IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 119

Criminal Case No 19 of 2018

Between

Public Prosecutor

And

(1) Raj Kumar s/o Aiyachami
(2) Ramadass Punnusamy

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Statements] — [Voluntariness]

TABLE OF CONTENTS

INTRODUCTION **1**

THE FACTS **3**

EVENTS AT SENOKO 3

EVENTS AT WOODLANDS CHECKPOINT 5

Ramadass' First Statement *5*

Ramadass' Second Statement *6*

Seizure from the Lorry *6*

Ramadass' Third Statement *7*

EVENTS AT SPC PETROL STATION IN ANG MO KIO 8

Seizure from the Mitsubishi *8*

Raj's First Statement *9*

PHOTO-TAKING AND WEIGHING OF EXHIBITS 10

FURTHER STATEMENTS RECORDED AT THE POLICE CANTONMENT COMPLEX 10

Raj's Second to Fifth Statements *10*

Ramadass' Fourth to Sixth Statements *11*

ANALYSIS OF THE VEGETABLE MATTER 14

DNA EVIDENCE 15

FORENSIC ANALYSIS OF THE SEIZED HANDPHONES 15

ANCILLARY HEARING – RAMADASS' FIRST, SECOND AND THIRD STATEMENTS **15**

PROSECUTION'S CASE AGAINST RAJ AND RAMADASS **18**

EVIDENCE ADDUCED BY RAJ AND RAMADASS **19**

Version No 1: 27 Oct 2020 (22:41 hrs)

RAJ'S TESTIMONY 19

VICNESWARAN'S TESTIMONY 21

MARK'S TESTIMONY 21

RAMADASS' TESTIMONY 24

WHETHER THE PROSECUTION PROVED ITS CASE AGAINST RAJ 27

WHETHER RAJ HAS REBUTTED THE PRESUMPTION OF KNOWLEDGE 28

Whether Raj had ordered Buttery and was at Senoko to take delivery of Butterfly 28

Whether there was a mistaken delivery by Ramadass 29

WHETHER THE DRUGS WERE FOR THE PURPOSE OF TRAFFICKING 35

WHETHER AN ADVERSE INFERENCE SHOULD BE DRAWN AGAINST RAJ 35

WHETHER THE PROSECUTION PROVED ITS CASE AGAINST RAMADASS 36

WHETHER RAMADASS KNEW THE NATURE OF THE DRUGS 36

Whether Ramadass had actual knowledge 37

Whether Ramadass has rebutted the presumption of knowledge 41

CONVICTION 43

SENTENCE 43

RAJ 44

RAMADASS 44

ANNEX A 46

Version No 1: 27 Oct 2020 (22:41 hrs)

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Public Prosecutor
v
Raj Kumar s/o Aiyachami and another

[2020] SGHC 119

High Court — Criminal Case No 19 of 2018
Chua Lee Ming J
30, 31 October, 1, 2, 7–9 November 2018, 7–9 May, 2–5, 9–12 July 2019;
9 September 2019

15 June 2020 Judgment reserved.

Chua Lee Ming J:

Introduction

1 The first accused person, Raj Kumar s/o Aiyachami ("Raj"), presently 38 years old, was charged with:

(a) possession of not less than 1,875.8g of cannabis for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"); and

(b) possession of not less than 2,977.8g of cannabinol and tetrahydrocannabinol ("cannabis mixture") for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the MDA.

Raj's offences were alleged to have been committed on 21 September 2015 at about 2.30pm at an SPC petrol station at 793 Ang Mo Kio Avenue 1, Singapore.

2 The second accused person, Ramadass Punnusamy ("Ramadass"), presently 39 years old, was charged with:

(a) trafficking in not less than 1,875.8g of cannabis by delivering the same to Raj, an offence under s 5(1)(*a*) and punishable under s 33(1) of the MDA; and

(b) trafficking in not less than 2,977.8g of cannabis mixture by delivering the same to Raj, an offence under s 5(1)(*a*) and punishable under s 33(1) of the MDA.

Ramadass' offences were alleged to have taken place on 21 September 2015 at about 2.00pm along Senoko Drive, Singapore.

3 Both Raj and Ramadass claimed trial and did not object to a joint trial.

4 As a result of the decision of the Court of Appeal in *Saravanan Chandaram v Public Prosecutor and another matter* [2020] SGCA 43 that was delivered on 29 April 2020, the Prosecution has withdrawn the charges against Raj and Ramadass that relate to cannabis mixture. Accordingly, I grant Raj and Ramadass each a discharge amounting to an acquittal on the charge of possession of cannabis mixture and the charge of trafficking in cannabis mixture respectively.

5 Cannabis is a controlled drug specified in Class A of the First Schedule to the MDA. Both the accused persons were not authorised under the MDA or the regulations made thereunder to be in possession of, or to traffick, cannabis.

Version No 1: 27 Oct 2020 (22:41 hrs)

Each of the offences in the charges is punishable with death under s 33(1) of the MDA. Alternatively, pursuant to s 33B(1), if the requirements in s 33B(2) or (3) are met, the accused persons may be sentenced to imprisonment for life and caning of not less than 15 strokes (in the case of s 33B(2)) or imprisonment for life (in the case of s 33B(3)).

The facts

6 On the morning of 21 September 2015, a number of officers from the Central Narcotics Bureau ("CNB") attended a briefing during which they were informed that:

(a) Raj and one Muhammad Noorul Amin bin Muhammad Sabir ("Noorul") were expected to collect a consignment of drugs from Ramadass that day;

(b) Raj would be driving a Mitsubishi car, registration number SFW 3916 X ("the Mitsubishi"); and

(c) Ramadass would be entering Singapore via the Woodlands Checkpoint in a Malaysian-registered lorry, registration number MAQ 351 ("the Lorry").

The CNB officers were shown photographs of Raj, Ramadass and Noorul.

Events at Senoko

7 Later that day, at about 12.30pm, Ramadass drove the Lorry into Singapore via Woodlands Checkpoint, and headed towards the Senoko area. Ramadass worked as a lorry driver for Ban Chong Transport Trading Sdn Bhd, a company in Johor Bahru, Malaysia. His job was to deliver bricks within Johor

Version No 1: 27 Oct 2020 (22:41 hrs)

Bahru and from Johor Bahru to Singapore. The Lorry was assigned to him.

8 At about 1.00pm, the Lorry turned into 10 Senoko Loop, where its cargo of bricks was unloaded. It left 10 Senoko Loop at about 1.15pm. Two CNB officers observed Ramadass driving the Lorry in circles around Senoko Loop and Senoko Drive, stopping intermittently along the road, for the next half an hour.[1]

9 Annex A of this judgment is a map which shows the relevant areas of Senoko Drive and Senoko Loop.

10 At about 1.40pm, Raj was spotted at Min Lock Eating House at 22 Senoko Loop. At about 1.45pm, Raj was seen driving the silver Mitsubishi from the carpark in front of Min Lock Eating House towards Senoko Drive. Noorul was seated in the front passenger seat.

11 At about 1.50pm, the Lorry stopped along the road slightly beyond the gate of 31 Senoko Drive. Raj drove the Mitsubishi along Senoko Drive, and stopped behind the Lorry. After a while, Raj reversed the Mitsubishi into the driveway of 31 Senoko Drive and drove off. Woman Staff Sergeant Norizan binte Merabzul[2] testified that Ramadass was standing on the grass patch by the side of the road and Raj was seen gesturing towards Ramadass' direction, as if signalling to him to wait.[3] Both Raj and Ramadass dispute this.

12 Shortly after, at about 2pm, Raj drove the Mitsubishi along Senoko Drive again and parked directly in front of the Lorry. Ramadass alighted from the Lorry, retrieved a red plastic bag from the passenger side of the Lorry and walked towards the Mitsubishi with the bag in his hand. Ramadass opened the left rear passenger door of the Mitsubishi and placed the red plastic bag inside

Version No 1: 27 Oct 2020 (22:41 hrs)

the Mitsubishi. Ramadass then walked back to the Lorry and got onto the driver's seat. Senior Station Inspector Tony Ng Tze Chiang ("SSI Tony")[4] testified that he saw Ramadass holding a white object that was slightly smaller than "half of A4 size".[5] Ramadass disputed this.

13 The Mitsubishi left the area at about 2.03pm. The Lorry left soon after at about 2.05pm.

Events at Woodlands Checkpoint

14 At about 2.18pm, the Lorry entered the departure bay at Woodlands Checkpoint. CNB officers moved in and arrested Ramadass.

Ramadass' First Statement

15 Upon his arrest, Woman Sergeant Meenambikhai Arul Molzi Thevar ("W/Sgt Meena")[6] recorded a statement from Ramadass under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") ("Ramadass' First Statement").[7] Ramadass and W/Sgt Meena spoke to each other in Tamil.

16 In his First Statement, Ramadass said the following:

(a) He went to Senoko Drive to send "*jama*". In response to a question, Ramadass said "*jama*" meant "drugs".

(b) He was told that he was carrying "*buku*". Ramadass also used a Tamil word, "*yellai*". Ramadass said "*yellai*" meant "*ganja*, 1 kilo of *ganja*". W/Sgt Meena testified that "buku" was a Malay word which means "a book"; in his oral testimony, Ramadass said he knew that "*buku*" means "book" although he denied making the statement.[8]

Version No 1: 27 Oct 2020 (22:41 hrs)

Ramadass' Second Statement

17 A short while later, at 2.50pm, W/Sgt Meena recorded another statement from Ramadass under s 22 of the CPC ("Ramadass' Second Statement").[9] Ramadass and W/Sgt Meena were seated inside a CNB car during the recording of his Second Statement. In this Second Statement, Ramadass said the following:

(a) He went to Senoko to send "*jama*" and that "*jama*" meant "drugs".

