IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 46

Criminal Case No 46 of 2019

Between

Public Prosecutor

And

Omar bin Yacob Bamadhaj

JUDGMENT

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

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Public Prosecutor
v
Omar bin Yacob Bamadhaj

[2021] SGHC 46

General Division of the High Court — Criminal Case No 46 of 2019
Tan Siong Thye J
6–9, 13, 14 October, 4 December 2020, 27 January, 11 February 2021

24 February 2021 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The accused is Omar bin Yacob Bamadhaj ("Omar"), a 41-year-old male Singaporean. Omar faces one charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for importing into Singapore three bundles containing not less than 1009.1g of vegetable matter, which was analysed and found to be cannabis. If convicted, Omar is liable to capital punishment pursuant to s 33(1) read with the Second Schedule to the MDA, unless s 33B(1) of the MDA applies. The charge against Omar reads as follows:

> That you, **OMAR BIN YACOB BAMADHAJ**,
>
> on 12 July 2018 at about 12.25 a.m., at Woodlands Checkpoint, Singapore, did import into Singapore a Class A controlled drug listed in the First Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ('the MDA'), *to wit*, three (3) bundles containing not less than 1009.1g of vegetable matter, which was analysed and found to be cannabis, without any

> authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the MDA and punishable under section 33(1) of the MDA, and alternatively, upon conviction, you may be liable to be punished under section 33B(1) of the MDA
>
> [emphasis in original]

The facts

Omar's arrest

2 At or about midnight on 12 July 2018, Omar and his father, Yacob bin Osman Bamadhaj ("Yacob"), entered Singapore from Malaysia via Woodlands Checkpoint. Yacob was driving his car bearing Singapore registration number SLC6226T ("the Car"), with Omar seated in the front passenger seat.[1]

3 At about 12.25am, at the Arrival Car Counter 34 ("Counter 34"), Aetos officer Corporal Loo Kum Pang ("Cpl Loo") conducted a routine check on the Car. During the check, in the boot of the Car, Cpl Loo discovered a black and blue haversack bag ("the Bag", subsequently marked A1) together with many grocery plastic bags.[2] The Bag belonged to Omar. The Bag contained Omar's clothes which concealed three bundles wrapped in aluminium foil, cling wrap and newspaper ("the Bundles", subsequently marked A1A1A1, A1B1A1 and A1C1A1A).[3] Omar, in reply to Cpl Loo's query, said the Bundles contained "plants for herbs".[4] Cpl Loo then requested for the Car to be referred to the

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1 Statement of Agreed Facts ("SOAF"), at para 2.

2 Exhibit P23.

3 NEs, 6 October 2020, p 66, line 18 to p 67, line 21.

4 Agreed Bundle ("AB") 108–110.

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Green Channel office of the Immigration and Checkpoints Authority ("ICA") for further checks.[5]

4 Shortly after 12.30am, Sergeant Muhammad Faliq bin Mohd Awi ("Sgt Faliq") and Sergeant Muhammad Ridhuan bin Abdol Mutalib ("Sgt Ridhuan") from the ICA arrived at Counter 34. Sgt Faliq, with the assistance of Sgt Ridhuan, subsequently placed Omar under arrest for suspicion of importation of a controlled drug. At about 12.35am, Staff Sergeant Chong Jia Lian ("SSgt Chong") and Sgt Muhammad Zuhaidi bin Abdul Wahab ("Sgt Zuhaidi") from the Central Narcotics Bureau ("CNB") arrived at Counter 34 and took over the matter.[6] At or about 12.40am, SSgt Chong retrieved and seized the Bundles from the boot of the Car.[7]

Drug analysis

5 The Bundles were subsequently sent for analysis by the Health Sciences Authority ("HSA"). HSA's analysis revealed that the Bundles contained a total of not less than 1009.01g (net) of vegetable matter, which was analysed and found to be cannabis, as follows:[8]

Exhibit No	Description	Gross weight (g)	Analysed weight of cannabis (g)
A1A1A1	One block	970.5	Not less than 487.9
A1B1A1	One block	997.8	Not less than 295.1

5 SOAF, at paras 2–3.

6 SOAF, at para 6.

7 SOAF, at para 6.

8 SOAF, at paras 21–24; AB 65–69, 517–523.

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A1C1A1A	One block	1010	Not less than 226.1
		Total	**Not less than 1009.1**

DNA analysis

6 The following exhibits taken from the Bundles were analysed by the HSA for DNA, the results of which were as follows:[9]

Source	Exhibit No	Description	Results
A1A1A1	A1A1	One cling wrap	No interpretable DNA profile was obtained
	A1A1-SW	Wet, dry and control swabs of exhibit A1A1	No interpretable DNA profile was obtained
	A1A1A	One aluminium foil wrapping	No interpretable DNA profile was obtained
A1B1A1	A1B1	One cling wrap	DNA profiles were obtained from the cling film and the plastic which did not match Omar's DNA profile
	A1B1-SW	Wet, dry and control swabs of exhibit A1B1	No interpretable DNA profile was obtained
	A1B1A	One aluminium foil wrapping	No interpretable DNA profile was obtained

[9] SOAF, at para 29; AB 59–64.

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A1C1A1A	A1C	One rubber band	No interpretable DNA profile was obtained
	A1C1A	One cling wrap	No interpretable DNA profile was obtained
	A1C1A-SW	Wet, dry and control swabs of exhibit A1C1A	No interpretable DNA profile was obtained
	A1C1A1	One aluminium foil wrapping	No interpretable DNA profile was obtained

Statements given by Omar

7 The Prosecution contends that on 12 July 2018, at about 12.25am, Omar gave an oral statement to Cpl Loo when Cpl Loo asked Omar about the Bundles in his Bag. Omar replied that "it was just plants for herbs" ("the First Oral Statement").[10] Later, between 12.30am and 12.35am, Omar gave another oral statement to Sgt Faliq ("the Second Oral Statement") admitting that the Bundles contained cannabis.[11] Omar denies that the Second Oral Statement was given by him to Sgt Faliq.[12]

8 Apart from the First Oral Statement and the Second Oral Statement, the following eight statements were given by Omar in the course of the investigations:[13]

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10 AB 108–110.

11 AB 112.

12 NEs, 7 October 2020, p 12, line 30 to p 13, line 13; p 15, lines 8–12.

13 SOAF, at para 39; NEs, 7 October 2020, p 12, lines 25–28.

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(a) an oral statement given to Sgt Zuhaidi on 12 July 2018, at about 12.36am ("the Third Oral Statement");[14]

(b) a contemporaneous statement recorded by Sgt Zuhaidi on 12 July 2018, at about 1.15am ("the Contemporaneous Statement");[15]

(c) a cautioned statement recorded by Investigation Officer R Shamaani ("IO Shamaani") on 12 July 2018, at about 3.06pm ("the Cautioned Statement");[16]

(d) the first long statement recorded by IO Shamaani on 17 July 2018, at about 10.45am ("the First Long Statement");[17]

(e) the second long statement recorded by IO Shamaani on 17 July 2018, at about 5.42pm ("the Second Long Statement");[18]

(f) the third long statement recorded by IO Shamaani on 18 July 2018, at about 2.52pm ("the Third Long Statement");[19]

(g) the fourth long statement recorded by IO Shamaani on 29 January 2019, at about 3.05pm ("the Fourth Long Statement");[20] and

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14 AB 123.

15 AB 124.

16 AB 159–160, 167–169.

17 AB 161, 170–173.

18 AB 161–162, 174–191.

19 AB 162, 192–194.

20 AB 164, 195–196.

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(h) the fifth long statement recorded by IO Shamaani on 3 May 2019, at about 11.30am ("the Fifth Long Statement").[21]

9 Omar admits that the First Oral Statement, the First Long Statement, the Second Long Statement, the Third Long Statement, the Fourth Long Statement and the Fifth Long Statement were given voluntarily by him, and that there was no threat, inducement, promise or oppression made before or during the recording of the said statements.[22] However, Omar contends that the Third Oral Statement, the Contemporaneous Statement and the Cautioned Statement were not given voluntarily by him. He alleges that these statements were given pursuant to certain threats made to him by Sgt Zuhaidi. I should mention that initially, Omar admitted that the Cautioned Statement was given by him voluntarily without any inducement, threat or promise.[23] That was why the Cautioned Statement was admitted into evidence during the Prosecution's case. However, when Omar was cross-examined on the Cautioned Statement after his defence was called, he alleged that the Cautioned Statement had also been given involuntarily. I shall address these issues in greater detail below.

The parties' cases

The Prosecution's case

10 The Prosecution's case is that Omar imported the Bundles into Singapore with *actual* knowledge that he possessed them and that they contained cannabis.[24] In particular, Omar had pre-ordered the Bundles on

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21 AB 164–165, 197–198.

22 SOAF, at para 40; NEs, 9 October 2020, p 41, line 26 to p 42, line 7.

23 SOAF, at para 40.

24 Prosecution's Closing Submissions ("PCS"), at paras 8 and 41.

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10 July 2018 from one "Jay", which he collected on 11 July 2018 near Wadi Hana Mosque ("the Mosque") and imported into Singapore on 12 July 2018.[25] The Prosecution contends that Omar's account that the Bundles were planted in the Bag without his knowledge is a fabrication and an afterthought.[26]

11 The Prosecution relies, in the alternative, on the presumption under s 18(1)(*a*) of the MDA as Omar had in his possession, control and custody the Bag containing the Bundles. Thus, the Prosecution contends that he is presumed to have had the Bundles in his possession and this presumption has not been rebutted by the evidence. The Prosecution also contends that the presumption under s 18(2) of the MDA applies. Hence, Omar is presumed to have known the nature of the drugs in the Bundles, that is, that the Bundles contained cannabis.[27]

12 In support of its case, the Prosecution relies on several text messages recovered from one iPhone (subsequently marked OBY-HP1) and one Samsung mobile phone (subsequently marked OBY-HP2) seized from Omar ("the Phones").[28] The text messages show that Omar had pre-ordered the Bundles on 10 July 2018 from Jay.[29] The Prosecution also relies on the testimonies of Sgt Faliq and Sgt Zuhaidi regarding Omar's oral admissions to them when he was asked about the Bundles. Specifically, Omar told them that the Bundles were cannabis, contained "marijuana", and belonged to him.[30] Furthermore, the Prosecution also relies on some of the statements recorded from Omar in the

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25 Prosecution's Opening Address ("POA"), at paras 15 and 18.

26 POA, at para 20; PCS, at para 3.

27 POA, at para 19; PCS, at para 10.

28 SOAF, at para 9.

29 POA, at para 15.

30 POA, at para 9.

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course of investigations.[31] In relation to this, the Prosecution seeks to admit into evidence and rely on Omar's Contemporaneous Statement and Cautioned Statement, on the basis that they were given by Omar voluntarily and were accurately recorded from him.[32]

Omar's defence

13 Omar's defence is that he did not know the nature of the Bundles at the material time.[33] According to Omar, the Bundles had been placed in his Bag by his acquaintances, Din and/or Latif, without his knowledge[34] and he only realised that the Bundles were cannabis when the Bundles were processed by the CNB as exhibits after his arrest.[35]

14 In relation to the text messages relied on by the Prosecution, Omar's explanation is that Jay was his distant relative and supplied him with cloth and textile for his business.[36] According to Omar, Jay had messaged him to ask him if he would be going to Johor Bahru the next day, as Jay had some textiles or cloth prepared for Omar. In that context, the references in the messages to "*barang*" were references to cloth or textiles.[37] As regards the events of 11 July 2018 and 12 July 2018, Omar's account of the relevant events is as follows.

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31 PCS, at para 9.

32 POA, at paras 16–17.

33 Defence Closing Submissions ("DCS"), at para 9.

34 NEs, 9 October 2020, p 56, lines 27–29.

35 NEs, 9 October 2020, p 48, lines 30–31.

36 NEs, 9 October 2020, p 52, lines 10–11; p 82, line 22 to p 83, line 19.

37 NEs, 9 October 2020, p 53, lines 3–26.

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Events in Johor Bahru

15 On 11 July 2018, at about 4pm, Omar and Yacob departed Singapore to go to Johor Bahru using the Car driven by Omar. Upon their arrival, they went to a supermarket to buy groceries, including pampers and cooking oil. They then went to the Mosque at about 7pm to perform their evening prayers. After that, Yacob went to Omar's brother's *madrasah*, or religious school, to attend an event,[38] while Omar went to collect a wooden chair that he had sent for repair. After collecting the chair, he went back to the Mosque to perform his night prayers. He then returned to the *madrasah*, where he met his brother and Yacob for about half an hour. After that, he went for a 30-minute cupping massage at a location near the Mosque.[39]

16 After the massage, Omar went to wash the Car near a restaurant ("the Restaurant"). While he was there, he happened to meet two of his acquaintances, Latif and Din.[40] Omar, Latif and Din smoked a rolled cigarette near the rear of the Car, which had its boot open. Latif asked Omar to bring "*barang*" to Singapore – three bundles wrapped in newspaper. Din was holding the *barang* which he put into the Bag. However, Omar told Latif and Din that he did not dare to bring the Bundles into Singapore as he did "not want to take the risk". According to Omar, he did not ask Latif and Din what the contents of the Bundles were. Upon hearing this, Din took the Bundles out of the Bag and brought them back to his own car. This exchange occurred in the span of about half an hour.[41]

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38 NEs, 9 October 2020, p 37, line 27 to p 38, line 4; p 38, lines 19–23.

39 NEs, 9 October 2020, p 37, line 25 to p 38, line 20; DCS, at paras 26(a)–(b).

40 NEs, 9 October 2020, p 39, lines 20–30.

41 NEs, 9 October 2020, p 40, lines 1–11; DCS, at para 26(c).

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17 After this exchange, Omar called Yacob, who informed him that he was ready to return to Singapore. Omar then went to the toilet for about five minutes. When he returned to the Car, Din asked him for his mobile phone number, which Omar gave to Din. Omar then drove to the Mosque to pick up Yacob. Omar told Yacob to drive the Car back to Singapore as Omar was tired. Omar alleged that he dozed off in the front passenger seat on the way to Woodlands Checkpoint.[42]

Events surrounding Omar's arrest

18 When Omar and Yacob were at Singapore's Woodlands Checkpoint, Omar was awakened by Yacob, who asked him what the items in the Bag in the boot of the Car were. Omar did not answer Yacob but went directly to the boot of the Car. When questioned by Cpl Loo, Omar told Cpl Loo that he did not know what the items were.[43] Omar testified that he might have "spontaneously" told Cpl Loo that the Bundles were herbs, as he had suddenly been awoken from his sleep and he had previously bought items from Malaysia such as ginseng and *tongkat ali* which were also wrapped in newspaper.[44] Cpl Loo then seized Omar's mobile phone and passport, and instructed Omar and Yacob to sit in the Car.[45]

19 A few minutes later, a few ICA officers arrived. Sgt Faliq asked Omar what the Bundles were, to which Omar replied that he did not know. Sgt Faliq then instructed Omar and Yacob to step out of the Car, and handcuffed them.[46]

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42 NEs, 9 October 2020, p 40, lines 11–20; DCS, at para 26(d).

