MAGISTRATES COURT

McGRATH, Magistrate

MAG-00242843/10(0)

|  |  |
| --- | --- |
| CROWN | Complainant |
| and |  |
| PHILIP ERIC DE FIGUEIREDO | Defendant |

BRISBANE

..DATE 10/10/2011

..DAY 1

|  |
| --- |
| I, STEPHANIE ATTARD, Director of the State Reporting Bureau and Courts Corporate Services, and the officer in charge of the State Reporting Bureau transcripts, do hereby certify that the abovementioned transcript, pages 1 to 91, is a transcript held in the official records of the State Reporting Bureau.  Dated this 14th day of October 2011  StephanieAttard  ----------  Stephanie Attard  Director  State Reporting Bureau and Courts Corporate Services |

ANDREW JAMES LAVELLE APPOINTED A RECORDER

BENCH: I have before me a number of charges, there are three in total. The defendant named in them is Philip Eric de Figueiredo.

MR DUNN: Yes, sir, my name is Dunn and I appear for Mr de Figueiredo, is the gentleman now‑‑‑‑‑

BENCH: De Figueiredo, is it?

MR DUNN: Yes, de Figueiredo.

BENCH: Yes. I'll come to you in a moment. Thank you, Mr Dunn.

MR DUNN: Yes, thank you, sir.

BENCH: Mr de Figueiredo - would you announce your appearances, please.

MR ROBINSON: Your Honour please, I appear with my learned friend, Mr Weston. My name is Robinson, prosecution.

BENCH: Thank you, Mr Robinson. Thank you, Mr Weston. Yes, Mr Dunn.

MR DUNN: If your Honour pleases, my name is Dunn and I appear for my learned friend, Mr Thomas for Mr de Figueiredo.

BENCH: Thank you, Mr Dunn. Mr Robinson.

MR ROBINSON: Your Honour please. Your Honour, can I hand to your Honour, pursuant to section 110A, a list of 26 witnesses were admitted by agreement.

BENCH: And those documents are admitted by consent?

MR DUNN: They are, sir.

BENCH: Well, those statements will be admitted under the provisions of section 110A of the Justice Act. Yes, Mr Robinson.

MR ROBINSON: Your Honour, there are then a further 20 witnesses. At this stage one of whom a witness, Kathy Jay from the Australian Taxation Office, will be called and provided for the purpose of cross-examination. The balance of the 19 is presently, I understand it, would be called in viva voce and then cross-examined, your Honour.

BENCH: All right.

MR ROBINSON: Can I also hand your Honour an exhibit list.

BENCH: Thank you.

MR ROBINSON: I'm sorry, your Honour, there's one - can I hand your Honour, before I do that, a schedule of the order of - currently proposed order of witnesses, which my friends, of course, have.

BENCH: Yes, thank you.

MR ROBINSON: And‑‑‑‑‑

BENCH: Yes.

MR ROBINSON: ‑‑‑‑‑I also hand to your Honour an exhibit list, which is tendered. The exhibits there and tendered by consent with our friends. You'll see‑‑‑‑‑

MR DUNN: That is so, sir.

BENCH: Thank you. Well, those exhibits - I note they’ve got numbers attached to them. Is it proper to identify them by that number, Mr Robinson?

MR ROBINSON: Yes, your Honour, we'd seek to deal with them in accordance with those numbers.

BENCH: All right.

MR ROBINSON: Can I hand your Honour a copy for your Honour‑‑‑‑‑

BENCH: Thank you.

MR ROBINSON: ‑‑‑‑‑of that exhibit list, and your Honour, can I hand you also, for your Honour's purpose rather than the exhibit, a folder of - no, sorry - the list of the names of those witnesses that have just been handed up for your Honour's purposes.

BENCH: Thank you. Yes, Mr Robinson.

MR ROBINSON: Your Honour, what I would seek to do is to open the matter to your Honour, which will, I hope, not take too long and give your Honour an overview of the nature of the matter.

BENCH: Thank you.

MR ROBINSON: Can I start with a small piece of background to it, which is that on the 4th of November of 2003, two Federal agents attached to the Australian Crime Commission attended at the Sheraton on the Park Hotel in Sydney and located some promotional booklets relating to the setting up of offshore structures, which was published by a firm, Strachans SA, which is Swiss accounting company. The room had been occupied by Mr Philip Egglishaw, a principal of Strachans and whom I refer to it further as we go along.

On the 14th of February 2004, Australian Crime Commission investigators attended the Sheraton Towers Hotel in Melbourne and executed a warrant on the hotel room occupied by Mr Egglishaw. A number of documents were obtained and also his laptop, which was then taken back and examined and a copy of the contents imaged by officers of the ACC and as a result of that, details in respect to the operation of the business directories - sorry, Phone Directories Company Pty Limited, which I'll refer to as PDC, came to the attention of investigators. PDC basically carried on the business of creating and selling regional telephone directories. The business aspect of it was from the selling of advertising in the directories and the nature of the business was to obtain and collate and print data into telephone directories most of which, from the relevant period from 1999, was done by a Chinese company called QH Data on behalf of PDC.

In May of 2004 an investigation given the name Operation Wickenby was commenced which was directed in examining PDC and director conspirators that your Honour has named on the charges which are there before your Honour, and I'll come to in a moment.

Relating to PDC engaging the Swiss accounting firm, Strachans, in setting offshore structures. Off-shore structures is actually the term used by the conspirators and in the materials of PDC.

The informant's case is that the purpose of the structure was to divert taxable income of PDC out of Australia by artificially inflating invoices for PDC expenses in the main for the production of the printing and the collation of the data by QH Data and paying the money off shore in respect of those invoices by a company, which I'll come to, which was set up for the purpose of this, and then holding the money in trust which was set up by Strachans and allowing that money to be accessed via credit and debit cards from ATM machines or for the purchase of goods using those cards off shore.

In short, between the 2000 and 2004 financial years, PDC had a tax shortfall based upon the claimed payments off shore of a little over 1.3 million dollars and each of the conspirator directors, in combination, also failed to declare income an amount of a little over 2.47 million dollars in the same period.

Your Honour has already noted there are three charges. First, between the 18th of June '99 and 23rd of May 2001 at Broadbeach and elsewhere, being conspiracy, contrary section 86 of the Crimes Act, to defraud the Commonwealth, contrary section 29D, alleging against the defendant, Philip Eric de Figueiredo and the directors of the company, Adam John Hargraves, Glenn Luke Hargraves and Daniel Aran Stoten or relevant directors, and Philip Egglishaw, the principal or a principal of Strachans, and Strachans conspired.

Count 2 commences on the 24th of May and runs through to the 9th of June and is a conspiracy alleged against, effectively, the same defendants relating to conspiracy to dishonestly cause a loss to the Commonwealth contrary of the Code.

The need for the - or the reason for the two counts is because on the 24th of May 2001 the Commonwealth Code came into effect and replaced the provisions of the Crimes Act.

The third count is that between the 1st of January 2003 and the 11th of June 2005 at Broadbeach and elsewhere Philip Jepson Egglishaw, Philip Eric de Figueiredo, the defendant, and Phone Directories Company Limited and others, dealt with money or property intending the money or property would become an instrument of crime and the value of the money in the property so dealt with was a million dollars or more, effective, one count of money laundering.

Consents are necessary for the prosecution of conspiracies in respect to the Commonwealth under both the Crimes Act and the Code, and they have been obtained.

Essentially, as I've said, your Honour, the object of the conspiracy was to set up an offshore structure to enable income of PDC to be diverted or paid out of Australia by artificially inflating invoices thereby reducing the taxable on the face of a taxable income of PDC and repatriating the money diverted out of Australia in circumstances which would keep it secret and not alert the Australian Taxation Office as the existence of such.