(b) He met one male Indian along the roadside of Senoko Drive and he alighted from the Lorry carrying one red plastic bag which he threw into the car from the rear passenger side.

(c) The red plastic bag contained white parcels packed with "*ganja*".

(d) He recognised Raj (whom he described as "the baldie") from two photos that were shown to him. Raj had given him hand signals from the "silver car". He threw the red plastic bag into the silver car which was parked in front of the Lorry, and saw two male Indians seated in the car. He recognised the "baldie" instantly when he threw the red plastic bag into the car as he had passed "*jama*" to him previously.

(e) He did not deliver "*jama*" to anyone else.

Seizure from the Lorry

18 At about 3.40pm, CNB officers searched the Lorry in Ramadass' presence, and seized the following:

Version No 1: 27 Oct 2020 (22:41 hrs)

(a) A white "Star Mart" plastic bag (marked "R-FP1") from a flap above the driver's seat.[10] The plastic bag contained S$7,000 tied in a bundle with rubber bands.

(b) A blue bag (marked "R-FP2") from the space between the driver's seat and the passenger's seat.[11] The blue bag contained S$4,300 tied in a bundle with rubber bands.

19 Two white 'Samsung' handphones were also seized from Ramadass and marked "R-HP1" and "R-HP2" respectively.[12]

Ramadass' Third Statement

20 At 7.35pm on the same day, W/Sgt Meena recorded a third statement from Ramadass under s 22 of the CPC ("Ramadass' Third Statement").[13] Ramadass and W/Sgt Meena were seated inside a CNB car during the recording of his Third Statement. In this Third Statement, Ramadass said, among other things, the following:

(a) The drugs were placed under a long seat behind the driver's seat in the Lorry.

(b) He was told the night before by one Muruga that Muruga had placed the drugs under the seat and that Muruga would call him "today" (*ie*, 21 September 2015) and inform him who to pass the drugs to.

21 Ramadass challenged the voluntariness of his First, Second and Third Statements. As discussed later in this judgment, after an ancillary hearing, I ruled that the statements had been given voluntarily and admitted the same into evidence.

Version No 1: 27 Oct 2020 (22:41 hrs)

Events at SPC petrol station in Ang Mo Kio

22 Meanwhile, after leaving the Senoko area, the Mitsubishi made its way to Ang Mo Kio Avenue 1 where it turned into an SPC petrol station at 793 Ang Mo Kio Avenue 1 ("the SPC petrol station") at about 2.30pm. CNB officers arrested Raj and Noorul after they alighted from the Mitsubishi at the SPC petrol station.

Seizure from the Mitsubishi

23 At about 2.47pm, CNB officers searched the Mitsubishi in the presence of Raj and Noorul and seized the following:

(a) A "Mums & Babes" plastic bag (marked "B1") from the floor between the front passenger seats.[14] The plastic bag contained:

(i) miscellaneous items, including tools, sunglasses, a CD and leather conditioner (collectively marked "B1A"); and

(ii) one colourful pouch (marked "B1B") containing a red plastic bag (marked "B1B1") which in turn contained a plastic packet (marked "B1B1A") containing three packets bearing the brand "Butterfly" (collectively marked "B1B1A1").[15] The three packets contained vegetable matter.

(b) One Toyota car key and remote control (marked "H1") from the front passenger seat.

(c) One red plastic bag which was tied up (marked "C1") from the rear passenger seat.[16] The plastic bag contained five rectangular blocks each wrapped in a red and white "Sky Net" packaging (marked "C1A", "C1B", "C1C", "C1D" and "C1E").[17] Each rectangular block comprised

Version No 1: 27 Oct 2020 (22:41 hrs)

vegetable matter wrapped in a gold-coloured wrapper with a layer of plastic wrap over the gold-coloured wrapper. The blocks of vegetable matter were subsequently marked "C1A1A1", "C1B1A1", "C1C1A1", "C1D1A1" and "C1E1A1" respectively. Staff Sergeant Tay Keng Chye ("SSgt Sunny")[18] testified that there was a "very strong smell" of cannabis, and that one of the Sky Net packagings was found slightly opened, with a hole in the wrapping through which the block of vegetable matter inside could be seen.[19]

24 During the search, Raj told Station Inspector Tay Cher Yeen ("SI Jason")[20] that the three packets bearing the brand "Butterfly" ("B1B1A1") contained synthetic cannabis.[21]

25 Four handphones were also seized from Raj:[22]

(a) One black "Samsung" handphone (marked "RK-HP1").

(b) One black "Apple" iPhone (marked "RK-HP2").

(c) One black "Q1" handphone (marked "RK-HP3").

(d) One blue/black "Nokia" handphone (marked "RK-HP4").

Raj's First Statement

26 SI Jason recorded a statement from Raj under s 22 of the CPC on 21 September 2015 at 3.35pm at the SPC petrol station ("Raj's First Statement").[23] Raj spoke in English. He refused to answer any question and said that he was "not being un-cooperative, but [he wanted] to consult a lawyer for legal advice before giving any statement".

Version No 1: 27 Oct 2020 (22:41 hrs)

Photo-taking and weighing of exhibits

27 On 22 September 2015, the case exhibits were photographed and the drug exhibits weighed in the presence of Raj and Ramadass. Both Raj and Ramadass signed the investigation diary to acknowledge the record of the weights of the drug exhibits.[24]

Further statements recorded at the Police Cantonment Complex

Raj's Second to Fifth Statements

28 Four further statements were recorded from Raj at the Police Cantonment Complex ("PCC"):

(a) Station Inspector Shafiq Basheer[25] recorded a statement under s 23 of the CPC on 22 September 2015 at 3.53pm ("Raj's Second Statement").[26] Raj refused to sign acknowledgements that (i) the charge had been read to him and that he had been informed that if convicted he was liable to be sentenced to death, and (ii) the notice of warning under s 23 of the CPC had been administered to him. Raj did not give any statement except to say that he wanted to consult a lawyer first.

(b) Inspector Teh Chee Sim Karlson ("Insp Karlson")[27] recorded a statement under s 22 of the CPC on 25 September 2015 at 1.23pm ("Raj's Third Statement").[28] Raj was asked a series of questions. Raj's response to each question was that he wanted to consult a lawyer first.

(c) Insp Karlson recorded a statement under s 22 of the CPC on 28 September 2015 at 11.15am (Raj's Fourth Statement").[29] Again, Raj responded to each question by repeating that he wanted to consult a lawyer first.

Version No 1: 27 Oct 2020 (22:41 hrs)

(d) Insp Karlson recorded a statement under s 22 of the CPC on 29 September 2015 at 1.42pm ("Raj's Fifth Statement").[30] Again, Raj simply repeated that he wanted to consult a lawyer first.

Ramadass' Fourth to Sixth Statements

29 Three further statements were recorded from Ramadass at the PCC. Ramadass spoke in Tamil; the interpreter was one Mdm Malliga Anandaa Krishnan.[31] Ramadass did not challenge these statements. The three further statements were as follows:

(a) Inspector Huang Yixia ("Insp Huang")[32] recorded a statement under s 23 of the CPC on 22 September 2015 at 3.43pm ("Ramadass' Fourth Statement").[33] Ramadass said, among other things, the following:

(i) Muruga was from a drug syndicate,

(ii) Muruga asked him to "deliver one bag into Singapore" and promised to pay him RM500 after he (Ramadass) returned to Malaysia.

(iii) He did not know what was in the bag; Muruga did not tell him.

(iv) Muruga put the bag in the Lorry and called him later to tell him "to deliver the next day".

(b) Insp Karlson recorded a statement under s 22 of the CPC on 24 September 2015 at 10.42am ("Ramadass' Fifth Statement").[34] Ramadass said, among other things, the following:

Version No 1: 27 Oct 2020 (22:41 hrs)

(i) In the early hours of 20 September 2015 while he was at a drinking session, Muruga called him to ask him to perform an urgent delivery to Singapore. Ramadass told Muruga to call him later. After drinking, Ramadass went home to sleep until the morning of 21 September 2015 at 6.00am (at paras 11 and 12).

(ii) On 21 September 2015, after clearing Malaysian immigration but before entering Singapore, Ramadass recalled the conversation with Muruga from the day before and parked the Lorry on the side of the bridge and called Muruga. Muruga informed him that he had put "the things" inside the Lorry on Sunday (*ie*, 20 September 2015). Ramadass did not usually lock the doors to the Lorry because it could be opened with "any car key" (at para 12);

(iii) After Ramadass had cleared Singapore's immigration, Muruga called him. During the phone conversation, Muruga told him that the things placed in the Lorry were "tobacco sprayed with chemicals" and that nothing will happen even if he were arrested (at paras 13 and 15); and

(iv) Muruga asked him to drive to Senoko Drive and park along the side of the main road (at para 13). Subsequently, when Ramadass arrived at Senoko Drive, Muruga told Ramadass over the phone that he had put "the thing" behind the passenger seat under a cushion, and that "the car collecting the thing" was parked in front of the Lorry (at para 14). Ramadass retrieved a red plastic bag (which he identified as exhibit "C1") from under the cushion, and saw three blocks, wrapped in red/white wrappers, below the plastic bag. Ramadass then opened the red

Version No 1: 27 Oct 2020 (22:41 hrs)

plastic bag and saw another two blocks wrapped with same type of red/white wrappers. He put the three blocks into the plastic bag. Thereafter, as instructed by Muruga, Ramadass took the plastic bag, went to the silver car parked in front of the Lorry and placed the plastic bag in the back seat (at para 14).

