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

[2024] SGHC 3

Criminal Case No 16 of 2023

Between

Public Prosecutor

And

Lim Wei Fong, Nicman

GROUNDS OF DECISION

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

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Version No 1: 10 Jan 2024 (14:16 hrs)

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Public Prosecutor
v
Lim Wei Fong Nicman

[2024] SGHC 3

General Division of the High Court — Criminal Case No 16 of 2023
Hoo Sheau Peng J
27–28 June, 6–7 July, 27 November, 28 December 2023

10 January 2024

Hoo Sheau Peng J:

Introduction

1 The accused person, Mr Lim Wei Fong, Nicman ("Mr Lim"), claimed trial to a charge of having in his possession four packets containing not less than 367.2 g of methamphetamine for the purpose of trafficking. This is an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). Having considered the parties' closing submissions after the trial, I found Mr Lim guilty of the charge and convicted him accordingly. Having further considered the parties' sentencing positions, I imposed on Mr Lim life imprisonment and 15 strokes of the cane. Mr Lim has appealed against the conviction, and I now give the full reasons for my decision.

The undisputed facts

2 I begin with the undisputed facts, which are set out in the statement of agreed facts ("SOAF"). On 11 August 2020, at about 10.05pm, a party of officers from the Central Narcotics Bureau ("CNB") carrying out an operation ("the first party of CNB officers") intercepted the car Mr Lim was driving bearing licence plate SMP7468Y ("the Car"). They then arrested him.[1]

3 At around 10.20pm, two of the CNB officers searched the Car. Some cash belonging to Mr Lim was seized and handed over to Sergeant (3) Yogaraj Ragunathan Pillay ("Sgt Yogaraj").[2] During the search, Mr Lim informed Inspector Tay Cher Yeen Jason ("Insp Tay") that he was staying in Room 603 of a hotel located at Beach Road. He also said that his girlfriend, later identified to be Ms Chee Min Hui ("Ms Chee"), was in the room. A second party of CNB officers was despatched to locate the hotel along Beach Road. They ascertained that the hotel was the ST Signature Bugis Beach Hotel at 85 Beach Road ("the Hotel").[3]

4 At about 10.48pm, Ms Chee was arrested at the pantry area opposite Room 603, and then escorted back to Room 603 by the second party of CNB officers. Thereafter, Senior Staff Sergeant Muhammad Fardlie bin Ramlie (who I shall refer to as "SI Fardlie" based on his rank of a Station Inspector at the time of trial) and Women Sergeant (3) Nur Farina binte Sidik from the first party of CNB officers arrived to take over custody of Ms Chee and the scene.[4]

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1 Statement of Agreed Facts dated 27 June 2023 ("SOAF") at paras 2 and 3.

2 SOAF at para 4.

3 SOAF at para 5.

4 SOAF at para 6.

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5 At about 11pm, Mr Lim was brought back to Room 603. At about 11.03pm, SI Fardlie recorded a contemporaneous statement from Mr Lim.[5] At about 11.15pm, in Mr Lim's presence, Sgt Yogaraj counted the cash recovered from the Car and ascertained that it amounted to $7,600.[6]

6 Thereafter, a search of the room was conducted. In the presence of Mr Lim and Ms Chee, Sgt Yogaraj found a black luggage on the floor beside the bed. From the black luggage, Sgt Yograj recovered many exhibits. These included four packets containing crystalline substances, which were later marked during exhibit processing as "A1B1A", "A1B1B", A1B2A" and "A1C1A" (see [11] below), and which I shall collectively refer to as "the Drug Exhibits.[7]

7 SI Fardlie assisted to place and seal the exhibits in tamper proof bags, which were then placed in a black duffle bag ("the Black Duffle Bag"). At 12.53am on 12 August 2020, the search ended. At about 1.08am, Sgt Yogaraj handed the Black Duffle Bag containing the exhibits to Insp Tay.[8]

8 At around 2.13am, the CNB officers escorted Mr Lim to Tampines Storhub Self Storage located at 37 Tampines Street 92 ("Storhub"). This was because, during the recording by Senior Staff Sergeant Phang Yee Leong James ("SSS Phang") of another contemporaneous statement at 1.19am in Room 603, Mr Lim said that he had collected the drug consignment from Storhub. At Storhub, Mr Lim led the CNB officers to Storage Room No 4117 ("the Store")

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5 SOAF at para 7.

6 SOAF at para 8.

7 SOAF at paras 8 and 17.

8 SOAF at para 9.

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and informed them of the PIN to unlock the padlock on the door to the Store. Nothing was seized from the Store.[9]

9 Thereafter, the CNB officers escorted Mr Lim to his residence in Tampines ("the Unit"). They arrived at 3.12am. After a search of the Unit, one drug exhibit was seized.[10]

10 At about 3.33am, Mr Lim was escorted out of the Unit to a carpark at Blk 827A Tampines Street 81 ("the Carpark"). There, at 3.42am, another contemporaneous statement was recorded from Mr Lim by SSS Phang ("the third contemporaneous statement"). This concluded at 5.30am. Mr Lim was then brought to the CNB Headquarters. The party of CNB officers and Mr Lim arrived at 5.55am.[11]

11 At the CNB Headquarters, SSS Phang recorded the last contemporaneous statement from Mr Lim at about 6.20am.[12] At about 8.42am, at the Exhibit Management Room of CNB Headquarters, in the presence of Mr Lim, Investigation Officer Muhammed Ridlwan bin Mohamed Raffi ("IO Ridlwan") and Woman Inspector Tan Lye Cheng Michelle ("W/Insp Tan") processed the seized exhibits with the assistance of other CNB officers. Photographs were taken, and markings assigned to them. Specifically, the Drug Exhibits *ie,* the four packets, were marked as "A1B1A", "A1B1B", A1B2A" and "A1C1A".[13]

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9 SOAF at paras 11 and 12.

