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

[2024] SGHC 319

Criminal Case No 24 of 2023

Between

Public Prosecutor

And

(1) Muhammad Hanafi bin Abdul Talip
(2) Mohamed Nagib bin Awang

JUDGMENT

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

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Public Prosecutor
v
Muhammad Hanafi bin Abdul Talip and another

[2024] SGHC 319

General Division of the High Court — Criminal Case No 24 of 2023
Hoo Sheau Peng J
8, 10, 15–18, 22–24 August, 4–5, 8, 12–15 September, 27 November 2023, 28 June 2024

16 December 2024 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This is a joint trial involving two accused persons, Mr Muhammad Hanafi bin Abdul Talip ("Hanafi") and Mr Mohamed Nagib bin Awang ("Nagib").

2 Hanafi claimed trial to two charges under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA"), for having in his possession for the purpose of trafficking, on 27 April 2021, five packets containing not less than 58.86g of diamorphine (the "Bundles"), and four blocks containing not less than 499.99g of vegetable matter which was analysed and found to be cannabis (the "Blocks").

3 Nagib claimed trial to two charges of trafficking under s 5(1)(*a*) of the MDA, for delivering the Bundles and Blocks to Hanafi.

4 For the charges in relation to the Bundles (but not the Blocks), the death penalty is prescribed as punishment. In addition, the Prosecution chose to proceed with other non-capital charges, four against Hanafi, and three against Nagib. Although Hanafi and Nagib claimed trial to these other non-capital charges, from the outset, they indicated that they would provide no substantive defence to them. I shall return to these charges at [213]–[214] below.

The Prosecution's evidence

5 Broadly speaking, the Prosecution's case is that on 27 April 2021, pursuant to an existing arrangement between them, Hanafi and Nagib met up to collect a consignment of drugs. Specifically, Nagib had alighted from the car they were travelling in, bearing the registration number SJA1446S (the "Car"), along Riverside Road to collect the consignment of drugs, comprising of the Bundles and the Blocks. Upon returning to the Car, Nagib passed the drugs to Hanafi. In turn, Hanafi placed the Bundles and the Blocks into different compartments of his black "Superdry" backpack (the "Superdry Bag"). He had the intention to supply the drugs to others. Shortly thereafter, they were arrested. I now set out the main strands of the Prosecution's evidence.

Arrest of the accused persons and seizure of exhibits

6 At around 7.28pm on 27 April 2021, officers from the Central Narcotics Bureau ("CNB") intercepted the Car at the traffic junction of Woodlands Industrial Park E7 and Woodlands Avenue 8, Singapore.[1] The driver of the Car

[1] Statement of Agreed Facts dated 8 August 2023 ("SOAF") at para 3.

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was Muhamad Nur Zaihidir bin Abdul Kadir ("Zaihidir"). Hanafi was seated at the front passenger seat of the Car, while Nagib was seated at the rear passenger seat.[2] Hanafi, Nagib and Zaihidir were placed under arrest.

7 During the arrest, Hanafi put up a struggle, and force was used to place him under arrest. Upon his arrest, Hanafi was brought to the side of the road, where he subsequently became unresponsive. An ambulance arrived at the scene at 7.50pm. At about 8pm, Hanafi was conveyed to Changi General Hospital ("CGH").[3]

8 At about 8.02pm, Zaihidir and Nagib were escorted to the multi-storey carpark at Block 780 Woodlands Crescent (the "MSCP").[4]

9 At around 8.18pm, the CNB officers conducted a search and seizure of the Car in the presence of Zaihidir and Nagib at the MSCP.[5] In challenging the chain of custody of the drug exhibits, the location of the search and seizure – specifically, the relevant block of the multi-storey carpark – is heavily contested by both Hanafi and Nagib. The relevant evidence is detailed at [63]–[74] below. In particular, from the front passenger floorboard of the Car, the CNB officers recovered the Superdry Bag which was subsequently marked as Exhibit A1.[6]

10 The Superdry Bag contained five packets of granular/powdery substance bound together with a red tape, which were subsequently separately marked as Exhibits A1A1A, A1A2A, A1A3A, A1A4A and A1A5A respectively

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2 SOAF at para 2.

3 Agreed Bundle ("AB") at page 305 at paras 7 to 8.

4 AB344 at para 8.

5 SOAF at para 5; AB314 at para 10; AB344 at para 9.

6 AB344.

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(collectively, the "Bundles").[7] The Superdry Bag also contained four blocks which were subsequently marked as Exhibits A1B1, A1E1A, A1E2A and A1F1 (collectively, the "Blocks").[8] The Bundles and the Blocks each form the subject of the two charges against Hanafi and Nagib (see [2]–[3] above).

11 The five packets comprising the Bundles, as well as one of the Blocks (*ie*, A1B1), were retrieved from the main compartment of the Superdry Bag. Two of the Blocks (*ie*, A1E1A and A1E2A), were found in the right compartment of the Superdry Bag. The last of the Blocks (*ie*, A1F1) was recovered from the left compartment of the Superdry Bag.[9] At the point of seizure, the Superdry Bag was zipped.[10]

12 From the front compartment of the Superdry Bag, a black pouch marked as Exhibit A1H was retrieved.[11] This black pouch contained various drug exhibits forming the subject matter of the four additional charges against Hanafi (see [4] above). I deal with the charges at [213]–[214] below.

13 In addition, a black YONEX bag was recovered from the main compartment of the Superdry Bag, and this was marked as Exhibit A1C (the "YONEX bag").[12] During the process, a brown sling bag belonging to Nagib was also seized (the "sling bag").[13] A torn black plastic wrapper marked as

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7 AB511; AB427 at S/N 27–28; AB344.

8 AB512 to AB515; AB427 at S/Ns 30, 33, 34, 35 and 36.

9 AB344 to AB345; Notes of Evidence ("NE") for 10 August 2023 at page 57 line 9 to page 58 line 4.

10 AB344 at para 9, Exhibit A1.

11 AB345 at para 9; NE for 10 August 2023 at page 58 lines 14 to 31.

12 AB513; AB427 at S/N 31; NE for 10 August 2023 at page 57 lines 19 to 21.

13 AB430 at S/N 59.

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Exhibit A1D was also retrieved from the main compartment of the Superdry Bag.[14]

14 Further, three mobile phones were seized by the CNB. Two mobile phones marked as B1 and B2 belonged to Hanafi, while the mobile phone marked MN-HP1 belonged to Nagib.[15]

Analysis of drug exhibits by the Health Sciences Authority

15 After the drug exhibits were handed over by the CNB to the Health Sciences Authorities (the "HSA"), the analysts analysed the contents of the Bundles and the Blocks and found the quantity of drugs in each of the exhibits to be as follows:[16]

Exhibit Marking	Quantity of drugs
A1A1A	Not less than 11.65g of diamorphine
A1A2A	Not less than 11.84g of diamorphine
A1A3A	Not less than 11.89g of diamorphine
A1A4A	Not less than 11.54g of diamorphine
A1A5A	Not less than 11.94g of diamorphine.
A1B1	Not less than 475.5g of cannabis.
A1E1A	Not less than 10.31g of cannabis.
A1E2A	Not less than 9.23g of cannabis.
A1F1	Not less than 5.11g of cannabis.

