

AUSTRALIA / JUDGMENT

Zhang v R (No 4)

[2026] NSWCCA 8**COURT**

Court of Criminal Appeal

DECIDED

18 February 2026

BEFORE

Kirk JA; Wright J; Cavanagh J

CASE / FILE NUMBER

2014/34635; 2015/258606

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Court of Criminal Appeal

Supreme Court

New South Wales

Medium Neutral Citation: Zhang v R (No 4) [2026] NSWCCA 8**Hearing dates:** 1 September 2025**Date of orders:** 18 February 2026**Decision date:** 18 February 2026**Before:** Kirk JA; Wright J; Cavanagh J**Decision:** (1) Leave to appeal is granted except with respect to Ground 2.
(2) Appeal dismissed.**Catchwords:** CRIME — Appeals — Appeal against conviction — whether applicant prosecuted maliciously — whether applicant's extradition from New Zealand unlawful — whether jury verdicts unreasonable — whether jury's ability to access digital evidence impeded — whether intervention by trial judge excessive and undue — whether summing up unbalanced and unfair — whether undue pressure placed on jury by trial judge — whether consciousness of guilt reasoning inappropriately relied on by Crown — whether trial commenced at unjust time owing to applicant's medical conditions — whether alleged errors and procedural unfairness cumulatively caused trial to miscarry**Legislation Cited:** Criminal Appeal Act 1912 (NSW), ss 5(1)(b), 5F, 6
Criminal Code, s 135.4(3)
Evidence Act 1995 (NSW), s 41
Extradition Act 1988 (Cth)
Extradition Act 1999 (NZ)

Cases Cited:	A v State of New South Wales (2007) 230 CLR 500; [2007] HCA 10 Al-Sheikh v R [2025] NSWCCA 205 Black v The Queen (1993) 179 CLR 44; [1993] HCA 71 Dansie v The Queen (2022) 274 CLR 651; [2022] HCA 25 Filippou v The Queen (2015) 256 CLR 47; [2015] HCA 29 M v The Queen (1994) 181 CLR 487; [1994] HCA 63 McKell v The Queen (2019) 264 CLR 307; [2019] HCA 5 Mehajer v R [2022] NSWCCA 297 Nwagbo v The Queen [2021] VSCA 93; (2021) 288 A Crim R 516 Pell v The Queen (2020) 268 CLR 123; [2020] HCA 12 R v Abou-Chabake [2004] NSWCCA 356; (2004) 149 A Crim R 417 R v Thompson [2002] NSWCCA 149; (2002) 130 A Crim R 24 RPS v The Queen (2000) 199 CLR 620; [2000] HCA 3 The King v ZT (2025) 281 CLR 137; [2025] HCA 9 TS v R [2022] NSWCCA 222 Z (a pseudonym) v R [2022] NSWCCA 8 Zhang v R [2021] NSWCCA 266 Zhang v R [2022] NSWCCA 100 Zhang v R [2023] NSWCCA 98
Category:	Principal judgment
Parties:	Li Zhang (Applicant) Crown (Respondent)
Representation:	
Counsel:	L Zhang (self-represented) K Ginges and K Curry (Respondent)
Solicitors:	Commonwealth Director of Public Prosecutions (Respondent)
File Number(s):	2014/34635; 2015/258606
Publication restriction:	Nil Decision under appeal
Court or tribunal:	District Court
Jurisdiction:	Criminal
Date of Decision:	9 October 2023
Before:	Blackmore ADCJ

File Number(s):

2014/34635; 2015/258606

HEADNOTE

[This headnote is not to be read as part of the judgment]

The applicant, Mr Li Zhang, was found guilty by a jury on 9 October 2023 of two counts of conspiring to dishonestly cause a loss to the Commonwealth contrary to s 135.4(3) of the Criminal Code (Cth). He was sentenced to a total term of imprisonment of 10 years, with a non-parole period of six years and eight months. The Crown case at trial was that the applicant was in effective control of a corporate group engaged in property development. It was said that a series of false business activity statements (BASs) had been lodged with the Australian Taxation Office (ATO) by corporations within the group. Those BASs were said to have claimed inflated and false input tax credits (ITCs) leading to reduced net Goods and Services Tax (GST) liabilities – and often refunds – with respect to the companies’ costs in relation to a residential/retail development in Chippendale in inner Sydney (the first count) and a hotel and golf resort development in the Hunter Valley in New South Wales (the second count).

The tax fraud scheme alleged by the Crown was effected by way of the costs of two property developments being overstated by some \$25-30 million for the development the subject of count 1, and by over \$100 million for the development the subject of count 2. The costs were overstated by means of false or inflated invoices, enabling increased GST liabilities to be claimed as input tax credits. This scheme involved three “tiers” of companies, all controlled by the applicant: a developer (tier one); several building contractors (tier two); and various sub-contractors (tier three). Tier three companies would issue false or inflated invoices – often mimicking invoices issued by genuine sub-contractors who had actually performed the work – to a tier two company, which would in turn pass the cost of the invoice on to the tier one company. The tier one and two companies were registered on an “accrual” accounting basis. This meant that they could claim ITCs in their BASs based on invoices they had received, regardless of whether yet paid. The ITCs could be used to reduce any GST liabilities of the companies in question, and could potentially lead to the ATO paying GST refunds. The tier three companies, however, were generally registered on a cash accounting basis. That meant they were only entitled to claim ITCs on money actually spent, but they also only became liable to pay GST upon receipt of money from the invoices which were issued by them. Thus such companies could issue invoices claiming GST but would not have to account for that GST to the ATO unless and until the invoice was paid. The Crown case was that in general the invoices issued by associated tier three companies were not paid. The applicant appealed against his convictions on the following 10 grounds: the charges were a malicious prosecution instigated and wrongfully conducted by the ATO (Ground 1); the applicant’s extradition from New Zealand was unlawful (Ground 2); the verdicts of the jury with regards to both counts were “unsafe” and cannot be supported having regard to the evidence (Ground 3); the “server scheme” used by the District Court during the e-trial caused a miscarriage of justice by impeding the jury’s ability to access substantial “native electronic evidence” (Ground 4); the trial judge’s excessive and undue intervention in the trial occasioned a miscarriage of justice (Ground 5); the trial judge’s summing up was unbalanced and unfair, resulting in a miscarriage of justice (Ground 6); the trial miscarried by way of undue pressure placed on the jury, particularly during

the course of their deliberations (Ground 7);
the Crown's consciousness of guilt reasoning, as permitted by the trial judge, occasioned a miscarriage of justice (Ground 8);
the trial commenced at an unjust time taking account of various medical conditions suffered by the applicant (Ground 9); and
the cumulative effect of the errors and procedural unfairness in the preceding grounds caused the trial to miscarry (Ground 10).
The Court (Kirk JA, Wright and Cavanagh JJ) held, granting leave to appeal on all grounds except Ground 2 and dismissing the appeal:

**As to Ground 3
(unreasonable verdict):**

None of the evidence the applicant referred to contained discrepancies, displayed inadequacies, was tainted or otherwise lacked probative force in such a way as to lead to a conclusion that there is a significant possibility an innocent person has been convicted. To the extent that some of the technological anomalies identified by the applicant did not have an obvious explanation that does not mean that the only plausible explanation is that they were fraudulently created or altered by ATO officers, as the applicant claimed. The great disparity between the claimed construction costs and the likely reasonable construction costs for the two development projects provided a compelling foundation for the Crown case that the amount invoiced was greatly in excess of the actual building work undertaken. None of the alleged factual inconsistencies or oddities in the trial documentation demonstrated that the Crown case relied upon fraudulent evidence which would suffice to cause the jury to entertain a reasonable doubt about the applicant's guilt: [52]-[111].

M v The Queen (1994) 181 CLR 487; [1994] HCA 63; *Pell v The Queen* (2020) 268 CLR 123; [2020] HCA 12; *Dansie v The Queen* (2022) 274 CLR 651; [2022] HCA 25; *The King v ZT* (2025) 281 CLR 137; [2025] HCA 9; *Al-Sheikh v R* [2025] NSWCCA 205, referred to.

As to Ground 5 (undue and excessive judicial intervention):

Nothing in the transcript would have created an impression in the jury that the trial judge was becoming an advocate for the prosecution or had any view about the strength of the prosecution case. Nor did the approach taken by the trial judge create an appearance of bias, nor unfairly undermine the proper presentation of the applicant's case: [112]-[137].

R v Thompson [2002] NSWCCA 149; (2002) 130 A Crim R 24; *TS v R* [2022] NSWCCA 222; *Mehajer v R* [2022] NSWCCA 240; *Nwagbo v The Queen* [2021] VSCA 93; (2021) 288 A Crim R 516, referred to.

**As to Ground 6
(unbalanced and unfair summing up):**

A fair reading of the whole of the summing up did not support the contention that it might be viewed as biased, demonstrating a favour towards one side or a view about the outcome: [138]-[152].

As to Ground 7 (improper and undue pressure on the jury):

The trial judge did not place improper and undue pressure on the jury, whether by reminding jurors that justice must both be done and seen to be done ([155]-[158]), supposedly directing the jury in a way that suggested the applicant was guilty ([159]-[162]) or in addressing the likely end date of the trial ([163]-[166]).

As to Ground 1 (malicious prosecution):

There was no foundation for the applicant's assertion of a cover-up and the Crown case did not depend upon the validity of the ATO's assessments: [168]-[172].
A v State of New South Wales (2007) 230 CLR 500; [2007] HCA 10, referred to.

As to Ground 2 (unlawful extradition):	The applicant's argument that his extradition constituted an abuse of process had previously been determined by the Court of Criminal Appeal to be without merit. In those circumstances the applicant should not be permitted to reargue the same issue. Leave to appeal on Ground 2 was refused: [173]-[181]. Zhang v R [2021] NSWCCA 266, referred to.
As to Ground 4 (server scheme used to obstruct native evidence):	There was no evidence to support the applicant's proposition that difficulties with the use of technology during the trial led to a miscarriage of justice: [182]-[200]. As to Ground 8 (error in the approach to consciousness of guilt reasoning): There was no basis for the applicant's argument that the trial judge demonstrated bias in exchanges with the prosecutor: [201]-[206]. His Honour's directions during the summing up were orthodox, not "poisonous": [211]. Zhang v R [2023] NSWCCA 98, referred to.
As to Ground 9 (trial commenced at an unjust time):	The applicant did not demonstrate any miscarriage of justice in the way in which the trial was conducted or the fact that it took place when it did: [214]-[218].
As to Ground 10 (miscarriage of justice):	This was a catch-all type ground of appeal focusing on the cumulative effect of all the errors and procedural unfairness raised in the other grounds. However, assessing the grounds cumulatively made no difference to their lack of merit: [219]-[220].

JUDGMENT

THE COURT: The applicant, Mr Li Zhang, was found guilty on 9 October 2023 of two counts of conspiring to dishonestly cause a loss to the Commonwealth contrary to s 135.4(3) of the Criminal Code (Cth), following a trial before Blackmore ADCJ and a jury in the District Court. The Crown case at trial was that the applicant was in effective control of a corporate group engaged in property development. It was said that a series of false business activity statements (BASs) had been lodged with the Australian Taxation Office (ATO) by corporations within the group. Those BASs were said to have claimed inflated and false input tax credits (ITCs) leading to reduced net Goods and Services Tax (GST) liabilities – and often refunds – with respect to the companies' costs in relation to a residential/retail development in Chippendale in inner Sydney (the first count) and a hotel and golf resort development in the Hunter Valley in New South Wales (the second count). The conspiracy involved the applicant and two co-conspirators, namely Song (Peter) Chang and Simon Chee-To Chan. Mr Chan left the country in 2010, has never returned, and was not charged. Mr Chang was charged with two similar counts to those against the applicant. He pleaded guilty to one and was found guilty in a separate trial of the other (as was noted in the judgment sentencing the applicant).

The applicant's trial lasted some 150 days over some ten months. It was conducted as an e-trial. The Crown tendered over 200,000 pages of evidence, much of which was made available to the jury electronically, with the jury being supplied first with tablets and then, when deliberating, with a laptop computer for that purpose. The applicant chose to represent himself during the course of the trial, having been offered representation supported by Legal Aid. He was represented by senior counsel for the purpose of sentencing. The applicant represented himself in this appeal.

In February 2024 the applicant was sentenced by the trial judge to a term of imprisonment of six years for the first count, and seven years and six months for the second count. Allowing for some concurrency, the total term of imprisonment was 10 years, ending on 27 September 2030, with a non-parole period for both offences of six years and eight months, due to expire on 27 May 2027.

The applicant has previously made applications to this Court on three occasions in relation to various interlocutory matters concerning the proceeding in the District Court: Zhang v R [2021] NSWCCA 266 (Zhang CCA No 1); Zhang v R [2022] NSWCCA 100 (Zhang CCA No 2); Zhang v R [2023] NSWCCA 98 (Zhang CCA No 3).

The applicant filed a notice of appeal (in time) against his convictions and his sentence. In the end, the applicant only pursued the appeal against his convictions, raising 10 grounds of appeal as follows:

the charges were a malicious prosecution instigated and wrongfully conducted by the ATO (Ground 1);

the applicant's extradition from New Zealand was unlawful (Ground 2);

the verdicts of the jury with regards to both counts were "unsafe" and cannot be supported having regard to the evidence (Ground 3);

the "server scheme" used by the District Court during the e-trial caused a miscarriage of justice by impeding the jury's ability to access substantial "native electronic evidence" (Ground 4);

the trial judge's excessive and undue intervention in the trial occasioned a miscarriage of justice (Ground 5);

the trial judge's summing up was unbalanced and unfair, resulting in a miscarriage of justice (Ground 6);

the trial miscarried by way of undue pressure placed on the jury, particularly during the course of their deliberations (Ground 7);

the Crown's consciousness of guilt reasoning, as permitted by the trial judge, occasioned a miscarriage of justice (Ground 8);

the trial commenced at an unjust time taking account of various medical conditions suffered by the applicant (Ground 9); and

the cumulative effect of the errors and procedural unfairness in the preceding grounds caused the trial to miscarry (Ground 10).

The Crown submitted that leave to appeal is required pursuant to s 5(1)(b) of the Criminal Appeal Act 1912 (NSW), as the appeal concerns grounds involving questions of fact and law. It submitted that many of the grounds raised do not warrant leave being granted, and to the extent that leave is granted or there is a right of appeal, each ground would be dismissed. To the extent that any ground succeeded, the Crown initially submitted that the proviso in s 6 of the Criminal Appeal

Act would apply. However, it later conceded that should the Court uphold the appeal on Grounds 3, 5, 6 or 7 then the proviso would not apply. In the result, it is not necessary to address the proviso. Given the nature of the issues raised, leave to appeal should be granted except with respect to Ground 2. However, none of the grounds is made out and the appeal should be dismissed.

The applicant provided lengthy and detailed written submissions – covering hundreds of pages – and made oral submissions in chief for some 2.5 hours, along with some oral submissions in reply. We will deal with each ground of appeal, but by and large it is neither necessary nor practical to set out and respond to every one of the applicant's extensive submissions on each ground, although all of these submissions have been considered. Some of the grounds appear to be generalised complaints (such as Ground 1 and Ground 9). Other grounds, such as Ground 2, appear to be a rehash of points already argued (see Zhang CCA No 1) which have little to do with the jury's verdict. Ground 3 involves numerous examples of claimed fraudulent or suspect documents in the Crown case. Other grounds, such as Ground 4 (which is a complaint about inadequate technology used during the trial), overlook steps taken to solve the technology problems which arose. With respect to each ground we seek to address what we understand to be the substance of the applicant's complaint.

It is convenient to address the unreasonable verdict ground first (being Ground 3), and then to address Grounds 5-7, which in effect raise procedural fairness complaints going to the fundamental issue of whether the applicant had a fair trial. We then address Grounds 1, 2, 4, and 8-10 in turn. Before addressing the grounds it is necessary to summarise the Crown case made below to set out the context in which the appeal is brought.

The Crown case

The two charges against the applicant were as follows:

- (1) Between about 1 January 2004 and 30 June 2006 at Sydney and elsewhere, in the State of New South Wales, did conspire with Song (Peter) CHANG and Simon Chee-To CHAN with the intention of dishonestly causing a loss to a third person, namely the Commonwealth.
- (2) Between about 1 June 2004 and 30 April 2008 at Sydney and elsewhere, in the State of New South Wales, did conspire with Song (Peter) CHANG and Simon Chee-To CHAN with the intention of dishonestly causing a loss to a third person, namely the Commonwealth.

The charges were founded on s 135.4(3) of the Criminal Code (Cth), which provides:

A person commits an offence if:

- (a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and
- (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

The offence does not require proof of actual loss being suffered by the Commonwealth entity. What it requires is establishing a conspiracy between two or more persons, where that conspiracy involves an intention dishonestly to cause a loss to a third person, and that third person is a Commonwealth entity.

