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

[2022] SGHC 103

Criminal Case No 34 of 2021

Between

Public Prosecutor

And

Shen Hanjie

JUDGMENT

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

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Public Prosecutor
v
Shen Hanjie

[2022] SGHC 103

General Division of the High Court — Criminal Case No 34 of 2021
Dedar Singh Gill J
1, 2, 13–16, 21, 22 July 2021, 1 November 2021

9 May 2022 Judgment reserved.

Dedar Singh Gill J:

1 The accused is a 31-year-old male Singaporean[1] who was arrested in his home on 20 November 2018. Multiple packets of drugs were found in his bedroom at the time of arrest. On 21 November 2018 at about 1.39pm, the accused was charged with an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The charge ("the Charge") reads as follows:

> **YOU ARE CHARGED** at the instance of the Public Prosecutor and the charge against you is:
>
> That you, **SHEN HANJIE**,
>
> on 20 November 2018 at about 8.25 pm … did traffic in a controlled drug listed in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), *to wit*, by having in your possession for the purpose of trafficking 25 packets containing not less than 2,651.39g of granular / powdery substance which was analysed and found to contain

[1] Agreed Statement of Facts ("ASOF") at para 1.

> not less than 34.94g of diamorphine, without any authorisation under the Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) and punishable under section 33(1) of the Act, and further upon your conviction under section 5(1) of the Act, you may alternatively be liable to be punished under section 33B of the Act.

2 This judgment deals with the question of whether the accused is to be convicted on the Charge.

3 Before discussing the background facts and the parties' respective cases, I set out the applicable statutory provisions for ease of reference. Sections 5(1)(*a*) and 5(2) of the MDA provide:

> **5.**—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —
>
> (*a*) to traffic in a controlled drug;
>
> (*b*) to offer to traffic in a controlled drug; or
>
> (*c*) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.
>
> (2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.
>
> [emphasis in bold added]

4 The three elements of the offence under s 5(1)(*a*) read with s 5(2) of the MDA as stated in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28] are:

(a) possession of a controlled drug;

(b) knowledge of the nature of the drug; and

(c) possession of the drug for the purpose of trafficking.

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Background facts

5 On 20 November 2018 at about 5.15pm, a team of officers from the Central Narcotics Bureau ("CNB") arrived at the carpark of a block in Marsiling ("the Block"), Singapore in order to keep a lookout for the accused. The CNB officers were as follows:[2]

(a) Station Inspector Tay Cher Yeen ("SI Tay");

(b) Inspector Kua Boon San ("Insp Kua");

(c) Senior Station Inspector Ng Tze Chiang Tony ("SSI Tony");

(d) Station Inspector Eng Chien Loong Eugene ("SI Eugene");

(e) Station Inspector Wong Kah Hung Alwin ("SI Alwin");

(f) Senior Staff Sergeant Muhammad Fardlie bin Ramlie ("SSSgt Fardlie");

(g) Sergeant Dadly bin Osman ("Sgt Dadly");

(h) Staff Sergeant Au Yong Hong Mian ("SSgt Au Yong");

(i) Staff Sergeant Nurshila binte Abdullah ("SSgt Nurshila");

(j) Staff Sergeant Low Yi Xun ("SSgt Low");

(k) Sergeant Mohammad Hidayat bin Jasni ("Sgt Hidayat");

(l) Sergeant Mohammad Nasrulhaq bin Mohd Zainuddin ("Sgt Nasrulhaq"); and

(m) Sergeant Yogaraj s/o Ragunathan Pillay ("Sgt Yogaraj").

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2 ASOF at para 2.

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Arrest and seizure

6 At about 8.25pm, SI Alwin, SI Tay, SSgt Yi Xun, SI Eugene, SSgt Nurshila, Sgt Yogaraj, SSSgt Fardlie, Sgt Hidayat and Insp Kua went to a unit of the Block ("the Unit"). The main door to the Unit was open. Force was used to break into the accused's bedroom as it was locked. SI Alwin, SSgt Low and SI Tay then arrested the accused inside his bedroom.[3]

7 The following exhibits, *inter alia*, were seized from the third side drawer of the accused's bedroom:[4]

(a) One black plastic bag (marked "D4") containing:

(i) One black zip lock packet (marked "D4A") which contained one packet containing granular/powdery substances (marked "D4A1").

(ii) One piece of cling wrap (marked "D4B") wrapping:

(A) one black packet (marked "D4B1") which contained one packet containing granular/powdery substances (marked "D4B1A"); and

(B) one black packet (marked "D4B2") which contained one packet containing granular/powdery substances (marked "D4B2A").

(iii) One zip lock packet (marked "D4C") containing:

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3 ASOF at para 4.

4 ASOF at para 6 and Annex – List of Physical Exhibits.

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(A) one packet containing granular/powdery substances (marked "D4C1"); and

(B) one piece of clear wrapping with tape (marked "D4C2") which wrapped granular/powdery substances (marked "D4C2A").

(b) One black packet (marked "D5") containing:

(i) One piece of clear wrap (marked "D5A") wrapping:

(A) one black packet (marked "D5A1") which contained one packet containing granular/powdery substances (marked "D5A1A"); and

(B) one black packet (marked "D5A2") which contained one packet containing granular/powdery substances (marked "D5A2A").

(ii) One piece of clear wrap (marked "D5B") wrapping:

(A) one black packet (marked "D5B1") which contained one packet containing granular/powdery substances (marked "D5B1A"); and

(B) one black packet (marked "D5B2") which contained one packet containing granular/powdery substances (marked "D5B2A").

(c) One black packet (marked "D6") containing:

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(i) One piece of clear wrap (marked "D6A") wrapping:

(A) one black packet (marked "D6A1") which contained one packet containing granular/powdery substances (marked "D6A1A"); and

(B) one black packet (marked "D6A2") which contained one packet containing granular/powdery substances (marked "D6A2A").

(ii) One piece of clear wrap (marked "D6B") wrapping:

(A) one black packet (marked "D6B1") which contained one packet containing granular/powdery substances (marked "D6B1A"); and

(B) one black packet (marked "D6B2") which contained one packet containing granular/powdery substances (marked "D6B2A").

(d) One black packet with masking tape (marked "D7") containing:

(i) One zip lock packet (marked "D7A") which contained one packet containing granular/powdery substances (marked "D7A1").

(ii) One zip lock packet (marked "D7B") which contained one packet containing granular/powdery substances (marked "D7B1").

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(iii) One zip lock packet (marked "D7C") which contained one packet containing granular/powdery substances (marked "D7C1").

(iv) One zip lock packet (marked "D7D") which contained one packet containing granular/powdery substances (marked "D7D1").

(e) One black packet (marked "D8") containing:

(i) One piece of clear wrap (marked "D8A") wrapping:

(A) one black packet (marked "D8A1") which contained one packet containing granular/powdery substances (marked "D8A1A"); and

(B) one black packet (marked "D8A2") which contained one packet containing granular/powdery substances (marked "D8A2A").

(ii) One piece of clear wrap (marked "D8B") wrapping:

(A) one black packet (marked "D8B1") which contained one packet containing granular/powdery substances (marked "D8B1A"); and

(B) one black packet (marked "D8B2") which contained one packet containing granular/powdery substances (marked "D8B2A").

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(f) One black packet (marked "D9") containing:

(i) One piece of clear wrap (marked "D9A") containing:

(A) one black packet (marked "D9A1") which contained one packet containing granular/powdery substances (marked "D9A1A"); and

(B) one black packet (marked "D9A2") which contained one packet containing granular/powdery substances (marked "D9A2A").

(ii) One piece of clear wrap (marked "D9B") containing:

(A) one black packet (marked "D9B1") which contained one packet containing granular/powdery substances (marked "D9B1A"); and

(B) one black packet (marked "D9B2") which contained one packet containing granular/powdery substances (marked "D9B2A").

There were in total 25 packets containing granular/powdery substances.

8 Other exhibits were also seized from the accused's bedroom, and they include:[5]

[5] ASOF Annex – List of Physical Exhibits.

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(a) one roll of clear wrap (marked "A1");

(b) one improvised smoking apparatus and one lighter (marked "D10");

(c) one clear box (marked "D11") containing numerous empty packets and black tape (marked "D11A"), one roll of clear wrap (marked "D11B") and numerous black packets (marked "D11C"); and

(d) two "5 STARS" notebooks with writings (marked "E1").

Statement recording

9 A total of eight statements were recorded from the accused.

10 SI Eugene recorded a statement from the accused under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") in the accused's bedroom shortly after he was arrested (the "Contemporaneous Statement"). The Contemporaneous Statement was recorded from 11.05pm on 20 November 2018 to 12.05am on 21 November 2018,[6] in a question-and-answer format. SI Eugene asked the accused what language he wished to speak in. The accused chose to give his Contemporaneous Statement in Mandarin. SI Eugene asked the accused questions in Mandarin, and the accused answered in Mandarin. SI Eugene recorded the questions and answers in writing in English. After recording the Contemporaneous Statement, SI Eugene read it back to the accused in Mandarin. The accused affirmed that the Contemporaneous Statement, as read back by SI Eugene to the accused in Mandarin, was true and correct. SI Eugene invited the accused to make any alterations to the

6 ASOF at paras 9 and 11.

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Contemporaneous Statement, but the accused declined. SI Eugene then wrote an acknowledgment clause at the end of the Contemporaneous Statement and read it to the accused in Mandarin. The accused appended his signature at the end of each page and below the acknowledgment clause. SI Eugene also signed below the acknowledgment clause.[7]

11 Another statement was recorded by Assistant Superintendent Yang Weili ("ASP Yang") under s 23 of the CPC on 21 November 2018 from 1.33pm to 2.03pm (the "Cautioned Statement").[8] During the course of investigations, ASP Yang recorded six more statements from the accused under s 22 of the CPC (collectively, the "Long Statements"):

(a) a statement dated 26 November 2018, recorded from 7.26pm to 9.27pm at Central Police Divisional Headquarters ("PCC") Lockup Interview Room 5 (the "1st Long Statement");

(b) a statement dated 27 November 2018, recorded from 9.52am to 11.26am at PCC Lockup Interview Room 12 (the "2nd Long Statement");

(c) a statement dated 27 November 2018, recorded from 7.22pm to 9.32pm at PCC Lockup Interview Room 4 (the "3rd Long Statement");

(d) a statement dated 28 November 2018, recorded from 7.28pm to 10.23pm at PCC Lockup Interview Room 12 (the "4th Long Statement");

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7 ASOF at para 10.

8 ASOF at paras 19–20 and 22.

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(e) a statement dated 29 November 2018, recorded from 2.45pm to 4.43pm at PCC Lockup Interview Room 9 (the "5th Long Statement"); and

(f) a statement dated 8 August 2019, recorded from 9.13am to 10.02am at Changi Prison Complex Cluster B2, Interview Room 6 (the "6th Long Statement").

12 The statement-recording process for the Long Statements was as follows:[9]

(a) Before recording the statement, ASP Yang asked the accused what language he wished to speak in. He chose to speak in Mandarin.

(b) Language Executive Wong Png Leong ("LE Wong") acted as a Mandarin interpreter for the recording. The accused did not object to LE Wong acting as a Mandarin interpreter.

(c) ASP Yang asked the accused questions in English. LE Wong interpreted the same to the accused in Mandarin. The accused answered in Mandarin. LE Wong interpreted the same to ASP Yang in English.

(d) ASP Yang typed out the answers of the accused in narrative form on his laptop. The same process was repeated until the statement-recording process was completed.

(e) For each of the statements, ASP Yang printed out the statement and handed it to LE Wong, who interpreted and read back each statement to the accused in Mandarin.

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9 ASOF at para 21.

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(f) Several amendments and corrections to typographical errors were made during this process. Each amendment was explained to the accused in Mandarin. He was invited to make further amendments to his statement. He declined. The accused then signed at the bottom of each page of each statement, and against each amendment.

(g) Thereafter, ASP Yang wrote out an acknowledgment clause at the end of each statement. LE Wong read the clause to the accused in Mandarin. The accused confirmed that he understood the clause, as read by LE Wong to him in Mandarin, and signed below the clause after affirming each statement to be his. LE Wong and ASP Yang similarly appended their signatures.

The statement-recording process for the Cautioned Statement was the same.[10]

13 It is an agreed fact between parties that the Contemporaneous Statement, Cautioned Statement and Long Statements were made by the accused voluntarily, and there were no threats, inducements or promises made to him during the recording of these statements.[11]

Analysis of seized drug exhibits

14 The seized drug exhibits were subsequently sent to the Health Sciences Authority ("HSA"). Mr Koh Hui Boon ("Mr Koh"), an analyst with the Illicit Drugs Laboratory of the HSA, analysed the 25 packets of granular/powdery substances in exhibits D4 to D9 set out at [7] above and found that they

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10 ASOF at para 23.

11 ASOF at paras 11 and 24.

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contained not less than 34.94g of diamorphine (the "Drugs").[12] The Drugs are the subject of the Charge (see above at [1]).

15 On 16 April 2019, Analyst Tang Sheau Wei June issued two reports stating that the accused's DNA profile was found on, *inter alia*, the following exhibits:[13]

(a) exterior and interior of re-sealable bag marked "D4";

(b) sticky side of tape of one re-sealable bag with cling wraps and a tape marked "D4C2";

(c) exterior of re-sealable bags marked "D6A1", "D6A2", "D7B" and "D7C";

(d) cling wrap marked "D6A", "D6B" and "D8A"; and

(e) exterior and interior of re-sealable bag marked "D7A".

Parties' cases

16 It is undisputed that the Drugs were in the accused's possession within the meaning of s 5 of the MDA. The Prosecution initially proceeded on the basis that the Defence was not disputing the chain of custody of the Drugs, and focused its submissions on showing that the other two elements of the Charge, *ie*, knowledge of the nature of the Drugs and possession of the Drugs for the purpose of trafficking, have been satisfied. In this regard, the Prosecution invokes the presumption of knowledge under s 18(2) of the MDA ("the s 18(2) presumption") and seeks to prove beyond a reasonable doubt that the accused had the intention to traffic the Drugs in his possession. The Prosecution relies

12 ASOF at para 26.

13 ASOF at para 29.

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primarily on the accused's lack of credibility, as seen from how his account of events has shifted across his statements and oral testimony, as well as various admissions in the accused's statements that he had delivered and sent drugs on previous occasions.

17 On the other hand, the Defence, in its closing submissions, contends that there is a reasonable doubt in the integrity of the chain of custody from the time after the exhibits were seized and sealed into tamper-proof bags.[14] The Defence also submits that the accused has successfully rebutted the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities, and has raised a reasonable doubt that the accused possessed the Drugs with the intention to deliver the same.[15] Central to the Defence's case is that the accused thought that the Drugs were cannabis (which is known either as "grass", "ganja" or "gu"), and that the accused was merely safekeeping drugs, including the Drugs, for a person known as "Alan" with the intention of returning the drugs to him.

18 The Prosecution, in reply, alleges that the Defence has failed to put (or even suggest) to the relevant CNB officers that their evidence on the chain of custody of the Drugs was untrue, or not within their personal knowledge, and submits that the Defence should be precluded from challenging the chain of custody at this stage of the proceedings.[16] Nevertheless, the Prosecution sets out in its reply submissions what is in its view an unbroken chain of custody of the Drugs from seizure to analysis, and rebuts the Defence's attempts to raise a reasonable doubt on this point.

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14 Defence's Submissions ("DS") at para 2.1.

15 DS at paras 2.2 and 2.3.

16 Prosecution's Reply Submissions ("PRS") at paras 3 and 28.

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19 In the light of parties' respective cases, I will first address the issue of the chain of custody of the Drugs and consider whether there is merit in the Defence's challenges as to the accuracy with which several of the accused's statements were recorded and/or interpreted, before considering whether the elements of the Charge have been satisfied. In my analysis, the terms "grass", "ganja" and "gu" will be used interchangeably to refer to cannabis, where applicable, so as to accurately reflect the different terms used by the accused across his statements, testimony and notebooks found in his possession.

Chain of custody

20 As held by the Court of Appeal in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39]–[40], the Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused. It is first incumbent on the Prosecution to establish an unbroken chain of custody and account for the movement of the drug exhibits at every point from seizure to analysis. In the context of the Prosecution establishing the chain of custody, the Defence may seek to show that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. Where this is shown to be the case and a reasonable doubt is raised as to the identity of the drug exhibits, then the Prosecution has not discharged its burden.

The chain of custody according to the Prosecution

21 I now turn to consider whether the Prosecution has proven a complete chain of custody in relation to the Drugs. In this regard, the Prosecution relies on the evidence of Sgt Hidayat, SI Alwin, SI Eugene and SI Tay, who handled

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the seized exhibits in the accused's home, and ASP Yang, Sergeant Goh Yang Lun ("Sgt Goh") and Mr Koh, who handled the seized exhibits at CNB HQ.