(c) Insp Karlson recorded a statement under s 22 of the CPC on 26 September 2015 at 10.48am ("Ramadass' Sixth Statement").[35] Ramadass said, among other things, the following:

(i) He "always" carried S$11,000 with him. He co-owned a lorry in Malaysia with his friend, one "Vijay", and the money represented earnings from that lorry. He converted the earnings into Singapore currency so that he could buy spare parts for that lorry. He claimed that spare parts were cheaper in Singapore (at para 18). In his oral testimony, Ramadass clarified that his friend's name was not "Vijay", but "Viji"[36].

(ii) At the time of his arrest, he did not know what "*ganja*" was and had never seen "*ganja*" before (at para 22).

(iii) He did not usually lock the doors to the Lorry because "any car key" could unlock the door easily (at para 24).

(iv) Although he had been told that Muruga had asked lorry drivers to bring drugs into Singapore, it did not occur to him that Muruga would ask him to do so (at paras 25 and 26).

(v) When he used the word "*jama*" in his First Statement, he meant "thing", not "drug". He said that he agreed with W/Sgt Meena when she said "*jama*" meant drugs (at para 27, A2 and Q2).

Version No 1: 27 Oct 2020 (22:41 hrs)

(vi) He said in his Second Statement that the parcels were packed with "*ganja*" because Muruga told him it was chemically-sprayed tobacco and that it was called "*ganja*" (at para 27, Q6 and A6).

Analysis of the vegetable matter

30 The three "Butterfly" packets and the five blocks of vegetable matter that were seized from the Mitsubishi were sent to the Illicit Drugs Laboratory of the Health Sciences Authority ("HSA") for analysis.

31 The HSA found the three packets bearing the brand "Butterfly" ("B1B1A1") to contain fragmented vegetable matter. On analysis, no common controlled drug was detected.[37]

32 The HSA found the five blocks of vegetable matter ("C1A1A1", "C1B1A1", "C1C1A1", "C1D1A1" and "C1E1A1" (collectively, "the Drugs")) to contain (collectively) not less than 1,875.8g of vegetable matter which was analysed and found to be "cannabis" (as defined in s 2 of the MDA).[38]

Cannabis is a controlled drug specified in Class A of the First Schedule to the MDA.

33 I am satisfied that the chain of custody was not broken and that the items analysed by the HSA were the same as those seized by the CNB officers from the Mitsubishi. Neither Raj nor Ramadass challenged the chain of custody in their closing submissions.

Version No 1: 27 Oct 2020 (22:41 hrs)

DNA evidence

34 The DNA Profiling Laboratory of the HSA found Ramadass' deoxyribonucleic acid on:

(a) the interior and exterior surfaces of the red plastic bag (marked "C1"; see [23(c)] above); and

(b) the exterior surface of one red and white "Sky Net" packaging (marked "C1A"; see [23(c)] above).

Forensic analysis of the seized handphones

35 The handphones seized from Raj and Ramadass were examined by officers from CNB's Forensic Response Team. The forensic examination found that both Raj and Ramadass had made and received numerous calls from a Malaysian registered phone number, +60142385604, (which was Muruga/Vijay's phone number) on 21 September 2015. According to Raj, this number belonged to one "Vijay" whereas Ramadass knew the owner of this phone number as "Muruga".

Ancillary hearing – Ramadass' First, Second and Third Statements

36 Ramadass challenged the voluntariness of his First, Second and Third Statements. The relevant contents of these statements are set out in [16], [17] and [20] above. I held an ancillary hearing to determine the voluntariness of these three statements.

37 Ramadass alleged that he gave/signed the statements because:

(a) he became scared after W/Sgt Meena told him that "all of them had … been caught and … have said everything", that "all of them were

Version No 1: 27 Oct 2020 (22:41 hrs)

very big gangsters in Singapore and they will do anything", that they would "beat [him] to death or they will do something to [his] family" and that "all of them are going to be hanged … and [he] will also be hanged";[39]

(b) W/Sgt Meena told him "[i]f you help us, then we would also help you";[40]

(c) W/Sgt Meena threatened him by showing him a shoving action using her elbow and he was scared she would hit him with her elbow;[41] and

(d) from the time he reached Woodlands Checkpoint at 2.18pm to 8.00pm that same day, W/Sgt Meena did not provide him with any food or water, and did not allow him to go to the toilet to urinate.[42]

W/Sgt Meena denied Ramadass' allegations.

38 I rejected Ramadass' allegations. First, Ramadass explained that he was scared that the gangsters would beat him to death if he did *not* give a statement.[43] This was illogical. Why would the gangsters want to beat up Ramadass if he did not give any statement? If Ramadass had any reason to fear being beaten up, it would have been for giving a statement implicating the gangsters. Ramadass was unable to explain why he thought he would be beaten to death for *not* giving a statement.[44] In my view, Ramadass' allegation could not be believed.

39 Second, I do not accept Ramadass' evidence that W/Sgt Meena had told him "[if] you help us, then we would also help you". Ramadass' evidence lacked consistency. During the ancillary hearing, he claimed that W/Sgt Meena had told him "[i]f you help us, then we would also help you". However, he

Version No 1: 27 Oct 2020 (22:41 hrs)

subsequently said that he gave his statements because W/Sgt Meena told him "If *you had asked*, we would help you" [emphasis added].[45] Further, Ramadass said that he "[did] not know what help [W/Sgt Meena asked him] to do".[46] However, he subsequently claimed that W/Sgt Meena had "told [him] to *admit*" to the offence.[47] In my judgment, Ramadass' shifting evidence lacked credibility and could not be believed.

40 Third, I found Ramadass' allegation that W/Sgt Meena threatened to hit him with her elbow too incredible to believe. In any event, even if I were to assume W/Sgt Meena had made a shoving gesture with her elbow, Ramadass was physically far bigger in size than her, and a mere shoving gesture by W/Sgt Meena with her elbow would not have been sufficient to threaten Ramadass into giving his statements.

41 Fourth, I agreed with the Prosecution that not providing Ramadass with food or water for just the afternoon could not have amounted to oppression. Further, it was not true that Ramadass was not allowed to urinate. At about 5.15pm, Ramadass had to undergo a urine test.

42 Finally, Ramadass did not allege any inducement, threat or promise by W/Sgt Meena, when he subsequently gave statements to Insp Huang or Insp Karlson at the PCC. In particular, I note that in his Sixth Statement, Insp Karlson specifically asked Ramadass to explain the contents in his First and Second Statements. In his answer, Ramadass did not allege that those statements had not been given voluntarily.[48] W/Sgt Meena was not present then and there was no allegation that either Insp Huang or Insp Karlson threatened Ramadass in any way. Ramadass did not challenge the voluntariness of the statements recorded at the PCC. During cross-examination in the ancillary

Version No 1: 27 Oct 2020 (22:41 hrs)

hearing, Ramadass agreed that if W/Sgt Meena had indeed done anything improper, he should have told Insp Karlson of it.[49] However, he did not.

43 I concluded that Ramadass' First, Second and Third Statements were given voluntarily and I admitted them into evidence.

Prosecution's case against Raj and Ramadass

44 The Prosecution's case against Raj is as follows:

(a) It is undisputed that Raj was in possession of the Drugs from the time Ramadass placed them in the Mitsubishi at Senoko Drive until Raj's arrest. In any event, as the driver and person in charge of the Mitsubishi at all material times on 21 September 2015, Raj is also presumed to be in possession of the Drugs under s 21 of the MDA.

(b) As Raj is proved or presumed to be in possession of the Drugs, he is presumed to know the nature of the Drugs in his possession pursuant to s 18(2) of the MDA.

(c) It is to be inferred from the large quantity of the Drugs found in his possession, and the fact that Raj was not a consumer of controlled drugs, that Raj was in possession of the Drugs for the purpose of trafficking to other persons. In any event, Raj did not dispute that the items found in his possession were intended for the purpose of sale (and therefore trafficking).

45 The Prosecution's case against Ramadass is as follows:

(a) By delivering the Drugs to Raj, Ramadass has trafficked in the Drugs. Ramadass does not dispute the act of delivery.

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) Ramadass knew the nature of the Drugs; alternatively, pursuant to s 18(2) of the MDA, he is presumed to know the nature of the Drugs.

46 At the end of the Prosecution's case, it was clear that the Prosecution had produced evidence which was not inherently incredible and which satisfied each and every element of the charges against Raj and Ramadass. I therefore called on Raj and Ramadass to each give his defence. Each of them elected to give evidence in his defence.

Evidence adduced by Raj and Ramadass

47 Raj adduced evidence to show that he went to Senoko Drive on 21 September 2015 to take delivery of chemically-sprayed tobacco known as "Butterfly K4" ("Butterfly") but, unknown to him, the Drugs were delivered to him by mistake.

Raj's testimony

48 Raj's testimony was as follows:

(a) Vijay (whom we now know to have used the same phone number as Muruga – see [35] above) contacted Raj in August 2015 to ask him about buying deregistered vehicles, because Raj also sold deregistered cars.[50] Vijay told him that he was a Malaysian.[51] They spoke on multiple occasions. However, Raj has never met Vijay in person.[52] On one occasion, Raj asked Vijay whether he had liquor and branded luxury goods. Vijay said he did not and instead offered to sell Butterfly to Raj at S$90 per packet based on a minimum order of 50 packets.[53]

(b) Raj started buying Butterfly from Vijay, for resale in Singapore, from end-August 2015. Raj bought 30 packets of Butterfly from Vijay

Version No 1: 27 Oct 2020 (22:41 hrs)

the first time, 50 packets the second time and subsequently, he bought 100 packets each time.[54] The third and subsequent purchases were on credit; Vijay agreed to let him pay when he received enough money (from selling the Butterfly) to pay Vijay.[55]

(c) The three packets of Butterfly that were seized from the Mitsubishi on 21 September 2015 (see [23(a)(ii)] above) were left over from a previous order.[56]

(d) Raj ordered 100 packets of Butterfly from Vijay on 20 September 2015.[57] On 21 September 2015, he called Vijay in the morning and Vijay told him to go to Senoko Loop and to call Vijay when he arrived. Raj then called Noorul who worked in his tattoo shop. He picked up Noorul from the MRT station at Marsiling and drove to Senoko Loop.

