is so complicated.

79 The Federal sentence starts today, that is quite right. The State sentence commences three years from today.

80 Now, the non-parole period will commence today, less the presentence detention. Excuse me, Madam Associate, is that correct? Sixteen years, is it not?

81 Look, just so I make it clear, it is 16 years in total. And I order a non-parole period of 12 years.

82 Now, that is - putting it together, but basically I will say it again, that I order that two years of Charge 6 be cumulative with Charge 1, the - sorry, I thought I checked this, and obviously it has not been checked - the Federal sentence is commence today, that is, 19 October.

83 The State sentence is to commence three years from today.

84 The non-parole period will commence today.

85 Now that, taking into account *Tognolini*, it is rather unusual to set the State offences commencing on a day other than the day of sentence, but it makes it far more efficient in relation to the orders. So if everyone understands that? I have checked with central records, otherwise it is unworkable.

86 The sentence on Charge 2 commences today. As to the cumulation, of three years on Charge 2, in three years, the State offences start, 19 October 2019, and it is on that day the non-parole period will commence. I said it incorrectly. I have read this so many times that I have confused myself.

87 So today, Charge 2 starts. That is 11 years. In three years, the State offences starts, and that is 19 October 2019. I always put in three years, because there could well be emergency management days. So in three years, the State

sentence commences and the non-parole period will commence on 19 October 2019.

88 The presentence detention is 369 days.

89 MR REGAN: Yes, may it please the court. With respect, Your Honour, my instinctive submission is that the *Sentencing Act* 1991 does not give power for the postponement - - -

90 HER HONOUR: It does. It does, there is a section.

91 MR REGAN: Okay.

92 HER HONOUR: I cannot find it now, but I have done this a number of times and it does - - -

93 MR REGAN: Yes.

94 HER HONOUR: And I check for central records.

95 MR REGAN: Okay Your Honour, I will not - - -

96 HER HONOUR: No, no, I would rather you raise it. Mr Patton looks troubled because it is very unusual, but I - - -

97 MR REGAN: Yes, but - - -

98 HER HONOUR: It is just when there is the Commonwealth and State Indictments, they are just difficult.

99 MR REGAN: Yes, yes Your Honour.

100 HER HONOUR: I will find it for you, but you do not have to start on the day.

101 MR REGAN: Yes, we are accustomed - if I may, we are accustomed to it being the other way around, so to speak.

- 102 HER HONOUR: I know, I know. And look, the difficulty is setting the non-parole period.
- 103 MR REGAN: Yes.
- 104 HER HONOUR: That was the minefield for me.
- 105 MR REGAN: Agreed, Your Honour.
- 106 HER HONOUR: Just let me find it, because you are entitled to know where I got - I must say, I checked with central records - just let me see. It is here because I actually have done this before, amazingly. Section 17, I think. It is s.17. I cannot find the precise one.
- 107 I believe it is this, I did check it, and I spoke to the person in charge of central records. Because it was the fixing the non-parole period, gentlemen. So overall, Mr Patton, if I could put you on the spot, do you have any queries? You probably have a lot, but - - -
- 108 MR PATTON: Many.
- 109 HER HONOUR: Do you understand that today the Commonwealth sentence starts, and I cannot cumulate.
- 110 MR PATTON: Yes.
- 111 HER HONOUR: So I have done the way the Commonwealth do it. So in three years' time, the State offences start, and the non-parole period starts at that time. So all up it becomes 16 years, and the minimum of 12.
- 112 MR PATTON: Yes Your Honour, and that 12 years commences from 19 October 2019?
- 113 HER HONOUR: Yes, well after three years.

114 MR PATTON: Yes, so three years from today, the non-parole period commences?

115 HER HONOUR: Yes.

116 MR PATTON: So that is, in effect, yes.

117 HER HONOUR: It is not easy.

118 MR PATTON: No, I understand Your Honour's formulation of the sentence.

119 HER HONOUR: Now, I had other formulations that were really difficult with the non-parole period, and that was the problem. So I believe - *Tognolini*, I will hand this down to both of you. It was not this situation, but it was where this sort of formula of starting one sentence.

120 However, gentlemen, I have got to charge a jury - - -

121 COUNSEL: Yes, Your Honour.

122 HER HONOUR: And there is always leave to - but do you want to have a quick word to your client now?

123 MR PATTON: I will go and speak to Mr Nguyen in the cells, Your Honour.

124 HER HONOUR: Yes, could you stand up, Mr Duc Nguyen? Sir, it is very complicated, and I have to work within the law. And your sentence is 16 years, and you will be eligible for parole after 12 years. And the time you have spent in prison is taken into account and deducted. Mr Patton will speak to you in the cells.

125 I congratulate you on your manners and your courtesy to the court, thank you. Thank you, Mr Nguyen, if you could go down now with the prison officer, and Mr Patton will see you soon. Thank you. And thank you Madam Tran.