Draft overt acts have been provided to our friends and they're very lengthy. Effectively, they break up into setting up the arrangement, providing instructions and the dealings by Strachans in respect thereto, the lodging of false returns and repatriating of the money back by the use of debit, credit cards.

It's the informant's case that the conduct of the offshore conspirators was overseen by Philip de Figueriedo, the defendant, that Egglishaw and Strachans were involved in and including setting up the arrangement and Egglishaw basically was the man who visited Australia and negotiated the setting up of the arrangement, but thereafter, the overseeing and the day to day operation of the running was conducted by the defendant, de Figueriedo.

The Australian co-conspirators, on the Crown case, were Adam Hargraves, his brother, Glenn Hargraves and Daniel Stoten, who were all directors at the relevant time of PDC and together with the company, Phone Directories, engaged in a large number of overt acts including acts of certain employees including a Catherine Stoten and a Catherine McGarry, which were done on behalf of the conspiracy.

Essentially, Strachans, which is, according to the materials, Strachans SA, a company and Strachan Services Limited, is an accounting services firm with officers in Jersey and Geneva in Switzerland.

Materials seized from Egglishaw, including the Strachans promotional booklet, indicate that Strachans offered tax planning and offshore administration services for a range of clients around the world. These services include setting up a company trust services, high and low volume invoicing, provision of corporate directors, protectors, trustees and secretaries for the purpose of these arrangements and, as their material refers to, Strachans will also help their clients with invoicing and re-invoicing.

In particular, for the count - the case as laid against the defendant, the evidence the Crown asserts reveals that Strachans established a number of in-house companies which they use as directors, secretaries and nominees for other corporate entities. Strachans refers to the companies and trusts and things established in respect of those as structures. Structures consist of or may consist of, in this case did, a British Virgin Island company, whose underlying shares are held by a Jersey trust. To conceal the ownership of the shares, a Strachans in-house nominee shareholder company is used to nominally hold the shares which are then held on terms of trust.

In this case, Strachans incorporated a company, Amber Rock Limited, and utilising various in-house companies as directors and the like, controlled by Strachans, operated the company. Amber Rock purported to be an independent company operating out of London. In fact, that was merely a post box and it was operated by Strachans.

The system was, the Crown asserts, that’s work legitimately done for PDC by the Chinese company, QH Data, in providing the listings and printing listings in respect to the material were rendered at the direction of PDC to Amber Rock, the Strachans operated company, and Amber Rock would then render false and significantly inflated invoices for that work to PDC here in Australia. PDC remitted the payment to Amber Rock as if for a legitimate invoice and Strachans, upon receiving the PDC payments after paying the legitimate work to the Chinese QH Data and taking their fees, distributed the balance of the PD funds as directed by the Australian conspirators to the different trusts.

Strachans will also provide the services of opening bank accounts for clients and because of the structures used in the trust arrangement, the accounts do not identify the true operator. The purpose of using the companies to conceal the identity was to allow the bank accounts to be established and the persons drawing against them to remain undetected.

For the purpose of drawing an account, Strachans would provide or arrange for credit and debit cards to be linked to those accounts, they would also arrange names - sorry, cards in names other than the true name of the client and in this case, on the informant's case, each of the Australian conspirator directors had cards in their own and names other than their own for the purpose of drawing on funds in the trusts.

Whilst the original arrangement was negotiated with Egglishaw, the day to day Strachans management of the offshore structure and its actions was conducted by the defendant, de Figueiredo.

I will give a very brief description of the operation of Phone Directories. PDC was incorporated in April 1993 with Adam and Glenn Hargraves as the directors and initially sole shareholders. In February of 1998, Daniel Stoten became a director and on 1st of July of 2001, the shareholding of the company was restructured with Adam and Glenn Hargraves each holding 45 shares and Stoten holding 10 shares.

Apart from the taking of various witness statements, the following describes, effectively, the collection of the material which largely goes before the Court now. On the 9th of June of 2005, a search warrant was executed at the offices of PDC in Broadbeach and a significant number of documents was seized.

On the same day, a warrant was executed at the residence of Daniel Stoten in Casuarina Beach. On the same day, a warrant was executed at the residence of Kerry Hargraves, the former wife of Adam Hargraves, in Bonogin. On the same day a warrant was executed at the offices Lee Garvey, Chartered Accountants, who had the accountants who had acted for PDC during the relevant period.

On the same day a warrant was executed at the residence of Adam Hargraves in Sanctuary Cove and the same day a warrant was executed on the address of Glenn Hargraves at Clear Waters - at Clear Island Waters.

And on the 24th of June '05, a warrant was executed at the offices of Cranstoun and Hussein, Chartered Accountants, in the office of former accountants for the group. Telephone warrants were issue in respect of the interception of services of certainly the lines used by Australian directors and a significant number of documents were obtained from off shore. A large number of files relating to PDC was seized under a search warrant issued pursuant to the mutual assistance request and pursued by the Swiss in Switzerland. A large number of documents were obtained pursuant to mutual assist requests by Australia to the British Virgin Islands to the United Kingdom, to the People's Republic of China and there is also a significant and a lengthy statement by Cathy Jay.

Your Honour, I refer to where she examines the significant number of the documents including tax returns and accounts, and expresses opinions in respect thereto, essentially as to the claiming of deductions for payments made to Amber Rock in excess of the work done and the true value.

Your Honour, can I, rather than recite in detail the structure, I would seek to hand up to your Honour, and I've handed a copy to my learned friends, an A3 chart of two pages which is a reconstruction of, effectively, the structure.

BENCH: Thank you.

MR ROBINSON: And, your Honour, I won't take too long on this, but so that your Honour gets the general idea, the second page is, essentially, a blow up of part of the right-hand side of the first page. But dealing with the first page, the company, Amber Rock Limited, which was, as I said, set up in the British Virgin Islands. Its shareholders were on the left hand column and they are, effectively, companies controlled and operated by Strachans, that’s RJ Managers Limited, Pomona Global, Paxford Services and the like.

The secretaries were similarly corporations operated by Strachans, Progress Secretaries and then for a following period San Creno Secretaries Limited. The accountants for the company were Strachans and the directors were also corporate directors, controlled and in-house companies of Strachans, being Grove Directors for a period, then HP Limited, Brian Esk Limited, San Creno Secretaries and Hadrian Management for the different dates set out.

So that effectively, of course, Amber Rock, which is set up in the Virgin Islands and its directors and shareholders and secretaries, are all corporations controlled by Strachans. Amber Rock was set up to hold, in respect of which holdings were held on trust, and your Honour can see on the right-hand side three trusts following the arrow across the top and down, and if I could stop there for a second, as I'll come to with another document which is perhaps a little easier to follow in the sense of the detail, the schematics, but the basic proposition is very simple.

QH Data's invoices were sent by China to Amber Rock which purportedly operated out of the UK but in fact was controlled and operated by Strachans. Once the invoice was received, details of a mark up on that invoice were conveyed by PDC, basically by Stoten, but sometimes by other staff here, to Strachans for the particular invoice.

Amber Rock would then send an invoice with an inflated figure varying between 1000 and 5000 per cent, the true figure, to PDC here in Australia. PDC would then make payment, usually by way of telegraphic or electronic transfer, to Amber Rock in purported payment of the listings provided, or the listing service provided. That money was sent to Amber Rock.

Amber Rock, because it was controlled by Strachans, would then do what was required, which was pay on to QH Data, I'll call the legitimate invoice cost. Fees were taken for running the structure and overseeing the day-to-day operation of it, and then funds were distributed to the trust holders of Amber Rock and those trusts set out down the right-hand side.