(e) At Senoko Loop, Raj had a meal at Min Lock Eating House. Thereafter, as he was walking to the Mitsubishi, Vijay called him and told him to go to Senoko Drive, and to park beside a red lorry to collect the 100 packets of Butterfly.

(f) Raj drove to Senoko Drive and parked the Mitsubishi behind a red lorry. After about ten minutes, he made a U-turn and drove off because nobody came up to him. At that point, Vijay called him and gave him the registration number of the Lorry. He then made another U-turn and went back to the red lorry. He saw that the registration number was the same as that given to him by Vijay. He then parked the Mitsubishi in front of the red lorry.

Version No 1: 27 Oct 2020 (22:41 hrs)

(g) A short while later, someone came over and left the red plastic bag in the rear passenger seat of the Mitsubishi. Raj did not check the contents of the red plastic bag. He believed that the red plastic bag contained the 100 packets of Butterfly that he had ordered from Vijay.

Vicneswaran's testimony

49 One Mr Vicneswaran s/o Subramaniam ("Vicneswaran")[58] testified that he bought Butterfly from Raj from early August to September 2015.[59] Vicneswaran claimed that he knew Raj because Raj's younger brother was his friend.

Mark's testimony

50 Raj also called one Mr Mark Kalaivanan s/o Tamilarasan ("Mark")[60] to give evidence on his behalf. Raj first met Mark in Changi Prison sometime between November 2017 and January 2018.[61] Raj's testimony as regards Mark was as follows:

(a) Whilst in Changi prison, Raj was allowed to spend one hour a day in the prison yard ("yard time"). Mark approached him during one yard time. During their conversation, Raj told Mark that he was involved in a "drug case" and that he had gone to Senoko Loop to collect some other item but ended up with *ganja*.[62]

(b) Mark asked Raj when he went to Senoko Loop and Raj said he was there on 21 September 2015. Upon hearing this, Mark told Raj that he had seen Raj at the "canteen in Senoko Loop" on that very day. Mark also told Raj that he (Mark) had gone to Senoko Loop that day to collect *ganja* and "Hans" but the items he collected from "a Tamil person" in a "red lorry" turned out to be "butterfly tobacco" and "one packet of

Version No 1: 27 Oct 2020 (22:41 hrs)

powder".[63] Mark explained during his testimony that "*ganja*" is the street name for cannabis, and "Hans" is chewable or edible tobacco.

(c) Raj then asked Mark to tell his story to Raj's lawyer.[64]

51 Mark's testimony was as follows:

(a) Mark was working with one "Mano" in a company called Applied Movers Delivery from 2000 to 2001. From 2002 to 2014, Mark was in prison. After his release, Mark happened to meet Mano and they met each other a few more times. A few days before 21 September 2015, Mano offered to give Mark 100g of *ganja* if Mark would collect some items for Mano.[65] When Mark asked what these items were, Mano said they were *ganja.* Mark agreed to Mano's request.[66] On 20 September 2015, Mano called him to tell him to keep himself free the next morning.[67]

(b) On 21 September 2015, Mano called him in the morning at between 9.00am and 10.00am, and told him to go to Senoko Loop in a taxi to collect 1kg of ganja and six bundles of "Hans".[68] Mano told Mark that he was to approach a lorry driver and say "Muruga".[69]

(c) Mark took a taxi to Senoko Loop, arriving at around lunchtime. He told the taxi driver that he needed to use the toilet and the taxi driver stopped at the side of Senoko Loop near Min Lock Eating House. He saw Raj (whom he knew as "Don") at Min Lock Eating House but did not speak to him. Mark recognised Raj because he had seen Raj "many times" at Orchard Towers where Raj operated his tattoo shop.[70]

Version No 1: 27 Oct 2020 (22:41 hrs)

(d) After he had used the toilet at Min Lock Eating House, Mark walked back towards the taxi and called Mano.[71] He told Mano he was outside Min Lock Eating House. Mano told him that he (Mano) would call him back. Shortly after, Mano called him and told him to look for a red lorry along the road outside Min Lock Eating House and gave him the lorry's registration number.[72] Mark remembered the numerals as "351" but could not recall the letters constituting the remainder of the registration number. Mark claimed that he remembered the number "351" because he used to "hang out" with his secret society friends at Block 351 in Jurong East.[73]

(e) Mark saw a red lorry at a distance to his right, parked on the opposite side of the road from Min Lock Eating House. He signalled the taxi driver to wait and he walked over towards the lorry. As he approached the lorry, he noticed that the registration number was the same as that given by Mano. He walked on the pavement to the passenger side of the lorry, knocked on the door and said "Muruga" when the driver turned towards him. The driver, a male Indian, handed him a red plastic bag.[74]

(f) Mark did not check the contents of the red plastic bag. He went back to the taxi and headed home. After he reached home, Mark called Mano who then told him to separate the *ganja* and the "Hans" and put them into different bags.[75]

(g) Mark took out a package wrapped in paper from the plastic bag. He unwrapped the package and found "four, five, six or seven"[76] boxes. One box contained one packet of white powder whilst the rest contained packets which bore the brand "Butterfly".[77]

Version No 1: 27 Oct 2020 (22:41 hrs)

(h) Mark then called Mano. Mano told him that he should have six bundles of "Hans" and one block of *ganja*. Mark told him what he had found in the plastic bag was one packet of white powder and "Butterfly" packets.[78] Mano said he would call back. Subsequently, Mano called him and told him the items "had been given by mistake".[79] Mano asked Mark to count the number of "Butterfly" packets. Mark counted and told Mano there were 100 packets. Mano then told Mark to put the "Butterfly" packets back into the boxes and to put the boxes into the plastic bag. On Mano's instructions, Mark subsequently delivered the bag to a Malay man at the lift lobby. Mark was given S$50.[80]

(i) This was the only time that Mark picked up anything for Mano.[81] Subsequently, Mark was arrested for unrelated matters and remanded in Changi Prison where he then met Raj.

(j) Mark remembered that it was on 21 September 2015 that he went to Senoko Loop to collect the plastic bag for Mano, because his pet hamster (named Patrick) died in the evening that day. Mark claimed that he was "quite close" to his pet[82] and a few days after its death, he had "RIP 21.9.15 PAT" tattooed on the side of his left middle finger ("the hamster tattoo").[83] A photo was taken of the tattoo in court.[84]

Ramadass' testimony

52 Ramadass' account was that he brought four bags containing what he was told was chemically-sprayed tobacco, into Singapore and delivered them to four different persons. Ramadass' testimony was as follows:

(a) He knew Muruga through his work at the brick company in Johor Bahru. About four months before Ramadass was arrested, Muruga kept

Version No 1: 27 Oct 2020 (22:41 hrs)

asking if Ramadass would bring some items into Singapore for Muruga. Muruga did not mention what the items were. Ramadass said "no" to him because Ramadass knew that Muruga consumed "Ice" and Ramadass feared that Muruga would ask him to bring "wrongful items" into Singapore and he (Ramadass) could be "hung for it".[85]

(b) Muruga knew the registration number of the Lorry and where Ramadass parked it when he (Ramadass) returned home. Ramadass did not usually lock the Lorry door because the lock was not secure and any "car key" could unlock the door.[86]

(c) In the evening of 19 September 2015, Ramadass was drinking beer and whisky at home with two friends. They had bought three crates of beer and two bottles of whisky. They drank until the morning of 20 September 2015 and Ramadass went to sleep at 9.00am.[87] His wife woke him up at 6.00am the next day (21 September 2015) as he had to go to work.

(d) After loading the Lorry with bricks, Ramadass drove the Lorry and cleared the Malaysian customs. Whilst on the causeway, before reaching the Singapore immigration and customs, he remembered that Muruga had spoken to him after midnight (*ie*, in the early morning on 20 September 2015). He stopped by the roadside on the causeway and called Muruga. Muruga told him that he had placed the item in the Lorry but refused to tell Ramadass what it was or where it was.[88]

(e) Ramadass did not see anything in the Lorry and decided to proceed to deliver his cargo of bricks to 10 Senoko Loop. Ramadass said he did not want to be stuck in a jam.[89]

Version No 1: 27 Oct 2020 (22:41 hrs)

(f) Muruga called him after he had cleared Singapore customs and was making his way towards Woodlands. Muruga still refused to tell Ramadass where the item was. Ramadass became angry and scolded Muruga, after which Muruga said it was tobacco which had chemicals sprayed on it. Muruga told Ramadass he would tell Ramadass where the item was after Ramadass completed his delivery of bricks.[90]

(g) Ramadass drove the Lorry to 10 Senoko Loop where his cargo of bricks was unloaded from the Lorry. After that, Ramadass drove the Lorry along Senoko Loop, passed by Min Lock Eating House, and stopped at the roadside just after 27 Senoko Loop. Ramadass called Muruga who told him that the chemically-sprayed tobacco was placed below the seat behind the driver's seat.[91]