126 Mr Patton, do you require Madam Tran in the cells?

127 MR PATTON: No I will not, Your Honour. Thank you.

128 HER HONOUR: Thank you, and thank you, Mr Regan, for all your assistance.

129 MR REGAN: Thank you Your Honour, my instinctive reaction remains the same. I appreciate Your Honour is having to grapple with these difficulties - - -

130 HER HONOUR: The accused is gone.

131 MR REGAN: Yes.

132 HER HONOUR: Sorry Mr - - -

133 MR REGAN: Yes, Your Honour, my instinctive reaction remains the same, although of course I will have to take this under advice. But firstly Your Honour, of course, as Your Honour has advised, *Tognolini* is the starting point for our - -

134 HER HONOUR: Have a look, if there is any difficulties, come back.

135 MR REGAN: Yes.

136 MR PATTON: Yes, Your Honour.

137 HER HONOUR: But as I have said, I have checked it with central records, and I hope I am right. And I might say, thank you both. It was a very - well, when I say enjoyable, because you both cooperated, and you are appraised - you not only read the brief, which does not happen in most cases, you knew the issues, and it was a pleasure presiding over a trial with the two of you, and the informant, I cannot leave him out, he was helpful too. So thank you gentlemen, I will now just stand it down for the next case.

138 COUNSEL: Thank you, Your Honour.

2 NOVEMBER 2016

HER HONOUR:

1 The order will be; the court orders pursuant to s.105A(1)(a)(3) of the Sentencing Act that the following amendment be made to the sentence imposed on 19 October 2016. The prisoner is ordered to serve a minimum of 2 years' imprisonment before becoming eligible for parole and this minimum term is to commence on 19 October 2016.

2 I will go over the sentence again but it will not be in the order because we have already got the order which is; Charge 1 convicted and sentenced to 11 years.

3 Charge 2, convicted and sentenced to 11 years. As to each of 3, 4 and 5, convicted and sentenced to four years' imprisonment; Charge 6, convicted and sentenced to 7 years; Charge 7, convicted and sentenced to 12 months.

4 I cumulated two years of Charge 6 on Charge 1, that is how I got, as we all know, the 13. I order the sentence imposed on Charge 2, commence on 19 October 2016, that is the date of sentence; that the sentence imposed on the State offences to commence three years from 19 October 2016, that is 19 October 2019. Therefore the total is 16 years and I order a non-parole period of 12 years to commence on the day of sentence which is 19 October 2016 and the pre-sentence detention I ordered was 369, is that right?

5 MR PATTON: That's right.

6 HER HONOUR: As having been already served. Now could you hand this to counsel please? I just want you both to see the orders I have made today which is pursuant to 104A.

7 MR REGAN: Yes, Your Honour.

8 MR PATTON: Agree with that, Your Honour.

- 9 HER HONOUR: That is a material miscalculation of figures. Now do you want to refer to that when you are speaking to your client?
- 10 MR PATTON: No, Your Honour, I won't need that.
- 11 HER HONOUR: Do you need that - I want it handed back but do you need that to take notes or anything?
- 12 MR REGAN: No, Your Honour, but we - will that be emailed in the normal manner?
- 13 HER HONOUR: Yes, it will be I take it, Madam Associate?
- 14 MR REGAN: And entered in the record.
- 15 HER HONOUR: Yes.
- 16 MR REGAN: May it please the court.
- 17 HER HONOUR: Thank you, Mr Nguyen. I apologise for you having to come again to court but hopefully it is all sorted now and your solicitor and your barrister will now speak to you, sir.
- 18 OFFENDER: Yes, Your Honour.
- 19 HER HONOUR: And with the interpreter, Mr Tran.
- 20 OFFENDER: Yes, Your Honour.
- 21 HER HONOUR: Thank you, Mr Regan, Mr Patton and Mr Nikakis, I hope I do not have to see you all again in this matter. I hope - judges need training in maths, do we not? Very well.

- - -

(See prosecution opening attached.)

Court Reference: CR-14-01407

Indictment Number: No: C1409624.1

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL JURISDICTION

DIRECTOR OF PUBLIC PROSECUTIONS

v.

DUC HAI NGUYEN

2016 SUMMARY OF PROSECUTION OPENING
PURSUANT TO SECTION 182
OF THE CRIMINAL PROCEDURE ACT 2009

Date of document:
Filed on behalf of:
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27 July 2016
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Reference: C1409624.1

CHARGES: Duc NGUYEN

- Charge 1 - Traffick (by possession for sale) a
Large Commercial Quantity of Heroin (4.812 kg mix)**
- Charge 2 - Traffick (by possession for sale) Commercial Quantity
4.475 kg 3,4-methylenedioxymethcathinone ("MDMC")
(Commonwealth Offence)**
- Charge 3 - Traffick (by possession for sale) 39.3 gr Ephedrine**
- Charge 4 - Traffick (by possession for sale) 34.8 gr Cocaine (mix)**
- Charge 5 - Traffick (by possession for sale) 29.5 gr Meth (mix)**
- Charge 6 - Traffick (by possession for sale) 524.8 gr Heroin (mix)**
- Charge 7 - Deal with \$169,900 knowing it was proceeds of**

crime**Charge 8 - Deal with \$169,900 being reckless as to whether it was proceeds of crime.**Initial Information