43 NEs, 9 October 2020, p 40, lines 21–25.

44 NEs, 9 October 2020, p 41, line 31 to p 42, line 7; DCS, at paras 26(e)–(g).

45 NEs, 9 October 2020, p 40, lines 25–27.

46 NEs, 9 October 2020, p 40, lines 30–31.

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Thereafter, Sgt Faliq brought Omar to the rear of the Car, raised his hand and threatened Omar, "If you refuse to admit ownership to this item, I will slap you".[47] Omar did not tell Sgt Faliq that the Bundles were cannabis.[48]

20 About five to ten minutes later, Sgt Zuhaidi and SSgt Chong arrived. Cpl Loo and Sgt Faliq briefed Sgt Zuhaidi and SSgt Chong, after which Sgt Zuhaidi brought Omar to Arrival Car Counter 33 ("Counter 33") and SSgt Chong brought Yacob to Counter 34. At Counter 33, Sgt Zuhaidi asked Omar whom the Bundles belonged to and whom they were to be delivered to. However, Omar replied that he did not know. Omar explained that the Bundles did not belong to him but might belong to Latif and Din. Sgt Zuhaidi then threw a pen at Omar and threatened him.[49] Subsequently, Sgt Zuhaidi wrote the Contemporaneous Statement and asked Omar to sign it, which he did.

Events post-arrest

21 Subsequently, Omar was brought to the Woodlands Checkpoint office, where his urine sample was taken and a body search was conducted. He was then brought to several locations – his home, Yacob's shop, the CNB premises at Cantonment Police Complex, and Alexandra Hospital. Eventually, he returned to the CNB premises at Cantonment Police Complex, where his Cautioned Statement was recorded on 12 July 2018 at about 3.06pm.[50] Omar

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47 NEs, 9 October 2020, p 42, lines 10–17.

48 NEs, 9 October 2020, p 43, lines 11–28.

49 NEs, 9 October 2020, p 43, line 29 to p 46, line 6.

50 NEs, 9 October 2020, p 48, line 8 to p 49, line 7.

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testified that by the time his Cautioned Statement was recorded, he had not slept for about 33 hours. Furthermore, he was afraid and his mind was blank.[51]

Admissibility of Omar's statements

22 The ancillary proceedings were conducted to ascertain whether the Third Oral Statement, the Contemporaneous Statement and the Cautioned Statement had been given by Omar voluntarily without inducement, threat or promise. The Prosecution submitted that these statements were made voluntarily. On the other hand, Omar denied that he had made the Third Oral Statement and contended that the Contemporaneous Statement and the Cautioned Statement had been given involuntarily. Instead, he only gave the Contemporaneous Statement because Sgt Zuhaidi had thrown a pen at him and threatened to charge both him and Yacob, as well as send them to be hanged, if he did not cooperate. This threat continued to operate on his mind when he gave his Cautioned Statement.

23 The first ancillary hearing was convened during the Prosecution's case to determine the admissibility of the Third Oral Statement and the Contemporaneous Statement. Omar did not challenge the voluntariness of the Cautioned Statement during the Prosecution's case and thus his Cautioned Statement was admitted at that stage.

24 At the end of the first ancillary hearing, I was satisfied beyond a reasonable doubt that the Third Oral Statement and the Contemporaneous Statement had been given by Omar voluntarily without inducement, threat or promise. Accordingly, I admitted the Third Oral Statement and the Contemporaneous Statement into evidence.

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[51] NEs, 9 October 2020, p 50, lines 16–21.

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25 The second ancillary hearing was convened during the Defence's case, midway through the Prosecution's cross-examination of Omar. Although this was not initially raised as an issue, Omar's evidence in the course of cross-examination appeared to contest the voluntariness of his Cautioned Statement.[52] Thus, the second ancillary hearing was convened to determine the voluntariness of Omar's Cautioned Statement. At the end of the second ancillary hearing, I was satisfied beyond a reasonable doubt that the Cautioned Statement had been given by Omar voluntarily without inducement, threat or promise. Accordingly, I allowed the Cautioned Statement to continue to be admitted as evidence. I set out my reasons below, dealing with each ancillary hearing separately.

The first ancillary hearing

Omar's case

26 Omar alleged that he did not give the Third Oral Statement and that the Contemporaneous Statement was not given voluntarily. In relation to the Third Oral Statement, Omar denied that the conversation had even taken place. According to Omar, his first interaction with Sgt Zuhaidi was at Counter 33, when Sgt Zuhaidi recorded the Contemporaneous Statement.[53]

27 In relation to the Contemporaneous Statement, Omar testified that after he entered Counter 33, he told Sgt Zuhaidi that he and Yacob were innocent and that someone had planted the Bundles on him. He explained to Sgt Zuhaidi that in Johor Bahru, he had met Latif and Din, who had asked him to bring into Singapore the Bundles in exchange for $500 per bundle. Not knowing the

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52 NEs, 13 October 2020, p 39, line 21 to p 40, line 17.

53 NEs, 7 October 2020, p 91, lines 19–27; 8 October 2020, p 7, line 26 to p 8, line 1.

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contents of the Bundles, he had refused to do so, as he did not want to risk bringing the Bundles into Singapore.[54] Sgt Zuhaidi continued to ask Omar a few more questions, to which Omar replied that he did not know. Sgt Zuhaidi then threatened to charge him and Yacob for drug importation if he refused to cooperate.[55] Specifically, Sgt Zuhaidi threw a pen at him and told him, "If you refuse to admit to this, I will throw both you and your father to be hanged."[56]

28 Omar explained that due to this threat, he was afraid for himself and Yacob. He was especially concerned for Yacob, whom he was afraid would be so shocked by the arrest as to have a heart attack.[57] Omar alleged that Yacob had never been arrested and he did not wish for Yacob to have to go through the process of being charged. This caused him to give the Contemporaneous Statement, in which he admitted knowledge of the Bundles and that they contained cannabis.

29 Omar further testified that he did not use the word "marijuana" in response to Sgt Zuhaidi's questions, as he did not even know the contents of the Bundles until the Bundles were subsequently processed by CNB.[58] Instead, Sgt Zuhaidi had written the Contemporaneous Statement of his own accord. Thereafter, Sgt Zuhaidi told Omar to sign it and he complied. Sgt Zuhaidi did not ask Omar to read through the contents of the Contemporaneous Statement before signing. Neither did Omar read the contents of the Contemporaneous

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54 NEs, 8 October 2020, p 8, line 22 to p 9, line 3.

55 NEs, 7 October 2020, p 92, lines 1–6; 8 October 2020, p 7, line 19 to p 8, line 1; p 9, lines 8–15.

56 NEs, 7 October 2020, p 92, lines 17–22; 8 October 2020, p 10, lines 1–6.

57 NEs, 7 October 2020, p 92, line 24 to p 7.

58 NEs, 7 October 2020, p 94, lines 14–18; 8 October 2020, p 15, lines 25–27.

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Statement before signing it, as he was afraid and could not "think well or properly".[59]

The Prosecution's case

30 The Prosecution submitted that no threat, inducement or promise was made by Sgt Zuhaidi when the Third Oral Statement and the Contemporaneous Statement were given. In support of its submission, the Prosecution relied on the testimonies of Sgt Zuhaidi, SSgt Chong and Sgt Ridhuan.

31 In relation to the Third Oral Statement, Sgt Zuhaidi testified that this was recorded in less than two minutes.[60] This happened when he arrived at the scene and he first asked Omar a question in Malay, "*barang apa itu*?", meaning, "What item is that?" This is reflected in the first question recorded in the Third Oral Statement – "What are these?" Although he could not remember Omar's exact words in reply, he testified that Omar had specifically said that the Bundles contained "marijuana". Sgt Zuhaidi also asked Omar where he had to deliver the Bundles and who was going to collect them. However, Omar replied that he did not know.[61] Sgt Zuhaidi denied making any threat, inducement or promise to Omar when he questioned Omar.[62]

32 In relation to the Contemporaneous Statement, Sgt Zuhaidi similarly denied that he had threatened Omar to charge him and Yacob for the offence of

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59 NEs, 7 October 2020, p 93, lines 19–30; 8 October 2020, p 4, lines 22–24.

60 NEs, 7 October 2020, p 41, line 22 to p 42, line 1.

61 NEs, 7 October 2020, p 43, line 13 to p 45, line 5.

62 NEs, 7 October 2020, p 24, lines 28–31.

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drug importation.[63] He also did not throw a pen at Omar or threaten to press charges against both Omar and Yacob and send both of them to hang.[64] Sgt Zuhaidi explained that he was not involved in framing the charges against accused persons as that was for the investigation officer to decide.[65] He also explained that prior to the recording of the Contemporaneous Statement, Omar had confirmed that he was fine and was comfortable to give his statement in the English language.[66] After the Contemporaneous Statement was recorded, Sgt Zuhaidi read it back to Omar in the English language and invited him to make any amendments. Omar declined to make any amendments and appended his full name, IC number and signature on the Contemporaneous Statement.[67]

33 Sgt Zuhaidi's testimony was supported by SSgt Chong's testimony and the entries made by SSgt Chong in the station diary. SSgt Chong was about 1m away from Sgt Zuhaidi and Omar when the Third Oral Statement was given.[68] At that time, SSgt Chong was being briefed by Cpl Loo regarding the case. SSgt Chong testified that although he could not remember the language in which Omar and Sgt Zuhaidi was speaking and did not catch their entire conversation, he overheard Omar saying "marijuana" to Sgt Zuhaidi. After the briefing by Cpl Loo, SSgt Chong checked with Sgt Zuhaidi, who informed him that Omar had admitted that the Bundles were marijuana.[69] SSgt Chong then recorded this in the station diary.[70]

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63 NEs, 7 October 2020, p 33, lines 27–31; p 45, lines 17-19.

64 NEs, 7 October 2020, p 45, lines 6–24; p 45, line 29 to p 46, line 29.

65 NEs, 7 October 2020, p 51, lines 8–15.

66 NEs, 7 October 2020, p 29, lines 10–23.

67 NEs, 7 October 2020, p 32, lines 9–14.

68 NEs, 7 October 2020, p 24, lines 6–11; p 56, lines 22–26.

69 NEs, 7 October 2020, p 56, line 27 to p 57, line 3.

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34 Sgt Zuhaidi's testimony was also supported by Sgt Ridhuan's testimony. Sgt Ridhuan was about 1m to 1.5m away from Omar and Sgt Zuhaidi when the Third Oral Statement and the Contemporaneous Statement were given. In particular, when the Contemporaneous Statement was recorded, Sgt Ridhuan was standing inside the same counter area, *ie*, inside Counter 33 and Counter 34 which were unseparated in the same booth.[71] Hence, he had overheard the conversation between Sgt Zuhaidi and Omar.[72] He testified that throughout the giving of the Third Oral Statement and the Contemporaneous Statement, Omar appeared "calm" and "comfortable", and that Omar and Sgt Zuhaidi had been speaking in a "normal tone".[73] Sgt Ridhuan did not, at any point in time, see Sgt Zuhaidi making any threat, inducement or promise to Omar. In particular, he did not see or overhear Sgt Zuhaidi threatening to charge Omar and Yacob; neither did he see Sgt Zuhaidi throw a pen at Omar.[74]

My decision on the admissibility of Omar's Third Oral Statement and Contemporaneous Statement

35 Section 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") reads as follows:

> (3) The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him

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70 Exhibit P105; NEs, 7 October 2020, p 59, line 6–11.

71 NEs, 7 October 2020, p 81, lines 1–27.

72 NEs, 7 October 2020, p 74, lines 16–19; p 76, lines 2–4.

73 NEs, 7 October 2020, p 74, lines 20–25; p 76, line 18 to p 77, line 3.

74 NEs, 7 October 2020, p 77, lines 10–25.

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> reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

36 There are two limbs to the test of voluntariness (see *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Chai Chien Wei Kelvin*") at [53]). The first limb is an objective one and this concerns whether a threat, inducement or promise was actually made. The second limb is a subjective one and it concerns whether the threat, inducement or promise "operate[d] on the mind of the particular accused through hope of escape or fear of punishment connected with the charge". I emphasise that the burden is on the Prosecution to prove beyond a reasonable doubt that the statements were made voluntarily, rather than on the Defence to prove on a balance of probabilities that the statements were not made voluntarily (see *Chai Chien Wei Kelvin* at [53]; *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz and another* [2019] SGHC 268 ("*Mohamed Ansari*") at [9]).

37 Preliminarily, I note that Omar's objection regarding the Third Oral Statement was that he did not actually make such a statement. As this objection did not pertain to voluntariness, the Third Oral Statement rightfully should not have been the subject of ancillary proceedings. This was conceded by Omar's counsel. This position is explained in Illustration (*d*) to s 279(1) of the CPC:

> **279.**—(1) …
>
> *Illustrations*
>
> …
>
> (*d*) The prosecution seeks to admit a statement of the accused, who denies that he made it. No ancillary hearing is necessary as this does not relate to the voluntariness of the statement.

Based on the evidence, I was satisfied that the Third Oral Statement had in fact been made. As I shall elaborate below, Sgt Zuhaidi's account that Omar had

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given the Third Oral Statement was corroborated by SSgt Chong, Sgt Ridhuan as well as an entry in the station diary. Having concluded that the Third Oral Statement had in fact been given, I then considered the voluntariness of both the Third Oral Statement and the Contemporaneous Statement.

38 I shall turn now to the facts of the present case. The crux of the dispute revolved around the objective limb of the test set out in *Chai Chien Wei Kelvin* – whether Sgt Zuhaidi had thrown a pen at Omar and threatened to charge Omar and Yacob with drug importation so that they would both be hanged, unless Omar cooperated and admitted to knowing about the Bundles and the drugs contained therein ("the Threat"). If the objective limb of the test is shown (*ie*, it is shown that no threat, inducement or promise had actually been made), there will be no further need to consider the subjective limb of the test.

39 In my view, the Prosecution had proven beyond a reasonable doubt that the Threat had not in fact been made for the following reasons.

(1) The Prosecution's witnesses and the contemporaneous evidence

40 Sgt Zuhaidi's account of what had transpired during the recording of the Third Oral Statement and the Contemporaneous Statement was supported by two credible witnesses, as well as by the contemporaneous evidence. The Prosecution's witnesses did not know Omar and Yacob before this case. The Car was randomly checked through a routine procedure and the Bundles were discovered by chance. There was no evidence that the officers were targeting the Car or that the officers were out to get Omar or Yacob. Thus, there was no evidence to suggest that the officers who dealt with Omar and Yacob wanted to do any harm to them. These officers were just doing their job. I shall now consider the evidence of the Prosecution's witnesses.