10 SOAF at paras 12 and 13.

11 SOAF at para 13.

12 SOAF at para 14.

13 SOAF at paras 15 to 17.

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12 On 14 August 2020, the Drug Exhibits, amongst other exhibits, were submitted to the Health Sciences Authority ("HSA") for analysis. The analysis revealed that the Drug Exhibits contained a total of not less than 367.2g of methamphetamine which form the subject matter of this trial ("the Drugs"). Mr Lim was not authorised to possess or traffic in methamphetamine.[14]

13 Further, DNA analysis showed that Mr Lim's DNA profile was found, *inter alia,* on the following exhibits: (a) the interior of one brown envelope with the marking "255" marked as "A1B1" which originally contained two of the Drug Exhibits, *ie,* A1B1A and A1B1B; (b) the exterior of foil packaging and flap, as well as the interior foil packaging, of a yellow coloured packet marked as "A1B2" which originally contained one of the Drug Exhibits, *ie,* A1B2A; and (c) the interior of one white plastic bag marked as "A1C1" which originally contained one of the Drug Exhibits, *ie,* A1C1A.[15]

The Prosecution's case

14 In addition to the undisputed facts, as part of its case, pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the Prosecution adduced 14 statements recorded from Mr Lim in the course of investigations.

15 As set out above, there were four contemporaneous statements which were recorded under s 22 of the CPC on 12 August 2020. Further, there were: (a) a cautioned statement recorded under s 23 of the CPC at about 5.46pm on 12 August 2020; (b) six long statements recorded under s 22 of the CPC between

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14 SOAF at paras 20 to 22.

15 SOAF at para 26.

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14 August 2020 and 31 March 2021; and (c) three cautioned statements recorded under s 23 of the CPC on 31 August 2021.[16]

16 Mr Lim did not object to the admissibility of any of the 14 statements. He accepted that he provided the statements voluntarily.[17] Further, Mr Lim did not challenge the accuracy of the contents of any of the 14 statements, save for Q28 of the third contemporaneous statement recorded in the operational car at the Carpark.[18] I shall discuss this in more detail later. For now, it suffices to state that the dispute related to Mr Lim's claim (only raised during his testimony) that during the recording of Q28 of the statement, SSS Phang showed him the physical exhibits, including the Drug Exhibits. However, the Prosecution took the position that, based on the evidence of SSS Phang, only digital photographs of the exhibits, including digital photographs of the Drug Exhibits, had been shown to Mr Lim. In turn, this dispute went towards the issue of whether the chain of custody of the Drug Exhibits had been established by the Prosecution.

17 Putting aside the dispute regarding Q28, in these 14 statements, Mr Lim consistently admitted that all the exhibits recovered from the black luggage bag in Room 603, including the Drug Exhibits, were in his possession. Mr Lim explained that he had an arrangement with one Malaysian, whom he referred to as "Boss", to collect and deliver drugs for "Boss" and that he was waiting for instructions from "Boss" on who to pass the drugs to. "Boss" had offered him this arrangement to help clear an online betting debt of $50,000 owed by Mr Lim to "Boss". More significantly, Mr Lim admitted that he knew that the

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16 P210, P211, P212, P213, P216, P217, P218, P219, P220, P222, P223, P224, P225, P226 respectively.

17 SOAF at paras 29 and 30.

18 P212.

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Drug Exhibits contained "Ice" (*ie,* the street name for methamphetamine), which he also referred to as "Cold" or "Leng".[19]

18 Based on the foregoing, at the close of the Prosecution's case, I found that there was sufficient evidence against Mr Lim to call for his defence.

Mr Lim's case

19 Apart from Mr Lim, his mother, Mdm Cheng Ee Lan ("Mdm Cheng"), and his sister, Ms Lim Xing En Rinda ("Ms Lim"), also gave evidence for the Defence.

20 In his testimony, Mr Lim did not substantially depart from the contents of his statements. To reiterate, he admitted that he was in possession of the Drug Exhibits and that he knew that they contained methamphetamine. In relation to the delivery of the Drugs, he was waiting for instructions from "Boss". He contacted "Boss" through WeChat, with the number belonging to "Boss" saved as "boyboy7799".

21 Mr Lim's main defence, however, was that he acted under duress. After working for "Boss" for about a month to pay off his gambling debt, Mr Lim no longer wanted to work for "Boss". He felt that it was dangerous to do so. Also, at the time, Ms Chee found out she was pregnant with their child. On 7 August 2020, he decided to go into hiding with Ms Chee at the Hotel. He abandoned the Car (which was a rental car he had been using for drug collections and deliveries). He stopped replying to text messages from "Boss", and stopped picking up calls from "Boss". However, one packet of drugs belonging to "Boss", either A1B1A *or* A1B1B, remained in the Car. Three other packets of

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[19] P 212 at Q27, Q29, Q41, Q42; P 216; P218 at paras 13, 16, 17 and 21.

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drugs belonging to "Boss" remained with Mr Lim; these were either A1B1A *or* A1B1B, A1B2A and A1C1A.[20]

22 Mr Lim remained uncontactable until late into the night of 9 August 2020.[21] On 8 and 9 August 2020, an unknown man visited the Unit (which was also the home of Mdm Cheng and Ms Lim). I digress to add that Mdm Cheng and Ms Lim gave accounts of the visits, narrating how the unknown man was rude and loud, and demanded to see Mr Lim about money that Mr Lim owed.[22] On 9 August 2020, Mr Lim became aware of attempts to contact him by unknown individuals. In particular, one individual, using the name "SoundsoFaiths Hurt", sent him threatening messages via Facebook Messenger, including a photograph of the Unit and messages relating to the Unit.[23] Mr Lim understood the demands were for him to return the drugs and cash from past deliveries to "Boss". With Ms Chee's assistance, Mr Lim proceeded to return the drugs to "Boss" by leaving them at the Store. This happened around 12.48pm on 10 August 2020. He also kept "Boss" updated on where the Car was. By 8.34pm on the same day, Mr Lim returned the cash to "Boss" via an ATM machine.[24]

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20 Closing Submissions of the Defence dated 18 August 2023 ("DS") at paras 6 to 8.