1. Duc Hai NGUYEN and Quoc Hai NGUYEN have partners who are sisters and therefore are connected by those relationships. Duc Hai Nguyen will be referred to as Duc in this summary. Quoc Huy Nguyen will be referred to as Quoc in this summary.
2. Both men are connected to a single stash of 4.812 kilograms of heroin that Federal police covertly discovered within a Kennards storage unit at Maribynong on 16 December 2013. They are connected to that 4.412 kilograms of heroin in different ways, and at different periods.
3. That particular 4.812 kg heroin stash was discovered in the Kennards storage unit along with the other drugs listed earlier, such as the 4.475.5 kg of MDMC, 39.3 grams of Ephedrine, 34.8 grams of Cocaine, and 29.5 grams of Methylamphetamine. All of the drugs and substances found in the storage unit were secretly removed and replaced by Federal Police with inert substances in the original packing and boxes.
4. A distinguishing feature of the 4.812 kilograms heroin mix was that more than half of it was in the form of complete or fragmented compressed disks. Six complete heroin disks 119.5mm in diameter and between 25 to 26mm high and weighing around 350 grams each were discovered within heat-sealed vacuum packets. Other bags contained fragments of broken heroin disks, some of which were of very slightly smaller diameter. The remaining heroin was in the form of crumbled disk fragments and chunks down to fragments of smaller and smaller size down to powder consistency.
5. That a lot of the heroin was in the form of compressed disks enabled those intact disks and bigger disk fragments to be compared with a mechanical press that had been seized by Victorian Police from a Housing Commission flat in Holland Court Flemington back on 21 November 2013 (some 25 days beforehand). A forensic comparison of the heroin disks and the mechanical press (the "heroin press") established that the heroin disks had been compressed in that very same press.

Background

6. The discovery of the heroin press on 21 December 2013 occurred after Quoc NGUYEN had walked into another Housing Commission flat over in Elizabeth Street Richmond an hour or so earlier as police were searching that Richmond flat in relation to a separate investigation into another person. That Richmond flat was not occupied by Quoc but the fact that he had walked in resulted in him being detained. He was searched and found to be carrying 4 phones, an amount of cash, plus some house keys.
7. Quoc NGUYEN was transported by Victoria Police members to the Holland Court Housing Commission flats and a key that had been taken from him was found to open the front door of flat 93/12 Holland Court.
8. Police found that the flat was virtually unfurnished, having only a single uncovered mattress on the floor and a single office-type chair. The heroin press and 2 hydraulic car

jacks and some “dies” and other steel parts compatible with the press, were found as was 11.2 grams of heroin in a kitchen cupboard. A white Sunbeam brand vacuum heat sealing machine was photographed on the kitchen bench, and a distinctive blue and white patterned shopping bag was also photographed. Police then seized the press, jacks dies and equipment, but didn’t take the heat seal machine or the blue and white patterned bag. As they left the flat they left a copy of a search warrant on the kitchen benchtop to alert anyone subsequently coming in that there had been a police search.

9. Quoc NGUYEN was then kept detained by Victorian Police from that time onward, but asked to and was permitted to contact his family shortly after his arrest to tell them he was in custody. He was ultimately bailed on 4 December 2103, having spent the period 21 November through to 4 December in custody.

Video evidence relating to the Holland Court flat

10. Investigators obtained video camera recordings from a camera that had a view of flat 93/12 Holland and reviewed the imagery to see what activity had been occurring there both before and after 21 November.

11. Video footage was isolated that showed Quoc NGUYEN attending the flat on 16, 17 and 20 November, each time entering with a key he had with him, and sometimes letting other males into the flat. The imagery showed that he spent quite lengthy periods inside the flat on 16 and 17 November and a short time on the morning of 20 November.

12. The specifics are:

- i. About 3.10pm on 16 November 2013, Quoc used a key to unlock the door to the unit and entered;
- ii. Between 4.01pm and 4.22pm, two males attended the unit, were let in by Quoc, and then left a short time later;
- iii. About 4.38pm, Quoc left the unit and appeared to lock the door behind him;
- iv. At about, 2.39pm on 17 November 2013, Quoc used a key to unlock the door to the unit and entered the flat;
- v. Between 2.44pm and 3.49pm, one male attended the unit and was allowed in by Quoc. The male then left a short time later. This male returned with another male and both entered the unit, the second male left a short time later, followed by the first;
- vi. About 3.57pm, Quoc left the unit and appeared to lock the door behind him;
- vii. About 8.28am on 20 November 2013, Quoc used a key to unlock the door to the unit and went inside;
- viii. About 8.36am, one male attended the unit and was allowed in by Quoc then left a short time later; and

- ix. About 8.41am, Quoc left the unit and appeared to lock the door behind him.

12. Quoc was clearly controlling the flat and was therefore an “occupier”. That he was spending time at that flat which had nothing much else inside other than equipment for pressing heroin results in the prosecution contending that Quoc was inside either compressing or packaging heroin using the vacuum heat sealing machine.

