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

[2024] SGHC 239

Criminal Case No 4 of 2024

Between

Public Prosecutor

And

Iswan bin Ali

JUDGMENT

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

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Public Prosecutor
v
Iswan bin Ali

[2024] SGHC 239

General Division of the High Court — Criminal Case No 4 of 2024
Dedar Singh Gill J
23–25, 29–31 January, 6, 8 February, 8 April 2024

17 September 2024 Judgment reserved.

Dedar Singh Gill J:

1 The accused claimed trial to one charge of having in his possession for the purpose of trafficking not less than 61.19 grams of diamorphine under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA").

Facts

2 The accused is Iswan bin Ali ("Iswan"), a 48-year-old male Singaporean citizen.[1] The key facts are as follows.

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[1] Agreed Bundle at p 202; Prosecution's Closing Submissions (dated 21 March 2024) ("PCS") at para 1; Defence's Closing Submissions (dated 20 March 2024) ("DCS") at para 1.

3 On 9 April 2020, at about 12.45am, officers from the Central Narcotics Bureau ("CNB") conducted a raid on Iswan's home at Block 90 Pipit Road [unit redacted].[2] Station Inspector Tay Keng Chye, Sunny (PW17) ("SI Sunny Tay"), Staff Sergeant Nor Saharil bin Sulaimai (PW22) ("SS Saharil") and Sergeant (3) Syazwan bin Daud Mohamed (PW37) ("Sgt 3 Syazwan") arrested Iswan in the unit.[3]

4 At about 12.53am, Iswan informed Sgt 3 Syazwan, in Malay, that there were drugs kept in his car (bearing plate number SJL6639L) (the "Car").[4] Thereafter, Sgt 3 Syazwan seized one Honda car remote key from Iswan.[5]

5 At about 1.20am, the CNB officers escorted Iswan to the carpark.[6] At about 1.25am, Senior Staff Sergeant Muhammad Fardlie bin Ramlie (PW38) ("SSS Fardlie") conducted a search of the Car in Iswan's presence.[7] Amongst other things, six packets containing granular / powdery substance were seized from the following locations in the Car (the "Seized Drug Exhibits"):[8]

Location	Exhibit Marked
In the car boot, under the mat, at the spare tyre compartment	A1A1A
	A1A2A
	A1A3A

2 Agreed Bundle at p 83 para 3; Agreed Bundle at p 93 para 4; Agreed Bundle at p 99; Agreed Bundle at p 212 para 14; PCS at para 4.

3 Agreed Bundle at p 89 para 4; Agreed Bundle at p 93 para 4; PCS at para 4.

4 Agreed Bundle at p 90 paras 5–6; PCS at para 5.

5 Agreed Bundle at p 90 para 5; PCS at para 5.

6 Agreed Bundle at 90 para 6.

7 Agreed Bundle at p 105 para 6; PCS at para 6.

8 Agreed Bundle at p 105 para 6; Agreed Bundle at pp 90–91 para 6; PCS at para 6.

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On the left side of the car boot	B1A1
Inside the car, at the rear right passenger seat	C1A
	C1B

6 All the seized exhibits were packed by SSS Fardlie and Sgt 3 Syazwan.[9] The search of the Car ended at 2.15am.[10] After the search ended, Sgt 3 Syazwan handed the seized exhibits over to SI Sunny Tay.[11] At about 2.22am, SI Sunny Tay handed over all the seized items to Inspector Eng Chien Loong Eugene (PW39) ("Insp Eugene").[12]

7 On the same day, at or around 3.55am, the CNB officers escorted Iswan to his registered address at Block 627 Yishun Street 71 [unit redacted] and conducted a search of the unit.[13] During the search, the officers seized, amongst other things, one packet of crystalline substance (later marked "J1A1").[14]

8 Insp Eugene retained custody of all the seized exhibits (including the Seized Drug Exhibits and J1A1) until they were processed at the Exhibit Management Room ("EMR") in the CNB by Station Inspector Asilah Binte Rahman (PW48) ("IO Asilah"), Station Inspector Cindy Ow (PW41) ("SI Cindy Ow"), and members from the CNB Forensic Response Team.[15] At about 9.15am, Insp Eugene handed custody of the remaining seized exhibits (*ie*,

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9 Agreed Bundle at p 90 para 6; Agreed Bundle at p 105 para 6; PCS at para 6.

10 Agreed Bundle at p 92 para 7.

11 Agreed Bundle at p 90 para 6; Agreed Bundle at p 105 para 6.

12 Agreed Bundle at p 84 para 6; Agreed Bundle at p 96 para 7; PCS at para 7.

13 Agreed Bundle at p 84 para 7.

14 Agreed Bundle at p 84 para 8.

15 Agreed Bundle at p 85 para 15; Agreed Bundle at p 149 paras 3–4; Agreed Bundle at p 183 para 7; PCS at para 8.

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Iswan's personal properties that were seized) to Inspector Daniel Yeo (PW40) ("Insp Daniel") to continue with the processing of exhibits.[16] The entire processing of exhibits ended at about 9.47am.[17]

9 At about 9.51am, IO Asilah and SI Cindy Ow commenced the weighing of the Seized Drug Exhibits.[18] The Seized Drug Exhibits were weighed between 9.51am and 9.55am.[19] Iswan witnessed the entire exhibit weighing process through a glass panel.[20] The respective weights of the Seized Drug Exhibits were as follows:[21]

Exhibit Marked	Weight
A1A1A	464.39g
A1A2A	463.40g
A1A3A	463.49g
B1A1	464.17g
C1A	236.06g
C1B	158.60g

10 Subsequently, the Seized Drug Exhibits were sealed and kept by IO Asilah in her locked cabinet at the CNB HQ.[22] Only IO Asilah had access to

16 Agreed Bundle at p 85 para 15; Agreed Bundle at p 131 para 3; Agreed Bundle at p 149 para 3; Agreed Bundle at p 184 para 7; PCS at para 8.

17 Agreed Bundle at p 184 para 7; PCS at para 8.

18 Agreed Bundle at p 184 para 9.

19 Agreed Bundle at p 184 paras 9–10.

20 Agreed Bundle at p 184 para 9.

21 Agreed Bundle at p 184 para 9.

22 Agreed Bundle at p 184 para 10.

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her locked cabinet.[23] At around 12.00pm, IO Asilah handed over the case exhibits, including the Seized Drugs Exhibits, to SI Cindy Ow who submitted them to Senior Staff Sergeant Chang Tat Yien (PW42) ("SSS Chang") of the CNB Exhibit Management Team ("EMT").[24] Thereafter, SSS Chang kept the said exhibits in a locked cabinet in the EMT office (the "Locked Cabinet").[25]

11 On the same day, sometime before 3.14pm, Sergeant (3) Muhammad Sufyan bin Mohamed Khairolzaman (PW43) ("Sgt 3 Sufyan") collected, amongst other exhibits, the Seized Drug Exhibits and Exhibit J1A1 and brought them to Lim Jong Lee Wendy (PW44) ("Wendy Lim") from the Health Sciences Authority ("HSA") for analysis.[26]

12 Wendy Lim issued nine certificates dated 15 May 2020, under s 16 of the MDA, in respect of the Seized Drug Exhibits:[27]

Exhibit Marked	**Weight**	**Analysis**
A1A1A	461.4g	Containing not less than 13.51g of diamorphine
A1A2A	460.5g	Containing not less than 12.48g of diamorphine
A1A3A	460.6g	Containing not less than 12.72g of diamorphine
B1A1	461.3g	Containing not less than 12.70g of diamorphine

23 Agreed Bundle at p 184 para 10.

24 Agreed Bundle at p 150 para 5; Agreed Bundle at p 142 para 2; PCS at para 9.

25 Agreed Bundle at p 142 para 3.

26 Agreed Bundle at p 143 para 2; Agreed Bundle at p 11 para 2; PCS at para 10.

27 Agreed Bundle at p 11 paras 3–4; Agreed Bundle at pp 13–18; PCS at para 11.

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C1A	230.9g	Containing not less than 5.85g of diamorphine
C1B	153.4g	Containing not less than 3.93g of diamorphine

13 During the investigations, a total of two contemporaneous statements and eight statements pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") were recorded from Iswan. These are as follows:[28]

(a) the contemporaneous statement recorded on 9 April 2020 from 2.40am to 3.40am (the "1st contemporaneous statement");[29]

(b) the contemporaneous statement recorded on 9 April 2020 from 4.34am to 4.43am (the "2nd contemporaneous statement");[30]

(c) the s 22 CPC statement recorded on 13 April 2020 from 3.25pm to 5.22pm (the "1st investigation statement");[31]

(d) the s 22 CPC statement recorded on 14 April 2020 from 10.25am to 11.55am (the "2nd investigation statement");[32]

(e) the s 22 CPC statement recorded on 14 April 2020 from 2.55pm to 4.00pm (the "3rd investigation statement");[33]

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28 Agreed Bundle at pp 107–108 paras 8–14; Agreed Bundle at pp 185–194 paras 15–59; PCS at para 13; DCS at paras 10–11.

