IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 17

Criminal Case No 65 of 2018

Between

Public Prosecutor

And

Muhammad Faizal Bin Mohd Shariff

JUDGMENT

[Criminal law] — [Statutory offences] — [Misuse of Drugs Act]

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Public Prosecutor
v
Muhammad Faizal Bin Mohd Shariff

[2019] SGHC 17

High Court — Criminal Case No 65 of 2018
Chan Seng Onn J
11—13, 18—19 September 2018; 15 November 2018

28 January 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The accused, Muhammad Faizal Bin Mohd Shariff ("Faizal"), claimed trial to the following charge (the "charge") under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA"):

> That you, MUHAMMAD FAIZAL BIN MOHD SHARIFF,
>
> On or before 14 February 2016, at 95 Pasir Ris Grove, #06-41, NV Residences, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) ("MDA"), *to wit*, by having in your possession for the purpose of trafficking, six (06) blocks containing not less than 3540.07 grams of vegetable matter, which was analysed and found to contain 1562.97 grams of cannabis, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the MDA, punishable under s 33(1) of the MDA, or you may alternatively be liable to be punished under s 33B of the MDA.

2 At the end of the trial, I reserved judgment. Having considered the evidence and the submissions of the parties, I find that the Prosecution has proven beyond a reasonable doubt the charge against Faizal. Accordingly, I convict Faizal of the charge. I set out the reasons for my decision below.

Undisputed facts

The rental of the unit at NV Residences

3 Ong Bee Leng ("Ong") is the owner of a condominium unit located at 95 Pasir Ris Grove #06-41, NV Residences, Singapore 518912 (the "Unit"). Ong was using the Unit for short-term rentals. On 1 February 2016, Ong commenced renting the Unit to one Kow Lee Ting Serena ("Serena") for an initial period from 1 to 8 February 2016. Serena had informed Ong that she would be staying at the Unit with two of her colleagues. These two "colleagues" are Faizal, and one Muhammad Hizamudin Bin Sheik Allahudin, also known as "Abang Arab" or "Arab". Another person, one Leonard Cheng Lee Siang, also known as "Brother" or "Leo", would come to the Unit on occasion. Apart from Faizal, Serena, Arab and Leo, no one else had access to the Unit.[1]

4 On 8 February 2016, Serena contacted Ong and requested to extend her lease of the Unit to 15 February 2016. Ong acceded to Serena's request.[2]

5 On 14 February 2016, Faizal and Serena were arrested by the Central Narcotics Bureau ("CNB") in relation to another case.[3]

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1 Notes of evidence ("NE"), 19 Sep 2018, p 67, lines 29 – 30.

2 Agreed Bundle ("AB"), p 141, para 3.

3 Prosecution's Closing Submissions ("PCS"), para 6.

6 On 15 February 2016, given that the rental period had ended, Ong tried to contact Serena to collect the door access cards to the Unit but could not reach her.[4] Ong then went to the Unit with her husband that same day at about 10.00pm. Seeing as to how there was no one in the Unit, they retrieved what they believed to be the tenants' belongings and left them with the condominium's security supervisor for safekeeping.

Discovery of the six blocks of cannabis

7 On 16 February 2016, at about 8.00am, Ong returned to the Unit to clean it out. It was then that she discovered three big blocks and three smaller blocks wrapped in cling wrap (the "six blocks") in the drawer of the television console in the master bedroom of the Unit.[5] She put the six blocks in a red plastic bag and brought it down to the condominium's security supervisor to be placed with the rest of the tenants' belongings.

8 Later that evening, the security supervisor informed Ong and her husband that there was a strong smell coming from the red plastic bag, and of his suspicion that it contained illegal drugs. Ong's husband then called the police.

9 Officers from the CNB eventually seized the six blocks, which were marked E1 to E6. The six blocks were sent to the Health Sciences Authority for analysis and found to be not less than 3540.07g of vegetable matter, which was analysed and found to contain 1562.97g of cannabis. The weights of the cannabis and cannabis mixture in each of the six blocks are as follows:[6]

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4 AB, p 141, para 4.