Duc NGUYEN’s connection with the Holland Court flat discovered

13. Federal Police investigators obtained the Holland Court video imagery and reviewed it covering the period 21 November through to 27 November 2013.

14. They discovered:

- i. at 3.06am on 22 November 2013, Duc Nguyen attended 93/12 Holland Court, Flemington accompanied by his partner, Thi Thanh Ha Tran and unsuccessfully attempted to enter the flat¹. Duc and Ms Tran left a short time later;
- ii. at 9.23am on 22 November 2013, Duc returned to 93/12 Holland Court and went inside alone². About 9.39am, Duc left the flat carrying a black with white text re-usable shopping bag and a white with various shades of blue re-usable shopping bag³. Both these bags appeared to contain items;
- iii. at 9.43am, Duc returned to the flat with a shopping trolley. About 9.49am, another male also attended 93/12 Holland Court and entered the flat; and
- iv. between 9.51am and 10.20am, Duc and the male removed a number of items from the flat, some by using the shopping trolley. These items included a shopping bag with a distinctive blue and white pattern, a black shopping bag with handles, a small dark square box, a large white rectangular box, a 2nd large rectangular box, what appeared to be a green plastic bowl, a clear plastic tub and a white plastic bottle.

15. The prosecution contends that Quoc NGUYEN’s arrest and notification to his family has given rise to Duc NGUYEN’s attendance at the flat only hours later, at the unusual time of 3.20am.

16. When Duc NGUYEN re-attended the flat at 9.23am the prosecution contends that he would have seen the copy search warrant. He then began clearing out a number of items from the flat, but significantly did not remove all things from the flat because the mattress, chair and a long wooden object on the floor of a bedroom didn’t come out. He therefore selectively removed items rather than everything.

¹ Hand Up Brief images folder page 349 (see generally deps 1094 - 1154 for images)

² HUB images folder page 350

³ HUB images folder pages 355 and 356

17. Given that it is now known that the heroin press that was seized by Victorian Police from the flat on 21 November had been used to press heroin disks discovered at Kennards Maribyrnong on 16 December, and that the flat was so sparsely furnished as to only be a heroin pressing location, and that Quoc had been spending quite lengthy periods inside that flat in the days leading up to 21 November 2103, the prosecution contends that this combination of circumstances gives rise a very strong hypothesis that Quoc was pressing and sealing heroin disks and packets in the Holland Court flat.

18. Further, the prosecution contends that Duc NGUYEN's attendances at the Holland Court flat so soon after Quoc's arrest strongly suggest that he wanted to remove or recover something of value to him out of that flat.

19. A high likelihood exists that the heroin disks or some heroin disks or disk fragments were not discovered by the Victorian Police, or that Duc NGUYEN was wanting to remove the heroin press, only to discover it already taken by police. This likelihood gives rise to the start date for Duc's charge 1 being particularized as from 21 November 2013, although it is emphasized that charge 1 relates to the heroin found at the Kennards Unit on 16 December 2013. The end date for that charge is the day before he was ultimately arrested on 6 February 2014. Evidence will show that Duc removed the white Sunbeam vacuum heat seal machine from the kitchen bench, and that that particular heat seal machine had definitely been used to seal the packets containing the heroin disks as well as other packets.

Duc NGUYEN's connection to the Kennards Storage Unit

19. Investigations discovered that Duc NGUYEN had, on Tuesday 26 November 2013 (while Quoc NGUYEN was still in custody) opened up an account at Kennards Storage 151 Raleigh Road Maribyrnong (deps 1051).

20. He was allocated Storage Unit 3017. He nominated Quoc Nguyen, Dat Nguyen and H Tran as persons also authorised to access the unit.

21. To gain access to the storage unit, customers are allocated a unique PIN and are also required to furnish their own padlock as added security.

22. Security video imagery is available from Kennards Storage.

23. Video imagery from between 5 and 6pm on 26 November 2013 shows Duc NGUYEN initially attending at the Kennards Office wearing an orange short-sleeved t-shirt type top. Some time later the video imagery shows him walking out of the Kennards Office with what looks to be a ready made-up box plus another flat-packed carton. The reflection in a nearby window shows a silver Honda legend 4 door sedan reversing out of the shop area car park.

24. Further segments of video imagery show the silver Honda Legend driving into the main storage complex and pulling up near Unit 3017. A Kennards staff member is seen to direct Duc to where the storage unit is, and the staff member leaves. Duc is then seen to very briefly go to the storage unit and then then drive off almost immediately after.

25. Later that same evening, at about 8.20pm Duc NGUYEN returned in the Honda Legend sedan, by himself, and can be seen on the video unloading items from the boot of the car and possibly from the back seat as well, on to a trolley that he wheeled around the corner out of sight toward the storage unit 3017. He then drove out after about 20 minutes.

Duc leaves Melbourne for Vietnam on 27 November 2013

26. The next day, 27 November 2013, Duc departed Australia on Vietnam Airline flight 780 bound for Vietnam. He did not return until just over 2 months later, on Monday 4 February 2014.