22 The chain of custody, as submitted by the Prosecution, is as follows:

(a) Shortly after the accused's arrest on 20 November 2018, Sgt Hidayat conducted a search of the accused's bedroom at about 8.38pm.[17] Sgt Hidayat seized the Drugs (that is, exhibits D4 to D9) from the third side drawer in the accused's view and presence.[18] While Sgt Hidayat was seizing the exhibits, a colleague was writing down descriptions of the same in a field diary.[19]

(b) SI Alwin assisted Sgt Hidayat with the packing and sealing of the exhibits into CNB tamper-proof polymer bags (the "Tamper-Proof Bags").[20] At about 9.50pm, SI Alwin handed over the seized exhibits to SI Eugene.[21]

(c) SI Eugene received a black duffel bag from SI Alwin, which he understood contained the exhibits seized from the accused's bedroom.[22] Although SI Eugene did not see the exhibits being placed into the black duffel bag, he testified that it was "STF's procedure" to place all the exhibits into the duffel bag.[23]

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17 2 July 2021 Transcript at p 48 lines 3–5.

18 AB 304–305 (para 9).

19 2 July 2021 Transcript at p 48 lines 17–18.

20 2 July 2021 Transcript at p 48 lines 6–8.

21 AB 281-282 (paras 10–11); 1 July 2021 Transcript at p 54 lines 2–10.

22 2 July 2021 Transcript at p 9 lines 24–28 and p 15 lines 19–21.

23 2 July 2021 Transcript at p 15 lines 9–18.

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(d) At 10.31pm, SI Eugene handed over the black duffel bag, containing all the seized exhibits, to SI Tay.[24]

(e) At 11pm, SI Tay handed over the black duffel bag, containing the seized exhibits, to SI Eugene for the latter to record the Contemporaneous Statement from the accused.[25]

(f) SI Eugene testified that before the Contemporaneous Statement was recorded, the five black packets (*ie*, exhibits D5 to D9) had already been sealed in Tamper-Proof Bags, which were inside the black duffel bag.[26] SI Eugene took out the Tamper-Proof Bags, containing the five black packets (*ie*, exhibits D5 to D9), to show them to the accused, and placed them back into the black duffel bag thereafter.[27]

(g) After the Contemporaneous Statement was recorded, SI Eugene handed over all the seized exhibits in the duffel bag to SI Tay.[28]

(h) On 21 November 2018 at about 1.55am, SI Tay escorted the accused out of the Unit with all the seized exhibits in his custody.[29]

(i) At about 2am, in the accused's presence, SI Tay placed all the seized exhibits into the boot of the CNB operational car.[30]

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24 2 July 2021 Transcript at p 16 lines 12–16; AB 272 (para 12).

25 AB 272 (para 13); AB 289 (para 14); 1 July 2021 Transcript at p 68 lines 23–30.

26 2 July 2021 Transcript at p 17 lines 27–30.

27 2 July 2021 Transcript at p 17 line 31 to p 18 line 18.

28 AB 289 (para 15); 1 July 2021 Transcript at p 80 lines 10–14.

29 AB 272 (para 17).

30 AB 272 (para 18).

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(j) From 2am to 2.30am, the black duffel bag was in the boot of the CNB operational car and nobody opened the car boot until the car reached CNB HQ. Thereafter, SI Tay brought the black duffel bag up to CNB "A" office and kept the black duffel bag beside him in the CNB "A" office from 2.35am to 3.50am.[31]

(k) At about 4.09am, SI Tay handed over all the seized exhibits to ASP Yang at the Exhibit Management Room.[32] ASP Yang then cross-checked the exhibits against a police report filed by Sergeant Muhammad Fauzi bin Mohamed Said ("Sgt Fauzi").[33]

(l) On 22 November 2018 at about 1pm, ASP Yang handed over custody of the exhibits to Sgt Goh at the Exhibit Management Room.[34] Sgt Goh then kept the exhibits in a locked cupboard.[35]

(m) On 23 November 2018 at about 10.49am, Sgt Goh retrieved the drug exhibits (including the 25 exhibits constituting the Drugs) and submitted them to the Illicit Drugs Laboratory of the HSA for analysis.[36] The Drugs were analysed by Mr Koh, who later issued certificates setting out the results of his analysis.[37]

(n) On 26 March 2019, at about 2.23pm, Sgt Goh collected 25 case exhibits (*ie*, the 25 packets constituting the Drugs) from the Illicit Drugs

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31 1 July 2021 Transcript at p 80 line 24 to p 81 line 11.

32 AB 273 (para 23); AB 354 (para 10); 15 July 2021 Transcript at p 27 lines 12–16.

33 15 July 2021 Transcript at p 28 lines 1–18.

34 AB 358 (para 28).

35 AB 11 (para 2).

36 AB 11 (para 4).

37 AB 65–114.

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Laboratory, and deposited the same in the CNB Operations Planning Store for safekeeping.[38]

23 Having reviewed the evidence, I am satisfied that the Prosecution has proven a complete chain of custody in relation to the Drugs. In particular, I accept the Prosecution's submissions at [22(a)]–[22(k)] above, as the evidence of the respective witnesses which sets out this part of the chain of custody (*ie*, the parts of their testimonies and conditioned statements which the Prosecution relies on) was entirely within their personal knowledge. Those parts of their evidence withstood scrutiny under cross-examination and remain cogent, credible and internally and externally consistent. I elaborate.

(a) In court, Sgt Hidayat maintained that he had personal knowledge of the descriptions of the exhibits seized from the accused's bedroom listed in paragraph nine of his conditioned statement, because he was the one who searched the accused's bedroom and seized those exhibits.[39] This position remains unshaken even when questioned by this court.[40] The accuracy of paragraph nine of Sgt Hidayat's conditioned statement is bolstered by his repeated confirmation in court that before he signed his conditioned statement, he cross-checked the descriptions of the seized exhibits in paragraph nine against the field diary,[41] which contains a contemporaneous record of the exhibits which were seized from the accused's bedroom.[42] It bears mentioning that six of the seized exhibits

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38 AB 12–13 (para 7).

39 2 July 2021 Transcript at p 48 lines 3–16 and p 49 lines 28–29.

40 2 July 2021 Transcript at p 52 lines 6–9.

41 2 July 2021 Transcript at p 53 lines 13–28 and p 56 lines 10–26.

42 2 July 2021 Transcript at p 48 lines 13–18; 1 July 2021 Transcript at p 96 lines 3–11 and 23–27.

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described at paragraph nine of Sgt Hidayat's conditioned statement correspond to exhibits D4 to D9.

(b) SI Alwin stated in his conditioned statement that he assisted Sgt Hidayat in packing and sealing the exhibits seized from the accused's bedroom into Tamper-Proof Bags.[43] This is corroborated by Sgt Hidayat's oral testimony.[44]

(c) SSgt Low testified that after the seized exhibits were packed and sealed into Tamper-Proof Bags, he and SI Alwin checked the seized exhibits against the field diary before placing all the seized exhibits into the black duffel bag.[45] SSgt Low affirmed that the exhibits seized from the accused's bedroom were placed into the black duffel bag even when pressed under cross-examination.[46] Buttressing this is SI Tay's testimony that after the seized exhibits were packed and sealed into Tamper-Proof Bags, they were placed into the black duffel bag. SI Tay was present in the accused's bedroom at the material time because his role was to escort the accused while the search and seizure was ongoing.[47]

(d) According to SI Alwin, at about 9.50pm, he handed over *all* the seized exhibits found in the accused's bedroom to SI Eugene.[48] In the light of [23(c)] above, the seized exhibits were handed to SI Eugene in

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43 AB 281 (para 10).

44 2 July 2021 Transcript at p 48 lines 6–8.

45 1 July 2021 Transcript at p 97 lines 4–15.

46 1 July 2021 Transcript at p 98 lines 6–18.

47 1 July 2021 Transcript at p 71 line 29 to p 73 line 5, p 85 lines 3–11 (read with AB 270-271 (para 10)), p 86 lines 18–28.

48 1 July 2021 Transcript at p 54 lines 2–10; AB 282 (para 11).

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the black duffel bag. This is reinforced by SI Tay's testimony that he witnessed SI Alwin handing over the black duffel bag to SI Eugene,[49] as well as SI Eugene's testimony that he received the black duffel bag from SI Alwin.[50]

(e) SI Eugene testified that at 10.31pm, he handed the black duffel bag to SI Tay.[51] This is corroborated by SI Tay's and SI Alwin's evidence: SI Tay stated in his conditioned statement that SI Eugene handed all the exhibits to him at 10.31pm,[52] and SI Alwin testified that he saw SI Eugene handing over the black duffel bag to SI Tay at 10.31pm.[53]

(f) SI Eugene also gave evidence that at 11pm, SI Tay handed him the black duffel bag so that he could record the Contemporaneous Statement from the accused.[54] This was confirmed by SI Tay.[55] Up until this point in time, there is no evidence that any of the exhibits seized from the accused's bedroom were removed from the black duffel bag.

(g) However, when SI Eugene asked the accused question one of the Contemporaneous Statement, SI Eugene took out Tamper-Proof Bags, containing exhibits D5 to D9, from the black duffel bag and showed

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49 1 July 2021 Transcript at p 72 line 26 to p 73 line 5.

50 2 July 2021 Transcript at p 9 lines 24–28.

51 2 July 2021 Transcript at p 16 lines 12–16.

52 AB 272 (para 12).

53 1 July 2021 Transcript at p 61 lines 1–7.

54 2 July 2021 Transcript at p 9 lines 29–32; AB 289 (para 14).

55 1 July 2021 Transcript at p 68 lines 23–30; AB 272 (para 13).

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them to the accused. SI Eugene's evidence in this regard is consistent across his examination-in-chief and cross-examination.[56]

(h) SI Eugene testified in cross-examination that he placed the Tamper-Proof Bags, containing exhibits D5 to D9, back into the black duffel bag before asking question three in the Contemporaneous Statement.[57] There is no reason to disbelieve SI Eugene's testimony, especially since the exhibits which eventually made it to the Exhibit Management Room ultimately tallied with what is recorded in the field diary (see below at [23(n)]).

(i) According to SI Eugene's conditioned statement, after recording the accused's Contemporaneous Statement at about 12.05am on 21 November 2018, he (SI Eugene) then handed over all the seized exhibits to SI Tay.[58] This is corroborated by SI Tay, who testified that SI Eugene handed over the black duffel bag to him after he (SI Eugene) had recorded the Contemporaneous Statement.[59]

(j) It is stated in SI Tay's conditioned statement that at 1.55am, SI Tay, together with SSgt Low and SSgt Nurshila, escorted the accused out of the Unit, during which time SI Tay was holding on to all the seized exhibits.[60] This is supported by SSgt Low's and SSgt Nurshila's

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56 2 July 2021 Transcript at p 10 line 15 to p 11 line 3 and p 17 line 27 to p 18 line 1.

57 2 July 2021 Transcript at p 18 lines 15–18.

58 AB 289 (para 15).

59 1 July 2021 Transcript at p 80 lines 10–14.

60 AB 272 (para 17).

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evidence that they saw SI Tay holding on to the black duffel bag at 1.55am.[61]

(k) SI Tay also stated in his conditioned statement that at 2.00am, he placed all the seized exhibits and the accused's personal properties into the car boot of the CNB operational vehicle.[62] In his oral testimony, SI Tay clarified that he placed the black duffel bag, containing all the seized exhibits and the accused's personal property, into the car boot.[63] This coheres with SSgt Nurshila's testimony that she saw SI Tay placing the black duffel bag into the boot.[64]

(l) SI Tay testified that from 2.00 to 2.30am, the black duffel bag was in the boot of the CNB operational vehicle, and that while he was inside the CNB operational vehicle, nobody opened the car boot until they reached CNB HQ.[65] This is confirmed by SSgt Nurshila's oral evidence,[66] who was in the said CNB operational vehicle at the material time.[67]

(m) SI Tay gave evidence that after the CNB operational vehicle reached CNB HQ at 2.30am, he brought the black duffel bag up to the CNB "A" office and kept the black duffel bag beside him in the CNB

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61 1 July 2021 Transcript at p 101 lines 21–27; 2 July 2021 Transcript at p 35 line 31 to p 36 line 6.

62 AB 272 (para 18).

63 1 July 2021 Transcript at p 79 line 21 to p 80 line 3.

64 2 July 2021 Transcript at p 37 lines 21–29.

65 1 July 2021 Transcript at p 80 lines 18–30.

66 2 July 2021 Transcript at p 38 lines 3–8.

67 AB 276 (para 12).

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"A" office the entire time he was there.[68] I observe that there is a minor discrepancy between SI Tay's testimony and his conditioned statement as to the time at which he (and other CNB officers) escorted the accused out of the CNB "A" office. SI Tay's testimony indicates that he was in the CNB "A" office until 3.50am before he (and other CNB officers) escorted the accused to the Exhibit Management Room.[69] However, SI Tay's conditioned statement indicates that at about 3.45am, he (and other CNB officers) had escorted the accused out of the CNB "A" office and arrived at the Exhibit Management Room at about 3.50am.[70] The Defence has not relied on this discrepancy in its written submissions. In my judgment, this slight discrepancy as to timing in no way affects the overall consistency of SI Tay's evidence and the chain of custody. It is clear that the black duffel bag was in SI Tay's custody the whole time he was in the CNB "A" office,[71] after which, SI Tay (along with a few other CNB officers) escorted the accused from the CNB "A" office to the Exhibit Management Room.[72]

(n) According to both SI Tay and ASP Yang, SI Tay handed over all the seized exhibits to ASP Yang at about 4.09am in the Exhibit Management Room.[73] ASP Yang testified that he cross-checked the exhibits against the police report filed by Sgt Fauzi.[74] In this connection,

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68 1 July 2021 Transcript at p 80 line 31 to p 81 line 11; AB 272–273 (para 19).

69 1 July 2021 Transcript at p 81 lines 1–15.

70 AB 273 (para 22).

71 1 July 2021 Transcript at p 81 lines 1–11.

72 AB 273 (para 22); 1 July 2021 Transcript at p 81 lines 12–15.

73 AB 273 (para 23); 1 July 2021 Transcript at p 82 lines 3–8; AB 354 (para 10); 15 July 2021 Transcript at p 27 lines 12–16.

74 15 July 2021 Transcript at p 28 lines 1–18.

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Sgt Fauzi testified that the descriptions of the exhibits in his police report were copied "word-for-word" from the field diary.[75] Accordingly, the seized exhibits which SI Tay handed to ASP Yang ultimately tallied with what was recorded in the field diary. The Defence did not put to Sgt Fauzi that the contents of the police report were inaccurate or materially different from the entries in the field diary.

For completeness, I also accept the Prosecution's submissions at [22(l)]–[22(n)] above, which are supported by evidence.

24 Against this, the Defence made several arguments seeking to undermine the integrity of the chain of custody. I now turn to consider these arguments.

Issues raised by the Defence

25 The Defence submits that:

(a) The conditioned statements of SI Tay, SSgt Low, Sgt Yogaraj and ASP Yang are inadmissible because they were prepared by a third party and contain substantial matters which are not within their personal knowledge.[76]

(b) Even if the conditioned statements of SI Tay, SSgt Low, Sgt Yogaraj and ASP Yang are admissible, parts of their conditioned statements and testimonies should be excluded because they are hearsay. Parts of their evidence are also based on assumptions and should be given zero weight.[77] Similarly, parts of the evidence in the respective

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75 13 July 2021 Transcript at p 13 lines 25–28 and p 14 lines 19–24.

76 DS at para 60(1).

77 DS at para 110.

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conditioned statements and oral testimonies of SI Eugene, SI Alwin, Sgt Fauzi, Sgt Hidayat, SSgt Au Yong, SSgt Nurshila, SSSgt Fardlie and Inspector Nur Yusyeila binte Yunus ("Insp Nur Yusyeila") contain hearsay and should be excluded. Parts of their evidence are also based on assumptions and should be given zero weight.[78]

(c) There are discrepancies in the CNB witnesses' accounts concerning the seizure and handling of the drug exhibits in the accused's bedroom and in the Exhibit Management Room:[79]

(i) After the Tamper-Proof Bags were sealed, there is no corroborated evidence proving that the exhibits were cross-checked against the list of exhibits supposedly seized and recorded in the field diary, before the Tamper-Proof Bags were placed into the black duffel bag.

(ii) There are also inconsistencies in the CNB officers' statements and testimonies as to whether SI Eugene and SSgt Low were present in the accused's bedroom at the time of search and seizure.

(iii) At the Exhibit Management Room, the exhibits were checked against the police report filed by Sgt Fauzi, but that report was prepared based on hearsay. No one cross-checked the exhibits or the contents of the police report against the field diary. There is also discrepancy as to who did the cross-checking of the exhibits against the police report.