5 AB, p 142, para 6.

6 AB, pp 66 – 71.

Exhibit	Cannabis (g)	Cannabis mixture (g)	Total weight (g)
E1	328.80	507.90	836.70
E2	412.90	478.40	891.30
E3	426.40	434.50	860.90
E4	89.77	138.80	228.57
E5	108.70	152.10	260.80
E6	196.40	265.40	461.80
Total	1562.97	1977.10	3540.07

Prosecution's case

10 The Prosecution's case against Faizal is that he had actual knowledge and was in possession of the six blocks of cannabis (*ie*, E1 to E6). On 9 February 2016, around midnight, Faizal collected four blocks of cannabis by driving his van to Pasir Ris Farmway and picking them up by the roadside near the fishing pond. He refers to these four blocks of cannabis as "storybooks". He subsequently brought these four storybooks back to the Unit. He then took one of the storybooks and repacked it into three smaller blocks (*ie*, E4, E5 and E6). Faizal then kept these three smaller blocks together with the three remaining storybooks (*ie*, E1, E2 and E3) in the drawer of the television console in the master bedroom of the Unit where the six blocks were discovered.

11 The Prosecution further submits that the evidence shows that Faizal had possessed these blocks for the purpose of trafficking. In the alternative, the Prosecution submits that Faizal is unable to rebut the presumption of trafficking under s 17 of the MDA.

Defence's case

12 Faizal admits to collecting the four storybooks on the evening of 9 February 2016.[7] He brought the storybooks back to the Unit, but claims that he placed the storybooks in the chiller compartment of the refrigerator.[8] Subsequently he retrieved one storybook and divided it into three smaller blocks (*ie*, E4, E5 and E6).[9] He wrapped these smaller blocks in cling wrap and placed them back into the chiller compartment of the refrigerator. Faizal admits to ownership and knowledge of E4, E5 and E6,[10] but claims that these drugs were for his own consumption and only a small portion was meant for sale.[11]

13 However, Faizal denies possession and knowledge of E1, E2 and E3. He claims that E1, E2 and E3 were not part of the four storybooks which he had collected.[12] He claims that sometime around 12 February 2016, when he looked into the chiller compartment of the refrigerator again, he noticed that the three remaining storybooks had disappeared and only E4, E5 and E6 remained.[13] Faizal also claims that he had left the storybooks in the chiller compartment of

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7 NE, 18 Sep 2018, p 27, lines 13 – 17.

8 Defence's Closing Submissions ("DCS"), para 16.5.

9 DCS, para 13.

10 DCS, para 3.

11 NE, 18 Sep 2018, p 19, lines 21 – 31.

12 DCS, para 15; NE, 18 Sep 2018, p 31, lines 14 – 24.

13 DCS, para 16.7.

the refrigerator and does not know how E1 to E6 came to be in the drawer of the television console in the master bedroom.[14]

14 The Defence suggests that given the circumstances, there is a reasonable doubt as to whether E1, E2 and E3 were indeed in the possession of Faizal. First, Faizal's fingerprints were not found on E1, E2 and E3. Second, there were other people who had access to the Unit, which could account for the unidentified fingerprints on E1, E2 and E3.

15 If indeed it cannot be proven beyond a reasonable doubt that Faizal had possession and knowledge of E1 to E3, the Defence contends that the charge should be amended pursuant to s 128 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). Instead of "six (06) blocks" and "1562.97 grams of cannabis" as stated in the original charge, the charge should be amended to "three (03) blocks" and "394.87 grams of cannabis". The applicable punishment would then be an imprisonment term of between 20 to 30 years and 15 strokes of the cane, as opposed to the mandatory death penalty.[15]

The law

16 The Court of Appeal in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28] listed three elements that have to be fulfilled for the Prosecution to establish a charge under s 5(1)(*a*) read with s 5(2) of the MDA:

> (a) Possession of a controlled drug (which may be proved or presumed);

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14 DCS, para 26.2.

15 DCS, para 3.

(b) Knowledge of the nature of the drug (which may be proved or presumed); and

(c) Proof that the possession of the drug was for the purpose of trafficking.