14 AB350; NE dated 10 August 2023 at page 57 lines 19 to 21.

15 SOAF at para 20.

16 AB171 to AB188.

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Zaihidir's evidence

16 According to Zaihidir, who was the driver of the Car, Hanafi was his friend at the time of the arrests. They met in prison in 2015 and stayed in contact thereafter via social media.[17] Zaihidir and Nagib did not know each other.[18]

17 On the afternoon of 27 April 2021, at 4.08pm, Hanafi messaged Zaihidir asking Zaihidir if he was free, and at 4.09pm, Hanafi messaged Zaihidir that he needed urgent transport. Zaihidir did not respond.[19] At 5.56pm, Hanafi messaged Zaihidir again, asking Zaihidir to pick him up from "Woodlands 183".[20] Zaihidir ascertained where Hanafi was,[21] before driving the Car to Woodlands Block 183 to meet Hanafi.[22] Upon his arrival, Hanafi got into the front passenger seat, while Nagib sat at the rear passenger seat.[23]

18 To search for food, Zaihidir drove the Car to a restaurant called "Al-Ameen", and subsequently to "Rasa Rasa" at Waterfront Woodlands. However, as both places were crowded, they did not eat at either eatery.[24]

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17 NE for 16 August 2023 at page 62 line 8 to page 63 line 8.

18 NE for 16 August 2023 at page 61 line 30 to page 62 line 7; 2nd Accused's Written Submissions dated 11 December 2023 ("2DCS") at para 17.

19 AB553; NE for 16 August 2023 at page 69 line 30 to page 70 line 6.

20 AB137 at S/N 13; NE for 16 August 2023 at page 70 lines 11 to 19.

21 NE for 17 August 2023 at page 3 line 25 to p 4 line 1.

22 Prosecution's Closing Submissions dated 11 December 2023 ("PCS") at para 7(ii); NE for 17 August 2023 at page 2 line 24 to page 4 line 3.

23 AB492 at para 17; NE for 16 August 2023 at page 72 lines 25 to 28; PCS at para 7(ii); 1st Accused's Closing Submissions dated 14 December 2023 ("1DCS") at para 16; 2DCS at para 18.

24 NE for 16 August 2023 at page 74 line 16 to page 75 line 19; PCS at para 7(ii); 1DCS at para 16; 2DCS at paras 23 to 24.

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19 Nagib subsequently mentioned that a friend needed his help as his lorry had broken down. Zaihidir agreed to help, and therefore followed Nagib's directions to drive to the location. However, on the way there, Nagib said that his friend was fine.[25] Later, as Zaihidir was driving off to drop Hanafi at Yishun, Nagib said that he needed to urinate. As directed by Nagib, Zaihidir stopped the Car along Riverside Road for Nagib to alight.[26] Five minutes later, Nagib returned to the Car.[27]

20 When Nagib returned to the Car, Zaihidir resumed driving. Zaihidir testified that he "saw like movement, [Nagib] give Hanafi bag".[28] Specifically, Zaihidir was checking his left blind spot when he saw the bag move "from back to front" through the centre gap between the front passenger seat and the driver seat.[29] This happened before the arrest. Zaihidir claimed that he had nothing to do with the drugs.

Statements made during investigations

Statements made by Hanafi

21 During the course of the investigations, Hanafi gave the following statements to the CNB:

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25 NE for 16 August 2023 at page 76 lines 2 to 13.

26 NE for 16 August 2023 at page 77 lines 1 to 22.

27 NE for 16 August 2023 at page 77 line 30 to page 78 line 3; PCS at para 7(iii); 1DCS at para 17; 2DCS at para 25.

28 NE for 16 August 2023 at page 78 lines 14 to 17.

29 NE for 16 August 2023 at page 78 line 30 to page 79 line 10; NE for 17 August 2023 at page 7 lines 14 to 22.

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(a) Six cautioned statements recorded under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") on 10 May 2021, 10 November 2021 and 4 April 2022;[30] and

(b) Eight long statements recorded under s 22 of the CPC on 4,[31] 8[32] and 10 May 2021,[33] 6 June 2021,[34] 30 July 2021,[35] 10 November 2021[36] and 7 January 2022.[37]

22 Hanafi does not challenge the admissibility of these statements on the grounds of threat, inducement or promise.[38] I now set out key extracts from five of these statements which the Prosecution relies on against both Hanafi and Nagib.

23 I begin with the long statement recorded on 4 May 2021, and should point out that this is a statement handwritten by Investigation Officer Inspector Muhammed Ridlwan bin Mohamed Raffi ("IO Ridlwan") into his investigation diary. IO Ridlwan's evidence is that he initially intended to record a formal statement from Hanafi. However, when he saw Hanafi at the lock-up that day, Hanafi indicated to IO Ridlwan that he required an asthma pump. IO Ridlwan therefore made a call to the in-house doctor. Despite this, Hanafi

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30 AB467 to AB484.

31 AB485 to AB487.

32 AB488 to AB499.

33 AB557 to AB558.

34 AB588 to AB589.

35 AB606.

36 AB607.

37 AB608 to AB610.

38 NE dated 18 August 2023 at page 9 lines 5 to 16.

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told IO Ridlwan that he wished to share some brief accounts of what had happened. In those circumstances, IO Ridlwan decided to record a brief investigation statement from Hanafi in his investigation diary. However, the interview ended up lasting longer than he expected, and the statement was a detailed one.[39] Hanafi eventually saw a doctor and obtained an asthma pump.[40] In my view, nothing really turns on this background, as Hanafi does not seriously raise any challenges based on the recording process.

24 Turning to the contents of the statement recorded on 4 May 2021, Hanafi detailed the following:[41]

(a) Sometime at 4pm on 27 April 2021, Hanafi was supposed to meet his girlfriend at her workplace. However, he received a video call from Nagib asking him "about [Block] 183 Woodlands or something". Nagib said that this was "urgent" and very important.

(b) Hanafi therefore booked a Grab car to fetch Nagib from his home in Serangoon. Hanafi brought along his Superdry Bag.

(c) When Hanafi arrived at Serangoon, Nagib was alone and carrying a sling bag. From Serangoon, the pair headed to "Blk 183 Woodlands or 183 Marsiling". When they arrived at their destination, Nagib wanted to locate a specific spot in Block 183. Hanafi decided to help him as Nagib was "old".

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39 NE for 18 August 2023 at page 23 line 22 to page 24 line 16; NE for 18 August 2023 at page 49 lines 16 to 29.

40 NE for 18 August 2023 at page 25 lines 5 to 13.

41 AB485 to AB487; AB492 at para 12; NE for 24 August 2023 at page 41 line 25 to page 44 line 2; NE for 24 August 2023 at page 44 line 29 to page 45 line 18.

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(d) After spending some time trying to locate Block 183 of Woodlands, Hanafi contacted Zaihidir to pick them up. Nagib was unable to find anything at Block 183.

(e) The three of them drove to two restaurants in Woodlands (*ie,* "Al-Amin" and a restaurant at Woodlands Waterfront), but both places were full. Zaihidir thus began the journey to Yishun.

(f) Along the way to Yishun, Nagib said that he needed "to pee". Zaihidir stopped the Car along Riverside Road for Nagib to alight. When Nagib was heading out of the Car, Hanafi saw Nagib unzipping the sling bag and pulling out another bag from within it. Hanafi could not recall how long Nagib had left as Hanafi had consumed Epam tablets. When Nagib came back to the Car, he was hugging "a big black bag". He asked Zaihidir to proceed to Yishun.