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78 DS at paras 125–158.

79 DS at paras 159–174 and 177.

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The Defence contends that if this courts accepts the foregoing submissions, there would be no evidence which establishes, beyond a reasonable doubt, how the drug exhibits were handled beyond the sealing of the tamper-proof bags.[80]

26 The Defence makes two additional points. First, the Defence claims that after SI Eugene took over the black duffel bag, no one had personal knowledge as to what exactly the items inside that bag were.[81] Second, relying on the presence of FORT Officer Yee Hui Ping's ("Officer Yee") DNA on exhibit D7B, the Defence argues that Officer Yee did not adhere to protocol. It is also submitted that the presence of her DNA on exhibit D7B contaminated the physical evidence, such that it is no longer reliable and safe to include that exhibit as part of the Charge.[82]

27 In my judgment, none of these submissions raises a reasonable doubt in the Prosecution's case.

28 I deal first with the Defence's submission that the conditioned statements of SI Tay, SSgt Low, Sgt Yogaraj and ASP Yang should be inadmissible in their *entirety* (see above at [25(a)]). This submission merits greater elaboration.

29 The Defence urges this court to adopt a rule that stipulates that where a witness's conditioned statement is prepared or reviewed by a third party before trial, and contains substantial matters that are not within that witness's personal

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80 DS at para 176.

81 DS at para 177.2.

82 DS at paras 178–180.

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knowledge, that conditioned statement should be excluded because it is contaminated and unreliable.[83]

30 In support of this rule, the Defence cites the English Court of Appeal case of *R v Momodou* [2005] EWCA Crim 177 ("*Momodou*") which sets out principles prohibiting witness training in criminal proceedings (the "*Momodou* Principles").[84] Reference is also made to the Singapore Court of Appeal case of *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand*"), which adopted the *Momodou* Principles in civil litigation cases, albeit with some modifications (the "Modified *Momodou* Principles").[85] The Defence submits that the Modified *Momodou* Principles should apply in the context of criminal proceedings as well,[86] and contends that allowing a third party to prepare or review a witness's conditioned statement would amount to a breach of the Modified *Momodou* Principles because it would be akin to training or coaching that witness as to what evidence to give by way of the conditioned statement. The Defence submits that unless the witness provides a cogent explanation as to why a third party prepared or reviewed his conditioned statement, and what steps were taken to avoid influencing the witness's evidence, the evidence in the conditioned statement is contaminated. Further, when substantial portions of the conditioned statement are not within the witness's personal knowledge, the conditioned statement becomes unreliable.[87]

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83 DS at paras 61 and 83.

84 DS at paras 62–64.

85 DS at paras 66–69.

86 DS at para 70.

87 DS at para 82.

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31 The Defence then argues that evidence given in breach of the Modified *Momodou* Principles should be rendered inadmissible altogether due to the prejudicial effect of such contaminated evidence.[88] To support this point, the Defence submits that the majority reasoning in *Regina v H* [1995] 2 AC 596 ("*R v H*") supports the proposition that evidence that is contaminated and shown to be unreliable is susceptible to be excluded.[89] Much emphasis is placed on Lord Mackay's decision in *R v H*.

32 I am unable to accept the Defence's submissions.

33 I begin by outlining the salient principles:

(a) At their core, the *Momodou* Principles are directed at ensuring that witnesses *give their own uncontaminated evidence* to the court. This is likewise the nub of the Modified *Momodou* Principles (borrowing the Defence's terminology) developed in *Ernest Ferdinand*.

(b) It follows from this that there is nothing inherently impermissible for an officer to prepare or review a conditioned statement on behalf of a CNB officer who was part of the drug raid based either on the self-statement of that officer or on facts gathered in a meeting with that officer. As long as a CNB officer's conditioned statement ultimately contains that CNB officer's own account of events, the conditioned statement would still consist of the CNB officer's own evidence.

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88 DS at para 77.

89 DS at paras 71–78.

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(c) Less weight (or even no weight) is placed on the witness's testimony if it transpires that the witness's evidence is not his own: *Ernest Ferdinand* at [136]–[137].

34 I now elaborate on the first proposition at [33(a)] above, which forms the foundation for the second. The essence of the principles laid down in *Momodou* is neatly encapsulated in *Ernest Ferdinand* at [134]:

> 134 … The *Momodou* principles were formulated in the context of criminal proceedings in England, and they provide that *it is important to ensure that the* ***evidence given by a witness is the witness's own uncontaminated evidence***, and that, consequently, the training or coaching of witnesses – whether one-to-one or in a group – is impermissible. …
>
> [emphasis added in italics and bold italics]

The Court of Appeal endorsed this fundamental point and emphatically held that:

> 136 … The line that *must* ***not*** *be crossed* is this: the witness's evidence *must remain* ***his own***.
>
> 137 … The ultimate question is … whether the preparation has compromised the fundamental principle that the witness's evidence must be his own independent testimony.
>
> [emphasis in original]

From this, the Court of Appeal in *Ernest Ferdinand* at [137]–[140] derived further rules that elucidate what is permissible and what is not in the course of witness preparation. One such rule is that the solicitor, in preparing a witness for a civil trial, must not allow other persons, including the solicitor himself, to supplant or supplement that witness's own evidence.

35 The fundamental principle that the witness's evidence must be his own applies equally when that evidence is in the form of a conditioned statement.

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Section 264 of the CPC provides that a witness's conditioned statement, if admitted, is to be treated as if it is oral evidence given by that same witness:

> **264.—**(1) Despite anything in this Code or in any other written law, a written statement made by any person is *admissible as evidence* in any criminal proceeding, ***to the same extent and to the same effect as oral evidence given by the person***, if the following conditions are satisfied: …
>
> [emphasis added in italics and bold italics]

The practical benefit of s 264 of the CPC is that conditioned statements can be used to admit the evidence of formal witnesses, whose evidence is unlikely to be challenged, in order to expedite the trial process: see *Modern Advocacy – More Perspectives from Singapore* (Eleanor Wong, Lok Vi Ming SC and Vinodh Coomaraswamy, gen eds) (Academy Publishing, 2019) at para 06.057.[90] Nevertheless, conditioned statements are admissible to the same extent and carry the same effect as oral evidence. As it is implicit under s 62(1) of the Evidence Act 1893 (2020 Rev Ed) that oral evidence must be the witness's own, this same principle must equally apply to conditioned statements.

36 In the present case, whether a conditioned statement contains that CNB officer's own evidence would depend on whether that conditioned statement reflects the CNB officer's own account of events. Having another officer prepare or review the CNB officer's conditioned statement, as stated at [33(b)] above, is not an objectionable practice *in itself*. It only becomes objectionable if the conditioned statement departs from the CNB officer's own account of events. Accordingly, I am unable to accept the Defence's submission that allowing a third party to prepare or review a witness's conditioned statement would be akin to training or coaching the witness as to what evidence to give. This sweeping proposition is not supported by any principle or logic. Much

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[90] Defence's Bundle of Authorities, Tab 16.

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would depend on whether the resulting conditioned statement still reflects that CNB officer's own account of events. As acknowledged by the Court of Appeal in *Ernest Ferdinand* at [134], whether the evidence is the witness's own is a *fact-specific inquiry*. For the same reason, it is not appropriate to lay down any hard and fast rule that unless the witness provides a cogent explanation as to why a third party prepared or reviewed his conditioned statement, and what steps were taken to avoid influencing the witness's evidence, the evidence in the conditioned statement is contaminated, as advocated for by the Defence.

37 As for the consequence of a breach of the *Momodou* Principles and the Modified *Momodou* Principles, I am unable to accept the Defence's contention that such a breach should affect the admissibility of the evidence and not its weight. This sits at odds with the holding of the Court of Appeal in *Ernest Ferdinand* at [136]–[137], which contemplates the converse:

> 136 … The line that must not be crossed is this: the witness's evidence must remain his own.
>
> 137 From this simple principle, at least three rules follow, *the breach of which* may – *depending on all the circumstances – lead the court to accord* ***less weight (or even no weight)*** *to the resulting testimony.*
>
> [emphasis added in italics and bold italics; emphasis in original omitted]

Hence, the Court of Appeal indicates that a breach of the Modified *Momodou* Principles will affect the *weight* of the evidence, instead of its admissibility. This is reinforced by the fact that the possibility of ascribing no weight to the evidence is expressly canvassed in lieu of excluding the evidence altogether.

38 The Defence's submission that contaminated evidence should be rendered inadmissible altogether rests on Lord Mackay's decision in *R v H*. However, that decision does not assist the Defence. In that case, the accused

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was charged with sexual offences against two girls living with him in the same house. It was accepted that there was a risk that both girls had colluded to make false allegations against the accused. Against these facts, Lord Mackay was concerned with two legal issues. The first was whether evidence could be admitted as similar fact evidence, and secondly, *supposing the evidence was admissible*, whether it could be used as corroboration of the evidence of the witnesses supporting the allegation in issue, having regard to the admitted risk of collusion (*R v H* at 603). Lord Mackay held that collusion is generally not relevant at the stage of deciding whether to exclude evidence on the ground that it does not qualify as similar fact evidence. In relation to the second question, he held that if similar fact evidence has been admitted, but no reasonable jury could accept the evidence as free from collusion, the judge should direct the jury that it cannot be relied upon as corroboration. Where this is not so but the question of collusion has been raised, the judge must draw the importance of collusion to the attention of the jury and leave it to them to decide whether such evidence can be relied upon as free from collusion and tell them that if they are not so satisfied they cannot rely on it as corroboration (*R v H* at 612). Leaving aside the question of the relevance of *R v H*, as neither the issue of admissibility of similar fact evidence nor the issue of corroboration is engaged, the broad proposition relied upon by the Defence, that evidence that is ***contaminated*** and shown to be ***unreliable*** is susceptible to be excluded, does not assist the Defence in its attempt to raise a reasonable doubt in the Prosecution's case.

39 This is because the conditioned statements of SI Tay, SSgt Low and ASP Yang were, in the first place, not contaminated within the meaning of the *Momodou* Principles and the Modified *Momodou* Principles. In other words, their conditioned statements contained their own account of events. Even though SI Tay, SSgt Low and ASP Yang admitted that a person known as "the IO" had drafted their conditioned statements on their behalf based on self-

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statements given by them,[91] SI Tay, SSgt Low and ASP Yang signed their respective conditioned statements declaring that the contents therein were true to the best of their respective knowledge and belief.[92] In court, these three officers also confirmed that the signatures on their respective conditioned statements were theirs and that the contents therein were accurate.[93]

40 SI Tay, SSgt Low and ASP Yang further testified that before appending their respective signatures, they read their respective conditioned statements and ensured that they were accurate in substance.[94] In particular, SI Tay verified the accuracy of the conditioned statement by comparing it with his own self-statement and the field diary,[95] while SSgt Low checked that his conditioned statement was true and correct by comparing it with his own self-statement.[96] More care could have been taken by SI Tay and ASP Yang in checking through their conditioned statements for typographical errors,[97] but there is nothing to suggest that a third party has supplemented or supplanted the *substance* of their evidence.

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91 1 July 2021 Transcript at p 85 lines 3–27, p 89 lines 15–16 and p 90 lines 21–22; 2 July 2021 Transcript at p 5 lines 1–4; 15 July 2021 Transcript at p 32 lines 7–17.

92 AB 273, 309, 320 and 365.

93 1 July 2021 Transcript at p 68 lines 11–17 and p 89 lines 12–21; 2 July 2021 Transcript at p 2 lines 13–23; 15 July 2021 Transcript at p 2 lines 18–24 and p 44 lines 7–12.

94 1 July 2021 Transcript at p 68 lines 11–13, p 70 lines 12–26, p 88 lines 3–8, p 89 lines 12–14, p 91 line 25 to p 92 line 14 and p 103 lines 7–13; 15 July 2021 Transcript at p 2 lines 18–24 and p 44 lines 7–15.

95 1 July 2021 Transcript at p 70 lines 12–26.

96 1 July 2021 Transcript at p 91 line 25 to p 92 line 14.

97 1 July 2021 Transcript at p 69 lines 1–8; 15 July 2021 Transcript at p 29 line 9 to p 30 line 22.

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41 Indeed, parts of the conditioned statements of SI Tay and SSgt Low refer to matters not within their personal knowledge.[98] However, these are insufficient to suggest that "the IO" had supplanted or supplemented the conditioned statements of SI Tay or SSgt Low, because both SI Tay and SSgt Low were able to explain that they came to know of these matters, which were not initially within their personal knowledge, by reading the field diary or from what other officers had told them.[99] In other words, SI Tay and SSgt Low are still putting forward their own account of events, even though their understanding and narration of what had happened is premised on secondary sources.

42 Hence, I reject the Defence's argument that the conditioned statements of SI Tay, SSgt Low and ASP Yang are contaminated.

43 As for Sgt Yogaraj's conditioned statement, the Prosecution is not relying on it to establish an unbroken chain of custody. The question of whether Sgt Yogaraj's conditioned statement should be excluded therefore does not arise. I nevertheless observe in passing that Sgt Yogaraj admitted that the information contained in paragraphs nine and ten of his conditioned statement was not in his self-statement. This indicates that the IO who prepared Sgt Yogaraj's conditioned statement had inserted the information on his or her own accord, and there is no evidence before me as to where the IO had obtained the information if it was not previously in Sgt Yogaraj's self-statement. In these circumstances, paragraphs nine and ten, should not have been included in Sgt

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98 AB 270 (para 10) read with 1 July 2021 Transcript at p 87 lines 8–20; AB 272 (para 13) read with 1 July 2021 Transcript at p 75 lines 12–27; AB 320 (para 12) read with 1 July 2021 Transcript at p 98 line 30 to p 99 line 7.

99 AB 270 (para 10) read with 1 July 2021 Transcript at p 87 lines 8–20; AB 272 (para 13) read with 1 July 2021 Transcript at p 75 lines 12–27; AB 320 (para 12) read with 1 July 2021 Transcript at p 98 line 30 to p 99 line 7.

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Yogaraj's conditioned statement. This observation, however, does not detract from the fact that Sgt Yogaraj's conditioned statement is immaterial to the Prosecution's case, and accordingly my evidential analysis, of whether the chain of custody has been established beyond a reasonable doubt.

44 I now turn to consider the Defence's second submission at [25(b)] above. While the Defence is right in pointing out that parts of the conditioned statements of SI Tay and SSgt Low refer to matters outside their personal knowledge,[100] and that parts of SI Tay's evidence are based on his personal assumptions,[101] these matters are not being relied upon by the Prosecution to establish the chain of custody. The same goes for parts of the evidence given by SI Eugene, SI Alwin, Sgt Fauzi, Sgt Hidayat, SSgt Au Yong, SSgt Nurshila, SSSgt Fardlie and Insp Nur Yusyeila which are not within their respective personal knowledge and which are based on their personal assumptions. There is thus no need to take into account these affected parts in the evidential analysis.

45 As I have shown at [23] above, all the evidence relied upon to build the chain of custody is squarely in the respective CNB officers' personal knowledge. The affected pieces of evidence at [44] above do not impact on the Prosecution's ability to establish an unbroken chain of custody. Hence, despite the Defence's strenuous effort in advancing its submissions set out at [25(a)] and [25(b)] above, I am unable to accept that they raise a reasonable doubt in the chain of custody.

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100 AB 270 (para 10) read with 1 July 2021 Transcript at p 87 lines 8–20; AB 272 (para 13) read with 1 July 2021 Transcript at p 75 lines 12–27; AB 320 (para 12) read with 1 July 2021 Transcript at p 98 line 30 to p 99 line 7; 2 July 2021 Transcript at p 5 line 18 to p 8 line 10; AB 309.

101 1 July 2021 Transcript at p 72 line 22 to p 75 line 9, p 76 line 25 to p 78 line 13 and p 82 line 20 to p 83 line 1.

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46 I now consider the Defence's submission set out at [25(c)] above. Here, the Defence raised several concerns regarding the seizure and handling of the drug exhibits, none of which are sufficient to raise a reasonable doubt in the chain of custody of the Drugs. One of these concerns is the presence of alleged inconsistencies in the CNB officers' statements and testimonies as to whether SI Eugene and SSgt Low were present in the accused's bedroom at the time of search and seizure.[102] As the Prosecution correctly points out,[103] nothing turns on this point. Even if there are indeed inconsistencies on this point, they do not impugn the integrity of the chain of custody as set out by the Prosecution.