21 DS at para 9.

22 Notes of Evidence ("NE") of 7 July 2023, p 61 line 1 to p 62 line 19; NE of 7 July 2023, p 75 lines 16 to 30.

23 D1.

24 DS at paras 10 to 16.

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23 Nonetheless, "Boss" wanted him to resume deliveries.[25] Mr Lim decided to resume working for "Boss" and collected, *inter alia,* the Drug Exhibits from the Store.[26] Later that day, he was arrested.

24 Another issue raised by Mr Lim concerned the chain of custody of the Drug Exhibits. According to Mr Lim, contrary to the evidence of Insp Tay, after the Black Duffle Bag containing the exhibits (including the Drug Exhibits) was handed to Insp Tay (see [7] above), it did not remain in Insp Tay's possession throughout the entire operation. In this connection, Mr Lim claimed, *inter alia,* that he did not see Insp Tay with the Black Duffle Bag when they proceeded to the Store and to the Unit, as well as in the Store and the Unit. Also, Mr Lim claimed that SSS Phang showed him the physical exhibits, including the Drug Exhibits, during the recording of the third contemporaneous statement (see [16] above).[27] Further, Mr Lim, Mdm Cheng and Ms Lim also testified that when the party of CNB officers brought Mr Lim back to the Unit (see [9] above), they did not see anyone, including Insp Tay, carrying a Black Duffle Bag.[28]

The applicable law

25 I now turn to the law. The relevant provisions within the MDA read:

Trafficking in controlled drugs

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25 DS at para 18.

26 DS at paras 19 and 20.

27 DS at paras 61 to 64.

28 DS at paras 57 to 60.

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> 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;
>
> …
>
> (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.

By s 2 of the MDA, "traffic" is defined to include to "give", "transport", "send" and "deliver".

26 In respect of a charge of trafficking under s 5(1) read with s 5(2) of the MDA, the elements to be established are: (a) possession of the drugs; (b) knowledge of the nature of the drugs; and (c) proof that possession of the drugs was for the purpose of trafficking which was not authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]).

27 Further to the above, it is also well established that it falls on the Prosecution to prove beyond a reasonable doubt that the drug exhibits analysed by the HSA are the same drug exhibits that were initially seized by the CNB officers from an accused person. This is often referred to as the *chain of custody* of the drug exhibits. As stated by the Court of Appeal in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39]), the Prosecution is required to account for the movement of the drug exhibits from the point of seizure to the point of analysis. The defence may suggest that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. If there is a reasonable doubt as to the identity of the drug exhibits, the Prosecution's burden will not be discharged.

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That said, as pointed out by the Court of Appeal at [41] of *Affandi*, speculative arguments about the possibility of contamination are insufficient.

28 Moving on, by s 94 of the Penal Code (Cap 224, Rev Ed 2008) ("Penal Code"), a general defence is accorded to a person compelled by threats to act. The provision states as follows:

> **Act to which a person is compelled by threats**
>
> 94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person or any other person will otherwise be the consequence:
>
> Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
>
> *Explanation* 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins gang-robbers knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

29 In *Public Prosecutor v Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 2 SLR 830 ("*Nagaenthran*") at [16], [17] and [28], the High Court held that an accused who wishes to claim that he acted under duress must prove on balance of probabilities that:

(a) the harm that the accused was threatened with was death;

(b) the threat was directed at the accused or other persons which would include any of his family members;

(c) the threat was of "instant" death, which was "imminent, persistent and extreme";

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(d) the accused reasonably apprehended that the threat will be carried out; and

(e) the accused had not, voluntarily or from a reasonable apprehension of harm to himself short of instant death, placed himself in that situation.

The issues

30 At set out above, Mr Lim admitted to all three elements of the charge. Specifically, he admitted that he was in possession of the drugs contained in the Drug Exhibits, that he knew that the Drugs were methamphetamine, and that he was in possession of the Drugs for the purpose of trafficking by delivering the Drugs upon receiving the instructions of "Boss". I note that, in any event, on the basis that Mr Lim admitted to possession and knowledge of the Drugs, by s 17(*h*) of the MDA, Mr Lim, by being in possession of more than 25g of methamphetamine, is presumed to have had the Drug Exhibits in his possession for the purpose of trafficking. This presumption was relied on by the Prosecution, and Mr Lim did not seek to rebut this presumption at the trial.

31 Based on Mr Lim's defence, the two issues which fell to be determined were:

(a) whether the Prosecution had proved the unbroken chain of custody of the Drug Exhibits; and

(b) whether Mr Lim was entitled to rely on the defence of duress.

I shall deal with each in turn.

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Decision

Whether the Prosecution had proved the unbroken chain of custody of the Drug Exhibits

32 In relation to the chain of custody of the Drug Exhibits, as set out at [27] above, it was for the Prosecution to account for the movement of the Drug Exhibits. In this connection, the Prosecution's evidence was as follows:[29]

(a) On 11 August 2020, at about 11.15pm, Sgt Yogaraj found the Drug Exhibits in the black luggage bag in Room 603 of the Hotel. Together with SI Fardlie, they placed the exhibits, including the Drug Exhibits, into tamper proof bags and packed the bags into the Black Duffle Bag.