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41 I turn first to the evidence of Sgt Ridhuan, who confirmed that the Third Oral Statement had taken place, and that no threat, inducement or promise had been made during the recording of the Contemporaneous Statement. It was not disputed that Sgt Ridhuan was very near to both Sgt Zuhaidi and Omar at the relevant times.[75] Hence, he could see Sgt Zuhaidi and Omar and hear their conversation.[76] This was clear from the fact that his evidence on what he had overheard correlated to what Sgt Zuhaidi and Omar had actually discussed. Sgt Ridhuan testified that he had heard Sgt Zuhaidi asking Omar about an incoming phone call.[77] This accords with a reference in the Contemporaneous Statement to Omar "waiting for the person to call [him]", as well as Omar's own testimony that he did tell Sgt Zuhaidi "that this item [did] not belong to [him]" and that a person was "going to call [him]".[78]

42 Although Sgt Ridhuan could not recall everything that transpired between Sgt Zuhaidi and Omar,[79] this did not mean that at the time, he did not see and/or hear their conversation. Furthermore, although Sgt Ridhuan was not paying complete attention and had a side view of Omar,[80] these did not compromise the reliability or veracity of his evidence. According to Omar, Sgt Zuhaidi had used clear words to threaten him and had even thrown a pen at him. These would have been noticed by Sgt Ridhuan even if he was not paying full attention or could only see Omar's side view. Rather than diminishing the

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75 NEs, 8 October 2020, p 11, lines 10–17.

76 NEs, 7 October 2020, p 83, lines 12–19.

77 NEs, 7 October 2020, p 76, lines 5–13.

78 NEs, 8 October 2020, p 18, lines 18–27.

79 NEs, 7 October 2020, p 74, lines 20–22; p 76, lines 14–17.

80 NEs, 7 October 2020, p 84, lines 5–25.

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weight to be given to his evidence, I found that Sgt Ridhuan was candid on this point and this bolstered his credibility as an honest and forthcoming witness.

43 I turn next to the evidence of SSgt Chong, who also confirmed that the Third Oral Statement was given, and that Omar had admitted that the Bundles were marijuana and they belonged to him. While Cpl Loo was briefing SSgt Chong, they were standing near Sgt Zuhaidi and Omar. SSgt Chong overheard the word "marijuana" in their conversation[81] and asked Sgt Zuhaidi what Omar had told him. Sgt Zuhaidi told SSgt Chong that "Mr Omar told—admitted that the bundles are marijuana".[82] SSgt Chong remembered this incident because this case was unique as it involved father and son and it was "the largest seizure [of drugs] in [his] entire career".[83] As with Sgt Ridhuan, SSgt Chong was also standing close by at the time the Third Oral Statement was given. Furthermore, SSgt Chong's and Sgt Zuhaidi's testimonies were corroborated by the contemporaneous evidence, specifically, an entry in the station diary marked by the time "0036" (*ie*, 12.36am). This entry reads, "Zuhaidi interview[ed] [Omar] and [Omar] admitted it to be marijuana …".[84] The timing of the entry in the station diary corresponds to the time which Sgt Zuhaidi said the Third Oral Statement was given (*ie*, about 12.36am).[85] SSgt Chong explained that he made this entry one or two minutes after Sgt Zuhaidi interviewed Omar.[86] Thus, the entry at 12.36am in the station diary

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81 NEs, 7 October 2020, p 56, lines 27–30.

82 NEs, 7 October 2020, p 57, line 3.

83 NEs, 7 October 2020, p 57, line 17.

84 Exhibit P105.

85 AB 123, at para 5.

86 Exhibit P105; NEs, 7 October 2020, p 59, line 6 to p 60, line 3; p 60, lines 18–22.

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was consistent with both SSgt Chong's and Sgt Zuhaidi's testimonies regarding the Third Oral Statement. Furthermore, it contradicted Omar's allegations that he had not spoken to Sgt Zuhaidi until the recording of the Contemporaneous Statement at Counter 33. It also contradicted Omar's claim that he did not admit to knowing that the Bundles were cannabis.

44 In the course of the cross-examination of SSgt Chong, Omar's counsel highlighted that the information in SSgt Chong's conditioned statement, the police report made by SSgt Chong and the entries in the station diary did not match exactly. First, although the station diary stated that Omar had admitted that the Bundles were marijuana, this was not mentioned in SSgt Chong's conditioned statement.[87] Secondly, there was also no mention in the police report that Omar had used the word "marijuana". The police report only stated that Omar "admitted ownership to [the Bundles]" and "exonerated [Yacob] of any illegal drug activities".[88] Finally, the fact that Omar had exonerated Yacob of any illegal drug activities was not mentioned in the station diary.[89] However, these were minor and insignificant discrepancies. In relation to the police report, SSgt Chong explained that it was meant to contain "brief facts". Hence, he only included the fact that Omar had admitted ownership to the Bundles, which he considered the "most important part".[90] As regards the station diary, SSgt Chong explained that entries in the station diary were usually made "on the spot" one or two minutes from the occurrence of the event. Hence, there had not been enough time for him to list down all the relevant facts. In contrast, the police

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87 NEs, 7 October 2020, p 64, line 21 to p 65, line 12.

88 AB 120; NEs, 7 October 2020, p 65, lines 17–22.

89 NEs, 7 October 2020, p 67, lines 19–31.

90 NEs, 7 October 2020, p 65, line 26 to p 66, line 18.

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report was made later at around 5am, by which time SSgt Chong was able to consolidate the facts from Sgt Zuhaidi and list them down in the police report.[91] I considered this explanation reasonable.

45 The Prosecution's case was also supported by IO Shamaani's testimony. IO Shamaani testified that on 12 July 2018, after she had spoken to the arresting officers and obtained their verbal account of the relevant events, she viewed the CCTV footage of the events that took place from the time of Omar's arrest. The CCTV footage provided only a visual recording, with no audio.[92] IO Shamaani confirmed that the CCTV footage showed "nothing remarkable".[93] Instead, the CCTV footage corroborated the arresting officers' accounts of the relevant events.[94] IO Shamaani also explained that as Omar did not subsequently make any allegations regarding his arrest in the course of her interaction with him, she did not retrieve the CCTV footage at the material time. If Omar had made such allegations, she would have followed up on these allegations and retrieved the relevant CCTV footage.[95] As at the time of the trial, however, it was no longer possible to retrieve the CCTV footage as the data had been overwritten.[96] For these reasons, the CCTV footage was not produced as evidence at the trial. I accepted IO Shamaani's explanation of why the CCTV footage was not adduced as evidence, as well as her account of what the CCTV footage had showed.

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91 NEs, 7 October 2020, p 68, lines 1–10.

92 NEs, 4 December 2020, p 23, lines 8–10.

93 NEs, 4 December 2020, p 17, lines 22–24.

94 NEs, 4 December 2020, p 18, lines 12–31; p 20, lines 3–6.

95 NEs, 4 December 2020, p 20, lines 13–20.

96 NEs, 4 December 2020, p 20, lines 10–12.

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46 For the above reasons, I accepted the evidence of Sgt Zuhaidi, Sgt Ridhuan, SSgt Chong and IO Shamaani. There was no conceivable reason for them to lie. To the contrary, they were clear and forthcoming in their evidence, which was also supported by the contemporaneous evidence.

(2) Inconsistencies in Omar's testimony

47 In contrast, there were several material inconsistencies in certain aspects of Omar's testimony which made me doubt his credibility and the veracity of his evidence. First, it was unlikely that the station diary would have referred to the Bundles being "cannabis" and "marijuana" unless Omar had told the CNB officers so. In addition to the entry in the station diary at 12.36am which referred to Omar admitting that the Bundles were "marijuana", another entry in the station diary at "0040" (*ie*, 12.40am) reads, "Eden [*ie*, SSgt Chong] put the 3 bundles of cannabis into the large tamper proof bag".[97] SSgt Chong explained that he used the word "cannabis" in the entry at 12.40am because Omar had used the word "marijuana", which was the "street lingo" for cannabis.[98] It was significant that at all material times, the Bundles were wrapped in newspaper and aluminium foil. This was confirmed by both Sgt Zuhaidi and SSgt Chong.[99] Thus, Sgt Zuhaidi and SSgt Chong could not have known for sure that the Bundles were cannabis, unless Omar had told them so. It was possible that Sgt Zuhaidi and SSgt Chong could have guessed the nature of the Bundles based on their experience as alleged by Omar. However, Omar could not explain why they would fabricate the statements to frame him with such a serious offence.[100]

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97 Exhibit P105.

98 Exhibit P105; NEs, 7 October 2020, p 60, lines 4–14, 23–25.

99 NEs, 7 October 2020, p 25, lines 21–24; p 29, lines 7–9; p 61, line 28 to p 62, line 23.

100 NEs, 8 October 2020, p 17, lines 6–13; p 31, line 22 to p 32, line 9.

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I found this highly unlikely and there was insufficient evidence to raise a reasonable doubt in the Prosecution's case in this regard. Sgt Zuhaidi and SSgt Chong were simply the officers on duty at the time. They were also not subsequently involved in the investigations.[101]

48 Secondly, the answer in the Contemporaneous Statement that Omar had consumed cannabis was something only Omar would know. The Contemporaneous Statement records that Sgt Zuhaidi had asked Omar, "Did you consumed [*sic*] any controlled drugs?" According to the Contemporaneous Statement, Omar's reply was, "Yes. I smoked 'Marijuana' during the time I met 'Din', in Johor Bahru. …"[102] However, at the time when the Contemporaneous Statement was recorded, Omar's urine had yet to be tested. As such, Sgt Zuhaidi could not have known whether Omar had or had not consumed any drugs.[103] Again, this suggests that such information had been provided to Sgt Zuhaidi by Omar himself as subsequently his urine tested positive for 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid which is a cannabinol derivative.[104] This directly contradicted Omar's claims that he made no such admission and that Sgt Zuhaidi had made up the Contemporaneous Statement of his own accord.

49 Thirdly, it was telling that Omar did not mention the Threat until much later when the Case for the Defence ("CFD") was filed.[105] This was despite the fact that he had multiple opportunities to do so. There was no mention of the

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101 AB 116, 123; NEs, 7 October 2020, p 35, lines 2–6; p 63, lines 5–11.

102 Exhibit P61.

103 NEs, 8 October 2020, p 18, lines 1–12.

104 SOAF, at para 32.

105 Exhibit P106, at p 4, para 2; NEs, 8 October 2020, p 35, lines 8–28.

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Threat in his Cautioned Statement or any of his long statements.[106] Instead, when he was asked during the recording of the Third Long Statement to explain the discrepancy between his Contemporaneous Statement and his long statements, his explanation was that he was "high" at the time he gave the Contemporaneous Statement. Specifically, Omar stated in the Third Long Statement, as follows:[107]

> I said that [the Bundles were marijuana] because I was not at [*sic*] the right state of mind. I was feeling high from the stick I had smoked with 'Din'. High to me is like being semi-conscious.

Neither did Omar inform Dr Amit Varma ("Dr Varma") of the Threat, despite seeing Dr Varma twice at about 2pm and 4.10pm on 12 July 2018 for medical examinations. That was the very same day as when the Threat was allegedly made.[108] Moreover, even in the CFD, Omar did not mention that Sgt Zuhaidi had thrown a pen at him. That aspect of the Threat was only raised in his oral testimony at the trial itself.[109]

50 When confronted at trial with his failure to mention the Threat earlier, Omar explained that this was because he did not trust IO Shamaani as IO Shamaani and Sgt Zuhaidi were both from the CNB.[110] As such, when giving his Third Long Statement, he had simply given "the most reasonable excuse" he could think of. In court, Omar clarified that this excuse was not actually true. At the time of the recording of the Contemporaneous Statement, he had not been so high that it affected his state of mind.[111]

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106 NEs, 8 October 2020, p 33, line 4–10; p 34, lines 10–19; AB 173, 193.

107 AB 193.

108 NEs, 8 October 2020, p 43, lines 4–8.

109 NEs, 8 October 2020, p 37, lines 2–7.

110 NEs, 8 October 2020, p 35, lines 29–31; p 39, line 28 to p 40, line 3.

111 NEs, 8 October 2020, p 37, line 8 to p 38, line 12.

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51 I was not persuaded by Omar's shifting explanation. By the time Omar's long statements were recorded, he had taken a diametrically different position from that set out in his prior statements, including the Contemporaneous Statement and the Cautioned Statement. Specifically, he denied that he knew that the Bundles contained cannabis, and he further denied that he had agreed to bring the Bundles into Singapore. Instead, he suggested that Din might have put the Bundles in the Car while he was in the toilet.[112] In these circumstances, there was no reason to withhold the additional explanation that he had been earlier coerced into giving the Contemporaneous Statement, or that the Third Oral Statement had not taken place. This is especially given that he was specifically asked for an explanation in that regard. He did not have to trust IO Shamaani in order to provide that explanation. Indeed, despite his alleged mistrust of IO Shamaani, he was nevertheless willing to tell IO Shamaani his defence in respect of the charge. Therefore, Omar's failure to mention the Threat until the CFD was filed suggested that it was merely an afterthought created by him to counter the incriminating effect of the Third Oral Statement and the Contemporaneous Statement.

52 For completeness, I should mention that although the Contemporaneous Statement was recorded in English, Omar is conversant in English and he understands the English language. His highest education level attained was the Singapore-Cambridge General Certificate of Education Ordinary Level.[113] In court, he had no problem reading and understanding the Contemporaneous Statement.

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112 AB 193–194.

113 AB 170.

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(3) Conclusion on the first ancillary hearing

53 For the above reasons, I found that the Prosecution had proven beyond a reasonable doubt that the Third Oral Statement had in fact been given, and that the Third Oral Statement and the Contemporaneous Statement were made voluntarily by Omar without threat, inducement or promise. No Threat had been made by Sgt Zuhaidi to Omar at any point in time. The oral and contemporaneous evidence adduced by the Prosecution was reliable and consistent. In contrast, Omar's case relied solely on his own testimony, which was inconsistent with the information recorded in the Contemporaneous Statement. The fact that Omar failed to mention the Threat until the CFD was filed further reinforced my conclusion that the Threat was a mere afterthought. Accordingly, I admitted the Third Oral Statement and the Contemporaneous Statement into evidence.

The second ancillary hearing

54 The second ancillary hearing was convened because Omar, during his cross-examination by the Prosecution on his Cautioned Statement, which he had earlier admitted was given by him voluntarily without any inducement, threat or promise, suddenly alleged to the surprise of the parties that he had given the Cautioned Statement under the influence of Sgt Zuhaidi's Threat. However, he said that there was no inducement, threat or promise from IO Shamaani who recorded his Cautioned Statement. Nevertheless, the court decided to conduct another ancillary hearing to ascertain the voluntariness of the Cautioned Statement.