Investigators enter Storage Unit 3017 on Monday 16 December 2013

27. As stated earlier, on Monday 16 December 2013 investigators searched storage unit 3017, locating a number of boxes inside. Within these boxes, police investigators located a large quantity of illicit substances and associated items (see photographs at deps 243 - 366).

28. The items within the storage unit on 16 December were:

(a) One white 'Bose' single-lift-lid box with a number 1 in a small blue square on the box lid. Inside was found a stainless Steel 'Sunbeam Food Saver VAC780' vacuum bag sealing machine⁴ as well as a small steel machined "die" and 2 small rectangular pieces of steel;

(b) One "Tiger" brand shopping bag that contained a roll of masking tape and a Spirax "To Do" notebook and also a "Sunbeam" vacuum food sealer carton inside of which was a hydraulic car jack and a portion of "egg-carton-type" packing in which was found 2 Blackberry phones within a clear zip lock plastic bag;

(c) One medium-sized Kennards packing carton inside which had been found a "Country Road" brand camouflage patterned duffle bag, which in turn had inside it 3 silver packets of filler type substance, and 3 clear plastic bags of crystalline substance, plus one sandwich type bag that contained a further bag of 224 grams of a filler type substance;

(d) One larger sized Kennards storage box within which was found a variety of plastic bags, as well as a blue and white distinctively patterned "Howards Storage World" bag as well as a Vintage Cellars black wine bottle sized carry bag, each of these shopping-type bags containing empty sealer type bags, sandwich bags, and other assorted items;

⁴ HUB exhibit reference 25, images brief page 251 and 252

- (e) a plain cardboard carton with some Asian characters written on the outside, inside which was found a "Luois Vuitton" cloth sack-type bag containing a plastic bag containing a chunky powdery substance. Underneath that sack bag were found other plastic bags containing either complete compressed disks of heroin or disk portions of fragments, plus other plastic bags containing even smaller zip lock or click lock bags containing white or yellow powdery substances;
- (f) a white Styrofoam box containing a number of items including food saver bags, facemasks, and a ceramic cup with white powder caked inside the bottom of the cup as well as a zip lock bag containing more of a similar substance in powder crystalline form; and
- (g) an empty food saver machine box.

FORENSIC EXAMINATION RESULTS

The Brown Cardboard Carton with Asian characters on it

29. In the brown cardboard carton with some Asian characters on the outside (originally found in the rear right corner of the storage unit on top of the white Styrofoam box) the following drugs were found:

- (a). **4,812.7** grams of heroin in a mixed substance in the form of compressed disks or disk fragments or in the form of smaller chunks and fragments together with powder, granular or chunk forms of the same substance in other bags;
- (b). **39.3 grams of Ephedrine** (pure);
- (c). **34.8 grams of Cocaine** mix; and
- (d) a couple of very small quantities of **MDMC**.

30. 2 fingerprints belonging to Quoc Nguyen were discovered on the outside of a "Hercules" brand food saver bag within which a further plastic bag containing heroin from within the plain cardboard carton.

The Medium-Size Kennards Carton

31. Within the medium-sized Kennards carton was found a "Country Road" brand camouflage duffle bag inside which was found 3 silver packets that contained a filler substance used for the "cutting" of drugs, together with 3 clear plastic bags that contained the vast majority of all the MDMC found within the storage unit:

- (a) the total of all MDMC within the storage unit was **4,475.5 grams** of pure 3/4-Methylenedioxyamfetamine ("**MDMC**");

32. Also deep within the Country Road duffle bag was found a sandwich size zip lock or clip seal clear plastic bag that contained a freezer bag containing 224 grams of a 'filler type substance used for cutting drugs'.

33. On the freezer bag within the sandwich bag was found a single fingerprint belonging to Duc Nguyen.

34. The filler type substance in the freezer bag was mostly of the same type as found in the 3 silver packets in the duffle bag, as well as being one of the cutting substances found to be mixed in with the MDMC and the heroin.

The Larger Kennards Carton

35. Examination of the variety of items from within the larger Kennards carton revealed 15 fingerprints that came from Duc NGUYEN and 15 fingerprints that came from Quoc NGUYEN on various items such as an envelope, an ANZ bank deposit envelope, various plastic bags, freezer bags or zip lock bags.

36. Also from within the blue and white patterned "Howards Storage World" shopping bag in the larger Kennards carton came a white Sunbeam Food Saver VAC440' vacuum bag sealing machine⁵. Forensic testing established that this particular heat seal machine had been used to seal the vacuum packed heroin disks as well as several of the other heat-sealed packets containing heroin found in the plain carton with Asian characters.

37. Also found in the larger Kennards carton was a black "Vintage Cellars" carry bag highly consistent with a bag that Duc NGUYEN was seen carrying out of the Holland Court flat on 22 November 2013.