17 In addition, s 17(*d*) of the MDA states that any person who is proved to have had in his possession more than 15g of cannabis shall be presumed to have had that drug for the purpose of trafficking unless proven otherwise.

My decision

18 Having assessed the evidence, I am satisfied that Faizal had actual possession and knowledge of all six blocks of cannabis. Further, the evidence shows that he had possessed the six blocks of cannabis for the purpose of trafficking. Accordingly, the Prosecution has proven the charge against Faizal beyond a reasonable doubt.

The storybooks were not jointly owned by Serena, Arab and Leo

19 Before I proceed to determine whether Faizal had actual possession and knowledge of E1, E2 and E3, I will first deal with Faizal's contention that the four storybooks were jointly owned by Serena, Arab, Leo, and himself. My finding on this issue will have an effect on several of the other assertions raised by Faizal.

20 Contrary to Faizal's contention, I find that the storybooks were not jointly owned by Serena, Arab or Leo.

21 First, the Defence had never once put to Serena that she jointly owned the storybooks, nor did the Defence request for Arab and Leo to be called to the

stand for this assertion to be put to them. It is just a bare assertion on the part of Faizal that the four storybooks were jointly owned by the three other occupants of the Unit.

22 Second, if indeed the four storybooks were jointly owned by Arab and Leo, it is surprising that they would have left their share of the storybooks in the Unit. This is especially so given that the estimated value of the six blocks would be around $35,000.[16] Even taking the Defence's case at its highest that E1, E2 and E3 were not part of the original four storybooks collected, it is undisputed that E4, E5 and E6 had come from one of the storybooks. There is no evidence of Arab and Leo making any attempts to retrieve their share of E4, E5 and E6 if indeed they were the joint owners of the storybooks.

23 Third, none of the six blocks contained Arab or Leo's DNA. This is in stark contrast to the unchallenged fact that Faizal's DNA evidence was found on multiple surfaces of the three blocks E4, E5 and E6.[17]

24 Although Serena's DNA was found on the cling wrap that was used to package E4, she explained that she had used the roll of cling wrap (exhibit A1) to wrap up some leftover food.[18] Faizal had admitted to using the same roll of cling wrap to package E4, E5 and E6.[19] It is notable that Serena's evidence in this regard was unchallenged by the Defence.

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16 NE, 19 Sep 2018, pp 70 – 71.

17 AB, pp 83 – 117; DCS, para 8.

18 NE, 13 Sep 2018, pp 10 – 11.

19 AB, p 275, para 27.

25 All things considered, I am of the view that the four storybooks were solely owned by Faizal. He was the only person who went to collect the storybooks, and the only person to deal with the storybooks subsequently.

Faizal had actual possession and knowledge of all six blocks of cannabis

26 At the outset, it should be noted that Faizal had admitted to collecting the four storybooks on the night of 9 February 2016. It is also undisputed that he had brought the four storybooks back to the Unit, and that he subsequently took one of the storybooks and divided it into three smaller blocks. Faizal confirmed that these three smaller blocks were E4, E5 and E6, which he admitted to knowledge and ownership of. Faizal's sole defence is that E1, E2 and E3 were not part of the four storybooks that he had collected. Therefore, what is left for me to determine is whether Faizal had actual possession and knowledge of E1, E2 and E3.

27 In my view, the objective and circumstantial evidence when taken together, lead to the irresistible inference that Faizal was also in possession and had knowledge of E1, E2 and E3. It is clear to me that E1, E2 and E3 are in actual fact the other three storybooks which Faizal had collected and brought back to the Unit but did not repackage into smaller blocks.

Faizal's admission in his statement recorded on 21 February 2016

28 In his statement recorded on 21 February 2016 (the "21 February Statement"), Faizal had originally identified E1, E2 and E3 as being three of the four storybooks that he had collected.[20] It should be noted that the Defence did not challenge the admissibility of the 21 February Statement, neither did it

[20] AB, p 274, para 27.

challenge the recorder of the statement, Inspector Seah Jin Peng Lucas, on its accuracy.