(h) Upon lifting up the seat, Ramadass saw four red plastic bags below the seat.[92] The four plastic bags looked "roughly the same".[93] Muruga told him that someone would approach the Lorry and say "Muruga" and Ramadass was to hand over a bag to that person.[94] Whilst still on the phone with Muruga, Ramadass heard a knock from the passenger side of the Lorry. He wound down the window and saw someone raise his right hand and say "Muruga". Ramadass did not know which bag he was supposed to hand over, as he did not ask Muruga and Muruga did not tell him.[95] Ramadass could not see inside the bags.[96] Ramadass simply "put [his] hand in, took a bag and then handed it over" to that person.[97]

(i) Thereafter, Muruga said another person would come and Ramadass was to hand another bag to that person. Again, whilst Ramadass was still on the phone with Muruga, this second person came

Version No 1: 27 Oct 2020 (22:41 hrs)

and opened the passenger door and said "Muruga". Ramadass handed him one of the red plastic bags. Muruga then told Ramadass he would call back, and hung up.[98]

(j) A short while later, Muruga called Ramadass and said the third person would be a "Malay person". A Malay man came to the Lorry and asked "Is it Muruga?". Ramadass handed him one of the two remaining plastic bags.[99] Muruga then told Ramadass to go to Senoko Drive.[100]

(k) Ramadass drove to Senoko Drive and stopped by the road side in front of 33 Senoko Drive. Ramadass called Muruga who told him to look for a "silver car" in front of the Lorry and to place the fourth plastic bag in the car.[101] Ramadass took out the last red plastic bag and found two packets inside the bag while three packets were underneath the bag. He put the three packets into the plastic bag.[102] At that moment, he saw a silver car stop in front of the Lorry. Ramadass alighted from the passenger side of the Lorry with the red plastic bag and walked towards the car. When he got to the car, he was unable to open the rear passenger door. He knocked on the door and tried again. This time, the door opened and he placed the plastic bag in the back seat and went back to the Lorry.[103] He then drove to Woodlands Checkpoint where he was arrested.

Whether the Prosecution proved its case against Raj

53 Raj does not dispute being in possession of the Drugs. After all, the Drugs were seized from the Mitsubishi.

54 Raj's defence is that he did not know the nature of the Drugs because he was at Senoko Drive on 21 September 2015 to take delivery of Butterfly but,

Version No 1: 27 Oct 2020 (22:41 hrs)

unknown to him, the Drugs were delivered to him instead by mistake. The issues therefore are whether Raj knew the nature of the Drugs, and if so, whether the Drugs were in his possession for the purpose of trafficking.

Whether Raj has rebutted the presumption of knowledge

55 As stated earlier, the Prosecution's case against Raj is based on presumed knowledge under s 18(2) of the MDA. Raj claimed that he had gone to Senoko to take delivery of Butterfly and the Drugs were delivered to him by mistake. Raj's claim, if accepted, would (absent any other evidence to the contrary) rebut the presumption that he knew the nature of the Drugs seized from the Mitsubishi.

56 It is not Raj's case that Ramadass delivered to the wrong car. His case is that Ramadass delivered the wrong bag to the Mitsubishi. Raj's mistaken-delivery defence depends on two important facts being established: (a) that Raj had ordered Butterfly and had gone to take delivery of Butterfly at Senoko on 21 September 2015; and (b) that Ramadass delivered the Drugs to Raj by mistake.

Whether Raj had ordered Buttery and was at Senoko to take delivery of Butterfly

57 As stated at [47] above, Raj claimed that he started buying Butterfly from Vijay from end-August 2015. After Raj's first two purchases, Vijay agreed to sell him 100 packets of Butterfly on credit, to be paid as and when Raj received enough money from selling the Butterfly. Raj claimed that he placed another order for 100 packets of Butterfly on 20 September 2015 and the next day, Vijay told him to go to Senoko to take delivery.

Version No 1: 27 Oct 2020 (22:41 hrs)

58 I agree with the Prosecution that Raj's claim about the credit terms offered by Vijay was too incredible to believe. According to Raj, he first knew Vijay in August 2015 when Vijay contacted him by phone to ask about buying deregistered vehicles.[104] Raj admitted that he has never met Vijay.[105] According to Raj, Vijay sold 100 packets of Butterfly to him at S$80 per packet.[106] The total price of the 100 packets of Butterfly, being S$8,000, was not a small amount. Further, Raj claimed that he would only have to repay Vijay once he made enough money from re-selling the Butterfly, and Vijay did not fix any time for repayment.[107] This also meant that the risk of Raj being unable to sell enough Butterfly to repay Vijay would be Vijay's, and not Raj's. In my view, it is unbelievable that Vijay would, after just two transactions and without having even met Raj, offer Raj such generous credit terms.

59 I disbelieve Raj's story about his purchases of Butterfly from Vijay. I find that Raj did not in fact order Butterfly from Vijay on 20 September 2015, and that the reason for his presence at Senoko Loop and Senoko Drive on 21 September 2015 was not to take delivery of Butterfly.

Whether there was a mistaken delivery by Ramadass

60 Raj's claim that there was a mistaken delivery requires two facts to be established: (a) that Ramadass had more than one red plastic bag to deliver on that day; and (b) that at least one of the plastic bags (which Raj did not receive) contained Butterfly, while at least one contained the Drugs.

61 Raj relies on Ramadass' oral testimony that he (Ramadass) had more than one bag to deliver on the day in question, and on Mark's testimony that at least one of the bags contained Butterfly.

Version No 1: 27 Oct 2020 (22:41 hrs)

62 I agree with the Prosecution that Ramadass' and Mark's testimonies are inherently incredible. According to Ramadass, there were four red plastic bags that looked roughly the same and Muruga merely told him to pass one plastic bag to each of the four recipients. Muruga did not tell him which bag he (Ramadass) had to pass to each of the recipients and Ramadass did not ask. It is unbelievable that Muruga would have placed four red plastic bags (that looked similar) in the Lorry and simply told Ramadass to pass one bag to each of the four recipients if the contents of the bags were different in that at least one of the bags contained cannabis and at least one contained Butterfly.

63 Further, Ramadass did not mention that he had four red plastic bags, or that he made four deliveries, in any of his six statements to the Police. In fact, in his Second Statement, Ramadass mentioned only the delivery of one bag to the Mitsubishi driver and denied delivering "*jama*" to anyone else.[108] In his Fourth Statement, Ramadass said that Muruga asked him to "deliver one bag",[109] and in his Fifth Statement, Ramadass said that he saw "one red plastic bag" when he lifted the cushion behind the passenger seat in the Lorry.[110]

64 When asked to explain why he mentioned only one bag in his statements, Ramadass claimed that SSI Tony told him not to mention the other deliveries. According to Ramadass, this happened when W/Sgt Meena was recording his statements in the CNB car at Woodlands Checkpoint.[111] SSI Tony denied Ramadass' allegation and testified that he did not enter the CNB car when W/Sgt Meena was recording Ramadass' statement.[112] W/Sgt Meena's evidence supported SSI Tony's evidence.[113]

65 In my view, Ramadass' explanation was plainly an afterthought.

Version No 1: 27 Oct 2020 (22:41 hrs)

(a) Ramadass' evidence lacked internal consistency, In his evidence-in-chief, Ramadass claimed that:[114]

(i) SSI Tony had shown him a photograph and stated that it was enough to "just mention this person";

(ii) Ramadass was "unable to tell" whether it was one or two persons in the photograph; and

(iii) SSI Tony then went on to mention three persons, and said "I would close one eye about these individuals" and "[you] (*ie*, Ramadass) do not have to mention about [*sic*] these three persons to your IO or anyone".

Under cross-examination, Ramadass asserted that SSI Tony had showed him a photograph of two persons.[115] In addition, Ramadass initially confirmed that he did not know which of the two persons in the photograph SSI Tony wanted him to talk about, only to then claim that SSI Tony had pointed out one of the two persons in the photograph to him but he could not remember who it was.[116]

(b) There was no reason why SSI Tony would have asked Ramadass not to mention the other deliveries. Ramadass did not offer any such reason.

(c) Ramadass' Fourth, Fifth and Sixth Statements were recorded at PCC, and SSI Tony was not present when these statements were recorded. Therefore, Ramadass could have explained in these statements that there were four red plastic bags, if that was indeed the case. However, he did not. Neither did he mention what SSI Tony had allegedly said to him.

Version No 1: 27 Oct 2020 (22:41 hrs)

66 I reject Mark's evidence that he was at Senoko on 21 September 2015 to take delivery of *ganja* but mistakenly took delivery of some white powder and packets of Butterfly from Ramadass instead. I also reject Ramadass' evidence that he delivered four red plastic bags to four different persons at Senoko on that day. I find that Ramadass had only one red plastic bag which he delivered by placing it inside the Mitsubishi at Senoko Drive.

67 The Prosecution also submitted that Mark inked the hamster tattoo after he met Raj in Changi Prison, and not contemporaneously as Mark claimed. The Prosecution relied on the following evidence:

(a) DSP Azman bin Suant ("DSP Azman")[117] testified that it is possible for inmates to create tattoos in prison, using staples and pen ink, and that inmates have been caught doing so.[118] DSP Azman also testified that Mark's prison cell was monitored using a closed circuit TV ("CCTV") camera installed on the ceiling at one corner of the cell.[119] Obviously, however, the camera would not capture what Mark might be doing with his hands if he stood facing the opposite corner with his back to the camera.

(b) On admission to prison, an inmate has to declare the tattoos that he has on his body. Mr Victor Leow Yong Chong,[120] a tattoo collation officer with Singapore Prisons Service, testified that on 8 September 2017, he attended to Mark who declared his tattoos on his Inmate Tattoo Acknowledgement Form ("ITA Form").[121] Mark's ITA Form does not show any declaration of the hamster tattoo although Mark claimed that he declared it.