29 Agreed Bundle at pp 111–116 and 172–175.

30 Agreed Bundle at pp 117–118 and 176.

31 Agreed Bundle at pp 202–206.

32 Agreed Bundle at pp 212–215.

33 Agreed Bundle at pp 216–218.

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(f) the s 22 CPC statement recorded on 15 April 2020 from 2.25pm to 4.30pm (the "4th investigation statement");[34]

(g) the s 22 CPC statement recorded on 12 November 2020 from 3.12pm to 4.18pm (the "5th investigation statement");[35]

(h) the s 22 CPC statement recorded on 5 January 2021 from 9.57am to 10.43am (the "6th investigation statement");[36]

(i) the s 22 CPC statement recorded on 24 May 2021 from 2.06pm to 4.05pm (the "7th investigation statement");[37] and

(j) the s 22 CPC statement recorded on 19 July 2021 from 2.20pm to 2.50pm (the "8th investigation statement").[38]

14 Iswan did not challenge the voluntariness and admissibility of the aforementioned contemporaneous and investigation statements (see above at [13]).[39] However, he sought to make some amendments and/or clarifications to his statements during the trial.[40]

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34 Agreed Bundle at pp 219–222.

35 Agreed Bundle at pp 236–241.

36 Agreed Bundle at pp 245–248.

37 Agreed Bundle at pp 254–262.

38 Agreed Bundle at pp 264–265.

39 DCS at para 13.

40 See for example, Notes of Evidence ("NE") (31 January 2024) at page 4 line 3 to page 7 line 18; DCS at para 13.

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15 During the investigations, five cautioned statements were also recorded from Iswan pursuant to s 23 of the CPC.[41] These five statements relate to the stood down charges and are irrelevant for the present purposes.[42]

16 On 20, 21 and 30 April 2020, Dr Kenneth Gerard Koh Wun Wu (PW45) ("Dr Koh") conducted a psychiatric assessment on Iswan.[43]

The applicable law

17 Section 5 of the MDA states that:

> **Trafficking in controlled drugs**
>
> **5.**—(1) Except as authorised by this Act, it shall be an offence for a person, on his or her 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 or she has in his or her possession that drug for the purpose of trafficking.

18 "Traffic" is defined under s 2 of the MDA:

> "traffic" means —
>
> (*a*) to sell, give, administer, transport, send, deliver or distribute; or
>
> (*b*) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning …

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41 Agreed Bundle at p 194 paras 60–89; Agreed Bundle at pp 270–284; DCS at para 12.

42 DCS at para 12.

43 Agreed Bundle at p 76 para 2; Agreed Bundle at pp 77–80; PCS at para 22.

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19 The elements of a charge under s 5(1)(*a*) of the MDA have been summarised in the decision of the Court of Appeal in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (at [59]), as follows:[44]

> (a) possession of a controlled drug – which may be proved or presumed pursuant to s 18(1) of the MDA, or deemed pursuant to s 18(4) of the MDA;
>
> (b) knowledge of the nature of the drug – which may be proved or presumed pursuant to s 18(2) of the MDA; and
>
> (c) proof that possession of the drug was for the purpose of trafficking which was not authorised.
>
> [emphasis in original omitted]

The parties' cases

20 The Prosecution submits that Iswan had admitted to possession and knowledge of the Seized Drug Exhibits.[45] Therefore, the only issue is whether Iswan had possessed the Seized Drug Exhibits for the purpose of trafficking.[46]

21 The Prosecution relies on the presumption, pursuant to s 17 of the MDA, to establish that Iswan had possessed the Seized Drug Exhibits for the purpose of trafficking.[47] Section 17 of the MDA sets out that:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his or her possession more than —
>
> …
>
> (*c*) 2 grammes of diamorphine;

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44 PCS at para 28.

45 PCS at para 31.

46 PCS at para 32.

47 PCS at paras 33–34.

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> …
>
> whether or not contained in any substance, extract, preparation or mixture, is presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his or her possession of that drug was not for that purpose.

According to the Prosecution, as Iswan was proved to have in his possession 61.19g of diamorphine, the presumption of trafficking would apply. The Prosecution further submits that Iswan has not rebutted the presumption.[48] Accordingly, the charge under s 5(1)(*a*) read with s 5(2) of the MDA is made out.

22 The thrust of the Defence's case rests on two main submissions.

(a) First, the Defence submits that, as there were alleged gaps in the chain of custody of the Seized Drug Exhibits, the Prosecution has failed to prove beyond a reasonable doubt that the exhibits analysed by HSA were indeed the Seized Drug Exhibits.[49]

(b) Second, the Defence contends that the Prosecution has not proven that Iswan possessed the Seized Drug Exhibits for the purpose of trafficking.[50] In support of this, the Defence makes two main arguments in relation to two categories of exhibits:

(i) The Defence submits that four of the Seized Drug Exhibits, namely, Exhibits A1A1A, A1A2A, A1A3A and B1A1, did not belong to Iswan.[51] Instead, these four exhibits belonged

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48 PCS at para 35.

49 DCS at paras 52–53.

50 DCS at para 54.

51 DCS at para 22; Defence's Reply Written Closing Submissions (dated 1 April 2024) ("DRCS") at para 6.

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to one Zahari bin Samat (PW49) (also known as "Bob") ("Zahari"). The Defence submits that Iswan had merely held the drugs for Zahari as a "bailee", and therefore his actions would not constitute "trafficking" as defined in the MDA.[52] Only Exhibits C1A and C1B belonged to Iswan.[53]

(ii) As for Exhibits C1A and C1B, the Defence alludes to a defence of consumption. The Defence points to Iswan's evidence in court that Exhibits C1A and C1B were for his own consumption,[54] as well as evidence of Iswan's high drug consumption.[55]

Issues to be determined

23 In determining whether the Prosecution has proven the offence under s 5(1)(*a*) of the MDA beyond a reasonable doubt, there are two main issues:

(a) First, whether the Prosecution has established the chain of custody of the Seized Drug Exhibits.

(b) Second, whether the Prosecution has established the required elements of an offence under s 5(1)(*a*) of the MDA. In the present case, this mainly turns on whether the Defence has successfully rebutted the presumption of trafficking. Two sub-issues come to the fore:

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52 DCS at paras 46–47.

53 DCS at para 22.

54 DCS at para 26; NE (31 January 2024) at page 38 lines 15 to 17.

55 DCS at paras 28–30.

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(i) Whether Iswan held Exhibits A1A1A, A1A2A, A1A3A and B1A1 as a "bailee" for Zahari; and

(ii) Whether Iswan possessed Exhibits C1A and C1B for his own consumption.

Whether the Prosecution has established the chain of custody of the Seized Drug Exhibits

24 It is incumbent on the Prosecution to prove 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 (*Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Mohamed Affandi*") at [39]).[56] To do so, the Prosecution must show an unbroken chain of custody. There cannot be a single moment that is unaccounted for if this would give rise to a reasonable doubt as to the identity of the exhibits (*Mohamed Affandi* at [39], citing *Public Prosecutor v Chen Mingjian* [2009] 4 SLR(R) 946 at [4]).

25 The Defence may also seek to suggest that there is a break in the chain of custody (*Mohamed Affandi* at [39]). Nonetheless, it is well established that "speculative arguments about the possibility of contamination will not be entertained" [emphasis in original omitted], and the chain of custody need not be laboriously proved by calling witnesses to testify to each step in every case (*Mohamed Affandi* at [41]). In the present case, the Defence raises three main issues with the chain of custody:

(a) First, the Prosecution's witnesses could not identify who had taken out the Seized Drug Exhibits from the Locked Cabinet and

56 DCS at para 52.

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how the Seized Drug Exhibits were delivered to HSA for analysis.[57]

(b) Second, IO Asilah could not explain the difference in the weights of the Seized Drug Exhibits in her statement (see above at [9]) and the HSA certificates (see above at [12]).[58]

(c) Third, the Prosecution's witnesses were unable to explain why Exhibit J1A1 was not mentioned in Wendy Lim's statement.[59]

26 The Prosecution disputes all three issues raised by the Defence and argues that it has "led clear evidence in respect of the chain of custody of the Seized [Drug Exhibits]" from the moment that they were seized to the point that they were submitted to the HSA for analysis.[60]

27 I find that the Prosecution has proven beyond a reasonable doubt that the drug exhibits analysed by the HSA were the Seized Drug Exhibits.