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Omar's case

55 Omar explained that after the Contemporaneous Statement was recorded, he had expected that Yacob would be released given that he had complied with Sgt Zuhaidi's Threat. Specifically, he had admitted that the Bundles were cannabis and belonged to him. However, he saw that his father still had to undergo a urine test and that searches were conducted on his father's person and personal belongings. Hence, he was worried about his father and wanted his father to be released as soon as possible.[114] Thus, he alleged that he was still influenced by Sgt Zuhaidi's Threat that Yacob could be charged for drug importation as he was the driver and owner of the Car.[115] Therefore, he decided to "take the risk and come up with a story" so as to exonerate Yacob and ensure Yacob's release. He explained that he used the word "green" in the Cautioned Statement because he saw from a photograph of the Bundles that they contained something green in colour.[116]

56 Omar also claimed that when the Cautioned Statement was recorded, in addition to being in fear because of the Threat, he had also been unable to focus as he had not gotten any sleep since his arrest.[117] Omar alleged that prior to the recording of the Cautioned Statement, IO Shamaani did not check with him whether he was feeling fine.[118] He explained that he gave the Cautioned Statement because of the "combination of both" the Threat and his tiredness.[119]

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114 NEs, 14 October 2020, p 45, lines 3–23.

115 NEs, 14 October 2020, p 47, lines 9–24.

116 NEs, 14 October 2020, p 46, line 16 to p 47, line 1.

117 NEs, 13 October 2020, p 35, lines 13–16.

118 NEs, 14 October 2020, p 60, lines 13–19.

119 NEs, 14 October 2020, p 63, lines 1–5.

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The Prosecution's case

57 The Prosecution recalled Sgt Zuhaidi, Sgt Ridhuan and IO Shamaani to testify at the second ancillary hearing. Sgt Zuhaidi maintained that he did not throw a pen at Omar or threaten to charge both Omar and Yacob and send them both to hang if Omar did not confess to the charge.[120] Sgt Zuhaidi affirmed that he did not see Omar again after he recorded the Contemporaneous Statement and he had not been involved in the recording of the Cautioned Statement.[121] Similarly, Sgt Ridhuan maintained that he had not seen Sgt Zuhaidi throwing a pen at Omar or issuing the Threat to Omar.[122]

58 IO Shamaani testified that prior to the recording of the Cautioned Statement, she had confirmed with Omar that he was feeling fine to give his statement.[123] Furthermore, although Omar looked tired, he was calm, responsive to questions, and appeared to be aware of the charge and the surrounding circumstances. When asked what he wished to state regarding the charge, he informed IO Shamaani of the relevant details and did not appear to have difficulty recalling what had happened.[124] After the Cautioned Statement was read back to him, he confirmed the statement and declined to make any amendments.[125] IO Shamaani testified that Omar did not mention the Threat to

120 NEs, 14 October 2020, p 3, line 23 to p 4, line 6.

121 NEs, 14 October 2020, p 3, lines 16–19; p 4, lines 11–13.

122 NEs, 14 October 2020, p 26, lines 13–26.

123 NEs, 14 October 2020, p 36, lines 25–29.

124 NEs, 14 October 2020, p 37, line 2 to p 38, line 9; p 41, lines 12–22.

125 NEs, 14 October 2020, p 38, lines 13–21.

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her at any point in time, nor did he tell her that he was too tired to give the Cautioned Statement.[126]

59 The Prosecution also called SSgt Mohammad Adli bin Mohamed Nawar ("SSgt Adli"), who had escorted Omar on 12 July 2018. SSgt Adli testified that between 3am (the time of his arrival) and 4.25am (the time when a strip search was carried out), Omar had been resting on a chair in the CNB office at Woodlands Checkpoint.[127] Between 5.15am (the time the urine procurement and sealing of the urine sample concluded) and 7.30am (the time Omar left Woodlands Checkpoint), Omar was similarly resting.[128] Although SSgt Adli could not recall if Omar had been provided with breakfast,[129] he testified that the normal practice was for officers to buy food for the accused person in long operations such as the one on 12 July 2018.[130] SSgt Adli testified that during the time he accompanied Omar (which was from about 3am to sometime after 4.10pm on 12 July 2018), Omar appeared fine and there was nothing significant about his demeanour. Neither did he mention that any threat had been made to him.[131]

60 Finally, the Prosecution also recalled Dr Varma, who had conducted two medical examinations of Omar on 12 July 2018. The first medical examination took place at about 2pm on 12 July 2018, prior to the recording of the Cautioned Statement. Dr Varma's medical case notes indicated, "Pt alert", meaning Omar

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126 NEs, 14 October 2020, p 38, lines 22–30.

127 NEs, 14 October 2020, p 32, line 28 to p 33, line 13.

128 NEs, 14 October 2020, p 33, lines 25–27.

129 NEs, 14 October 2020, p 35, lines 3–6.

130 NEs, 14 October 2020, p 34, lines 1–8.

131 NEs, 14 October 2020, p 34, lines 9–21.

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was alert, and "Conversant – denies any medical issues or injuries".[132] Dr Varma explained that he had reached this conclusion based on Omar's general demeanour and the fact that Omar had been able to appropriately answer questions regarding where he was, his identity, and whether he had sustained any injuries or had any medical issues or conditions. In relation to the last question in particular, Dr Varma testified that Omar had confirmed that he did not have any injuries, medical issues or conditions.[133]

61 The second medical examination took place at about 4.10pm the same day, after the recording of the Cautioned Statement. Dr Varma's medical case notes indicated, "Alert and cooperative with examinations" and "Denies any injuries/medical issues".[134] Dr Varma explained that he reached his conclusion as Omar had again denied having any physical injuries and/or medical conditions and was able to answer questions appropriately and rationally. He was also cooperative with the physical examination.[135] At no point during the medical examinations did Omar mention the Threat to Dr Varma.[136] Neither did Omar mention to Dr Varma that he was too tired to give a statement, despite Dr Varma having asked him several times "whether he was okay".[137]

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132 Exhibit P107; NEs, 14 October 2020, p 17, lines 6–7.

133 NEs, 14 October 2020, p 17, lines 9–28.

134 Exhibit P108.

135 NEs, 14 October 2020, p 19, lines 18–25; p 20, lines 5–11.

136 NEs, 14 October 2020, p 18, lines 1–7; p 19, lines 26–29.

137 NEs, 14 October 2020, p 21, lines 2–7.

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My decision on the admissibility of the Cautioned Statement

62 In my view, the Prosecution had proven beyond a reasonable doubt that the Cautioned Statement had been made by Omar voluntarily, without threat, inducement or promise.

(1) Omar's allegation regarding the Threat

63 I shall turn first to Omar's allegation regarding the Threat issued by Sgt Zuhaidi. In this regard, Omar's case was essentially the same as in the first ancillary hearing – Sgt Zuhaidi's Threat continued to operate on his mind when he gave his Cautioned Statement. However, I had already found in the first ancillary hearing that no Threat had been made by Sgt Zuhaidi to Omar at any point in time (see [53] above). This completely undermined Omar's case in the second ancillary hearing that he continued to be affected by the Threat when giving his Cautioned Statement.

64 Furthermore, Omar's claim that the Threat affected the Cautioned Statement was made at an extremely belated stage, even more so than for the Third Oral Statement and the Contemporaneous Statement. As with the Third Oral Statement and the Contemporaneous Statement, the effect of the alleged Threat on the Cautioned Statement was not mentioned in Omar's long statements.[138] Moreover, it was also not mentioned in the CFD. The CFD merely stated that the Cautioned Statement "contains several inaccuracies" and that Omar would be "challenging the contents of" the Cautioned Statement.[139] The claim that the Threat affected the Cautioned Statement was not even raised at

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138 NEs, 14 October 2020, p 67, lines 1–30.

139 Exhibit P106, at p 4, para 3; NEs, 14 October 2020, p 78, lines 3–8.

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the first ancillary hearing, where the issue of the Threat was thoroughly canvassed. It was only raised by Omar in the middle of his cross-examination during the Defence's case.[140] All of this suggested that the link he made between the Threat and the Cautioned Statement was, as with the Threat itself, a mere afterthought and fabricated by him as he was not able to explain the incriminating statement he gave in the Cautioned Statement.

65 Finally, I shall address Omar's counsel's reliance on *Mohamed Ansari* to support Omar's case. In *Mohamed Ansari*, Chan Seng Onn J found that the Prosecution failed to prove beyond a reasonable doubt that four statements given by the accused had been made voluntarily. Chan J found that the accused managed to raise a reasonable doubt that those statements had been given in order to protect his girlfriend, pursuant to several inducements from the CNB officers. Omar's counsel submitted that the facts in *Mohamed Ansari* were similar to the facts in the present case and that the inducement was even stronger in this case given that the relationship between Omar and Yacob was that of a father and son.[141] However, the inquiry of voluntariness is highly fact-specific. The critical difference between *Mohamed Ansari* and the present case is that in *Mohamed Ansari*, Chan J had found that the accused had raised a reasonable doubt in the Prosecution's case that the inducements had not been made (see *Mohamed Ansari* at [37] and [50]). This was based, *inter alia*, on an assessment that the accused's evidence was more credible and that the recording officers' accounts were "hard to believe" (see *Mohamed Ansari* at [38]) and "oscillating" and "not credible" (see *Mohamed Ansari* at [52]). This was not the case here. No reasonable doubt was raised by Omar in the Prosecution's case that the

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140 NEs, 14 October 2020, p 55, lines 18–28.

141 NEs, 14 October 2020, p 69, lines 6–27.

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Threat had not been made. The evidence of the Prosecution's witnesses was credible and consistent. It was Omar's evidence which I found to be lacking credibility and unbelievable. Hence, *Mohamed Ansari* was of little assistance to Omar in the present case.

66 Therefore, I rejected Omar's testimony that the Threat had been made and that he had been influenced by the Threat in giving his Cautioned Statement.

(2) Omar's allegation that he was tired

67 I turn now to Omar's claim that he gave his Cautioned Statement because he was tired and had not gotten sufficient rest. He did not mention this in his examination-in-chief during the second ancillary hearing, but he had raised it previously in the main trial when he was cross-examined on it by the Prosecution in the second ancillary hearing.

68 Omar's claim regarding being tired was essentially a claim of oppression. In this regard, Explanation 1 to s 258 of the CPC states that:

> If a statement is obtained from an accused by a person in authority who had acted in such a manner that *his acts tend to sap and have in fact sapped the free will of the maker of the statement*, and the court is of the opinion that such acts gave the accused grounds which would appear to the accused reasonable for supposing that by making the statement, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, such acts will amount to a threat, an inducement or a promise, as the case may be, which will render the statement inadmissible. [emphasis added]

69 The Court of Appeal explained the test for oppression in *Chai Chien Wei Kelvin* at [56] and [57] as follows:

> 56 Oppression is a circumstance which may render a confession involuntary and thus inadmissible, and whether the accused has been subjected to oppression is a question of fact:

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> *Seow Choon Meng v PP* ([53]) *supra*). In *R v Priestly* (1967) 51 Cr App R 1, Sachs LJ, as he then was, said:
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> > [T]his word [oppression] … imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary. … Whether or not there is oppression in an individual case depends upon many elements. … They include such things as the length of time of any individual period of questioning, the length of time intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world.
>
> 57 In other words, a statement would not be extracted by oppression unless the accused was in such a state that his will was 'sapped' and he could not resist making a statement which he would otherwise not have made: *PP v Tan Boon Tat* [1990] 1 SLR(R) 287.

70 At the end of the second ancillary hearing, I was not convinced by Omar's claim that his tiredness was to such an extent that his giving of the Cautioned Statement was involuntary.

71 Omar's claim was not borne out on the evidence. Based on the passage from *Chai Chien Wei Kelvin* at [57] cited above, the threshold for a finding of oppression is a relatively high one. However, this does not shift the burden of proof which is always on the Prosecution to satisfy the court beyond a reasonable doubt that Omar gave his Cautioned Statement voluntarily without inducement, threat or promise. For oppression to be shown, it requires that the accused "was in such a state that his will was 'sapped'". This was by no means the case here. Omar himself admitted that he was not involved in any investigation-related activities between 2.32am and 4.25am, as well as between 5am and 7.30am. During these times, he had been sitting down on a chair in the

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CNB office, waiting for the investigation to proceed.[142] This was supported by the evidence of SSgt Adli and the entries in the station diary.[143] I also accepted SSgt Adli's testimony that Omar would probably have been given breakfast during this time.[144] Omar did not complain that he was not given food and drink. Although Omar was handcuffed and may have experienced some discomfort,[145] this was insufficient in itself to justify a finding of oppression. Taking all these circumstances in their totality, I do not find that they could have caused Omar to be in such a state that his will was "sapped" and he could not resist giving the Cautioned Statement.

72 This finding regarding Omar's state of mind at the time he gave his Cautioned Statement is supported by the evidence of SSgt Adli, Dr Varma and IO Shamaani, who each testified that when they met Omar at various times on 12 July 2018, he appeared fine. In relation to Dr Varma and IO Shamaani in particular, both of them agreed that Omar was responsive, cognisant of his surroundings and fit to give a statement. In this regard, I did not place significant weight on the fact that Dr Varma's medical examination was primarily a physical examination and did not pertain specifically to Omar's mental state. As Dr Varma explained, he assessed Omar's mental state using "surrogates for examining the mental capacity as well as the mental state of the patient", specifically, Omar's alertness, cooperation, whether Omar was agitated or resisted physical examination, and whether Omar was verbally aggressive

142 NEs, 14 October 2020, p 58, lines 12–16; p 59, lines 22–28.

143 Exhibit P105.1; NEs, 14 October 2020, p 32, line 28 to p 33, line 13; p 33, lines 25–27.

144 NEs, 14 October 2020, p 34, lines 1–8.

145 NEs, 14 October 2020, p 58, lines 17–19; p 59, line 29 to p 60, line 4.

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towards the doctor or the police officers.[146] Furthermore, although IO Shamaani and Dr Varma acknowledged that Omar may have been tired or anxious,[147] this was again insufficient to amount to oppression *per se*. The evidence did not show that Omar's feelings of tiredness and/or anxiety were to such an extent that his will was "sapped" and he could not resist giving the Cautioned Statement.

73 Furthermore, I also considered that this allegation of being tired was raised at an extremely belated stage of the proceedings. As with Omar's allegation regarding the Threat and its effect on the Cautioned Statement, this claim of being tired was only raised by Omar during his cross-examination by the Prosecution in the main trial.[148] He did not raise it in any of his statements or mention it to Dr Varma during both medical examinations.[149] Neither did he mention this in his CFD, or even in his examination-in-chief at the main trial. He only brought up this claim when confronted in cross-examination with the inculpatory admission contained in his Cautioned Statement. He was trying to wriggle out of that tight situation and was unable to explain his admission in the Cautioned Statement, so he suddenly sprang a surprise and alleged that the Cautioned Statement had been involuntarily given. This suggested that his claim of being tired was simply not true and an afterthought.

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146 NEs, 14 October 2020, p 23, lines 13–25.

147 NEs, 14 October 2020, p 21, lines 12–13; p 37, line 8.

148 NEs, 14 October 2020, p 56, lines 9–13.

149 NEs, 14 October 2020, p 61, line 1 to p 62, line 19.

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(3) Conclusion on the second ancillary hearing

74 For the above reasons, I found that the Prosecution had proven beyond a reasonable doubt that the Cautioned Statement had been given by Omar voluntarily, without inducement, threat or promise. I had already rejected Omar's evidence regarding the Threat in the first ancillary hearing, and I similarly rejected his evidence regarding the extent of his tiredness and its effect on the voluntariness of his Cautioned Statement. None of these allegations were borne out by the evidence, and were raised at an extremely late stage of the proceedings. In my view, all of these allegations were fabricated and untrue. Accordingly, I continued to allow the Cautioned Statement to be admitted as evidence.