(g) In the Car, Hanafi heard Nagib talking on the mobile phone in Malay with an Indian man through a video call. Hanafi could not remember what they had talked about. Hanafi saw a flash, and he turned back to see Nagib taking pictures. He asked Nagib why he was taking pictures, but Nagib did not answer him. He also saw Nagib "tearing some plastic bag", but he could not recall the colour of the plastic bag. Later, Nagib asked Hanafi to keep the black bag into the Superdry Bag. Hanafi did not ask Nagib for the reason behind this request as he was hungry, and asked Nagib to pass him the bag. Less than a minute later, Nagib asked Hanafi to return him the bag so as to take pictures again. Hanafi became frustrated and opened the bag. He tore a black plastic bag and saw "ubat". He then confronted Nagib. Hanafi did not pass the bag back to Nagib as Hanafi was angry.

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25 In the long statement made on 8 May 2021 at 1.30pm,[42] Nagib provided an account largely similar to that set out in the long statement on 4 May 2021. While Hanafi initially claimed that IO Ridlwan simply "transfer[red]" the details in the 4 May 2021 statement over to the 8 May 2021 statement recorded at 1.30pm,[43] Hanafi subsequently confirmed that "every single aspect" of the 4 May 2021 statement had been read out to him to "clarify and confirm" its contents.[44] The material portions of the long statement made on 8 May 2021 at 1.30pm are as follows:

(a) Hanafi reiterated, as in the statement of 4 May 2021, that when Nagib left the Car, Hanafi saw Nagib unzipping the sling bag, and pulling out another bag from within it. When Nagib came back to the Car, he was hugging "a big black bag", and had told Zaihidir to drive. In the Car, Hanafi heard Nagib talking on the mobile phone in Malay, and Hanafi "saw flashes of light from the back like [Nagib] was taking pictures". When Hanafi looked to the back, he saw Nagib tearing some plastic bags. Again, he could not remember the colour of these plastic bags.[45]

(b) Departing from the long statement of 4 May 2021, Hanafi said that he was the one who asked Nagib to pass the bag to the front, which Nagib did. Going into more detail, Hanafi said that when he opened the bag, there was a big parcel. He tore the plastic wrapper of the parcel and saw the drugs which he recognised as heroin. He believed that Nagib did

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42 AB492 to AB499.

43 NE for 5 September 2023 at page 35 lines 5 to 24.

44 NE for 5 September 2023 at page 39 lines 14 to 22.

45 AB493 at paras 19 to 20.

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not know about the contents of the bag as the drugs had been concealed. Hanafi kept the bag into the Superdry Bag. Nagib did not say anything as he "looked very lost". Less than a minute later, the CNB intercepted the Car.[46]

(c) When shown the photographs of the exhibits seized by the CNB, Hanafi admitted that he knew that the Bundles contained heroin, and that the Blocks looked like either "Mushroom or Cannabis". Hanafi "admitted ownership" of both the Bundles and the Blocks, but claimed that they were for his consumption. He exonerated Nagib and Zaihidir of any involvement in the Blocks, claiming that "neither [Zaihidir] nor [Nagib] knew about them". He also identified the YONEX bag as the "bag which carried the parcel which contained the drugs". Further, he identified a black plastic bag, Exhibit A1D, as the "plastic wrapper" he tore from the parcel.[47]

26 In the cautioned statement to the first charge recorded on 10 May 2021, Hanafi stated that he "took ownership of the drugs" for his own consumption:[48]

> I admit to this charge served to me … I regret following 'Nagib' to help him. I saw that there were drugs in the parcel and I took ownership of the drugs and had intended for my own consumption. [Zaihidir] was not involved in this and that I had only called him to send me home. …

27 As for the cautioned statement to the second charge recorded on 10 November 2021, Hanafi explained why he "took ownership" of the drugs:[49]

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46 AB493 at paras 19 to 22; AB494 at para 23.

47 AB494 at para 23.

48 AB469.

49 AB472.

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> 3. Again, the only reason that I took ownership is an explanation [*sic*] that I was the last person who was holding the exhibits. I hope this clarifies. This applies to my 1st charge as well.

28 Finally, in the long statement recorded on 7 January 2022, Hanafi stated that the drugs were not in the Superdry Bag before he met with Nagib.[50]

Statements made by Nagib

29 Similarly, Nagib gave 15 statements to the CNB as follows:

(a) One contemporaneous statement recorded on 27 April 2021 at 10.03pm;[51]

(b) One further contemporaneous statement recorded on 28 April 2021 at 12.42am;[52]

(c) Eight cautioned statements recorded under s 23 of the CPC on 28 April 2021 and 12 November 2021;[53] and

(d) Five long statements recorded under s 22 of the CPC on 3, 4, 5 May 2021[54] and 12 November 2021.[55]

30 Nagib does not challenge the admissibility of these statements on the grounds of threat, inducement or promise.[56] The gist of these statements is that

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50 AB608 at paras 82 to 84.

51 AB358 to AB366; AB414 to AB415.

52 AB367 to AB368; AB416.

53 AB611 to AB613; AB686 to AB706.

54 AB614 to AB622; AB650 to AB651.

55 AB686.

56 NE dated 10 August 2023 at page 90 lines 24 to 31; NE dated 18 August 2023 at page 6 lines 16 to 23.

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Nagib denied delivering the Bundles and Blocks to Hanafi. He claimed that he only had his sling bag both when he left the Car "to pee", and when he returned to the Car.[57] He denied any knowledge of the YONEX bag found in the Superdry Bag. He also denied knowledge of the Bundles and the Blocks and what they contained.[58] Nagib also gave various reasons to account for his presence in Woodlands that day. In brief, he claimed that he wanted to go to Woodlands to "find food" as well as meet his old friends,[59] that it was one "Baiya" who had told him to go to Woodlands to look for a white lorry,[60] and that he was going to meet one "Das".[61] These shall be dealt with in due course (see [195]–[199] below).

WhatsApp messages, and expert evidence on the communications

31 From the mobile devices recovered, WhatsApp messages between Hanafi and Nagib, as well as between Hanafi and various third parties, including Zaihidir, "Arab Jujul", "Ace A.A Msl", "Adek Don Grab", "Boy Steam", "Ali Jepun", and "Kidl", were recovered.[62] Communications were also extracted between Nagib and Das (saved as "Chef Dosrty Long"[63] on Nagib's phone), and Baiya.[64]

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57 AB619 at paras 21 and 22.

58 AB621 at para 34.

59 AB618 at para 18.

60 AB620 at para 28; AB650 at paras 41 and 44 to 55.

61 AB619 at para 20.

62 AB74 to AB168.

63 NE for 8 September 2023 at page 15 lines 1 to 2.

64 AB39 to AB73.

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32 Inspector Mohamad Khairul bin Mohamed ("Insp Khairul") was called as an expert witness on drug matters. Based on the contents of the WhatsApp messages, he testified that Hanafi and Nagib were involved in drug trafficking activities, and were supplying drugs to each other's customers.[65] I shall go to the evidence later (see [98]–[103] below).