Version No 1: 27 Oct 2020 (22:41 hrs)

68 Given the lapse in time, it was no longer possible to tell when the hamster tattoo might have been inked. Further, the CCTV recordings of the cell that Mark was in were no longer available as they were deleted after three months. In my view, the evidence falls short of proving beyond a reasonable doubt that Mark inked the hamster tattoo when he was in prison, after he met Raj. It seems to me that inking the hamster tattoo using makeshift tools such as staples and pen ink would have taken considerable effort and time. Having to do so while standing at a corner of the cell, facing the corner, would have made it even more challenging since it would more likely have attracted attention.

69 Nevertheless, in my view, the fact that the Prosecution cannot prove that Mark inked the hamster tattoo when he was in prison, does not change my conclusions and finding at [66] above.

70 I agree with the Prosecution that Mark and Raj had more than ample opportunity to collude and manufacture the story that Mark spun in court. Both of them shared one hour of yard time each day in prison between 30 November and 29 December 2017.[122] Thereafter, they were cellmates for substantial periods between February 2018 and February 2019, and from 11 to 13 June 2019.[123] The evidence does not explain why Mark testified as he did to support Raj's defence. However, the absence of any such explanation does not detract from the incredulity of the evidence relating to the mistaken-delivery defence.

71 As for Ramadass, he was in a different part of the prison from Raj and Mark. There was no evidence that he had the opportunity to talk to either Raj or Mark whilst in prison. However, Raj and Mark gave their evidence before Ramadass gave his and Ramadass was in court when Raj and Mark gave their evidence. He had ample opportunity to tailor his evidence to support Raj's and Mark's tale of the mistaken-delivery. It was in Ramadass' interest to do so since

Version No 1: 27 Oct 2020 (22:41 hrs)

Mark's claim that he received packets of Butterfly supported Ramadass' defence at the trial that he believed he was delivering Butterfly and not cannabis. What Ramadass was unable to concoct was an explanation as to why Muruga did not tell him which of the four red plastic bags was to be delivered to whom. The logical explanation would be that, if there were indeed four red plastic bags, the contents of the four bags were the same, but that would defeat Raj's mistaken-delivery defence.

72 The Prosecution further submitted that Raj would have known that the red plastic bag, which had been placed in the Mitsubishi, contained cannabis.

(a) As stated at [23(c)] above, SSgt Sunny noticed that there was a strong smell of cannabis from the red plastic bag in the back seat of the Mitsubishi.[124] SI Jason[125] also testified that there was "a very strong smell of cannabis as compared to … the synthetic cannabis found in [Butterfly]".[126]

(b) Raj admitted that he had consumed both Butterfly and cannabis, and that he had consumed cannabis "once in a while" in 2008.[127] Raj also admitted that he knew what the smell of cannabis was like.[128]

73 The Prosecution pointed out that despite knowing that the red plastic bag contained cannabis, Raj made no effort to investigate the contents of the plastic bag. The Prosecution submitted that the reason for this is clear: Raj already knew that it contained cannabis. I agree with the Prosecution.

74 It is trite that while the Prosecution has to prove its case beyond a reasonable doubt, the accused only has to prove his defence on a balance of probabilities. Nevertheless, in my judgment, the evidence before me fails to prove Raj's mistaken-delivery claim. Instead, the evidence establishes beyond

Version No 1: 27 Oct 2020 (22:41 hrs)

a reasonable doubt that Ramadass had only one red plastic bag to deliver on the day in question and this was the red plastic bag that he delivered to (and which was subsequently seized from) the Mitsubishi.

75 In conclusion, I find that Raj has failed to rebut the presumption of knowledge under s 18(2) of the MDA.

Whether the Drugs were for the purpose of trafficking

76 The Prosecution submitted that it is to be inferred from the large quantity of the Drugs found in his possession, that Raj was in possession of the Drugs for the purpose of trafficking to other persons: *Ong Ah Chuan and another v Public Prosecutor* [1979–1980] SLR(R) 710 at [14]–[15]; *Liew Zheng Yang v Public Prosecutor* [2017] 5 SLR 611 at [34] and [36]. I agree.

77 The Prosecution also sought to rely on the fact that Raj did not dispute that the items found in his possession were intended for the purpose of sale (and therefore trafficking). However, all that can be said is that Raj did not dispute that he intended to sell or traffick in Butterfly. In my view, it would be wrong to rely on this as evidence that Raj intended to sell or traffick in *ganja*.

Whether an adverse inference should be drawn against Raj

78 The Prosecution submitted that an adverse inference should be drawn against Raj because of his persistent refusal to provide any information to the CNB officers in his statements. Raj answered every question that he was asked by saying that he wanted to consult a lawyer for legal advice before giving any statement. His mistaken-delivery defence was raised for the first time when he gave evidence in Court.

Version No 1: 27 Oct 2020 (22:41 hrs)

79 Raj explained that he had been advised by a lawyer, Mr Wong Sin Yee ("Wong")[129] that he had a right to consult a lawyer before giving a statement.[130] Raj met Wong (whom he knew as Edmund) when both of them were in prison for matters unrelated to the present case.[131] Raj was released from prison in March 2015; Wong had been released earlier. After Raj's release, he went to see Wong in his office in April or May 2015 on behalf of a friend who was in remand. Wong was then practising as a lawyer and representing Raj's friend. When discussing his friend's statement to the police, Raj asked Wong whether there was a right to speak to a lawyer before giving a statement. It was then that Wong advised Raj on his right to consult a lawyer before giving a statement.[132]

80 Wong gave evidence and confirmed that he did advise Raj that he (Raj) was entitled to tell the police that he would like to speak to his counsel before giving a statement.[133]

81 In my view, it would be wrong to draw an adverse inference against Raj. Raj did not act unreasonably in following Wong's advice. He could not have known that Wong's advice was incorrect.

Whether the Prosecution proved its case against Ramadass

82 Ramadass admitted that he took the red plastic bag containing the Drugs from the Lorry and placed it in the Mitsubishi, as instructed by Muruga. It cannot be disputed that Ramadass did traffick in the Drugs.

Whether Ramadass knew the nature of the Drugs

83 Ramadass' only defence is that he did not know the nature of the Drugs. The Prosecution submitted that Ramadass had actual knowledge of the Drugs,

Version No 1: 27 Oct 2020 (22:41 hrs)

and alternatively, that he is presumed to know the nature of the Drugs pursuant to s 18(2) of the MDA.

Whether Ramadass had actual knowledge

84 Ramadass admitted to his actual knowledge of the nature of the Drugs in his First, Second and Third Statements. I have found that Ramadass gave these statements voluntarily (at [43] above).

(a) In his First Statement, Ramadass said that he was told that he was carrying "*buku*", "*yellai*"; Ramadass also said that "*yellai*" means "*ganja*".[134] Under cross-examination, Ramadass agreed that "*buku*" means book.[135] I reject Ramadass' allegation, during his oral testimony, that W/Sgt Meena wrote the statement on her own.[136] The Drugs had not been seized when Ramadass' First Statement was recorded. W/Sgt Meena could not have known that the Drugs were *ganja*, or to use the descriptor "*buku*".

(b) In his Second Statement, Ramadass again said he went to Senoko to deliver "*jama*", that "*jama*" means "drugs", that the red plastic bag contained drugs, and that inside the bag was a white parcel "packed with *ganja*".[137] I reject Ramadass' allegation, during his oral testimony, that W/Sgt Meena wrote the statement on her own.[138]

(i) Ramadass had made corrections to other parts of the Second Statement and signed against the amendments, but did not change the incriminating parts referred to above.

(ii) W/Sgt Meena recorded this statement at about the same time that the Drugs were recovered from the Mitsubishi at the SPC petrol station. There is no evidence, and it was not alleged,

Version No 1: 27 Oct 2020 (22:41 hrs)

that anyone at the SPC petrol station contacted W/Sgt Meena to tell her that they had recovered the Drugs from the Mitsubishi or that the Drugs were in white parcels.

(iii) Ramadass' claim, that W/Sgt Meena wrote the Second Statement on her own, is inconsistent with his Sixth Statement. In his Sixth Statement, Ramadass was asked about his statements in his Second Statement. Ramadass claimed that he had merely agreed with W/Sgt Meena that "*jama*" meant "drugs".[139] He also claimed that he had said the red plastic bag contained drugs because he was "confused and [didn't] know what to say" and that he just "use[d] what [W/Sgt] Meena had said".[140] Ramadass further claimed that he said the white parcel was packed with "*ganja*" because Muruga told him it was sprayed "*ganja*".[141]

(c) In his Third Statement, Ramadass confirmed that he brought the "drugs" into Singapore, the "drugs" were placed under the seat behind the driver's seat, and Muruga called him on 20 September 2015 to tell him that he (Muruga) had placed them there and that he (Muruga) would call him the next day to tell him who to pass the "drugs" to.[142] I reject Ramadass' allegation, during his oral testimony, that he did not in fact say this to the recorder of his Third Statement.[143] Ramadass' reference to drugs in his Third Statement was consistent with his First and Second Statements. Further, the details about where the drugs were placed in the Lorry, and Muruga's call and instructions could only have come from Ramadass. In addition, Ramadass had signed his Third Statement without making any amendments. He could have amended his Third Statement if, as he claimed, he did not say that it was drugs. After all, he

Version No 1: 27 Oct 2020 (22:41 hrs)

did amend his Second Statement where he disagreed with what had been recorded.

85 In his oral testimony, Ramadass asserted that Muruga had told him that the items were chemically-sprayed tobacco and that it was not illegal to bring chemically-sprayed tobacco into Singapore.[144] It is common ground that at the material time, chemically-sprayed tobacco was not a controlled drug under the MDA. However, I reject Ramadass' assertion that he thought he was delivering chemically-sprayed tobacco. His assertion is inconsistent with his First, Second and Third Statements.