The circumstances of the alleged conspiracies are complex and it is necessary to outline in some (summarised) detail the facts relevant to each count relied upon by the Crown and the commercial arrangements which underly the applicant and his co-conspirators' alleged conduct. This summary draws to some extent upon the sentencing judgment of the trial judge.

The Crown alleged that the applicant was the controlling mind of the Hightrade Group of companies and that he was the architect of the fraudulent tax scheme. Mr Chang and Mr Chan were employees within the Group who agreed to take part in carrying out the scheme under the applicant's direction. Mr Chan was the Group's internal accountant. Mr Chang undertook administrative and accounting functions, acting as an assistant to the applicant.

In short, the scheme was effected by the costs of two property developments being overstated by some \$25-30 million for the development the subject of count 1, and by over \$100 million for the development the subject of count 2. The costs were overstated by means of false or inflated invoices, enabling increased GST liabilities to be claimed as input tax credits. Although it was not necessary to establish actual loss, it was said that the total loss incurred by the ATO (on behalf of the Commonwealth) with respect to count 1 was some \$2.5-3 million, in terms of net GST liabilities not paid, and the total loss with respect to count 2 was some \$10.5-12 million.

The applicant gave lengthy evidence in his own defence. His evidence in chief was taken over the course of four days (not all full days), then he was cross-examined over another seven days. He did not otherwise call any witnesses. He did tender many documents.

Count 1: the Chippendale (JKC) development

In relation to count 1, JKC Developments Pty Ltd (later, Protons National Pty Ltd) was the corporate developer of the project in Chippendale. JKC was a wholly owned subsidiary of High Trade Company Pty Ltd and comprised one of the entities in the group referred to as the Hightrade Group.

The development was undertaken substantially from January 2004 to June 2006. JKC engaged Hightrade Constructions Pty Ltd (HTC) – another company in the Hightrade Group – to complete the construction work for a contract price of \$11.5 million plus GST. The conspiracy in relation to the Chippendale development is said to have occurred in two phases, explained below.

As for the relationship between the companies involved, JKC, the developer, was what was referred to in the proceedings as a “tier one” company. HTC, the builder, was what has been referred to as a “tier two” company. So was AusChintle Pty Ltd (later, Auxon Pty Ltd), another “tier two” company which was part of the same group. It was the Crown case at trial that HTC contracted with various genuine third-party contractors to complete the building work, under

what were, in effect, subcontracting arrangements. The Crown alleged there were various associated “tier three” companies related to the Hightrade Group which purportedly (but often not actually) provided various materials or services to HTC in relation to the construction, as subcontractors. It was alleged that the applicant was the progenitor and controlling mind of all of these companies. In simple terms, the genuine third-party contractors and the tier three entities associated with Hightrade and/or the applicant purportedly had the same function; that is, they both were playing the role of contractors providing construction services and goods to the builder, with invoices provided to the builder. Those costs were passed on by the builder, HTC, to the developer, JKC.

Importantly, JKC and HTC were registered on an “accrual” accounting basis. This meant that they could claim ITCs in their BASs based on invoices they had received, regardless of whether yet paid. The ITCs could be used to reduce any GST liabilities of the companies in question, and could potentially lead to the ATO paying GST refunds. The tier three companies, however, were generally registered on a cash accounting basis. That meant they were only entitled to claim ITCs on money actually spent, but they also only became liable to pay GST upon receipt of money from the invoices which were issued by them to HTC. Thus such companies could issue invoices claiming GST but would not have to account for that GST to the ATO unless and until the invoice was paid. The Crown case was that in general the invoices issued by associated tier three companies were not paid.

In effect, these accounting arrangements allowed JKC to claim ITCs in relation to GST on what it was invoiced by HTC, where HTC in turn could claim the GST it was nominally liable to pay on the fraudulent and/or inflated invoices it had received from tier three companies, even though the invoices of those tier three companies may not have actually been paid (in whole or in part) by HTC. As the tier three companies were only required to pay GST upon receipt of the monies due pursuant to the fraudulent invoices, no GST would be paid in relation to those fraudulent invoices they had issued.

Phase one

Phase one of the alleged fraud in relation to the Chippendale project occurred from January 2004 until about 3 August 2005, on which date an occupation certificate was issued for the development, and after which apartments in the development started to be sold (that being phase two).

HTC invoiced JKC for some \$29.5 million including GST for construction of the Chippendale development. HTC was in effect passing on the liability arising (or purportedly arising) from invoices received from contractors and tier three companies. In June 2005 HTC did not invoice JKC but AusChintle did, for an amount of \$1.54 million including GST.

The Crown's case was that the actual cost of construction was much less than the amounts invoiced to HTC and then to JKC, being no greater than some \$17 million including GST. For all the great detail and vast number of documents tendered, that core allegation is relatively simple. It was supported by the following evidence:

As noted, the agreed contract price between the developer and builder was \$11.5 million plus GST.

In July 2003 an insurance contract was taken out by JKC covering \$11.35 million worth of contract works at the site.

JKC had taken out a loan and mortgage with a lender, Capital Finance Australia Ltd (CFAL) for some \$19.256 million to finance the development, including to cover the cost of purchasing the land (which cost some \$5.5 million) and to pay other development costs outside the construction costs.

Part of the loan arrangement involved HTC or JKC making a progress claim seeking a drawdown on the CFAL loan. CFAL had protected its interests by requiring such claims to be certified by an independent quantity surveyor, Newton Fisher. As at 18 July 2005 – around the end of the construction period – Newton Fisher had certified constructions costs of a total of some \$11.77 million plus GST, with the estimated cost to complete the remaining construction work of about \$285,000, for a total construction amount of some \$12.058 million plus GST (about \$13.264 million including GST). That amount was substantially consistent with the agreed contract price. The Crown did not allege that what was certified by Newton Fisher was the precise cost of construction, but did say that it threw light on the approximate cost.

The Crown called an expert quantity surveyor, Mr Stephen Mee. He had estimated the reasonable cost of undertaking construction of the Chippendale development, including the variations that were made to the project over the course of the construction. His estimate was of the order of \$15 million without GST, which he rounded up to \$17 million including GST.

This evidence together provides a compelling foundation for the Crown argument that the amount invoiced to HTC (and AusChintle), and thence to JKC, was greatly in excess of the actual building work undertaken.

The Crown's case was that the amounts invoiced were inflated by the use of false invoices generated (usually retrospectively) on behalf of companies associated with the applicant and the Hightrade Group, where these commonly recorded amounts referable to the values allowed under the building contract but increased by 30%. Commonly, thus, the Crown alleged that the building company would be invoiced twice for work done – once being a real invoice from a third party supplier, which supplier actually did the work, and one being an (inflated) invoice generated by a company associated with the Hightrade Group and/or the applicant, which company had not done the work.

During the construction phase, the total value of invoices received by HTC from non-associated contractors was calculated as amounting to some \$10.9 million. Invoices recorded in the books of HTC as having been received from companies associated with Hightrade and/or the applicant in relation to the Chippendale development amounted to \$15.96 million including GST.

An example of a false claim by an associated company given by the Crown was an amount recorded in the accounts invoiced by a company called Mainroad Project Pty Ltd for demolition work. That company was first registered on 24 March 2004. The applicant's brother was the sole director and shareholder. Yet a Newton Fisher document of 29 January 2004 recorded that 95% of the demolition work had been completed by that time, prior to incorporation of the company. Other invoices had been received by HTC from third parties which appeared to relate to demolition work.

The false and inflated invoices rendered to HTC then led to inflated amounts being invoiced to JKC by HTC. The GST putatively liable to be paid on those invoices could then be used as input tax credits to offset the GST liabilities of JKC.

The Crown estimated that the loss sustained by the ATO from the overstated invoices in relation to phase one was about \$1.5 million. As noted, it was not necessary to prove actual loss.

The modus operandi of the fraud was said to involve the key individuals – including the applicant, Mr Chan and Mr Chang – conferring in advance of the due date for the lodgement of the BASs of JKC and HTC, which was on the 21st day of each month. The evidence indicated that the GST status of the companies some few days before that deadline was circulated, following which instructions were provided to issue (fraudulent) invoices such that the final “GST refundable” figure would be close to the value of the “GST payable” amount, so as to reduce the GST liability of the company. Invoices by associated companies were generated in order to reduce the GST liability; they were not (as they should have been) recorded in order to calculate the relevant GST liabilities. An example is given below when dealing with count 2.

External accountants were used to lodge the BASs for JKC (along with the developer with respect to the Hunter Valley development, RHV). But the Hightrade Group lodged the BASs for the building companies (such as HTC and AusChintle) directly. The accounts for the development companies with respect to the developments were relatively simple, as the main cost input was in the form of the invoices provided by the building companies. It was those invoices provided by the building companies which crystallised the fraudulent scheme alleged by the Crown.

An example of how the scheme worked is as follows. The example involves HTC and was at a time where that company was undertaking work on both developments (thus it is relevant to both counts 1 and 2):

On 13 September 2004 Mr Chan emailed Mr Chang, cc.ing the applicant, saying “Please find preliminary BAS for August”, with a spreadsheet attached.

On 16 September 2004 Mr Chan emailed Mr Chang, cc.ing the applicant, saying that updated BASs were attached and “Please instruct how to issue builder invoices”.

On 18 September 2004 Mr Chan emailed Mr Chang, cc.ing the applicant, saying “Please find attached updated BAS after issuing builder's invoices” and attaching an Excel attachment.

On 21 September 2004 Mr Chan sent an email to the applicant’s former wife, Maggie Lan (who assisted with book-keeping for the Hightrade Group), cc.ed to Mr Chang. The subject heading was “HTC GST”. The email indicated that HTC’s GST position as at 21 September 2004 (the day the BASs were due) was net payable of \$668,196, composed of \$223,235 GST refundable, \$882,365 GST payable and \$9,066 PAYG (pay as you go income tax). Following that there is a reference to “[p]ay today to ATO” of \$10,172, and a reference to “invoices required” of \$658,024. The amounts of \$658,024 and \$10,172 add up to \$668,196, being the net tax listed in the email as payable. The obvious inference is that invoices were “required” to reduce the tax liability to a target amount of \$10,172. As the Crown noted in submissions to this Court, that would imply the generation of some \$6.6 million worth of invoices.

Mr Chan sent Mr Chang an email a few hours later, cc.ed to the applicant, which refers to “updated GST amounts after lodgement of August BAS today”. For HTC, the GST refundable component had increased substantially, such that the total payable amount was \$10,171, which is within one dollar of the aimed-for figure referred to by Mr Chan earlier that day. It was the Crown case that following the lodgement of the BAS to recalibrate the GST status of the companies, the fraudulent invoices were generated retrospectively to alter the GST position, such that the total amount payable was the “target” amount.

A physical document seized under search warrant in 2009 listed amounts to be claimed for the August 2004 BAS with respect to four developments being undertaken by HTC, including the two the subject of the two counts. Handwritten on the bottom of this document were notations saying “Total Claim: 6580239.98” and “GST: 658024.02”. The GST amount written there correlates to target reduction referred to in the first email of 21 September 2004. The Crown noted in its submissions to this Court that the handwriting on this seized document undermined the applicant’s claim that the Crown case was built on electronic documents falsified by ATO officers.

Phase two

Phase two of the alleged fraud in relation to the Chippendale development occurred from August 2005 to February 2006 and then again in May 2006. It concerned the offsetting of GST liabilities incurred from the sale of the apartments in the development, following the completion of the development. During this phase JKC lodged BASs with the ATO claiming false ITCs as an offset against the GST payable on the apartment sales.

JKC claimed in the BASs that construction costs invoiced by HTC amounted to approximately \$2.7 million during this period, and that invoices for materials supplied by a company called “Lobbyfit” amounted to approximately \$16.7 million (this amount had been calculated by the forensic accountant called by the Crown, Mr Tony Samuel, who had examined relevant accounts).

Lobbyfit was another company related to the Hightrade Group. In total, the ITCs claimed on the basis of the HTC and Lobbyfit invoices substantially reduced JKC's GST liability from the apartment sales, such that only some approximately \$69,000 worth of GST was payable.

The Lobbyfit invoices concerned various finishes and furnishings, said to have been imported from China. Yet the 56 units in the Chippendale development were sold unfurnished. Even if they had been sold furnished, the invoices made little sense in practice as they referred to material vastly in excess of what would have been required. For example, there would have been at least 6 bed heads per bedroom, and 32 lounges per unit.

The applicant conceded that the furniture was billed to JKC, but said that did not necessarily mean it was going to be used for the Chippendale development. The gist of the applicant's argument at trial seemed to be that it did not matter that JKC had purchased the furniture, whether it had used the invoices to offset its GST liability and whether the goods were to be used as part of the Chippendale development, as it was simply a business decision and was legally compliant. In his evidence-in-chief he said:

So, at the end JKC bought that partial materials and then, as the Crown said, they offset GST matters but true it is from my to say it doesn't matter who import that material, who buy that material, even Resort Hunter Valley bought themselves, if anything is GST-related, that's the same things, whatever offset or refunded by law the tax office, that's just by law whatever, that's nothing particular but, as I said, that just a business decision for that.

There is an air of unreality about that evidence. Even leaving aside the technical issue of whether a liability of one company should have been attributed to another, the applicant did not explain where the enormous quantities of furnishings purportedly ordered from Lobbyfit had ended up. Mr Mee gave evidence that he could not reconcile the items ordered with usage in the developments. JKC was subsequently placed into administration and then wound up. The administrator's report recorded that the director of JKC had said that "there was defects with the stock imported from China and, as it was not compliant with Australian standards, most had to be scrapped". That some \$16 million worth of furnishings should simply be scrapped as defective, without apparent complaint, appears fanciful. The obvious inference is that, at least to a substantial extent, in fact it never existed.

The Crown alleged that all the Lobbyfit invoices were fraudulently generated, occasioning a loss of approximately \$1.5 million in lost GST (by way of false offsetting ITCs) to the ATO and the Commonwealth.

Count 2: the Hunter Valley (RHV) development

The second count concerns a substantial development involving a resort associated with a golf course in Pokolbin in the Hunter Valley. The corporate developer was a company first called HT & LI 4 Pty Ltd, and later renamed as Resort HunterValley Pty Ltd (RHV). RHV played an equivalent role for the Hunter Valley development as JKC played in relation to the Chippendale development. RHV was wholly owned by High Trade Company. It was registered to account for its

GST on an accrual basis. For this development there were four tier two building entities which issued invoices to RHV: HTC, AusChintle, Ferro Construction Pty Ltd and Andian Group Pty Ltd. The most significant of these was HTC.

The development involved the construction of the resort from 2004 to 2007 in three stages: the construction of a 150 room hotel, together with the renewal of an existing golf course; development of the “south village”, involving the construction of 72 villas; development of the “north and east village”, involving the construction of 103 villas.

The fraud alleged was the claiming of false ITCs so as to reduce (or lead to a refund of) GST liabilities of RHV. Again, it was alleged that this was done based on false and inflated invoices rendered by tier three companies (where, again, those tier three companies which were associated with the Hightrade Group or the applicant used the cash accounting method).

The Crown’s case pointed to the significant discrepancy between the real costs of construction and the total claimed costs for the project’s construction in the BASs. Those claimed costs were some \$227 million from 2004 to 2008 (as calculated by the Crown’s forensic accountant, Mr Samuel, based upon data in RHV’s accounting system). However, as for the Chippendale development, various other sources of information strongly suggest that the true costs were much lower than the sum claimed:

CFAL provided finance for the purchase of land and for stage 1 of the development (the loan being for \$38.562 million). A condition of that loan was the RHV entered a fixed price building contract for a sum of not more than \$29 million plus GST for the stage 1 work. St George Bank provided finance for stages 2 and 3 (of some \$24 million for construction costs, noting that some of the costs were also to be borne by RHV).

The independent quantity surveyor, Newton Fisher, played much the same role for both lenders here as it had done for CFAL with respect to the Chippendale development. The total constructions costs it certified were some \$65.4 million.

Insurance on the project changed over time. The highest covered insurance value for the entire construction project was \$81 million, which was said to reflect reasonable assessed replacement construction costs.

The independent quantity surveyor called by the Crown, Mr Mee, estimated reasonable construction costs of some \$100 million plus GST, with total costs (including costs other than construction costs) amounting to \$124-129 million including GST.

As for phase one of the Chippendale development, this evidence again provides a compelling basis for the Crown argument that the amount ultimately invoiced to RHV was greatly in excess of the actual building work undertaken. The Crown estimated that RHV claimed between about \$10.5 million to \$12 million of ITCs from the ATO to which it was not entitled, based off approximately \$100-150 million of fraudulent invoices submitted to the building companies, and thence to RHV, containing fictitious or inflated costs.