(b) On 12 August 2020, at about 1.08am, Sgt Yogaraj handed the Black Duffle Bag to Insp Tay (see [7] above). Between 2.13am and 3.42am, Insp Tay travelled with the party of CNB officers escorting Mr Lim to Storhub, the Unit and then the Carpark. From 3.42am to 5.30am, the party of CNB officers, including Insp Tay, remained at the Carpark. During this time, SSS Phang recorded the third contemporaneous statement from Mr Lim.

(c) At the trial, Insp Tay testified that when travelling to Storhub, he placed the Black Duffle Bag in the boot of the CNB car he was in.[30] At Storhub, he carried the Black Duffle Bag with him to the Store.[31] He also

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29 Closing submissions of the Prosecution dated 18 August 2023 ("PS") at para 25.

30 NE of 27 June 2023, p 17 lines 22-25.

31 NE of 27 June 2023, p 17 lines 28-30.

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carried the Black Duffle Bag to the Unit.[32] At the Unit, Insp Tay placed a seized exhibit into the Black Duffle Bag. When they travelled to the Carpark, the Black Duffle Bag was in the boot of the CNB car. When SSS Phang recorded the third contemporaneous statement from Mr Lim in the CNB car at the Carpark, the Black Duffle Bag remained in the boot of the car. Insp Tay stood watch over the car.[33]

(d) Between 5.30am and 5.55am, Insp Tay travelled with the party of CNB officers escorting Mr Lim to CNB Headquarters. The Black Duffle Bag remained in the boot of the CNB car. They arrived at about 5.55am.

(e) Between 5.55am and 6.15am, while at CNB Headquarters, Insp Tay was holding on to the Black Duffle Bag. About 6.15am, Insp Tay handed over the Black Duffle Bag to Staff Sergeant Muhammad Helmi bin Abdul Jalal ("SS Helmi").

(f) Between 6.15am and 8.31am. SS Helmi had custody of the Black Duffle Bag. Later, he later handed over the Black Duffle Bag to Sergeant Muhammad Hidayat bin Jasni ("Sgt Hidayat") at the Exhibit Management Room.

(g) Between 8.42am and 1.35pm, for the exhibit processing, Sgt Hidayat took out case exhibits from the Black Duffle Bag, including the Drug Exhibits, and handed the same to W/Insp Tan. The exhibits were then processed by other officers under IO Ridlwan's directions.

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32 NE of 27 June 2023, p 28 lines 10-12.

33 NE of 28 June 2023, p 4 lines 1-7.

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Thereafter, IO Ridlwan locked the case exhibits, including the Drug Exhibits, in W/Insp Tan's office.

(h) On 13 August 2020 at about 1.59pm, W/Insp Tan handed over the case exhibits, including the Drug Exhibits, to IO Ridlwan. At about 2.45pm, IO Ridlwan handed over the Drug Exhibits to Senior Staff Sergeant Chia Wai Mun ("SSS Chia") for the Drug Exhibits to be sent to the HSA for analysis. SSS Chia then stored these exhibits in a locked metal cabinet.

(i) On 14 August 2020, before 5.07pm, SSS Chia retrieved the Drug Exhibits from the locked metal cabinet and handed them to Staff Sergeant Chong Kai Wen ("SS Chong") to be sent to the HSA for analysis. At about 5.07pm. SS Chong submitted the Drug Exhibits to the HSA for analysis.

33 In relation to the above, Mr Lim contended that there was a reasonable doubt as to the custody of the Drug Exhibits between 2.13am and 5.55am on 12 August 2020 ("the Relevant Period"). As set out at [32(b)] to [32(c)], the Black Duffle Bag was supposed to be in the custody of Insp Tay during the Relevant Period. Challenging this position, the main lines of attack by the Defence were as follows:[34]

(a) First, in Insp Tay's conditioned statement of 27 May 2022, he did not provide any details of how he handled the Black Duffle Bag during the Relevant Period.[35] Instead, he only testified on these aspects in his examination-in-chief. According to the Defence, Insp Tay's

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34 DS at para 32.

35 Agreed Bundle ("AB") 157-161.

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explanation that he did not think it was necessary for him to state these matters in his conditioned statement was not satisfactory.[36]

(b) Second, Insp Tay had a hazy recollection of the events, and his evidence was not wholly clear. For example, he could not recall what was in Room 603 when he first entered, and he had to refer to the field diary to refresh his memory of the events of that night.[37] Therefore, his claim to be able to recall with precision that he had custody of the Black Duffle Bag during the Relevant Period (when there was "absolutely no contemporaneous or corroborating evidence" of the same to aid his recall) was "highly odd".[38]

(c) Third, Insp Tay's testimony was not corroborated by the other Prosecution witnesses. None of the CNB officers, including Insp Tay, could explain when and how the Black Duffle Bag was first brought to Room 603. Thereafter, none of those who were present with Insp Tay during various points within the Relevant Period recalled seeing Insp Tay carry the Black Duffle Bag, especially at the Store and at the Unit. To elaborate, Sgt Yogaraj was at the Hotel and the Store, but he said that after he passed the Black Duffle Bag to Insp Tay in Room 603, he did not see what Insp Tay did with it. He did not notice Insp Tay carrying it.[39] SSS Phang testified that from the Hotel to the Store, at the Unit, and until he left the Unit, he did not remember Insp Tay carrying the Black Duffle Bag. Sergeant Mohammad Nasrulhaq bin Mohd

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36 DS at para 47.