47 The Defence also raises the concern that SSgt Low's claim that he checked the seized exhibits against the field diary together with SI Alwin remains uncorroborated by other CNB officers who were present in the accused's bedroom at the material time.[104] However, corroborative evidence is unnecessary especially given the absence of evidence undermining the veracity of SSgt Low's claim. SI Alwin, who assisted Sgt Hidayat in packing and sealing the exhibits seized from the accused's bedroom, was silent as to whether he and SSgt Low checked the items against the field diary. Sgt Hidayat could not remember if SSgt Low was in the accused's bedroom during the search and also could not remember who was holding on to the field diary.[105] He also did not see SI Alwin cross-checking the exhibits against the field diary.[106] But all these are unsurprising given that Sgt Hidayat was busy conducting the search and seizure. SI Eugene who was sometimes in the accused's bedroom and

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102 DS at paras 160–166.

103 PRS at para 38.

104 DS at paras 163–166 and 168; 1 July 2021 Transcript at p 97 lines 4–13.

105 2 July 2021 Transcript at p 48 lines 3–26.

106 2 July 2021 Transcript at p 49 lines 24–31.

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sometimes outside the accused's bedroom,[107] did not see SSgt Low checking the exhibits against the field diary,[108] but this is insufficient to cast doubt on SSgt Low's claim since SI Eugene was in the accused's bedroom only for pockets of time.

48 In any event, I agree with the Prosecution that even if the CNB officers did not check the drug exhibits against the field diary, this would be insufficient to raise a reasonable doubt in the chain of custody. This is because the movement of the drug exhibits is still well-accounted for: there is sufficient evidence proving that after the exhibits seized from the accused's bedroom were packed and sealed into Tamper-Proof Bags, the seized exhibits were packed into the black duffel bag, and SI Alwin handed the black duffel bag containing the seized exhibits to SI Eugene (see at [23(b)]–[23(d)] above).

49 This brings me to the next point. In view of the evidence at [23(c)] above, the Defence's claim that no one could attest to what happened between the time after the Tamper-Proof Bags were sealed and the time that the Tamper-Proof Bags were allegedly put into the black duffel bag,[109] is not correct. On a related note, the Defence also alleges that after SI Eugene took over the black duffel bag, no one had personal knowledge as to what the items inside that bag were.[110] This allegation is equally meritless in attempting to raise a reasonable doubt in the chain of custody. What is important is that after SI Alwin handed over the black duffel bag to SI Eugene, and before SI Tay handed over the seized exhibits one by one to ASP Yang at the Exhibit Management Room, there is no

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107 2 July 2021 Transcript at p 14 lines 4–6.

108 2 July 2021 Transcript at p 16 lines 2–5.

109 DS at para 167.

110 DS at para 177.2.

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evidence that any of the seized exhibits were removed from the black duffel bag, except when SI Eugene took out five black packets (*ie*, exhibits D5 to D9) when recording the accused's Contemporaneous Statement. Even then, SI Eugene placed those exhibits back into the black duffel bag after the Contemporaneous Statement was recorded.[111]

50 Turning now to the handling of the seized exhibits at the Exhibit Management Room, the Defence raises three concerns. The Defence observes that no one at the Exhibit Management Room cross-checked the exhibits or the police report against the field diary.[112] I find this immaterial and incapable of raising any reasonable doubt in the chain of custody. ASP Yang testified that at the Exhibit Management Room, he cross-checked the exhibits against the police report filed by Sgt Fauzi.[113] Sgt Fauzi testified that the descriptions of the exhibits which appeared in his police report were copied "word-for-word" from the field diary.[114] In the circumstances, as the Prosecution argues,[115] it is sufficient for ASP Yang to have cross-checked the exhibits against the police report. I also note that the Defence did not put to Sgt Fauzi that the contents of the police report were inaccurate or materially different from the entries in the field diary.

51 Next, the Defence claims that there is a discrepancy in the evidence given by Insp Nur Yusyeila, Officer Yee and ASP Yang as to who carried out the cross-checking of the exhibits against the police report filed by Sgt Fauzi.[116]

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111 2 July 2021 Transcript at p 17 line 31 to p 18 line 18.

112 DCS at paras 169–173.

113 15 July 2021 Transcript at p 28 lines 15–16.

114 13 July 2021 Transcript at p 13 lines 25–28 and p 14 lines 19–24.

115 PRS at para 49.

116 DS at paras 174 and 177.3.

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I set out the evidence of Insp Nur Yusyeila and Officer Yee below and explain why this discrepancy alleged by the Defence is illusory:

(a) Insp Nur Yusyeila's testimony is that she did not check the exhibits against the field diary or the police report filed by Sgt Fauzi. She was unable to recall whether ASP Yang checked the exhibits against either document.[117] This does not support but neither does it contradict ASP Yang's testimony that he cross-checked the exhibits against the police report. In this connection, the Defence makes the point that Insp Nur Yusyeila did not cross-check against any list even though Sgt Fauzi said that the officer assisting the Investigation Officer (*ie*, ASP Yang) would do so together with the Investigation Officer.[118] Sgt Fauzi did not make such a claim. What Sgt Fauzi said was that the Investigation Officer "and the official that hand over the items to the [Investigation Officer]" would do the cross-checking.[119] As Insp Nur Yusyeila was not the officer who handed the exhibits over to ASP Yang, it is unsurprising that she did not partake in any cross-checking.

(b) When Officer Yee was asked whether she saw ASP Yang going through any document listing out the exhibits which were seized, Officer Yee replied that "[t]o the best of [her] knowledge", she saw the "arresting officer" cross-checking the exhibits against the police report before passing all the exhibits to ASP Yang.[120] While Officer Yee does not know who this "arresting officer" was,[121] the "arresting officer" must

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117 13 July 2021 Transcript at p 55 line 31 to p 56 line 4.

118 DS at para 174.

119 13 July 2021 Transcript at p 13 line 29 to p 14 line 1.

120 14 July 2021 Transcript at p 61 lines 1–11.

121 14 July 2021 Transcript at p 61 lines 5–6.

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have been SI Tay as he was the one who handed over all the exhibits to ASP Yang.[122] However, SI Tay's evidence is silent as to whether he cross-checked the exhibits against the police report before passing them to ASP Yang. SI Alwin, SSgt Nurshila and Sergeant Syazwan Bin Daud Mohamed were also present in the Exhibit Management Room at the material time and witnessed SI Tay handing over the exhibits to ASP Yang, but they did not expressly mention that SI Tay cross-checked the exhibits against the police report before passing them to ASP Yang.[123] In any event, even if I accept Officer Yee's evidence that the "arresting officer", which in the circumstances must have been a reference to SI Tay, cross-checked the exhibits against the police report before passing all the exhibits to ASP Yang, her evidence still does not undermine ASP Yang's evidence, as ASP Yang did not claim that he was the *only* one who cross-checked the exhibits against the police report filed by Sgt Fauzi. In fact, Officer Yee's evidence is compatible with Sgt Fauzi's evidence that it would be the Investigation Officer "and the official [who] hand over the items to the [Investigation Officer]" who would do the cross-checking.[124] Hence, it is plausible that both the "arresting officer" and ASP Yang cross-checked the exhibits against the police report. In any event, it is sufficient for ASP Yang alone to have cross-checked the exhibits against the police report.

52 Lastly, the Defence urges this court to infer that Officer Yee did not adhere to protocol and, as a result, to exclude exhibit D7B from the Charge, on

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122 AB 273 (para 23); AB 354 (para 10); 15 July 2021 Transcript at p 27 lines 12–16.

123 1 July 2021 Transcript at p 65 lines 2–25; 2 July 2021 Transcript at p 39 line 31 to p 40 line 21; AB 337 (paras 4–5).

124 13 July 2021 Transcript at p 13 line 29 to p 14 line 1.

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the basis that her DNA was found on the exterior of exhibit D7B.[125] I reject the Defence's submissions on this point. On 21 November 2018 at about 4.09am, Officer Yee was at the Exhibit Management Room swabbing the exterior of various exhibits, including exhibits D7A1, D7B1, D7C1 and D7D1, under the directions of ASP Yang.[126] She testified that she was wearing gloves throughout the swabbing process.[127] As noted by the expert witness, Ms Tang Sheau Wei June, there are a few plausible explanations for why Officer Yee's DNA was found on the exterior of exhibit D7B: (a) she had come into direct contact with exhibit D7B, (b) she had talked, coughed or sneezed nearby, or (c) she had previously touched another person's hand and that person transferred her DNA onto exhibit D7B.[128] It would be a leap of logic to infer that Officer Yee did not follow protocol just from the mere presence of her DNA on the exterior of exhibit D7B. It is also hard to see how the presence of Officer Yee's DNA on the *exterior* of exhibit D7B could be said to have "contaminated" the Drugs.[129] Lastly, as the Prosecution has observed,[130] the allegation that Officer Yee deviated from protocol in the Exhibit Management Room was not put to her during the trial, and it is also not the Defence's case that Officer Yee had tampered with exhibit D7B. The presence of Officer Yee's DNA on the exterior of exhibit D7B is therefore neither here nor there.

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125 DS at paras 178–180.

126 AB 2 at para 4.

127 14 July 2021 Transcript at p 57 lines 8–10.

128 14 July 2021 Transcript at p 20 lines 20–29.

129 DS at para 180.

130 PRS at paras 59 and 61.

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Accuracy of the accused's statements

53 It is claimed, by the Defence in its submissions and at trial, that various parts of the accused's statements were recorded and/or interpreted inaccurately:

(a) Contemporaneous Statement (the "Disputed Portions of the Contemporaneous Statement"):

(i) The accused was shown five black packets[131] and was asked at Q3 why these were with him. The accused's answer at A3 reads: "Alan asked me to keep. He will ask me to pass it to others". The accused claims that what he said (in Mandarin) was: "Alan asked me to keep for him first. Within a month, he would ask his man to take them from me".[132]

(ii) In response to Q17, which asked the accused how much he would earn for "doing such things", the accused's answer at A17 reads: "When I need money, I will ask from Alan. Each time he will give me $200 – $300". The accused claims that what he said (in Mandarin) was: "No, I did not. I was just helping out" and "If I needed money, I would ask from him, and I would ask about 2, 3 hundred dollars. A few days later, I would return him the money".[133]

(b) At paragraph 12 of the 1st Long Statement, the accused was recorded as having said: "Since then, I have been receiving 'drugs' on

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131 AB at 291 at A1; 2 July 2021 Transcript at p 10 line 15 to p 11 line 6.

132 DS at para 47.

133 DS at para 52.

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'Alan' behalf [*sic*]". The accused claims that what he said (in Mandarin) was: "Since then, I have been keeping grass and red wine for Alan", as well as "ice" and "k".[134]

(c) At paragraph 31 of the 3rd Long Statement, the accused was recorded as having said: "I will use the notebooks to note down what 'drugs' I helped 'Alan' to send on his behalf". The accused claims that what he said (in Mandarin) was: "…noted down the things that Alan asked me to keep for him".[135]

(d) At paragraph 34 of the 3rd Long Statement, the accused was recorded as having said: "This was done for easier reference if 'Alan' asked me whether I had made the delivery according to his instructions". The Defence claimed at trial that what the accused had said (in Mandarin) was: "I asked Alan for the names at times because Alan will ask who came to take, so I would be able to answer him. He asked me to place at a location to tell him, he said his man will come to take".[136]

(e) At paragraph 62 of the 3rd Long Statement, the accused was recorded as having said: "but I have yet to place it at a location for delivery as I was arrested". The accused claims that what he said (in Mandarin) was: "I yet to have time to place the packet at a location, the CNB officers already came after me" [*sic*].[137]

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134 DS at para 61.3.

135 DS at para 54.4 (p 29).

136 13 July 2021 Transcript at p 46 lines 1–32 and p 47 lines 9–10.

137 DS at para 57.1

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54 I will refer to the paragraphs listed at (b) to (e) above as the "Disputed Portions of the Long Statements".

55 The Contemporaneous Statement was recorded by SI Eugene. The Long Statements were recorded by ASP Yang. In my judgment, the Defence has failed to show that the Disputed Portions of the Contemporaneous Statement and the Disputed Portions of the Long Statements were inaccurately recorded.

56 I reject the Defence's allegation that the accused's answers at A3 and A17 of the Contemporaneous Statement were inaccurately recorded. It is undisputed between parties that the Contemporaneous Statement was recorded in a question-and-answer format. SI Eugene asked the accused questions in Mandarin. The accused answered in Mandarin. SI Eugene then recorded the questions and answers in writing in English.[138]

57 In relation to A3, SI Eugene disagreed that the accused said the following in Mandarin: "Alan asked me to keep for him first. Within a month, he would ask his man to take them from me". SI Eugene testified that he would try to write down the accused person's answers "as exact as possible".[139] He was able to repeat in court what the accused had said to him in Mandarin, and when this was translated into English by the court interpreter, the translated version matched what was recorded at A3.[140] Further, the accused accepted that after the Contemporaneous Statement was recorded, SI Eugene read the Contemporaneous Statement back to him in *Mandarin*, and he affirmed that the

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138 ASOF at para 10.

139 2 July 2021 Transcript at p 18 line 29 to p 19 line 20.

140 2 July 2021 Transcript at p 19 lines 21–31.

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Contemporaneous Statement, as read back by SI Eugene in Mandarin, was true and correct.[141]

58 In a bid to cast doubt on the accuracy of what was recorded at A3, the Defence points to Q4 and Q12 of the Contemporaneous Statement.[142] At Q4, the accused was asked what else Alan had asked him to keep.[143] The Defence claims that Q4 supports the accused's version because it referred to the action of keeping without mentioning the action of passing things to another person. This claim was put to SI Eugene, who disagreed.[144] Clearly, what was put to the accused at Q4 is an equivocal piece of evidence in so far as determining what the accused said at A3 is concerned. It is equally plausible that SI Eugene chose to focus only on what Alan had asked the accused to "keep", notwithstanding that the accused's previous response also mentioned that Alan would ask him to "pass" things to others. Indeed, even on the version advocated for by the Defence, SI Eugene could have focused only on the action of keeping in Q4 even though the accused had earlier mentioned that Alan's men would "take [the things] from [him]".

59 Next, at Q12 of the Contemporaneous Statement, SI Eugene asked the accused whether he knew who would "come and collect".[145] Latching onto SI Eugene's use of the word "collect" in Q12, the Defence put to SI Eugene that the accused must have used the word "collect" in his response at A3 (thus implying that A3, as reflected in the Contemporaneous Statement, was wrongly

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141 ASOF at para 10.

142 DS at para 47.

143 AB 291.

144 2 July 2021 Transcript at p 19 lines 12–14.

145 AB 293.

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recorded). SI Eugene disagreed.[146] Indeed, the use of the word "collect" in Q12 does not suggest that the accused must have used the word "collect" in A3. The accused's answers at A10 and A11 (which were unchallenged) claimed that Alan had asked him to place things at the "6th and 7th floor staircase" and that he proceeded to place different plastic bags at the said location.[147] It was thus natural for SI Eugene to follow-up with the question as recorded at Q12. Nothing in the Contemporaneous Statement indicates that the accused must have said what he now claims he said. On the face of the Contemporaneous Statement, there is also no indication that the accused could not have said what is recorded at A3. In these circumstances, there is no reason to doubt that SI Eugene had accurately recorded the accused's answer at A3 of the Contemporaneous Statement.

60 I am similarly unconvinced that SI Eugene had not accurately recorded what the accused said at A17 of the Contemporaneous Statement. It is undisputed that after the Contemporaneous Statement was recorded, SI Eugene read the Contemporaneous Statement back to the accused in *Mandarin*, and the accused affirmed that the Contemporaneous Statement, as read back by SI Eugene in Mandarin, was true and correct. It is also undisputed that SI Eugene invited the accused to make any alterations to the Contemporaneous Statement but he declined.[148] When given an opportunity to explain why he did not flag out to SI Eugene that his answer at A17 as recorded in the Contemporaneous Statement was different from what he told SI Eugene, the accused said that he was feeling uncomfortable and nervous, and did not know what was written as

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146 2 July 2021 Transcript at p 20 lines 9–29.

147 AB 293.

148 ASOF at para 10.

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his answer because he answered the question in Mandarin.[149] In my view, these are mere excuses which must be rejected. The accused claimed that he felt nervous because "many people rushed into [his] room suddenly and [he] did not know what had happened". However, when the Prosecution pointed out to the accused during cross-examination that the Contemporaneous Statement was recorded at 11.05pm, which was nearly three hours after CNB officers gained entry into his home, the accused shifted his stance and claimed that he was nervous because between the time the CNB officers entered his room and the time his Contemporaneous Statement was recorded, "many things had happened".[150] The accused's claim that he did not know what was written as his answer is also baseless. The accused knew what was recorded in the Contemporaneous Statement because SI Eugene read the Contemporaneous Statement back to the accused in *Mandarin*, and the accused *affirmed* that the Contemporaneous Statement, as read back by SI Eugene to the accused in Mandarin, was true and correct. There is no allegation (nor evidence to support such an allegation) that SI Eugene had deliberately repeated what the accused had said to him in Mandarin but had written down something different in English.