28 Before I give my reasons, I deal with the Prosecution's submission that Iswan had conceded in cross-examination that he did not have any basis to dispute that the Seized Drug Exhibits were handed over to the HSA for analysis and had no basis to make allegations of any contamination of the Seized Drug Exhibits.[61] I am of the view that such admission is, by itself, insufficient to prove beyond a reasonable doubt that there was no break in the chain of custody. The Prosecution has a duty to "account for the movement of exhibits from the point

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57 DCS at para 48.

58 DCS at para 51.

59 DCS at para 49.

60 PCS at para 29.

61 PCS at para 30; NE (31 January 2024) at page 12 lines 5 to 20.

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of seizure to the point of analysis" (*Mohamed Affandi* at [39]). The Prosecution's duty to ensure a complete chain of custody is paramount, especially since it could be a matter of life and death (*Mohamed Affandi* at [40], citing Chao Hick Tin J's dissenting judgment in *Lim Swee Seng v Public Prosecutor* [1995] 1 SLR(R) 32 at [70]). Therefore, in finding that the Prosecution has proven the chain of custody beyond a reasonable doubt, I do not place weight on Iswan's aforementioned concession. I address the three issues in turn.

The removal and delivery of the Seized Drug Exhibits from the Locked Cabinet

29 The Defence submits that the Prosecution is unable to identify the officer who had taken out the Seized Drug Exhibits from the Locked Cabinet after they were placed there by SSS Chang, and how the said exhibits were delivered to HSA for analysis.[62]

30 The Defence has overstated the alleged break in the chain of custody. The evidence makes clear that (a) SSS Chang placed the Seized Drug Exhibits in the Locked Cabinet (see above at [10]),[63] (b) the EMT duty officer of the day opened the Locked Cabinet, retrieved the Seized Drug Exhibits and passed them to Sgt 3 Sufyan,[64] and (c) Sgt 3 Sufyan "collected" the Seized Drug Exhibits and handed them over to the HSA for analysis (see above at [11]).[65] It was the practice for the EMT duty officer of the day, who would have access to the key to the Locked Cabinet, to take out the exhibits from the Locked Cabinet and

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62 DCS at para 48.

63 Agreed Bundle at p 142 para 3.

64 NE (25 January 2024) at page 4 line 25 to page 5 line 2.

65 Agreed Bundle at p 143 para 2; NE (25 January 2024) at page 5 line 28 to page 6 line 25; PCS at para 10.

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hand them over to the various EMT officers for the EMT officers to dispatch the exhibits to the various labs.[66] The only real issue in the present case is that the identity of the EMT duty officer is unknown.[67] This is borne out by the Defence's cross-examination of Sgt 3 Sufyan, as reproduced below:[68]

> Q: *You cannot remember? Alright. Now in para 2 of your conditioned statement which is at AB143, you say that at 3.14, you collected 10 exhibit from the cabinet—locked cabinet, right?*
>
> A: *To be exact prior to 3.14, Your Honour.*
>
> Q: Yes.
>
> A: *Yes. That's correct.*
>
> Q: *Yes. That's correct. So you collected. Alright. Now the 10 exhibits that you collected, who opened the cupboard? Locked cabinet, sorry. The cabinet.*
>
> A: *Only the duty officer [("DO")] because the key only the duty officer holds on to the key, Your Honour.*
>
> Q: You never had the key?
>
> A: Unless I was the DO of the day, which I honestly cannot remember, Your Honour.
>
> …
>
> Q: Yes. Chang say he could not remember whether you went and ask the key or he opened the cupboard. So who was the one who opened the locker?
>
> A: The—our procedure is that the duty officer will have the key and only the duty officer will open the cupboard. But as to who actually open—which individual specifically, I cannot remember, Your Honour.
>
> Q: Okay, fine. Now, when—you personally took out the exhibits, right?
>
> A: No, like what I explained, the DO handed over to me the exhibits, Your Honour.

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66 NE (25 January 2024) at page 5 lines 7 to 13.

67 DCS at para 48.

68 NE (25 January 2024) at page 7 line 15 to page 8 line 11; see also, NE (25 January 2024) at page 5 lines 3 to 4.

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> Q: *And you don't know who is the DO who handed over the exhibits?*
>
> A: *I cannot remember because the procedure is such that—because every day, we do in—we do this duty day in day out. So I don't remember who was the DO who handed over to me the exhibits, Your Honour.*
>
> [emphasis added]

31 As stated by the Court of Appeal in *Lai Kam Loy and others v Public Prosecutor* [1993] 3 SLR(R) 143 ("*Lai Kam Loy*") (at [38]), the Prosecution only needs to laboriously call every single witness to establish the chain of possession of the seized drugs where a doubt as to the identity of an exhibit has arisen. Such a doubt may arise where there was a shortfall in the number of exhibits or a failure to mark the exhibits (*Lai Kam Loy* at [38]).

32 In the present case, there is no doubt as to the identity of any of the Seized Drug Exhibits. Having regard to the sealing and storage of the Seized Drug Exhibits, I am satisfied that the Prosecution's case is not affected by the failure to identify the EMT duty officer.

33 Firstly, SSS Chang testified that he had kept all the exhibits in the Locked Cabinet inside the EMT office.[69] He also testified that the Locked Cabinet was only accessible by EMT officers.[70] This is because the key to the Locked Cabinet is kept inside a safe in the EMT office.[71] This significantly reduces the likelihood of any tampering and/or break in the chain of custody of the Seized Drug Exhibits. Although the identity of the EMT duty officer is unknown, it is clear that SSS Chang placed the Seized Drug Exhibits in the

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69 Agreed Bundle at p 142, para 3.

70 Prosecution's Reply Written Closing Submissions (dated 8 April 2024) ("PRCS") at para 6(b); NE (24 January 2024) at page 91 line 14 to page 92 line 9; NE (24 January 2024) at page 83 lines 26 to 30.

71 NE (24 January 2024) at page 89 line 26 to page 90 line 6.

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Locked Cabinet and it was Sgt 3 Sufyan who took delivery of the Seized Drug Exhibits from the EMT duty officer and handed them over to the HSA's Wendy Lim for analysis.[72]

34 Secondly, all the Seized Drug Exhibits were duly marked. As indicated by the HSA certificates issued by Wendy Lim, the exhibits which she analysed bore the exact markings of the Seized Drug Exhibits which SSS Chang had placed in the Locked Cabinet.[73] Wendy Lim also testified that she had ensured that the information on the exhibit label, the submission form, as well as the contents of the exhibit were consistent.[74]

35 Thirdly, the Seized Drug Exhibits were all sealed in tamper-proof bags when placed in the Locked Cabinet.[75] SSS Chang testified that he had ensured that the Seized Drug Exhibits were all sealed in tamper-proof bags and there was no tampering before placing the exhibits in the Locked Cabinet.[76] Sgt 3 Sufyan also testified that when he received the Seized Drug Exhibits from the EMT duty officer of the day, he made sure that the tamper-proof bags were all properly sealed and there was no sign of tampering.[77] Wendy Lim further testified that when she received the Seized Drug Exhibits for analysis, there was no sign of tampering and there was no tampering or alteration of the exhibits while they were in her custody.[78] Any sign of tampering would have been

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72 Agreed Bundle at p 143 para 2.

73 Agreed Bundle at pp 13–18 and 142 para 2.

74 NE (25 January 2024) at page 20 lines 1 to 6.

75 NE (24 January 2024) at page 82 line 23 to page 83 line 8; PRCS at para 6(a).

76 NE (24 January 2024) at page 82 line 23 to page 83 line 8.

77 NE (25 January 2024) at page 5 lines 20 to 23.

78 NE (25 January 2024) at page 20 line 25 to page 21 line 16.

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obvious as the word "void" would have appeared at the top of the tamper-proof bags.[79] This was not the case here.

36 Therefore, having considered the other evidence, I conclude that the failure to identify the EMT duty officer who handed the Seized Drug Exhibits over to Sgt 3 Sufyan is not sufficient, by itself, to raise any reasonable doubt that the Seized Drug Exhibits were the very exhibits analysed by the HSA. I take the view that, on the facts of this case, there is no break in the chain of custody that would cast doubt on the identity of the exhibits. However, to avoid such an issue arising in the future, it will be a matter of good practice for the name of the EMT duty officer who retrieves exhibits from the Locked Cabinet and delivers them to the EMT officers to be recorded.