The first one is Gabriel Trust which up until July 2001 held 50 per cent. Your Honour will recall that Stoten became a shareholder and interest in PDC from that date. After that date, that is from the 25th of July, 45 per cent of the trust holding in Amber Rock was by Gabriel Trust. Fifty per cent up until the 24th of July was held by Galaxy Trust, and after the change of shareholders in PDC, 45 per cent; and Dunedin Trust was set up as from the 25th of July, or to hold from the 25th of July, 10 per cent of Amber Rock in accordance with the shareholding of the Australian conspirators in PDC.

Down the right-hand side, and the print on the other side is a little larger to read, but effectively your Honour will see that for each of the different trusts which were held in Amber Rock, the trustee was Roca Trust, reading the first one, which was a Jersey company again controlled by Strachans between certain dates and then varied.

There was a protector set up, and effectively the details of the arrangement were that the trustee held pursuant to the trust arrangements and a company given the title of protector had rights to remove the trustee. The protector was again a company held and operated by Strachans, and you can see that it changed in August '99 from Corporate Advisers Limited to Overseas Protectors Limited.

As part of the arrangement, Strachans provided to the Australian conspirators a letter in blank to remove the protector so that it was offered to the Australian clients that they had control by being able to change the protector and therefore direct the trustee or remove the trustee if they wanted, as a - as a comfort to them effectively, because the structure was such that they nowhere appeared in respect of it and they necessarily had to rely upon Strachans honouring their obligation. As part of that, there was this letter in dealing with the protector.

The shareholders in respect to the various trusts and the structure set up are then set out, again R J Managers Limited and Paxford and so on were Strachans' operations, and the beneficiary of the trust, which was operated by the trustee in the first relevant period being Roca, was Gillette Company Limited, and later it changed reading for the Gabriel Trust to Ferndale Worldwide Limited.

What Strachans did was then set up, in respect to the Gabriel Trust, an account in respect to what was called Gillette 4469 which was the account in respect of which a card was issued to Adam Hargraves, so he could draw from the funds held by the trustee on behalf of the beneficiary, Gillette Company, though he was nowhere to appear on any of the papers.

A similar thing was done for the Galaxy Trust and the Dunedin Trust so that - and in the various records of Strachans, and there are many records that were seized and have been tendered before you, and the hard - I should perhaps divert for a moment, your Honour.

Part of the delay, I'm sorry, was setting up to make sure we could throw images up on the screen rather than having to deal with hard copies, but our friends have asked if there be hard copies available, if may be. They're here in Court, and we can produce hard copies if our friends want, or we can use the images. But the very many images show in relation to Strachans that records relating to Gillette 4469 were Hargraves that - in relation to 4646 Gillette - sorry, were Adam Hargraves, Lynn Hargraves 4646 and Ferndale 4819, Daniel Stoten.

The next page, your Honour, effectively is in a larger print, a simple description of what I've just been through. In respect to the operation of those various trusts, the signatory for the setting up accounts and authorising applications to the bank and the like was de Figueiredo. He was an office holder of the various companies who were directors secretaries, trustees and protectors of the various trusts, and therefore he would sign and attend at various meetings and resolve on behalf of various companies to do the different things to allow these transfers to charging the money and the invoices and the like to take place. Now, I won't stay to go through that any further.

I should at least say a little something, your Honour, in opening about how the application - the commencement of the structure took place. An accountant, Feddema, who had been acting for PDC but ceased, at a point after ceasing in 1999 was approached by Adam Hargraves and Adam Hargraves spoke to him about establishing an offshore structure. There were a number of conversations and during one of these conversations Feddema requested the details sought by Strachans for setting up an organisation such as this. On the materials and in his statement, Feddema refers to having received a facsimile from Egglishaw in June '99 giving costings and other information required for setting up an offshore structure.

On the 27th of July '99, Feddema received a fax from Hargraves on PDC letterhead which attached two proposed structures. Tax structure A related to a proposed agreement to broker a paper overseas using some form of overseas company, and tax structure B related to the brokering of listings. Mr Feddema will say in respect of that discussion that he'd had no discussion with Hargraves about the brokering or listings.

On the 30th of July, Feddema sent a facsimile to Strachans attaching a copy of Hargraves fax to him with A and B propositions on it, and on the 22nd of September of 1999 Catherine McGarry, who was an employee of PDC, sent an email on behalf of Adam Hargraves to Philip de Figueiredo who was recorded as a senior trust manager of Strachans, and McGarry asked, "What progress is being made towards forming a company?".

On the same day, de Figueiredo sent an email to McGarry advising effectively, the Gabriel Trust which has a Strachans in-house company, Roca Trustees Jersey Ltd as trustee, has been allocated. A BBI company in the name of Amber Rock Limited, wholly owned by the trust, has been allocated. See documentation for opening a bank account has been forward to the National Westminster Bank in London.

Amongst the internal documents found was a document in Strachans, Gabriel Trust and Amber Rock which documents a meeting between Egglishaw, Hargraves and Stoten in Brisbane in October of '99, and it sets out basically the form of the structure being the initial one I've taken your Honour through, and I won't go through in detail, but 50/50, that a person who will give instructions to the in-house lawyer, Daniel Stoten. It asks for copies of the wills and passports.

A certain agreement was to be set up between Amber Rock and PDC, the Crown says, to give some spurious legitimacy to the invoices that Amber Rock was sending in place of the QH data, and a letter of resignation for the protector, which was left effectively in blank as to date and time, was handed over; was passed to Adam Hargraves.

In July 2000, Stoten sent an email to Strachans asking a third trust structure be set up and I've taken your Honour through that, and they were set up in accordance with the documents your Honour has seen.

Your Honour has seen how BBI company, Amber Rock, was set up and I won't go through that in any detail, but the material reflects the setting up of that structure and the advice of how it was to operate being passed backwards and forwards between the Australian conspirators and Strachans, and the Crown says that the one who was involved in that most was, once the arrangements were entered into, the defendant, de Figueiredo.

There is material in addition to the way the Crown puts it, internal documentations confirming the purpose of the offshore structure and that's on the 1st of October '99. De Figueiredo sent an email to Adam Hargraves where de Figueiredo explained the purpose and operation of the offshore structure and that's in Exhibit Z1269. Your Honour will see that different alphabetical letters have been given to designated places, and the Z documents are those from Strachans from Switzerland.

In that email, de Figueiredo effectively says, "Gabriel Trust is a trust governed by Jersey trust law, having a trustee, our in-house company, Roca Trustees. The named beneficiaries are international charities. You do not have any overt connection to the trust. Control over the trustees is exercised by a protector, the first one being our in-house companies. However, Philip Egglishaw will have available to you at your meeting a signed undated letter of resignation for that protector and appointment in blank of a successor protector. This will allow the client to replace the trustees and ultimately control the overall trust structure. The sole function of the trust is to hold the shares in the underlying BBI trading company, Amber Rock Limited. By using a trust we can overcome succession and inheritance problems in the event of your demise, and to allow this would normally look to your domestic will, a copy which you will need to give to Philip when you meet. Amber Rock Limited has been given a London address for cosmetic purposes and is effectively controlled from our offices by the provision of directors and company secretary, but again you will have no relationship with the company in any way and must not be seen to have any control. All the invoices produced by the company should be seen to be coming from the company and not from anywhere else. I think we could easily operate a system whereby you email us details for the invoice which we would then superimpose on a template final invoice and fax out from the London number. It may well be that we could use the details from the purchase invoice with an agreed mark up to produce the sales invoice. Settlement would be upon the company's account of London out of which purchases will be paid in receipt of the approved purchase invoices", and indeed, that was exactly how the system did operate.