86 There were other parts of Ramadass' story that are not supported by the objective evidence:

(a) Ramadass asserted during the trial that he had not heard of the term "*ganja*" before his arrest.[145] I reject his assertion. It is clearly inconsistent with his First and Second Statements. It is also inconsistent with his Sixth Statement in which he said that Muruga had told him the white parcel contained sprayed "*ganja*" and that chemically-sprayed tobacco was called "*ganja*".[146]

(b) Ramadass claimed that he stopped the Lorry on the causeway to call Muruga because he remembered that Muruga had called him in the early morning on 20 September 2015 (see [52(d)] and [52(c)] above). Ramadass confirmed that he only used the two handphones (R-HP1 and R-HP2) that were seized from him.[147] However, the forensic analysis of R-HP1 showed no evidence of any calls,[148] while the forensic analysis of R-HP2 showed no evidence of any call in the early morning of 20 September 2015.[149]

Version No 1: 27 Oct 2020 (22:41 hrs)

(c) Ramadass also claimed that after the beer and whisky drinking session with his friends, he slept from 9.00am on 20 September 2015 to 6.00am on 21 September 2015.[150] However, the forensic analysis of R-HP2 showed that he made eight calls (including two to Muruga)[151] and received four calls (including two from Muruga)[152] during this period.

87 In my judgment, the evidence proves beyond a reasonable doubt that Ramadass knew that he was delivering *ganja*.

88 For completeness, I deal with two other points. First, the Prosecution argued that the sum of S$7,000 in the white Star Mart plastic bag that was seized from the Lorry (see [18(a)] above), was the payment for the Drugs. SSI Tony testified that when Ramadass returned to the Lorry after making the delivery to the Mitsubishi, he was holding a "white coloured object" that was "slightly smaller" than half the size of an A4-sized sheet of paper.[153] Station Inspector Yeo Kheng Wei[154] estimated that the supplier's price for the Drugs was about S$8,000, or at most $10,000.[155]

89 A blue bag containing S$4,300 in cash was also found in the Lorry. Ramadass claimed that the total amount of S$11,300 represented earnings from a lorry that was co-owned by him and his friend, Viji (stated as "Vijay" in Ramadass' Sixth Statement – see [29(c)] above).[156] Ramadass' explanations for carrying S$11,300 in cash in the Lorry, ranged from buying spare parts for the lorry that he shared with Viji, to buying a "scrapped lorry head", to buying scrapped lorries, and to buying spare parts to set up a business in Malaysia.[157]

90 I agree with the Prosecution that Ramadass' shifting explanations for the large amount of cash found in the Lorry, were not credible. However, in my

Version No 1: 27 Oct 2020 (22:41 hrs)

view, the Prosecution had not proved beyond a reasonable doubt that the S$7,000 was payment for the Drugs. The Prosecution has offered no explanation for the $4,300 found in the Lorry. The $4,300 was evidence that Ramadass did carry large sums of cash in the Lorry.

91 Second, the Prosecution challenged Ramadass' claim that he did not usually lock the Lorry door because any "car key" could unlock it. Ramadass gave a statement to this effect in his Fifth Statement which was recorded on 24 September 2015.[158] On 28 October 2015, Insp Karlson tested the lock on the Lorry door using keys to five other *lorries* of the same model. None of them could unlock the door.[159] Insp Karlson explained that he did not use car keys to test the Lorry door because it "wouldn't make sense [to] use a car key to test a lorry".[160] In my view, Insp Karlson's evidence in this regard did not assist the Prosecution.

Whether Ramadass has rebutted the presumption of knowledge

92 The Prosecution also relies on the presumption of knowledge under s 18(2) of the MDA as its alternative case against Ramadass. It was not disputed that Ramadass had possession of the Drugs. Accordingly, the presumption applies unless rebutted.

93 Ramadass claimed that he believed that he was bringing chemically-sprayed tobacco into Singapore because Muruga told him that the items in the Lorry were chemically-sprayed tobacco, that it was not "wrongful" and that "nothing will happen to [him]" if he were arrested.[161]

94 However, Ramadass admitted that on several previous occasions, he had rejected Muruga's requests to bring things into Singapore as he knew Muruga "took drugs … [and] had seen him smoking 'Ice'". Ramadass was afraid that

Version No 1: 27 Oct 2020 (22:41 hrs)

Muruga would ask him to bring "wrongful items" into Singapore, and he knew he could face the death penalty for bringing those items in.[162] According to Ramadass, Muruga made about ten requests within the four-month period before Ramadass was arrested. Each time, Muruga did not mention what were the items that he wanted Ramadass to bring to Singapore. Each time, Ramadass said no.[163]

95 I find it unbelievable that, having adamantly refused Muruga's previous requests, Ramadass would have simply accepted Muruga's assertion on 21 September 2015 that the items in the Lorry were just chemically-sprayed tobacco and that it was not "wrongful". Further, Muruga's conduct would have made Ramadass more suspicious. According to Ramadass:

(a) Muruga placed the Drugs in the Lorry without first telling him or obtaining his agreement;

(b) when Ramadass stopped the Lorry on the causeway and called Muruga, Muruga told him that he had "put the things in the Lorry" and that it was "urgent" but refused to tell him what the "things" were or where in the Lorry he had put them;[164]

(c) when Muruga called Ramadass again after he had cleared immigration into Singapore, Muruga still did not tell Ramadass what the "things" were or where they had been placed. It was only after Ramadass scolded him that Muruga told him that the "things" were chemically-sprayed tobacco and that "nothing will happen to [him]".[165]

96 In addition, as dealt with earlier, Ramadass admitted to his knowledge of the nature of the Drugs in his First, Second and Third Statements.

Version No 1: 27 Oct 2020 (22:41 hrs)

97 Therefore, I find that Ramadass has not rebutted the presumption of knowledge of the nature of the Drugs under s 18(2) of the MDA.

Conviction

98 I find that the Prosecution has proved its case against Raj and Ramadass beyond a reasonable doubt and accordingly, I convict Raj and Ramadass of the charges against each of them respectively.

Sentence

99 The prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death. Section 33B(1)(*a*) of the MDA provides an alternative sentence of mandatory life imprisonment and not less than 15 strokes of the cane for a person convicted of a capital offence under ss 5(1) or 7 of the MDA. Section 33B(2) sets out the two conditions that must be satisfied. In general terms, (a) the convicted person must show that he was merely a "courier" *ie*, his involvement was limited to delivering or conveying the drugs (*Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [55]); and (b) the Public Prosecutor must issue a certificate of substantive assistance.

Version No 1: 27 Oct 2020 (22:41 hrs)

Raj

100 Raj's involvement in the offence on which he has been convicted, does not fall within the acts specified under s 33B(2)(*a*) of the MDA. In any event, the Public Prosecutor is not issuing a certificate of substantive assistance in his case. As the alternative sentencing regime under s 33B(1) is not available to Raj, I impose the mandatory sentence of death on him.

Ramadass

101 The Prosecution's position is that Ramadass was a courier. I agree. I am satisfied that on a balance of probabilities, Ramadass' involvement in the offence on which he has been convicted, satisfies the first condition under s 33B(2)(*a*) of the MDA. His involvement was merely to deliver the Drugs to Raj.

102 As the Public Prosecutor is issuing a certificate of substantive assistance, the requirement within s 33B(2)(*b*) is met. As such, I exercise my discretion under s 33B(1)(*a*) of the MDA to impose the sentence of life imprisonment and the mandatory minimum of 15 strokes of the cane on Ramadass.