33 More importantly, pointing to WhatsApp messages between Hanafi and Nagib, the Prosecution argues that they had made arrangements to meet on 27 April 2021 to carry out a drug transaction.[66] As for communications involving Hanafi, Zaihidir and "Boy Steam", they show that Hanafi had been searching for heroin purchasers on 27 April 2021.[67] Further, the messages between Nagib and Baiya show that Nagib was a "go-between" between the drug source (*ie*, Baiya) and the recipient (*ie*, Hanafi).[68]

Hanafi's evidence

34 Having considered that the Prosecution has established a *prima facie* case, I called for Hanafi's defence. Hanafi testified in his defence. At the time of the arrest, Hanafi was a deliveryman for GrabFood and Deliveroo, using a personal mobility device ("PMD") or a power assisted bicycle ("PAB"). He also had other part-time jobs such as delivering parcels and helping to repair PMDs.[69]

35 Hanafi claimed to consume a wide range of drugs. He would share information over WhatsApp on drug suppliers, as well as the prices of drugs,

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65 PCS at paras 8(i) and 76.

66 PCS at paras 92 to 97.

67 PCS at paras 55 to 58.

68 PCS at paras 102 to 107.

69 NE for 24 August 2023 at page 6 line 6 to page 7 line 25.

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with his friends, including Arab Jujul, Abu Alok (also saved as "Ace A.A Msl"[70] on his mobile phone), Adek Don Grab, Ali Jepun, Kidl, Boy Steam, Zaihidir (also saved as "Didie Airmata" on his mobile phone)[71] and Nagib (also saved as "Nagib Ace"[72] on his mobile phone).[73]

36 Turning to the events on 27 April 2021, at 3.44pm, Hanafi received a WhatsApp message from Nagib asking Hanafi to call Nagib back urgently.[74] At 4.08pm, Hanafi responded that he would do so as soon as possible.[75] Shortly after, a call took place between Hanafi and Nagib. According to Hanafi, during the call, Nagib informed Hanafi that he needed to go to Block 183 of Woodlands to look for his friends.[76] At the time, Hanafi was at a rented room in Orchard Towers with his girlfriend. As it was the first time Nagib had ever asked for his help, and Nagib's speech was slurred, as if he had taken a tablet such as Epam, Hanafi decided to help.[77] Hanafi left Orchard with the Superdry Bag,[78] and took a Grab car to fetch Nagib from Serangoon to go to Woodlands together.[79]

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70 NE for 4 September 2023 at page 78 lines 13 to 15.

71 NE for 24 August 2023 at page 28 lines 1 to 6.

72 NE for 24 August 2023 at page 30 lines 5 to 7.

73 NE for 24 August 2023 at page 33 lines 2 to 12 and at page 34 lines 5 to 12.

74 AB549 read with AB167.

75 AB549; AB167 at S/Ns 99 to 100.

76 NE for 5 September 2023 at page 3 line 25 to page 4 line 3.

77 1DCS at para 11; AB589 at para 68; AB606 at para 71; NE for 24 August 2023 at page 40 line 25 to page 41 line 13.

78 1DCS at para 12; AB492 at para 13; NE for 24 August 2024 at page 42 lines 16 to 30.

79 1DCS at para 13; AB492 at para 13; NE for 24 August 2024 at page 41 line 19 to page 42 line 15.

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37 At around 5.15pm,[80] Hanafi arrived at Nagib's place of residence in Serangoon. Nagib was carrying the sling bag.[81] The pair made their way to Woodlands in a Grab car.[82]

38 When Hanafi and Nagib reached their destination, they alighted from the Grab car. They were, however, unable to locate Block 183. During their search for Block 183, Hanafi became hungry and bought a cake from a bakery. He also consumed Epam pills. They were ultimately unable to find Block 183.[83] Hanafi therefore called Zaihidir to ask for a ride to Yishun.[84]

39 After getting into the Car, Zaihidir drove them to look for restaurants to eat at in the vicinity. As the places were full, they decided to proceed to Yishun instead. However, as Nagib wanted "to pee", Zaihidir stopped at the side of the road.[85] When Nagib left the Car, he had the sling bag with him. When he came back, he also only had the sling bag.[86] After Nagib returned to the Car, Hanafi saw Nagib "playing with his phone, taking picture", and "fondling with … a bag or something".[87] Nagib was also talking in Malay.[88] Hanafi asked Nagib to "pass it to the front, to pass the bag".[89] Although Hanafi could not remember

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80 AB168, at S/N 108.

81 1DCS at para 13; AB492 at para 14.

82 1DCS at para 13; AB492 at para 14.

83 AB492 at paras 14–16; 1DCS at para 14.

84 AB492 at para 16; 1DCS at para 15.

85 NE for 24 August 2023 at page 48 lines 12 to 31.

86 NE for 24 August 2023 at page 49 lines 20 to 23.

87 NE for 24 August 2023 at page 48 lines 21 to 26.

88 NE for 24 August 2023 at page 50 lines 11 to 13.

89 NE for 24 August 2023 at page 48 lines 26 to 27.

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clearly, he thought that there was a bag "being passed to the front".[90] The next thing Hanafi remembered was tearing up plastic, and finding "the bundle" with "drugs inside" on his lap. The Car was subsequently intercepted. Hanafi was "so shocked"[91] that he placed the "whole thing inside [his] bag".[92] Hanafi was dizzy at that point as he had consumed Epam.[93]

40 Even then, Hanafi said that at first glance, the drugs in the bundle looked like heroin.[94] He put the drugs into the Superdry Bag because he thought he would be able to consume them.[95] During cross-examination, Hanafi claimed that while he recognised the drugs in the Bundles as heroin, he did not know what the Blocks contained, *ie*, cannabis.[96] Having set out the main of his evidence in examination-in-chief, which I observe to be fairly consistent with the accounts in his statements as set out in [23] to [28] above, I should highlight that on various aspects, Hanafi shifted his stance, especially during cross-examination and re-examination. These shall be dealt with below.

Nagib's evidence

41 Similarly, having called for his defence, Nagib testified. Consistent with his position in the statements as set out at [30] above, Nagib denied delivering the drugs to Hanafi. On 27 April 2021, Nagib intended to go to Woodlands to

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90 NE for 24 August 2023 at page 51 lines 1 to 3.

91 NE for 24 August 2023 at page 53 lines 9 to 11.

92 NE for 24 August 2023 at page 49 lines 1 to 7 and at page 51 lines 9 to 11.

93 NE for 24 August 2023 at page 50 lines 29 to 31.

94 NE for 24 August 2023 at page 52 lines 27 to 29.

95 NE for 24 August 2023 at page 63 lines 8 to 10.

96 NE for 4 September 2023 at page 44 lines 5 to 14; NE for 5 September 2023 at page 50 line 23 to page 51 line 5.

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meet his friends to "carry out some good deeds", to meet Das to pass him monies, and to obtain a mobile phone from Das.[97] He got a lift from Hanafi, thinking that Hanafi would return to Yishun.[98] Along the way, Nagib helped Baiya look for a white lorry.[99]

42 For context, Nagib claimed that Das was a friend whom he treated "like family".[100] Nagib claimed that they spoke at least two to three times every week and were close enough that Das could ask for money from Nagib. However, Nagib did not know Das's full name,[101] nor his address.[102] As for Baiya, Nagib claimed that Baiya, whose real name is pronounced as "Thivan",[103] was someone he knew through another individual he called "Boy".[104] Nagib claimed that Baiya called him frequently, that Baiya lives in Malaysia, and that they "understand each other".[105] Save for these general and rather vague details, Nagib could provide no further information on Das and Baiya.