37 DS at para 48.

38 DS at para 50.

39 DS at para 36; NE of 27 June 2023, p 42 lines 2 to 42.

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Zainuddin testified that from the Hotel to the Store, and from the Store to the Unit, he could not remember anyone carrying the Black Duffle Bag. As for Staff Sergeant Goh Bai Lin, he was at the Unit. However, he did not recall seeing the Black Duffle Bag, even when he handed exhibits to Insp Tay during the search of the Unit. In fact, none of the conditioned statements of these witnesses, as well as those of other CNB officers, mentioned Insp Tay having custody of the Black Duffle Bag.[40]

(d) Fourth, the defence witnesses, Mdm Cheng and Ms Lim, gave compelling evidence throwing doubt on Insp Tay's account that he brought the Black Duffle Bag to the Unit.[41] Both of them clearly testified that they closely interacted with Insp Tay when he was at the Unit. For instance, both of them recalled Insp Tay as the officer who informed them that Mr Lim was involved in drug activities.[42] However, they did not see Insp Tay carrying any black duffle bag.[43]

(e) Fifth, Mr Lim's testimony also contradicted Insp Tay's claims. According to Mr Lim, Insp Tay was not carrying the Black Duffle Bag when they were in the lift to go up to the Store at Storhub. Also, he did not see the Black Duffle Bag in the lift on the way down. He did not see the Black Duffle Bag after he alighted the CNB car to go up the lift to the Unit, and when he went back down to the car. On all four occasions, he shared the lift with Insp Tay. Further, in the course of the recording of the third contemporaneous statement, as clearly recorded at Q28 and

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40 DS at paras 34, 35, 36 and 42.

41 NE of 7 July 2023, p 65 lines 5 to 8; NE of 7 July 2023, p 79 lines 19 to 24.

42 NE of 7 July 2023, p 63 lines 26 to p 64 ln 21; NE of 7 July 2023, p 78 lines 7 to 9.

43 DS at paras 57 to 60.

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> Q47, he was shown "the item[s]" by SSS Phang. This stood in sharp contrast with Q27, Q43 and Q48, where SSS Phang expressly recorded that Mr Lim was shown the "digital photo[s]". Therefore, it was clear that Insp Tay was not in custody of the Drug Exhibits at all times during the Relevant Period.[44]

34 I have carefully considered the parties' arguments, as well as the evidence on the issue, but I was unable to accept the Defence's position. At the outset, a very important point to be made is that despite all of Mr Lim's contentions that Insp Tay was *not* in custody of the Black Duffle Bag throughout the Relevant Period, there was no suggestion whatsoever that the case exhibits, including the Drug Exhibits as analysed by HSA, were not those personally packed by Mr Lim into the black luggage bag prior to the arrest. In other words, as the Prosecution pointed out, the *identity* of the Drug Exhibits was simply not put in issue. When shown the photographs marked as P35 to P66 showing *all* the exhibits seized from Room 603, Mr Lim agreed that they belonged to him. These exhibits included the Drug Exhibits, *ie*, A1B1A, A1B1B, A1B2A and A1C1A, captured in the photographs P47, P48 and P52.[45] By way of background, these photographs were taken in the Exhibit Management Room at the CNB Headquarters on 12 August 2020, between 8.42am to 1.25pm, shortly *after* Insp Tay handed over the Black Duffle Bag to SS Helmi at 6.15am (see [32(e)] to [32(g)] above).

35 Turning to Insp Tay's evidence, consistently, he testified that he was in custody of the Black Duffle Bag during the Relevant Period. If someone had opened the car boot of the CNB car during the recording of the third

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44 DS at paras 61 to 64.

45 PS at para 27; NE of 7 July 2023, p 14 line 24 to p 16 line 29.

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contemporaneous statement by SSS Phang, Insp Tay said that he would have noticed it. In this regard, some support for his evidence is found by way of SSS Phang's account; SSS Phang said that he only showed Mr Lim digital photographs of the Drug Exhibits, and not the physical exhibits. I shall return to this later. At this juncture, I should state that it was of some concern to me that Insp Tay did not set out the details of how he remained in custody of the Black Duffle Bag in his conditioned statement of 27 May 2022. Conditioned statements are prepared for the purpose of setting out a witness' evidence for the trial. In relation to the chain of custody, the conditioned statements of the relevant CNB officers should provide *sufficient* details on the movement of drug exhibits. Instead, Insp Tay only stated how he took over custody of the Black Duffle Bag at 1.08am, and how he then relinquished control of it at 6.15am, leaving the details to be filled during his examination-in-chief. This was not entirely satisfactory. That said, the further details provided by Insp Tay during his examination-in-chief were *not* inconsistent with the contents of Insp Tay's conditioned statement. Having weighed the whole of Insp Tay's evidence, and having considered Mr Lim's contentions, I accepted that Insp Tay's account remained reliable.

36 Turning to the evidence of the other CNB officers, the fact that they were unable to recall that Insp Tay was the one carrying the Black Duffle Bag, in my view, was neutral, and did not detract from the reliability of Insp Tay's testimony. At different points during the operation, the CNB officers were assigned to different tasks and roles. I did not find it surprising that *none* of them were able to shed light on the movement of the Black Duffle Bag, save for Insp Tay, who was tasked to take custody of the seized exhibits. I was also mindful that, by the time of the trial, almost three years had passed since the events of that early morning. More importantly, as the Prosecution pertinently

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observed, it was significant that *none* of the other CNB officers claimed that it was *any* other CNB officer, and not Insp Tay, who was tasked with this aspect of the operation. Also, none of them observed any other CNB officer carrying the Black Duffle Bag.[46] Such evidence, obviously, would have been detrimental to the Prosecution's case. However, there was nothing to contradict Insp Tay's account.