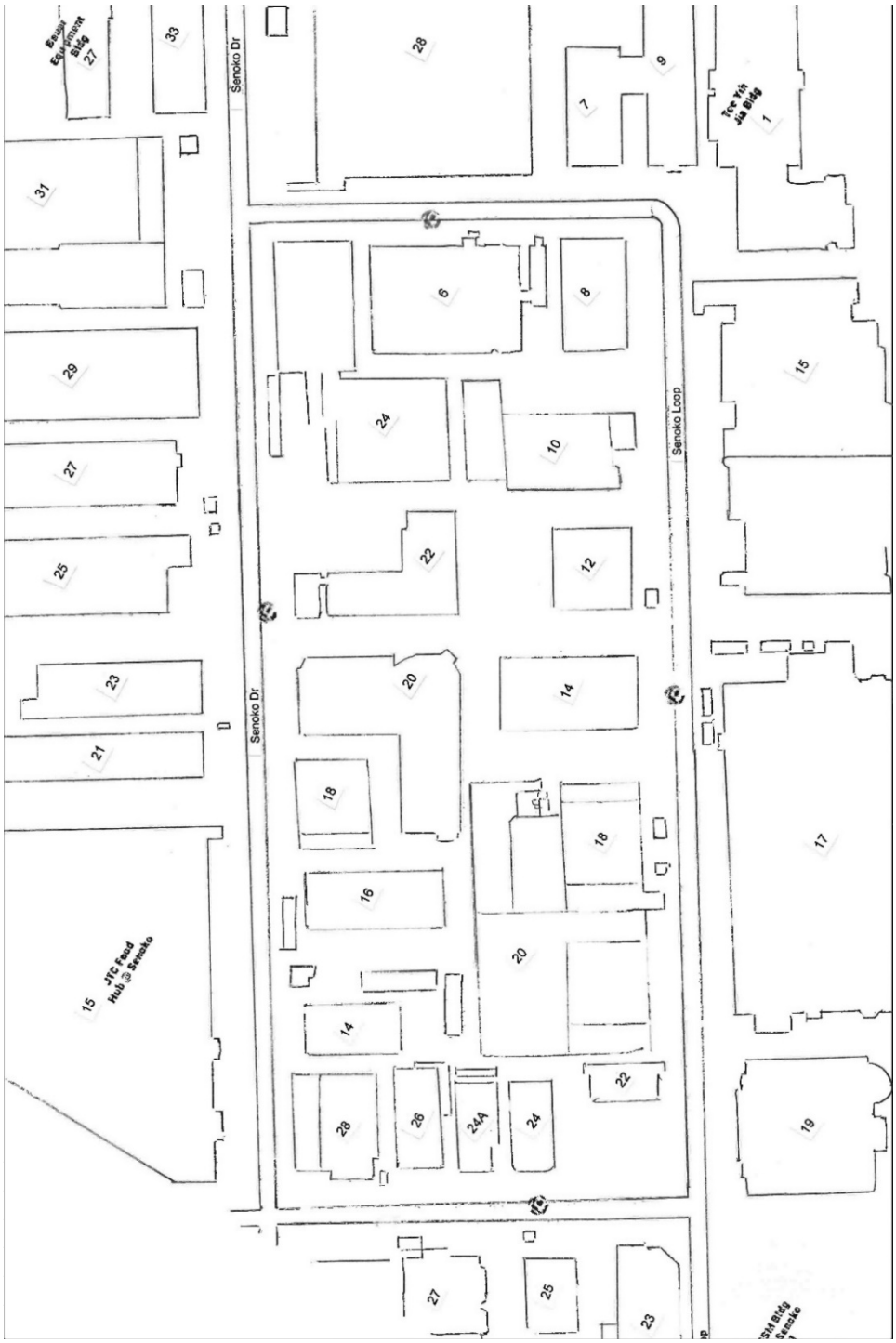
Chua Lee Ming
Judge

Version No 1: 27 Oct 2020 (22:41 hrs)

Tan Wen Hsien, Sarah Shi and Li Yihong (Attorney-General's Chambers) for the Prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Sankar s/o Kailasa Thevar Saminathan (Sterling Law Corporation) for the first accused;
Singa Retnam (I.R.B Law LLP) and Subir Singh Grewal (Aequitas Law LLP) for the second accused.

Version No 1: 27 Oct 2020 (22:41 hrs)

Annex A



Version No 1: 27 Oct 2020 (22:41 hrs)

[46] NE, 8 November 2018, at 20:22–23.
[47] NE, 8 November 2018, 26:19–24.
[48] Exhibit P191 (AB604).
[49] NE, 8 November 2018, 26:8–13.
[50] NE, 2 July 2019, at 36:28–37:7 and 37:19–38:17.
[51] NE, 2 July 2019, at 38:18–21.
[52] NE, 2 July 2019, at 45:14–15 and 76:23–24.
[53] NE, 2 July 2019, at 39:15–24 and 40:15–16.
[54] NE, 2 July 2019, at 43:29–44:20.
[55] NE, 2 July 2019, at 44:20–27 and 45:1–2.
[56] NE, 2 July 2019, at 53:26–29.
[57] NE, 2 July 2019, at 36:20–25.
[58] DW4.
[59] NE, 5 July 2019, at 73:12–14 and 77:29–78:4.
[60] DW3.
[61] NE, 2 July 2019, at 59:6–12.
[62] NE, 2 July 2019, at 59:15–30.
[63] NE, 2 July 2019, at 60:1–32.
[64] NE, 2 July 2019, 61:2–8.
[65] NE, 5 July 2019, at 5:7–14, 6:9–32 and 10:14–28.
[66] NE, 5 July 2019, at 11:11–12.
[67] NE, 5 July 2019, at 11:17–25
[68] NE, 5 July 2019, at 11:27–31.
[69] NE, 5 July 2019, at 15:1–6 and 18–28.
[70] NE, 5 July 2019, at 30:5–13.
[71] NE, 5 July 2019, at 16:10–15.
[72] NE, 5 July 2019, at 16:25–17:4.
[73] NE, 5 July 2019, at 29:21–27.
[74] NE, 5 July 2019, at 19:30–20:14.
[75] NE, 5 July 2019, at 22:1–2 and 23:22–29.
[76] NE, 5 July 2019, at 26:28–30.
[77] NE, 5 July 2019, at 26:1–3.
[78] NE, 5 July 2019, at 27:31–28:3.
[79] NE, 5 July 2019, at 28:9.
[80] NE, 5 July 2019, at 28:14–29:7.
[81] NE, 5 July 2019, at 29:8–11.
[82] NE, 5 July 2019, at 29:13–14.
[83] NE, 5 July 2019, at 4:10–31.
[84] Exhibit D.
[85] NE, 9 July 2019, at 7:15–8:19.
[86] Exhibit P191, at para 24 (AB603).
[87] NE, 9 July 2019, at 69:30–32.
[88] P190 para 12 (AB598–599); NE, 9 July 2019, at 11:1–23.
[89] NE, 9 July 2019, at 11:22–27.
[90] NE, 9 July 2019, at 11:29–12:12:
[91] NE, 9 July 2019, at 13:1–24.
[92] NE, 9 July 2019, at 14:13–15:3 and 15:24.
[93] NE, 10 July 2019, at 15:8–13.

Version No 1: 27 Oct 2020 (22:41 hrs)

94 NE, 9 July 2019, at 19:6–9.
95 NE, 9 July 2019, at 15:5–12 and 28–31.
96 NE, 9 July 2019, at 19:20–21, 20:30–31, 21:11–13 and 21:25.
97 NE, 9 July 2019, at 15:8–12 and 19:10–14.
98 NE, 9 July 2019, at 20:4–26.
99 NE, 9 July 2019, at 21:1–4.
100 NE, 9 July 2019, at 21:16–17.
101 NE, 9 July 2019, at 21:19–23 and 22:30–23:3.
102 NE, 9 July 2019, at 23:7–26.
103 NE, 9 July 2019, at 23:28–24:7.
104 NE, 2 July 2019, at 36:26 – 37:9.
105 NE, 2 July 2019, at 45:14–15 and 51:19–21.
106 NE, 2 July 2019, at 44:17–18.
107 NE, 2 July 2019, at 44:20–27; NE, 3 July 2019, at 39:1–18 and 40:1–7.
108 Exhibit P177 at A11.
109 Exhibit P186.
110 Exhibit P190, at para 14 (AB 599).
111 NE, 10 July 2019, at 9:15–18 and 9:25–27.
112 NE, 11 July 2019, at 5:27–29.
113 NE, 7 November 2018, at 44:6–17.
114 NE, 9 July 2019, at 26:10–15.
115 NE, 10 July 2019 at 10:6–16.
116 NE, 10 July 2019, at 10:20–29.
117 PW31.
118 NE, 11 July 2019, at 18:24–19:24 and 22:3–5.
119 NE, 11 July 2019, at 13:29–30, 14:1–15 and 14:31–32.
120 PW32.
121 Exhibit P296.
122 NE, 11 July 2019, at 12:3.
123 NE, 11 July 2019, at 12:23–13:1.
124 NE, 9 November 2018, at 38:10–39:8.
125 PW11.
126 NE, 31 October 2018, at 112:31–113:22.
127 NE, 2 July 2019, at 40:3–12; NE, 3 July 2019, at 4:27–5:4.
128 NE, 3 July 2019, at 5:5–6 and 6:31–32.
129 DW2.
130 NE, 2 July 2019, at 64:10–17.
131 NE, 2 July 2019, at 61:26–30.
132 NE, 4 July 2019, at 25:9–26:2.
133 NE, 4 July 2019, at 51:3–7.
134 Exhibit P175.
135 NE, 10 July 2019, at 40:27–28.
136 NE, 10 July 2019, at 40:20–23.
137 Exhibit P177.
138 NE, 10 July 2019, at 8:16–26 and 42:7–43:2
139 Exhibit P191, answer to question 3 (AB 604).
140 Exhibit P191, answer to question 4 (AB 604).
141 Exhibit P191, answer to questions 5 and 6 (AB 604).

Version No 1: 27 Oct 2020 (22:41 hrs)

142 Exhibit P178.
143 NE, 9 July 2019, at 75:3–16; NE, 10 July 2019, at 44:19–45:1.
144 NE, 9 July 2019, at 12:5–9, 16:1–3, 34:28–29 and 52:1–4.
145 NE, 9 July 2019, at 49:30–50:13.
146 Exhibit P191, answers to questions 5 and 6 (AB 604).
147 NE, 9 July 2019, at 42:27–32.
148 Exhibit P116, at Annex A (AB 122–124).
149 Exhibit P115, at Annex A pp 3-6 (AB 104–107).
150 Exhibit P190, at paras 11–12 (AB 598–599); NE, 9 July 2019, at 69:30–32.
151 Exhibit P115, at p 3 (AB104).
152 Exhibit P115, at p 5 (AB106).
153 PS34, at para 10 (AB434); NE, 31 October 2018, at 19:24–20:21.
154 PW17.
155 NE, 1 November 2018, at 72:13–26.
156 Exhibit P191, at paras 18–19 (AB601).
157 Exhibit P191, at para 18 (AB601); NE, 10 July 2018, at 33:8–34:24.
158 Exhibit P190, at para 12 (AB599).
159 PS58, at para 44.
160 NE, 7 May 2019, at 22:15–27.
161 Exhibit P190, at para 13 (AB 599); NE, 9 July 2019, at 12:5–9.
162 NE, 9 July 2019, at 7:21–8:19; Exhibit P190, at para 10 (AB 598).
163 NE, 9 July 2019, at 7:21–30.
164 Exhibit P190, at para 12 (AB 598–599)
165 Exhibit P190, at para 13 (AB 599).

Version No 1: 27 Oct 2020 (22:41 hrs)