43 Nagib subsequently alighted along Riverside Road to urinate.[106] In relation to various photographs he sent to Baiya when he alighted to urinate, Nagib explained that these were to inform Baiya that he could not locate the

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97 NE for 8 September 2023 at page 21 lines 19 to 25 and page 26 lines 5 to 9.

98 NE for 13 September 2023 at p 16, lines 30 to 32.

99 NE for 8 September 2023 at page 35 lines 4 to 8 and at page 38 lines 27 to 31.

100 NE for 8 September 2023 at page 47 line 27 to page 48 line 9.

101 NE for 8 September 2023 at page 47 lines 10 to 11.

102 NE for 12 September 2023 at page 66 lines 13 to 16.

103 NE for 8 September 2023 at page 49 line 27 to page 50, line 6.

104 AB650 at para 38.

105 NE for 8 September 2023 at page 49 lines 16 to 26; AB650 at para 38.

106 NE for 8 September 2023 at page 33 lines 1 to 30.

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white lorry.[107] At the time, Nagib was "high", as he had consumed "Erimin", "Epam" and "mushroom".[108] However, he denied having anything to do with the Bundles and the Blocks, and claimed that he never passed a bag to Hanafi in the Car.[109]

The Prosecution's case

Chain of custody

44 The Prosecution argues that there was no break in the chain of custody of the drug exhibits. The CNB officers' documentation and identification of the seized exhibits was unchallenged at trial, and the evidence shows that the movement of the drug exhibits from the point of seizure to the point that they were submitted to the HSA is properly accounted for. Hence, the chain of custody has been established beyond a reasonable doubt.[110]

Case against Hanafi

Bundles of diamorphine

45 In relation to the Bundles, the Prosecution argues that based on the evidence, Hanafi had possession of and actual knowledge of the nature of the drugs in the Bundles, *ie*, diamorphine.[111] As Hanafi was proved to have in his

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107 NE for 12 September 2023 at page 17 line 25 to page 18 line 16.

108 NE for 8 September 2023 at page 23 lines 23 to 27.

109 NE for 8 September 2023 at page 35 line 28 to page 36 line 27, and at page 38 line 25 to page 39 line 4.

110 PCS at paras 12 to 28.

111 PCS at paras 31 to 37.

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possession 58.86g of diamorphine (within the Bundles), the presumption of trafficking under s 17(*c*) of the MDA applies.[112]

46 The presumption under s 17(*c*) is unrebutted by Hanafi's claim that the diamorphine in the Bundles was intended for his consumption. First, Hanafi's account at the trial implied that the drugs did not belong to him and that he had chanced upon the drugs. Hence, Hanafi's consumption defence is somewhat inconsistent with his version of events, as it would mean that he intended to consume drugs belonging to someone else.[113] Second, Hanafi was not an abuser of heroin at the relevant time. He did not report his heroin consumption to the CGH doctor after his arrest, and had informed his reporting doctor at the Institute of Mental Health ("IMH"), Dr Cheow Enquan ("Dr Cheow") that he tried to quit drugs one week prior to his arrest.[114] Third, Hanafi conceded at the trial that he was not a heavy heroin abuser at the relevant time.[115] Fourth, Hanafi's claims were deficient as he failed to adduce any credible evidence on his rate of consumption.[116] Given these factors, Hanafi would not have stockpiled heroin weighing approximately five pounds with a substantial value for his consumption.[117]

47 Indeed, the objective evidence shows that Hanafi possessed the Bundles for the purposes of trafficking. Based on text messages between Hanafi and Zaihidir as well as Boy Steam, Hanafi had been searching for heroin purchasers

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112 PCS at para 38.

113 PCS at paras 40 to 41; PRS at paras 12 to 17.

114 PCS at paras 42 to 45.

115 PCS at paras 46 to 47.

116 PCS at paras 48 to 52; PRS at paras 17 to 20.

117 PCS at para 58(ii).

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on 27 April 2021, the same day that he received the Bundles. Hanafi's claim that these messages were confined to information-sharing and did not concern drug sales ran contrary to the content of the messages. Additionally, text messages between Hanafi and, amongst others, Kidl, Ali Jepun and Arab Jajul, show that Hanafi was operating a drug trafficking business. These further point towards the Bundles being for trafficking purposes and not for Hanafi's personal consumption.[118]

Blocks of cannabis

48 In relation to the Blocks, the Prosecution argues that Hanafi had possession of the Blocks and relies on the presumption in s 18(2) of the MDA that he had knowledge of the nature of the drugs.[119] Hanafi has failed to rebut this presumption.[120]

49 As regards whether Hanafi possessed the Blocks for the purpose of trafficking, the Prosecution argues that because the amount of cannabis involved (*ie*, 499.9g) is "more than 30 times the statutory threshold that triggers the presumption of trafficking" under s 17 of the MDA, there is an irresistible inference that the Blocks were for the purpose of trafficking. The Prosecution emphasises that although it is not relying on the statutory presumption under s 17 of the MDA, the statutory threshold "remains useful" to highlight the substantial quantity of cannabis in the present case.[121]

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118 PCS at paras 54 to 60.

119 PCS at paras 61 to 71.

120 PCS at para 71.

121 PCS at paras 72 to 73.

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50 Next, Hanafi's claim that he intended to consume the cannabis is not convincing. Hanafi did not report his cannabis consumption habits to the CNB or to Dr Cheow.[122] Neither did he raise this in his cautioned statement in respect of the second charge.[123] On the contrary, again, the messages show that Hanafi was engaged in drug trafficking activities, which strengthens the inference that he possessed the Blocks for the purpose of trafficking.[124]

51 Thus, the evidence leads to the irresistible inference that Hanafi was in possession of the Blocks for the purpose of trafficking.

Case against Nagib

52 To establish the case against Nagib, the Prosecution relies on both Hanafi's confession in the statements, where Hanafi admitted that it was Nagib who passed him the drugs, as well as the objective evidence and circumstances. The Prosecution argues that full weight should be given to Hanafi's account which implicates Nagib as it was internally and externally consistent.[125] Further, Hanafi had incidentally incriminated Nagib while incriminating himself, which lends credibility to his account.[126]

53 The objective evidence bolsters the inference that the drugs were delivered by Nagib to Hanafi. According to the Prosecution, Nagib's drug-centred relationship with Hanafi provides the context to their meeting on

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122 PCS at para 74.

123 PCS at para 75.

124 PCS at para 77.

125 PCS at paras 79 to 86.

126 PCS at paras 87 to 90.

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27 April 2021.[127] Additionally, based on text messages between Nagib and Baiya, Nagib had arranged to collect a drug consignment on the day of his arrest. Text messages between Nagib and Baiya were deleted soon after they were sent, and from around 4.30pm to 7.21pm, Nagib had provided multiple updates to Baiya of his whereabouts, such as by sending pictures of his surroundings. This included a picture of a plastic bag sent at 7.21pm.[128]

54 In comparison, Nagib's defence of denial should be rejected as it lacks veracity and credibility, and is unbelievable.[129] Nagib was also an evasive and dishonest witness, prepared to conjure accounts whenever it suited his purposes.[130] Accordingly, the Prosecution argues that Nagib has failed to rebut the presumption of knowledge under s 18(2) of the MDA.[131] The charges against him are therefore established.