61 I now turn to consider whether the Disputed Portions of the Long Statements were accurately recorded. LE Wong was the Mandarin interpreter for the recording of the Long Statements. For all the Long Statements, ASP Yang asked the accused questions in English, and LE Wong interpreted the same to the accused in Mandarin. The accused answered in Mandarin, and LE Wong interpreted the same to ASP Yang in English.[151]

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149 21 July 2021 Transcript at p 22 lines 13–29.

150 21 July 2021 Transcript at p 22 line 30 to p 23 line 13.

151 ASOF at para 21(c).

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62 LE Wong disagreed that the accused said what he claims to have said at [53(b)]–[53(e)] above.[152] He testified that his practice was to interpret "according to what the person told me or said".[153] It also bears emphasising that for all the Long Statements, the accused accepts that LE Wong had interpreted and read back the statements to him in Mandarin. During this process, several amendments and corrections to typographical errors were made. Each amendment was explained to the accused in Mandarin, and when he was invited to make further amendments to his statements, he declined. The accused then signed at the bottom of each page of the Long Statements, and against each amendment.[154] Despite having the opportunity to raise all the inaccuracies listed at [53(b)]–[53(e)] above, the accused did not. The belated nature of these claims coupled with LE Wong's evidence render the accused's challenges meritless.

Elements of the Charge

63 As it is undisputed that the accused had possession of the Drugs within the meaning of s 5 of the MDA, and there is also ample evidence in this regard,[155] there are only two issues which fall to be determined: (a) whether the accused knew the nature of the Drugs ("Issue 1"), and (b) whether the accused was in possession of the Drugs for the purpose of trafficking ("Issue 2").

64 Given that much of the evidential analysis for the latter two issues turns on the accused's evidence, both in his statements and his oral testimony, I will

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152 13 July 2021 Transcript at p 29 line 28 to p 31 line 32, p 33 lines 1–13, p 43 line 8 to p 44 line 2; p 46 line 6 to p 47 line 24, and p 49 lines 3 to 23.

153 13 July 2021 Transcript at p 47 lines 15–16.

154 ASOF at paras 21(e) and 21(f).

155 See AB 370 (para 6); 21 July 2021 Transcript at p 3 lines 12–17.

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begin by setting out the accused's evidence from these two sources before delving into the analysis proper.

Accused's evidence

Contents of the accused's statements

65 After the Charge was read out to the accused, all he said in his Cautioned Statement was that he had already said what he wanted to say in his Contemporaneous Statement and had nothing more to add.[156] I therefore focus this section on the contents of the accused's Contemporaneous Statement and Long Statements.

(1) Contemporaneous Statement

66 In the Contemporaneous Statement, the accused disavowed knowledge of the contents of exhibits D5 to D9,[157] and claimed that they belonged to Alan.[158] When asked why they were with him, the accused responded: "Alan asked me to keep. He will ask me to *pass it to others*" [emphasis added].[159]

67 The accused said that Alan passed him these items two weeks ago on two occasions, through a male Chinese known as "Ah Han" and another person.[160] Ah Han and this other person passed him the items by leaving them at the staircase outside the accused's house. Upon being informed by Alan or

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156 AB 368; 16 July 2021 Transcript at p 30 line 30 to p 31 line 4.

157 AB at 291 at A1; 2 July 2021 Transcript at p 10 line 15 to p 11 line 6.

158 AB at 291 at A2.

159 AB at 291 at A3.

160 AB 292 at A6.

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Ah Han through a phone call about the location of these items, the accused collected them and brought them back to his house.[161]

68 The accused also said Alan asked him to keep "Ice, Red Wine, [G]rass, 'K' and some red tablet[s]".[162] When he was asked what red wine, grass and the red tablets were, he identified red wine as "5" and the red tablets as "WY". However, he did not know what "grass" was.[163]

69 In the afternoon of 20 November 2018, the day the accused was arrested, the accused collected a white plastic bag containing grass and a red plastic bag containing "5" at the staircase outside his house after Alan informed him that "the things are there".[164] Later that same day, Alan told the accused to place "the things" at "the 6th and 7th floor staircase".[165] The accused then placed the white plastic bag containing grass and the red plastic bag containing "5" at the said location,[166] and called Alan to inform him of the same.[167]

70 In response to a question asking how long the accused had been helping Alan "keep and send the [*sic*] drugs", the accused replied "[a]bout half a year".[168] When asked how much he would earn for doing such things, the

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161 AB 292 at A7 and A8.

162 AB 292 at A4.

163 AB 292 at A5.

164 AB 293 at A13; AB 294 at A15.

165 AB 293 at A10.

166 AB 293 at A11.

167 AB 293 at A12.

168 AB 294 at A16.

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accused said that he would ask Alan for money when he was in need of money, and that Alan would give him $200 to $300 each time.[169]

(2) Long Statements

(A) THE ACCUSED'S RELATIONSHIP WITH ALAN

71 The accused claimed that he had known Alan for about six months prior to his arrest. The accused got to know Alan through a mutual friend, who gave him Alan's contact number and told him to call Alan to arrange for a meeting.[170] The accused called Alan and told Alan to meet him at a playground near the Block. Alan and the accused then met at that playground. This was the *only* time the accused met Alan in-person.[171]

72 During that meeting at the playground, Alan told the accused that "if [he] need[ed] anything, he [*ie*, Alan] [would] be able to find someone to deliver it over". The accused claimed that he understood "anything" to be a reference to illegal things such as drugs.[172]

73 Some time after their meeting at the playground, Alan called the accused to tell him that there were things coming in from "JB" and told the accused to receive them on his behalf. The accused alleged that he did not know what those things were at that time, and only found out that they were drugs after he had received Alan's things and "opened up the things to see". He recognised that they were drugs because he had seen drugs on television before.[173]

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169 AB 294 at A17.

170 AB 371 (para 12).

171 AB 372 (para 12).

172 AB 372 (para 12).

173 AB 372 (para 12).

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74 The accused claimed that since then, he had been receiving drugs on Alan's behalf,[174] and that Alan had only contacted him for drug-related matters.[175] Apart from their meeting at the playground, the accused and Alan only communicated through phone, with Alan using a Malaysian phone number.[176] According to the accused, he had received "ice", "gor kia", "grass" and "k" on Alan's behalf. He could not remember how many times he had received drugs on behalf of Alan. When he helped Alan receive drugs, he did not receive any form of fixed payment in return. Whenever he needed money, he would ask Alan for about $200 to $300. Alan allegedly did not tell the accused why he needed the accused to receive drugs on his behalf.[177]

75 In his 1st Long Statement, the accused said that he had never seen who placed the drugs at the pick-up location when he was tasked to pick up the drugs. Neither had he seen who collected the drugs after he placed them at the pick-up location. In the accused's own words, "[i]t will always be contacted through 'Alan' [*sic*]".[178] In a similar vein, the accused said in his 3rd Long Statement that he "sen[t] the 'drugs' to the locations according to 'Alan' instructions" and "had never collect[ed] anything from anyone to pass to 'Alan'".[179] Alan "had only asked [him] to *deliver* the 'drugs' to one person face to face for a few times" [emphasis added], and that person was one "Ah Poh". For "the rest of

174 AB 372 (para 12).

175 AB 432 (para 73).

176 AB 372 (para 14).

177 AB 372 (para 12).

178 AB 372 (para 15).

179 AB 400 (para 34).

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the times, 'Alan' asked [him] to place it at a location where the recipient [would] collect without [his] presence".[180]

76 The last time the accused met Ah Poh was one week before his arrest. During that meeting, he "passed 'Ah Poh' one packet of 'hot one'" in accordance with Alan's instructions.[181] After he passed a packet of "hot one" to Ah Poh on the aforementioned occasion, he received cash from Ah Poh.[182] The accused proceeded to deposit the cash into a Singapore POSB account. The account number was provided by Alan even though that account did not belong to Alan.[183]

77 The accused was also shown photographs of two notebooks (the "Notebooks") during the recording of his 3rd Long Statement.[184] He explained that these Notebooks belonged to him and that he used them to "note down what 'drugs' [he] helped 'Alan' to *send* on his behalf" [emphasis added].[185] Other than that, the accused also "roughly take down the name of whom [he was] supposed to *send* them to" [emphasis added].[186] The accused said that the names of the recipients were provided by Alan, because the accused would ask Alan who the drugs were meant for when he placed them at a location for collection. The accused explained that this was done "for easier reference if 'Alan' asked [him] whether [he] had made the *delivery* according to his instructions"

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180 AB 399 (para 31).

181 AB 399 (para 32).

182 AB 399–400 (para 32).

183 AB 400 (para 32).

184 AB 399 (para 31) and 405 (photos 48–49).

185 AB 399 (para 31) and 400 (para 34).

186 AB 400 (para 34).

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[emphasis added].[187] In his 5th Long Statement, the accused maintained that the Notebooks contained "the names of the recipients whom [he] delivered 'drugs' to by placing them at the location" and "the 'drugs' which [he had] placed at the location for the recipient".[188]

(B) EVENTS ON 20 NOVEMBER 2018 PRIOR TO THE ACCUSED'S ARREST

78 In the 1st Long Statement, the accused explained the events on 20 November 2018 prior to his arrest as follows. On that day, the accused was woken up by a call from Alan. Alan told him that there were "grass" and "red wine" to be collected at the 11th floor staircase of the Block. The accused then collected the "grass" and "red wine" and went back home.[189]

79 Later on the same day, Alan called him again and told him that "someone" was going to take "something" from him. Alan allegedly told him it was "meant for the same person" but instructed the accused to place the "grass" and "red wine" at separate locations. The accused, on his own accord, decided to place the "grass" and "red wine" at "the 6th and 7th floor staircase" of the Block respectively. He then "placed a white colour plastic bag which contains many black packets of item" which he thought was "grass" at the 6th floor and a red plastic bag containing a black zip lock bag with "red wine" at the 7th floor. According to the accused, the "grass" and "red wine" were "already in that state when [he] received them", and he only separated them by placing them into two plastic bags.[190]

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187 AB 400 (para 34).

188 AB 430 (para 65).

189 AB 369–370 (para 5).

190 AB 370 (para 6).

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80 After he returned home, he contacted Alan to tell the latter the exact locations where the "grass" and "red wine" were placed.[191] Shortly thereafter, he was arrested by CNB officers in his home.

(C) THE ACCUSED'S KNOWLEDGE OF THE DRUGS FOUND IN HIS POSSESSION

81 When the accused's 2nd and 3rd Long Statements were recorded, he was shown photographs of various exhibits. He was able to identify "red wine", "ice" and "k" in a number of those exhibits and explained that those drugs were "meant for somebody else" and that he will wait for Alan to tell him where to place them.[192] In particular, he was able to identify exhibits G1A1A, G1A2A and SHJ-A2 as containing the "red wine" which he collected from the staircase at the 11th floor on 20 November 2018.[193] He was also able to identify exhibit SHJ-A1A as containing the "grass" which he collected from the staircase at the 11th floor on 20 November 2018.[194] The accused explained that he was able to identify them as such because Alan told him so.[195]

82 However, when he was shown photographs depicting exhibit D4 and its contents during the recording of his 2nd Long Statement, he claimed that he could only recognise exhibit D4. He did not know what the brown substances in exhibits D4A1, D4C1, D4C2, D4B1A, D4B2A and D4C2A were.[196] He explained that when he received exhibit D4, he did not open it up to see what was inside. He received exhibit D4 and its contents from Alan but did not ask

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191 AB 370 (para 6).

192 AB 374–375 (paras 21–23 and 25), 393 (photo 33), 394 (photo 34), 395 (photo 37), 396 (photo 38).

193 AB 401 (paras 37–38) and 409–410 (photos 57–58).

194 AB 401 (para 38) and 410 (photo 59).

195 AB 401 (para 37) and 411 (para 42).

196 AB 375 (paras 25–26).

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Alan what was inside exhibit D4.[197] When asked in his 3rd Long Statement why he did not ask Alan about the contents of exhibit D4, the accused explained that it did not cross his mind to ask Alan what was inside even though he knew that it was something illegal.[198]

83 In relation to exhibits D5 to D9, the accused claimed that they came from Alan. He only recognised exhibits D5 to D9 and not the other exhibits found within them because he did not open exhibits D5 to D9 to check their contents. As far as the other exhibits found within D5 to D9 were concerned, the accused "[did] not recogni[s]e them", had "never seen them before" and had "never touched them before". He also did not ask Alan what exhibits D5 to D9 contained, even though he knew that it was something illegal.[199]

(D) THE ACCUSED'S HISTORY OF DRUG CONSUMPTION AND KNOWLEDGE OF DRUGS IN GENERAL

84 In his 3rd Long Statement, the accused explained that when Alan told the accused to deliver "hot one" to Ah Poh, he understood Alan as referring to a black packet of things which looked like exhibits D5 to D9. The accused, however, disclaimed any knowledge of what Alan meant by "hot one". He suspected that "hot one" was something illegal, but never asked Alan what was "hot one".[200] He explained that there was no need for him to ask Alan what exactly "hot one" meant because he was not trying to study it and did not have to know what it was exactly.[201]

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197 AB 375–376 (para 26).

198 AB 398 (para 28).

199 AB 398 (para 29) and 402–404 (photos 43–46).

200 AB 399 (para 32) and 402 (photo 42).

201 AB 399 (para 32).

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85 In his 5th Long Statement, the accused was asked to explain the meaning of various terms written in one of his Notebooks, and his replies were as follows:[202]

(a) The term "HOT" referred to "hot one", which is a drug.

(b) The term "FISH" referred to "cold one", which is a drug. It also meant "ice".

(c) The term "wine" referred to "red wine", which is a drug. It is also known as "gor kia" and "five".

(d) The term "DANCE" referred to "shake head", which is a drug in tablet form.

(e) The term "KFC" referred to "k", which is a drug.

(f) The term "W.Y" referred to "WY", which is a drug.

(g) The word "GU" referred to "grass", which is a drug.

86 Of note is the fact that when the accused was asked whether he knew or used any other names to refer to "grass", he answered that he referred to "grass" as Gu".[203] He did not mention that he referred to "grass" as "hot one". The accused was also asked whether he knew or used other names to refer to "hot one", and he replied that he also referred to "hot one" using the term "hot".[204]

87 As for the accused's history of drug consumption, the accused said that he smoked "ice" on a daily basis since early 2018.[205]

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202 AB 430 (para 66).

203 AB 431 (para 71).

204 AB 432 (para 72).

205 AB 414–415 (paras 54–55).

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(E) THE ACCUSED'S FINANCIAL SITUATION

88 The accused claimed that he was unemployed at the time his 1st Long Statement was recorded. He stopped helping out at his father's coffeeshop two years ago and since then, he would receive allowances from his parents as and when he needed money and had no sources of income.[206]

89 The accused had pawned various items, some of which belonged to his parents. He explained that he wanted to use the money for his daily expenses and online casino betting, and mentioned that he was losing money from his bets.[207]

Accused's evidence at trial

(1) The accused's interactions with Alan prior to receiving the drugs in exhibits D4 to D9

90 The accused first met Alan at a playground near the Block.[208] The meeting was arranged entirely by a mutual friend shared by the accused and Alan: the accused was not given Alan's contact number and Alan did not contact him personally prior to their meeting.[209] That mutual friend did not inform the accused why the meeting was arranged and was not present at the meeting.[210] During that meeting, the accused had a "normal chit-chat" with Alan and regarded Alan as his friend.[211] When Alan asked whether the accused could help him temporarily keep "anything" that came from Malaysia on his behalf without

206 AB 369 at para 4.

207 AB 414 (para 50).

208 21 July 2021 Transcript at p 5 lines 1–4.

209 21 July 2021 Transcript at p 3 line 31 to p 4 line 1 and at p 5 lines 12–20.

210 21 July 2021 Transcript at p 4 lines 1–15 and p 5 lines 25–28.

211 21 July 2021 Transcript at p 5 line 29 to p 6 line 28.

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specifying what those things would be, the accused did not promise that he could help.[212]

91 The accused did not communicate with Alan until approximately half a year later when Alan called the accused. During that phone call, Alan asked if the accused could help him keep his things at the accused's place. Although Alan did not say what those things were, the accused agreed because he thought he "might as well [help]" because it was "not a big issue".[213]

92 Subsequently, Alan informed the accused via a phone call that his things had arrived in Singapore and, again, asked the accused to keep them for him temporarily. Alan also told the accused that he would send someone to take his things back.[214] In another call, Alan told the accused what time to take the things and gave the accused the collection address.[215] When the accused reached the location given by Alan, all he saw was a black paper bag. He did not meet anyone there. The accused took the black paper bag home after confirming with Alan via a phone call that it belonged to Alan.[216]

93 When the accused reached home, he kept the black paper bag in a drawer in his room. It remained in the accused's home until a month later when Alan called the accused. During that call, Alan told the accused to place the black paper bag at a location within the vicinity of where the accused stayed and Alan

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212 16 July 2021 Transcript at p 16 lines 25–27; 21 July 2021 Transcript at p 6 line 29 to p 7 line 8.