The difference in the weight of the Seized Drug Exhibits

37 The Defence also takes issue with the differing weights of the Seized Drug Exhibits as recorded by IO Asilah and as reflected in the HSA certificates.[80] However, some of the Defence's calculations as to the said differences in weight are erroneous.[81] I therefore set out a table with the actual differences in the recorded weights, having considered both IO Asilah's statement and the HSA certificates:[82]

Exhibit Marked	IO Asilah's Records	HSA Certificates	Difference
A1A1A	464.39g	461.4g	-2.99g (0.64%)

79 PRCS at para 6(e); NE (25 January 2024) at page 5 lines 24 to 27.

80 DCS at para 51.

81 DCS at para 51.

82 Agreed Bundle at p 184 para 9; Agreed Bundle at pp 13–18.

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A1A2A	463.40g	460.5g	-2.9g (0.63%)
A1A3A	463.49g	460.6g	-2.89g (0.62%)
B1A1	464.17g	461.3g	-2.87g (0.62%)
C1A	236.06g	230.9g	-5.16g (2.19%)
C1B	158.60g	153.4g	-5.2g (3.28%)

38 During cross-examination, IO Asilah put forward two possible reasons for the differing weights: (a) the packaging of the original package of the Seized Drug Exhibits; or (b) the weighing scale that was used by the CNB.[83] In relation to (b), IO Asilah emphasised that there was no problem with the weighing scales, but that it was simply "how [the CNB's] weighing scale[s] measure[d]".[84]

39 The Prosecution's main submission is that the discrepancies in the recorded weights are from the weights of the original packaging of the Seized Drug Exhibits (*ie*, (a)).[85] IO Asilah testified, during re-examination, that when she weighed the Seized Drug Exhibits at the CNB she weighed the entire exhibits (*ie*, *both* the powdery substances and the plastic bags they were contained in).[86] Wendy Lim provided evidence, during the course of the trial, that the weights in the HSA certificates pertained *only to the powdery substances*.[87]

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83 NE (29 January 2024) at page 41 lines 2 to 10.

84 NE (29 January 2024) at page 41 lines 7 to 10.

85 PRCS at para 16.

86 PRCS at para 14; NE (30 January 2024) at page 10 lines 20 to 28.

87 PRCS at para 14; NE (25 January 2024) at page 23 lines 16 to 30.

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40 I accept this explanation. The photographic evidence shows that Exhibits A1A1A, A1A2A, A1A3A and B1A1 were contained in the same type of plastic bags.[88] For these four exhibits, the weight discrepancy between the CNB weights and the HSA weights is consistently around 2.87g to 2.99g. Exhibits C1A and C1B were contained in a different type of plastic bag from the previous four exhibits (*ie,* a clear Ziplock bag),[89] and reflect a similar weight discrepancy of around 5.16g to 5.2g.

41 The Court of Appeal in *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 ("*Nguyen Tuong Van*") stated (at [38]), "what is crucially important is to ensure that there has been no mixing of the drug exhibits or the tampering of the contents". In the present case, there is no suggestion of any mixing or tampering of the Seized Drug Exhibits. I am reinforced in my conclusion by the fact that there is no dispute that the Seized Drug Exhibits were marked and contained in tamper-proof bags that were properly sealed when delivered to the HSA for analysis (see [35] above).[90] Wendy Lim testified that she had checked that the seals of all the exhibits were intact, and that the information on the exhibit label, the submission form as well as the content of the exhibit were consistent.[91] Further, the Prosecution has adduced evidence that the Seized Drug Exhibits were properly handed over from one officer to another officer (see [5]–[12] above) (*Nguyen Tuong Van* at [38]). To my mind, there is sufficient evidence to establish that the Seized Drug Exhibits were the very exhibits analysed by the HSA.

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88 Exhibits P25 and P27.

89 Exhibit P30.

90 NE (25 January 2024) at page 6 lines 6 to 25; NE (25 January 2024) at page 20 lines 25 to 32; Agreed Bundle at p 143 para 2; Agreed Bundle at p 11 para 2; PRCS at para 17.

91 NE (25 January 2024) at page 19 line 29 to page 20 line 6.

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The omission of Exhibit J1A1

42 The Defence further calls into question the fact that Sgt 3 Sufyan "could not explain why Exhibit J1A1 was not mentioned in the condition[ed] statement" of Wendy Lim.[92] In particular, Wendy Lim's statement indicated that she had issued nine certificates in respect of exhibits A1A1A, A1A2A, A1A3A, B1A1, C1A, C1B, C1C1, C1D1 and E2A, but did not make mention of Exhibit J1A1.[93] The Defence contends that this casts doubt as to the chain of custody of the Seized Drug Exhibits.

43 The Defence's submission fails. Wendy Lim testified during the trial that, in addition to the nine listed exhibits, she had in fact also received another exhibit which was Exhibit J1A1.[94] The Prosecution explained that they had omitted references to Exhibit J1A1 as Exhibit J1A1 was not part of the proceeded charge.[95] The Defence itself accepted that Exhibit J1A1 could be excluded as it was not relevant to the proceeded charge.[96] As Exhibit J1A1 is not relevant to the charge before me,[97] and there is a proper explanation for its omission, I do not find the omission of Exhibit J1A1 in Wendy Lim's statement to be relevant.

44 For all the foregoing reasons, the Prosecution has proven that the Seized Drug Exhibits were the very ones analysed by the HSA beyond a reasonable doubt.

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92 DCS at para 49.

93 Agreed Bundle at 11 para 4.

94 NE (25 January 2024) at page 19 lines 6 to 20.

95 PRCS at para 11; NE (25 January 2024) at page 19 lines 17 to 19.

96 NE (25 January 2024) at page 20 lines 11 to 24.

97 PRCS at para 11.

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Whether the elements of the charge are established

45 As indicated above (at [19]), the elements of the charge under s 5 of the MDA are: (a) that the accused was in possession of the drugs; (b) that the accused had knowledge of the nature of the drugs in his possession; and (c) that the drugs were for the purpose of trafficking (that was unauthorised).

46 The Defence does not seriously contend that Iswan did not possess or did not know of the nature of the Seized Drug Exhibits. The crux of the defence is, therefore, whether Iswan had possessed the Seized Drug Exhibits for the purpose of trafficking. Nevertheless, I first explain my reasons for finding that the possession and knowledge elements of the charge are made out.

Possession of the Seized Drug Exhibits

47 In my view, Iswan was in possession of the Seized Drug Exhibits. The Seized Drug Exhibits were found in Iswan's Car.[98] During cross-examination, Iswan admitted that the Seized Drug Exhibits were placed in the Car by him and that they were in his possession:[99]

> Q: Now, Mr Iswan, I'll be asking you some questions. Please listen to my questions which will be translated to you by the Court interpreter before you answer them. Now, there are a few things I would like you to confirm before I move into some other areas. Can you just confirm that you agree that the drugs regardless of who own—who you say owns them, the drugs, A1A1A, A1A2A and A1A3A were in your possession because they were placed in your car by you.
>
> A: Yes, Your Honour.
>
> Q: Yes. And similarly for B1A1, if you look at P27.
>
> A: Yes.

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98 Agreed Bundle at p 105 para 6.

99 NE (31 January 2024) at page 10 lines 8 to 27.

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> Q: Yes. They were in your possession because they were placed in your car by you, correct?
>
> A: Yes, Your Honour.
>
> …
>
> Q: And similarly, see pa—if you look at P30 [referring to C1A and C1B].
>
> A: Yes.

The Defence also admits that Iswan "did not deny [that] he had possession of the seized drugs".[100]

Knowledge of the nature of the Seized Drug Exhibits

48 The Defence does not dispute the fact that Iswan knew that the Seized Drug Exhibits were diamorphine. Iswan stated, both during cross-examination at trial and in his contemporaneous and investigation statements, in no uncertain terms that he knew that the Seized Drug Exhibits were diamorphine.

49 During cross-examination, Iswan testified that he knew that the Seized Drug Exhibits contained 'heroin' or 'panas', which are the street names for diamorphine:[101]

> Q: Now, you knew that these exhibits – A1A1A, A1A2A, A1A3A, B1A1, C1A and C1B – all contained heroin known to you as *panas*.
>
> A: Yes, Your Honour.
>
> Q: Yes. And you had collected these drugs from the man at Yishun Industrial Park—sorry, Yishun Industrial.
>
> A: Yes, Your Honour.
>
> Q: And can I just confirm that you knew that you had collected heroin or *panas* because this was what you had ordered from Joe Cartel(?)?

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100 DRCS at para 6.

101 NE (31 January 2024) at page 10 line 30 to page 11 line 6.

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A: Yes, Your Honour.

50 Iswan's knowledge of the nature of the Seized Drug Exhibits is similarly borne out by his contemporaneous and investigation statements:

(a) In Iswan's 1st contemporaneous statement, he identified Exhibits A1A1A, A1A2A and A1A3A (initially marked as "B1A") as "panas, heroin".[102] Iswan similarly identified Exhibit B1A1 (initially marked "C1A") and Exhibits C1A and C1B (initially collectively marked as "D1A") as "panas".[103]

(b) In his 1st investigation statement, Iswan also stated that he had "met up with one Malaysian guy at Yishun Industrial Park A to collect six 'batu'. 'Batu' is 450 grams of heroin".[104]

(c) In Iswan's 2nd investigation statement, he mentioned that on 9 April 2020 when the CNB officers had asked him if there was anything illegal in his house, he told them that he "kept some 'batu' in [his] car".[105]

(d) In his 4th investigation statement, Iswan expressly stated that the Seized Drug Exhibits were "heroin that [he had] taken from the old Indian guy on 8 April 2020, at Yishun Industrial A", and that the heroin belonged to him.[106]

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102 Agreed Bundle at p 172 A1.