The modus operandi of this alleged fraud was said to be much the same as for phase one of the Chippendale development. Like the arrangements in relation to the Chippendale development, the Crown alleged that various tier three associated companies invoiced HTC and the other tier two companies for goods or services not actually provided or undertaken on the RHV development, where the work had in fact been provided by genuine, unrelated third party companies (which costs were also recorded by the tier two companies and passed on to RHV). Seized documents demonstrated that false invoices issued to HTC were generated in the sum of 160%, and then 170%, of the values attributable to the work done.

Analysis of RHV's ledgers demonstrated that HTC received invoices of approximately \$103 million said to be related to the development, about \$74 million of which were received from tier three companies associated with the Hightrade Group and/or the applicant, with approximately \$29 million worth of invoices from unrelated businesses. Analysis of RHV's ledgers by the Crown's expert accountant, Mr Samuel, indicated that of the approximately \$111 million (GST inclusive) of invoices issued from HTC to RHV, approximately \$36 million were recorded as having been "paid", with the remaining approximately \$74 million recorded as having been "transferred". It was said that that sum loosely corresponded with the sum of the invoices issued by the associated tier three entities to HTC in relation to the development.

In relation to the other tier two companies, analysis demonstrated that RHV had recorded some \$90 million (including GST) of invoices from AusChintle, of which approximately \$27 million had been recorded as paid with the remaining sum "transferred". In relation to Ferro, all invoices had been recorded as paid, but close analysis revealed that many of the transactions were involved in a "round robin" arrangement whereby the same or similar amounts of money were transferred through various accounts associated with the Hightrade Group, ending up in the same account, a process which repeated on subsequent days. With respect to Andian, analysis of invoices demonstrated that \$27 million worth of invoices to RHV were recorded as having been paid, however banking records revealed that payments purportedly made to Andian were actually paid to Ferro. Andian was a cash accounting entity which would have accounted to the ATO on money received, while Ferro was an accrual accounting entity, which would account to the ATO based on invoices issued.

The applicant's role

As noted, the Crown alleged that the applicant was the progenitor and the "controlling mind" of the relevant companies in the Hightrade Group, despite not necessarily always being a director or shareholder of those companies. It was said that he would usually cause an employee,

associate or family member to be appointed director were he not formally appointed. It was alleged that the applicant knew of the expected and true costs of undertaking the development and read and issued instructions in relation to the quantity surveyor reports. It was said that the applicant received updates from the co-conspirators Simon Chan and Peter Chang and instructed them as to the GST to be claimed or the sums to be invoiced in relation to the BASs of both JKC and RHV.

Employees of the Hightrade Group, or those who had dealings with it, gave evidence at the trial to a similar effect. For example, Mr John Di Vito, who provided services to the Hightrade Group through his own consulting company, referred to the applicant as the “owner and operator of the business”, presumably referring to the Hightrade Group. He noted that he received all directions from the applicant, including with respect to JKC’s construction estimates. A former employee, Mr Constantine Cockinos, noted that the applicant was the “CEO” of Hightrade Group and ran the entire operation, had financial ownership of the company and controlled what happened in each of the companies. When asked about his directorship of various entities associated with the Hightrade Group he said that “some of them is frustrating because I didn’t realise” that he was director of some of those companies, later saying that “[i]t is not unusual for anyone at Hightrade to do this sort of thing”.

In the end the applicant did not seem to dispute that he was in control of the relevant companies. For example, he said the following in his closing submissions to the jury, seeking to undermine the argument that he could have conspired with Messrs Chang and Chan given that they were simply employees (emphasis added):

You know, all the way, I was either funder or director in certain time, or even not directors. I will show you Con - what Con Cockinos call me. He call me CEO. That means for the big company, called CEO, the Chief Executive Officer. But that's a fancy name because big organisation, or they prefer use that one, make feel big. Otherwise, if the company, just a general manager. So what I say, even I was not director, I still like a general managers. So I still know the business, I still get involved the business. So what I say is all the way, if not director or general manager, the Simon Chan or Peter Chang, I were their manager in a way. Doesn't matter directly or - but I'm little in the middle. I'm in the position of a highlander. So what I say is a lot of work, I direct them to do. Not conspiracy with them. You see the point.

So they are the one hard worker. You say, "Do this. Do that." Not conspiracy way is direction or instruction. That's why you see a lot of work called "instruction". Like, you know in our life, we always have, you know. Like my - when I work in the government, you know, I from low level to certain medium levels. I often have - we make it simple - boss. You have a boss above you, and they give you instruction, so you do the job. For similar, like even Simon Chan, when I - or Peter Chang. If they are employees, they took instruction. That's their duties. And you can't blame the people in their work environment when they took instruction become conspiracy. ...

In his submissions to this Court he said (noting he often spoke of himself in the third person):

The applicant dominated High Trade group, including JKC and RHV. He was the founder, the owner and the operator of the business. He resigned to be the director only because he committed to his overseas business, but he still in charge [then giving some examples].

The scheme alleged by the Crown involved a very substantial, systematic, organised tax fraud. If the scheme existed as alleged, then it was simply implausible that the applicant – as the controller of the relevant companies and as the person who stood most to gain – was not aware of and involved in the scheme.

Ground 3: Unreasonable verdict

The law to be applied in relation to an unreasonable verdict challenge is well-established. It was summarised recently by this Court in *Al-Sheikh v R* [2025] NSWCCA 205:

[172] The issue raised by the unreasonable verdict challenge is “whether the court thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty”: *Dansie v The Queen* (2022) 274 CLR 651; [2022] HCA 25 at [8]; *M v The Queen* (1994) 181 CLR 487 at 493; [1994] HCA 63. The question is “one of fact which the court must decide by making its own independent assessment of the evidence”: *M* at 492, quoted in *Dansie* at [8].

[173] In resolving the question of fact, “the burden of persuasion that appellate interference is required, in what is otherwise the jury’s province, is upon the person who impugns a jury’s verdict”: *MacKenzie v The Queen* (1996) 190 CLR 348 at 370; [1996] HCA 35.

[174] In considering whether the jury’s verdict was unreasonable, “the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses”: *M* at 493, quoted in *Dansie* at [9]. As *Kirk JA* observed in *Lee v R* [2023] NSWCCA 203; (2023) 310 A Crim R 170 at [29]:

“a jury has a further advantage in assessing the facts, namely that it involves the assessment of 12 people drawn randomly from the community, seeking to achieve a unanimous verdict, who bring to bear a diverse range of human experience, understanding and judgment in assessing the testimony they have heard”.

As was explained in *The King v ZT* (2025) 281 CLR 137; [2025] HCA 9, it is for the parties to identify the points in dispute and the evidence that is relevant in that regard (see also *Filippou v The Queen* (2015) 256 CLR 47; [2015] HCA 29 at [83]):

[11] Third, *M v The Queen* requires that the appellate court undertake an “independent assessment” of the sufficiency and quality of the “whole of the evidence”. However, that assessment is undertaken in a context in which an appeal is as much of an adversarial process as the criminal trial from which the appeal is brought and in which it is for the parties to identify the evidence that the appellate court must review and assess and the features of that evidence that support their respective cases on appeal. The appellate court

does not determine the grounds of appeal by simply reconsidering the parties' respective cases at the trial.

- [12] In some appellate courts, the practice in criminal appeals is for the entirety of the trial court's file to be provided to the appellate court. Even so, given the adversarial nature of an appeal and the appellate court's function in hearing an appeal, it is for the parties to place all evidentiary material and submissions before the appellate court which they consider relevant to the discharge of the court's function and it is for the parties to identify and address the aspects of the evidence adduced at the trial that warrant the conclusion that the verdict was either unreasonable or not. [citations omitted]

The applicant made detailed submissions on this ground. Further, there is some overlap between this ground and other grounds raised by the applicant. Whilst we recognise that overlap, by and large it is appropriate and convenient to deal with the applicant's arguments when addressing the ground where they were raised.

The core of the applicant's complaint in relation to the unreasonable verdict challenge is that the Crown case against him was fraudulent in various ways. It was said in particular that there were documents which were fraudulent by reason of having been created or altered, such that the jury should have entertained a reasonable doubt about the Crown case to warrant the applicant's acquittal. The applicant drew the Court's attention to what he alleged were inconsistencies and oddities in the evidence put forward by the Crown which indicated that the evidence had been altered or fabricated.

The main person he accused of manipulating the evidence against him was Mr Alan Crowe. In this Court, the applicant agreed with the proposition that his "key attack on the Crown case made throughout the trial in different ways was that ... there were fraudulent documents in which Mr Crowe was involved and for that reason there was a reasonable doubt such that the jury should have acquitted". Mr Crowe was an employee of the ATO at all material times. He had commenced work with that body in 1999, and from 2005 was in the "Serious Non-Compliance" section, based in the Newcastle office. In late 2008 he was directed to begin an investigation into the Hightrade Group. He was assisted by others in the section. It was Mr Crowe, for example, who applied for search warrants in mid-April 2009 relating to the investigation.

Whether the applicant was unduly restricted from using his computing expertise

The applicant submits (and it was not disputed) that he had a degree in computing, that he had immigrated to Australia in 1990 based upon this expertise, and that his first business in Australia (in the 1990s) was Hightrade Computers. On that basis he claimed to have expertise in computing systems. He claimed a miscarriage of justice had occurred because the trial judge denied him the opportunity to ask questions relating to computing – whilst raising issues about manipulation of documents – on three identified occasions.

The argument is unpersuasive. The applicant himself notes that the trial judge said of the applicant that “he’s got some computer expertise”, and his Honour gave the applicant latitude in that regard. His Honour did not give a direction that the applicant should or should not be treated as an expert. The applicant had the opportunity (which was taken) to challenge in cross-examination the Crown’s forensic computer analyst, Mr Christopher Andrews, along with Mr Zoran Iliev, who had expertise in the Nuix computer system. Further, the trial judge did not prevent the applicant giving extensive evidence himself about computing issues, nor prevent him from making closing submissions on the topic.

As to the first of the three specific complaints, it relates to some of his cross-examination of Mr Philip Corke, who had been an ATO investigator. The exchange was as follows:

Q. You create this email. Is that right?

A. No.

Q. Mr Corke, why you do investigation that Peter - you see "Peter"?

A. I see "Peter".

Q. Peter Chang is the person. He's only Peter, number Peter. That's not identifiable in the email system. You got wrong. You are not knowing that. That email never exist, one Peter. It could be Peter Chung or Peter Chang, or Peter Smith, whatever, but not Peter one. Peter, nothing left.

A. What's the question?

Q. The server..(not transcribable)..have a name and surname. Given name, surname, not one.

HIS HONOUR: I reject the question, Mr Zhang. You don't have the expertise to say that.

ACCUSED: I..(not transcribable)..your Honour. The High Trade..(not transcribable)..I'm part of his Honour for that system. That identified this person.

HIS HONOUR: I haven't seen any qualifications that you make you an expert on that, Mr Zhang

ACCUSED: I'm an engineer, actually, your Honour.

HIS HONOUR: I haven't seen any expertise from you.

ACCUSED: I'm an expert for the immigrant into this country, but like expertise.

HIS HONOUR: I reject the question. Is there anything in that document you suggest is incorrect?

The applicant submitted that the trial judge’s intervention “stopped the applicant examin[ing] that fraud about email 182, that email shows ‘peter’ as recipient who did not exist in the Hightrade email system designed by the applicant”. The email was not Mr Corke’s, nor was it his email system. The issue seems to have little to do with the applicant’s computing expertise. And the trial judge did not prevent the applicant from asking specific questions about the email, nor from suggesting it was part of a fraudulent scheme. For example, shortly thereafter this exchange occurred:

ACCUSED: The evidence is this email were fake one. They create it serve the purpose.

HIS HONOUR: Did you want to put to the witness what that purpose might have been?

ACCUSED

Q. Mr Corke, what your purpose on that? To show that Peter--

HIS HONOUR: I reject that question, Mr Zhang. He's said he didn't fake it, but if you want to suggest to him there was some purpose behind him faking it, go right ahead. You don't have to; it's entirely a matter for you.

ACCUSED

Q. Mr Corke, you design those emails - this one, particularly, to fabricate the case against Peter and Li Zhang. Peter Chang and Li Zhang. Is that right?

A. No.

The second complaint related to the following exchange when the applicant was cross-examining the Crown's computing expert, Mr Andrews, about two emails seemingly sent at the same time (italicising the portion complained of):

Q. So what I say is, Mr Andrews, the answer you just said in the same time they send two emails, from this information, they have more contact at different, they can't be ready in the same time with that - those information different. Is that right?

A. Well, I can't comment on to how quickly they can send the emails. All I can see is two different emails.

Q. Yes, but all the same time we say that.

A. I mean, did it - have we got in the - the table what the seconds were?

Q. You see the second email.

A. No, I mean a more exact time, rather than just to the minute. Do you know what - just from viewing the two emails, I would just say they're two different emails.

Q. Two different email.

A. They're two different email chains with slightly different answers.

Q. In the same time.

A. Yes.

Q. So you don't know the reason why?

A. No.

Q. You wouldn't consider the same time. They quick type that information, and the same time they send out two email.

HIS HONOUR: Well, he's not here to answer those sorts of questions, Mr Zhang. He can answer questions about the way the computer system works. He can't answer what somebody working in your company might have done, or why.

ACCUSED: Thank you, your Honour.

The trial judge's intervention was reasonable. His Honour was not limiting cross-examination about the claimed anomalous and fraudulent emails; he was simply rejecting a question he perceived to relate to how people within the Hightrade Group might have acted.

The third complaint related to part of the very lengthy cross-examination of Mr Crowe. The applicant had been asking Mr Crowe extensive questions about some spreadsheets. The trial judge eventually directed the applicant to move on (a point not complained about). The applicant then asked for another document to be opened, which was a PDF version of one of the spreadsheets he had just been asking questions about. The following exchange occurred (with the portion complained of italicised):

CROWN PROSECUTOR GINGES: Your Honour, I think we're asking the same questions again with a different file.

ACCUSED: That's PDF. This is Excel spreadsheet. It's cleared.

HIS HONOUR: What's the question you want to ask about?

ACCUSED: The question is from this information, the email were manufactured when this data presented. That's causes Mr Alan Crowe realised, then they don't want to produce--

HIS HONOUR: Which email was concocted? Which one?

ACCUSED: There's a lot, your Honour. It's just heaps of--

HIS HONOUR: Point to one.

ACCUSED: All right. We scroll down to see if something marked. All right. We give the example. Line 167. The email number 150. So, before email submitted, already delivered that emails, so they mix up with the time.

HIS HONOUR: I reject the question, Mr Zhang. You've had expert evidence from a number of witnesses.

ACCUSED: All right. Thank you.

Q. All right. I won't pick that question. And this..(not transcribable)..this email number 179 to 183. The before email created, already submitted. So, that's the--

HIS HONOUR: Mr Zhang, I'm--

ACCUSED: Rejected, your Honour.

HIS HONOUR: I'm just going to reject that.

ACCUSED: All right. Thank you, your Honour.

HIS HONOUR: You've asked all these questions before.

ACCUSED: All right. I ask not this question. We scroll down, please.

HIS HONOUR: If you are suggesting that this witness did something wrong, I would - I'm happy for you to put that to him, but these questions are based upon expert computer knowledge. I'm not going to let you ask those questions. You've already asked them to other witnesses.

ACCUSED: No, you stop me also--

HIS HONOUR: No, I didn't, Mr Zhang.

ACCUSED: --when I asked Chris Andrews.

HIS HONOUR: No, I didn't, Mr Zhang.

There was no suggestion that Mr Crowe had expert computer knowledge. That was more the point being made by the trial judge than whether or not the applicant had such knowledge. And part of his Honour's concern, in context, was about wasting of time. As for the reference to the evidence of Mr Andrews, that seems to relate to the second complaint, which has already been addressed.

Attacks made on Mr Crowe relating to search warrants and other matters

The applicant made various allegations regarding fraudulent search warrants. A number of search warrants were issued in April 2009 at the instigation of Mr Crowe, who was seeking to gather material for the ATO investigation into the Hightrade Group. The applicant himself notes that three sets of discs of material were produced, one of which went to the ATO, one of which was kept by the Australian Federal Police (AFP), and one of which was provided to his then accountants. He says there were 4 TB of data on the discs, but asserts that the material was "tainted" by Mr Crowe. If that was so, it seems likely that there would have been a disparity between the material on the ATO and/or AFP set on the one hand and the material in the set provided to his accountants on the other.

The applicant subpoenaed the Local Court at Newcastle for nine search warrants it had issued. The applicant noted that one of the warrants produced referred to a murder investigation, which is seemingly irrelevant to the applicant's matter, while another referred to an armed robbery. He alleged that another search warrant issued in relation to QBE premises was "totally irrelevant" although the particulars listed on that warrant are clearly of relevance to the applicant's matter. The applicant's complaint in relation to these warrants was somewhat unclear, but he appeared to be alleging that all these warrants were fraudulently produced by Mr Crowe rather than the Court, as the Court had no record of the warrants. The applicant agreed with the following

summation of his position: that “because the Court didn’t produce documents in answer to the subpoena that you or someone served – seeking production of all the search warrants that it follows that they could never have been issued and Mr Crowe’s fabricating”. An obvious possibility is that the Local Court erred in its production. Of course, the applicant’s argument was and is that it shows that the search warrants were somehow fraudulent. Yet the applicant could and did put such assertions to Mr Crowe in cross-examination, and to the jury in submissions.