In respect to the invoices on the 2nd of October '99, Hargraves sent an email to Strachans in which he advised - Adam Hargraves, in which he advised, "The primary transactions will be the purchase of listings from a company in China by the name of Q Data. They are up to speed with our requirements and are waiting further instructions. I am to assume that Amber Rock Limited will invoice Q Data to specify an amount indicated by myself. In turn, they will invoice PDC Proprietary Limited in Australia for listings. I guess you could call it services rendered by Q Data by Amber Rock brokerage fees."

One of the documents seized from Strachans, which is Exhibit Z2658, reads, "Amber Rock is invoicing PDC Directories for work being done in China by QH Data. Upon receipt of the funds from PDC Directories, Amber Rock's settle invoice received from QH Data, and transfer the remaining balance into three trusts, 4469, 4646, 4819, following client's instructions as to splitting the amount transferred."

Now, your Honour, as I've said, there are a large number of documents, and essentially this was a repeat pattern. For the purpose of providing a, I hope, readily following a simple way to do it, there is - there are a number of spreadsheets that have been done by Kathy Jay, and what I'd seek to do, your Honour, is to hand to your Honour two different spreadsheets, one of which is marked X1 which is a two page A3 statement, as document, and the second, X2, which is a single page and my friends have received copies of these.

BENCH: Thank you.

MR ROBINSON: In very simple terms, X1 really just traces he document chain from the various exhibits and your Honour can see looking at X1 across the top of the spreadsheet columns A through to D are the QH Data invoices. The date, the invoice number, the US dollar amount and the document number which is effectively the exhibit number.

So, just reading from the first line, item 5, 2000 on 5th of November '99, an invoice number RU99003 for $US6,000 odd was sent by QH Data in accordance with the arrangement that was sent on to Amber Rock.

Then from column E, column H. There are documents which are the reinvoiced Amber Rock Limited documents, and they effectively, as you can see, issue a date exhibit number. Then there is an email dealing in respect of that which is in the material, in this case Adam Hargraves, and the amount of the invoice, and the first one there is six, being a rolled up. Then from column 9 to column 16, again Strachans' documents, and these relate to communications between the Australian conspirators and Strachans where the Australian conspirators advised the mark up of the Amber Rock document, and again I won't go through it in any detail, but in the next document one is followed through, and what's happened these are just being examined all the way through.

Then from document 17 to 19 are the international transfers in payment to Amber Rock for the invoices rendered to PDC which contained the inflated mark up on the work done by QH Data. And then columns 20 through to 24 are bank statements recording receipt of funds paid to Amber Rock by PDC and purported payment of the invoices that were sent by Amber Rock.

And then the following documents refer - well, your Honour can see them there, credit and advice documents in respect to the payments relevant to the amounts and then transfers, the last series of documents - sorry, my apologies. I've got it on two A4 pages. I'm sorry, I confused your Honour. I missed in that the nine through to 13, which are the invoices and then after that, the payments which are 17 to 19 and 20 through to 24, the distribution out of Amber Rock and payment to QH Data and then the distributions in respect to the funds paid by PDC in excess of the payment actually due to QH Data.

The second document I've handed to your Honour is again one of the spread - or perhaps better to call it a chart, prepared by Cathy Jay, which is called spreadsheet X2, which I've handed to your Honour, I think.

BENCH: Yes. Thank you.

MR ROBINSON: It's the second one, yes. And this basically follows one document and I won't call the Court to go through it, but it's actually on spreadsheet X1, column item number 34 and so the various things which appear on X2 are taken from the documents which are set out in the detail on column 34 on X1.

It starts with step 1, which is that on the 5th of August 2002, QH Data sent an invoice number so and so for the amount of 5,779.29 and the Z number which is - that it's found in Switzerland because of course, it was sent to Amber Rock.

On the 6th of August, Stoten sent by email instructions to Strachans as to the mark up and distribution of the additional funds over and above the mark up. Strachans then upon - or direction of Amber Rock, or directed Amber Rock to issue an invoice, which they did. Its number is there set out, for an amount of $144,002.23, which is a very substantial mark up over the 5,779 which QH Data actually charged for work.

PDC on the 7th, paid Amber Rock that sum in purported meeting of a legitimate invoice, being the Amber Rock invoice. Those funds were then received by Amber Rock and transferred as set out in step 5; that is, Strachans transferred the 5,799.29 from Amber Rock to AH Data, hence, in meeting the genuine invoice by the Chinese for the work done.

Strachans then transferred the differing amounts set out in the following three blocks, as per the description and instructions given to them by Stoten; 51,000 to Dunedin Trust, 43,000 to Galaxy and 43,000 the same amount to Gabriel, Gabriel being Adam Hargreaves, the 4469 being Glen Hargreaves and the Dunedin Trust being Stoten, who were then able to, on the cards that had been issued to them by Strachans, draw the money from automatic teller machines.

And the pattern that's shown in those two extracts was repeated over the period of time and that's essentially the way in which it operated, your Honour.

The effect was that QH Data invoices to Amber Rock between the tax years 2000 and including 2005, totalled a little over $147,505. In that same period, Amber Rock Invoices to PDC amounted to a little in excess of 4.278 million dollars. On the face of it, the only difference really between the QH Data and the Amber Rock invoices is the amount, so the - as indicated set out.

Because this is a case where there's a repetition of pattern along the way, these sort of figures have been done and I put it to your Honour to give some idea of the scale.

Between the 2000 tax year and including the 2005 tax year, the average mark up was 2,900 per cent by Amber Rock of the QH Data invoice and it varied from a low in 2000 of 1,315.71 per cent to a highest of, in 2004, 5,534.09 per cent mark up.

Can I then, your Honour - again, I hope by saving a significant number of words and some time of the Court, hand one more document to your Honour, which is a flow chart, which my friends have also received, which is one of the exhibit documents. It's a Z document, therefore it's seized from Strachans in Switzerland and your Honour can see in the bottom right-hand corner the Bar code on the copy document with the Z number and I won't read it, but all - each document is marked with an individual Bar code and hence, the capacity to chase them up by way of computer search.

This was a Strachans document and the bottom right-hand corner records certain things that are required for resolutions and the like in accordance with the operation of the structure. But it's - pictorially, very simply demonstrates what's happened. Starting at the bottom of the page, Phone Directories Proprietary Limited sends money, which is the arrow, in response to invoices issued by Amber Rock. The money goes to Amber Rock.

Amber Rock then, after payment of the bill according to the way it's recorded here, pays commissions in the following three ways; commissions as contribution to the Gabriel Trust, which is for Glen Hargreaves, the GH appearing there, which is distributed by way of moneys paid into Gillette 4469 account, which is also an account set up in respect of which Hargreaves was provided two debit, credit cards, to draw against that account.

Commissions were paid onto Galaxy Trust AH, which is Adam Hargreaves and distribution were to Gillette 4646. Again, in respect of him, he can draw against moneys held in that trust in that account, which started of an account in the UK and ended up in the Corner but later changed the Corner Bank in Switzerland and also to the Dunedin Trust, which was Daniel Stoten, which was then distributed into the Ferndale 489 account and he was able, on the same basis, to access the funds by drawing against the funds by way of the debit credit cards that were issued.

Over the period, from the 2000, 2000 prior income year, transferred from Amber Rock to the bank accounts established for the directors as part of this scheme. Adam Hargreaves received a little in excess of 2.868 million, Glen Hargreaves a little in excess of 2.396 million and Daniel Stoten, who of course, held only 10 per cent of PDC, received a little in excess of 1.29 million.