213 16 July 2021 Transcript at p 16 line 32 to p 17 line 15.

214 16 July 2021 Transcript at p 17 lines 21–27.

215 16 July 2021 Transcript at p 17 lines 28–32.

216 16 July 2021 Transcript at p 18 lines 1–7.

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would send someone to retrieve it. The accused later informed Alan of the location so that "his man could go there to take".[217]

94 The accused kept things for Alan on a few other occasions. On one of these occasions, the bag containing Alan's things was torn and the accused could see what was inside. That was the first time when the accused realised that Alan's things were drugs, specifically, "grass" and "red wine".[218] He knew that they were "grass" and "red wine" because he had seen them on television and had consumed both types of drugs previously.[219] When the accused called Alan to tell him that the bag was torn, Alan told the accused that he would get his men to give the accused the black zip lock bag and asked the accused "to repack them into the black zip lock bag.[220] Alan later sent him black zip lock bags (marked as exhibit D11C) and white transparent bags (found in exhibit D11A), both of which were seized from his bedroom.[221] After the accused repacked Alan's things, he kept them in a drawer since Alan had asked him to keep them and he was waiting for Alan's men to take back those things.[222]

95 On a separate occasion, Alan's things were sent over in a paper bag and the bag was torn when the accused arrived home. The accused recognised that the things in the paper bag were "ice" because he had seen it on television and had consumed it before.[223] Another time, Alan asked the accused to pass a "black packet of thing" to someone by the name of Ah Poh. Alan told the

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217 16 July 2021 Transcript at p 18 lines 8–32.

218 16 July 2021 Transcript at p 20 lines 11–18 and p 21 lines 12–18.

219 16 July 2021 Transcript at p 21 lines 19–22.

220 16 July 2021 Transcript at p 20 lines 14–18.

221 16 July 2021 Transcript at p 20 lines 24–30; Photograph P30.

222 16 July 2021 Transcript at p 21 lines 23–27.

223 16 July 2021 Transcript at p 21 line 28 to p 22 line 4.

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accused that it was "shao de" (which translates to "hot one" in English, and refers to diamorphine), but both Alan and Ah Poh did not tell the accused what exactly "hot one" was.[224]

96 When asked by his own counsel during examination-in-chief what other drugs he had seen in Alan's things, the accused replied that he would not know what those things were but he would ask Alan and Alan would tell him.[225]

97 Besides helping Alan keep his things from Malaysia and placing them somewhere for his men to take them back, the accused would also help Alan take down notes. Alan would tell the accused other people's names, telephone numbers, and other information, and the accused would note these down word-for-word.[226] Alan asked the accused to take note of these, so that if he subsequently asked the accused what the accused was keeping for him or whether his men had come to take his things, the accused would be able to answer him.[227]

98 Additionally, the accused helped Alan convert money from Singapore dollars into Malaysian ringgit. Alan would transfer money in Singapore dollars into the accused's bank account, and the accused would withdraw that sum of money and change it into Malaysian ringgit. On Alan's instructions, the accused would place that sum of money at a certain location for Alan's men to collect.[228]

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224 16 July 2021 Transcript at p 38 lines 3–31.

225 16 July 2021 Transcript at p 22 lines 15–18.

226 16 July 2021 Transcript at p 19 lines 3–14 and p 37 lines 30–32.

227 16 July 2021 Transcript at p 19 lines 23–26.

228 16 July 2021 Transcript at p 19 line 6 to p 20 line 5.

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99 Notably, the accused claimed that he was not paid for helping Alan keep illicit drugs.[229] But he alleged that if he needed money, he would borrow money from Alan and return the money to Alan a few days later.[230]

(2) The accused's receipt of drugs in exhibits D4 to D9

100 About two to three weeks before his arrest, Alan asked the accused, over the phone, to keep things for him and told the accused that he would send his man to take them back within one month.[231] At the time of collection, they came in a black zip lock bag which was torn, and the accused saw that they were drugs.[232] However, he did not know what drugs they were.[233] He called Alan and asked what they were, to which Alan replied that they were "ganja". When the accused asked what the granular substances were, Alan said that "they were ganja but it was in different shape".[234] The accused also asked Alan what he should do as the bag was torn. In response, Alan asked the accused to repack the items into another zip lock bag. The accused then repacked the items into exhibit D4, thus leaving behind his DNA on the exterior and interior of exhibit D4.[235]

101 The accused also claimed that within the original, torn black zip lock bag, there were two other bags which were torn. He therefore replaced these

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229 21 July 2021 Transcript at p 11 line 26 to p 12 line 6.

230 16 July 2021 Transcript at p 29 lines 25–32; 21 July 2021 Transcript at p 21 lines 10–14.

231 16 July 2021 Transcript at p 23 lines 3–15.

232 16 July 2021 Transcript at p 24 lines 3–12.

233 16 July 2021 Transcript at p 24 line 20.

234 16 July 2021 Transcript at p 24 lines 20–22; 22 July 2021 Transcript at p 15 lines 9–11.

235 16 July 2021 Transcript at p 24 line 10 and p 25 lines 1–7.

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bags with packagings which are now marked as exhibits D4C1 and D4C2. As the original packaging had markings on them, the accused copied those markings onto exhibits D4C1 and D4C2.[236] According to the Defence, this explains why the accused's DNA appears on D4C2.[237]

102 In the same period of time (*ie*, about two to three weeks before his arrest), the accused also received another group of items from Alan. Those items came in bags, some of which were torn. At the time of seizure, these items were found in five black packets, exhibits D5, D6, D7, D8 and D9. As before, Alan had asked the accused to keep those things for him and told the accused he would send his man to take them back.[238] The accused could not remember if he collected those things on the same day or on separate days, or on the aforementioned occasion at [100] above.[239] At the time of collection, the accused knew that the items were something illegal, and believed that they could be "grass" and "red wine" because those were the types of drugs he received from Alan on prior occasions.[240] However, when he reached home and was about to change the bags which were torn, he realised that the things were not "red wine",[241] but "grass".[242] This was because he saw the cubes in exhibits D5 to D9 and recalled that Alan told him that they were "ganja".[243]

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236 16 July 2021 Transcript at p 25 lines 10–28.

237 DS at para 35.

238 16 July 2021 Transcript at p 23 lines 16–28; see Photograph P5.

239 16 July 2021 Transcript at p 23 line 29 to p 24 line 2.

240 16 July 2021 Transcript at p 36 lines 11–18.

241 21 July 2021 Transcript at p 41 lines 2–6; 22 July 2021 Transcript at p 15 lines 23–30.

242 21 July 2021 Transcript at p 41 line 2 to p 42 line 6.

243 21 July 2021 Transcript at p 41 line 2 to p 42 line 6.

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103 The accused then proceeded to repack the items which were in bags that were torn and this resulted in his DNA being found on exhibits D6A1, D6A2, D6A and D6B,[244] as well as exhibits D7A, D7B and D7C.[245]

104 Up to the accused's time of arrest, Alan had not told him what to do with the items in exhibits D4 to D9. Even though two to three weeks had passed, the accused was still keeping the items for Alan because Alan told the accused that he would send someone to take them back within one month.[246]

105 At the time of his arrest, the accused had known Alan for about 10 to 11 months.[247]

(3) The accused's history of drug consumption and knowledge of drugs in general

106 The accused's evidence is that he consumed "grass" prior to 2018,[248] consumed "ice" everyday,[249] and infrequently consumed "red wine".[250] Before he was arrested, the accused knew that "ganja" was brownish in colour,[251] and that the drugs, "grass", "red wine" and "ice", were also known as "ganja", "gor kia" or "Erimin-5", and "bing" respectively.[252]

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244 16 July 2021 Transcript at p 25 line 29 to p 26 line 14.

245 16 July 2021 Transcript at p 26 line 27 to p 27 line 13; Photograph P27.

246 16 July 2021 Transcript at p 24 lines 27–31 and p 27 lines 19–31.

247 21 July 2021 Transcript at p 3 lines 25–30.

248 21 July 2021 Transcript at p 18 lines 15–20.

249 21 July 2021 Transcript at p 19 lines 7–24.

250 21 July 2021 Transcript at p 18 line 28 to p 19 line 6.

251 16 July 2021 Transcript at p 24 lines 25–26.

252 21 July 2021 Transcript at p 17 lines 6–19.

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107 As for the term "hot one", the accused suspected that it was something illegal,[253] and was under the impression that it referred to "grass".[254] He formed this impression because Alan "told [him] that the 'hot one' he was referring to was the same as the 'grass' [he] referred to".[255] "Hot one" was a term used by Alan, not the accused.[256]

Issue 1: Knowledge of the nature of the Drugs

Applicable legal principles

108 The presumption of knowledge of the nature of the controlled drug is contained in s 18(2) of the MDA:

> **18.**–(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.

109 The Prosecution can avail itself to the s 18(2) presumption where the accused is proved or presumed to have the controlled drug in his possession. If the Prosecution does invoke the s 18(2) presumption, as in the present case, the burden of proof lies on the accused to rebut the statutory presumption on a balance of probabilities.

110 To rebut this presumption, the accused person has to show that he did not know the nature of the drugs in his possession: *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") at [57]. However, an assertion of ignorance is insufficient to displace the s 18(2) presumption – if such a simplistic claim could rebut this presumption, the presumption would be "all

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253 21 July 2021 Transcript at p 51 lines 2–8.

254 21 July 2021 Transcript at p 52 lines 27–31.

255 21 July 2021 Transcript at p 53 lines 16–19.

256 21 July 2021 Transcript at p 54 lines 1–2.

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bark and no bite": *Gobi* at [64], citing *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [39].

111 The s 18(2) presumption is also not rebutted if the accused is indifferent to the nature of what is in his possession. An indifferent accused person cannot be said to have formed any view as to what the thing in his possession *is* or *is not*, and thus cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of. An accused may be said to be indifferent to the nature of the thing in his possession if he had the ready means and opportunity to verify what he was carrying, but failed to take the steps that an ordinary reasonable person would have taken to establish the nature of the thing, and also fails to provide any plausible explanation for that failure: *Gobi* at [65]. In a similar vein, if an accused person identifies the drugs in his possession by some idiosyncratic or colloquial name, but does not know what that means and does not bother to ascertain that meaning, he may be described as being indifferent to the nature of what he is carrying: *Gobi* at [67(c)].

112 Ultimately, the s 18(2) presumption will be rebutted where the court accepts that the accused has formed a positive belief that was incompatible with knowledge that the thing he was carrying was the specific drug in his possession: *Gobi* at [60]. To this end, the accused can show either that: (a) he believed he was in possession of something innocuous, even if he is unable to specify exactly what that was, or (b) he believed that he was in possession of some contraband item or drug other than the specific drug in his possession: *Gobi* at [59]. There is no need for the accused person to establish that he held a firm belief as to, or actually knew, what the thing in his possession specifically was: *Gobi* at [58].

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113 Where the accused person has stated what he thought that item was, the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the item in that light. This assessment will naturally be a highly fact-specific inquiry, and the court will consider factors such as the nature, the value and the quantity of the item and any reward for transporting it: *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 ("*Saravanan*") at [34]; *Obeng* at [40]. This inquiry will also take into account the credibility of the accused as a witness: *Obeng* at [40].

Defence's case

114 The Defence largely relies on the accused's oral testimony. The Defence's case is that after the accused received the items in exhibit D4, he was told by Alan that they were "ganja", and that the granular substance was "ganja but it was in different shape".[257] At the time the accused collected the items in exhibits D5 to D9, he believed that they were "grass" and "red wine" as with previous occasions. After he got home, he saw that some of the packaging was torn and realised that the items in exhibits D5 to D9 were the same cubes or granular substances which were in exhibit D4.[258] On the Defence's case, the accused realised then that there was no "red wine" and that the cubes or granular substances were "ganja" per what Alan told him previously.[259]

115 In short, the accused was of the belief that exhibits D4 to D9 contained "ganja" in a different shape.[260] To buttress that belief, the Defence submits that the accused had no reason to think that Alan was lying to him when Alan told

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257 DS at paras 210 and 228.

258 DS at paras 210 and 229.

259 DS at paras 210 and 212.

260 DS at para 238.

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him that the cubes or granular substances were "ganja" but in a different shape. This is because:

(a) The accused had no knowledge of what diamorphine is:[261]

(i) The accused only ever consumed "grass", "red wine" and "ice" and had no history of diamorphine consumption.[262]

(ii) During investigations, the accused was forthcoming about his ability to identify "grass", "red wine" and "ice" from the photographs of the exhibits shown to him, but was unable to recognise diamorphine. If the accused was trying to hide his guilt, he would have denied knowledge of all the drugs supposedly seized and shown to him, especially since the quantity of cannabis involved was also very substantial. His willingness to admit to knowingly possessing other types of drugs should thus point to a finding of fact that the accused genuinely had no knowledge about diamorphine.[263]

(b) The accused knew that "ganja" was "brownish in colour" and the diamorphine, as illustrated in the photographs, does appear brown in colour. The Defence also claims that the Prosecution did not dispute the accused's testimony that "ganja" can appear in different shapes.[264]

116 Separately, the Defence also put forward submissions on the use of the term "hot one". According to the Defence, the first time that the accused

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261 DS at para 234.

262 DS at paras 197–201 and 231.

263 DS at paras 198–202, 204 and 232-233.

264 DS at paras 211 and 230; DRS at para 4.

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mentioned "hot one" was when he was being forthcoming about a prior delivery of drugs, on Alan's behalf, to Ah Poh.[265] The accused accepts that when he delivered black packets, which resembled exhibits D5 to D9, to Ah Poh on that previous occasion, Alan told him that it was "hot one".[266] However, the Defence submits that this prior delivery to Ah Poh is not relevant to establishing the accused's knowledge about diamorphine or the contents of exhibits D4 to D9.[267] There is no evidence establishing what the accused had delivered to Ah Poh on that occasion.[268] Neither is there evidence that the accused was told what "hot one" meant when he delivered drugs to Ah Poh on that occasion.[269] The evidence merely shows that the type of black zip lock packets used for exhibits D5 to D9 were likely to have been used when the accused delivered Alan's drugs to Ah Poh. However, as the accused did not see the drugs on that occasion and notice that they looked the same as or similar to the diamorphine in exhibits D5 to D9, the prior delivery to Ah Poh cannot be said to be relevant.[270]

117 The Defence also claims that the accused understood "hot one" to be a reference to "ganja", and that the Prosecution has not proven that the accused knew that "hot one" meant diamorphine:[271]

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265 DS at para 205.

266 DS at para 187.

267 DS at paras 187 and 205.

268 DS at para 188.

269 DS at para 205.

270 DS at para 189.

271 DS at paras 29, 197, 209 and 236.

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(a) The accused's evidence is that Alan told him that "hot one", a term which Alan used, was the same as "grass", a term which the accused used.[272]

(b) The fact that the accused candidly talked about the incident involving Ah Poh and mentioned "hot one" meant that he genuinely did not think that "hot one" had anything to do with diamorphine.[273]

(c) Due to the way ASP Yang phrased his questions during investigations, the accused did not mention that he knew "grass" as "hot one". In particular, the accused understood one of ASP Yang's questions as asking what *he*, and not other persons, referred to as "grass" and "hot one". Since it was Alan who referred to "grass as "hot one", and not the accused, the accused did not say that he knew "grass" as "hot one" during investigations.[274]

(d) With respect to the Notebooks, the accused only wrote down what Alan dictated to him, and there is no evidence showing that he wrote the entries independently and with full knowledge of the term "HOT".[275]

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272 DS at paras 29 and 236.

273 DS at para 209.

274 DS at paras 29 and 206–208.

275 DS at para 237.

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Prosecution's case

118 The Prosecution relies on the presumption of knowledge in s 18(2) of the MDA to show that the accused knew that exhibits D4 to D9 contained diamorphine.[276]

119 The Prosecution submits that the defence raised by the accused during trial, *viz*, that he believed exhibit D4 contained "ganja" while exhibits D5 to D9 contained "grass" and "red wine",[277] should be rejected for two reasons:

(a) The accused is not a credible witness as he gave varied accounts regarding what he thought the Drugs were across his statements and testimony. His testimony at trial was an afterthought which was belatedly raised.[278] For instance, in relation to the contents of exhibit D4, the accused initially claimed in one of his Long Statements that he did not know what was inside exhibit D4 and did not ask Alan about it.[279] However, one of his accounts at trial was that he saw the drugs inside exhibit D4 and had asked Alan what the drugs were, to which Alan said they were "ganja" but "in a different shape".[280]

(b) The accused's claim, that he thought that the Drugs were "grass" and "red wine", is irreconcilable with his own evidence.[281]

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276 Prosecution's Closing Submissions ("PS") at para 41(b).