He also subpoenaed the AFP about the material obtained under the search warrants. His main argument here seems to be that the AFP did not, as required, produce the set of discs containing the 4 TB of information. It is true that a cover letter sent by the AFP to the District Court in response to the subpoena does not refer to these discs. The reason for that is not apparent. There could be a number of explanations: eg the letter was not complete; or appropriate searches were not made; or the discs had been lost; or they had never existed (as the applicant presumably wishes to suggest). Yet if the latter possibility was correct, then the material given to his then accountants would have particular significance. That issue was not explored by the applicant in his submissions.

The applicant asserts that Mr Crowe resigned from the ATO soon after a complaint made by or on behalf of the applicant had been put to the ATO. Yet the applicant had a letter from the ATO – which he cross-examined Mr Crowe about – indicating that it would not continue an investigation into the complaint against Mr Crowe in light of the court proceedings. Moreover, Mr Crowe’s evidence was that the questions being asked were the first he had heard of the matter, and he had chosen to retire “at my own time” and of his own choice.

The applicant asserts that he made a complaint to NSW Police about Mr Crowe’s conduct, which was eventually referred to the AFP. He pointed to a letter from a Detective Senior Constable of the NSW Police who had said the exhibits the applicant had provided were “detailed and well organised”. The applicant submitted that this comment supported the fact that Mr Crowe had engaged in fraud. Yet that comment says nothing about the merits of the applicant’s complaint. Even if it had, such an opinion would have been irrelevant to the jury’s consideration of whether there had been any form of fraud or corruption as the applicant alleges.

Under a sub-heading “His tendency to falsify the emails”, the applicant submits that he had demanded that the Crown explain “why the arrest warrant had been modified by crossing the date on 6 May 2015” then rewritten to 3 September 2015. The applicant had asked Mr Crowe some questions about the arrest warrant. Mr Crowe explained another numbering issue which the applicant asked him about by explaining that a case number which post-dated his affidavit had been generated by the Local Court and was nothing to do with him.

These various attacks made by the applicant on Mr Crowe exemplify the central part of his defence, already noted, namely his assertion that Mr Crowe had created a false case against him in a range of ways. The jury saw Mr Crowe give evidence over the course of ten days. We return to the significance of this point below. As explained there, the jury must have rejected the allegations made against him by the applicant. In so doing, the jury had the significant advantage of having seen and heard him give evidence.

The Crown, with leave, filed and served a supplementary note after hearing of the appeal providing a list of documents contained in the applicant's appeal books which were not tendered in the trial. Documents referred to here fell within that category. However, it is not necessary to consider whether that is a further basis for rejecting this argument (note the principles summarised relating to new or fresh evidence in *R v Abou-Chabake* [2004] NSWCCA 356; (2004) 149 A Crim R 417 at [63]).

Fraudulent documents

The applicant drew the Court's attention to various anomalies and abnormalities in relation to various documents, including emails involving the applicant and his alleged co-conspirators as well as in spreadsheets related to the Hightrade Group entities. He submitted that such abnormalities are evidence that the documents contained therein are fraudulent and "had never existed". He submitted that this was an element of the fraud perpetuated against him by, in particular, Mr Crowe. In addressing the applicant's submissions, it is appropriate and sufficient to address leading examples of the detailed points that he made.

Anomalies in email addresses

The applicant submits, for example, that his former wife's email address and handle is portrayed inconsistently across a range of separate emails. In some emails, her address is "maggie@hightrade.com.au" while in others, for instance, she is referred to as "Maggie Lan/Hightrade@HIGHTRADE". A plausible explanation for these discrepancies could simply be that her email address is maggie@hightrade.com.au, and in some servers this is recognised by her name "Maggie Lan" with some information inserted after that by the computing system. It also might well be that her handle displays as "Maggie Lan/Hightrade@HIGHTRADE" in a different format, such as when an email is forwarded, or in a different system's server. Indeed, it was in circumstances where an email from Ms Lan had been forwarded that her name displayed in that form in one of the exhibits. The only proper email address referred to in these emails for Ms Lan (ie with a standard domain such as ".com.au") is the one email to which we have referred. It is entirely plausible that the discrepancies are simply the product of different computer software systems operating and/or presenting information in different ways.

The applicant also referred to apparent anomalies in the email address for Mr Chang, outlining in his submissions four variations of Mr Chang's address: peter@hightrade.com.au; changsong.au@gmail.com@hghtrade; changsong.au@gmail.com; and chang-song.au@gmail.com@HIGHTRADE. There are also plausible explanations for such discrepancies.

Mr Chang may have had both a personal email address (changsong.au@gmail.com) as well as a business email (peter@hightrade.com.au). As for the other discrepancies, the applicant's notation of "chang-song.au..." is incorrect, and the address referred to in the email noted is in fact "changsong.au@gmail.com@hightrade". Similarly, there appears to be a typo in the applicant's submissions and "...@hghtrade" should in fact be "@hightrade", which is how it appears in the exhibit.

As for an explanation as to the presence of the two addresses containing "...@gmail.com@hightrade" and "...@gmail.com@HIGHTRADE", it seems plausible that that is again a formatting anomaly occasioned by the forwarding of the email, whereby the forwarding causes the "@hightrade" component to be capitalised. Those two references both appear in relation to the same email (one being the original email, and one being a forwarded copy). As for the anomaly of the address containing both "@gmail.com" and "@hightrade" (or "@HIGHTRADE"), that could have been some anomaly relating to confusion of one person having two email addresses, or relate to some issue about how the particular email system displayed email addresses in particular contexts.

In relation to the alleged fraudulent search warrants, the applicant noted that annexed to an affidavit of Alan Crowe explaining an expired warrant were emails which supported the affidavit. He noted a discrepancy in an email address of an individual from the relevant entity, namely that the individual's email included "@syd.wkhorwarth.com.au" instead of "@whkhorwarth.com.au". He referred to evidence given by the individual in question, Mr James Maston (an external accountant), who said that his email address did not include the "syd" component "at the time". The gist of the applicant's argument was that Mr Crowe falsified these emails associated with the search warrants to bolster the legitimacy of the fraudulent warrants.

In the trial, Mr Maston said that he did not know why the address was different. However, he said that "[i]t looks like the way I would write something" and that he still believed it was his email. One explanation might be that at the time the email was reproduced for the purpose of preparing the affidavit, the applicant's email address had changed. Or it could simply be a manifestation of an aspect of the particular email system. It is significant that Mr Maston indicated he believed it was his email despite this anomaly. That illustrates that quirks may manifest in the depiction of computer documents which do not indicate that they are fraudulent documents.

Inconsistency in addressing and signing off emails

The applicant submitted that various emails in the Crown exhibits include addresses or signoffs which do not align with the purported sender or receiver details in the email's metadata. Some emails he refers to involve the receiver of an email being one individual, but the email being addressed to another (in circumstances where that individual was cc.ed in the email). That point has minimal force. It is not uncommon for a person writing an email to address it to someone to whom it is cc.ed, especially (but not only) where it has been part of an email chain.

In one email, the recipient is listed as Maggie Lan with the sender as Simon. However, the email is signed off as being from “Peter”. In another email in which the recipient is Simon and the sender is Maggie Lan, the email is signed off as being from “Jasmin”. Another email chain from 2001 includes an email whose metadata indicates it is from “Jeremy” to numerous individuals, however the email is signed off with “Li Zhang”. Yet it is not unheard of for one person to send an email on behalf of another person, especially if they are working closely together and/or the latter person is more senior. Notably, a Jeremy Hung appears in a number of emails, and it appears he had an @hightrade email address. A “Jasmin Xi” is identified in a number of emails. There is reason to infer she worked with Ms Lan. That inference is supported by the existence of an email of 26 February 2007 from Ms Lan to Mr Chan which said “Jasmin is going to issue a invoice to you sooner, please let someone to come our office to pick up the cheque”. It is plausible that Ms Xi might have sent emails on behalf of Ms Lan; that Mr Hung might have done so for the applicant; and that Mr Chan might have done so for Mr Chang.

Ordering of email names

The applicant also alleged that there were fraudulently produced emails based on the arrangements of first names and surnames in address lines of emails. He pointed to an ATO departmental update in June 2018 which announced that display names on emails would be changed from being displayed as “[surname], [first name]” to “[first name] [surname]”. He submitted that all emails prior to that date should include names with the surname first, and all emails after that date should use the latter formatting. The applicant drew the Court’s attention to an email from 2015 where Mr Crowe’s name is referred to in the address line as “Alan Crowe”. As this predated the ATO display name change, the applicant submitted that it was falsified. He referred to another copy of the same email where it appeared as “Crowe, Alan”.

However, as was pointed out to the applicant at the hearing, it was the responsive email from the recipient (a Deputy Registrar of the Local Court) which referred to “Alan Crowe”, and that might just be an aspect of the computer system used by the Court. Another explanation might be that when the email was printed or reproduced, the changed formatting had come into effect, thus causing the names to appear in the new order in the system despite the email predating that change. For example, in another email from 2009 (also prior to the 2018 policy change), Mr Crowe’s user is referred to as “Alan Crowe” rather than “Crowe, Alan”. That email was annexed to an affidavit sworn in 2020, following the policy change. In any case, there is little force in the applicant’s speculative submissions.

Two substantially identical emails

The applicant also referred to two substantially identical emails, saved in different formats. He noted that they were sent at the same time, saying that the sender was “unable to send out two different emails by the email system at exactly the same time to the same person”, doing so with “different subjects and different capital letters”. One email contains “RE” in the header and the sender and recipient names are capitalised, while the other does not contain “RE” and those

names are uncapitalised. However, that aside, the emails are the same. The two emails appear to be duplicates of one another, saved as different file types. The differences between them could simply be a product of a different file type. In any event, there is no plausible reason why Mr Crowe or some other person would have taken the time to create two materially identical fraudulent emails where one would have sufficed.

Timing inconsistencies in metadata

The applicant drew the Court's attention to one email chain between various individuals within the Hightrade Group. The head email is correspondence from Simon Chan to another individual by the name of "Johnson" attaching a spreadsheet. It appears that email forwarded an email and attachment received from an individual called "Gloria" to Mr Chan. The applicant noted that the timestamp of the forwarded email is 2.19pm on 27 January 2006, but that the email indicates that it was forwarded by Mr Chan on 2.17pm. Moreover, the timestamp of the forwarded email indicates it was sent to Johnson at 2.18pm. The applicant also noted that the attached spreadsheet contains no "last modified" date in its metadata which he says supports the conclusion that the document is fake. In another email, a similar abnormality occurred, whereby the email chain indicates that the forwarded email was forwarded at 11.02am on a particular day, while the email forwarding that correspondence is timestamped at 10.58am. The same occurred in another chain of emails where there is a one minute discrepancy. There is no obvious explanation for these discrepancies, but the timing difference is not material, and might have been a quirk of different email systems as to the recorded time when emails were sent and/or received. It is also conceivable that 20 years ago, some email facilities recorded sent and received times based on the specific device's local clock (which could differ between computers even in the same office) rather than a central online clock.

The applicant also submitted that it was abnormal that a number of the spreadsheets in evidence have no "last modified" dates in their metadata. It is also somewhat abnormal that the date the document was created predates a date indicated on an invoice referred to by more than 18 months, coupled with the fact that many of the spreadsheets appear to have been created on the same date. However, it might be the case that the template documents were all created on the same date, and modified at a later time.

At the hearing of the appeal the applicant placed significant emphasis on what he said were anomalies in the metadata of various spreadsheets. His complaints included that some spreadsheets indicated they had been authored by one individual, but the metadata purportedly indicated otherwise; that the dates in the documents and the metadata did not cohere (in a similar vein to the earlier materials); and that various spreadsheets had all been "last modified" at the same time. He argued the latter point by reference to spreadsheets which had been last modified by different people at the same time, as well as spreadsheets which were last modified by the same user at the same time. In relation to one set of spreadsheets, modified by different users, he emphasised that the text of some of the spreadsheets contains "current on..." dates which post-date the "last modified" date in the metadata. The applicant submitted that "[t]he

hidden data shows the last modified dates for that were exactly the same at 1:50 PM of 19 October 2007 by four person ... that stands no chance to be real in life for that to be modified in the same time for the matters even did not exist on that day”.

The applicant made similar points before the trial judge, when argument occurred in the absence of the jury on an objection raised by the Crown whilst the applicant was cross-examining the computer expert, Mr Andrews. The applicant had appeared to suggest that given Mr Andrews had accepted that the time on a computer system can change, then there must have been some fraudulent manipulation of the spreadsheets. The Crown suggested that the modified times were in fact different and that the sizes of the documents were different, to which the applicant responded that it was misleading because there is a difference between the modification of the file and simply copying the file in an index.

The trial judge addressed the issue as follows:

HIS HONOUR: ... There's no reason why they couldn't have simply opened these documents at the same time when they received them from Simon Chan. That's a logical explanation for all of this. And frankly, you know, if you aren't able to suggest any way in which this was altered, and yet keep suggesting to him somehow fraud was involved, that's misleading. You don't have any basis for suggesting that because you have no idea how this might've been the case, and unfortunately, he doesn't either. But he doesn't accept that fraud is involved.

...

HIS HONOUR: When you receive something on the email at the same time, you may well open it at the same time. You see, that's closing your mind to other possibilities that aren't fraud, but the main thing is that the expert hasn't been able to agree with you there's any fraud involved, and you can't point to anything.

ACCUSED: They don't need to agree with me. I've already got an eye and an ear, so they can see and listen.

HIS HONOUR: We can see what you've pointed to, that's for sure, and inasmuch as it's an anomaly doesn't mean that it's fraud. You can keep saying it's fraud if you want to but you actually don't have any basis for it.

The expert, Mr Andrews, when questioned about the discrepancy between the date modified time referred to in the metadata and the time in the relevant index (which seemed to have been generated from the document software, Nuix) said that:

the file modified and file created from these columns, just from looking at the files as we have over the last few days, appear to be from the file system, not from the internal metadata.

Q. So that's not carried the content of that file information; it just not content information but the file itself

A. The fact that all of those dates times – well, the created and modified and [sic - are] exactly the same suggests a file which has been – a new copy has been taped [sic – saved?] for instance from within Excel, choosing “save as” and saving it a new location or even a new name, or both.

Q. So it is not represented the file with the time the modified – sorry, the content modified time does not represent anything with the content modified.

A. I can't say with certainty which modified time it's showing there. It could be the one from the file system which is – because the dates are the same as the created is what it suggests to me but it could also be the internal – internal metadata time that's stored inside the document. Without – the person who created the spreadsheet is probably better placed to answer that exact question.

The expert was thus not able to give definitive answers on the issue. However, as the trial judge said, “inasmuch as it's an anomaly doesn't mean that it's fraud”.

In an email from 2004, Mr John Di Vito sent the applicant, cc.ing Mr Chang, an email with an attachment referring to the “claim I put yesterday after speaking to Phil”. The metadata of the email indicates it was dated 30 January 2004. The applicant noted that the metadata of the attached spreadsheet indicates that it was created by a user called “peter” on 28 November 2003 and last modified by a user named “John” on 1 December 2003. The applicant submitted that the spreadsheet and email must be fraudulent as the email refers to the claim put yesterday after speaking to an individual, and in those circumstances the spreadsheet should have last been updated on 29 January or 30 January 2004. He also submitted that the user profiles are indicative of fraud as they should refer to the users' full names, rather than their first names, as those are “the user names given by the Centre when they logged onto computers”.

The applicant's argument as to the chronology assumes that the spreadsheet was edited following the conversation, which might not be the case. That said, the document contains three spreadsheets, one of which is seemingly dated 30 January 2003 and another of which is dated 29 January 2004. A third spreadsheet provides an overview of bill estimates for the Chippendale project. It might be somewhat unusual, but is not impossible, for a document which was last edited at the beginning of December 2003 to refer to a spreadsheet dated 29 January of the next year. It might be that it was a matter of planning ahead, for example. However, it is also the case that 29 January 2004 was the day before the day of the email, potentially aligning with the email's reference to the claim put “yesterday”. A further oddity with this spreadsheet is that the email address embedded behind the author “peter” is “peter@crisisready.com.au” which is an address which has not previously been observed in the other exhibits. There is no email embedded behind the modifier John's username. In the document's properties, the “company” is listed as “ht”, presumably referring to Hightrade in one of its manifestations.