As part of the instructions in respect to the use of the cards, the Australian directors were advised not to use the cards for purchases which required a signature in Australia because of the risk of detection, but that they should be used for the purpose of withdrawing from teller machines or could be used overseas.

The cards, as your Honour will hear or see, bore either the true name of the Australian Conspirator Director or another name and a signature of that director was - when the card was sent, appeared to have been placed on by the director so that the name would be whatever the name was and the signature was then placed on by the director. For the purpose, obviously, of an ATM withdrawal, there's no need to use the signature, merely a PIN. I won't go through the circumstances of the cards being sent. It's sufficient for opening, I would submit, your Honour, that you've got the description there to see how they were.

The Crown also relies upon, obviously, the use of these structures in the transfer of monies, for the purpose of the money laundering account. The purpose of the arrangement was to defraud contrary 29 and of course a loss, contrary 135(4) of the Code.

De Figueiredo, together with the others in as the Crown will put it, aiding and abetting, dealt with the money remitted to Amber Rock by receiving it and dispersing the money as described in the way in which I've gone through, which included concealing the Conspirator Director's access to the accounts, arranging and overseeing the banking and managed the overseas banking.

A number of documents were found in the exercise of searches relating to these matters off shore. A document was found in Hargreaves, or in the exercise of the search warrant at Adam Hargreaves' premises, for the year ending 30th of June, which showed a recorded amount of 540,000 described as "OS profit".

Another document found showed a recording of 540,475 profit for the 2002, 2003 and 2001, two years, and gave breakdowns of transactions for different periods relating to that.

A document was found at the residence of Daniel Stoten similar to the document at Adam Hargreaves' residence and shows listings in amount of 1.39 million, 131,000, comprising 1,100,000 profit and also recording the loan and adjustments.

As part of the evidence, Mr Feddema was engaged to provide a valuation. He had been a previous accountant but was not the accountant during the relevant period when the scheme was run. For the purpose of valuing the company, he was provided with certain materials including profit, loss and the like. In preparing the report, he discovered an expense called Listings Data Processing in the management reports, another Express Overseas Listings and the company report and directory listings was another expense. In fact, those expenses in the evidence of Ms Jay, went to make up the significant deduction for payments made to Amber Rock.

When Feddema went through these, he sent an email on the 19th of May to Kate Stoten, the wife of Daniel Stoten, who was an accountant, relating to the valuation of the company. One of his queries regarded the directory listing expenses and he asked Kate if she was able to provide a real cost in respect to those.

On the 15th of August, which was a couple of months later, near enough, he received a facsimile from Kate Stoten which contained answers. In it, she advised that in relation to directory listing expenses, the real cost in 2003 was about $136,000 and was expected to be the same in the following years, though the profit and loss statement for PDC for the financial year ending 30th of June records the listing process expense for that year was 1,232,000; in other words the Amber Rock inflated figures.

Income tax returns were lodged by the defendant Conspirator - the Australian Director Conspirators and by PDC, in respect of each of them - sorry. I'll start with PDC. PDC claimed as deductions and over-claimed the deductions in respect of payments to Amber Rock. I won't, unless your Honour wants me to, give you the individual years for the relevant period, but effectively, over the five year tax period, a little in excess of 5,266,000 of deductions was over-claimed and during the relevant period, tax returns of the individuals failed to declare the access to funds they had of the funds held in the trusts off shore.

Your Honour, I hope that was sufficient without being too lengthy, particularly what the Crown says the way in which this fraud was conducted.

BENCH: As I understand it, the case against Mr De Figueiredo is that he aided and abetted.

MR ROBINSON: No, your Honour. In respect to the first two, the defrauding, that he is a conspirator, proper. In respect to the money laundering, aiding and abetting. But the‑‑‑‑‑

BENCH: Aided and abetted the money - sorry, yes.

MR ROBINSON: Yes, the - on the two conspiracy counts, which are‑‑‑‑‑

BENCH: Yes.

MR ROBINSON: ‑‑‑‑‑broken because of the Code, that he, together with the others, conspired to defraud by the creation of the false circumstances of inflating the deduction by - involved in falsely increasing the invoices by Amber Rock and hiding money and allowing the repatriation of funds out of the accounts which were set up as trust in a way which were blind to the rest of the world, so that the directors were able to access it without it being discovered.

BENCH: And the two Hargreaves in the statement were the only beneficiaries.

MR ROBINSON: Yes, they were.

BENCH: Yes. I think I understand, thank you.

MR ROBINSON: Your Honour pleases.

BENCH: Mr Weston.

MR WESTON: Thank you, your Honour. Your Honour pleases, I call William Robert Tooth.

BENCH: Has his statement been tendered, Mr Weston? Has his statement been tendered, Mr Weston?

MR WESTON: No, it's not.

BENCH: No, it's not.

MR WESTON: It hasn't been.

BENCH: It's viva voce.

MR WESTON: He'll be giving full evidence, your Honour.

BENCH: He's going to give viva voce evidence, is he?

MR WESTON: Yes, full evidence-in-chief.

MR DUNN: There's no objection to the witness being led through his evidence, sir.

BENCH: Thank you. Thank you, Mr Dunn.

LIAM ROBERT TOOTH, SWORN AND EXAMINED:

BENCH: Sit down, please and make yourself comfortable. Mr Weston?

MR WESTON: Thank you, your Honour. Sir, is your name William Robert Tooth?‑‑ Yes, that's correct.

Mr Tooth, are you an officer of the Australian Federal Police?‑‑ Yes, I am.

And how long have you been a Federal agent?‑‑ Since March 1999.

You're currently attached to the Australian Crime Commission?‑‑ No, I'm currently with the Federal Police in professional standards.

In 2006, were you involved in the investigation of a business called Phone Directories Company Proprietary Limited?‑‑ Yes, that's correct.

Right. If I can take you to the morning of the 9th of June 2006. Were you and some other officers involved in a search of the offices of Phone Directories Company Proprietary Limited at Broadbeach?‑‑ Yes.

Now, it's the case that you executed a search warrant on the premises, did you?‑‑ Yes, I did.

Right. Were you the officer who swore the warrant?‑‑ No, I was not.

Do you know who that was?‑‑ From memory I don't recall, but I suspect it was Federal Agent Matthew Franklin.

You attended a briefing before the search, did you?‑‑ Yes, I did.

Okay. Who conducted that?‑‑ Federal Agent Matthew Franklin.

All right. You arrived at the premises of Phone Directory Company Proprietary Limited - I might start referring to them as PDC, at about 7.30 that morning?‑‑ Yes. That's correct.

All right. What did you do when you arrived there?‑‑ I spoke to the - the occupants of - business manager, there were two female business managers I spoke with and explained the conditions of the warrant and the occupiers rights and - and then we commenced the execution of the warrant on two levels, the PDC group was on.

I see. Now, during the course of the search did you give instructions to your colleagues to search particular parts of the building?‑‑ Yes, I did.

All right. And was there a designated property officer?‑‑ Yes, Bonnie Jean Hunt who is attached to the Crime Commission at the time.

Right. Now, can I just ask you generally, when matters of interest were found by officers during the course of the search what was done with them?‑‑ The property would have been - our standard procedure, placed in a bag, labelled as to where they'd found it and, you know, which room, drawer, cabinet, that sort of thing and then the item was handed to the property officer, Bonnie Jean Hunt, who would have recorded it in the property seizure record.

I see. You would be involved in that process, wouldn't you?‑‑ Yes, that's right. The item would have generally have been shown to - to either myself or Sue Taylor who is - who is looking after officers searching on - on one level while I was looking after officers searching on the other level.