The Styrofoam Carton

38. Apart from the other items discovered within the foam box, analysis of the ceramic cup found within the foam box established that the substance in the cup and bag inside the cup was:

- (a). **29.5 grams of Methylamphetamine** mix.

The 'Bose' Box

39. No drugs were found within the Bose box apart from a trace sample of heroin found within the stainless steel 'Sunbeam' Food saver vacuum sealer.

40. Fingerprint examination of the stainless steel food sealer revealed 15 fingerprints from Quoc NGUYEN, 13 on the base, 1 from the inside and 1 on the top.

⁵ HUB exhibit reference 21, images brief page 203, 204, 227 and 228

41. The 'Bose' box also contained a small diameter machined steel "die" and 2 steel bars that appear to be within the same class of dies and bars as were seized by Victorian Police from the Holland Court flat on 21 November 2013.

The "Tiger" Brand shopping bag

42. Within the Tiger brand bag was found a hydraulic car or bottle jack of the same general type to the 2 seized from the Holland Court flat on 21 November 2013, and the prosecution contends that all 3 of these jacks because of the particular contexts within which they were found were all used, or intended to be used, for compressing heroin.

43. Also found within the 'Tiger' brand shopping bag were 2 Blackberry phones in a zip lock bag, plus a "Spirax To Do" spiral bound notebook with columns of figures on a number of the pages.

44. Also located was an Electricity Australia Electricity Account Tax Invoice dated 24 October 2013 addressed to Quoc NGUYEN⁶.

Substitution of drugs and re-installation of items back into storage unit 3017

45. Between 16 and 18 December 2013 the drugs were removed from the items from the storage unit and inert substances were substituted. The boxes and cartons were then re-packed and transported back to Kennards, carefully placed back into storage unit 3017 and re-placed in their original positions in such a way as to make it look as though the items had never been disturbed.

The fitting of Federal Police covert surveillance cameras near and above the storage unit

46. 3 covert video surveillance cameras were fitted near and above the storage unit for the purpose of monitoring any subsequent attendances and activity concerning the unit.

Duc arrives back in Australia on 4 February 2014

47. At about 10.00am on Tuesday 4 February 2014, Duc returned to Melbourne from Vietnam on Vietnam Airlines flight 781. About 11.05am, Duc cleared Customs then caught a Silvertop Taxi bearing registration number M4785 from Melbourne Airport to 28 Roxburgh Street, Ascot Vale⁷.

48. As Duc passed through Melbourne Airport Customs and travelled in the Silvertop Taxi bearing registration number M4785, he was captured by a number of CCTV cameras - see Customs images at deps 1053 - 1056 and Taxi images at deps 032 - 1036.

49. Duc was wearing a distinctive dark blue coloured short sleeve collared polo shirt with 'USA' printed on the front and smaller 'Polo' motifs on the left breast, and thick wide white striped across the shoulders and down the outside of the sleeve⁸.

⁶ HUB see brief reference 91, pages 347-348, images brief page 212, 213, 264, 265 and 266

⁷ see HUB brief reference 74, pages 317-318, images brief pages 270-275

⁸ exhibit reference 62, images brief pages 177, 178, 126, 127, 270-275

50. About 12.00pm on Tuesday 4 February 2014, Duc was picked up on Surveillance Device footage arriving outside storage unit 3017, Kennard's Self Storage, 151 Raleigh Road, Maribyrnong, Victoria 3032.

51. Duc had arrived alone in Victorian Registered vehicle ZTD251, a black 2013 Lexus IS350 sedan which is registered to Ai Ngoc TANG.

52. Duc was wearing the same distinctive polo shirt as described above that he was wearing earlier that day when he passed through Customs at Melbourne Airport⁹ and that he was wearing as he travelled in the Silvertop Taxi bearing registration number M4785.

53. Duc entered storage unit 3017 and began searching through a number of the items. The prosecution contends:

- (a) that he initially stooped over the Bose box and may have looked briefly inside;
- (b) that he slid the medium sized carton back toward the door;
- (c) that he stooped over the Tiger brand bag;
- (d) that he retrieved the brown cardboard carton with Asian characters on it from the rear right corner of the storage unit and concentrated most of his attention on to that. ***The prosecution contends that Duc NGUYEN then transferred the (Federal Police substituted) contents of the brown cardboard carton with Asian characters over into the foam box, then placed the lid back on the foam box and then placed the now empty brown cardboard carton with Asian characters back on to the foam box;***
- (e) that he then turned his attention back toward the general area where the Tiger brand bag was and retrieved 2 Blackberry phones;
- (f) he then briefly turned back toward the plain carton and tipped it over on to its side;
- (g) he then slid the medium-sized Kennards carton back into position;
- (h) he then left with the 2 Blackberry phones and locked the unit back up.

54. About 11.30pm on Tuesday 4 February 2014, Duc was again observed on Surveillance Device footage arriving outside storage unit 3017, Kennard's Self Storage, 151 Raleigh Road, Maribyrnong, Victoria 3032. This time, he arrived in a black 2008 Honda Civic sedan, registered WTN 391. This car is registered to Duc's partner, Thi Thanh TRAN at 28 Roxburgh Street, Ascot Vale¹⁰.