The lack of an obvious explanation for some anomalies

To the extent that some of the technological anomalies identified by the applicant do not have an obvious explanation that does not mean that the only plausible explanation is that they were fraudulently created or altered by Mr Crowe or others. There can be quirks in the way different

electronic systems produce or manifest information. There can be “bugs” and glitches in such systems. Such is a matter of common human experience over the last thirty years. Furthermore, there is no apparent reason why, if there had been fraudulent alteration or creation of electronic documents as alleged by the applicant, this should have been manifest by the various glitches in the documents that he relied upon.

It was of course at least theoretically possible that the various anomalies might have manifest a fraudulent conspiracy by Mr Crowe and others. But, as noted, the jury saw Mr Crowe give evidence. We return to the significance of this point below.

Removed evidence

The applicant also alleged that material had been stolen by the Crown or illegitimately removed from evidence. He referred the Court to a bundle of documents from a government authority containing photographs of various individuals including the applicant and other associated individuals. He noted that in handwritten page numbers written on the bottom of the bundle, there is one missing photograph in the sequence (the numbering jumps from p 29 to p 31). When asked what this missing photograph showed, he suggested that it was a photograph illegally taken within the Hightrade office. He appeared to suggest that Mr Crowe had installed software within Hightrade’s server which had enabled the photograph to be taken. He further suggested that there was some form of conspiracy involved in the removal of the photograph from the bundle, postulating that the Crown had been notified by the ATO to remove the photograph.

The Crown submitted that the materials formed part of an exhibit tendered by the applicant himself. On the appeal, in the course of questioning, the applicant described this as a “lesser important thing”.

There is no persuasive evidence to support the applicant’s hypothesis. The mere fact that some handwritten page numbers skip over a number does not come close to establishing serious misconduct by the Crown of the kind alleged. There is no force in the applicant’s submission. That it was made at all illustrates the tendency of the applicant to attribute any anomaly to serious misconduct by those involved in the case against him.

The applicant made claims relating to a missing jury note which he appeared to resile from upon it being pointed out to him that it may have been due to a renumbering of the jury notes. In any event, even if a jury note now cannot be located it was not apparent how this supported this or any other ground of appeal.

Intention to cause a loss and conspiracy

The applicant makes various submissions to the effect that an intention to cause loss was not established. Notably, in this part of his submissions, he attacks the conduct of the audits by the ATO with respect to the two development projects. He submits that the audits were not properly undertaken and the tax assessments were not validly issued. But the Crown case did not depend upon the validity of the tax audits and assessments. The question was whether the Crown had proved the two counts beyond reasonable doubt based on the evidence presented to the jury.

The applicant argued in this Court, as he did at trial (note above at [49]), that there could have been no conspiracy because he was the key decision-maker. That fact is not inherently inconsistent with there being an agreement between him and the two employees to carry out actions involving an intention dishonestly to cause loss to a Commonwealth entity. The evidence indicated that Mr Chang and Mr Chan played a significant role in carrying out the scheme alleged by the Crown.

The applicant submitted that the conspiracy allegation was false and beyond common sense “for the simple reason that the applicant could achieve all the goals alleged by the prosecutor without the conspiracy [being] needed”. Even if that is so, the availability of another route to achieve an improper end does not mean that the applicant could not have chosen to proceed by way of a conspiratorial agreement.

The applicant referred to the fact that other employees or contractors working in the business had been more senior than Mr Chang and Mr Chan. That fact does not preclude there having been a conspiracy involving the applicant and those two men, recalling that Mr Chang was the internal accountant and Mr Chan worked as the applicant’s assistant.

The overall strength of the Crown case

The applicant’s written and oral submissions to this Court manifest a fastidious attention to detail. That characteristic is consistent with the approach taken by the applicant at trial. As noted, some of the points he has made about a relatively small number of documents do not have an obvious explanation. Yet the applicant did not develop an argument that some or all of these documents were of such significance to the Crown case that doubts about them must undermine the whole prosecution. Identifying some oddities in a small number of documents in a case involving hundreds of thousands of pages does relatively little to advance analysis.

To a significant extent the applicant’s approach focuses on a few trees and ignores the wood. As we have noted, the great disparity between the claimed construction costs and the likely reasonable construction costs for the two development projects provides a compelling foundation for the Crown case that the amount invoiced was greatly in excess of the actual building work undertaken (see above at [22]-[24] and [42]-[43]). The Lobbyfit invoices relied upon with respect to phase two for count 1 lack plausibility (see above at [33]-[37]). It is practically inconceivable that that disparity could have occurred without the knowledge and involvement of the applicant (see above at [47]-[51]).

Whilst Mr Crowe was the main focus of the applicant's claim about the case against him being fraudulent, it seems practically unlikely that one ATO officer could have manipulated and created the evidence without others being aware. And there is no persuasive basis for suggesting that Mr Crowe and other ATO or AFP officers had any real motive to engage in such a high degree of improper conduct.

The Crown also relied upon a consciousness of guilt argument relating to the fact that the applicant left the country shortly after the search warrants were executed (the argument is addressed below with respect to Ground 8). That argument has some force.

Further, the following submission made by the applicant in a pretrial hearing – which he quoted to this Court – is worth noting:

The defence not worried the materials that they've obtained. The defence challenged the credibility of person, Mr Alan Crowe's, credit, your Honour. If his credit not there, all the materials is unreliable. That's the defence point of views. Defence doesn't care any materials he got it because that's not case against the defence. Defence comfortable with every single piece of materials. But defence not comfortable for this person if dishonest, then all the materials be tainted.

The applicant put various allegations about manufactured or manipulated evidence to Mr Crowe, along with other witnesses. As the submission just quoted illustrates, Mr Crowe's reliability and credibility was a key issue in the trial. Having seen him give evidence over the course of some ten days, the jury was well placed to consider whether or not they believed him. In so doing, it is inevitable that the jury would have taken account of the benefit of having seen and heard him give evidence, that being a significant advantage held by the jury compared to this Court: note *M v The Queen* (1994) 181 CLR 487 at 493-495; [1994] HCA 63; *Dansie v The Queen* (2022) 274 CLR 651; [2022] HCA 25 at [9]. The jury must have found Mr Crowe to be credible and reliable: note, analogously, *Pell v The Queen* (2020) 268 CLR 123; [2020] HCA 12 at [39]; see also *Z* (a pseudonym) v R [2022] NSWCCA 8 at [29]. The same is true of other witnesses who were said to have participated in manipulating evidence and who testified in this very lengthy trial.

That point is reinforced by a particular direction given by the trial judge to the jury shortly before the conclusion of his summing-up:

I remind you of what I have said a few times. That if you think that any of the documents that have been presented in the Crown case are false or fabricated, or fake, then you must have a doubt about the Crown case, because they are the documents that the Crown relies upon. The Accused submits that you will have a doubt about the documents in the Crown case and therefore you should find him not guilty.

As the Crown submitted, that direction was extremely favourable to the applicant. Indeed, strictly, it was unduly favourable to the applicant in that, as the Crown submitted to this Court, it "did not actually have to prove the veracity of all documents or each individual piece of evidence but had to satisfy the jury from all of the evidence accepted by them of the applicant's guilt

beyond reasonable doubt”. The effect of that direction is that the jury was told that the applicant was entitled to be acquitted if any document presented in the Crown case was false or fabricated or fake. The jury, following that direction, must have rejected the entirety of the applicant’s arguments about the claimed falsification of documents in the case against him. The jury must have accepted the evidence of Mr Crowe, and other witnesses, denying that they had manufactured or manipulated evidence. For our part, we find it entirely unsurprising that they should have done so.

Taking account of the arguments made by the applicant, we consider it clear that upon the whole of the evidence it was entirely open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. We are not persuaded that the evidence the applicant has referred to contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead to a conclusion that there is a significant possibility an innocent person has been convicted, after making full allowance for the advantages enjoyed by a jury. That is so even accepting that there are some anomalies and oddities in the voluminous documentation. We are not persuaded that any of the alleged factual inconsistencies or oddities demonstrate that the Crown case relied upon fraudulent evidence which would suffice to cause the jury to entertain a reasonable doubt about his guilt. This ground is not made out.

Ground 5: Undue and excessive judicial intervention

The applicant submits that the trial judge intervened unduly and excessively in the conduct of the trial, and this led to a miscarriage of justice such that his convictions should be set aside. He says in particular that the trial judge wrongly intervened during the applicant’s cross-examination such that he was aligning himself with the prosecution case and that this was evidenced by the language he used to belittle the applicant. He is said to have used words such as “who cares”, “don’t waste time” and “don’t argue with me” over 50 times and he is said to have intervened over 1000 times during the course of the trial.

In his submissions the applicant refers to the evidence of a number of different witnesses and topics. Indeed, he devotes 101 pages of his main written submissions to this ground of appeal, along with numerous pages in supplementary submissions. Included in those submissions is an extensive analysis of a number of cases in which the principles are set out.

It is not necessary to comment on all those cases as the principles are well-established. They have been referred to recently in *Mehajer v R* [2022] NSWCCA 240 at [144] per Bell CJ, Gleeson and Yehia JJ as follows:

In *Ellis v R* [2015] NSWCCA 262 at [65], Bathurst CJ, R A Hulme and Garling JJ referred to *R v T*, WA [2014] SASCFC 3; (2013) 118 SASR 382 at [38], where Kourakis CJ stated three ways in which a judge’s intervention may be excessive and lead to a miscarriage of justice:

- (i) the questioning unfairly undermines the proper presentation of a party’s case (the disruption ground);

- (ii) the questioning gives an appearance of bias (the bias ground);
- (iii) the questioning is such an egregious departure from the role of a judge presiding over an adversarial trial that it unduly compromises the judge's advantage in objectively evaluating the evidence from a detached distance (the dust of conflict ground).

As Ipp AJA said in *R v Thompson* [2002] NSWCCA 149; (2002) 130 A Crim R 24 at [38], the line between permissible judicial intervention in a criminal trial and intervention that results in an unfair trial is not capable of clear definition. It is sometimes difficult to determine where the line falls. A decision as to "whether the point of unfairness has been reached must be made in the context of the whole trial and in the light of the number, length, terms and circumstances of the interventions": *Galea v Galea* (1990) 19 NSWLR 263 at 281.

In *Nwagbo v The Queen* [2021] VSCA 93; (2021) 288 A Crim R 516, at [38], the Victorian Court of Appeal set out relevant principles which govern the limits of a trial judge's permissible intervention in the conduct of a trial as follows:

- (a) Whether judicial intervention will constitute a substantial miscarriage of justice will always be a question of fact and degree.
- (b) An adversarial system prescribes distinct roles to counsel and the judge, and the role of the judge is circumscribed by the dynamics of the adversarial system.
- (c) In jury trials, judges should be especially careful to avoid unnecessary intervention in the presence of the jury.
- (d) Judicial intervention in the presence of the jury ought not descend to denigration of counsel or counsel's case.
- (e) A judge must not give the appearance of adopting the role of a party to the proceeding, nor appear as if that party's partial advocate.
- (f) A judge must not shape the content of a trial, save for procedural or evidentiary rulings. Hence, a judge must not endeavour to fill gaps in a party's case, examine areas that the parties have left alone, nor endeavour to impact upon a witness's credit.
- (g) A judge may intervene in order to understand technical issues in a case, or to endeavour to clarify those issues for the jury.
- (h) A judge may intervene to maintain proper control over proceedings.

In our view, the ultimate question here is whether the conduct of the trial judge either viewed as a whole or having regard to specific instances was such that there was unfairness to the applicant with the result that a miscarriage of justice occurred. Fundamental to the obligations of a trial judge is to ensure a fair trial. The trial judge must ensure that they are not seen to have a view as to the outcome or be seen to be demonstrating bias or unnecessarily restricting the case pursued by an accused with the result that the trial is not fair.

The task of ensuring that a trial is fair is sometimes made more difficult if the accused person is unrepresented. An accused person will generally not have the same experience in conducting a trial or advocating their position and may not understand or be familiar with legal principles and evidentiary rules. While some leeway must be given to unrepresented persons in the presentation of their case, and a trial judge may assist an unrepresented person in dealing with procedural aspects, in the end the same rules apply to both parties. An unrepresented person is not excused from complying with the rules of evidence or court orders.

An unrepresented person must be given an opportunity to present the case that person wishes to pursue but there are limits. For example, court time is valuable and an unrepresented person is not merely permitted to pursue any argument or issue that person wishes to irrespective of its relevance or the time taken. As Basten AJA explained in *TS v R* [2022] NSWCCA 222 at [71], “the obligation of the trial judge is to do whatever can be done to ensure that the patience of the jury and the efficient disposal of public resources are not depleted through unnecessary and irrelevant cross-examination or tender of evidence”.

A fair trial requires that unrepresented persons adhere to the same general principles insofar as that is possible. As was observed by the trial judge during the summing up in this case, some leeway must be (and was) given to the applicant in terms of questioning of witnesses and propositions being put even absent any real foundation for the propositions. In the end, the tribunal of fact must determine the case having regard to proper legal principles and properly admissible evidence. Trials must be fair to both parties and one of the obligations of the trial judge in ensuring a fair trial is to ensure that questioning of witnesses is fair and that propositions being put to witnesses have a proper foundation, particularly if the proposition being put necessarily involves an assertion of fraudulent criminal conduct on the part of those witnesses.

This is a problem which often arose in the course of evidence in these proceedings. As indicated, the defence case in part involved assertions of fabrication of documents, fake documents, deliberately erroneous assessments and officers of the Newcastle ATO working with others to create a case against the applicant. The applicant was permitted to pursue this defence but many of the objections and so-called interruptions without objection arose in the context of the applicant raising suggestions of fraud, cover-ups and fake documents without pointing to any basis for the proposition or identifying how it was that the witness was involved in such conduct.

Legal practitioners are bound by ethical principles in terms of the issues they pursue, the questions they put and the arguments they maintain. Propositions must have a proper foundation in the sense that they must be capable of being supported by evidence reasonably available. Self-represented persons may not be bound by the same principles (in the sense of being subject to sanction) but a trial judge must still ensure that witnesses are not subject to offensive, harassing or speculative questioning: note Evidence Act 1995 (NSW), s 41.

It is not necessary or appropriate for this Court to respond to every complaint made by the applicant during his extensive submissions on this topic. However, having considered the submissions of both parties and the transcript of the trial, we make the following observations in addressing the substance of the applicant's arguments:

The complaint that the trial judge intervened excessively must be viewed in the context of the trial as a whole. This was a trial which lasted more than 10 months. Quite a number of witnesses gave evidence over a number of days. The transcript of the trial, excluding opening and closing submissions, amounts to over 7800 pages.

The applicant submits that the trial judge intervened over a thousand times, but that number is misleading. The applicant appears to have taken the view that responding to objections is a form of intervention. That is apparent from his own summary of the "interventions" in his submissions.

Having said that, the trial judge did intervene on occasions when there was no objection. His Honour did seek to limit the applicant's questioning from time to time and did reject questions on some occasions because his Honour considered them irrelevant, repetitive or without any foundation. One of the difficulties the applicant appears to have struggled with was grasping that merely suggesting a document is fake or that there is a cover up or there was some sort of fraud on the part of an individual does not make it so. The trial judge did intervene on a number of occasions to explain this to the applicant, but it is apparent that he was reluctant to accept this.

Further, the trial judge intervened on occasions when the applicant put questions which the witness could not possibly answer or should not be permitted to answer as the evidence would have necessarily involved speculation or hearsay. Again, it is apparent that the applicant was unwilling to accept these limitations on his questioning.

The defence case pursued by the applicant involved very serious allegations made about a number of persons involved in the investigation and prosecution. In our view, the trial judge gave the applicant a fair opportunity to pursue his defence as he wished to do so but the trial judge had an obligation to ensure that the trial was conducted properly. This involves ensuring that questioning of witnesses is fair. An accused person must be free to pursue the defence he wishes but that does not mean that members of society who attend and give evidence in criminal trials, whether in some official capacity or otherwise, should be exposed to questioning and repeated allegations of improper conduct made under privilege without a proper basis for such allegations. Having regard to the written submissions of the applicant, he appears to believe that he should have been permitted to question any witness in any way he wished to without limits. Restrictions on his questioning are said to be evidence of the general approach of the trial judge to preclude him from adducing relevant evidence and being in favour of the prosecution. We do not accept that.

None of the examples referred to in the applicant's written submissions demonstrate or support that proposition. Nor do we accept the general proposition that the so-called interventions were excessive. Indeed, having regard to the examples given in the applicant's written submissions, it is apparent that the so-called interventions were not excessive. The applicant was given plenty of opportunity to cross-examine witnesses without any interruption either by way of objection or from the trial judge.

It is evident that the trial judge did become exasperated or frustrated by the applicant from time to time, using language such as "I don't care" or even adding a comment following a ruling such as "you know that" which might be indicative of that frustration. Such examples are few and far between having regard to the length of the trial, the complexity of the issues and the number of witnesses. Some of these interventions are unfortunate. However, judges are human. The combination of a very lengthy trial, trying to ensure that the jurors remained focussed on the issues, some language difficulties in terms of phrase, grammar, or expression on the part of the applicant, and the applicant pursuing a defence that persons had fabricated, concocted or concealed evidence, all made the task of the trial judge particularly difficult. As explained, the nature and number of such interventions must be assessed as a whole and in context. Such examples are rare in the context of this trial.