All right. Now, it's also the case that when you arrived at PDC's premises that morning you had a tape recorder with you?‑‑ Yes, I did.

What did you do with that?‑‑ I activated it on commencing the search warrant and - and I believe the tape would have been exhibited at the Crime Commission as part of the - the exhibits with the property.

I see. Now, how long were you at the premises of PDC that morning?‑‑ Well, we commenced about 7.30 in the morning, like you said, and I think we finished up around 2 in the afternoon, approximately.

During the course of the search did you detail a computer forensic examiner, a Mr Murphy, to examine anything?‑‑ Yes, Chris Murphy was present at the - at the search warrant. He conducted a key word search on the computer system at the premises and - and then conducted a forensic examination of that according to his procedures at the ACC.

Now, at the completion of the search of PDC, what was done?‑‑ The - I believe Daniel Stoten was present at the conclusion of the warrant and the‑‑‑‑‑

Do you recall how long Mr Stoten was there?‑‑ No, he came basically right before the end of the warrant with some other Federal officers or - or officers from the Crime Commission. I can't remember who that was.

Do you recall if he said anything to you?‑‑ No, he was talking to another officer. I can't recall if it was Mathew Franklin or - or someone else. But they were there basically right at the conclusion of the warrant and he was there in time to - to review the property seizure record and - and - and just - and sign - and sign the record basically to confirm that what we were seizing is - is - is what we took from the office.

All right. Now, your Honour, the matter's taken from PDC that morning have already been admitted into the evidence, the folder marked "G" so unless there's‑‑‑‑‑

MR DUNN: No.

BENCH: They're not required, thank you.

MR WESTON: I don’t intend to take the witness through each exhibit unless there's some requirement by my learned friend for that to be done. All right. Now, if I could - the date we've spoken about, that was 9 June 2005, wasn't it?‑‑ Um.

Or 2006?‑‑ 2006, I think it was. Yes.

Did you later attend the offices of - sorry, I'll withdraw that. You were involved in another search in connecting with this matter, weren't you?‑‑ Yes, I was.

All right. And where was that?‑‑ I can't recall the exact address. It was an accountant's address at Hendra.

All right. Could I suggest 82 Gerler Road, Hendra?‑‑ Yes, that sounds correct.

Is that the address for Mr John Feddema?‑‑ Yes, that's correct.

Was he the accountant that you were speaking about?‑‑ Yes.

And could I suggest that you attended his address on 16 September 2005?‑‑ With other officers, that's correct.

All right. Okay. And what did you do when you were at that address?‑‑ There was search warrant conducted at that address and I assisted with execution of that search warrant.

All right. You weren't the warrant holder were you?‑‑ No.

All right. Were you present when Agent Franklin spoke to Mr Feddema outside the offices of the Australian Crime Commission on 29 June 2005?‑‑ Yes, I've made a notation in my diary in relation to that.

All right. And was it the case that Mr Franklin, from what

you could see, was tape recording that conversation?‑‑ I - I - I can't recall, to tell you the truth. I recall a conversation with Mr Feddema and - and his lawyer was also present but it was a very short conversation.

All right. Thank you. That's his evidence-in-chief, your Honour.

BENCH: Mr Dunn.

CROSS-EXAMINATION:

MR DUNN: Yes, thank you, Sir. Just in relation to that last matter, the meeting that you had with Agent Franklin and Mr Feddema. Do you have a note of that in your police - in your diary or your notebook?‑‑ Yes, I do.

Do you have that with you?‑‑ Yes, I - I - I do.

Right. Just while I'm - could you get that out, please, for the 29th. Have you got a page number or something you can find there?‑‑ Yes. I'll just - okay.

Right?‑‑ Page 115.

Right. Thanks very much. Just before you - I ask you about that, you joined the Australian Federal Police, I think you told us, in 1999?‑‑ Yes, that's correct.

And - and prior to being a member of the Australian Federal Police what were you doing?‑‑ I was in the navy.

In the navy?‑‑ Yes.

Right. Australian Navy?‑‑ That’s correct.

Right. Even better. And after you joined - after you left the navy you joined the - the AFP?‑‑ Yes.

And did you serve as a uniform member of the Australian Federal Police?‑‑ Yes, I did.

And what's - where were you based?‑‑ At Woden police station in Canberra.

Right. And what sort of work were you doing there?‑‑ Uniform policing.

Right. And how long did you stay a uniform member of the AFP?‑‑ Approximately three years.

Right. And then?‑‑ And then I transferred to the Robina office at the Gold Coast‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑where I conducted national operations.

Right. Were you then an investigator or a uniform member?‑‑ An investigator.

Right. And what sort of training had you undergone for that?‑‑ I'd done the - the semester one, semester two of the AFP police course.

Right?‑‑ Which is - it basically covers - because member statement of facts and contentions the Federal Police are required to do both uniform and national investigations work.

Right?‑‑ It covers both areas.

Right?‑‑ Yes.

Sorry, in the navy you'd been - what had you been doing in the navy?‑‑ Nothing related to investigations.

Right. What - working as a‑‑‑‑‑?‑‑ As a combat systems operator.

Right. Okay. And the Australian Federal Police, apart from providing protective services and doing uniform work, they also then have investigators?‑‑ Yes, that's correct.

And you became an investigator after a number of years?‑‑ Yes, that's correct.

And their investigations, very broadly, can I suggest, fall into either fraud or - or drug matters?‑‑ Um.

Or is that too broad?‑‑ That's probably too broad, yes.

Okay. Were you streamed in any way on the Gold Coast as to what you were doing?‑‑ Yes, well I had done a number of investigations in - in Canberra as well. I worked in plainclothes down there for a little while as well.

Right?‑‑ And in‑‑‑‑‑

And the weather would be a whole lot better?‑‑ Better on the Gold Coast.

Yes?‑‑ Yes. In Gold Coast I worked in - I started of doing general investigation, Centrelink frauds, general drug matters, family law‑‑‑‑‑

Yes?‑‑ ‑‑‑‑‑that sort of thing and then I became attached to the - they had the old Avian Drug Strike teams.

Yes. But the old?‑‑ They're called Avian teams. A-V‑‑‑‑‑

Avian. Oh, yes, as in - yes, as in the bird?‑‑ That was in response to drug importations and that sort of thing at the time.

Yes?‑‑ So I - I worked on those in - at the Gold Coast.

Right. And then?‑‑ And then I was - I applied for a secondment to the Crime Commission‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑in Brisbane.

In Brisbane here. Yes?‑‑ Yes, that's correct.

Okay. And you went to the Crime Commission when?‑‑ I think it was approximately at the end of 2002 from memory.

Right. Now, you understand I'm not going to ask you about anything that might be confidential, right, but with that proviso, what sort of work did you do in the Crime Commission from 2002 'til 2006?‑‑ More investigations. I worked on a variety of - they had determinations in the Crime Commission where you work under specific determinations, similar to AFP where you have drugs, fraud, for example. The Crime Commission had determinations which are - are set down every year.

Guild you as to where you're going?‑‑ Yes, that's correct and I - I worked‑‑‑‑‑

Was it the National Crime Authority then or was it the Crime Commission?‑‑ The Crime Commission.

Right. Yes?‑‑ I worked under firearms determination, AOSD, which is amphetamines and other synthetic drugs.

Yes. Perhaps I can make this easier. When - when did you get - become involved in the tax matters?‑‑ I was only involved as far as the - the warrants were concerned and I didn't have any other involvement in the investigation.

Right. Well, that's probably the - where - where I'm coming to?‑‑ Yep.