⁹ exhibit reference 62, images brief pages 177, 178, 126, 127, 270-275

¹⁰ see brief reference 89, pages 341, images brief pages 179, 180 and 181

55. Duc was observed getting out of the sedan and removing a large rectangular black coloured box from the vehicle, which he carried into storage unit 3017. ***This will be called the “Monster Sweeper” box in the trial.***

56. Duc was observed on the footage entering the storage unit, placing the box on the substituted consignment inside the unit then departing in the same vehicle.

Kennards Storage Unit 3017 secretly re-examined by investigators Wednesday 5 February 2014

57. At about 3.55pm on Wednesday 5 February 2014, investigators re-attended storage unit 3017 and specifically looked at the new large rectangular black coloured box Duc had placed within storage unit 3017. Within that box investigators located and seized **\$169,900.00** suspected of being the proceeds of crime and a fresh stash of **524.8 grams** of heroin¹¹.

Duc Nguyen arrested on Thursday 6 February 2014

58. At about 2.20pm on Thursday 6 February 2014, investigators attended 28 Roxburgh Street, Ascot Vale, Victoria. Duc was arrested at the residence.

59. Investigators seized exhibits including¹²:

- i. the two BlackBerry mobile phones uniquely identified by International Mobile Station Equipment Identity (IMEI) number, which Duc had removed from Storage Unit 3017;
- ii. a set of Honda keys with another key attached which opened the padlock that secured the door to storage unit 3017; and
- iii. **\$5,750.00** of assorted Australian banknotes.

60. Within Duc's wallet, investigators located:

- i. an Australia Post Key Pass Identity Card number 068728, in the name Duc Hai Koyaki NGUYEN, born 1 June 1970 of 14 Park Street, Abbotsford 3067¹³. (Images were taken of this item, however it was not seized).

61. On a table investigators observed a small spiral bound notebook, together with 2 pages that appear to have been torn out of a spiral-bound “To Do” notebook, each of the pages bearing the same “To Do” as is seen on each of the pages from the “To Do” notebook found within the “Tiger” bag from within storage unit 3017. These 2 pages have hand-written columns of figures on them, again consistent with the hand-written entries on a number of the pages from the “To Do” notebook found within storage unit 3017.

Prosecution Contentions - Duc NGUYEN

¹¹ see brief reference 93 and 94, pages 355 and 356, images brief pages 186-188

¹² see HUB brief reference 96, pages 358-360, images brief reference 204

¹³ see HUB brief reference 90, pages 342-346, images brief 163 and 164

62. The prosecution's contentions about Duc NGUYEN are:

(a) that notification of Quoc NGUYEN's arrest has precipitated Duc NGUYEN's 9.03am attendance at flat 93/12 Holland Court where his entry attempt was unsuccessful most likely due to not having the right key;

(b) that this visit occurred so soon after Quoc's arrest and at such an unusual hour that the prosecution contends that Duc NGUYEN must have been wanting to remove items of value to him from within the flat, such as heroin that had not been discovered by Victoria Police and/or the heroin pressing and heat sealing equipment;

(c) that Duc NGUYEN then re-attended with the right key at 9.23am later that morning and succeeded in entering the flat. The prosecution contends that Duc NGUYEN would have seen the Victoria Police search warrant at least to the extent of being aware that police had searched the flat and seized items;

(d) that Duc NGUYEN then gathered up any heroin remaining hidden in the flat and the gathered together the remnants of the heroin pressing and sealing equipment left by Victoria Police such as the white Sunbeam heat seal machine, bowls, tubs, bags and some mats or carpet squares;

(e) that Duc NGUYEN then transported the items he removed from the Holland Court flat to an unknown location where he kept them for a number of days;

(f) that Duc NGUYEN then rented Kennards Storage Unit 3017 on 26 November 2013 in the late afternoon buying at least one flat-pack carton and a Kennards archive type box at the same time and that although shown where the unit was by a Kennards staff member, he did not place anything into the unit at that time;

(g) that in the days and hours leading up to Duc NGUYEN re-attending Kennards at 8.20pm on 26 November 2013 Duc NGUYEN set about packing drugs and drug-related items into the cartons and boxes, and that in doing so:

(i) as he was packing the medium size Kennards carton with the "Country Road" camouflage duffle bag and packing substances into that duffle bag his left middle finger has come into contact with a freezer bag containing a filler substance of a type also found in the 3 silver packets of filler, the 3 larger clear plastic bags of MDMC also in the duffle bag, and also found as one of the fillers in the heroin from the plain cardboard carton with Asian characters on it.