The Defence's cases

Location of the search and seizure and the chain of custody

55 Hanafi and Nagib submit that the location of the search of and seizure from the Car is uncertain, and that the Prosecution has not discharged its burden of proving an unbroken chain of custody.[132]

56 In this regard, the electronic Global Positioning System ("GPS") records for the movement of the Car on 27 and 28 April 2021 were extracted by

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127 PCS at paras 92 to 99.

128 PCS at paras 100 to 107.

129 PCS at paras 117 to 146.

130 PCS at paras 147 to 150.

131 PCS at para 151.

132 1DCS at paras 89 to 96; 2DCS at paras 106 to 124.

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Mr Kelvin Kum Tuck Leong ("Mr Kum"), the director of Karz Automobile & Leasing Pte Ltd,[133] the company Zaihidir rented the Car from.[134] The GPS records indicate that the Car had been at Block 782C Woodlands Crescent from 8.06pm, at the very earliest, to 11.27pm on 27 April 2021.[135]

57 While the Prosecution's witnesses testified that the search and seizure of the Car took place at the MSCP (located at Block 780 of Woodlands Crescent), this location did not appear in the GPS records of the Car. Instead, the Car was only recorded as being at Block 782C of Woodlands Crescent. No satisfactory explanation was provided by the Prosecution's witnesses on this discrepancy. The location of the seizure was uncertain. Hence, a reasonable doubt has arisen from the point of interception to the point of seizure.[136]

Hanafi's case

58 As regards both the Bundles and Blocks, Hanafi advances a single composite case. He argues that he has rebutted the presumption under s 17(*c*) of the MDA. In essence, Hanafi's case is that the "main 'protagonist'" was Nagib, who had arranged for the collection of the Bundles and Blocks on 27 April 2021,[137] and had eventually done so "under the guise of a toilet break" at Riverside Road.[138] Hanafi asserts that he did not order the Bundles and Blocks from Nagib, that the drugs had "unexpectedly" come into his possession, and

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133 SOAF at para 27.

134 NE for 15 August 2023 at page 77 lines 9 to 11.

135 AB35; NE for 15 August 2023 at page 79 lines 23 to 30; NE for 15 August 2023 at page 81 lines 6 to 19.

136 1DCS at paras 89 to 96.

137 1DCS at para 77.

138 1DCS at para 81.

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that he formed the intention to keep them for his personal consumption upon coming into possession of them. As he was intoxicated on Epam tablets, he was unable to fully appreciate his situation, and "did not fully appreciate the amount of drugs" in the bag. This is especially given the short interval between the passing of the drugs and interception by the CNB officers. In his intoxicated state, and upon seeing the heroin in the Bundles, Hanafi made the "hasty decision" to "retain possession of the entire bag of drugs" for his personal consumption.[139] Hence, the presumption that the Bundles and the Blocks were for the purpose of trafficking is rebutted.

Nagib's case

59 Nagib's primary case is that he did not have possession of the Bundles and Blocks, and was not aware of their existence at any point in time.[140] Nagib points to the fact that at the time of the arrest, he was not in physical control over the bag which contained the Bundles and Blocks[141] – specifically, this refers to the YONEX bag, which Hanafi claimed contained the drugs (see [25(c)] above).[142]

60 Nagib submits that the bag which contained the drugs and which had been passed from Nagib to Hanafi, as alleged by the Prosecution and Hanafi, does not exist and was fabricated to implicate Nagib. This is supported by the following points. There were only three bags seized by the CNB: Nagib's sling bag, the Superdry Bag, and the YONEX bag.[143] However, neither Nagib's sling

139 1DCS at paras 116 to 118.

140 2DCS at para 30.

141 2DCS at para 31.

142 AB494 at Exhibit A1C.

143 2DCS at paras 31 to 35.

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bag nor the YONEX bag were large enough to fit the drugs. Only the Superdry Bag was large enough to fit the drugs. In turn, Nagib's DNA was not found on the Superdry Bag or the YONEX bag, which shows that he never had contact with them. The fibre test between Nagib's sling bag and the YONEX bag also showed that there was no connection between them.[144]

61 Instead, Nagib claims that Hanafi had possession of the drugs at all times. Nagib relies on photographs of Hanafi at Orchard Towers on the morning of 27 April 2021 as evidence that the Superdry Bag was not empty at the time.[145] Hanafi's testimony was also not reliable, as it is odd that Hanafi would have opened a bag belonging to Nagib without his permission. Moreover, Hanafi had time to pack the Bundles and the Blocks into the Superdry Bag, as shown by how they were found in separate compartments. Hanafi's evidence is unreliable.[146]

62 As regards Insp Khairul's evidence on the messages between Nagib and his friends, Nagib argues that Insp Khairul's evidence is not accurate.[147] Accordingly, Nagib argues that the element of possession has not been established, and that the presumption in s 18(2) of the MDA cannot be invoked.

Decision: Location of the search and seizure, and chain of custody

63 Having set out the parties' cases, I turn to the common issue concerning the location of the search and seizure, and the chain of custody of the drug exhibits. It is well-established that the burden of establishing the chain of

144 2DCS at paras 36 to 47.

145 2DCS at para 56.

146 2DCS at para 62.

147 2DCS at paras 98 to 105.

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custody lies on the Prosecution. This requires the Prosecution to account for the movement of the exhibits from the *point of seizure* to the *point of analysis*. Where the defence suggests that there has been a break in the chain of custody, it may show that at one or more stages, a reasonable doubt has arisen as to whether the chain of custody has been broken. Where this is shown to be the case and a reasonable doubt arises as to the identity of the drug exhibits, the Prosecution would have failed to discharge its burden (*Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39]).

64 I make two preliminary points. First, contrary to Hanafi's submission, it seems wrong to me to characterise a concern which arises "from the point of interception to the point of seizure" as a chain of custody issue. Any difficulty which arises from the GPS records concerns a point in time *before* (and not *after*) the formal seizure of the drug exhibits. Strictly speaking, this does not give rise to a chain of custody issue. Notwithstanding this, I recognise that following the interception and arrests, the CNB officers had control of the Car until the time of the search and seizure. Therefore, it falls for the Prosecution to prove that the contents within the Car remained intact until the point of seizure of the drugs.

65 Second, as pointed out by the Prosecution, the parties have agreed in the Statement of Agreed Facts ("SOAF") that the search and seizure of the Car took place at the MSCP located at Block 780 of Woodlands Crescent.[148] The SOAF

148 SOAF at para 5.

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was admitted pursuant to s 267(1) of the CPC. Section 267 of the CPC provides that:

> **Proof by formal admission**
>
> **267.**—(1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the Public Prosecutor or the accused, and the admission by any party of any such fact under this section is, as against that party, *conclusive evidence* in those proceedings of the fact admitted.
>
> …
>
> (4) An admission under this section may with the permission of the court be withdrawn in the proceedings for which it is made or any subsequent criminal proceedings relating to the same matter.
>
> [emphasis added]

66 Section 267(1) of the CPC makes it clear that any fact in the SOAF is "conclusive evidence" of a fact being admitted in the proceedings. Counsel for Hanafi and Nagib have not sought to withdraw their admission under s 267(4) of the CPC, in relation to this fact. I therefore invited further submissions from them on the significance of their departure from the SOAF. Neither counsel, however, provided a meaningful response, save to assert that the burden was on the Prosecution to establish an unbroken chain of custody.[149]

67 That said, given the extent to which both counsel have advanced certain arguments in their written submissions about the uncertainty regarding the location of the search and seizure, and the credibility of the CNB officers who testified on the matter, I turn to deal with the issue in more detail.