My decision

The applicable law and presumptions

75 I shall deal now with Omar's charge of importation of cannabis. The elements of a charge under s 7 of the MDA for importation into Singapore of a controlled drug are as follows (see the Court of Appeal's decision in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [27]; *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 ("*Beh Chew Boo*") at [54]):[150]

(a) the accused person was in possession of the drugs;

(b) the accused person had knowledge of the nature of the drugs; and

150 PCS, at para 7.

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(c) the drugs were intentionally brought into Singapore without prior authorisation.

76 The first element of possession requires both physical possession of the drugs and knowledge of the existence of the thing in question that turns out to be a drug.[151] However, it is not necessary to show that the accused knew that the thing was in fact a controlled drug in order to establish the first element of possession (see *Adili* at [31]).

77 Sections 18(1)(*a*) and 18(2) of the MDA set out two presumptions which are applicable in this case:

> **18.**–(1) Any person who is proved to have had in his possession or custody or under his control –
>
> (*a*) anything containing a controlled drug;
>
> …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

78 Here, the Bundles were found in Omar's Bag which he had placed in the boot of the Car together with the many grocery bags. Furthermore, as shall be explained at [121] below, it is clear from Omar's First Oral Statement to Cpl Loo that he knew of the presence of the three Bundles in the Bag. Therefore, the Bundles were in his possession or custody or under his control within the meaning of s 18(1)(*a*). Since Omar is presumed under s 18(1)(*a*) to have been

151 PCS, at para 7.

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in possession of the Bundles, the presumption under s 18(2) also applies. Hence, the presumptions in both ss 18(1)(*a*) and 18(2) of the MDA apply.

79 It should be noted that the Prosecution is not contending that Omar was *wilfully blind* to the presence of the Bundles. Thus, the presumption in s 18(1) is applicable (see *Adili* at [71]). Similarly, there is no suggestion that Omar was wilfully blind to the nature of the Bundles.[152] Therefore, s 18(2) is also applicable (see *Gobi a/l Avedian v Public Prosecutor* [2020] SGCA 102 at [56]). Omar may rebut these presumptions by showing that he did not actually know that the Bundles were in his possession and that he did not actually know the nature of the Bundles.

80 Having set out the applicable law and presumptions, I turn now to the facts of the case proper. In my analysis, I shall first deal with the preliminary issue of whether the Second Oral Statement had been given by Omar. Following that, I shall consider the other evidence in this case to determine whether the elements of the importation charge against Omar have been established by the Prosecution beyond a reasonable doubt.

Whether the Second Oral Statement had been given

81 The preliminary issue is whether Omar had given the Second Oral Statement. According to Sgt Faliq, the relevant events took place as follows:[153]

> Thereafter, I questioned Omar, who was seated at the front passenger seat with the Car windows wound down, in Malay about the contents of the Bundles. Omar replied in English that the Bundles were 'herbs'. I questioned him again in Malay about the contents of the Bundles and asked him to be honest. Omar

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152 Prosecution's Reply Submissions ("PRS"), at paras 4–6.

153 AB 112; NEs, 6 October 2020, p 75, line 28 to p 76, line 7.

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> replied in Malay that it was 'barang itu', which I understood to mean 'that thing' in English. I asked him in Malay what 'thing' he was referring to. He replied in English that it was cannabis. Acting under my direction, Omar then alighted from the Car. Thereafter, with the assistance of Sergeant Muhammad Ridhuan Bin Abdol Mutalib, I placed Omar under arrest.

Sgt Faliq explained that the reason why he arrested Omar was because he "suspected [Omar] of narcotics", given Omar's statement to him.[154] Sgt Faliq emphasised that Omar had used the specific English word "cannabis".[155] Sgt Faliq also stated that he did not threaten to slap Omar.[156]

82 In contrast, Omar testified that when Sgt Faliq asked him what was in the rear of the Car, he replied that he did not know. Sgt Faliq then instructed him and Yacob to step out of the Car, and handcuffed Omar and Yacob. After that, Sgt Faliq brought Omar and Yacob to the rear of the Car and showed Omar the Bundles. Sgt Faliq raised his hand towards Omar and told Omar, "If you don't admit that this item belong[s] to you, I will slap you."[157] Omar maintained that throughout this time, he did not admit that he knew the Bundles were cannabis, nor did he use the specific word "cannabis".[158]

83 Having considered the evidence, I accept Sgt Faliq's testimony and find that the Second Oral Statement had in fact been given by Omar. First, Sgt Faliq's evidence was supported by the evidence of those nearby, specifically, Sgt Ridhuan and Yacob. It was not disputed that Sgt Ridhuan was

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154 NEs, 6 October 2020, p 77, lines 5–15.

155 NEs, 6 October 2020, p 91, lines 28–31.

156 NEs, 6 October 2020, p 94, lines 13–16, 25–27.

157 NEs, 7 October 2020, p 89, lines 8–26.

158 NEs, 7 October 2020, p 89, lines 16–20.

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present at all material times, including when Sgt Faliq was placing Omar under arrest.[159] Sgt Ridhuan confirmed that while Sgt Faliq and Omar were at the rear of the Car, Sgt Faliq did not raise his hand and threaten to slap Omar.[160] As I noted above at [42], I found Sgt Ridhuan to be an honest and credible witness. Furthermore, Sgt Ridhuan explained that he had assisted in arresting Omar as Sgt Faliq had told him that Omar had pleaded guilty to a drug-related offence.[161] This corroborates Sgt Faliq's account that Omar had admitted to him that the Bundles were cannabis.[162]

84 Sgt Faliq's testimony is also supported by Yacob's statement which was recorded by IO Shamaani at 6.04pm on 12 July 2018.[163] According to Omar, Yacob had been standing beside Sgt Ridhuan, near the petrol tank on the right side of the Car.[164] However, there was no mention in Yacob's statement to the CNB that Yacob had seen Sgt Faliq raise his hand against Omar. Yacob confirmed that the statement had been given by him voluntarily, and that the contents of the statement were true and accurate to his knowledge.[165] When asked about Omar's claim that Sgt Faliq had raised his hand and threatened to slap Omar, Yacob's evidence was as follows:[166]

> Q: Okay. Mr Yacob, if this did happen –
>
> Court: What did happen?

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159 NEs, 7 October 2020, p 89, lines 14–15; p 90, lines 11–15; AB 112, 114.

160 NEs, 7 October 2020, p 80, lines 17–20; PCS, at para 13(d).

161 NEs, 7 October 2020, p 73, line 4 to p 74, line 2.

162 PCS, at para 13(c).

163 PCS, at para 13(d).

164 NEs, 7 October 2020, p 90, line 23 to p 91, line 5.

165 NEs, 14 October 2020, p 99, lines 24–28.

166 NEs, 14 October 2020, p 106, lines 2–16.

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> Q: – law enforcement officer raising [his] hand against Mr Omar, looking like he was going to slap Mr Omar, and you saw it, you would have raised this in your statement.
>
> A: Of course.
>
> Q: And you agree you did not raise it in the statement anywhere here?
>
> A: Because I didn't see it.
>
> …
>
> Q: And if you did hear this officer threatening to slap Mr Omar, you would have mentioned it in the statement.
>
> A: Yes, for sure.

It bears noting that Yacob's statement was recorded the very same evening that Omar and Yacob were arrested. The events surrounding their arrest should have been fresh in Yacob's mind at the time. It also bears emphasis that Yacob is Omar's father – if he had seen Sgt Faliq threaten to slap Omar, there would have been no reason at all for him to conceal this. Therefore, the fact that Yacob did not mention Sgt Faliq raising his hand against Omar or otherwise threatening to slap Omar suggests that such a threat did not take place.

85 Secondly, Sgt Faliq's account of the relevant events is also supported by IO Shamaani's testimony. As I explained at [45] above, IO Shamaani had viewed the CCTV footage of the events that occurred from the time of Omar's arrest. She did not see anything remarkable, nor did Omar make any allegation regarding Sgt Faliq or the Second Oral Statement. Therefore, she did not retrieve the CCTV footage at the relevant time. IO Shamaani's testimony clearly

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refutes Omar's testimony in court that Sgt Faliq's threat to slap him would have been captured on the CCTV footage.[167]

86 Thirdly, not only was Sgt Faliq's account corroborated by Sgt Ridhuan, Yacob and IO Shamaani, Sgt Faliq also could not have known that the Bundles contained cannabis unless Omar told him so.[168] At the time Sgt Faliq spoke to Omar, neither Sgt Faliq nor Cpl Loo had ascertained the exact nature of the Bundles. Cpl Loo only told Sgt Faliq that he suspected the Bundles to contain narcotics; he did not specify that the Bundles were cannabis.[169] In fact, Cpl Loo himself could not have known that the Bundles contained cannabis. Prior to the Second Oral Statement, only Cpl Loo had spoken to Omar during the recording of the First Oral Statement. In the First Oral Statement, Omar merely described the Bundles as "plants for herbs" and "medicine". Cpl Loo did not inquire further into the contents of the Bundles.[170] Moreover, although Sgt Faliq suspected that the Bundles contained narcotics,[171] he could not have been sure of their exact nature as they were wrapped in several layers of plastic cling film, aluminium foil and newspaper at the time.[172] As with Sgt Zuhaidi and SSgt Chong, while Sgt Faliq might have guessed that the Bundles were cannabis and fabricated the Second Oral Statement, as alleged by Omar, this was highly unlikely. Sgt Faliq was an ICA officer and he handed over the matter to the CNB after Sgt Zuhaidi and SSgt Chong arrived at the scene.[173] There was

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167 NEs, 8 October 2020, p 30, lines 14–15; 13 October 2020, p 14, lines 14–17.

168 PCS, at para 13(b).

169 NEs, 6 October 2020, p 89, line 28 to p 90, line 10; p 99, lines 4–15.

170 AB 108–109; NEs, 6 October 2020, p 55, line 26 to p 56, line 12.

171 NEs, 6 October 2020, p 77, lines 5–15.

172 NEs, 6 October 2020, p 74, line 14 to p 75, line 27.

173 AB 112–113; NEs, 6 October 2020, p 77, lines 25–29.

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no reason why he would fabricate his evidence regarding the Second Oral Statement. Therefore, the only plausible explanation for Sgt Faliq knowing that the Bundles were cannabis was that Omar had told him so, as per the Second Oral Statement.

87 In contrast, Omar's case relied solely on his own testimony. He did not adduce any other evidence to support his contention that Sgt Faliq had threatened to slap him, and that he had not made the Second Oral Statement. However, I did not find Omar a particularly credible witness. This was especially given my rejection of Omar's allegations that Sgt Zuhaidi threw a pen at him and issued the Threat to him (see [53] above). Here, he was making a similar allegation that Sgt Faliq had threatened to slap him if he did not admit that the Bundles belonged to him. Given his willingness to lie freely in court regarding the events surrounding the Third Oral Statement, the Contemporaneous Statement and the Cautioned Statement, it was evident that he had similarly lied when it came to the Second Oral Statement to avoid its incriminating effect. Furthermore, this allegation regarding Sgt Faliq surfaced only in Omar's testimony in court.[174] As with the Third Oral Statement, the Contemporaneous Statement and the Cautioned Statement, Omar had multiple opportunities to raise the alleged threat made by Sgt Faliq. However, he did not do so. This suggests that such an allegation was fabricated and merely an afterthought. Hence, his testimony has to be treated with extreme caution. Given that he could not produce any other evidence supporting his case, I am not inclined to accept his testimony at face value, especially when weighed against the other evidence adduced by the Prosecution.

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174 NEs, 13 October 2020, p 16, line 30 to p 17, line 3.

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88 Therefore, I find that Omar had made the Second Oral Statement to Sgt Faliq, and that Sgt Faliq did not at any point in time threaten to slap Omar if he did not admit that the Bundles belonged to him.

The messages on the Phones

89 I shall turn now to the other evidence before the court. In support of its case, the Prosecution relies on certain messages exchanged between Omar and Jay between 10 July 2018 and 11 July 2018. The messages were recovered from the Phones, which Omar admits belonged to him and were used exclusively by him.[175] The messages are as follows:[176]

Date/Time	From	To	Message (translated)
10 July 2018 9.18pm	Jay	Omar	Peace be upon you..Babe tomorrow still coming..if **ente(?)** entering JB **ana(?)** want to *standby* **ente(?)** thing ..i want to co[n]firm with **ana(?)** friend.
10 July 2018 9.21pm	Omar	Jay	Greetings, happening babe. Want to order 3 We meet at Wadi Hana mosque after Isha **Shukran(?)** babe
10 July 2018 9.21pm	Jay	Omar	Alright babe
11 July 2018 6.10pm	Jay	Omar	Peace be upon you.. babe the thing is available with **ana(?)..**later you already enter JB, sms **ana(?)**

175 SOAF, at para 9.

176 Exhibit P98T.1, at pp 1–2; Exhibit P99T.

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11 July 2018 6.27pm	Omar	Jay	**Ana(?)** just enter babe…now *on the way* to Wadi Hana mosque… **ana(?) dinsana(?)** until night.
11 July 2018 6.28pm	Jay	Omar	*Ok* babe..later when **ana(?)** has arrived there, **ana(?)** cal
11 July 2018 8.41pm	Jay	Omar	Babe **ana(?)** has arrived in front of the mosque..where to meet..once **ente(?)** is *ok*, *cal* **ana(?)**
11 July 2018 9.04pm	Omar	Jay	A moment babe. **Ana(?)** go and take the car from upstairs for a while.
11 July 2018 9.04pm	Jay	Omar	*Ok* babe..**ana(?)** is at the road side below the bridge.
11 July 2018 9.04pm	Jay	Omar	Babe..**ana(?)** is at the road side, below the bridge..a bit to the front of the mosque.

90 Omar explained in his Fifth Long Statement that "*ana*" is an Arabic term referring to "me".[177] This was confirmed by Mr Mohammad Faiz bin Mohammad Isa ("Mr Faiz"), the CNB translator who translated the messages.[178] Mr Faiz explained that the translations of the messages referring to "thing" were derived from the Malay word "*barang*". Although the literal meaning of "*barang*" is "thing", it is often used by those involved in illegal drug activities as a slang to refer to "drugs". This generic term is often used in order to conceal

177 AB 197.

178 NEs, 9 October 2020, p 22, lines 28–30.

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the true nature of the transaction.[179] This was similarly observed by the Court of Appeal in *Beh Chew Boo* at [59], as follows:[180]

> … [I]f the transaction involves doing something that is illegal, the messages are likely to be coded or would use jargon the meaning of which only the persons involved could understand. The MDA cases before the courts contained ample instances where drugs are referred to in messages or conversations simply as 'things' or 'barang' in the Malay language.

