

57
5 days

THE QUEEN
-v-
TAN HAI NGUYEN
SUMMARY OF PROSECUTION OPENING

Presentment

1. The accused is charged with three offences under the Drugs, Poisons and Controlled Substances Act 1981.

1	9/11/05 – 8/6/06	Trafficked heroin.
2	8/6/06	Possession of heroin.
3	8/6/06	Possession of morphine.

Count 1

2. Count 1 alleges that between 9/11/05 – 8/6/06 the accused trafficked a drug of dependence – diacetylmorphine “heroin”.
3. Trafficking is carrying on a business, trade or commercial activity of moving drugs along the path from their source to the drug user¹. The Drugs Poisons and Controlled Substances Act 1981 does not exhaustively specify all activities that can amount to trafficking. What the Act does do is to say some activities are trafficking without limiting trafficking to those activities only. The activities that are expressly stated as amounting to trafficking are:²
 - (1) being in possession of a drug of dependence for the purpose of selling it;
 - (2) offering to sell a drug of dependence.
 - (3) agreeing to sell a drug of dependence.
 - (4) selling a drug of dependence.
 - (5) exchanging a drug of dependence.

¹ R. v. Giretti (1986) 24 A.Crim.R. 112 per Ormiston J at 134; Crockett J at 118.

² s. 70(1) DPCSA

Date/Time	Deps	Call no.	Parties	Transcript extract
10/12/05 17:41	346	1303	[REDACTED]	[REDACTED] ... you got new one [REDACTED] ... if you not happy you can wait
11/12/05 12:25	347	1312	[REDACTED]	[REDACTED] ... no good sorry ... you don't like no good.
16/12/05 11:44	348	1376	[REDACTED]	[REDACTED] ... nothing [REDACTED] , sorry
17/12/05 16:04	348	1376	[REDACTED] Incoming	Sorry andy now maybe Monday or Tuesday

10. Police executed a search warrant at [REDACTED] Coburg on 8/6/06. Police found the accused on a mattress on the floor. He was arrested and taken to the police station for interview. In the interview, the accused said his address was [REDACTED] Coburg however later on in the interview he said that he rarely slept there.⁴
11. Police searched the house and two cars at the premises being
- (1) Hong's RAV 4 [REDACTED]
 - (2) the accused's Silver 1994 Toyota Coupe [REDACTED] (registered in the name of Harry Pham. In his interview the accused
 - (a) gave his name as Harry Pham.⁵
 - (b) agreed that he also went by the name Tan Hai Nguyen.)

Heroin found at the premises

12. Powders were found by police in different places in the house and in the RAV. They were analysed at the Victoria Police Forensic Centre.
- (1) A total of 209.8 grams of powder containing heroin was found.
 - (a) 36.7 grams of that 209.8 gm. powder contained morphine also.

⁴ ROI 143-147

⁵ ROI 2, 22, 73