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149 1st Accused Response to the Court's Queries dated 28 June 2024 ("1DRS to the Court") at paras 13 to 19; 2nd Accused's Response to the Court's Queries dated 28 June 2024 ("2DRS to the Court") at paras 39 to 44.

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68 According to the Prosecution's witnesses, at around 8.02pm, Zaihidir and Nagib were escorted to the MSCP for the search and seizure.[150] While making their way to the MSCP, Zaihidir was in the custody of Staff Sergeant Goh Bai Lin ("SSgt Goh") and Sergeant (3) Muhammad Hidayat Bin Jasni ("Sgt Hidayat") in the Car, while Nagib was with Inspector Eng Chien Loong Eugene ("Insp Eugene") and Staff Sergeant Au Yong Hong Mian ("SSgt Au Yong") in an operational CNB car.[151] Station Inspector Tay Keng Chye Sunny ("SI Sunny") rode a bike and trailed after them to the MSCP.[152] At around 8.12pm, they arrived at the MSCP.[153] At around 8.18pm, at the MSCP, SI Sunny conducted a search of the Car in the presence of both Zaihidir and Nagib. The Superdry Bag was seized from the front passenger floorboard, and the drugs were seized from the Superdry Bag. The search concluded at about 9.32pm.[154]

69 With regards to the location of the search and seizure, Sgt Hidayat explained that it was the typical practice of CNB officers, following an interception, to "rendezvous" at the nearest multi-storey car park.[155] Similarly, SSgt Goh testified that the usual practice was to commence a search of the vehicle involved at the "rendezvous" location. He also added that it was the CNB's prevailing practice not to touch any items in the vehicle.[156] The "rendezvous" location is typically determined by the ground commanding

150 AB299 at para 10.

151 AB299 at para 10.

152 AB344 at para 8.

153 AB299 at para 10; AB344 at para 8.

154 AB344 to AB346 at para 9.

155 NE for 10 August 2023 at page 21 lines 8 to 13.

156 NE for 10 August 2023 at page 76 lines 9 to 26.

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officer, who was Insp Eugene at the time.[157] In turn, Insp Eugene confirmed that he had directed for the search to be at Block 780, and that location was where the officers had proceeded to.[158] This is consistent with the evidence of SSgt Goh, who testified that he had personally checked and seen the block number – *ie*, Block 780 – when he drove into the MSCP.[159] I accept the evidence of Sgt Hidayat, SSgt Goh and Insp Eugene, whose accounts are corroborative in material aspects and which, together, paint a cogent picture of the CNB officers commencing and conducting the search at the MSCP.

70 The Prosecution also relies on the evidence of Mr Kum, who testified that based on his own experience, it was "quite possible" for the GPS entries to have wrongly registered Block 782C as the relevant location.[160] This was because the MSCP, being comprised of multi-layers of concrete and brick, could interfere with the passing of GPS signals. In his two years of using the GPS system, he had experienced this around five to eight times.[161] I am cognisant that Mr Kum does not have scientific expertise in GPS systems. Nevertheless, his evidence is relevant for the limited purpose of showing that the GPS system is not completely infallible, and that there is a possibility of such GPS systems inaccurately registering the location of a vehicle.

71 In addition, the gantry records of the carparks near Blocks 780 and 782C of Woodlands support the Prosecution's case. Mr Au Leong Heng David ("Mr Au"), a representative of ST Engineering Urban Solutions Ltd, the company

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157 NE for 8 August 2023 at page 81 line 31 to page 82 line 3.

158 NE for 15 August 2023 at page 51 lines 8 to 25 and at page 54 lines 14 to 20.

159 NE for 10 August 2023 at page 83 lines 9 to 21.

160 PCS at para 23; NE for 15 August 2023 at page 84 line 30 to page 85 line 9.

161 NE for 15 August 2023 at page 85 line 3 to page 86 line 5.

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which manages the carpark gantries at Woodlands Crescent, helped retrieve the gantry records for the carpark at Block 780 on 27 April 2021. The gantry records show that the Car had entered the carpark at Block 780 – *ie*, the MSCP – at 8.05pm.[162] The CNB had also asked Mr Au to check the gantry records of the carpark at Block 782C of Woodlands Crescent.[163] However, as Block 782C of Woodlands Crescent is a residential block and not a multi-storey carpark, Mr Au instead checked the gantry records of the carpark at Block 782, where there was a multi-storey carpark. In this regard, he found no records of the Car on 27 April 2021.[164] The Prosecution relies on these gantry records to argue that the Car was at Block 780 for the search and seizure, and that there is no discrepancy as regards the location of the search and seizure.[165] I agree with the Prosecution, and find that the gantry records are consistent with the CNB officers' evidence that the search took place at Block 780, and not Block 782C. While Hanafi suggests that the Car's entry into Block 782C may not have been captured on the gantry records due to tailgating,[166] no evidence has been adduced in support of this. Such "speculative arguments that seek to raise a theoretical *possibility* of a break in the chain of custody" [emphasis in original] do not suffice in proving a break in the chain of custody (*Affandi* at [56]). In addition, I also find Mr Au's evidence, namely, that Block 782C of Woodlands Crescent was a residential block instead of a multi-storey carpark, to be useful to support Mr Kum's point, as it illustrates that the GPS records of the Car may not pinpoint its location with absolute accuracy.

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162 P179 at page 3.

163 NE for 22 August 2023 at page 9 lines 22 to 23.

164 NE for 22 August 2023 at page 8 line 9 to page 10 line 21.

165 PCS at para 22(i).

166 1DCS at para 94.

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72 To sum up, based on the evidence of the CNB officers as well as the gantry records, I find that the location of the search and seizure was at the MSCP at Block 780 of Woodlands Crescent. More importantly, neither Hanafi nor Nagib have put forth any evidence suggesting any form of tampering with the contents in the Car prior to the point of seizure of the drugs. As mentioned above at [68], during the drive to the MSCP, Nagib was in the custody of Insp Eugene and SSgt Au Yong in an operational CNB car, while Zaihidir was in the custody SSgt Goh and Sgt Hidayat in the Car. None of these witnesses were questioned on any alleged tampering during this journey.

73 With that, I turn to the rest of the Prosecution's evidence, showing the chain of custody from the point of seizure to the point of analysis as follows:

(a) After the search was concluded at 9.32pm, SI Sunny passed the seized exhibits to SSgt Au Yong, who packed and sealed the drug exhibits into separate tamper proof bags. Nagib and Zaihidir signed on each tamper-proof bag.[167] From 9.32pm onwards, SSgt Au Yong took custody of the exhibits.[168]

(b) Separately, at 10.21pm, IO Ridlwan arrived at the MSCP. At 10.30pm, SSgt Au Yong showed all the seized exhibits, which had been placed in a black duffel bag, to IO Ridlwan, for him to conduct the relevant checks and documentation.[169] IO Ridlwan checked the tamper-proof bags to ensure that there had been no tampering, and that

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167 AB344 to AB346; NE for 10 August 2023 at page 59 line 24 to page 61 line 2; NE for 8 August 2023 at page 75 lines 5 to 31.