91 Mr Faiz also testified in court regarding the following terms which he had not translated from the messages in his report:

(a) In relation to the word "*dinsana*", this was likely a typographical error. Omar could have meant to type "*disana*", which means "will be there".[181]

(b) The word "*shukran*" could be an Arabic term for "thank you".[182]

(c) The word "*ente*" could be an Arabic term for "you".[183]

92 The Prosecution submits that based on the above, the messages show that Omar had ordered the three Bundles from Jay on 10 July 2018.[184] Furthermore, Omar and Jay had arranged to meet at the Mosque on 11 July 2018, which they did. These suggest that Omar knew the nature of the Bundles and intentionally brought them into Singapore.

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179 NEs, 9 October 2020, p 24, lines 15–32; PCS, at para 36(b).

180 PCS, at para 37.

181 NEs, 9 October 2020, p 23, lines 13–25.

182 NEs, 9 October 2020, p 23, lines 26–28.

183 NEs, 9 October 2020, p 23, lines 29–32.

184 PCS, at para 36.

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93 This deeply incriminating evidence is denied by Omar. The existence of these phone messages cannot be disputed. Read in their totality, they destroy Omar's entire defence to smithereens, specifically, Omar's claims regarding Din and Latif whom he alleged had placed the Bundles in his Bag despite his refusal to bring them into Singapore. Thus, Omar had to convincingly explain the phone messages. He said that Jay was his Malaysian supplier for textiles and cloths. Jay was also his distant relative, whom he had been introduced to by his cousin, Isa bin Paiman ("Isa").[185] In his Fifth Long Statement, when IO Shamaani confronted Omar with the phone messages, he explained that he had arranged to meet Jay outside the Mosque to look at *sarong* designs. In this context, the message "Want to order 3" referred to Omar wanting to order three *sarong* designs. When Omar and Jay met on 11 July 2018, Omar did not buy anything as he did not like any of the designs.[186] In his testimony in court, Omar had another explanation regarding these phone messages. He claimed that "3" referred to three *kodi*, a unit of measurement for cloth – one *kodi* refers to 20 pieces of cloth. I shall deal with these critical discrepancies in his explanation below.

94 Having considered the evidence and the parties' submissions, I find that the messages exchanged between Omar and Jay pertained to the order and collection of drugs by Omar from Jay, specifically, the three Bundles. Two aspects of the messages are particularly revealing. First, Omar sent Jay a message that he "[w]ant[ed] to order 3" and Jay replied that "the thing is available". It is clear from these messages that Omar had ordered three Bundles from Jay, and that they had arranged to meet in person for Omar to collect the

185 NEs, 9 October 2020, p 83, lines 10–19; 13 October 2020, p 2, line 28 to p 3, line 6.

186 AB 197.

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said Bundles from Jay. Secondly, the use of the word "*barang*" – a commonly-used slang to refer to drugs – suggests that the conversation was one pertaining to drugs, which Jay and Omar wished to conceal by the use of the word "*barang*".[187] Finally, the specific reference to "3" corresponds with the number of Bundles that were recovered from the Bag.[188] Taken together, therefore, the messages show that Omar had pre-ordered the Bundles from Jay on 10 July 2018 for collection on 11 July 2018. The implication of this is that Omar knew the nature of the Bundles, since he had been the one to order them.

95 In this regard, I do not believe Omar's explanation that Jay was his textile supplier and that the messages pertained to an order for *sarongs* or *kodi*. Furthermore, Omar's account regarding Jay was contradictory and raised in circumstances suggesting that it was another fabrication and an afterthought. I shall address each of these reasons in turn.

Omar's explanation regarding Jay rests solely on his own testimony

96 First, Omar's explanation about Jay rests entirely on his own testimony. Omar claimed that Jay is his distant relative. However, Yacob testified he did not know anything about Jay although he said that Isa is his wife's nephew staying in Johor Bahru.[189] Thus, Yacob did not support Omar's claim that Jay is a distant relative.

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187 PCS, at para 36(b).

188 PCS, at para 36(a).

189 NEs, 14 October 2020, p 93, lines 7–18, p 108, lines 8–12; PCS, at para 39(b).

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97 Furthermore, Omar was not able to provide any evidence to prove that he had ever bought textiles from Jay.[190] His explanation for this was that he wanted to avoid paying tax – if he had receipts of his purchases of textiles from Jay, and such receipts were discovered by the authorities, he would have to pay tax.[191] This explanation is highly unsatisfactory. Receipts are not the only documentary evidence available to show that Omar had past transactions with Jay. If there were prior textile-related transactions between Omar and Jay, why did the phone messages not have a single iota of evidence to suggest this? Instead the phone messages contained only messages ostensibly relating to illegal drug transactions.

98 If the story about Jay's phone messages and his textile business with Omar was indeed true, this would have been crucial to Omar's innocence. Why then did Omar not call Jay to the stand to testify in support of his case? At the time of the investigations, Omar also failed to provide any information to the CNB to assist them in finding Jay.[192] This was although, according to Omar, Jay was his distant relative and could be found. In fact, Omar claimed in his testimony in court that although he did not know Jay's address, he knew how to get to Jay's house.[193] If that was truly the case, one would expect Omar to have been much more forthcoming with this information, as it could potentially exonerate him. However, Omar claimed that since he was in remand, he was unable to secure Jay as his witness. But he could have sought Yacob's assistance or provided information to the CNB to enable them to locate Jay. However, this

190 NEs, 9 October 2020, p 94, lines 8–10.

191 NEs, 14 October 2020, p 87, lines 6–12.

192 NEs, 9 October 2020, p 86, lines 3–17.

193 NEs, 13 October 2020, p 4, line 29 to p 5, line 9.

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was not the case here. Yacob did not even know Jay, a purported distant relative. Therefore, Omar's story about Jay and the textile business on 11 July 2018 seriously lacks credibility.

99 In this regard, Omar's counsel submitted that the Prosecution's interpretation of the messages (see [92] above) should not be adopted as the *Prosecution* did not call Jay to testify and confirm the said interpretation.[194] However, I do not find that this is fatal to the Prosecution's case. The interpretation contended by the Prosecution is supported by the contents of the messages themselves, as well as the fact that Omar knew the nature of the Bundles before they were opened (as I shall elaborate below). Furthermore, I observe that although the Prosecution did not call Jay to testify as a witness at the trial, it was not for lack of trying. As I shall elaborate at [108] below, the Prosecution attempted several times to locate Jay, but to no avail. In this regard, the Court of Appeal's observations in *Beh Chew Boo* at [72] are apposite – the Prosecution does not have a "duty to locate and to call witnesses to rebut wild or unsubstantiated allegations".

Omar's explanation regarding Jay was not borne out by the evidence

100 Secondly, Omar's explanation regarding Jay and the messages is not borne out by the messages themselves. There is no mention in any of the messages between Omar and Jay of "*sarong*", fabric, or cloth, or any textile-related terms for that matter.[195] Instead, as I have observed above, the messages refer cryptically to "*barang*".

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194 DCS, at para 7.

195 NEs, 9 October 2020, p 98, lines 20–22.

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101 Omar's explanation for this is that there was no need to mention cloth or *sarong* as Jay was his supplier for textiles and had been selling him textiles for a while. As such, Jay would "know [his] usual order" and "*barang*" was simply "a general word referring to the cloth or textile that [Jay was] selling".[196] I do not find this explanation persuasive.

102 In this regard, it is pertinent to note another incident on 6 July 2018 when Omar and one "Wardah" arranged to go to Johor Bahru to buy cloth. In this instance, it is particularly telling that in the text messages exchanged between Omar and Wardah, they discussed going to Johor Bahru to buy cloth and Omar specifically used the word "*kain*", meaning "cloth".[197] This is in stark contrast to the use of "*barang*" by Jay and Omar. There was no reason why Omar and Jay would use the general word "*barang*" in their messages when they could simply have referred to "*kain*" or "*sarong*".[198]

103 Furthermore, Omar's evidence is that he did not have any specific *sarong* design or fabric in mind when he met Jay on 11 July 2018. He only wanted to browse through the designs that Jay had available. When shown the designs by Jay, he did not like any of them and hence, he did not buy anything. That was the reason why, when he was arrested on 12 July 2018, he did not have any *sarongs* in his possession.[199] However, this is at odds with Omar's own evidence that based on his message "Want to order 3", he had ordered some items from Jay on 10 July 2018.[200] Similarly, he stated in his Fifth Long

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196 NEs, 9 October 2020, p 99, lines 6–10.

197 Exhibit P98T.2; NEs, 9 October 2020, p 96, lines 2–6.

198 PCS, at para 39(e).

199 NEs, 9 October 2020, p 97, line 16 to p 98, line 1.

200 NEs, 9 October 2020, p 98, lines 8–14; PCS, at para 39(d).

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Statement that this message "was [him] ordering the designs from Jay".[201] This plainly contradicts his evidence that he only wanted to browse through Jay's *sarong* designs and did not buy any *sarongs* in the end. Instead, the fact that no *sarongs* were found in his possession undermines his claim that the items he had ordered from Jay were *sarongs*. The logical conclusion, therefore, is that the items he had ordered from Jay were the Bundles that were recovered from the Bag.

Inconsistencies in Omar's evidence and his failure to mention Jay

104 Thirdly, there were significant inconsistencies and contradictions in Omar's evidence, which made me doubt even further the truth of his testimony. In particular, Omar in his Fifth Long Statement explained that "Want to order 3" referred to him wanting to order three *sarong* designs.[202] However, in his testimony in court, he claimed that the reference to the number "3" meant three "*kodi*". According to Omar, *kodi* is a unit of measurement – one *kodi* refers to 20 pieces of cloth, so three *kodi* refers to 60 pieces of cloth.[203] These two explanations directly contradict each other.[204] When asked about this contradiction, Omar's explanation was gibberish, illogical and incomprehensible:[205]

> … [A]t that point of time [during the recording of the Fifth Long Statement], I was thinking to myself when I answered the IO, 'I don't think that I need to give the answer in detail, Sir, because that information wouldn't be useful to the IO'; that was my thinking then. Because the IO wanted to know about the drugs

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201 AB 197.

202 AB 197.

203 NEs, 9 October 2020, p 99, line 30 to p 100, line 11.

204 PCS, at para 39(a).

205 NEs, 9 October 2020, p 102, lines 3–12; PCS, at para 39(b).

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> rather than my own business, so what does my business got to do with the drugs? So I do not have to elaborate on what is this '3' about, Sir. And the IO didn't ask me this question in details, Your Honour. As such, I answered it in such a manner, Sir. Brief answer, Sir.

105 In my view, this explanation is not at all credible. At the time, Omar would have known that he was facing a capital charge for importation of cannabis into Singapore. This was an extremely serious charge with grave consequences upon conviction. He must have known that the questions posed to him by IO Shamaani were part of investigations pertaining to his charge. In such circumstances, it is hard to believe that Omar would treat IO Shamaani's questions so lightly. Furthermore, Omar's explanation that he was being brief is in itself illogical. The inconsistency between Omar's Fifth Long Statement and his testimony in court is not simply that the Fifth Long Statement was a brief version of his testimony in court. To the contrary, they are two completely distinct accounts of what the number "3" referred to. On one hand, Omar's Fifth Long Statement states that "3" referred to three *sarong* designs. On the other hand, Omar's testimony in court was that "3" referred to three *kodi*, or 60 pieces of cloth. These two accounts are factually inconsistent and are not reconcilable on the basis that the former is a brief version of the latter.

106 Additionally, I find it significant that Omar's explanation regarding Jay was not brought up until the messages from his Phones were shown to him by IO Shamaani during the recording of the Fifth Long Statement on 3 May 2019, approximately ten months after his arrest.[206] This was despite the fact that in his First Long Statement, he had narrated in significant detail the events of 11 July 2018. He explained that he went to do some shopping, went to the Mosque,

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206 NEs, 9 October 2020, p 97, lines 13–18; PCS, at para 39(c).

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collected a chair from Bandar Bahru Uda, went back to the Mosque, and then went to the Restaurant.[207] However, there was no mention of Jay. Omar's claim that he had met Jay to peruse *sarong* designs is conspicuously missing from the account of his whereabouts set out in his First Long Statement. This suggests that Omar was trying to hide the truth about Jay with whom he had arranged to collect the Bundles on 11 July 2018. When he was confronted with the text messages about Jay during the recording of the Fifth Long Statement and in his cross-examination in court, he tried desperately to suppress and mask the truth. This gave rise to irreconcilable contradictions and discrepancies which resulted in his story becoming unbelievable.

107 I also find it extremely strange that when setting out the details of his whereabouts on 11 July 2018 in his CFD and even in his examination-in-chief, Omar made no mention of Jay. Jay was only mentioned towards the end of Omar's examination-in-chief, when he was specifically asked about the messages found on his Phones.[208] Furthermore, even at the trial, Omar produced new information regarding Jay, specifically, that Jay was his distant relative and that Jay's family name was "Al Atas".[209] This was despite the fact that in his Fifth Long Statement, Omar claimed not to know Jay's full name.[210] The haphazard manner in which Omar revealed all this information suggested that they were not true. Rather, he fabricated his evidence regarding Jay in an attempt to bolster his case.[211]

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207 AB 171–172.

208 NEs, 9 October 2020, p 52, line 2; PCS, at para 39(c).

209 NEs, 9 October 2020, p 83, lines 10–16.

210 AB 197, at A1.

211 PCS, at para 39(b).

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108 Notwithstanding the late revelation of Jay's details and the incredulous accounts of Jay given by Omar, the Prosecution sought an adjournment of the trial to try to trace Jay based on the evidence given by Omar regarding Jay in court. This application was granted. When the trial resumed on 4 November 2020, the Prosecution's witness, IO Zhong Kang Tai ("IO Zhong"), informed the court that neither Jay nor Isa could be located. IO Zhong explained that in January 2019, he had submitted Jay's phone number to the Malaysian authorities in order to establish the subscriber details for the phone number. However, as of the date of the trial, the CNB had yet to receive any replies from the Malaysian authorities.[212] Furthermore, in November 2020, he made two phone calls to Jay's phone number. The first phone call was not answered. The second phone call was answered by a male recipient, who hung up the call immediately after IO Zhong asked him if he was Jay. IO Zhong made two additional calls to Jay's phone number in December 2020. However, the calls were not answered.[213] IO Zhong also explained that as the information provided by Omar regarding Jay was too general, he was unable to proceed with any further investigations. For these reasons, the CNB had been unable to establish Jay's true identity.[214]

109 This was similarly the case for Isa. IO Zhong explained that he had retrieved a phone number connected to Isa from Yacob's phone contact records. Based on a subscriber screening of that phone number, it transpired that the phone number belonged to one Sheikh Abdul Rahman ("Mr Sheikh"), Omar's cousin. Mr Sheikh denied being Isa, and informed IO Zhong that Isa was a

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212 NEs, 4 December 2020, p 6, lines 15–27.