103 Agreed Bundle at p 172 A7 and A10.

104 Agreed Bundle at p 203 para 3.

105 Agreed Bundle at p 212 para 14.

106 Agreed Bundle at p 219 para 30.

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51 Having surveyed all the evidence before me, I conclude that Iswan knew of the nature of the Seized Drug Exhibits.

Presumption of trafficking

52 The Prosecution submits that as the Seized Drug Exhibits contain 61.19g of diamorphine, which far exceeds the 2g threshold, the presumption of trafficking pursuant to s 17 of the MDA should apply.[107] The Prosecution further asserts that Iswan has not rebutted the presumption of trafficking.[108] The Defence's case is that of the six Seized Drug Exhibits, four belonged to Zahari (*ie*, A1A1A, A1A2A, A1A3A and B1A1) and only two were for Iswan's own consumption (*ie*, C1A and C1B).[109] Iswan's final version of events, as set out in the Defence's closing submissions, is as follows:

(a) Zahari had asked Iswan to buy five 'batu' from Iswan's supplier, "Joe Cartel",[110] and paid Iswan $15,000 for the same (*ie,* $3,000 per 'batu').

(b) Iswan purchased a total of six 'batu' from Joe Cartel, of which five were for Zahari and one was for himself.[111]

(c) Of the five 'batu' for Zahari, Zahari gave one 'batu' to Zahari's customer on 8 April 2020, whilst in Iswan's Car at Beach Road.[112] Zahari thereafter instructed Iswan to keep the remaining four 'batu' and

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107 PCS at para 34.

108 PCS at para 35.

109 DCS at paras 22 and 25.

110 DCS at para 23.

111 DCS at para 23.

112 DCS at para 43.

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wait for his instructions, and to give one 'batu' to one Wadi later that night.[113] The *four* 'batu' that Iswan had kept for Zahari are Exhibits A1A1A, A1A2A, A1A3A and B1A1.

(d) Iswan split the one 'batu' which he had purchased for himself into Exhibits C1A and C1B.[114] These were for his own consumption.[115] Iswan also gave evidence that his drug consumption was heavy and that he had consumed part of Exhibit C1B on 8 April 2020.[116]

53 Accordingly, the Defence submits that as Iswan was holding Exhibits A1A1A, A1A2A, A1A3A and B1A1 for Zahari, he was merely holding the drugs as a "bailee" and with a view to returning them to Zahari (see above at [22(b)(i)]).[117] As for Exhibits C1A and C1B, they were for Iswan's own drug *consumption* (see above at [22(b)(ii)]). I consider the arguments in relation to (a) Exhibits A1A1A, A1A2A, A1A3A, B1A1; and (b) Exhibits C1A and C1B, in turn.

Exhibits A1A1A, A1A2A, A1A3A and B1A1

54 The total amount of diamorphine in Exhibits A1A1A, A1A2A, A1A3A and B1A1 is 51.41g (see above at [12]). This exceeds the threshold amount under s 17 of the MDA. The presumption of trafficking applies. The question is whether the Defence has successfully rebutted the presumption of trafficking in relation to these four exhibits.

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113 DCS at para 43.

114 DCS at para 25.

115 DCS at para 26.

116 DCS at paras 27–28.

117 DCS at paras 46–47.

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(1) Iswan's shifting version of events

55 As pointed out by the Prosecution, Iswan's version of events has shifted substantially over the course of investigations and trial. These inconsistences extend across numerous aspects of Iswan's evidence.[118] For the present purposes, I only raise the two main areas of inconsistency. These are the ownership of the Seized Drug Exhibits and the purpose of the Seized Drug Exhibits.[119]

56 With regards to the ownership of the Seized Drug Exhibits, there are at least four different accounts provided by Iswan.

(a) First, in Iswan's 1st contemporaneous statement on 9 April 2020, he said that all the Seized Drug Exhibits belonged to him.[120] This version is corroborated by Iswan's 4th investigation statement on 15 April 2020 where he expressly stated, referring to all the Seized Drug Exhibits, "these heroin belongs [*sic*] to me. It is meant for me to consume and also to sell to my friends if they need it. I cannot differentiate which exhibits are meant for me to consume and to sell to my friends".[121]

(b) Second, during his medical examination with Dr Koh, Iswan informed Dr Koh that "he had given a wrong statement to the CNB and had now wanted to tell [Dr Koh] the correct version".[122] Iswan informed Dr Koh that, in truth, the three bundles of drugs found under the spare

118 PCS at paras 37–42.

119 PCS at paras 38 and 39.

120 Agreed Bundle at p 172 A3, A8 and A11.

121 Agreed Bundle at p 219 para 30.

122 Agreed Bundle at p 78 para 7.

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tyre (*ie,* A1A1A, A1A2A and A1A3A) belonged to Zahari, while the rest of the Seized Drug Exhibits belonged to him.[123] Iswan gave Zahari one 'batu', and was instructed to keep the remaining *three* 'batu' for Zahari (*ie,* A1A1A, A1A2A and A1A3A).[124] This version of events is also reflected in Iswan's 6th investigation statement on 5 January 2021, where Iswan said that "Exhibits 'A1A1A', 'A1A2A' and 'A1A3A' belong[ed] to Bob and this [*sic*] are the 3 batu which Bob had asked me to keep. 1 batu, Bob had handed over to his client, after he boarded my car on 8 April 2020".[125] Iswan sought to clarify, during the trial, that he had overlooked Exhibit B1A1.[126]

(c) Third, in Iswan's 5th investigation statement on 12 November 2020, he stated that "some of [the] panas found in my car belongs to 'Bob'".[127] In this version of events, Zahari requested for one 'batu' to give to his friend and told Iswan to keep the remaining *two* 'batu' on his behalf.[128] During the trial, Iswan explained that he had told IO Asilah that *four* 'batu' belonged to Bob and that one 'batu' belonged to him.[129]

(d) Fourth, at trial, Iswan sought to explain his 4th investigation statement, saying that *four* of the Seized Drug Exhibits (*ie,* A1A1A, A1A2A, A1A3A and B1A1) belonged to Zahari, while Exhibits C1A

123 Agreed Bundle at p 78 para 7.

124 Agreed Bundle at p 78 para 8.

125 Agreed Bundle at p 247 para 52.

126 NE (31 January 2024) at page 7 lines 14 to 18.

127 Agreed Bundle at p 239 para 45.

128 Agreed Bundle at p 240 para 46.

129 NE (31 January 2024) at page 5 lines 11 to 16.

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and C1B belonged to him.[130] This is Iswan's final version of events (as recounted above at [52]).

57 Iswan's testimony regarding the purpose of the Seized Drug Exhibits has also morphed.

(a) The first version is that a portion of the Seized Drug Exhibits was for Iswan's consumption and sale.

(i) In Iswan's 1st contemporaneous statement dated 9 April 2020, he stated that Exhibits A1A1A, A1A2A, A1A3A (initially marked as "B1A") and B1A1 (initially marked "C1A") were for "selling", while Exhibits C1A and C1B (initially collectively marked as "D1A") were for his own consumption.[131]

(ii) In his 2nd investigation statement on 14 April 2020, Iswan said that of the six 'batu' which he had collected, he sold one 'batu' to Zahari and one packet of heroin (weighing 41g) to "Zafar", which he had repacked in his car.[132] During the trial, Iswan explained that instead of him having *sold* one 'batu' to Zahari, he meant that he "gave" one 'batu' to him.[133] IO Asilah disagreed that the word "sold" was a mistake.[134]

(iii) In Iswan's 4th investigation statement on 15 April 2020, he confirmed that a portion of the Seized Drug Exhibits was for

130 NE (31 January 2024) at page 5 lines 1 to 7.

131 PCS at para 39(a); Agreed Bundle at p 172 A4, A9 and A12.

132 Agreed Bundle at p 215 para 21.

133 NE (31 January 2024) at page 4 lines 10 to 16.

134 NE (29 January 2024) at page 30 line 31 to page 31 line 5.

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his own consumption and a portion was for him to sell to his friends.[135] However, in this account, he was unable to differentiate which exhibits were meant for his own consumption and which were intended for sale.[136] Iswan nonetheless maintained that Exhibits C1A and C1B were repacked from the same 'batu'. Iswan opened the original 'batu', gave a packet of heroin weighing 41g to Zafar, and the remainder (*ie,* Exhibits C1A and C1B) was for his consumption.[137]

(b) The second version is that a portion of the Seized Drug Exhibits was held by Iswan on Zahari's behalf. This is borne out in Iswan's account of events to Dr Koh on 20 and 21 April 2020, his 5th investigation statement dated 12 November 2020, and his 6th investigation statement dated 5 January 2021.[138] Nonetheless, the proportion of the Seized Drug Exhibits that were for safekeeping purposes differed across Iswan's statements (as indicated above at [56(b)]–[56(d)]).