The trial judge intervened on many occasions when there was no objection by the prosecutor and on most of those occasions the trial judge explained why he was doing that or had done so shortly beforehand. The trial judge was anxious that the parties focus on the issues and that the evidence adduced be relevant to the issues. Many of his Honour's interventions related to relevance. Many others related to the applicant putting questions which the witness could not or should not be required to answer. It is clear that his Honour allowed the applicant considerable latitude in pursuing the defence he wanted to pursue but was also acute to ensuring that the witnesses were not subject to repetitive and harassing questions and propositions that did not have any apparent foundation.

To the extent that his Honour occasionally himself considered that he might have overstepped the mark he sought to correct it. For example, his Honour asked a question of the applicant along the lines of asking him to explain where documents which the applicant asserted were fake came from. His Honour recognised that the applicant should not have been asked to explain something he could not explain. He then gave a direction to the jury that they should disregard that evidence.

It is appropriate to refer to a handful of examples. The first "who cares" comment identified in the applicant's written submissions was in this exchange, at the end of the applicant's cross-examination of Mr John Di Vito (who had worked in the applicant's business). The applicant was asking him about some photos showing a celebration of the first anniversary of the opening of the Crowne Plaza Hotel in the RHV development (emphasis added):

Q. Yeah, thank you. So, that's our general manager; is that right, John?

A. Yeah, Neil. Neil Houghton.

Q. Thank you. Neil Houghton, yeah. All right, thank you. Did you remember, John, the recruitment- -

CROWN PROSECUTOR GINGES: Your Honour, sorry, I've got an objection. I wasn't going to object earlier but this really doesn't go to any issue in dispute at all or for determination. It doesn't relate to GST. It doesn't relate to any issue. It's just, with respect - the photos are there. The jury can see them in their own time. Mr Zhang can close on it, but it's not something really this witness is going to assist with.

ACCUSED: Your Honour, that's related with this case. The hotel opened 2005, October 2006, and the staff - all the staff have to be in the position three months earlier.

HIS HONOUR: That's all fine and good, Mr Zhang, but it really doesn't have anything to do with this case.

ACCUSED: The tax office give the assessment for zero cost for the number of month for that period of time, so that's relevant directly to the case, your Honour.

CROWN PROSECUTOR GINGES: He can ask the tax office, your Honour. There's going to be an auditor who gives evidence about it.

HIS HONOUR: Yep. Well, the photos are in, Mr Zhang, so- -

ACCUSED: Yeah, thank you.

HIS HONOUR: - - they can have - the jury can have a look at them if they wish.

ACCUSED: All right. Thank you.

Q. John, you proud of that today still.

HIS HONOUR: Who cares, Mr Zhang?

ACCUSED: That's the point, your Honour.

HIS HONOUR: He can be proud of it, not proud of it. I don't care, either does the jury, so.

ACCUSED: Thank you, your Honour. Yes. The only people with feeling attach on that have more deeply involved. ...

The applicant extracted the italicised portion of this exchange in his written submissions. The surrounding context shows it arose when dealing with an objection about relevance. The trial judge correctly held that the issue being pursued was irrelevant. That is what was meant by asking rhetorically "who cares?". In an ideal world the point might have been expressed a little less emphatically when in front of the jury. Nevertheless, the point being made was clear. It is also not irrelevant that by this stage Mr Di Vito had been cross-examined by the applicant for nearly four days.

An example of the trial judge intervening which was said by the applicant “to stop [his] line of questioning” was in the applicant’s cross-examination of Mr Con Cockinos, a director of some of the companies controlled by the applicant. He was asking the witness about parts of a speech Mr Cockinos had delivered relating to one of the developments. The parts quoted by the applicant in his submissions are italicised:

Q. No worry. We see next. If you can see your speech. Next page, thank you.

HIS HONOUR: I don't mean to stop you, Mr Zhang, but none of this is likely to be in any dispute, so is there some point to these questions. Is there going to be something you're going to ask him at the end of the day, in other words?

ACCUSED: Yes, your Honour.

HIS HONOUR: About all of this.

ACCUSED: Yes, your Honour.

HIS HONOUR: What- -

ACCUSED: Con terminate their service after that.

HIS HONOUR: We've heard a bit about it already, so the jury know a fair bit about it. There's no point in going - is there any point in going through all of this with Mr Cockinos? You could probably just ask him the question that you want to ask him about the Azzuro - I mean, you might have a number of questions. I'm not saying you only have one question, but you might have a number. But rather than going through all this history again, why don't you just ask him the questions that you want to ask him and see if he can answer them.

ACCUSED: I don't know- -

HIS HONOUR: It's just a suggestion, Mr Zhang. If you want to keep going this way, I won't stop you, but it just seems to be taking up time for no purpose.

ACCUSED: This - sorry, your Honour. I don't know too much. I just one of ordinary. What I know is VIP event on that day, second day after that.

HIS HONOUR: Say what? That doesn't matter. It's not going to be in dispute.

ACCUSED: Yeah, that's come to dispute after that. Yeah.

HIS HONOUR: How's that in dispute?

ACCUSED: Because the people could - at that time can afford to buy that apartment, and the rich are powerful in Newcastle. At that time, it's high market. At the day, they sold 66 million.

HIS HONOUR: Well, we all know that already.

ACCUSED: No, we haven't seen the picture yet. We haven't- -

HIS HONOUR: There have been pictures already of Azzuro apartments.

The context of the portions that the applicant extracted in his submissions illustrates that the trial judge made clear that he was not going to shut down the line of questioning. His Honour was simply querying the utility of the questions. That was a legitimate concern for his Honour to raise in the course of this extraordinarily long trial.

An example of the applicant complaining about the trial judge rejecting a question about the integrity of a witness was in the applicant's cross-examination of the Crown's accounting expert, Mr Tony Samuel. The applicant was asking Mr Samuel about some instructions given to him by the Australian Government Solicitor:

Q. You haven't have conversation or brief or meeting to say, "Look, that's not good for this report", and then remit it.

A. The instructions are a matter for the AGS. They're not a matter for me.

Q. Are you not part of that conspiracy?

HIS HONOUR: Sorry. What did you say?

ACCUSED: Conspiracy.

HIS HONOUR: Conspiracy.

ACCUSED: Yes.

HIS HONOUR: No, I reject the question.

ACCUSED: Thank you, your Honour. All right.

HIS HONOUR: You can't ask questions like that. There are laws about what you can ask and what you can't ask.

ACCUSED: That's true. Thank you.

HIS HONOUR: And that's something you can't ask, okay.

ACCUSED: I will point out - yes, all right. I have file here, your Honour. I would like to see more.

HIS HONOUR: You have a what, sorry?

ACCUSED: All right. We'll go back to the file 3 again.

HIS HONOUR: Okay.

ACCUSED

Q. Instruction letter, yes. File 3. All right, keep going then. ...

The trial judge did not prevent the applicant asking questions of Mr Samuel about his instructions. What he rejected was the suggestion that Mr Samuel was part of a “conspiracy”, where no basis had been established for making that allegation under the privilege attaching to judicial proceedings. That was a proper way to proceed.

The applicant complains that the trial judge effectively entered the arena, including by asking the applicant questions when he was under cross-examination by the Crown. An example given is as follows:

Q. These invoices were created each month so as to neatly offset the amount of GST that JKC had to pay to the tax office when these apartments were being sold.

A. Yes.

Q. You agree with that.

A. Certainly, if from this paperwork.

Q. Yes.

A. But the point is the wrong concept because as one group, Resort Hunter Valley can buy directly, and they still get the refund from tax office as acquisition. So what I say is- -

HIS HONOUR

Q. But they didn't, Mr Zhang, did they? They didn't. They didn't do that, did they? RHV didn't buy directly, did they?

A. No, your Honour.

Q. No.

A. I mean the effect- -

Q. You- -

A. If you talk about the GST, the effect the same in the group. It's not infected.

Q. No, it's not the same, is it, Mr Zhang? It's not the same at all, is it?

A. Yeah, same, your Honour.

Q. No, it's not.

A. What's the different, your Honour?

Q. JKC got the benefit of the GST payments upfront.

A. Otherwise RHV get the benefit refund.

Q. Yeah.

A. Same result, your Honour.

Q. But they didn't buy it.

A. That's one group.

Q. Mr Zhang, listen. They didn't buy it though, did they?

A. Yes, they buy within the group.

Q. No, they didn't, Mr Zhang. JKC, you say, invoiced it. There's no evidence they actually bought it, but they invoiced it.

A. I don't know, your Honour.

Q. They got the benefit of the GST upfront.

A. I be cross by your Honour. I been crossed by Mr Crown.

Q. No, I'm just asking you. They didn't - they got the benefit of the GST upfront. You agree with that, don't you?

A. I agree. I think they do the good job.

HIS HONOUR: Okay. All right.

Presumably the trial judge considered he was clarifying something for the benefit of the jury, in the context of somewhat complex taxation issues. It would have been preferable for the trial judge to leave the questioning on the topic to the prosecutor. However, this particular example does not suffice to establish that his Honour had assumed the mantle of prosecutor. Nor do the other examples pointed to by the applicant.

The applicant complains about being required to answer certain questions put by the prosecutor in the course of being cross-examined. The following is an example:

Q. Yes, just pause there. I agree. If the builder is on an accrual system, you're absolutely right, but remember yesterday when I gave you this example, part of that agreement was that the developer says to the builder, "I'll set up a whole heap of companies that will issue you invoices for all sorts of works, antique porcelain vases perhaps, marble, door knobs, whatever, it doesn't matter. I'll set up companies that will issue invoices to that you, the builder, when you put in your business activity statement they'll equalise. You won't have to actually pay any GST or much GST." Let's just say, if that was part of the agreement, you'd agree with me that that would be a dishonest scheme, wouldn't it?

A. No, not at all.

Q. It wouldn't be a dishonest scheme?

A. The dishonest comes from Newcastle Tax Office.

Q. Forget about Newcastle Tax Office, Mr Zhang.

A. And they change the file to make it dishonest.

HIS HONOUR

Q. Mr Zhang, you're not answering the question. Just concentrate on the question.

A. Your Honour, why I answer the stupid question here, your Honour? Tell me.

Q. Because you're being asked questions and you have to answer them.

A. The questions are..(not transcribable)..to me answer, your Honour.

Q. They're not stupid. They're quite straightforward and you- -

A. It's not at all. They design a trap, they design a criminal case and ask me to answer that criminal concept; that's why I don't want to answer. If your Honour order me to answer I will answer what I like, your Honour.

Q. That might be a sufficient answer then.

The price of the applicant's decision to give evidence was that he was subject to cross-examination. The prosecutor's line of questioning was reasonable. It was not inappropriate – and not unusual – for the trial judge to direct the witness to concentrate on the question being asked. That the applicant thought the questions were stupid was not to the point.

The difficulties faced by the trial judge in dealing with the applicant are illustrated by an approach he took in cross-examination of the Crown's second witness, Mr Steven Ngai, on day 8 of the trial. The witness was referring to documents he had produced in response to a search warrant. The applicant wanted to question the witness about matters relating to the validity of the warrant, being an issue which the trial judge had already ruled on, and which could not concern the witness in any event. The prosecutor objected:

CROWN PROSECUTOR GINGES: I object.

HIS HONOUR: What's the point of your argument, Mr Zhang? What's the point?

ACCUSED: He said he have search warrant copy. I just ask him to identify if it the same.

HIS HONOUR: What's the point of the argument, I'm saying? Why do you want to ask him questions about this? He's produced the documents. They're here. He's here to answer questions about the documents.

ACCUSED: The search warrant issued on 17 September of that year. That's invalid warrant. He said..(not transcribable)..that's wrong. It's not issued by the Court.

CROWN PROSECUTOR GINGES: I object to this.

HIS HONOUR: I reject that as well, but let me deal with it. You know that I've already made rulings about this.

ACCUSED: That's before we haven't got a consent from this Court. This Court issued a subpoena to this..(not transcribable)..they produce nothing. They have no record. ..(not transcribable)..earlier than that.

HIS HONOUR: He can't comment about that particular search warrant other than he got it.

ACCUSED: ..(not transcribable)..they hand over the materials by force arrest warrant. That was wrong before this Court.

HIS HONOUR: Please listen to me for a moment. He can't comment about that particular search warrant.

ACCUSED: Was told me to show this search warrant to everyone if it's false or not.

HIS HONOUR: What would be the relevance of that?

ACCUSED: One is the materials are obtained by unlawful means, your Honour.

HIS HONOUR: That's your submission, but that's not--

ACCUSED: That's why I say not search warrant.

HIS HONOUR: That's got nothing to do with this witness.

ACCUSED: Yes.

HIS HONOUR: Listen. He received what he perceived was a search warrant, leaving aside your argument, okay? He got a document that said search warrant and as a result he produced the documents that we've got here in Court. He can't comment about whether it's legal or illegal.

ACCUSED: If we don't need comment, we just show to everyone to say if that year, seven days the search warrant are valid. Seven days. They issue on 17 September of that year, and then seven days valid means the valid or not.

HIS HONOUR: I reject the question, so just move on now and ask him another question.

ACCUSED: I object this witness for two ground, your Honour. First, this is senior quantity surveyor; there's no doubt about it, but he talk for somebody else's material, is the first one. He never got involved, second. The search warrant was issued on 17 September of that year, and seven day valid for the search warrant, and then this one after subpoena issued.

HIS HONOUR: I've rejected it. Move onto something else.

At the next break in proceedings after this exchange, the judge and the applicant had this exchange in the absence of the jury:

HIS HONOUR: Mr Zhang, please, please control your temper. If I tell you to stop, I want you to stop, okay? You don't help yourself by arguing with me, I can tell you now it's not a good look in front of the jury to behave the way you just did. Please, if I'm telling you to stop, it's just as much for your interests as it is for anybody else's okay? There will be occasions when you might be able to talk about those search warrants, this wasn't one of them. He knows nothing about it. I know

you want to say that it's a document that was wrongly dated and therefore wasn't effectively, but this witness knew nothing about that. All he was doing was producing the documents. So please don't argue with me in front of the jury, I don't want to have to criticise you in front of the jury, okay? Please respect that.

ACCUSED: Thank you, your Honour, I just try the best, you know, sometime when a personal reference on myself it just emotional too much attention.

HIS HONOUR: I understand that but be aware that I am trying to also stop you from being overly emotional by hurting yourself in front of the jury.

ACCUSED: Yeah, apologies. I apology on that. No just he's deny said he keep the recording, he keeping the date, he keeping the warrant.

HIS HONOUR: He did, yes.

ACCUSED: And then he, you know, he's a promote me, is something there, and I'm looking and it's fine, I haven't.

HIS HONOUR: Mr Zhang, you--

ACCUSED: But I - yeah, I will control myself.

HIS HONOUR: Yes, there's nothing - you're an intelligent man, you know that all that Mr Ngai did was get a warrant. He can't comment about the warrant, he doesn't know anything about it. Just think about what you're asking him before you start asking people questions like that. He couldn't comment on it. He just did what you would've done or anybody else would've done if they got a search warrant, they would've looked at it and handed over the documents, that's what he did.

ACCUSED: Well that's the issue, yes.

HIS HONOUR: Yes, but your issue is not with Mr Ngai.

ACCUSED: No, not at all, your Honour.

HIS HONOUR: No, exactly, so let's not argue about things that aren't really worth arguing about, okay?

ACCUSED: Thank you, your Honour

The trial judge was correct to uphold the Crown's objection. His Honour's manner of doing so was unexceptionable. And he then sought to explain in the absence of the jury that the argumentative approach taken by the applicant was not likely to aid his presentation of his case to the jury. This example illustrates the difficulty of a litigant representing himself in an assertive but often legally uninformed manner where the trial judge was seeking to maintain a trial that was fair to both sides.

In summary, in our view the applicant has not pointed to any particular passage which of itself would have created an impression in the jury that the trial judge was becoming an advocate for the prosecution or had any view about the strength of the prosecution case. Nor does a broader review of the transcript lead to that impression. Nor did the approach taken by the trial judge create an appearance of bias, nor unfairly undermine the proper presentation of the applicant's case. In the circumstances we reject the applicant's contention that the way in which the trial was conducted, specifically having regard to the approach taken by the trial judge and his Honour's so-called interventions, led to an unfair trial or a miscarriage of justice.