So, is your - your - the total connection that you have with these - these matters, I mean this committal and Operation Wickenby, the days that you've just told us about?‑‑ Yes, that's correct and there was one other occasion I - I read in my statement where I collected a - a mobile phone, I believe.

I was going to ask you about that?‑‑ Yes.

Okay. So, you'd been rounded in to make up the numbers. I don't mean that disrespectfully but when more hands were needed you were one of the hands?‑‑ Yeah, that's correct. With this it's most basically to assist an execution of warrants.

Right. All right. So, if I can go to the last date I just mentioned, the 29th of June, was it?‑‑ I can't recall from memory.

The page 115?‑‑ Oh, yes, yep.

29th of June you had a meeting with Mr Franklin and Mr Feddema?‑‑ Yes, that's correct.

Now, are you able to tell us what your diary - do you call it your diary or your field book or note book that you're looking at now?‑‑ It's my official diary.

Right. Okay. So, what's your diary say what happened on the 29th?‑‑ That's between 9 a.m. and 9.30 a.m. I corroborated Matthew Franklin's tape record of conversation between John Feddema and solicitor, Richard Gowen.

Yes. Well, do you make a note of what was said?‑‑ No, I haven't.

Right. So you were called in as the corroborator?‑‑ Yes, corroborator is probably a poor word. Basically, Matthew Franklin was having a conversation with John Feddema and his solicitor, from memory.

Yes?‑‑ And he wanted a second person to sit in while the conversation occurred. I can't recall - recall if he taped it or not and I don't recall exactly what it was about.

All right?‑‑ But I suspect it would have been something to do with asking them to provide information or participate in an interview or something similar to that.

Right. Thank you. And - and you don't recall the end result?‑‑ No, I don't recall.

Just pardon me a moment. Excuse me just for a moment. All right. Thank you. Okay. So, there's nothing else in your notebook about that?‑‑ No, I haven't made any further notes in relation to that.

All right. Now, if you go back then to the 9th of June 2005, is it? The - the search you did at PDC?‑‑ Yes.

Now‑‑‑‑‑?‑‑ 2006.

Sorry, 2006?‑‑ Yep.

On that - on that day, you attended a briefing. Do you have a note in your - your diary - your notebook about that? I think it is 2005 actually?‑‑ Oh, is it 2005, is it?

Yes?‑‑ 2005.

BENCH: Mr Dunn, is the date of the search 2005, is it?

MR DUNN: I believe so.

BENCH: I'm just looking at the index that's been handed up of the exhibits and it's got 2006.

MR DUNN: It is 2006? Oh, I'm sorry. All right. Well, let's have a look at your - I've obviously got that date wrong. Have you - have you got a note there for - for June of 2006 and have you got a note there for June of 2005, if you can just satisfy my curiosity? 9th. Perhaps you tell us what you're looking at at the moment?‑‑ Yes, I'm looking at June 2005.

And what have you got there? 9th of June?‑‑ Yeah, I've got the search warrant execution at 2005.

I think it is 2005.

MR ROBINSON: It is, your Honour. There's been a - a typo in the exhibit list that's caused the confusion.

BENCH: So, that dates of the 9th of June 2006 in G1 and G2 should be 2005?

MR ROBINSON: Yes, your Honour.

MR DUNN: I think that's correct, Sir. All right. Well, now let's - you probably may - just to help you out you probably made the statement in 2006. Okay. Now, what have you got for the 9th of June 2005 in your - in your - in your book?‑‑ I've got‑‑‑‑‑

Page number?‑‑ Page number 112.

Right, thank you. Got a briefing?‑‑ Yes, the briefing's actually the day before but then on the 8th of June 2005 at 9.30, I went to a warrant holder briefing with Matthew Franklin.

Right. And now‑‑‑‑‑?‑‑ Actually, correction. That's - I've got two notations. One at 9.30 and another one at 14 - at 2 - 2 p.m. in the afternoon.

Right?‑‑ Which was the - in the presentation room with the other staff members‑‑‑‑‑

Right. I think you just‑‑‑‑‑?‑‑ ‑‑‑‑‑ from ATO, ACC.

Just slow down a bit. You're going a bit fast for me?‑‑ Sorry.

Okay. So, on the 8th of June, if - if this - just see if I've got this right, you tell me if this records of your memory. In - in June of 2005, there are a series of search warrants executed throughout Australia by the Australia Crime Commission, a great number of them, 35 or more?‑‑ I - I don't recall. I recall there were a number of search warrants in south east Queensland and - and northern New South Wales. I don't recall‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑the others.

And some controversy flowed on from - from that but let's - now on the 8th of June you attend a briefing and this is what, the first you knew of it, apart from maybe gossip around the office?‑‑ Well, yes. I knew it was being planned obviously.

Yes?‑‑ But the official briefing was the day before.

All right. Now, you - the first briefing, is it on the 8th of June in the morning, is it, from Mr Franklin?‑‑ I might have had an informal briefing with him at 9.30 and a formal briefing with the presentation was at 2 p.m. in the afternoon.

All right. Now, did you make a note of what you were told at 9.30 in the morning?‑‑ No, I haven't.

Except it's going to be an early start the next day presumably and a bit about it?‑‑ Yes, that's correct.

Right. But anyway, so what that was is now - there's no record of that chat, right? Not that I'm suggesting there should be?‑‑ No.

Okay. So, now the briefing itself took place at the formal briefing?‑‑ Yeah, in the presentation room at the Crime Commission and from memory, I recall that Federal Agent Franklin had a PowerPoint done up in relation to that.

Right?‑‑ And he presented it to a room full of people from‑‑‑‑‑

All right?‑‑ ‑‑‑‑‑I've got here ATO as well as Crime Commission and AFP staff.

Right. So you've - so you've got the Australian Tax Office, you've got the Crime Commission, you've got AFP, you've got‑‑‑‑‑?‑‑ That's - that's all I've written in my diary.

Right?‑‑ I don't recall who else was there.

All right. Right. And the PowerPoint presentation, was that about taxation matters and‑‑‑‑‑?‑‑ It was specifically in relation to the PDC group warrants.

Right. And, were you given a pack at all or - or an information sheet as to what you'd look for?‑‑ Yes, I believe each warrant holder is - is given a - a pack with the search warrants occupier's rights and - and the briefing notes.

Right. Do you still have a copy of those?‑‑ No, I don't.

Right. Those sort of things in general, the briefing notes for this sort of operation, would they be retained or is that something that just comes and goes?‑‑ That's something that - that comes and goes. Oh, the - the - when I say briefing notes, it'd be basically what was in the PowerPoint. So, the PowerPoint should - should've been retained‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑in the files at the Crime Commission.

Have you been present in Court earlier today?‑‑ No.

No. Okay. I was just going to say, had you been you might've heard Mr Robinson telling us something about the matter and various company names and things like, which at first blush seemed a little bit complicated. How did you know what to look for when you went out the next day?‑‑ Basically, from memory, the conditions of the warrant specify the company names and all the names that we were looking for‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑so - so it was basically we were looking for things that were listed on the conditions of the warrant.

Right. So - but, were you given a - well, perhaps you could tell us, what - what was the purpose of the background briefing as you understood it?‑‑ Umm‑‑‑‑‑

That was Mr Franklin giving that?‑‑ It's a standard - standard procedure when we're executing warrants to brief every - everybody to let them know just - just where the warrants are going to be executed, who's required at each warrant.

Right?‑‑ It's more of a logistical type thing.

Right?‑‑ And, to advise people of what we're looking. That, obviously, computer forensics will be there and they - they have this - their role to perform.