58 Iswan has proffered a few reasons for the inconsistencies in his accounts:

(a) First, Iswan had explained to Dr Koh that he gave a wrong statement to the CNB because he did not want to be a snitch. Dr Koh assumed that Iswan meant that he did not want to be a snitch on his

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135 PCS at para 39(b); Agreed Bundle at p 219 para 30.

136 PCS at para 39(b); Agreed Bundle at p 219 para 30.

137 Agreed Bundle at p 220 para 32.

138 Agreed Bundle at p 78 para 7; Agreed Bundle at p 240 para 46; Agreed Bundle at p 246 para 52; PCS at para 39(c)–(e).

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"co-accused".[139] Iswan explained that instead of all of the Seized Drug Exhibits belonging to him, only some of the drugs were his while the rest belonged to Zahari.[140]

(b) Second, Iswan claimed that he was in a state of drug withdrawal when his 1st contemporaneous statement was recorded.[141]

(c) Third, Iswan alleged that he was experiencing pain from a hernia at the right side of his abdomen during the 3rd investigation statement.[142]

(d) Finally, Iswan contended that he revealed that some of the Seized Drug Exhibits belonged to Zahari after his mother had convinced him that he should work together with the CNB to get a lighter sentence.[143] According to Iswan, this alleged conversation with his mother had taken place on 15 April 2020. This was after his 4th investigation statement.[144]

59 I briefly consider the credibility of these explanations. Points (b) and (c) can be dealt with shortly. The Defence does not seriously pursue these points in its submissions. Iswan only suggested, during cross-examination, that his inconsistent statements were due to an alleged state of drug withdrawal and his hernia-induced pain.[145] Neither was raised to Dr Koh as an explanation for

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139 NE (29 January 2024) at page 7 lines 16 to 23; DRCS at para 8.

140 NE (29 January 2024) at page 7 lines 24 to 30.

141 NE (31 January 2024) at page 3 lines 21 to 26.

142 NE (31 January 2024) at page 4 lines 17 to 24; NE (31 January 2024) at page 19 lines 10 to 25.

143 NE (31 January 2024) at page 29 line 21 to page 30 line 3.

144 NE (31 January 2024) at page 35 lines 12 to 25.

145 NE (31 January 2024) at page 19 lines 13–25; NE (31 January 2024) at page 25 lines 18 to 23; PCS at para 47(b); see also NE (29 January 2024) at page 8 lines 8 to 14.

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Iswan's change of statements.[146] This casts some doubt on their veracity. I deal with the hernia-induced pain which Iswan claimed he had during the recording of the 3rd investigation statement. Although Iswan informed the investigation officer ("IO") that he felt some pain near his waist, when he was asked if he wanted to continue with his statement recording, he had informed the IO that he wished to continue as he was okay and well to give his statement.[147] As for the alleged state of drug withdrawal during the recording of his 1st contemporaneous statement, Iswan's impugned statement that all the drugs belonged to him is corroborated by his 4th investigation statement (see above at [56(a)]). Although I consider Iswan's defence of consumption later, for the present purposes, I simply note that these reasons (of an alleged drug withdrawal and a hernia-induced pain) are not credible and cannot, in my view, explain the inconsistencies in Iswan's statements as to the ownership and purpose of the Seized Drug Exhibits (detailed above at [56]–[57]).

60 I turn to consider Iswan's explanations in relation to the phone call with his mother (*ie,* point (d)). While the Prosecution accepts that Iswan's phone call with his mother is a likely explanation for Iswan changing his account of events,[148] the Prosecution argues that this was motivated by a desire to get a "lighter, non-capital, sentence" which is "self-serving".[149] I find that Iswan's claim that he followed his mother's advice to "work together with the CNB to get a lighter sentence" is at best neutral. It may be open to the interpretation that Iswan had, after the phone call, decided to *truthfully* assist the investigations and thus his later version of events should be accepted.

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146 PCS at para 47(b); Agreed Bundle at pp 77–78.

147 Agreed Bundle at p 216 para 23.

148 PCS at para 49.

149 PCS at paras 49–50.

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61 On the evidence before me, I find that there is also some veracity as to Iswan's justification of not wanting to implicate Zahari (*ie,* point (a)). The Prosecution applied to call Zahari to the stand as a rebuttal witness pursuant to s 230(1)(*t*) of the Criminal Procedure Code 2010 (2020 Rev Ed).[150] I allowed the Prosecution's application.[151]

62 The Prosecution and the Defence take conflicting interpretations of Zahari's testimony. The Prosecution submits that Zahari denied any knowledge of the Seized Drug Exhibits.[152] The Defence argues that "when confront[ed] with the transcript of the [in-car] camera recording … Zahari … feigned he [could not] remember".[153] I found Zahari's evidence to be largely unhelpful. Although Zahari consistently denied that the Seized Drug Exhibits belonged to him and vehemently disagreed with Iswan's account,[154] Zahari was a rather evasive witness. When cross-examined regarding the in-car camera recording of a conversation between Zahari and Iswan (the "in-car transcript"), Zahari repeatedly stated that he could not remember.[155]

63 It appears from the in-car transcript that Zahari had some involvement in the sale or distribution of the Seized Drug Exhibits. The in-car transcript shows Zahari instructing Iswan to send him one 'batu' of drugs, for Zahari to sell to Wadi:[156]

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150 NE (6 February 2024) at pages 1 to 5.

151 NE (6 February 2024) at page 8 lines 3 to 4.

152 PCS at para 66.

153 DRCS at para 11.

154 NE (8 February 2024) at page 7 line 22 to page 9 line 11.

155 NE (8 February 2024) at page 12 line 1 to page 13 line 31; NE (8 February 2024) at page 15 line 3 to page 16 line 11.

156 Agreed Bundle at p 179.

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> Iswan: *Okay Bob,* if you want anything, *call.*
>
> Bob: *Okay alright. Okay* this one, if possible drop one at night. *Give Wadi's one first. Eh? I see I can press him how much, four and a half or five, we divide into two.*
>
> Iswan: Expensive *sia* five thousand.
>
> …
>
> Bob: *Standby this one biji (?) first eh, later give to me.*
>
> Iswan: *Ah okay.*
>
> Bob: *Don't have to rush at night.*
>
> [emphasis added]

64 The in-car transcript contradicts Iswan's 1st contemporaneous statement and 4th investigation statement that all the Seized Drug Exhibits were his. This lends some credence to Iswan's explanation (in point (a)) for him changing the version of events. I caution that my views on Zahari's involvement are not meant to pronounce on the substantive culpability of Zahari in relation to any charges formulated against him.

65 As there is some doubt as to whether some of the Seized Drug Exhibits belonged to Zahari, I go on to consider Iswan's final version of events as set out above at [52].

(2) The "bailee" defence

66 In *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh a/l Perumal*"), the Court of Appeal held (at [100]–[101]) that an accused who took custody of the drugs but intended to and in fact returned the drugs to the person who initially entrusted him with the drugs would not be found to come within the definition of "trafficking".[157] The

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157 DCS at para 46.

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rationale is that the definition of "traffic" in s 2 of the MDA specifies that "traffic" means to "sell, give, administer, transport, send, deliver, distribute or to offer to do any of these things". The verb "return" is not found in that definition (*Ramesh a/l Perumal* at [103]). In going further to consider whether the term "deliver" could be interpreted to include the act of returning drugs to a person originally in possession of them, the court interpreted the terms "traffic" and "deliver" purposively and concluded that "Parliament's intention was to target those involved in the *supply and distribution* of drugs within society" [emphasis in original] (*Ramesh a/l Perumal* at [108]). Therefore, the court concluded that (*Ramesh a/l Perumal* at [110]):

> … a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs 'for the purpose of trafficking' …

67 The court drew a distinction between possession with a view to returning the drugs to the person who originally deposited those drugs and possession with a view to passing the drugs onwards to a third party (*Ramesh a/l Perumal* at [110]). While the former does not form part of the process of *disseminating* drugs in a particular direction, the latter constitutes "part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer" (*Ramesh a/l Perumal* at [110]).

68 The Court of Appeal made a further qualification in the decision of *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 ("*Roshdi*"). The court stated that *Ramesh a/l Perumal* "did not establish the general proposition that any 'bailee' who receives drugs intending to return them to the 'bailor' will *never* be liable for trafficking (or possession for the purpose of trafficking)" (*Roshdi* at [115]). Instead, much will depend on the circumstances (*Roshdi* at [115]). Therefore, where the 'bailee' in

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a 'bailment' arrangement *knew or intended* that the 'bailment' would be part of the process of supply and distribution of drugs within society, he would fall within the definition of "trafficking" (*Roshdi* at [116]). In establishing the requisite knowledge and/or intention, the court is concerned with the 'bailee's' subjective state of mind at the material time but may also infer the relevant knowledge and/or intention from the surrounding objective facts (*Roshdi* at [117]).