- (ii) that 15 of Duc NGUYEN's fingerprints were deposited onto various bags and items that were all ultimately packed into the large Kennards carton, together with the Howards Storage Bag and Vintage Cellars bag he had removed from the Holland Court flat and that inside one bag was the Sunbeam Heat Sealer machine he had removed from the Holland Court flat, and that that machine is conclusively linked to having sealed heroin packets earlier than 21 November 2013.
- (iii) that Duc NGUYEN packed the stainless steel heat seal machine that had come from an unknown location and placed it into the Bose box together with a "die" and 2 rectangular metal bars that are consistent with the same types of dies and rectangular bars seized by Victoria Police from Holland Court on 21 November 2013;
- (iv) that Duc NGUYEN either packed or assisted to pack the drugs into the plain cardboard carton with Asian characters on it, and that particularly on 4 February 2014 that he cut that carton open and rummaged through that carton;
- (v) that Duc NGUYEN packed or assisted with packing the foam box that contained amongst other things, the methylamphetamine in the ceramic cup as well as face masks;
- (vi) that Duc NGUYEN packed or assisted the packing of the Tiger brand bag contents, including a hydraulic bottle type jack consistent with those seized by Victoria Police from Holland Court on 21 November 2013, as well as placing into that the 2 Blackberry phones in a single clear plastic zip lock bag into the egg-carton-type material inside the box in the Tiger bag as well as the "To Do" Notebook also in the bag;
- (vii) that Duc NGUYEN then transported all these items and cartons to storage unit 3017 at about 8.30pm on 26 November 2013 and placed them inside knowing that there were drugs and drug-related items inside;
- (h) that Duc NGUYEN knowingly possessed those drugs of dependence and controlled drugs within storage unit 3017 for the purpose of sale.
- (i) ***that Duc NGUYEN's possession of the items in the storage unit was continuing notwithstanding that he went to Vietnam between 27 November 2013 and 4 February 2014;***

(j) that on 4 February 2014 at around midday, Duc NGUYEN attended storage unit 3017 and rearranged some of the boxes, then opened the tape-sealed brown cardboard carton with Asian characters on it (containing most of the Federal Police substituted items) transferred the entire contents of the brown carton with Asian characters over into the white foam box and put the lid back on the foam box;

(k) that Duc NGUYEN then retrieved 2 Blackberry phones from the Tiger brand bag and then left the unit;

(l) that later that same night, at about 11.30pm Duc NGUYEN returned briefly to storage unit 3017 and placed a black cardboard “Monster Sweeper” carton on to the empty brown cardboard carton with Asian characters that was laying on its side on top of the foam box and then departed again;

(m) that the contents of the black cardboard “Monster Sweeper” box were later discovered to be:

- (i) 524.8 grams Heroin (mix) (**Charge 6**);
- (ii) Dealing with \$169,900 knowing it to be proceeds of crime (**Charge 7**);
- (iii) Dealing with \$169,900 being reckless as to whether it was proceeds of crime (**Charge 8**) (alternative to charge 7).

(n) that the circumstances of this second “stash” being a further attendance where a further quantity of heroin was placed in the storage unit, together with \$169,900 cash, further consolidate the prosecution contention that the contents of the storage unit was nothing other than a clandestine and illicit “storehouse” of drugs, then later drugs and illicit money, in circumstances where the prosecution contends that Duc NGUYEN would have not been wanting to keep the drugs and money at his home given that Quoc NGUYEN had been arrested on 21 November and that police had searched the Holland Court flat on 21 November 2013; and

(o) the prosecution contends that the circumstances surrounding the \$169,900 cash placed into the storage unit were so illicit and clandestine and so connected with the stash of drugs, that the evidence overwhelmingly establishes that the money was proceeds of crime, and that Duc NGUYEN knew that the money was proceeds of crime.

62. The prosecution presents a circumstantial case where the evidence is to be considered as a whole. The prosecution will urge that the unified force of all the circumstances put together will result in only one reasonable inference, that being a reasonable inference of guilt.

27 July 2016

Trial Prosecutor

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL JURISDICTION

IN THE MATTER OF Section 182 of the Criminal Procedure Act 2009

THE DIRECTOR OF PUBLIC PROSECUTIONS

v.

DUC HAI NGUYEN
and
QUOC HUY NGUYEN

NOTICE OF PRE-TRIAL ADMISSIONS

Date of document:	16 June 2015
Filed on behalf of:	Prosecution
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	Indictment: C1409624
	Reference: C1409624

The following evidence is sought to be admitted by consent:

1. Supplementary Folder of Images (Exhibit K)
2. Photographs of 4/119 Elizabeth Street Richmond
3. Photographs of 93/12 Holland Court Flemington
4. Housing Commission security camera imagery from 16 November to 22 November 2013 inclusive and selected stills
5. Photographs of Kennards Storage Unit 3017
6. Kennards business documentation including unit application form, gate logs and imagery
7. Photographs of seizure items from 16 December 2013
8. Olinder Tool Mark Demonstration Charts (deps 195 - 206)
9. Customs imagery of Duc re-entry at Melbourne Airport 4 February 2014
10. Taxi imagery of Duc's taxi journey 4 February 2014
11. Kennards video imagery from 26 November 2013
12. Kennards video imagery from 4 February 2014
13. AFP video imagery of storage unit 3017 December to February 2014
14. Drugs analysis results
15. Fingerprint comparison results

27 July 2016

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