277 PS at paras 55 and 59.

278 PS at paras 51 and 60.

279 PS at para 52.

280 PS at para 55.

281 PS at para 61.

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(i) There was no reason for Alan to lie to the accused that "hot one" was a reference to cannabis when on the accused's own account, Alan had readily told him about the nature of other drugs on previous occasions. There was also no indication that the accused would refuse to help Alan had he known that the drugs were diamorphine.[282]

(ii) The accused ultimately admitted that he suspected that the contents of the exhibits D4 to D9 were "hot one". He testified that he had previously passed "hot one" to Ah Poh and that there was no need for him to ask Alan what "hot one" was on that occasion. It is incoherent for the accused to suddenly feel compelled to call Alan to ask him what the Drugs were when he previously did not see the need to.[283]

(iii) The accused was aware that "hot" was different from "grass" based on the entries in the Notebooks and his Long Statements.[284]

(iv) The accused also admitted in court that the contents of exhibits D5 to D9 did not resemble "red wine".[285]

(v) There was simply no reason for the accused to believe Alan's assurances that the Drugs were "grass", since on the accused's account at trial, they were not close to each other and

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282 PS at para 63.

283 PS at para 64.

284 PS at paras 65(a) and 65(b).

285 PS at para 65(c).

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> Alan had essentially tricked the accused into receiving and storing drugs for him for a period of time.[286]

120 Separately, the accused's account in his statements, *viz*, that he did not know what the Drugs were and did not conduct any checks on the same, was insufficient to rebut the presumption of knowledge as he was merely indifferent to what was in his possession.[287]

Evidential analysis

121 To rebut the s 18(2) presumption, the accused must form a positive belief that was incompatible with knowledge that the thing he was carrying was the specific drug in his possession: *Gobi* at [60]. Here, the positive belief asserted is that the items in exhibits D4 to D9 were "ganja". It is also claimed that this positive belief stemmed from Alan's assertion that the Drugs in exhibit D4 were "ganja" (see above at [114]). The credibility of the accused's contention must be assessed (see *Obeng* at [40]), and as part of this inquiry, I will consider whether Alan did in fact tell the accused that the Drugs in exhibit D4 were "ganja" and if so, whether the accused's assertion that he believed Alan ought to be accepted.

122 I reject the accused's claim that he believed that the items in exhibits D4 to D9 were "ganja", and find that the s 18(2) presumption remains unrebutted. This conclusion is the result of the following reasons which, taken together, show that the accused did not believe that the Drugs in exhibits D4 to D9 were "ganja":

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286 PS at para 66.

287 PS at paras 68–70.

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(a) The accused's alleged belief that exhibits D4 to D9 contained "ganja" was raised late in the day and stood in sharp contrast with the positions he took in his statements. This not only reveals that the accused is a witness lacking in credit, but also indicates that this defence at trial was an afterthought.

(b) The accused's narrative of how he came to believe that the Drugs were "ganja" was improbable. I disbelieved the accused's claim that Alan told him that the Drugs in exhibit D4 were "ganja". Even if Alan did say so, it was implausible for the accused to believe Alan.

(1) The accused is not a witness of credit and his defence at trial was an afterthought

123 I begin with the first reason. The accused's evidence as to what he knew about the contents of exhibits D4 to D9 as well as how he came to have such knowledge evolved over time. The general position he took in his statements was one of ignorance – he never opened exhibits D4 to D9, never looked at the Drugs, never asked Alan what was inside, and knew nothing about the specific nature of their contents. He *never* mentioned that he believed that exhibits D4 to D9 contained "ganja". However, his position changed at trial: he claimed for the first time that he had looked at the Drugs and had formed the belief that they were "ganja" because this was what Alan told him after he asked Alan. This marked shift in the accused's evidence and the absence of any credible explanation for this change show the accused's lack of credit and renders his belated assertion at trial unbelievable.

124 I will first set out the accused's conflicting positions in relation to the contents of exhibit D4, before proceeding to set out his similarly conflicting evidence in relation to the contents of exhibits D5 to D9.

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(A) ACCUSED'S EVIDENCE REGARDING THE CONTENTS OF EXHIBIT D4

125 In the 2nd Long Statement, the accused alleged that he did not recognise what the brown substance in exhibits D4A1, D4C1, D4C2, D4B1A, D4B2A and D4C2A was. According to the accused, when he received the black packet marked D4, he did not open it up to see what was inside. Neither did he ask Alan what was inside exhibit D4.[288] When his 3rd Long Statement was recorded, the accused explained that it did not cross his mind to ask Alan what was inside exhibit D4. He just knew that it was something illegal.[289]

126 The accused abandoned this position at trial. He alleged that Alan's items came in a black zip lock bag which was torn. When the accused reached home and wanted to change the black zip lock bag, he saw that the items inside were drugs.[290] However, he did not know what drugs those were because "they were different" from the drugs he received from Alan previously.[291] He then called Alan and asked what those things were. Alan replied that those were "ganja". When the accused asked what the granular substances were, Alan told him that "they were ganja but it was in different shape".[292]

127 This narrative is clearly at odds with what the accused said in his statements. It raises various inconsistencies as to whether he had opened exhibit D4 and seen its contents prior to his arrest, whether he asked Alan about the

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288 AB 375–376 (para 26).

289 AB 398 (para 28).

290 16 July 2021 Transcript at p 24 lines 3–12; 22 July at p 15 lines 7-14.

291 16 July 2021 Transcript at p 24 lines 19–20; 22 July 2021 Transcript at p 15 line 10.

292 16 July 2021 Transcript at p 24 lines 20–22; 22 July 2021 Transcript at p 15 lines 9–11.

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nature of those items, whether Alan had told him the nature of those items, and whether he had formed the belief that those items were "ganja".

128 When the Prosecution confronted the accused with his conflicting evidence as to whether he had asked Alan about what was inside exhibit D4, the accused could not offer any satisfactory explanation. The accused initially alleged that he did not know what ASP Yang was referring to because the "questions were put to [him] at different time[s]",[293] but when the Prosecution brought him through what was recorded in his 2nd Long Statement, the accused readily conceded that ASP Yang had shown him precisely the same exhibits as what his counsel had referred him to during his examination-in-chief.[294] When given another opportunity to provide an alternative explanation for this inconsistency, the accused alleged that he was not referred to any specific exhibits when his statement was recorded.[295] This is contradicted by his 2nd Long Statement, wherein the accused *himself* specifically referred to exhibits D4A1, D4C1, D4C2, D4B1A, D4B2A and D4C2A and claimed that he did not know what they were.[296] Similarly, in his 3rd Long Statement, the accused *himself* identified exhibit D4 when alleging that he did not ask Alan what was inside it.[297]

129 Separately, the accused sought to explain his inconsistent evidence in relation to whether he opened exhibit D4, by claiming that he could not remember which bags were torn and required repackaging as "the markings

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293 21 July 2021 Transcript at p 34 lines 3–19.

294 21 July 2021 Transcript at p 35 lines 8–11.

295 21 July 2021 Transcript at p 35 lines 12–20.

296 AB 375 (para 26).

297 AB 398 (para 28).

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were put up later".[298] As a result, he was uncertain as to whether he opened the packaging of the items now in exhibit D4.[299] Far from being an explanation, this claim compounds the accused's conflicting evidence. When the accused looked at the drugs in exhibit D4 during the recording of his 2nd Long Statement, he said that he had never opened exhibit D4.[300] He later changed his tune during his examination-in-chief by alleging that he "saw the drugs inside" exhibit D4 because the drugs came in a torn, black zip lock bag and he replaced that bag with exhibit D4.[301] The accused's claim that he was uncertain as to whether he opened exhibit D4 was made at a later point during the trial, and in fact constitutes a *third* position. The fact that this was only raised late in the day belies the veracity of that claim.

130 When confronted with the inconsistencies in his evidence as to whether Alan told him about the nature of the items in exhibit D4 and his belief as to what those items were, the accused alleged that these were a result of him not thinking much when ASP Yang questioned him. He claimed that he "did not make it [*sic*] [him]self very clear" when ASP Yang questioned him.[302] But the inconsistencies in these aspects cannot be explained on the basis that the accused was unclear or unspecific in his statements. The accused took the unequivocal position that he did not know what the items in exhibit D4 were, and implicit in that is the claim that no one told him what those items were. There was nothing unclear or unspecific in what he said in his statements. He then subsequently took a similarly unequivocal, yet contradictory position at

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298 16 July 2021 Transcript at p 35 lines 2–9; 21 July 2021 Transcript at p 34 lines 7–9.

299 21 July 2021 Transcript at p 35 lines 23–24.

300 AB 375–376 (paras 25–26).

301 16 July 2021 Transcript at p 24 lines 3–5.

302 21 July 2021 Transcript at p 36 line 23 to p 37 line 13.

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trial that he thought they were "ganja" because Alan told him that they were "ganja".

(B) ACCUSED'S EVIDENCE REGARDING THE CONTENTS OF EXHIBITS D5 TO D9

131 In his Contemporaneous Statement, the accused said that he did not know what was inside exhibits D5 to D9.[303] He took a somewhat similar stance when his 3rd Long Statement was taken: while he knew that exhibits D5 to D9 contained something illegal and he suspected that they contained "hot one",[304] he maintained that he did not know about the contents of D5 to D9 because he did not open them up to check and did not ask Alan what was inside.[305] When shown the photographs of the other exhibits found inside exhibits D5 to D9, the accused said that he had never seen them before, had never touched them before and did not recognise them.[306]

132 The accused's description of the state of his knowledge took on a different spin at trial. The accused, during his examination-in-chief, said that at the time of collection, he believed that exhibits D5 to D9 contained "grass" and "red wine" as those were the types of drugs he received from Alan on prior occasions.[307] Later in his cross-examination and re-examination, the accused supplemented what he said in examination-in-chief by claiming that when he reached home and was about to change the bags which were torn, he realised that exhibits D5 to D9 did not carry "red wine".[308] This was because he saw the

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303 AB at p 291 at A1; 2 July 2021 Transcript at p 10 line 15 to p 11 line 6.

304 AB 399 (para 32) and 402 (photo 42), read with 21 July 2021 Transcript at p 51 lines 5–8 and 22 July 2021 Transcript at p 16 line 20 to p 17 line 10.

305 AB 398 (para 29).

306 AB 398 (para 29) and 402–404.

307 16 July 2021 Transcript at p 36 lines 11–18.

308 22 July 2021 Transcript at p 15 lines 23–30.

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cubes in exhibits D5 to D9 and believed that they were "ganja". As to how he formed this belief, the accused said that he could not recall whether he asked Alan about the cubes found in exhibits D5 to D9, but he recalled ever asking Alan about such cubes, and Alan told him that they were "ganja".[309]

133 When the Prosecution confronted the accused with the inconsistencies regarding whether he repacked the various packaging, the accused conceded that he lied in his 3rd Long Statement about never seeing and touching the contents of exhibits D5 to D9 prior to his arrest. His responses merit reproduction:[310]

> Q Now, going back to your explanations last week about why your DNA was found on the number of exhibits, you explained that you would repack various packaging when they were torn. Do you recall that?
>
> A Yes.
>
> Q So, given that, what you told the IO:
>
> [Reads] "***For the rest of the items in Photo 43 to Photo 46, I do not recognise them…I have never seen them…and have never touched them before***."
>
> ***That is a lie isn't it?*** Because even on your case, you would repack them whenever you saw that the packages were torn and---
>
> A ***Yes.*** I said that if it was torn, I would repack them. And if they were not torn, I would not have repacked them.
>
> Q *So why is it that you lied to the IO by telling her that you had never seen or touched any of these packages?*
>
> A *I forgot what questions I were put by the IO. So I did---I gave these answers.*
>
> Q But your answer was very specific. You referred specifically to the rest of the items in photographs P26 to P29. You said very specifically do not recognise them, have never seen them before, have never touched them before. *What---can you think of*

309 21 July 2021 Transcript at p 41 line 2 to p 42 line 6.

310 21 July 2021 Transcript at p 39 lines 2–21.

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> *or can you suggest any question imposed by the IO that would explain why there is this inconsistency in your evidence?*
>
> A *I can't remember what questions were put to me.*
>
> [emphasis added in italics and bold italics]

For context, "the rest of the items in Photo 43 to Photo 46" is a reference to the other exhibits found within exhibits D5 to D9. As is evident from the extract above, the accused had no satisfactory explanation for why he lied in his 3rd Long Statement.

134 At another point during cross-examination, the accused was asked why he claimed in his 3rd Long Statement that he had suspected that exhibits D5 to D9 contained "hot one", but later testified that he believed that exhibits D5 to D9 contained "grass". In a feeble attempt to reconcile these two contradictory claims, the accused alleged that he thought Alan used the term "hot one" to refer to "grass".[311] In submissions, the Defence relies on this allegation to make the point that the accused believed that "hot one" referred to "grass".[312]

135 Apart from the fact that this allegation was raised for the first time during trial, it falls apart once the other parts of the accused's testimony, the accused's statements, and the contents of the Notebooks are considered. As the Prosecution notes in its written submissions,[313] the accused testified during his examination-in-chief that Alan did not tell him anything about "hot one".[314] This contradicts the accused's claim that Alan "told him" that "hot one" was a reference to "grass". Adding to this inconsistency is the accused's testimony at

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311 21 July 2021 Transcript at p 50 line 22 to p 52 line 31.

312 DS at paras 197 and 236.

313 PS at paras 58 and 65(b).

314 16 July 2021 Transcript at p 38 lines 28–31.

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an earlier part of his cross-examination where he stated that he *only* knew "grass" as "grass or *ganja*" [emphasis in original].[315]

136 As observed by the Prosecution, at no point in his statements did the accused associate the term "hot one" with "grass".[316] He did not mention this even when he was specifically asked during the recording of his 5th Long Statement whether he "*knew* or used any other names to refer to "grass"" [emphasis added]. The relevant portion in the 5th Long Statement reads:[317]

> … I am asked if I *know* or used any other names to refer to the "grass" I mentioned in the earlier statement. … I also refer to this "grass", which is a type of drug, as 'Gu' and the English term 'grass'. …
>
> I am asked if I *know* or used other names to refer to the 'hot one' I mentioned in the earlier statements. … I also refer to this "hot one", which is a type of drug, using the English term "hot". …
>
> [emphasis added in italics]

When the Prosecution pointed out to the accused that he did not mention that he knew "grass" as "hot one" in his 5th Long Statement, the accused said that this was because Alan referred to "grass" as "hot one". He also said that Alan "told" him that he used the term "hot one" to refer to "grass".[318] This does not adequately explain why he omitted to say that he knew "grass" as "hot one". Crucially, the accused was asked by ASP Yang whether he *knew* other names which were used to refer to "grass". If Alan truly referred to "grass" as "hot one", that would have been something squarely within the accused's knowledge. But he did not mention this to ASP Yang. This omission from his

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315 16 July 2201 Transcript at p 18 lines 12–13.

316 PS at para 58; see AB 430 (para 66) and 21 July 2021 Transcript at p 54 lines 3–13.

317 AB 431–432 (paras 71–72).

318 21 July 2021 Transcript at p 53 line 1 to p 54 line 2.

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5th Long Statement undermines the accused's allegation that he thought Alan used the term "hot one" to refer to "grass".

137 Finally, the accused wrote down different entries for "HOT" and "GU" in the Notebooks.[319] Given his understanding that "HOT" referred to "hot one" and "GU" referred to "grass", it must have been clear to the accused that Alan did not refer to "grass" as "hot one", and for the same reason, the accused could not have equated the two terms. As the Prosecution rightly contends,[320] it does not make sense for the accused to have used the terms "HOT" and "GU" separately for different entries if they referred to the same drug.

(C) CONCLUSION ON THE ACCUSED'S CREDIT AND THE VERACITY OF HIS DEFENCE AT TRIAL

138 The upshot of the evidential analysis set out above is that the accused's evidence was littered with multiple inconsistencies for which he could not provide a satisfactory explanation. In these circumstances, I am convinced that the accused was a witness lacking in credit, and that his claim about believing that the Drugs were "grass" was a mere afterthought.

(2) The accused's narrative of how he came to believe that the Drugs were "ganja" was improbable

139 Quite apart from the fact that the accused's evidence drastically shifted across his statements and oral testimony, the accused's explanation at trial as to how he had formed his belief that the Drugs were "ganja" is also improbable in the light of other pieces of evidence.

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319 AB 441.

320 PS at para 65(a).

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140 First, it was unlikely that Alan had lied to the accused that the Drugs in exhibit D4 were "ganja". There was no reason for Alan to lie. Alan had on multiple occasions told the accused the type of drugs the accused had received, so that he could hold the accused accountable. On the accused's own account at trial, Alan told the accused to take notes, so that if he subsequently asked the accused what the accused was keeping for him, the accused would be able to answer him.[321] This is corroborated by the accused's statements and the entries in the Notebooks, which indicate that the accused had recorded down the various types of drugs he handled.[322] There is also no evidence indicating that the accused would refuse to help Alan had he known that the drugs were diamorphine.