213 NEs, 4 December 2020, p 6, line 30 to p 7, line 4; p 7, lines 21–23.

214 NEs, 4 December 2020, p 9, lines 8–17.

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distant cousin whom he had not contacted for many years. Both Mr Sheikh's father and uncle also stated that they had not contacted Isa for many years.[215] For these reasons, the CNB had been unable to find out Isa's identity and current location.[216]

Conclusion on the messages found on Omar's Phones

110 For the above reasons, I completely reject Omar's evidence that Jay was his textile supplier and the messages recovered from his Phones pertained to his discussion with Jay to purchase *sarongs*. Instead, I find that the messages show that Omar ordered the three Bundles from Jay on 10 July 2018. Omar and Jay then coordinated to meet on 11 July 2018 in order for Omar to collect the Bundles, which he did. This means that Omar's defence about Din and Latif asking him to bring the Bundles to Singapore and his refusal of the same because of the risk of getting caught cannot be believed.

Omar's statements, CFD and testimony in court

111 I turn now to Omar's statements, his CFD and his testimony in court. Omar's defence in court was that Din and Latif had planted the Bundles in his Car while he was at the Restaurant. In support of his defence, Omar relied heavily on some of his Long Statements and his testimony in court.

112 Omar gave shifting and varying accounts of what had happened on 11 July 2018 to suit his purposes. I shall briefly set out the gist of his statements, CFD and testimony in court, as follows:

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215 NEs, 4 December 2020, p 9, line 21 to p 10, line 18; p 11, lines27–32.

216 NEs, 4 December 2020, p 12, lines 13–16.

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(a) In the First Oral Statement to Cpl Loo, Omar stated that the first of the Bundles recovered from the Bag was "plants for herbs". When asked how many "plants for herbs" he had, Omar said that there were three.[217]

(b) In the Second Oral Statement, Omar admitted to Sgt Faliq that the Bundles were "cannabis".[218]

(c) In the Third Oral Statement, Omar admitted to Sgt Zuhaidi that the Bundles belonged to him and contained "Marijuana". He stated that he would receive information on the location for delivery of the Bundles through a call.[219]

(d) In the Contemporaneous Statement, Omar again admitted to Sgt Zuhaidi that the Bundles were "Marijuana". He stated that the Bundles did not belong to him and he was merely delivering the drugs for $500 per bundle. He did not have the location to which he was supposed to deliver the drugs, nor did he know the person he was supposed to deliver the drugs to. Instead, he had been told that someone would call him once he reached Singapore and he was waiting for this person to call him. He explained that Din was the one who had loaded the Bundles into the Car. He had shared a joint of "Marijuana" with Din at about 8pm on 11 July 2018, while he was in Johor Bahru.[220]

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217 AB 108–109.

218 AB 112.

219 AB 123.

220 Exhibit P61.

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(e) In the Cautioned Statement, Omar stated that Din had asked him to "bring over some 'green' to Singapore". Din informed him that someone would call him that night or the following morning to take the "green" and pass him cash, specifically, $500 per bundle. Omar knew that "green" referred to "marijuana". Omar contemplated for 20 minutes, eventually deciding to accept Din's request as he was desperate for money. Furthermore, Din had been the one who packed the Bundles inside the Bag.[221]

(f) In the First Long Statement, Omar explained that after he and Yacob arrived in Johor Bahru, they went shopping before going to the Mosque at about 7pm. After prayers, Yacob went to the *madrasah* while Omar drove the Car to collect the chair, after which he drove back to the Mosque to continue his prayers. At about 9pm, he left the Mosque to go to the Restaurant, where he met Latif and Din. Omar, Latif and Din shared a tobacco made out of a leaf while seated at the boot of the Car. Omar then left to go to the toilet, with the Car not locked and the boot of the Car open. Before he left the Restaurant, Din asked Omar for his number, which Omar gave to him. Omar then drove to the Mosque to pick up Yacob, after which Yacob drove back to Woodlands Checkpoint.[222]

(g) In the Second Long Statement, Omar stated that it was only after seeing the CNB officers process the Bundles that he realised that the

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221 AB 169.

222 AB 171–172.

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Bundles were cannabis. At the time of his arrest, he did not know that the Bundles contained cannabis.[223]

(h) In the Third Long Statement, Omar stated that the tobacco he shared with Din and Latif could have contained some traces of cannabis. He only realised this after finishing the stick of tobacco. He explained that Latif had asked him to bring Din's "contraband" into Singapore for $500. While Latif spoke to Omar, Din loaded the three Bundles in the Bag. However, after 20 minutes, Omar rejected Latif's request, upon which Din took the Bundles out of the Bag. Omar suggested that Din could have put the Bundles back into the Car when he went to the toilet and left the Car unlocked. Omar alleged that he did not know the Bundles contained cannabis.[224]

(i) In the Fourth Long Statement, Omar stated that he could not recall if he had locked the Car while he went to the toilet at the Restaurant. He explained that he decided not to bring the Bundles into Singapore as he "did not want to take the risk". Omar also stated that he did "cupping", a traditional Chinese medicine treatment, before he went to wash the Car at the Restaurant.[225]

(j) In the Fifth Long Statement, Omar stated that Jay was his Malaysian supplier for textiles, whom he had met on 11 July 2018

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223 AB 174–175.

224 AB 192–194.

225 AB 195–196.

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outside the Mosque to look at *sarong* designs. However, because he did not like any of the designs, he did not buy anything from Jay that day.[226]

(k) In the CFD, Omar stated that both Omar and Yacob went to the *madrasah* after they both visited the Mosque for prayers. Omar then informed Yacob that he wanted to go for a cupping massage. However, Omar did not go for the cupping massage. Instead, he went to meet Latif and Din at a nearby café where they ate and chatted near the Car. Din offered Omar a rolled cigarette, which they smoked while seated at the rear of the Car. Din and Latif asked Omar to bring some contraband into Singapore, but Omar declined. Omar then went to the toilet while the boot of the Car was open. After returning from the washroom, he left to pick up Yacob, after which Yacob drove the Car back to Singapore.[227]

(l) Omar's testimony in court generally cohered with the account given in his long statements as well as in his CFD, save for a few inconstancies which I shall elaborate on below.

113 From the above, it is apparent that in Omar's earlier statements (*ie*, the First Oral Statement, the Second Oral Statement, the Third Oral Statement, the Contemporaneous Statement and the Cautioned Statement, collectively, "the Non-Long Statements"), he admitted to knowing that there were three Bundles and that the Bundles contained cannabis. He further explained that he had agreed with Din to bring the Bundles into Singapore for $500 per bundle. However, in his long statements ("the Long Statements"), Omar changed his position, claiming that he had rejected Latif's request to bring the Bundles into

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226 AB 197.

227 Exhibit P106.

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Singapore and that he did not know that the Bundles were cannabis until they were processed by the CNB. He maintained this position in his CFD as well as in his testimony in court. As such, while Omar's earlier statements were generally inculpatory, the subsequent Long Statements were exculpatory. The crux of the issue, therefore, is the weight to be given to these different parts of Omar's statements.

114 Having considered the evidence and the parties' submissions, I find that Omar's accounts in his Long Statements, CFD and testimony in court are not reliable and should not be believed. This is for the following reasons.

Lack of explanation for discrepancies between statements

115 Omar was unable to provide a satisfactory explanation, besides his false allegations about Sgt Zuhaidi's Threat and his own lack of rest, for why he made the admissions in the Non-Long Statements but later backtracked on them in the Long Statements. The initial explanation that he gave in his Third Long Statement was that he had made the admissions in the Contemporaneous Statement and the Cautioned Statement because he was "feeling high".[228] However, in his testimony in court, he disavowed this explanation, stating that this was merely "the most reasonable excuse" he could think of. He clarified that at the time he gave the Contemporaneous Statement, he felt "semi high" but not to the extent that it affected his state of mind.[229] His alternative explanation was that he had been influenced by the Threat and/or was tired during the recording of the Contemporaneous Statement and the Cautioned Statement. On this basis, Omar's counsel submits that the court should give these statements

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228 AB 193–194.

229 NEs, 8 October 2020, p 37, line 8 to p 38, line 12.

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little weight.[230] As for the First, Second and Third Oral Statements, Omar's case was that of a bare denial. He denied that the Second Oral Statement and the Third Oral Statement had taken place,[231] and claimed that he could not recall telling Cpl Loo that there were three Bundles.[232]

116 I shall deal first with the Contemporaneous Statement and the Cautioned Statement. After having fully considered the evidence presented at the two ancillary hearings, I had already rejected Omar's allegations regarding the Threat and him being too tired to give his Cautioned Statement.[233] Therefore, there is no reason to give less weight to these statements. In relation to the Contemporaneous Statement in particular, I also reject Omar's counsel's submission that Sgt Zuhaidi's "primary objective" in recording the Contemporaneous Statement was "solely to ensure [Omar] admitted to the knowledge of the [B]undles".[234] This is not at all apparent from the questions posed by Sgt Zuhaidi to Omar. The questions posed were generally open-ended questions. Although the questioning was brief, it is important to bear in mind that the Contemporaneous Statement was recorded at a very early stage of the investigations and Sgt Zuhaidi was not the investigating officer for the case.

117 Furthermore, although Omar claims that he referred to cannabis only as "*ganja*" and did not know the term "marijuana" (used in the Contemporaneous Statement),[235] I do not believe his evidence in this regard. As I observed above,

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230 DCS, at paras 12 and 22.

231 NEs, 7 October 2020, p 89, lines 16–20; p 91, lines 19–27.

232 NEs, 13 October 2020, p 10, lines 12–26.

233 PRS, at para 7.

234 DCS, at paras 13–19.

235 NEs, 13 October 2020, p 21, lines 7–9; DCS, at paras 14–15, 21.

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Sgt Zuhaidi's evidence that Omar had admitted the Bundles were "marijuana" was corroborated by SSgt Chong, who recorded this in the station diary.[236] Omar's knowledge of the nature of the Bundles is also corroborated by his Second Oral Statement made earlier to Sgt Faliq.[237] There was no reason for any of these officers to lie.

118 Turning now to the First, Second and Third Oral Statements, I have also found that the Second and Third Oral Statements did in fact take place. In relation to the First Oral Statement, there is no reason to doubt Cpl Loo's testimony, which is corroborated by Yacob's statement to the CNB in which Yacob confirmed that Omar told Cpl Loo that the Bundles were herbs.[238] Hence, there is no plausible explanation for why Omar kept on changing his position as regards the relevant events of 11 July 2018. Instead, Omar's numerous and shifting explanations highlighted that he was willing to fabricate evidence to claim his innocence. This further undermines his credibility and the veracity of his testimony in court.

119 The logical conclusion, therefore, is that Omar was not telling the truth in his Long Statements. The First Long Statement was recorded on 17 July 2018, five days after Omar's arrest. It appears to me that by then, Omar likely realised the inculpatory nature of his Non-Long Statements and sought to exonerate himself, in an attempt to bolster his defence that he did not know the nature of the Bundles and did not intentionally bring them into Singapore.

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236 PRS, at para 11; PCS, at para 16.

237 PRS, at para 9.

238 NEs, 14 October 2020, p 104, lines 19–22; Exhibit P109, at para 6.

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Lack of explanation for how he could have known the information given in the Non-Long Statements

120 Furthermore, there was no explanation for how Omar could have given the information that he did in the Non-Long Statements, unless he knew that the Bundles were cannabis and had agreed to bring them into Singapore. I shall give a few examples of such information.

121 In the First Oral Statement, Omar told Cpl Loo that there were *three* Bundles in the Bag. This is corroborated by Yacob's statement to the CNB, where he stated that he heard Cpl Loo ask Omar how many boxes there were in the Bag, to which Omar replied three. Yacob affirmed in court that this statement was true.[239] However, at this time, only one of the Bundles had been taken out of the Bag.[240] Furthermore, the Bag is a haversack which opens by drawstring only from a single opening at the top of the Bag.[241] As such, Omar could not have seen that there were two other Bundles inside the Bag which were concealed by his clothes and personal belongings.[242] In these circumstances, if Omar had truly been unaware of the presence of the Bundles in the Bag, he could not have known that the Bag contained two other Bundles. The fact that he was able to inform Cpl Loo that there were three Bundles suggests that he knew about the Bundles in the Bag.

122 Another example is Omar's admission in the Second Oral Statement, the Third Oral Statement and the Contemporaneous Statement that the Bundles

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239 Exhibit P109, at para 6; NEs, 14 October 2020, p 104, line 15 to p 105, line 3.

240 NEs, 6 October 2020, p 52, lines 2–6; PCS, at para 12.

241 Exhibits A1, P25.

242 NEs, 6 October 2020, p 66, line 18 to p 67, line 21.

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were cannabis or "marijuana". Omar's case is that he only realised the Bundles were cannabis when the Bundles were processed by the CNB.[243] However, at the time the Second Oral Statement, the Third Oral Statement and the Contemporaneous Statement were given, the Bundles had not yet been opened. On Omar's own evidence, he had never seen cannabis in this form before.[244] If Omar's Second Long Statement and testimony in court are to be believed, he could not have known that the Bundles were cannabis, and there was no reason why he would tell Sgt Faliq and Sgt Zuhaidi that the Bundles were cannabis. Therefore, the fact that Omar made such admissions to Sgt Faliq and Sgt Zuhaidi suggests that he knew even before the Bundles were opened that the Bundles were cannabis.[245]

123 Therefore, there was information in the Non-Long Statements that Omar could not have known unless he indeed knew the nature of the Bundles and had agreed to bring them into Singapore. In contrast, his Long Statements do not cohere with his ability to identify the number of Bundles and the nature of the Bundles shortly after his arrest. Thus, I find that Omar's Long Statements are not credible and should not be believed.

The shifting nature of Omar's case

124 Another reason which further undermines the credibility of Omar's case as set out in his Long Statements, CFD and testimony in court is the shifting nature of his case. Omar gave many versions of the facts, which suggests that he was not being truthful in his accounts. I give two examples of this.

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243 AB 174; NEs, 9 October 2020, p 48, lines 30–31.

244 AB 175.

245 PCS, at paras 13, 18, 19.

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125 First, there were several details regarding his whereabouts on 11 July 2018 that Omar vacillated on. In his First Long Statement where he first set out his account of his whereabouts, Omar did not mention that he returned to the *madrasah* after dropping Yacob off.[246] However, in his CFD and in his testimony in court, Omar claimed that he went to the *madrasah* after night prayers that would have been performed at about 8.30pm.[247]

126 There were similar inconsistencies in relation to the simple issue of whether Omar went for a cupping massage while in Johor Bahru.[248] Omar did not mention going for a cupping massage until his Fourth Long Statement.[249] In court, he maintained that he went for a cupping massage before meeting Din and Latif.[250] However, in his CFD, Omar expressly stated the opposite, specifically, that he "did *not* go for the cupping treatment but met his friends known as 'Latif' and 'Din' at a nearby café" [emphasis added].[251] When confronted with the clear inconsistency, Omar insisted that the word "not" was a typographical error and should not have been included in the sentence.[252] However, it is clear from the phrasing of the sentence that the word "not" was intended to be included in the sentence. In particular, the word "but" shows that a contrast was intended between Omar not going for the cupping treatment and Omar instead going to meet Latif and Din.