(A) ISWAN WAS INVOLVED IN THE SALE OF EXHIBITS A1A1A, A1A2A, A1A3A AND B1A1 TO ZAHARI

69 The Defence's argument that Iswan was holding Exhibits A1A1A, A1A2A, A1A3A and B1A1 for Zahari obscures the fact that Iswan had received money to obtain these exhibits from Joe Cartel for Zahari.

70 It is the Defence's own case that Iswan had collected $15,000 from Zahari in exchange for the purchase of diamorphine (including Exhibits A1A1A, A1A2A, A1A3A and B1A1), from Joe Cartel, for Zahari:[158]

> We submit that PW 49 Zahari Bin Samat on 8.4.2020 asked the Accused to purchase 5 batus of diamorphine from Joe Cartel and paid the accused $15,000.00 for the same.

71 This is also borne out by the evidence. In Iswan's 6th investigation statement, he stated that:[159]

> … a few day [*sic*] before 8 April 2020, Bob called me and asked about panas. Then in the conversation, I told him about my supplier only selling a minimum of 5 batu of 'panas'. Each batu will cost $3,000 plus, Singapore dollars. In that conversation, *Bob told me that he wanted to buy 4 batu and I will buy 1 batu. I agree with Bob, and I placed my order with 'Joe Cartel'*. After the conversation with Bob, I met Bob a few day [*sic*] later at the

158 DCS at para 43.

159 Agreed Bundle at pp 245–246 para 50.

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> vicinity of Beach Road. During that meet up, Bob passed me about $15,000, Singapore dollars. I did not want the money as I trusted Bob. *I informed Bob that once I have received the panas, I will update him.*
>
> [emphasis added]

72 This is corroborated by Iswan's admission during cross-examination that he had collected money from Zahari for the purchase of "batu" from Joe Cartel:[160]

> Q: So I'm going to move to the—so now, I'm going to go to the—on the "sixth *batu*". So just to confirm your evidence today, in court, is that the sixth *batu* was ordered from Joe Cartel by you?
>
> A: Yes, Your Honour.
>
> Q: Yes. And you made payment—okay, I'm going to—now don't talk—don't worry about the source of the money first. *You made payment to Joe Cartel through his man, of 18—for $18,000 for the sixth batu?*
>
> A: Yes, Your Honour.
>
> Q: Okay. So that works out to $3,000 per *batu*?
>
> A: Yes, Your Honour.
>
> Q: *And is it your evidence that the 18—of the $18,000, $3,000 came from you and $15,000 came from Bob**?***
>
> A: *Yes, Your Honour.*
>
> Q: *And is it your evidence today that you collected the $15,000 from Bob beforehand because that is the price you agreed with Bob for the drugs?*
>
> A: *Yes, Your Honour.*
>
> Q: Yes. And is it your evidence today that you collected this money from Bob beforehand so that you had money to pay Joe Cartel for the drugs?
>
> A: Yes, Your Honour.
>
> [emphasis added]

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160 NE (31 January 2024) at page 22 lines 10 to 28.

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73 Further in Iswan's 8th investigation statement, although he caveated that he did not receive any profit from Zahari, he admitted that Zahari ordered 'panas' from him:[161]

> I do not get any reward or profit from Bob. I was willing to help him deliver panas to his customer because he is my loyal friend. If I were to provide good service to him, *he will continue to order panas from me,* in bigger amount and I could get some get [*sic*] panas from my boss, joe cartel.
>
> [emphasis added]

74 The 'batus' or 'panas' referenced above (at [70]–[73]) consist of Exhibits A1A1A, A1A2A, A1A3A and B1A1. The evidence makes clear that Iswan collected $15,000 from Zahari for the purchase of Exhibits A1A1A, A1A2A, A1A3A and B1A1. In my view, this is sufficient to amount to the sale of drugs to Zahari – Iswan received money in exchange for goods (*ie,* drugs), regardless of whether he had made a profit from the sale or not.

75 Having sold Exhibits A1A1A, A1A2A, A1A3A and B1A1 to Zahari, it is perverse for Iswan to now argue that he was a bailee of these exhibits. An accused person who has sold the self-same drugs, that he was caught in possession of, to the person who he now says is the bailor, cannot rely on the bailee defence. This is because he is, without a doubt, part of the supply and distribution of drugs within society. Accordingly, it does not displace the presumption of trafficking for these exhibits.

(B) ISWAN KNEW THAT EXHIBITS A1A1A, A1A2A, A1A3A, B1A1 WERE MEANT TO BE PASSED ON TO OTHER PERSONS

76 In any event, it is also plain that Iswan knew that Exhibits A1A1A, A1A2A, A1A3A and B1A1 which he allegedly held for Zahari were meant to

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161 Agreed Bundle at p 265 para 69.

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be passed on to other persons. Iswan accepted during cross-examination that the drugs found in his car on 9 April 2020 (*ie*, Exhibits A1A1A, A1A2A, A1A3A and B1A1) were meant to be passed on to other persons:[162]

> Q: Would you agree that even based on your evidence, the drugs that were found in your car on the 9th of April 2020, the drugs were meant to be passed on to other persons?
>
> A: Yes, correct.

77 It is also evident from Iswan's 6th investigation statement that he knew that Exhibits A1A1A, A1A2A, A1A3A and B1A1 were to be passed on to Zahari's customers:[163]

> So on 8 April 2020, 4 batu of panas belongs to 'Bob' while 2 batu belongs to me. Exhibits 'A1A1A', 'A1A2A' and 'A1A3A' belongs to Bob and this are the 3 batu which Bob had asked me to keep. *1 batu, Bob had handed over to his client, after he boarded my car on 8 April 2020.*
>
> On 8 April 2020, when Bob took my car he told me to keep the remaining 3 batu of panas. *He asked me to wait for the price to rise up to $4,000 to $5,000 and thereafter Bob will give me the instruction to send to Bob's customer.* I do not know who is the customers as Bob have yet to tell me. *Bob also told me that the profit from the panas, he will manage and give to me accordingly. I am some sort working for Bob as there are occasion* [*sic*] *where I will send panas to Bob's customers and Bob will give me monetary reward about $500.*
>
> [emphasis added]

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162 NE (31 January 2024) at page 39 lines 28 to 31; PCS at para 54.

163 Agreed Bundle at pp 246–247 paras 52–53.

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78 Additionally, the in-car transcript shows that Iswan knew that Exhibits A1A1A, A1A2A, A1A3A and B1A1 were to be distributed to other persons. I reproduce the relevant extracts of the in-car transcript below:[164]

> Bob: *Okay alright.* ***Okay this one, if possible drop one at night. Give Wadi's one first.*** *Eh?* I see I can press him how much, four and a half or five, we divide into two.
>
> Iswan: Expensive *sia* five thousand.
>
> Bob: I swear *botak* I'm not creating stories. When I'm at *Batam* everything (inaudible)
>
> Iswan: I don't dare…
>
> …
>
> Bob: Later I *quarantine eh.*
>
> Iswan: *Ah okay.*
>
> Bob: ***Standby this one biji (?) first eh, later give to me.***
>
> Iswan: ***Ah okay.***
>
> Bob: ***Don't have to rush at night.***
>
> [emphasis in original in italics; emphasis added in bold italics]

79 This excerpt of the in-car transcript captures Zahari informing Iswan to give him one 'batu' later, for Zahari to sell to "Wadi".[165] Although Iswan stated that he did not dare, meaning that he "did not dare to sell at such a high price",[166] it is clear that he was aware that Exhibits A1A1A, A1A2A, A1A3A and B1A1 that he allegedly held for Zahari were for the purpose of sale to other persons. This coheres with Iswan's 7th investigation statement, where he explained that:[167]

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164 Agreed Bundle at pp 178–179.

165 NE (31 January 2024) at page 6 lines 14 to 27.

166 NE (31 January 2024) at page 6 lines 16 to 18.

167 Agreed Bundle at p 261 para 66.

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> With regards to serial number 8, Bob reminded me to send one batu to 'Wadi'. 'Wadi' is Bob's customer and I do not know him. The plan was I am suppose to go home and repacked [*sic*] the heroin. *Thereafter, I am supposed to meet Bob again with one batu of heroin for Wadi. Bob will then sell to Wadi at a price of $4500 to $5000 …*
>
> [emphasis added]

80 Therefore, even if Iswan had held Exhibits A1A1A, A1A2A, A1A3A and B1A1 with the intention of returning them to Zahari thereafter, he knew that this arrangement was part of the process and distribution of drugs within society which would amount to "trafficking".