Ground 6: Unbalanced and unfair summing up

The applicant submits that the trial judge's summing up was unfair and unbalanced such as to have led to a miscarriage of justice. The applicant submits that the trial judge advocated the prosecution case and sabotaged the defence case all with the intention of convicting the applicant by any means. It is said that the trial judge misquoted, twisted, distorted, left out and made up the facts and used misinformation throughout his summing up. The applicant submits that this misconduct on the part of the trial judge should lead to the conviction being set aside. Some of the applicant's complaints in his extensive submissions on this ground overlap with those made under other grounds, including in particular Ground 5. Many of the complaints relate to matters occurring in the course of the trial, prior to his Honour's summing up, and/or in the course of exchanges occurring in the absence of the jury.

The applicant refers to the decision of the High Court in *McKell v The Queen* (2019) 264 CLR 307; [2019] HCA 5 and suggests that a similar result should ensue in this matter. The issue in *McKell v The Queen* related to some comments made by the trial judge on the facts during the summing up. As the Court held, the trial judge has a broad discretion to comment on the facts in a criminal trial, but the discretion is to be exercised judicially as part of ensuring that the facts of the case are put accurately and fairly to the jury (at [3]). Statements as to the facts made by a trial judge during the course of summing up which are lacking in balance may be unfair to an accused and give rise to a miscarriage of justice (at [4]). A trial judge should refrain from comments which convey their opinion as to the proper determination of a disputed issue of fact to be determined by the jury (at [5]).

In his submissions the applicant refers to decisions made during the pre-trial process as seemingly giving an indication as to the trial judge's state of mind. We take this to be a submission that right from the outset the trial judge demonstrated bias which became evident during his summing up. Similarly, his Honour's rulings on tendency and coincidence are said by the applicant to have been indicative of his prior state of mind. That complaint is undermined by the fact that the applicant has not challenged those rulings.

The applicant extracts what are said to be a large number of instances of a lack of balance in his Honour's rulings and statements made to the jury. These include the following:

He complains of attempts by the trial judge to restrict the time allocated to the accused to give his closing address. Yet his Honour was prepared to allocate more time to the accused than the prosecutor. And it is difficult to see what this has to do with the trial judge's summing up.

The same may be said about the refusal of the trial judge to permit five laptop computers to be given to the jury. In any case, the context of that issue is explained below when addressing Ground 4.

The applicant complains that the trial judge gave incorrect written directions to the jury as to the elements of the charges and incorrect directions as to the meaning of loss, the meaning of an overt act and the meaning of co-conspirators. Yet these directions have not separately been challenged, the arguments made about them were not developed, and they have not been shown to be erroneous.

The applicant continued to assert that the trial judge was aligning himself with the prosecution case having formed a view about a number of matters before coming to summing up. That complaint does little, if anything, to make good his complaint about the summing up to the jury.

We are being asked to review the summing up with an understanding of the trial judge's allegedly already formed attitude to these matters as if understanding of the alleged biased attitude would inform the summing up. We do not understand how this could be so.

In terms of the applicant's closing address the applicant submits that the trial judge twisted the facts, distorted the facts, made up facts and left out facts that destroyed the defence case. The applicant submits that the trial judge did not present the applicant's case to the jury.

Part of the criticism of the trial judge is that his Honour did not refer to every piece of evidence or seemingly every statement made in the evidence whether by the applicant or other witnesses. In his written submissions the applicant adopts the approach of highlighting matters which were left out as if in some way that is indicative of a deliberate intent on the part of the trial judge to mislead the jury and damage the defence.

A trial judge is not obliged to mention every aspect or piece of evidence in the summing up. Although "a trial judge may comment on the facts, the judge is not bound to do so except to the extent that the judge's other functions require it": *RPS v The Queen* (2000) 199 CLR 620; [2000] HCA 3 at [42]. The obligation is to provide a fair and balanced summing up including a summary of the addresses of the prosecution and accused (see McKell at [35]). It must follow that if a trial judge embarks upon a summary of the evidence and omits critical aspects of the evidence which are particularly relevant to the defence, an impression might be created of a lack of balance in the summing up. However, it is not the case that because a trial judge does not refer to a particular aspect of the evidence that the summing up must be viewed as unbalanced, given that there is no obligation to refer to every aspect of the evidence. To attempt to have done so in this very long-running case would have been highly burdensome on the trial judge and would have made for a very lengthy summing up. As it was, the summing up took two and a half days, which followed closing submissions by the Crown and the applicant given over the course of 10 days

(although not all of those were full days).

Further, the applicant's complaints about evidence that the trial judge did not refer to have to be understood in the context, explained above in addressing Ground 3, that his Honour directed the jury in general terms highly favourable to the applicant by saying that if they considered that any of the documents presented in the Crown case were false or fabricated or fake then they should find the applicant not guilty.

A core complaint of the applicant is that the trial judge's summing up of the prosecution case effectively constituted a "second address" for the prosecution. To a significant extent that misunderstands that a trial judge may summarise the case put by each side for the benefit of the jury. Further, the specific complaints made are without substance. To take one example, the applicant complains that in the following passage the trial judge explained an aspect of the Crown case in somewhat different terms to how it had been put by the Crown itself with respect to certain figures relating to the RHV development:

What the Crown submits is that the amount of genuine invoices from HTC to RHV was around the \$37 million, which was actually paid and the difference was the amount that represented the overcharging of RHV for the building costs of \$73 million by HTC. Of course HTC was not the only builder on the site, but the Crown submits that the same scheme was being utilised by AusChintle with respect to invoices it was sending to RHV. See these are the invoices here, or examples of them, E_DOC_A_050 and E_DOC_A_054. So there are lists of invoices there you can see in those documents. The Crown took you through those documents in some detail in his address, I am not going to do that now.

The applicant argues that the trial judge thereby "just made up what he thought was best to present the prosecution's case, that was not the address by the prosecutor at all, that was his own view". The trial judge was not making up a new case; he was referring to evidence to which the Crown had taken the jury. That he may have explained it in a simpler way than the prosecutor had done does not make the summing up unfair.

The applicant also complained that the trial judge distorted his case when summarising his submissions to the jury. The following example is illustrative, relating to the RHV development. The trial judge said this in his summing up: "Mr Zhang said that he built the resort for himself and for his family and it is still there and he said even now he does not own it now, he is still very proud of his achievement". Yet, the applicant complains, what he actually said in his submissions was this:

All right. I don't want to read all of them. I become emotional otherwise. I just read one here. The next page, para 60. That's my heart. Exactly what I said there. Still today. Number 60, I said the words to the effect, "It's my colleagues and I. I working very hard to persuade the National Bank to come to the term with the tax office." And then what I said, "My interest in the resort is not about dollars and cents. It's about creating something for my family, something I can be proud of, given that it provides employment and happiness to the thousands of peoples."

His Honour's reference to this submission was reasonable and fair.

The question is whether on a fair reading of the whole of the summing up (and taking account of the applicant's extensive submissions on this ground) it might be viewed as biased, demonstrating a favour towards one side or a view about the outcome. In our view, the summing up by the trial judge in this matter is not to that effect. Further, we again reject the applicant's suggestions of some deliberate intent on the part of the trial judge to present a case to the jury that was biased and unbalanced and favoured the prosecution.

Finally, on this ground, the applicant made an oral submission about some directions given by the trial judge on 28 September 2023 in response to a jury note. It was not clear which ground this argument related to, but it is convenient to address it here. The jury's query related to some electronic documents referred to as MD5s. The parties took some time to consider the issue after the note was sent, and the issue was then discussed in the absence of the jury, before the trial judge gave a response to the jury. The applicant made some complaints to this Court about the terms of the directions. But his Honour did refer to the applicant's case that, among other things, the MD5s "were planted by Mr Crowe and by Mr Corke". In any event, the applicant – who was not backward in asserting his position – made no complaint about the directions at the time. No material error has been established in this regard.

Ground 7: Improper and undue pressure on the jury

The applicant suggests that the trial miscarried by reason of undue pressure placed on the jury by the trial judge, particularly during the course of their deliberations. There are a number of parts to this ground of appeal.

To put the complaint in context, the jury retired to consider its verdict just before lunch on Monday 25 September 2023. They delivered their unanimous verdicts just before noon on Monday 9 October 2023, after some ten days of deliberation. There was no occasion to give a Black direction (see *Black v The Queen* (1993) 179 CLR 44 at 50; [1993] HCA 71).

The applicant's written submissions include the following:

1013. It was not long after the trial started, the prosecutor's witnesses were called, examined and cross-examined. During the cross-examination, the applicant cracked them badly, he exposed those telling lies and unraveled the truth of the defense case.
1014. Gradually during the trial, the Jury accepted the defense case, there had been a lot of thumbs up displayed to the applicant throughout the trial. While the Jury filed into the court room, they showed their connection to the applicant through their nods, their smiles and friendly eye contacts, did the applicant in return.

1015. The prosecutor and the trial judge had been aware of that connection built up through the trial, all the parties in the court room witnessed that connection every court day. The prosecutor had never raised any issue nor had the trial judge during the full length of the trial that became the daily norm.
1016. On 04 October 2023, ten days into deliberation, the Jury still could not reach the verdicts. There had been a clear signal to all the parties the outcome would be favor to the applicant. The trial judge and the prosecutor both realized that.
1017. On that day, the trial judge suddenly criticized and warned the Jury claiming the Jury's connection with the applicant were unhealthy and unreasonable. It was crystal clear that the intention of the trial judge was to subvert the verdicts reaching in the applicant's favor.

The effect of the applicant's submission is that he believes that he established a connection with the jury through his conduct towards them during the trial and that this connection was a demonstration that they were inclining in his favour. According to the applicant the trial judge erred in breaking that connection by providing a warning to the jury as to their interactions with him.

That warning was to the following effect:

I have reminded you in the past that it is not only justice has to be done. It has to be seen to be done. So if you were seen to be interacting with any of the parties, the Crown, Mr Zhang, anybody else associated with the case, it might appear to people coming into court or people outside the Court that you were not being independent in the way in which your treating your duty as a juror. So just keep that in mind, please, when you are interacting with people. All right. We shall see you back tomorrow, and have a good night.

The applicant appears to have taken this reminder to the jury as a direct attack on his alleged connection with the jury, and some form of direction that they should not be demonstrating any acceptance of his position. There is no merit in the claim. The reminder to the jury that justice must be done and also be seen to be done was appropriate and worded appropriately. It was not expressed to relate to, or to favour or criticise, interactions with either side. The applicant's apparent belief that he had the jury on side prior to this time has no apparent foundation, other than his own idea that, by smiling at the jury and trying to interact with them, they would likely give him a favourable result.

The next complaint under this ground relates to the written directions given to the jury and complaints of errors therein. In this regard, the applicant complains that by using the word "did" in the directions, when explaining that the counts alleged that the applicant "did conspire" with the co-offenders, the trial judge was in some way suggesting to the jury that the applicant was guilty of the offences. This is an incorrect and selective interpretation of the direction, which simply reflected the terms of the indictment (see above at [9]). The complaint has no merit.

Similarly, the applicant's approach to the elements of the offences is misplaced. As discussed above at [11], proof of actual loss was not required. As s 135.4(3) of the Criminal Code makes clear, it is the intention of dishonestly causing a loss to a third person, being a Commonwealth entity, that is required rather than the establishment of an actual loss.

The applicant refers to the sheer volume of evidence that the jury had to consider. That reflected the length and complexity of the trial. The fact that the jury took two weeks to deliberate suggests that the evidence and submissions were considered with some care. The applicant complains that it was impractical for the jury to consider all the evidence without having been provided with five laptop computers. That issue is addressed below when considering Ground 4.

We reject the applicant's repeated suggestion that the prosecutor withheld information from the jury and that there was some sort of conspiracy between the trial judge and the prosecutor intended to lead to the applicant being convicted. Once again, the applicant refers to a small selection of the evidence or selectively refers to events which occurred, misconstruing them and suggesting without foundation that the events or the evidence points to misconduct on the part of the trial judge and the prosecutor. They do not.

In oral submissions the applicant sought to make something of the fact that the judge realised soon after noon on 28 September 2023 (because of an implication in a jury note) that the jury did not yet have access to the trial transcript, although he had previously indicated to them that they would have it. His Honour then directed that the jury gain access to the transcript, and it may be inferred that that then occurred. The jury had started its deliberations on the afternoon of 25 September. The applicant submitted that the jury should have had the transcript from the start of its deliberations, and blamed the Crown for withholding it. The delay in getting the transcript to the jury may well have been due to the Crown, given that it was taking responsibility for providing materials. However, there is nothing to suggest that this delay was deliberate. And the jury's deliberations continued for over a week after this point. The delay in providing the transcript does not establish any misconduct or miscarriage.

The applicant suggests that the jury felt pressured to deliver its verdicts because in the course of the trial, on 28 August 2023, a note had been received from a juror saying "I'd like to book a holiday and wanted to know if it's safe to book flights and accommodation for mid-October". The applicant argues that after the long trial the jurors wanted to go home, especially the juror who had planned to go on holiday.

The argument is unconvincing. The trial judge's response to the note had been to outline to the jury the then likely course of the trial, which suggested that they would commence their deliberations in about mid-September (as noted, in fact they started on 25 September). He said "don't hold me exactly to those dates". His Honour stated, with respect to their deliberations after closing addresses and his summing up:

You can discuss it amongst yourselves as to how long you think you might take. So, I'm not going to tell you. One of the things we say to jurors is there's no limit. You take as long as you need to decide, and so I won't obviously tell you how long you have to decide. But you, yourselves, privately in your own room, can discuss those things amongst yourselves as well. That's probably going to be the most valuable source of information.

Thus his Honour did not say that a holiday could definitely be booked with safety in mid-October. The applicant has not pointed to any further jury notes raising concerns about timing or the jury's deliberations. Taking some 10 days to consider their verdicts could hardly be said to be rushed such as to suggest that the jury felt undue pressure.

Ground 7 is not established.

Ground 1: Malicious prosecution

The applicant complains that the prosecution constituted a manifest abuse of court process, arising from a malicious prosecution instigated and wrongly conducted by the ATO.

The basis of this suggestion appears to be a belief on the part of the applicant that his conviction is a combination of a long history of attack and revenge against him and his family, his business and associates by the ATO and, in particular, the Newcastle Tax Office. He submits that documents obtained under Freedom of Information exposed how the ATO went about this attack on him. He selectively refers to emails and a worksheet prepared by an auditor from the Newcastle Tax Office which he says demonstrates error and led to assessments which must be viewed as fake and a cover up. He blames the assessments and recoveries pursued by the ATO for the demise of his companies and the ultimate loss of the Crowne Plaza Resort.

Whether that be so, there is no foundation for the applicant's assertion of a cover up and fake or generally wrong assessments. To begin with, as explained above at [99], the Crown case did not depend upon the validity of the ATO's assessments. The applicant's submissions include a range of attacks on the actions and integrity of a range of ATO officers. For example, he criticises a "fake assessment" made by Ms Merran Kemp, who had worked as an auditor within the Newcastle office of the ATO. He says that Ms Kemp "wanted to finish the applicant once and for all". He says that "[t]he extreme decision was then made to cover up the fake assessment". The relevant ATO officers gave evidence during the trial, as has been discussed above with respect to Ground 3. Ms Kemp, for example, gave evidence over the course of a number of days, most of which was cross-examination. As discussed above, it is apparent from the jury verdicts that the applicant's claim of some elaborate malicious scheme perpetrated by these ATO officers was not accepted by the jury, having had the benefit of seeing and hearing those witnesses give evidence.

Plainly the applicant is aggrieved by the ATO investigation into his affairs but there is no foundation for the suggestion that the ATO was acting maliciously or that the whole process was some sort of abuse of process. At least in general terms, a malicious prosecution is one that is pursued without a reasonable and probable cause and maliciously (*A v State of New South Wales* (2007) 230 CLR 500; [2007] HCA 10 at [1]). The tort of malicious prosecution depends upon

establishing that the proceedings terminated in favour of the plaintiff (ibid). Even allowing for the fact that there is no evidence to support these generalised assertions by the applicant, the conviction of him by the jury rather tells against the suggestion that there was never any basis to be pursuing him, and involves a rejection of the claims of malicious action. Those conclusions were well open to the jury.

Ground 1 constitutes an assertion without any foundation and is rejected.

Ground 2: Unlawful extradition

The applicant maintains that an abuse of process arose from the applicant's extradition from New Zealand which was conducted in violation of the Extradition Act 1988 (Cth) and the "backing of warrants system" between Australia and New Zealand.

The current proceedings were commenced by way of Court Attendance Notices (CANs) filed on 29 January 2014 for count one and 6 May 2015 for count two. The CANs were filed on the application of Mr Crowe, of the ATO, but they could not originally be served on the applicant because he was overseas.

Warrants for his arrest were subsequently issued by Mr Damien Bultitude, an Acting Registrar of the Local Court at Newcastle, on 29 January 2014 for count one and 3 September 2015 for count two.

After ascertaining that the applicant was in New Zealand, Mr Crowe prepared an affidavit seeking his extradition to Australia on 30 January 2019. The warrants were endorsed by the District Court in New Zealand and the applicant was arrested in New Zealand on 4 April 2019. Mr Crowe then prepared two further affidavits in support of the request for extradition.