37 Turning to Mr Lim's evidence, I did not give much weight on his recollection of the events. The CNB officers did not draw Mr Lim's attention to the Black Duffle Bag. In the main, Mr Lim stated that he did not know who was carrying the bag, and he did not recall seeing the bag at the various locations he was located to. In fact, initially, Mr Lim claimed that he saw the CNB officers packing the Drugs into a bag that did not look the same as the standard CNB black operations duffle bag shown to him in court. Later, he agreed that the drugs could have been packed into such a bag. In relation to the Black Duffle Bag, his testimony, in my view, was imprecise, and not entirely reliable. It also revealed that he could not have been paying much attention to these details of the operation that morning.[47]

38 Next, in relation to Mr Lim's evidence that during the recording of the third contemporaneous statement, SSS Phang showed him the physical exhibits and not digital photographs of the Drug Exhibits, I note that this was raised only in Mr Lim's examination-in-chief.[48] On that score, in SSS Phang's conditioned statement of 27 May 2022, he clearly referred to having shown Mr Lim the

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46 PS at para 29(a).

47 PS at para 29(b).

48 NE of 6 July 2023, p 58 line 10 to p 59 line 7.

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"digital photographs".[49] In his examination-in-chief, SSS Phang also clearly stated that despite recording in Q28 that he showed "the *items* seized inside room" to Mr Lim, which included the Drug Exhibits, he showed digital photographs only, namely photos 5 to 12 of P313.[50]

39 For completeness, I set out Q28:[51]

> Q28: Pertaining to Q23, you said that ***all the items seized*** inside room 603 belongs to you. Are these items (Accused is shown item B1A, B1A1, B1B, B1B1, ***B1B1A***, B1B2, ***B1B2A***, B1B3, B1B4, B1B5, B1C, B2C1, ***B1C1A***, B1C1B, B1D, B1D1, B1E, B1E1, B1E2, B1E3, B1F, B1F1, B1F2, B1F3, B1G, B1H, B1J, B1K, B1L, B1L
>
> A28: Yes. I safekeep for "boss"
>
> [emphasis added in bold italics]

It was not seriously disputed that B1B1A (comprising of two packets that were later remarked as A1B1A and A1B1B in the EMR), B1B2A (which was remarked as A1B2A in the Exhibit Management Room) and B1C1A (which was remarked as A1C1A in the Exhibit Management Room) were the Drug Exhibits. Contrary to Mr Lim's claim in his examination-in-chief, SSS Phang was not challenged on all these aspects by Mr Lim. Specifically, Mr Lim's position that he was shown the physical exhibits was not put to SSS Phang. In my view, this was a belated claim by Mr Lim in order to challenge the chain of custody of the Drug Exhibits.

40 I should add that in respect of Q47, SSS Phang also stated that he showed Mr Lim digital photographs, *ie,* photos 14 to 17 of P313.[52] To

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49 AB166 at paras 21 and 22; PS at para 26(d).

50 NE of 27 June 2023, p 55 lines 1 to 9.

51 AB174.

52 NE of 27 June 2023, p 55 lines 10 to 23. AB178.

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recapitulate, Q47 was the other question aside from Q28 which recorded SSS Phang showing Mr Lim "the item[s]". Nonetheless, Mr Lim accepted that he was shown the digital photographs.[53] In my view, this put to rest Mr Lim's argument that SSS Phang could not have made a mistake when he recorded that he showed "the items" in Q28 to Mr Lim, and that what was recorded in Q28 was accurate.[54] More importantly, it seemed to me that, given the space constraints in the back seats of the CNB car, there was little reason for SSS Phang to choose to selectively show Mr Lim *some* physical exhibits (when the digital photographs of *all* physical exhibits were available to SSS Phang).

41 This leaves me to deal with the testimonies of Mdm Cheng and Ms Lim. I did not consider their evidence to be accurate and was unable to accord much weight to the assertions. It was past 3.00am when Mr Lim was brought back to the Unit. Both of them were awoken from their sleep. As they conceded, they were worried. Understandably, they had a lot on their minds, having learnt that Mr Lim had been arrested by the CNB. It was also their first experience dealing with a team of CNB officers conducting a search of the premises. I accepted that they spoke to Insp Tay, and that if Insp Tay was carrying a black duffle bag, they *should* have been able to see it. However, their interactions with Insp Tay were brief, and there were other CNB officers moving around in their home at the time. Given their frames of mind, I did not consider it believable that either of them would have paid close attention to such a detail to be able testify, for certain, three years after that early morning, that Insp Tay was *not* carrying a black duffle bag while in the Unit.[55]

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53 NE of 7 July 2023, p 11 line 19 to p 12 line 7.

54 DS at para 62(g).

55 DS at paras 58 and 59.

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42 Based on all of the above, I found that the Prosecution had proved the chain of custody of the Drug Exhibits. To sum up, I was of the view that no doubt was raised as to the identity of any of the Drug Exhibits. Mr Lim's challenges in relation to the custody of the Drug Exhibits at certain junctures during the Relevant Period were entirely speculative, and he failed to cast a reasonable doubt on the Prosecution evidence.

Whether Mr Lim was entitled to rely on the defence of duress

43 I turn to the second issue. As summarised at [21] and [23] above, Mr Lim claimed that he wanted to stop working for "Boss". On 10 August 2020, he came to know of certain threatening messages sent to him by "SoundsoFaiths Hurt". On 8 and 9 August 2020, an unknown man also visited the Unit. Based on these, Mr Lim relied on s 94 of the Penal Code, claiming that he had acted under duress. The threats related to the burning down of the Unit (where Mdm Cheng and Ms Lim were residing), making Mr Lim "lie down" in hospital, and teaching Ms Lim a lesson for being "yaya" *ie,* arrogant.[56]

44 The elements of this defence are set out at [27] and [28] above, and as a preliminary point, it is evident that an accused must be compelled by the threats to carry out the acts in question for which he is being charged. With that, I examine the nature of the threats, and what Mr Lim was being compelled to do at the material time. The Prosecution submitted that the threatening messages only demanded that Mr Lim return the drugs and cash to "Boss", *after* Mr Lim had gone missing and uncontactable without accounting for what belonged to

[56] DS at para 10.