81 For the reasons above at [69]–[80], I find that the "bailee" defence fails. The Defence has not rebutted the presumption of trafficking in relation to Exhibits A1A1A, A1A2A, A1A3A and B1A1.

Exhibits C1A and C1B: Whether the defence of consumption applies

82 The total amount of diamorphine in Exhibits C1A and C1B is 9.78g (see above at [12]). This, by itself, also exceeds the threshold amount under s 17 of the MDA. The presumption of trafficking applies. I turn to consider the Defence's position with regards to Exhibits C1A and C1B which Iswan alleges were for his own consumption.

83 There are several relevant factors in dealing with a defence of consumption: (a) the rate of drug consumption; (b) the frequency of supply; (c) whether the accused had the financial means to purchase the drugs for himself; and (d) whether he had made a contrary admission in any of his statements that the whole quantity of drugs was for sale (*Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 at [31], citing *Public Prosecutor v Kwek Seow Hock* [2009] SGHC 202).

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84 As mentioned above, Iswan's testimony as to which of the Seized Drug Exhibits belonged to him had evolved over the course of the investigations and the trial (see above at [55]–[56]). For the present analysis, I adopt his final version of events as indicated in the Defence's closing submissions (as set out at [52] above). In this version, Exhibits C1A and C1B belonged to Iswan and were for his own consumption.[168]

85 Iswan testified that his drug consumption was heavy.[169] While Iswan testified both at trial and in his investigation statements that he had a high consumption of diamorphine, the amount he allegedly consumed daily vacillated. In Iswan's 2nd investigation statement, he originally stated that he would "smoke about one bag of heroin which weigh[s] 7.5 grams" on average.[170] In Iswan's 7th investigation statement, he said that he smoked a total of one packet of heroin (weighing about 7.5g) per day, in which he consumed amounts of 3g to 4g two to three times in a day, although there were occasions where he had abused "up to two packets of heroin, each weighing 7.5 grams, in a day".[171] At trial, Iswan clarified that he consumed 7.5g of heroin each time, two or three times a day (*ie,* amounting to 15g or 22.5g per day).[172]

86 Nonetheless, Iswan's testimony, both in his police statements and at trial, has always been consistent that at least *a portion* of Exhibits C1A and C1B was for his own consumption. In Iswan's 1st contemporaneous statement, Iswan

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168 DCS at paras 24–25.

169 NE (31 January 2024) at page 7 lines 23 to 24.

170 Agreed Bundle at pp 213–214 para 18.

171 Agreed Bundle at pp 254–255 para 56.

172 NE (31 January 2024) at page 7 lines 23 to 24; DCS at para 28.

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stated that Exhibits C1A and C1B (initially marked as D1A)[173] were his, for him "to smoke on [his] own".[174] Even in Iswan's 4th investigation statement, he said that all the Seized Drug Exhibits (including Exhibits C1A and C1B) were for him to "*consume* and also to sell to [his] friends if they need it" [emphasis added].[175] He was however unable to differentiate the exhibits meant for his consumption or sale.[176]

87 There is also corroborative evidence of Iswan's drug consumption. Dr Koh's medical opinion was that Iswan had "substance use disorder (opiate and methamphetamine)".[177] The HSA toxicology report issued by Chan Si Jia (PW11), an analyst with the Analytical Toxicology Laboratory of the HSA,[178] also indicated that Iswan's urine sample contained traces of monoacetylmorphine as a result of the consumption of diamorphine.[179]

88 Given Iswan's changing testimony on his rate of drug consumption (see above at [85]) and his 4th investigation statement where he could not clearly identify that Exhibits C1A and C1B were not for sale, I have great difficulty in accepting his final version of events that the entirety of Exhibits C1A and C1B was strictly for his consumption.

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173 NE (23 January 2024) at page 4 lines 11–14; NE (24 January 2024) at p 23 lines 12–26.

174 Agreed Bundle at p 172 A12.

175 Agreed Bundle at p 219 para 30.

176 Agreed Bundle at p 219 para 30.

177 Agreed Bundle at p 78 para 10.

178 Agreed Bundle at p 48 para 1.

179 Agreed Bundle at p 47; DCS at para 27.

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89 However, that does not detract from the fact that Iswan had remained consistent throughout that at least *a portion* of Exhibits C1A and C1B was for his own consumption. In other words, there is no contrary admission by Iswan that the *whole* quantity of drugs was for sale.

90 Although Iswan's 4th investigation statement suggests that it is possible that *a portion* of Exhibits C1A and C1B was for sale, the exact proportion of drugs for sale and for Iswan's own consumption is unclear.

91 The Prosecution takes the position that all the Seized Drug Exhibits were in Iswan's possession for trafficking,[180] but that does not cohere with the evidence before me. Regard must be had to Iswan's claims that a portion of the Seized Drug Exhibits was for his consumption, Dr Koh's medical opinion and the HSA toxicology report. The Defence's submissions also do not substantially address the consumption defence. The Defence's submissions do not go beyond simply factually listing out Iswan's testimony at trial that Exhibits C1A and C1B were for his drug consumption and that his "drug consumption [was] heavy".[181] In its reply, the Prosecution does not make any submission on Iswan's consumption defence.

92 I do not find that Iswan's admission of his sale of drugs to Zafar, either on Zahari's instructions or on his own accord,[182] assists in determining whether Exhibits C1A and C1B were for trafficking. Iswan's testimony is that Exhibits C1A and C1B collectively originated from one 'batu', of which Iswan had repacked into two packets as he had given a portion of the original 'batu' to one

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180 PCS at para 69.

181 DCS at paras 25–28.

182 NE (31 January 2024) at page 14 line 29 to page 15 line 6; NE (31 January 2024) at page 16 lines 6 to 26; NE (31 January 2024) at page 17 lines 6 to 18.

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"Zafar".[183] However, the drugs that Iswan had allegedly given to Zafar do not form part of the charge before me. They do not form part of the Exhibits C1A and C1B. It is not possible for me to conclude that just because Iswan had sold a portion of the original 'batu' from which Exhibits C1A and C1B originated, that the entirety of Exhibits C1A and C1B was also for the purpose of sale.

93 Therefore, I am unable, based on the evidence and arguments before me, to make a finding as to the exact proportion of Exhibits C1A and C1B which was for sale or consumption.

94 Having considered Iswan's consistent testimony that at least a portion of Exhibits C1A and C1B was for his consumption, Dr Koh's medical opinion of Iswan's substance use disorder and the HSA toxicology report indicating that he had consumed diamorphine prior to his arrest, I do not think that there is sufficient evidence to conclude beyond a reasonable doubt that the entirety of Exhibits C1A and C1B was for trafficking.

Conclusion

95 For the foregoing reasons, I find that 51.41g of diamorphine (in Exhibits A1A1A, A1A2A, A1A3A and B1A1) was in Iswan's possession for the purpose of trafficking pursuant to the presumption in s 17 of the MDA. However, I find that Iswan has raised sufficient doubt as to whether Exhibits C1A and C1B were in his possession for the purpose of trafficking.

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183 NE (31 January 2024) at page 14 line 29 to page 15 line 6; NE (31 January 2024) at page 15 line 28 to page 16 line 5; Agreed Bundle at p 246 para 52.

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96 Section 128(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) states:

> **Court may alter charge or frame new charge**
>
> **128.**—(1) A court may alter a charge or frame a new charge, whether in substitution for or in addition to the existing charge, at any time before judgment is given.
>
> (2) A new or altered charge must be read and explained to the accused.

97 As set out above (at [12]), Exhibits A1A1A, A1A2A, A1A3A and B1A1 weigh a total of 1843.8g and contain a total of not less than 51.41g of diamorphine. I exercise my power under s 128 of the CPC to alter the charge as follows:

> **YOU ARE CHARGED** and the charge against you is:
>
> That you, **ISWAN BIN ALI**, on the 9 April 2020, at about 12.45 a.m., in a Singapore registered car bearing plate number SJL 6639L, parked at the open carpark of Blk 90 Pipit Road, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("**MDA**"), *to wit*, by having in your possession for the purpose of trafficking, four packets containing not less than 1843.8 grams of granular / powdery substance, which was analysed and found to contain not less than 51.41 grams of diamorphine, without any authorisation under the MDA or the regulations made thereunder, and you have committed an offence under section 5(1)(*a*) read with section 5(2) and punishable under section 33(1) of the MDA.

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98 I will hear the Prosecution and the Defence with regards to next steps for the altered charge.

Dedar Singh Gill
Judge of the High Court

Hon Yi, Yeo Zhen Xiong and Ariel Tan Hui Ru (Attorney-General's Chambers) for the Prosecution;
Elengovan s/o V Krishnan (Elengovan Chambers) and Wong Hong Weng Stephen (Matthew Chiong Partnership) for the accused.

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