29 The Defence argues that the 21 February Statement is of little probative value given that it is contradicted by a subsequent statement that was recorded on 10 June 2016 (the "10 June Statement").[21] However, I do not think that any weight should be given to the 10 June Statement for the following reasons. In the 10 June Statement, Faizal claims at para 40 that he had completely made up paras 27 to 29 of his 21 February Statement. Specifically, he stated that he did not know what these items E1, E2, E3, E4, E5 and E6 were and that he had "never seen them before in [his] life".[22] However, this has been proven to be untrue, given that Faizal has now admitted to knowledge and possession of E4, E5 and E6. Moreover, Faizal appears to have retracted the parts of his 10 June Statement where he claims to have lied in his 21 February Statement, by stating in court that paras 40 to 42 of his 10 June Statement was a lie to protect his friends.[23] Therefore, I do not accept the Defence's argument that the accuracy of the 21 February Statement is put into doubt simply because of its apparent contradiction with the 10 June Statement.

30 In any event, the rest of the circumstantial evidence corroborates Faizal's admission in his 21 February Statement that E1, E2 and E3 are three of the four storybooks that he had collected.

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21 DCS, para 10.

22 AB, p 317, para 40.

23 NE, 18 Sep 2018, p 35, lines 18 to 24.

The number and weights of the blocks of cannabis discovered match that of the storybooks

31 First, the number of blocks of cannabis that were discovered exactly coincides with the number of storybooks that were collected and subsequently divided and repackaged. Faizal had admitted to collecting four storybooks, and that he subsequently divided one of the storybooks and repackaged it into three smaller blocks. This would mean that, based on Faizal's own admission, there would be three large blocks (*ie*, the three remaining storybooks) and three relatively smaller blocks (which were repackaged from one of the storybooks), for a total of six blocks. Indeed, Ong had discovered six blocks in the drawer of the Unit's master bedroom, comprised of three large blocks and three relatively smaller blocks (see [9] above).

32 Second, the weights of the six blocks of cannabis also corroborate to some extent the fact that E1, E2 and E3 are part of the four storybooks that Faizal had collected. Faizal had stated under cross-examination that each storybook weighs between 700g to 900g.[24] From the table at [9] above, it can be seen that E1, E2 and E3 weigh 836.7g, 891.3g and 860.9g respectively. Given that the weights of these three blocks fall within the range of weights for a storybook as described by Faizal, this helps to indicate that these three blocks found in the Unit form part of the four storybooks referred to by Faizal.

33 Further, the combined weight of E4, E5 and E6 of 951.7g is not too far out from the estimated weight of each storybook that was provided by Faizal. This lends support to Faizal's admission that E4, E5 and E6 originated from one of the storybooks that he had collected and brought back to the Unit. The combined weight of E4, E5 and E6 is also consistent with what Faizal had stated

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[24] NE, 19 Sep 2018, p 51, lines 7 – 10.

in his 21 February Statement that "E6 is half a storybook which is around 500 gram" [25], which means that the storybook which E6 originated from would weigh around 1000g.

The blue foil used to wrap E4 is similar to that used to wrap E1, E2 and E3

34 The blue foil that was used to wrap block E4, which Faizal admitted to having possession and knowledge of, is similar to the blue foil that was used to wrap blocks E1, E2 and E3. This suggests that E4, which was repackaged from one of the storybooks, is linked to E1, E2 and E3. The inference that can be drawn is that the blue foil used to wrap E4 was the same blue foil that was originally used to wrap the fourth storybook which Faizal had repackaged. Upon dividing and repackaging the fourth storybook, Faizal had probably recycled the blue foil and used it to wrap E4. Therefore, it is likely that E1, E2 and E3, which were all wrapped in the blue foil, are in actual fact the three remaining storybooks which Faizal had collected.

35 This inference is buttressed by the fact that Faizal could not provide a satisfactory explanation on the origins of the blue foil. When asked where he had obtained the blue foil that was used to wrap E4, Faizal stated that he had previously bought it from a stationery shop and had then kept it in his bag. There were several aspects of his answer which I find to be inherently incredible.

(a) Despite saying that he had bought the blue foil "[q]uite a while back", he was unable to specify how long ago in relation to the date of arrest he had bought it.[26]

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25 AB, p 274, para 27.