Right?‑‑ And - and - and in - and most cases, what happens is people are given a copy of the actual conditions or the conditions where it's listed out what company names and that sort of thing to look for and‑‑‑‑‑

I - I mean‑‑‑‑‑?‑‑ ‑‑‑‑‑and that - and that's basically what - what we're searching for.

This wasn't thought it was going to be a hostile matter or a dangerous matter, the officers?‑‑ No.

So, in those sorts of warrants you might have special briefing or assistance, right? If you're going to a hostile environment or where there might - where there might be danger for the officers?‑‑ Oh, the - this is basically run exactly the same, except you'd - you'd have a risk assessment prepared.

All right. Now, in the - in the warrant, did you become the warrant holder, do you recall?‑‑ For the PDC group?

Yes?‑‑ Yes.

Right. And, now in relation to that, was it - perhaps, that's what was explained to you a bit earlier in the day or was it explained to you in the briefing?‑‑ On that day I became aware on the 8th of June I was made aware that I'd be the warrant holder for the - for the PDC group.

All right. If I ask you now to look at your notes or to ransack your memory, what can you tell us about the briefing?‑‑ As it's 2005, all I really recall it was - it was in the - I recall - in the presentation room I recall that Federal Agent Franklin had a - a PowerPoint display and that's - so I was given a copy of the - the warrant, which was signed over to me and the - and the supporting documentation, like the occupier's rights and that sort of thing.

Now, I know it's a long time ago, but when you - when you went to the building there was, what, two or three levels that you had to look at?‑‑ Yes. Initially they thought it was over, I think it was, four levels and then it ended being over two levels that the‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑offices were - were operating from‑‑‑‑‑

That's probably a relief?‑‑ Yes.

All right. And, how many offices were there approximately?‑‑ There were two, I believe. Two levels.

Right. And - and - yes, and how many investigators or tax officers or others were there?‑‑ Umm.

Roughly?‑‑ Oh, I've got it written down in my diary. But, there were probably about 10 or 12.

All right?‑‑ In - in the beginning and more came later during the warrant as they - they finished their other search warrants.

Right. Did you have a video camera there? If you don't recall‑‑‑‑‑?‑‑ I don't recall.

Okay. You certainly had a - a tape-recorder, right?‑‑ Yes, I did.

And, the purpose of the tape-recorder was to do what?‑‑ Just to record the - the execution of the - the warrant, as in the reading the occupier's rights and the conditions of the warrant to the occupants and‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑then to record the conclusion of the warrant and the signing of the property seizure record and any relevant conversations that might have come up in between.

Right?‑‑ Obviously it - it - we were only dealing with office staff on the day mostly until the end of the warrant so‑‑‑‑‑

Anyway, you - you - you took whatever you believed to be relevant, right?‑‑ Yes.

Bagged it all up?‑‑ Yep.

And, that'd be in the search warrant log?‑‑ Yes, that's correct‑‑‑‑‑

That - that - the‑‑‑‑‑?‑‑ ‑‑‑‑‑yep. The property seizure record.

Property seizure record. That - that would have all of that listed and the location and probably the time where they found things, no?‑‑ Yes.

All right. Now, there's one other reference made in your - your statements to being present when a telephone SIM card's handed over?‑‑ Yes, that's correct‑‑‑‑‑

Do you recall seeing that in your‑‑‑‑‑?‑‑ Yeah. Yes, I do.

It's paragraph 16 of your statement. On the 24th of June 2005 you attend a Ramsden Faes Lawyers in Broadbeach?‑‑ Yes, I recall that.

What was that all about?‑‑ That was as - as the result of an ACC examination.

Right?‑‑ And‑‑‑‑‑

To do this with matter?‑‑ Yes.

And?‑‑ And, I believe it was a - what was her name, there's a person who was present at the search warrant who was asked to produce that mobile phone.

All right. Could you find the name out for me by looking at your notes? Do you have a note for the 24th of June?‑‑ I think it might've been Cath - Catherine McGarry. Is that right?

Yes, there is a Catherine McGarry. Do you think it was her phone?‑‑ Not her phone. From - from memory‑‑‑‑‑

Stoten - Mr Stoten's phone or Stoten wife's phone‑‑‑‑‑?‑‑ Yes. Yes, that's correct. Yes, that's correct. I believe what happened is during the search warrant we became aware of information from - or after the warrant we had obviously telecommunications interception.

Mmm?‑‑ There was a call that was identified where certain evidence was hidden during the search warrant, being a mobile phone and - and some sort of book that was thrown out the window.

Right?‑‑ And, those items were - were later asked to be produced to the Commission.

Now, what - what - what happened as I understand it, is, what, there was a telephone intercept warrant in place?‑‑ Yes. I - obviously, like I said, I wasn't part of the investigation in this, so‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑I was aware of the information, but Federal Agent Matthew Franklin would have more details in relation to that.

Right. And, Mr Stoten apparently asked somebody to throw a book or a - something out the window?‑‑ There was - apparently there was a telephone call intercepted in relation to that. I'm not sure of the exact details.

Right. Anyway, did you locate whatever it was that was thrown out the window?‑‑ I believe there was a - as a result of that examination, like I said, there was a - I was - I was asked to go down and collect this particular phone from‑‑‑‑‑

Right?‑‑ ‑‑‑‑‑the solicitor, and I believe that that was the phone that was‑‑‑‑‑

That was his?‑‑ ‑‑‑‑‑that went missing during the search warrant.

Okay. That was presumably Mr Stoten's phone?‑‑ Yes, that's correct.

All right. Now, just - do you know the Niecon Tower in Broadbeach?‑‑ Yes, I do.

Do the windows open there, just out of curiosity?‑‑ Umm‑‑‑‑‑

Or has it got balconies? I mean, can - can you‑‑‑‑‑?‑‑ I - I‑‑‑‑‑

‑‑‑‑‑chuck something out the windows?‑‑ I can't recall. I believe the phone from the information I recall was that the phone was - was actually carried out. But, the - I'm not sure. From memory I recall someone telling me the book was thrown out the window. That's correct. But, I - I don't - I don't know. I can't recall how the windows were laid out‑‑‑‑‑

And, the phone - and it - do you remember anything about the phone? Was it a global roaming phone or a‑‑‑‑‑?‑‑ I don't recall other than the details I recorded when I collected the phone.

All right. And, the page number in your notebook, sir, and this is the last thing I want to ask you?‑‑ Umm.

For the 24th of June?‑‑ Twenty-fourth of June. Page 114 and 115.

And, what have you written?‑‑ I've written, "Travelled to the Gold Coast at 9 a.m. 10.15 arriving at - with Christian Faes of Ramsden Faes Lawyers. Located level 5, 16 Queensland Avenue Broadbeach. Obtained a Sony Ericsson mobile phone and Vodaphone SIM card. Receipt 04176 provided". And, notes made in ACC field book, page number 21 and 22, "10.30 departed and returned to ACC Brisbane where phone was lodged as an exhibit".

Right. And, other than those three matters, nothing else you can help us with?‑‑ No, that's all.

I've got no other questions. Thank you, sir.

BENCH: Re-examination, Mr Weston?

MR WESTON: I have no re-examination.

BENCH: Thank you, Mr Tooth‑‑‑‑‑

MR WESTON: May the witness be excused?

BENCH: ‑‑‑‑‑you may step down and leave?‑‑ Thank you, your Honour.

WITNESS EXCUSED

MR WESTON: If your Honour pleases, I call Simon Gerard Gullifer. And, again, his evidence will be‑‑‑‑‑

MR DUNN: And led. No objection to being led.

MR WESTON: Thank you.