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246 NEs, 9 October 2020, p 58, line 31 to p 59, line 30.

247 NEs, 9 October 2020, p 39, lines 10–14; p 63, lines 1–3; Exhibit P106, at p 2, para 2.4.

248 PCS, at paras 46–48.

249 NEs, 9 October 2020, p 61, line 6 to p 62, line 17.

250 NEs, 9 October 2020, p 62, lines 15–19.

251 Exhibit P106, at p 2, para 2.5.

252 NEs, 9 October 2020, p 63, line 14 to p 64, line 7.

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127 Similar vacillations arose when it came to the issue of whether Omar had left the Car and the boot of the Car open while he went to the toilet at the Restaurant.[253] In his First Long Statement, Omar clearly stated that when he left the Car, it was not locked and the boot of the Car was open.[254] Similarly in his Third Long Statement, he stated that Din could have put the Bundles in his Bag when he "went to the toilet and the [C]ar was not locked".[255] However, in his Fourth Long Statement, when asked why he would go to the toilet without locking the Car despite knowing that Din and Latif wanted him to import contraband into Singapore, his position shifted. He claimed that he could not recall if he had locked the Car, although his usual practice was to lock it.[256] In his CFD, his position shifted again, stating that when he went to the toilet at the Restaurant, he had left the boot of the Car open.[257] His position shifted yet again in court, where he stated that he could not remember whether he had left the boot of the Car open.[258] When asked about these numerous shifts in his evidence, Omar's only explanation was that he was not sure at any point in time and was only guessing.[259] This is wholly unsatisfactory. These vacillations suggest that Omar was not being truthful in his Long Statements, CFD and testimony in court. On a separate note, I also observe that it would not have made sense for Omar to lock the Car but leave the boot of the Car unlocked, especially if he did

253 PCS, at paras 52–53.

254 AB 172.

255 AB 194.

256 AB 195.

257 Exhibit P106, at p 3, para 2.7.

258 NEs, 9 October 2020, p 76, lines 3–5.

259 NEs, 9 October 2020, p 78, line 15 to p 79, line 3.

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not trust Din and Latif and had just been asked by them to bring contraband into Singapore.[260]

128 Secondly, Omar also vacillated in his explanation regarding the word "green" in his Cautioned Statement. In the Cautioned Statement, Omar stated that Din had asked him to "bring over some 'green' to Singapore". Omar also admitted that he knew that "green" was "marijuana".[261] In his testimony in court, his initial explanation for this portion of his Cautioned Statement was as follows:[262]

> … Your Honour, without me realising, maybe I have used the word 'green' because I have already – I already saw the packaging and the colour 'green' was on the packaging, Sir. … And maybe at that point of time because I couldn't think properly, I just blurt out the word 'green', Sir. …

129 Thus, his explanation was that he had inadvertently mentioned the word "green" due to the colour of the "packaging" of the Bundles. This explanation in itself is illogical and difficult to believe. The Bundles were wrapped in aluminium foil, newspaper and cling wrap, none of which were green.[263] Moreover, four days later in the trial, Omar gave a different explanation for his use of the word "green". When asked again about the Cautioned Statement, Omar stated that:[264]

> … And this cautioned statement was taken from me after I have seen the content of the bundle, Sir. And the reason why I used the word 'green' in my cautioned statement was because the content of the bundle was green.

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260 NEs, 9 October 2020, p 76, lines 10–19.

261 AB 169.

262 NEs, 9 October 2020, p 51, lines 3–9.

263 Exhibits P26–P34.

264 NEs, 14 October 2020, p 83, lines 18–22.

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130 This time, Omar's explanation was that the word "green" was derived from the colour of the contents of the Bundles. This was different from his previous explanation that he had been influenced by the packaging of the Bundles. This vacillation suggests that these explanations are not true. Rather, Omar was fabricating them as and when it suited him. In any case, I am also not convinced by this subsequent explanation. It is clear that the contents of the Bundles are brown, not green. It is inexplicable that Omar could have looked at the brown contents of the Bundles and thought to describe them as "green", which is coincidentally also the slang in drug circles used to describe cannabis. In my view, Omar's vacillating and confusing explanations were simply futile attempts to distance himself from the conclusion that he was familiar with drug terms such as "green".[265]

131 Therefore, the above vacillations (for which Omar had no satisfactory explanation) illustrate the shifting nature of Omar's case from the time he gave his Long Statements to the time he gave his testimony in court at the trial. These significantly undermine his credibility and the veracity of his evidence, as far as his Long Statements, CFD and testimony in court are concerned.

Omar's failure to raise his defence early

132 Finally, I also consider it significant that Omar did not raise his defence as set out in his Long Statements, CFD and testimony in court at an earlier stage of the investigations. In particular, it was only in Omar's Third Long Statement that he mentioned that he had refused Latif's request for him to bring the Bundles into Singapore, and that Din had placed the Bundles in the Car and took

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265 NEs, 14 October 2020, p 85, lines 9–11.

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them out subsequently.[266] If Omar's defence was true, one would expect him to mention this defence in his Cautioned Statement, immediately after the charge and the notice pursuant to s 23(1) of the CPC were read to him. However, he did not mention this defence. Instead, he did the exact opposite – he admitted that he had agreed to Din's request to bring the Bundles into Singapore.[267] This significantly diminishes the credibility of his defence as set out in his Third Long Statement and suggests that it was an afterthought.

133 Furthermore, the Cautioned Statement was recorded on 12 July 2018, whereas the Third Long Statement was recorded on 18 July 2018. In between the recording of the Cautioned Statement and the Third Long Statement, Omar's First Long Statement and Second Long Statement were recorded from him on 17 July 2018. Despite having these opportunities to correct a critical fact he previously admitted to, Omar only raised his defence in his Third Long Statement, when asked about the discrepancies between his Long Statements and his Contemporaneous Statement. In light of all these circumstances, I am not inclined to believe his defence as set out in his Long Statements, CFD and testimony in court.

Conclusion on Omar's statements, CFD and testimony in court

134 For the above reasons, I place little weight on Omar's Long Statements, CFD and testimony in court. In my view, his accounts as set out in his Long Statements, CFD and testimony in court should not be believed. Not only was Omar unable to provide a satisfactory explanation for his sudden about-turn as to the facts, the information provided by him in his Non-Long Statements

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266 AB 194; NEs, 9 October 2020, p 72, line 25 to p 73, line 11; p 74, lines 9–12.

267 AB 169.

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suggests that he in fact knew the nature of the Bundles and had agreed to bring them into Singapore. Furthermore, he vacillated in his Long Statements, CFD and testimony in court, which suggests that he was not telling the truth. This is reinforced by the fact that he only mentioned his defence in his Third Long Statement, which was in direct contradiction to his admission in his Cautioned Statement.

135 According to Omar's Non-Long Statements, he ran into Din and Latif at the Restaurant. Din and Latif then asked him to bring the Bundles into Singapore. He agreed to do so, knowing that the Bundles were cannabis. This account of how Omar came to be in possession of the Bundles appears to be at odds with the messages from the Phones, which suggest that Omar had obtained the Bundles from Jay in the vicinity of the Mosque. The phone messages are objective, independent and contemporaneous evidence that do not lie. Omar's attempt to explain away the phone messages by suggesting that they were about textile transactions is most unconvincing. The phone messages suggest that Omar had pre-ordered the Bundles from Jay on 10 July 2018, which he then collected from Jay on 11 July 2018 and brought into Singapore on 12 July 2018.

136 Therefore, I find that Omar knew the nature of the Bundles and he intentionally brought the Bundles into Singapore. These facts are supported by the messages recovered from Omar's Phones. Omar's knowledge that the Bundles were cannabis is also supported by the Non-Long Statements, even if I disbelieve Omar's account regarding Din and Latif therein. Specifically, it is clear from the First Oral Statement that Omar knew that there were three Bundles in the Bag, even before the other two Bundles had been taken out. Furthermore, based on Omar's admissions to Sgt Faliq and Sgt Zuhaidi in the Second Oral Statement, the Third Oral Statement and the Contemporaneous Statement, he knew that the Bundles were cannabis. This was at the time when

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the Bundles had not yet been opened. Therefore, the Non-Long Statements support the finding that Omar knew the nature of the Bundles and had intentionally brought them into Singapore.

The DNA evidence

137 I turn now to the DNA evidence. Exhibits taken from the Bundles and their packaging were swabbed and sent for analysis by the HSA. No interpretable DNA profile was obtained from all of the exhibits, except for two DNA profiles were obtained from the cling film and the plastic of one of the Bundles (see [6] above). However, neither of these two DNA profiles matched Omar's DNA profile.[268]

138 I do not consider that this significantly affects the finding that Omar knew the nature of the Bundles and had agreed to bring them into Singapore. The Prosecution's witness, Ms Wong Hang Yee, who prepared the relevant HSA report, explained that although no interpretable DNA profile was obtained from the exhibits, it was still possible that Omar had handled the exhibits. This was because the absence of interpretable DNA profile could have been due to several reasons, such as Omar wearing protective gear, the amount of DNA left on the exhibits being insufficient or the DNA left on the exhibits having degraded.[269] For the same reasons, it was also possible that Omar had handled those exhibits on which two DNA profiles were found, even though the DNA profiles found on those exhibits did not match Omar's DNA profile.[270] Even if Omar did not come into contact with the Bundles himself, he could have told

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268 AB 60–64.

269 NEs, 8 October 2020, p 59, lines 2–11.

270 NEs, 8 October 2020, p 59, line 22 to p 60, line 2.

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Jay to put the Bundles into his Bag, with full knowledge of the nature of the Bundles. In other words, the absence of his DNA on the relevant exhibits does not exonerate him from the charge as he knew and admitted to the Bundles being cannabis when he imported them into Singapore through Woodlands Checkpoint.

Conclusion on the importation charge

139 In conclusion, I find that the Prosecution has proven beyond a reasonable doubt the elements of the importation charge against Omar. First, it is undisputed that Omar was in possession of the Bundles found in the Bag. In any case, the presumption of possession pursuant to s 18(1)(*a*) of the MDA applies and Omar has not successfully rebutted the presumption.

140 Secondly, I find that the Prosecution has proven beyond a reasonable doubt that Omar had knowledge of the nature of the Bundles. He knew that the Bundles were cannabis. This is evident from the fact that he was able to identify in his Second Oral Statement, Third Oral Statement and Contemporaneous Statement that the Bundles were cannabis, even before the Bundles were opened and processed by the CNB. This is also supported by my finding, based on the messages recovered from Omar's Phones, that Omar had pre-ordered the Bundles from Jay on 10 July 2018. Given that he ordered the Bundles, he should have known what the Bundles contained. In this case, the presumption of knowledge of the nature of the drugs pursuant to s 18(2) of the MDA applies. Based on the evidence before me, I am not satisfied that Omar has successfully rebutted this presumption.

141 Thirdly, I find that the Prosecution has proven beyond a reasonable doubt that the Bundles were intentionally brought into Singapore by Omar

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without prior authorisation. This is evident from the fact that Omar could identify the number of Bundles in the Bag even though, at the time, two out of the three Bundles had not yet been taken out of the Bag. If he knew about the presence of the Bundles in this Bag, this shows that he intended to bring them into Singapore. This is also supported by my finding that Omar had pre-ordered the Bundles. Given that he had pre-ordered the Bundles, he must also have intended to bring them back into Singapore.

142 In this regard, I reject Omar's defence that the Bundles were planted in his Bag by Din and Latif without his knowledge. This defence is not supported by any contemporaneous or objective evidence. Instead, Omar's defence relies largely on his own testimony and his Long Statements. However, there were numerous material inconsistences and vacillations in his defence.[271] In addition, I did not find him to be a credible witness. Hence, he has not been able to raise a reasonable doubt in the Prosecution's case.

143 For these reasons, I find that the Prosecution has proven the charge against Omar for importation of cannabis beyond a reasonable doubt. Accordingly, I convict him on the charge under s 7 of the MDA.

Sentence

144 Pursuant to s 33(1) read with the Second Schedule to the MDA, the prescribed punishment for unauthorised importation of more than 500g of cannabis is death. Section 33B(1)(*a*) of the MDA permits an alternative sentence of mandatory life imprisonment and not less than 15 strokes of the cane if the two conditions in s 33B(2) are met. Section 33B(2) reads:

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[271] PCS, at para 56.

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> (2) The requirements referred to in subsection (1)(*a*) are as follows:
>
> > (*a*) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted –
> >
> > > (i) to transporting, sending or delivering a controlled drug;
> > >
> > > (ii) to offering to transport, send or deliver a controlled drug;
> > >
> > > (iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
> > >
> > > (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
> >
> > (*b*) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

145 In this case, the Prosecution did not contest that Omar's involvement in the offence fell within s 33B(2)(*a*) of the MDA. The Prosecution referred to the decision in *Zamri bin Mohd Tahir v Public Prosecutor* [2019] 1 SLR 724, where the Court of Appeal observed at [15]–[17] as follows:

> 15 … The focus of the inquiry required by s 33B(2)(*a*) of the MDA is on *the accused's* acts in relation to the particular consignment of drugs which form the subject matter of the charge against him. … [T]he appellant's intentions at the relevant time were inchoate in the sense that they depended entirely on what someone else might decide or do at a point in time when no such decision or action had been made or taken.
>
> 16 In the present case, on the evidence before the court, it was, in truth, unknown and unknowable what the accused would have done after he had taken delivery of the drugs. …
>
> 17 We accept that in many instances where the accused is arrested before he has been able to deal with the drugs, the court may nevertheless infer that his role was to do more such that he should not be found to be a courier. This would be the case, for instance, where the accused has already been instructed or engaged, or is otherwise already committed and resolved to do other things such as to divide and pack the

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> drugs. But this will only be so where the evidence allows the court to find that he would have gone on to do such acts but for his arrest. …
>
> [emphasis in original]

146 Applying the principles set out above, the Prosecution conceded, and rightly so, that there is insufficient evidence to indicate what Omar intended to do with the Bundles after he had taken delivery of them and returned to Singapore. The evidence before the court only indicates that Omar had pre-ordered the Bundles, collected them in Johor Bahru, and then transported them from Johor Bahru into Singapore. Thus, I find that Omar was a courier whose involvement in the offence fell within s 33B(2)(*a*) of the MDA.

147 However, the Prosecution also informed the court that Omar did not receive a certificate of substantive assistance from the Public Prosecutor. Thus, the requirement under s 33B(2)(*b*) of the MDA is not satisfied, and the alternative sentencing regime under s 33B(1)(*a*) of the MDA is not available to Omar. Therefore, I sentence Omar to the mandatory sentence of death.

Conclusion

148 For the above reasons, I find that the charge against Omar has been proven beyond a reasonable doubt and convict him accordingly. I impose on Omar the mandatory sentence of death.

Tan Siong Thye
Judge of the High Court

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Senthilkumaran s/o Sabapathy and Gabriel Lim Cher Wei (Attorney-General's Chambers) for the Prosecution;
Kishan Pratap (Kishan Law Chambers LLC) and Ho Thiam Huat (T H Ho Law Chambers) for the accused.

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