26 NE, 19 Sep 2018, p 55 line 20 – p 56 line 11.

(b) When asked why he kept the foil in his bag, he said that he "[j]ust bought it for fun".[27] However, when I questioned him on how he plays with the foil given that it was "for fun", he could not give an answer and merely said that he did not understand the question. Subsequently, when the Deputy Public Prosecutor ("DPP") asked him again what the purpose of the foil was, he changed his answer to say that there was no purpose.[28]

(c) Faizal said that he kept "quite a number of colours [of foil] in [his] bag".[29] When asked to point to other pieces of foil of different colours, he pointed to exhibit E11 which were small packets which were purple in colour. However, he subsequently conceded under cross-examination that the blue foil used to wrap E4 and the small purple packets in E11 were not similar in size nor did they have the same purpose.[30]

Therefore, I do not accept Faizal's evidence that the blue foil used for wrapping E4 was separately purchased and from a different source as the blue foil used for wrapping E1, E2 and E3.

All six blocks of cannabis were found together

36 The fact that all six blocks of cannabis were discovered in the same drawer, three of which Faizal had admitted to possession and knowledge of and three of which he disclaimed ties to, strongly suggests that they had originated from the same source. If Faizal is to be believed, there are two gaping holes in the evidence to which no satisfactory explanation was provided. First, it is

27 NE, 19 Sep 2018, p 56, lines 30 – 31.

28 NE, 19 Sep 2018, p 57, lines 3 – 14.

29 NE, 19 Sep 2018, p 56, line 29.

30 NE, 19 Sep 2018, p 60, lines 1 – 7.

unclear what happened to the other three storybooks given that Faizal had admitted to bringing all four storybooks to the Unit. Second, it is also unclear where E1, E2 and E3 came from and how they ended up in the same drawer which contained E4, E5 and E6.

37 To my mind, there are only a few possible scenarios that can explain how the three storybooks in the refrigerator had disappeared, and three allegedly different blocks of cannabis (*ie*, E1, E2 and E3) had appeared in the drawer in the master bedroom.

(a) One or more of the three other occupants of the Unit (*ie*, Serena, Leo and Arab) had removed the three storybooks from the refrigerator and brought it somewhere else. These same people had also placed E1, E2 and E3 in the drawer.

(b) One or more of the three other occupants of the Unit had either removed the three storybooks from the refrigerator and brought it somewhere else, *or* had placed E1, E2 and E3 in the drawer. If so, then an unknown third person must have been involved in the other act, *ie*, either placing E1, E2 and E3 in the drawer or removing the three storybooks from the refrigerator.

(c) An unknown third person had gained entry into the Unit and removed the three storybooks from the refrigerator, and also placed E1, E2 and E3 in the drawer.

(d) There were two different unknown people who had gained entry into the Unit, one of whom removed the three storybooks from the refrigerator and one of whom placed E1, E2 and E3 in the drawer.

38 However, for the reasons I have given at [19] to [25] above, I have found that Serena, Arab and Leo were not joint owners of the storybooks. It is thus unlikely that any of them had taken away the three storybooks (brought back to the Unit by Faizal) and then placed a different three blocks of cannabis of approximately the same weight in the drawer. Therefore, scenarios (a) and (b) described above are unlikely to have occurred. If Serena, Arab and Leo were not involved with the drugs at all, then some unknown person must have taken away the three storybooks originally brought back to the Unit by Faizal and for no good reason, replaced them with another three blocks of cannabis each of approximately the same weight as those collected by Faizal. There is no sensible explanation for why this unknown person would do such a thing. Therefore, scenario (c) is also unlikely to be true. It would be even more implausible for there to have been *two* different unknown persons gaining entry into the Unit and committing the acts described above. Therefore, scenario (d) should also be discounted.

39 What I have done here is to take Faizal's version of events to its logical extremes. As demonstrated, none of the possible explanations for Faizal's version of events is probable. Therefore, the inference that should be drawn is that Faizal's version of events is unlikely to be true.