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"Boss". None of the threats (against Mr Lim, Mdm Cheng and Ms Lim) sought to force Mr Lim to resume drug deliveries and collections.[57] I agreed.

45 By way of illustration, I set out four key messages from "SoundsoFaiths Hurt" relied on by Mr Lim as follows:[58]

> 9 August 2020, 5.20pm: "Nicman I don't want disturb ye mum n sister. U there can drop 1 set fish n 1 red wine for me. *Drop off de*" ("the first message").
>
> 9 August 2020, 11.32pm: "Nicman. GD. *U return it.* Think of yr mum…" ("the second message").
>
> 10 August 2020, 8.09pm: "Bro u can *faster deposit the money* anot" ("the third message").
>
> 10 August 2020, 9.19pm: "U what time *return back* the stuffs" ("the fourth message")
>
> [emphasis added]

46 On a plain reading, the messages conveyed the following. By the first message, "SoundsoFaiths Hurt" wanted Mr Lim to return the drugs in his possession, including "1 set fish" which parties agreed referred to "methamphetamine". By way of the second and fourth messages, "SoundsoFaiths Hurt" demanded that Mr Lim return the drugs in his possession, and asked Mr Lim when he would do so. As for the third message, it stated that "SoundsoFaiths Hurt" wanted Mr Lim to return the cash in his possession. In my view, the messages, and other similar exchanges, simply did not compel Mr Lim to continue working for "Boss".

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57 PS at paras 33–35.

58 D1 at KTK-6, KTK-7, KTK-21 and KTK 22.

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47 Indeed, this was also how Mr Lim understood the threats. He revealed this in his cross-examination as follows:[59]

> Q: The threats were in relation to you--- to compelling you to return the items, correct?
>
> A: Correct.
>
> Q: Not to compel you to continue working for Boss, right?
>
> A: Yes.

That said, in re-examination, Mr Lim then claimed that even after he had returned the drugs and the moneys, there remained some concern whether Mr Lim had returned everything to "Boss". Therefore, Mr Lim thought that the best way to show "Boss" and the people threatening him that he had not stolen any of the drugs was to proceed to collect and then deliver the drugs completely, such that the eventual customers would be able to verify the deliveries of the quantities of drugs he had with him.[60]

48 I accepted the Prosecution's submission that this claim, raised only in re-examination, was a belated concoction *after* extensive cross-examination of Mr Lim concerning the benefits offered by "Boss" which would cause Mr Lim to continue working for him.[61] In any event, it seemed illogical to me that, to account for the drugs, the only way Mr Lim could think of was to continue to deliver them. As the threats made related to the return of the drugs and moneys to "Boss", I failed to see how Mr Lim could be entitled to rely on such threats for the *resumption* of drug collections and deliveries, and for taking possession of the Drug Exhibits for the purpose of trafficking. On this point, I also refer to my further discussion at [54] below.

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59 NE of 7 July 2023, p 37 lines 23-27.

60 DS at paras 19 and 84. NE of 7 July 2023, p 54 lines 11-26.

61 Prosecution's reply submissions of 31 August 2023 ("PRS") at para 10.

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49 Secondly, I deal with whether these were threats of instant death, or whether these were threats which would result in Mr Lim reasonably apprehending instant death to Mr Lim, Mdm Cheng or Ms Lim *ie,* see [29(c)]–[29(d)] above. While there were threats levelled at Mr Lim, Mdm Cheng and Ms Lim, it seemed to me that, contrary to Mr Lim's contentions, there were none which threatened instant death, or which would result in Mr Lim reasonably apprehending instant death to any of them.[62] To elaborate, there were two types of threats:

(a) First, an unknown man visited the Unit on 8 and 9 August 2020. However, Mdm Cheng[63] and Ms Lim[64] agreed that during those visits, there was no threat of harm made by the unknown man against Mr Lim or to either of them, much less a threat to cause them to apprehend "instant death". As set out at [22] above, Mdm Cheng and Ms Lim only spoke of how the unknown man demanded to see Mr Lim (on account of moneys owing by Mr Lim).

(b) Second, there were the other messages sent by "SoundsoFaith Hurt" to Mr Lim. This included a photograph sent of the Unit, with Mdm Cheng standing in the doorway.[65] I deal with the four main messages which stated:[66]

> 9 August 2020, 11.41am: "…Bcos of greed my personal account I shared wif u. My house was burnt. Wife cannot take it n divorced n get depression. All leave me.bro. not worth it. Trust me." ("the fifth message")

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62 DS at para 78 to para 79.

63 NE of 7 July 2023, p 82 lines 3-9.

64 NE of 7 July 2023, p 67 line 31 to p 68 line 11, p 69 line 28 to p 70 line 18.

65 D1 at KTK-4.

66 D1 at KTK-3, KTK-6, KTK-8, and KTK 13.

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> 9 August 2020, 9.35pm: "Nicman. U v lucky today not at 827. I will get u de. I tell my bro at 827. Saw u will treat u go hospital…Wait I let u lie down in hospital." ("the sixth message")
>
> 10 August 2020, 5.51pm: "Yup. U had to think of yr mum so old le. Wait house kena burnt how." ("the seventh message")
>
> 10 August 2020, 6.44pm: "I talk nicely to yr mum yr sister come n bank door. I sit prison 17 yrs u think kena 324 section. Only 1 yr plus." ("the eighth message").