Thereafter, on 30 August 2019, the applicant consented to being surrendered to Australia for the prosecution of the charges against him. He returned to Australia willingly and voluntarily on 12 September 2019. He participated in the committal proceedings and was subsequently committed for trial on the two counts.

On 10 November 2020, he sought declarations that his extradition from New Zealand was unlawful. The application was heard in the District Court. He appealed against the dismissal of his application to the Court of Criminal Appeal. The Court heard the matter on 1 October 2021 and delivered judgment on 9 November 2021 refusing leave to appeal.

With some minor variations, the issues raised by the applicant under Ground 2 were raised before this Court in that case, being Zhang CCA No 1. Indeed in this appeal, as in the previous hearing, the applicant seeks an order that the prosecution against him be stayed as an abuse of process. The Court in the earlier decision considered the arguments raised on their merits. None were found to establish any injustice warranting a grant of leave to appeal pursuant to s 5F of the Criminal Appeal Act (see at [66]-[78]). Notably, the Court held that the validity of extradition from New Zealand is a matter of New Zealand law such that the applicant's contentions that his extradition was invalid having regard to Australian law had no merit. As the Court indicated (at

[69]-[70]), the District Court in New Zealand was satisfied that the Extradition Act 1999 (NZ) had been complied with and that the applicant had freely consented to his surrender and extradition. At least in the absence of any argument of exceptional circumstances, it is not the function of this Court to engage in some retrospective analysis of whether that decision of the New Zealand court was correct.

The applicant should not be permitted to reagitate issues already raised by him in his earlier appeal to this Court, particularly in circumstances when he consented to his extradition from New Zealand. In any event, for the reasons already stated in Zhang CCA No 1, there is no merit in the applicant's contentions under this ground. The applicant did refer to an affidavit made by Mr Steven Corkhill which the applicant had obtained after the earlier appeal, and which thus was not referred to in that case. However, as the Crown submitted, the applicant has not explained how the affidavit assists him beyond making the bare assertion that it "confirm[s] the applicant was right".

Leave to appeal on this ground should be refused.

Ground 4: Server scheme used to obstruct native evidence

The applicant submits that a miscarriage of justice was occasioned by significant procedural unfairness through what he says was a scheme involving the manipulation of the court server and the deliberate withholding of laptop computers, which unduly impeded the jury's ability to access and examine a substantial body of critical electronic evidence essential to his defence. The applicant submits that the introduction of a server which was inadequate was part of a scheme designed by the prosecutor to hinder access by the jury to evidence adverse to the prosecution case. Further, the applicant asserts that "the trial judge developed that scheme to the extreme". The applicant develops this ground under seven separate headings.

Firstly, the applicant submits that a special server was installed at court and tablets were provided to the jury. However, it was quickly realised that the tablets could not display emails and documents in their native format. As will be apparent from the discussion with respect to Ground 3, central to the applicant's case was the allegation that many of the documents tendered by the prosecution had been altered or manufactured. It was thus important to his case that the jury be able to examine relevant evidence in native format. However, the applicant ignores the fact that during the course of the trial documents being referred to were displayed in their native form on a PC which would then be displayed on screens in the courtroom. Whenever the applicant wanted to go to a document in the course of cross-examining a witness, for example, that document was brought up on the screens, and he could – and did – direct what part of the document should be displayed.

As the Crown submits, none of this is unusual. As the trial judge said in giving short reasons for permitting the use of the tablets:

It was being proposed by the use of the computer tablets in this case is really no more than an alternative way to display the exhibits that have been admitted. Courts commonly display documents that have been tendered on a TV which is provided in court.

Further, some parts of the evidence were saved as a PDF so that the jury could access the documents on their tablets. The applicant fails to mention any of this in his submissions.

Moreover, the Crown explained to the jury in its opening address that the tablets could not open certain documents in their native format, but said that:

At the end of the trial or perhaps before the end of the trial, you will be provided with a number of computers, like a PC, that you might be familiar with, that has the capacity of reading those documents.

As the Crown submitted, it was thus apparent from near the start of the trial that the jury would not be able to examine documents in native format themselves until the end of the trial. That did not prevent the jury being taken to documents in their native format in the course of evidence and submissions, displayed in the usual way on screens in the court.

There was some suggestion over the course of the trial that five laptops would be provided to the jury at the end of the trial. In fact only one laptop was provided, in the following circumstances. A court-provided computer was set up in the jury room at the conclusion of the summing-up. However, the jury sent a note the next day saying that certain files could not be opened in native format. It emerged that this was because of limitations on the software on that computer. The Crown then suggested (in the absence of the jury) that the computer which the CDPP had been using in court to display documents in native format be provided to the jury. Evidence was given by a CDPP solicitor as follows:

HIS HONOUR

Q. Right. Now, you've heard us discuss in Court the prospect of providing a laptop computer to the jury. Are you confident that the situation is there's nothing on that laptop other than the material relevant to this particular case?

A. Yes, your Honour. The laptop has nothing on it except the standard files that would be on a laptop. The USB contains all of the materials from this case and I understand the jury also has a similar USB or the same USB. So they could use that USB with this laptop.

The applicant declined the opportunity to ask the solicitor any questions. Just before this evidence, he had indicated that he was content with the Crown's proposal about it providing a laptop to the jury:

HIS HONOUR: Right. So, the alternatives appear to be either that they're shown again in Court or the jury are allowed to have the DPP's computer. With respect to the latter suggestion, it would be necessary for Mr Zhang to have a very good look through that computer before I'd be happy to let that go out to the jury. If ultimately he's had a look at it and he's satisfied that it's okay, I'm happy for it to go out to the jury but if you have any concern about it, I won't let it go out to the jury.

ACCUSED: No, your Honour, I won't have any concern on that. I'm happy with that.

Whether or not it was desirable to provide more than one computer, that proved impractical. And only having one computer meant that the jury would focus jointly on the evidence. This course was acceded to by the applicant.

Secondly, the applicant submits that the trial judge was aware of the problem at the pre-trial stage and did nothing to take steps to ensure that the applicant had a fair trial which would have necessarily involved ensuring that documents were available in their native form on the jury's tablets. To the extent that this submission involves a suggestion that the trial judge was in on the scheme, it is rejected. There is no basis for it, and it is inconsistent with the transparent recognition of the issue with respect to the jury looking at documents in their native format, as just outlined.

Thirdly, and similarly, we reject the submission that the reason that the trial judge did not allow laptop computers to be provided to the jury was the trial judge's determination to keep critical evidence from the jury. The submission is without basis.

Fourthly, we reject the suggestion that the Court failed to safeguard the security of the evidence by allowing the solicitor from the Commonwealth Director of Public Prosecutions to be involved in the uploading of documents. Again, there is no evidence of any improper conduct on the part of the solicitor.

We also reject the suggestion that the prosecution expert, Mr Tony Samuel, was involved in some conspiracy with the ATO in terms of the uploading of his reports as he knew that they were wrong and contrary to ethical standards. Again, there was no evidence to support this suggestion. Similarly, there is no evidence to support the suggestion that the prosecution solicitor was in some way acting selectively in terms of uploading documents or that in some way the prosecution was removing evidence even though it had been admitted. It appears that Mr Samuel's reports, along with a redacted statement by Mr Ross Burns, were not uploaded to the server which was available to the jury until some time after they had been tendered. These delays became apparent following a query in a note from the jury. There is nothing to suggest that the delays were anything other than an honest mistake. Moreover, the applicant's submissions are inconsistent in complaining on the one hand that Mr Samuel's evidence was concocted to serve the interests of the Crown, whilst on the other hand complaining that his case was prejudiced because this material was not uploaded until some months after it had been tendered.

The applicant also complained that the exhibits were indexed on the server by reference to first/ given name of witnesses rather than by their surnames. However, as the Crown noted in its submissions, this jury was attentive, sending the trial judge numerous notes over the course of the trial, including about accessing documents on the computer system. If this jury had found the indexing system too difficult to navigate there is every reason to think they would have raised the point.

Fifthly, the applicant asserts that the Crown had “stolen” some of the evidence, seemingly by not uploading it on to the server. The claim is not supported by evidence.

Sixthly, we reject the suggestion that the server was in some way configured such that it was capable of handling the prosecution documents but not the documents relied on by the defence. There is no evidence for it. We have already dealt with the process the Court put in place to ensure that the jury had access to all documents.

Finally, we reject the seventh submission made by the applicant to the effect that the issues with the server were part of a scheme developed by the prosecution with the assistance of the trial judge and that the decision on laptop computers reflected that conspiracy. Again, this is a submission without foundation.

Further, the applicant’s approach in this Court is inconsistent with his consent to the trial judge’s suggested method of dealing with the difficulties opening email files in their native form. The jury had access to a computer in the jury room from 26 September 2023 until they delivered their verdicts on 9 October 2023. The jury did not raise any further issue about this. Nor did the applicant.

There is nothing to support the applicant’s proposition that difficulties with the use of technology during the trial led to a miscarriage of justice. Ground 4 is not made out.

Ground 8: Error in the approach to consciousness of guilt reasoning

The applicant submits that consciousness of guilt reasoning was invoked improperly and unfairly such that his convictions should be set aside. The applicant submits that the trial judge erred in allowing the prosecutor to invoke consciousness of guilt reasoning while disallowing the applicant to present evidence in response. The applicant submits that the trial judge acted as an advocate for the prosecutor and made “poisonous directions” about consciousness of guilt in his summing up.

The Crown relied on the applicant’s departure from Australia to Hong Kong on 24 April 2009 (a bit over a week after search warrants had been executed on relevant premises) and his failure to return as consciousness of guilt. The Crown tendered the applicant’s departure card in which he indicated that he was leaving for a two week holiday. It also relied upon the fact that he was an Australian citizen and had two children in Australia. As the prosecutor indicated (in the absence of the jury) shortly prior to the commencement of closing addresses, “the only consciousness of guilty [sic] I am going to be relying upon is flight”.

The applicant knew well in advance that the Crown would be relying on it as this was the subject of comment in Zhang CCA No 3, being an appeal to this Court from the trial judge's decision to refuse to adjourn the trial and recuse himself for apprehended or actual bias (see at [10]).

Under heading one of this ground of appeal, the applicant asserts that the trial judge demonstrated a biased state of mind in some exchanges with the prosecutor (in the absence of the jury) on this topic. None of the extracts referred to in this submission support that proposition. For example, the trial judge had asked the Crown during the course of the trial if it would be relying on some possible suggestion of interference with evidence by the applicant as going to consciousness of guilt. The Crown did not rely on that point. There was nothing untoward about the judge clarifying the Crown's position.

Beyond that, the substance of the complaint is that the trial judge should not have permitted the evidence to be presented to the jury or given any direction about consciousness of guilt based on flight. Indeed, the applicant refers to the prosecutor's raising of the issue with the trial judge and suggesting that his Honour might take a different view on the issue as supporting his contention that the trial judge was biased. We understand the point to be that even the prosecutor was not certain that consciousness of guilt reasoning could be invoked, and it was the trial judge's biased state of mind that led to that occurring.

Again, there is no basis for this submission. The Crown plainly sought to rely on consciousness of guilt arising from the applicant's flight and raised this with the trial judge, acknowledging that it would be a matter for the trial judge.

At least in part, the applicant accepts that there may have been some confusion about his evidence having regard to what he described as his language barriers and the use of wrong words in some of his answers. The applicant focuses on the difference between "book a ticket" and "buy a ticket", suggesting that the trial judge should have known that he misunderstood some of the questions when giving evidence. It is difficult to understand the significance of the matters on which the applicant relies in terms of the direction as to consciousness of guilt. To the extent that the applicant suggests that the trial judge erred in not realising that the applicant was not understanding some of the questions or using wrong words in his answers, the error was not on the part of the trial judge.

The applicant's approach is selective and is rejected. Much of the applicant's criticism seems to be based on the proposition that a consciousness of guilt direction should never have been given seemingly because of the applicant's view of his own behaviour, being that he had not fled the country and was planning to return. Suffice to say, we are satisfied that there was ample evidence supporting the request for a consciousness of guilt direction. It was up to the jury to form its own view as to the evidence on the issue. It could take into account, for example, the fact that the applicant gave evidence that his air flight to Hong Kong was pre-booked and was the second leg of a return ticket. Of course it is not known what view the jury formed. They may have disregarded the Crown's argument.

The applicant complains that certain evidence he had sought to rely on was not admitted by the trial judge, including, for example, some observations provided to senior counsel in relation to some Federal Court litigation connected to the tax issues. It is not apparent what relevance the evidence could have had to the consciousness of guilt issue.

The applicant criticises the trial judge for seeking to clarify whether the applicant had ever seen the search warrant and whether it had referred to potential charges. His Honour's attempt to clarify the issue was not untoward, and cannot fairly be characterised as his Honour having "coached" the prosecutor, as the applicant suggests.

The directions given by the trial judge in summing up were orthodox, not "poisonous". The trial judge made it clear that should the jury accept that the applicant travelled overseas for any other reason, the jury must not use his departure from the country as evidence of a consciousness of guilt. The applicant criticises the trial judge for saying that "people facing potential charges do not always act rationally". Yet that direction was in favour of the applicant. As his Honour then went on to say:

A person may have a reason for leaving quite apart from the fear of facing up to the truth. For example, a decision to flee the jurisdiction might be the result of panic, to escape an unjust accusation, or to protect some other person, or to avoid the consequence of some unrelated matter not related to the alleged offences.

The applicant criticises the judge for distorting the applicant's position on the issue. But his Honour gave a (reasonable) summary having read out a long extract of what had been said by the applicant. The applicant also says that there was a miscarriage of justice because the matters the subject of count one were not referred to in the search warrants. His Honour did not suggest otherwise.

Ground 8 is rejected.

Ground 9: Trial commenced at an unjust time

The applicant submits that the trial commenced at an unjust time in that he was unfit for trial at the time due to medical conditions. This ground has already been the subject of an appeal. The applicant's health was referred to by this Court in Zhang CCA No 3, in which the applicant had sought leave to appeal two interlocutory decisions made by the trial judge, namely refusing an application that the impending trial be delayed for about nine months, and refusing an application that the judge recuse himself for actual and apprehended bias. The grounds on which the applicant sought an adjournment of the trial before the trial judge did not include his health issues, but these were referred to in the application then made to this Court. As noted by Ierace J in that decision (at [59]), the notice of motion filed by the applicant for an adjournment was filed one year and nine months after he was first arraigned in the District Court, three and a half years after his arrest in New Zealand and 14-19 years after the offences were allegedly committed. There was considerable delay in these proceedings.

In any event, the applicant has not been able to point to any part of the trial during which he could not appear or could not represent himself due to ill health. The trial did not go on without him. Notably, the applicant had a planned procedure to have a stent inserted on 22 February 2022, during the course of the trial. The hearing was adjourned on 21 February until 2 March to accommodate this. When the trial resumed the following exchange occurred:

HIS HONOUR: Are you ready, Mr Zhang?

ACCUSED: Yeah, your Honour. Sorry, I - yeah, I have a hospital procedure successfully.

HIS HONOUR: Thank you for that. You sent us the information.

ACCUSED: Yeah, thank you. The cardiologist would like to see me on 29 March. I said in that email so if could have court leave on that day.

There was then discussion about how much time he would need to see the cardiologist. The applicant made no suggestion he was not capable of proceeding with the hearing.

The applicant criticises the trial judge for (repeatedly) asking for evidence supporting the claims he was making about his medical condition. That was an entirely reasonable approach in the circumstances.

Whatever the state of his health, at the commencement of and during the trial he has not demonstrated any miscarriage of justice in the way in which the trial was conducted or the fact that it took place when it did.

Ground 10: Miscarriage of justice

This appears to be a catch-all type of ground of appeal. The applicant submits that the cumulative effect of all the errors and procedural unfairness raised in Grounds 1 to 9 renders the trial unfair and the verdicts unsafe and unsatisfactory.

For the reasons we have set out, the applicant has been successful with respect to none of his grounds of appeal. Many of them, or at least the submissions supporting them, focus on the suggestion that the trial judge was biased and that in some way the trial judge and prosecutor were working in concert to ensure that the applicant was convicted through procedural rulings, the exclusion and admission of evidence and statements made to the jury. As will already be plain from these reasons, there is no proper basis for these propositions advanced by the applicant. The trial, a lengthy and complex process, was conducted fairly and appropriately by the trial judge. Similarly, there was no evidence of the prosecutor failing in his obligations in any material respect. We have rejected each ground of appeal. Assessing them cumulatively makes no difference to their lack of merit.

In the circumstances, the appropriate orders are:

Leave to appeal is granted except with respect to Ground 2.

Appeal dismissed.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated:

18 February 2026

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/19c55a1525bbcca991526f77>

CASE PAGE <https://chat.esheria.ai/case-law/australia/zhang-v-r-no-4-2026>

Prepared on 28 October 2026 · Esheria