The storybooks were not stored in the refrigerator

40 I also do not accept Faizal's evidence that he had placed the storybooks in the refrigerator of the Unit. Faizal explained that he had stored the storybooks in the refrigerator because he had done some research on the internet, and found out that cannabis can last longer if stored in the fridge.[31] When pressed further,

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[31] NE, 19 Sep 2018, p 37, lines 25 – 26.

Faizal was unable to tell me exactly when he had done this research, or point me to the online sources he had allegedly referred to.

41 I directed counsel to do an internet search to determine if it was indeed true that there were online sources which stated that it was better to keep cannabis in the refrigerator. As it turned out, there were conflicting opinions over whether it was indeed better for cannabis to be stored in the refrigerator. The DPP was able to direct me to a source which stated that cannabis should never be stored in the refrigerator "as temperatures and humidity levels fluctuate too much and aren't set at the ideal levels to begin with".[32] The Defence was able to point to another source, which stated that a "good way to store marijuana [*ie*, cannabis] is to wrap it into cling wrap and then put it into airtight containers" and that to "store marijuana over a longer period of time" it can be "put … into the fridge". Crucially, that source also stated that "[m]arijuana can be kept in the fridge for 2 years [or] longer *if it is in a really airtight container*" [emphasis added].[33] I do not propose to evaluate which opinion is correct and if it is really better to store cannabis in the refrigerator. However, even if I take the source quoted by the Defence at face value, it still states that the cannabis can be stored in the refrigerator *if* it is stored in an airtight container. However, Faizal testified that he placed the storybooks into the refrigerator wrapped only in newspaper and cling wrap. At no point did he state that he had first placed the storybooks in an airtight container before putting it into the refrigerator. In the circumstances, I have serious doubts as to whether Faizal had in fact stored the storybooks in the refrigerator as he claims.

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32 NE, 19 Sep 2018, p 39, lines 13 – 20.

33 NE, 19 Sep 2018, p 41, lines 11 – 12.

42 I would point out that even if I have found that the storybooks were originally stored in the refrigerator, it will not affect my finding that Faizal had possession and knowledge of all six blocks of cannabis. Given that Faizal had admitted to knowledge and possession of E4, E5 and E6, if indeed these blocks had originally been in the refrigerator, someone must have moved them into the drawer in the master bedroom. The most logical inference is that it was Faizal who had moved the blocks. Given that E1, E2 and E3 were found with E4, E5 and E6, the further inference to be drawn is that it was also Faizal who had moved the other storybooks from the refrigerator into the drawer along with E4, E5 and E6.

43 In my view, the most likely explanation is that Faizal had been the one to place all six blocks (*ie*, E1 to E6) in the drawer of the television console. However, due to his arrest on 14 February 2016, he was unable to remove the six blocks from the Unit before the rental period was over, which led to Ong's discovery.

44 I agree with the Prosecution's submission that the master bedroom was an ideal location to store the cannabis because it was rarely used and therefore would be the most inconspicuous. Serena had testified that she had not seen anyone sleeping in the master bedroom apart from the time that Leonard was in there for two hours.[34] On cross-examination, the Defence pointed out the inconsistency between Serena's oral testimony and her statement, in which she stated that she had seen "Brother" (*ie*, Leonard) sleeping in the master bedroom the whole day.[35] Even if Leonard had in fact slept in the master bedroom for one entire day, that would still only be one day out of the 15-day rental period. The

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34 NE, 13 Sep 2018, p 16, lines 1 – 2.

35 NE, 13 Sep 2018, p 25, lines 22 – 31.

fact that the master bedroom was rarely used was also corroborated by Ong's testimony that the master bedroom was relatively clean when she was cleaning up the Unit.[36]

45 I would also deal briefly with a point raised by the Defence that Faizal's DNA was not found on E1, E2 and E3, which therefore casts doubt on whether he was in fact in possession of these three blocks. In my view, the *absence* of DNA evidence in itself does not lead to the inference that the accused was never in possession of these three blocks. In any event, there was also no evidence to suggest that the absence of DNA on an item necessarily means that a person had not touched it. As for E4, E5 and E6, Faizal had admitted to dividing and repackaging the fourth storybook, which would have required a substantial amount of handling. Therefore, it is unsurprising that his DNA was left on those blocks.