50 In respect of the sixth message, Mr Lim stated that, upon seeing it, he thought of the "worst possible scenario". To him, lying in a hospital might mean that he were "dead". That said, Mr Lim agreed that this message could have been interpreted only as causing hurt and harm to him.[67] In my view, the sixth message was neither a specific threat to cause anyone to suffer "instant death" nor was it one to cause Mr Lim to reasonably apprehend such harm befalling him.

51 As for the fifth and seventh messages, they related to the burning of homes. "SoundsoFaiths Hurt" claimed that that he had experienced his "house" being "burnt" previously, and that it had caused his wife to leave him. While there was a reference to Mdm Cheng's "house" being burnt, there was, however, no threat that someone would actually set the Unit on fire, or that such fire would be set under circumstances so as to cause "instant death" to Mr Lim, Mdm Cheng or Ms Lim.

52 As for the eighth message, Mr Lim claimed that his understanding was that "SoundsoFaiths Hurt" had "nothing to lose".[68] However, there was really no threat that someone would kill Mr Lim. The references to "sit prison 17 yrs

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67 NE of 7 July 2023, p 39 line 16 to p 40 line 4.

68 NE of 7 July 2023, p 38 line 3 to 17.

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u think kena [s] 324" and "[o]nly 1 yr plus" pointed more towards acts of causing hurt or harm, rather than causing instant death.

53 For completeness, I note that there were a number of messages referring to Ms Lim as "yaya" (*ie,* arrogant), and suggesting that she had to be taught a lesson.[69] However, again, there was no specific threat giving rise to the level of a threat of instant death, or reasonably causing any apprehension of this. I should also add that *all* these threats were not "imminent, persistent and extreme" in nature.

54 Thirdly, I deal with the question of whether Mr Lim had placed himself in that situation, so as to lose the right to invoke the defence (see [29(e)] above). As provided in Explanation 1 to s 94 of the Penal Code, an accused who, of his own accord, joins a criminal enterprise, is not entitled to the rely on the defence for criminal acts he is then compelled to do. Mr Lim admitted that when he started working for "Boss" sometime in the middle of July 2020, he did so willingly as he wanted to clear his gambling debt. He knew that "Boss" was involved in the drug trade, and previously, he had carried out drug deliveries for "Boss". Based on the foregoing, I found that he was not entitled to rely on the defence.

55 Insofar as Mr Lim argued that he tried to leave the criminal enterprise, but that he was compelled to return to work for "Boss", I had already stated my views that the threats made did not seek to coerce Mr Lim to continue working for "Boss". They merely sought the return of items and cash belonging to "Boss". Before Mr Lim collected the Drug Exhibits on 10 August 2020, so as to carry out further deliveries, there were no further threats for him to do so.

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[69] D1, KTK-7, KTK-10 and KTK-12.

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Mr Lim's explanation that he was bothered by the previous threats and thought the best way for him to account for the drugs to "Boss" did not make sense, and again, pointed towards a voluntary resumption of the activities (see [47] above). I explain.

56 When he resumed communications with "Boss" on 10 August 2020, Mr Lim did not tell "Boss" that he did not wish to continue working for him.[70] While he claimed that he was afraid that "Boss" would ask another person to disturb his family again, the communications showed that he asked "Boss" for certain benefits to continue to work for "Boss".[71] In cross-examination, Mr Lim agreed that "Boss" had offered various benefits to Mr Lim in return for his work. This included monetary remuneration to clear his debt, reimbursement for his new handphone and rental of a condominium for him.[72] Indeed, Mr Lim conceded that until he had another option, he would continue working for "Boss" for the benefits that were being given to him by "Boss".[73] By doing so, any reliance on the defence was precluded.

57 For all of the foregoing reasons, I found that Mr Lim was not able to avail himself of the defence of duress.

Verdict

58 To sum up, I found that the Prosecution had proved the charge against Mr Lim beyond a reasonable doubt. In particular, the Prosecution had proved the chain of custody of the Drug Exhibits. The defence of duress was not

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70 NE of 7 July 2023, p 49 lines 4-26.

71 AB308 to AB338.

72 NE of 7 July 2023, p 30 lines 2-16. AB308-338.

73 NE of 7 July 2023, p 49 line 27 to p 50 line 18. PRS at para 10 to para 12.

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available to Mr Lim. Therefore, I convicted Mr Lim of the charge against him of having in his possession the Drugs for the purpose of trafficking.

Sentence

59 To avail himself of the discretion of the court not to impose the sentence of death, an offender must show that his acts fell within s 33B(2)(*a*)(i) to s 33B(2)(*a*)(iv) of the MDA (which the courts have referred to as "being a courier" in respect of the transaction in question), and the offender must also receive a certificate of substantial assistance from the Public Prosecutor. Based on the evidence, I found that Mr Lim had proved on a balance of probabilities that his role in relation to the Drugs was that of a courier, in that he collected the Drugs and that he was merely waiting to deliver the Drugs on the instructions of "Boss". In fact, this was also the Prosecution's position. Further, the Public Prosecutor had issued a certificate of substantive assistance to Mr Lim.

60 As the alternative sentencing regime under s 33B(1)(*a*) of the MDA was available to Mr Lim, I saw no reason to impose the death penalty. I imposed the alternative mandatory sentence of life imprisonment (backdated to 12 August 2020) and the mandatory minimum of 15 strokes of the cane on Mr Lim.

Hoo Sheau Peng
Judge of the High Court

Chong Yong, Benedict Chan Wei Qi and Brian Tan (Attorney-General's Chambers) for the Prosecution;
Daniel Chia Hsiung Wen (Prolegis LLC), Lau Kah Hee (BC Lim &

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Lau LLC) and Dierdre Grace Morgan (Drew & Napier LLC) for the accused.

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