141 Second, even if Alan did tell the accused that the Drugs in exhibit D4 were "ganja", it was unbelievable that the accused would blindly trust Alan. The accused's first and only meeting with Alan was at a playground. On the accused's own evidence, that meeting yielded next to no details about Alan's background. Alan did not tell the accused if he had a Chinese name. Neither did he tell the accused his full name. Alan also did not tell the accused his occupation and whether he stayed in Singapore or Malaysia.[323] In these circumstances, the accused's assertion that he regarded Alan as his friend after their "normal chit-chat" at the playground[324] rings hollow. The accused's one and only interaction with Alan was superficial at best and it is implausible that he would readily take Alan's words at face value.

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321 16 July 2021 Transcript at p 19 lines 23–26.

322 AB 399 (para 31), 400 (para 34), 430 (paras 65–66), 436, 439–447.

323 21 July 2021 Transcript at p 6 lines 1–18.

324 21 July 2021 Transcript at p 6 lines 19–28.

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142 The accused must at the very least put forward an explanation as to why he still trusted Alan's assertion as to the nature of the Drugs in exhibit D4 in spite of the abovementioned circumstances. No tenable explanation was forthcoming. The Defence's main submission is that the accused had no reason to think that Alan was lying to him.[325] Connected to this is also the submission that there is nothing to show that the accused was suspicious of the Drugs being diamorphine.[326] But these do not constitute *positive reasons* explaining why the accused *nevertheless believed Alan's assurance* despite barely knowing him. That the Drugs had the same "brownish" colour as "ganja" is also an unviable explanation. Implicit in the accused's account at trial is an acknowledgement that even though the Drugs had the same "brownish" colour as "ganja", the Drugs in exhibit D4 *still looked different* from the accused's understanding of what "ganja" typically looked like, which was why the accused allegedly did not know what the Drugs were and had to check with Alan. The question which then arises is whether it is plausible that the accused would trust Alan that the Drugs were "ganja" (or "ganja" in a different shape) despite the visual differences between the Drugs and the accused's understanding of what "ganja" typically looked like. That brings us back to the implausibility of the accused's trust in Alan, and the lack of a countervailing explanation as to why the accused would readily accept Alan's words at face value.

Conclusion on whether the accused rebutted the s 18(2) presumption

143 I am not convinced that the accused has rebutted the s 18(2) presumption on a balance of probabilities for the foregoing reasons.

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325 DS at para 234; DRS at para 4.

326 DRS at para 4.

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144 For completeness, I make a few final remarks to address parties' submissions. First, the Defence advances the argument that the Prosecution has not been able to prove that the accused knew that "hot one" referred to diamorphine.[327] However, it is not necessary for the Prosecution to prove this. The Prosecution invokes the s 18(2) presumption, which places the burden of proof on the Defence to rebut that presumption on a balance of probabilities. One of the obstacles standing in the way of the Defence is the accused's admission that he suspected that exhibits D5 to D9 contained "hot one" (see above at [131]). This contradicts the Defence's case that the accused believed that the Drugs were "ganja". To overcome this, and in an attempt to rebut the s 18(2) presumption, the Defence makes the submission that the accused believed that "hot one" referred to "grass".[328] For this submission to be rejected altogether, all the Prosecution needs to show is that it is untrue that the accused believed that "hot one" referred to "grass"; and this is what the Prosecution has done (see above at [135]–[137]).

145 Secondly, I accept the Defence's submission that the previous delivery of "hot one" to Ah Poh is not, *on its own*, relevant in shedding light on the accused's knowledge about the contents of exhibits D4 to D9.[329] There is no evidence that the accused was told what "hot one" meant when he made that delivery to Ah Poh.[330] There is no evidence that the accused saw the drugs on

327 DS at para 235.

328 DS at paras 197 and 236.

329 DS at paras 187 and 205.

330 DS at para 205.

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that occasion.[331] There is also no evidence establishing what the accused had actually delivered on that occasion.[332]

Issue 2: Possession for the purpose of trafficking

Applicable legal principles

146 Under s 2 of the MDA, "traffic" means to sell, give, administer, transport, send, deliver or distribute, or to offer to do any of these things.

147 An accused person who returns the drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". It follows that a person who holds the drugs only with the intention to return them to the person who originally deposited those drugs with him does not possess the drugs "for the purpose of trafficking": *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh Perumal*") at [110]. In this connection, the Court of Appeal in *Ramesh Perumal* at [110] stressed that there is a fundamental difference between the aforementioned type of possession, and possession with a view to passing the drugs onwards to a third party:

> … In the former situation, the returning of the drugs to a person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.

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331 DS at para 189.

332 DS at para 188.

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148 Nevertheless, there is no need for the Prosecution to prove that an accused who transfers, or intends to transfer, the drugs from one party to another has any end-user within his contemplation or any specific intention to purvey the drugs to consumers in particular: *Ramesh Perumal* at [113]. Neither is there a need for the Prosecution to prove that the accused was moving the drugs closer to their ultimate consumer: *Ramesh Perumal* at [114]. This sufficiently disposes of the Defence's contention that the Prosecution has not proven that the accused intended to move the Drugs along the supply chain towards the end-users.[333]

Defence's case

149 Relying on *Ramesh Perumal*, the Defence submits that the accused had the intention of returning the Drugs to Alan after receiving and keeping them on Alan's behalf (the "Bailment Defence").[334] For this submission, the Defence relies on the accused's testimony at trial that he was only helping Alan to keep his drugs and would return the drugs to Alan by placing them at locations for Alan's men to collect.[335] In so far as the Drugs in exhibits D4 to D9 are concerned, Alan had told the accused to keep them for him and that he would send his men to take them back. However, the accused was arrested before Alan made arrangements to take the Drugs back.[336] In support of its submissions that the accused was only helping Alan, the Defence points to the accused's claim that he did not receive any fixed remuneration from Alan.[337]

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333 DS at p 105 and para 255.

334 DS at para 247.

335 DS at para 194.

336 DS at paras 196 and 251.

337 DS at para 195.

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Prosecution's case

150 On the other hand, the Prosecution submits that the accused had possessed the Drugs for the purposes of trafficking, and urges this court to reject the accused's Bailment Defence:

(a) The accused admitted in his statements that the Drugs were in his possession for trafficking.[338]

(b) The accused had consistently admitted in his statements that whenever Alan sent drugs to him, such drugs were intended for delivery to other persons.[339] This, the Prosecution argues, is corroborated by the Notebooks, in which the accused listed 18 distinct names of persons whom he passed drugs to previously. The Prosecution also highlights that the accused expressly denied collecting anything from anyone to pass to Alan.[340] The Prosecution clarifies that it is not relying on such evidence to argue that the accused had a propensity to traffic drugs for Alan. Rather, the Prosecution seeks to rely on such evidence to show the accused's state of mind on 20 November 2018, and the nature of the accused's relationship with Alan.[341]

(c) The accused's account at trial regarding the nature of his relationship with Alan, *ie*, he was doing Alan a favour by safekeeping illicit drugs for Alan, is inherently incredible.[342]

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338 PS at para 81.

339 PS at paras 88–89.

340 PS at para 90.

341 PS at para 88.

342 PS at para 96.

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(i) On the accused's account, Alan was a mere acquaintance who he had only met once,[343] and it was particularly bizarre that the accused would continue to "help" Alan even after knowing that he was dealing with drugs.[344]

(ii) The accused would not only collect drugs from Alan's men, but also repack them and replace the labels.[345] The accused was also in possession of drug paraphernalia (clear plastic wrapping, empty black packets, empty plastic bags and tapes), which suggests that he was repacking the drugs.[346]

(iii) Further, the accused kept a record of what he received, where he placed the drugs as directed by Alan, and was accountable to Alan regarding where, and to whom, the drugs were delivered.[347]

(iv) Given that the accused was struggling financially at the material time, it is incredible that the accused would do so much for no financial reward.[348]

(d) The accused was employed by Alan to pack and deliver the Drugs.[349]

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343 PS at para 97.

344 PS at para 99.

345 PS at para 98.

346 PS at para 100.

347 PS at para 98.

348 PS at para 101.

349 PS at paras 102–105.

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(e) The accused's Bailment Defence is an afterthought that is entirely illogical and unsupported by evidence.[350]

151 In the alternative, the Prosecution submits that even if the accused was safekeeping the Drugs for Alan with a view of returning them to Alan, the definition of trafficking under s 2 of the MDA is still satisfied. The accused has not provided any evidence showing that Alan was the person who originally deposited the Drugs with him. In fact, he testified that an unknown person, who was not Alan, would normally deposit the drugs for his collection. Given the accused's account that he was supposed to pass the Drugs to another of Alan's men, the accused was moving the Drugs along the chain of distribution – he took possession of the Drugs from an unknown person for the purpose of giving them to someone else whose identity he did not know.[351] Furthermore, the *Ramesh Perumal* exception is a very narrow one, which only applies to a mere bailee who holds the drugs with a view of returning them to a bailor, *without more*. The accused had agreed to receive illicit drugs from Alan on numerous occasions and had received a large variety of drugs of significant quantities. Instead of simply returning the drugs to Alan, the accused would assist in repacking the drugs if the packaging was torn. He was also paid for his assistance. Consequently, even if the accused was just "safekeeping" the drugs, he was a "professional bailee" who was an integral part of the process of moving the drugs towards the ultimate customer.[352]

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350 PS at paras 106–115.

351 PS at paras 76–77.

352 PS at paras 78–79.

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Evidential analysis

152 I am satisfied that the Prosecution has proven beyond a reasonable doubt that the accused possessed the Drugs in exhibits D4 to D9 for the purposes of trafficking.

153 First, the accused admitted in his Contemporaneous Statement that Alan had told him to keep the Drugs in exhibits D5 to D9 to "pass it to others" (see above at [66]).[353] He did not mention in his Contemporaneous Statement that he was going to pass the Drugs to Alan's men.

154 Second, having regard to the approach taken in *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [17]–[19] and *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 at [107] in relation to evidence of previous dealings, I accept that the Prosecution can rely on the accused's admissions in his Long Statements regarding his previous drug dealings with Alan. They are relevant not for the purpose of showing that the accused had a propensity to traffic drugs for Alan, but for the purpose of shedding light on the accused's state of mind in relation to the Drugs in exhibits D4 to D9 and for the purpose of giving the court a complete account of the arrangements he had with Alan. While the Defence has sought to challenge the accuracy with which those admissions were recorded, I have found above that the Defence's case on this point is lacking in merit. As a result, they constitute cogent evidence from which strong inferences can be drawn as to the accused's state of mind in relation to the Drugs as well as his relationship with Alan.

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353 AB 291 at A3.

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155 Turning now to the aforementioned admissions, the accused had consistently admitted in his 2nd, 3rd and 5th Long Statements that Alan sent drugs to him so that he could deliver them to other persons.[354] Notably, it was never mentioned in the accused's statements that these other persons were Alan's men. He also explained in his 3rd and 5th Long Statements that he would use the Notebooks to record down "what 'drugs' [he] helped 'Alan' to send on his behalf",[355] and the "names of the recipients whom [he] delivered 'drugs' to by placing them at [a] location".[356] This is borne out by the entries in the Notebooks, which contained 18 distinct names of persons whom he had passed drugs to previously. Corroborating the accused's statements is what the accused testified to at multiple points during his examination-in-chief. When asked about what he had said in his 2nd, 3rd and 5th Long Statements, the accused maintained that he knew that the drugs in his possession were meant for somebody else because Alan said so, but he did not know who those people were.[357] All these indicate that the arrangement between Alan and the accused involved the accused receiving drugs on Alan's behalf, and then delivering or sending them to third parties on his behalf. They also demonstrate the accused's awareness that he was delivering drugs to third parties on Alan's behalf.

156 Pertinently, the accused said in his 3rd Long Statement that he would *ask* Alan "who [were] the drugs meant for when [he] placed them at a location" and note down who he was supposed to send the drugs to.[358] This reveals that the arrangement between the accused and Alan was *not* for the accused to return

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354 See AB 374–375 (paras 21–23 and 25), 399 (para 31), 401 (para 38) and 429 (para 62).

355 AB 399 (para 31).

356 AB 429–430 (para 65).

357 See 16 July 2021 Transcript at p 32 line 21 to p 34 line 28, p 40 lines 14–20, p 41 line 17 to p 42 line 4.

358 AB 400 (para 34).

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the drugs to Alan, and the accused was well aware of this. Had this arrangement been in place, there would have been no need for the accused to ask Alan who the drugs were for and note down the names of the intended recipients.

157 As against these repeated admissions by the accused regarding his arrangement with Alan, the Defence points out that Alan had not told the accused what to do with the Drugs,[359] but does not point to any evidence which indicates a change in the usual arrangement or that the accused intended to deal with the Drugs differently. It can be concluded, from the state of the evidence before me, that the accused was in possession of the Drugs with the intention to deliver them to third-party recipient(s), as per his usual arrangement with Alan.

158 In this regard, the accused's Bailment Defence fails to raise a reasonable doubt in so far as the element of trafficking is concerned. The Bailment Defence was raised for the first time at trial,[360] and its belated nature belies its truth. If the accused truly intended to return the Drugs to Alan, he had multiple opportunities to mention it in his statements.

159 Furthermore, the Bailment Defence is inherently unbelievable. On the accused's account of events (see above at [90]–[99]), Alan called him out of the blue six months after their first and only meeting to ask if he could keep his things at the accused's place. The accused agreed, and helped Alan store his things on multiple occasions. What is baffling is that even after the accused found out that Alan had been sending him illicit drugs for storage, the accused continued to "help" Alan, someone whom he barely knew, keep drugs

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359 DS at paras 251 and 255.

360 16 July 2021 Transcript at p 17 lines 23–27.

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(including the Drugs) without any protest and for no payment notwithstanding that he was facing substantial financial difficulties.

160 In this connection, the accused had been unemployed for two years at the time of his arrest. He stopped working for his father two years before his arrest and since then, did not have any other sources of income apart from the allowance that his parents gave to him as and when he needed money.[361] During cross-examination, he claimed that he earned about $1000 a month selling handphone accessories online but this did not feature anywhere in his statements.[362] Even if I accept that he had this additional source of income, that would not undermine the fact that the accused was in fact facing financial difficulties at the material time. The accused himself acknowledged that prior to his arrest, he was facing financial difficulties to the extent that he had to pawn not only his own items but also his parents' items.[363] As at 16 October 2018, he only had $10.20 in his bank account.[364] It is also undisputed that all this while, the accused had to fund his daily consumption of Ice[365] as well as gambling habit.[366] I also note that he admitted in his 4th Long Statement that he was losing money in online casino betting.[367]

161 When the Prosecution gave the accused an opportunity to explain why he decided to continue helping Alan despite realising that Alan had been

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361 AB 369 (para 4); 21 July 2021 Transcript at p 24 line 18 to p 25 line 29 and p 27 lines 17–19.

362 21 July 2021 Transcript at p 27 line 20 to p 28 line 6

363 21 July 2021 Transcript at p 26 lines 1–16 and p 28 lines 7–13; AB 414 (para 50).

364 21 July 2021 Transcript at p 27 lines 7–12.

365 21 July 2021 Transcript at p 28 lines 14–15.

366 21 July 2021 Transcript at p 21 line 6.

367 AB 414 (para 50).

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sending him illicit drugs for storage, the accused's only response was to reiterate that Alan had asked him to help.[368] No coherent reason was put forward. In these circumstances, the readiness of the accused to help Alan, even after finding out that Alan had been sending him illicit drugs, remains unexplained.

162 For the foregoing reasons, I am satisfied that the Prosecution has proven beyond a reasonable doubt that the accused had possessed the Drugs with the intention to deliver them to third parties, instead of returning them to Alan. The accused therefore had the intention to traffic the Drugs.

Conclusion on whether the accused possessed the Drugs for the purpose of trafficking

163 I am satisfied that the Prosecution has proven beyond a reasonable doubt that the accused had the Drugs in his possession for the purposes of trafficking, and that the accused's Bailment Defence fails to raise a reasonable doubt on this point.

368 21 July 2021 Transcript at p 11 lines 26–32.

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Conclusion

164 For the above reasons, I am satisfied that the Charge against the accused has been made out. I therefore convict the accused of committing the offence listed in the Charge.

Dedar Singh Gill
Judge of the High Court

Wuan Kin Lek Nicholas, Pavithra Ramkumar and Heershan Kaur
(Attorney-General's Chambers) for the Prosecution;
Cheong Jun Ming Mervyn (Advocatus Law LLP) and Lau Kah Hee
(BC Lim & Lau LLC) for the accused.

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