46 Considering the totality of the evidence, I find that Faizal had actual possession and knowledge of all six blocks of cannabis.

Faizal possessed the six blocks of cannabis for the purpose of trafficking

47 For the reasons stated below, I agree with the Prosecution that the evidence shows that Faizal had possessed the six blocks of cannabis for the purpose of trafficking. Even if the evidence is insufficient to prove beyond a reasonable doubt that Faizal had possessed the six blocks of cannabis for the purpose of trafficking, he has failed to rebut the presumption of trafficking under s 17 of the MDA.

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[36] NE, 12 Sep 2018, pp 18 – 20.

Faizal's admission in his 21 February Statement

48 Faizal had admitted in his 21 February Statement that the storybooks were for sale. The relevant portions of his statement are as follows:

> 27 … The items marked E4, E5 and E6 are mine. They are for me to sell. Actually there are 4 big blocks. I call it as 4 storybooks. The items E1, E2 and E3 are 3 storybooks. I took the other storybook and cut and packed for myself into 3 smaller portion which are the items marked as E4, E5 and E6. …
>
> 28 The 4 storybooks actually belong to me, Serena, Leo and Arab. They are actually for us all to sell. …

49 In *Chan Kin Choi v Public Prosecutor* [1991] 1 SLR(R) 111, the Court of Appeal observed that in relation to mixed statements which contain both incriminating and exculpatory facts, the incriminating parts are likely to be true – otherwise there would be no incentive to state them. However, the excuses or exculpatory portions need not carry the same weight. Indeed, an accused person would be incentivised to pepper an otherwise incriminating statement with portions of exculpatory evidence in an attempt to reduce his criminal liability. Therefore, it would indeed be sound practice for the court to approach such evidence with caution.

50 The part of the 21 February Statement which I have reproduced above is incriminating in so far as it states that the storybooks were for sale, and exculpatory in so far as it suggests that the other storybooks belonged to the three other occupants of the Unit. Therefore, I am inclined to placing greater weight on the fact that Faizal had admitted that all the four storybooks were for sale, and less weight on what was stated in relation to the storybooks being jointly owned by Serena, Arab and Leo. This is especially so given my finding at [19] above that Serena, Arab and Leo did not have knowledge or possession of the six blocks of cannabis.

Faizal had dealt with the storybooks in a manner indicating that he intended to traffic

51 Faizal had also dealt with the cannabis in a manner consistent with someone intending to traffic in it. Faizal's DNA was found on a pair of scissors (exhibit E21) and a weighing scale (exhibit E20A).[37] Faizal described the manner in which he dealt with the storybook as follows. He first removed the cling wrap from the storybook and weighed the entire storybook using the weighing scale to know exactly how much was in the storybook.[38] He then used the scissors to cut the storybook into three smaller portions.[39] After cutting the storybook into three smaller portions, he used cling wrap to wrap each subdivided portion up.[40]

52 Crucially, Faizal then weighed each of these three smaller portions again.[41] Upon being queried on why he had to weigh each of the three subdivided portions, he stated that he had to "know the amount" and to make sure that each of the portions were equal in weight.[42] When I asked him why he had to ensure that the subdivided portions were equal in weight given that it was for his own consumption, his answer was that it would be easier for him to keep the cannabis in the refrigerator, and so that he would know that those blocks were his. I did not accept his explanation. If the entire storybook was for Faizal's own consumption, it would have sufficed for him to weigh the entire storybook to ensure that he received the correct amount. Further, if he intended for the cannabis to be more easily identifiable, he could have made a mark on each

37 PCS, para 61.

38 NE, 19 Sep 2018, p 53, lines 12 – 18.

39 NE, 19 Sep 2018, p 35, lines 18 – 21; p 52, lines 15 – 23.

40 NE, 19 Sep 2018, p 35, line 27.

41 NE, 19 Sep 2018, p 53, lines 19 – 23.

42 NE, 19 Sep 2018, p 53, lines 24 – 28.

bundle as opposed to having to weigh each bundle again each time he wanted to make sure that the bundle was his. In my view, Faizal had weighed the subdivided portions because he had to ensure that their weights were correct in order to facilitate their future sale or distribution.

The cannabis could not have been for Faizal's own consumption

53 It is unlikely that the cannabis was meant for Faizal's own consumption, which leads to the inference that such a large quantity of cannabis must have been for the purpose of trafficking. Faizal had consistently stated across his 21 February Statement, his examination-in-chief and in cross-examination that he had never smoked cannabis before.[43] He explained that the cannabis was for his "future use", and that he had "never tried" cannabis before so he wanted to do it "bit by bit".[44] I found it incredible that someone who had never tried cannabis before would have spent so much money and purchased such a large amount for his personal consumption. Even if I accept that Faizal only had ownership of one storybook, that would still be about 950g of cannabis worth about $9,500.[45] In comparison, cannabis is usually sold at much lower quantities. Faizal had stated in his 21 February Statement that he would sell cannabis in packets of 3.5g each.[46] Serena had also suggested that cannabis would be sold in packs of 5g for $50 each.[47] If those figures are any indication of how much an ordinary user of cannabis would consume, Faizal was in possession of a very large quantity of cannabis.

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43 AB, p 276, para 32; NE, 19 Sep 2018, p 80, lines 16 – 18.

44 NE, 18 Sep 2018, p 19, lines 21 – 27; NE, 19 Sep 2018, p 80, lines 19 – 21.

45 NE, 19 Sep 2018, p 70, lines 17 – 32.

46 NE, 19 Sep 2018, p 69, lines 9 – 18.

47 NE, 13 Sep 2018, p 49, lines 2 – 4; NE, 19 Sep 2018, p 70, lines 1 – 5.

54 Faizal's financial situation makes it even more doubtful that he had possessed the storybooks for the purpose of consumption. Faizal had admitted to being heavily in debt for an amount of at least $9,000.[48] At the material time, he was working as a part-time delivery driver making just $3 per parcel delivered.[49] Given that he admitted to using the money that he earned from his job as a delivery driver to finance his consumption of methamphetamine,[50] it is unlikely that he would have had much money left over to purchase one entire storybook at the value of around $9,500 for his own consumption. Further, given that he had never once tried cannabis up to this point, he could not have been feeding an addiction. Therefore, there was no reason why he would have been willing to invest such a huge sum of money in a drug which he had never consumed before, when he could have used that money to pay off his debt or to purchase methamphetamine.

55 In this regard, Faizal states that the cannabis was given to him by an unknown individual "on credit", for him to use first and pay for later.[51] Faizal had also stated that there was no arrangement or any follow-up communication on how payment was to be made for the cannabis.[52] Given the very large amount of cannabis, and the fact that Faizal was so heavily saddled with debt, I find it unlikely that anyone would have supplied Faizal with cannabis on credit if it was indeed for his own consumption.

56 Therefore, considering the totality of the evidence, I find that Faizal had possessed the six blocks of cannabis for the purpose of trafficking. In any event,

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48 NE, 19 Sep 2018, p 79, lines 22 – 24.

49 NE, 18 Sep 2018, p 22, lines 22 – 24.

50 NE, 18 Sep 2018, p 24, lines 1 – 2.

51 NE, 18 Sep 2018, p 24, lines 18 – 25.

52 NE, 19 Sep 2018, p 42, lines 1 – 19.

given that there is no evidence to support Faizal's defence that the cannabis was for his own consumption, he fails to rebut the presumption of trafficking under s 17 of the MDA.

Conclusion

57 To conclude, I find that Faizal was in possession and had knowledge of all six blocks of cannabis from E1 to E6. I also find that he had possessed the six blocks of cannabis for the purpose of trafficking. Accordingly, given that all three elements have been fulfilled, I find that the Prosecution has proven its case against Faizal beyond a reasonable doubt, and I convict him accordingly.

58 I shall hear submissions on sentence from parties.

Chan Seng Onn
Judge

Terence Chua, Dwayne Lum and Sia Jiazheng (Attorney-General's Chambers) for the Public Prosecutor;
Eugene Thuraisingam and Chooi Jing Yen (Eugene Thuraisingam LLP) for the accused.