168 AB333; NE for 8 August 2023 at page 75 line 19 to page 76 line 5.

169 AB424 at paras 4 to 5.

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the bags had been sealed and signed.[170] At 11.42pm, the drug exhibits were returned to the same black duffel bag, and IO Ridlwan placed this duffel bag containing the drugs into the boot of his operational car. He then left for the CNB Headquarters ("HQ").[171]

(c) At 12.19am on 28 April 2021, IO Ridlwan arrived at the CNB HQ. SSgt Au Yong, who had also returned by then, took custody of the duffel bag containing the exhibits. At 12.21am, he kept them locked inside a metal cabinet which had previously been empty. He was the only one who possessed the key to the locked metal cabinet.[172]

(d) At 9.05am, SSgt Au Yong handed the duffel bag containing the drugs to Inspector Tay Cher Yeen Jason ("Insp Jason").[173] From 9.05am to 10.41am, the duffel bag was in Insp Jason's custody. As he went about his duties related to the case, he brought the duffel bag with him and had sight of the duffel bag at all times.[174]

(e) At 10.41am, Insp Jason brought the duffel bag, and its contents, to the Exhibit Management Room. Exhibit processing commenced at 10.41am.[175] Nagib was present to observe the exhibit processing, save

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170 NE for 18 August 2023 at page 14 line 23 to page 15 line 20.

171 AB424 at para 5.

172 AB334 at para 12.

173 AB334 at para 18.

174 NE for 8 August 2023 at page 47 lines 4 to 20 and lines 28 to 30; AB376 at para 3; NE for 16 August 2023 at page 9 lines 4 to 17.

175 AB377 at para 7.

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when he left the room from 10.59am to 11.01am to urinate.[176] The exhibit processing concluded at about 2.27pm.[177]

(f) At 2.36pm, the weighing of the exhibits commenced. This concluded at 2.45pm. Nagib witnessed the weighing of the drug exhibits, acknowledged the recorded weights, and signed on the investigation diary.[178]

(g) At 3.40pm, IO Ridlwan placed the exhibits in Women Inspector Tan Lye Cheng Michelle's ("OC Michelle") office. OC Michelle was the only one who could access her office. There were no exhibits in her room prior to her receiving the 90 exhibits[179] from IO Ridlwan.[180]

(h) From 3.40pm to 4.05pm, OC Michelle had custody of the exhibits.[181] At 4.05pm, OC Michelle submitted all 90 exhibits to Sergeant Kovalan s/o Gopala Krishna ("Sgt Kovalan") at the CNB Exhibit Management Team office ("EMT office").[182]

(i) Upon receiving the exhibits at 4.05pm, Sgt Kovalan placed them inside a locked metal cabinet inside the EMT office.[183] He was the only one who had access to the locked metal cabinet at the material time. He

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176 AB378 at para 5.

177 AB377 at para 7.

178 AB431 at para 14.

179 NE for 15 August 2023 at page 26 lines 23 to 31.

180 AB431 at para 15; NE for 15 August 2023 at page 27 lines 11 to 22.

181 NE for 15 August 2023 at page 15 lines 26 to 28.

182 AB422 at para 3; NE for 15 August 2023 page 26 line 26 to page 27 line 4.

183 AB387 at para 3.

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also ensured that there were no exhibits from other cases in the cabinet at the time.[184]

(j) On 29 April 2021:

(i) At around 2.48pm, Sgt Kovalan retrieved 21 exhibits and handed them to Sergeant 3 Muhammad Norjansher Shah Bin Misnan for delivery to the Illicit Drugs Laboratory of the HSA.[185]

(ii) At around 2.45pm, Sgt Kovalan retrieved 45 exhibits and handed them to Staff Sergeant Mohammed Rafi s/o Anwar Badcha for delivery to the DNA Profiling Laboratory of the HSA.[186]

(k) According to Sgt Kovalan, none of the exhibits, including the drug exhibits, were rejected by the HSA.[187] This was confirmed by HSA analyst Sylvia Tan.[188]

74 For completeness, Hanafi could not be present during the events as he was recuperating in CGH. He was only discharged on 3 May 2021.[189] However, an accused person's inability to observe the processing and/or sealing of a drug exhibit does not automatically break the chain of custody during that period of non-observation. What is important is the actual chain of custody of the material drug exhibits, and not any accused person's observation of that chain of custody

184 NE for 15 August 2023 at page 38 lines 9 to 17.

185 AB387 at para 5(a).

186 AB387 at para 5(b).

187 NE for 15 August 2023 at page 38 line 18 to page 39 line 1.

188 NE for 16 August 2023 at page 31 line 26 to page 32 line 19.

189 AB252 at para 2.

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(*Public Prosecutor v Yogesswaran C Manogaran and another* [2023] SGHC 170 at [45]). Based on all of the above, I find that the Prosecution has established that there was no break in the chain of custody of the drug exhibits.

Decision: Hanafi

The law

75 I now turn to consider the specific issues in relation to the two charges against Hanafi, beginning with the law.

76 The elements in respect of a charge of trafficking under s 5(1) read with s 5(2) of the MDA are well-established. It must be proven that the accused person had: (a) possession of a controlled drug; (b) knowledge of the nature of the drug; and (c) possession of the drug for the purpose of trafficking, which was not authorised.

77 The last element may be proved by the Prosecution or presumed under s 17 of the MDA (*Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 at [4]; *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 at [49]). In this connection, s 17(*c*) of the MDA reads:

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

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Bundles of diamorphine

Possession and knowledge

78 Dealing first with the Bundles of diamorphine, Hanafi has not seriously disputed that he was in possession of the Bundles at the time of his arrest. During his examination-in-chief, he admitted that he had placed Exhibit A1A (*ie*, comprising of the five packets of heroin which form the subject of his first charge)[190] in the Superdry Bag prior to the arrest.[191] When this element of the charge was put to him by the Prosecution during cross-examination, he accepted that he had possession of the Bundles.[192] In his written submissions, Hanafi also accepts that should the court find that the chain of custody of the drug exhibits has not been broken, that the element of possession is satisfied.[193] Hence, the first element of possession has been established beyond reasonable doubt.

79 Similarly, Hanafi's knowledge of the nature of the drugs contained in the Bundles, *ie*, diamorphine, does not appear to be disputed. In his investigation statements, he consistently stated that he saw heroin or "*ubat*" (the street name for heroin)[194] when he opened the "black plastic" enclosing the Bundles.[195] In his testimony, Hanafi said that he could tell that the drugs in the Bundles were heroin. During cross-examination, Hanafi testified that at the time of his arrest, he was familiar with how heroin looked like.[196] He further admitted that when

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190 AB511.

191 NE for 24 August 2023 at page 68 lines 6 to 14.

192 NE for 5 September 2023 at page 98 lines 12 to 17.

193 1DCS at para 104.

194 NE for 23 August 2023 at page 21 lines 22 to 24.

195 AB487 and AB493.

196 NE for 4 September 2023 at page 45 lines 7 to 9.

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he tore open the Bundles, he recognised that they contained heroin.[197] More notably, in his written submissions, he has not disputed his knowledge of the drugs, and has only sought to rebut the presumption of trafficking. Hence, I find that Hanafi had actual knowledge of the nature of the drugs in the Bundles.

Possession for the purposes of trafficking

80 Having proven that Hanafi had in his possession and knew of the nature of the drugs in the Bundles, and given that the amount of diamorphine in the Bundles exceeds 2g, the presumption under s 17(*c*) of the MDA is properly invoked by the Prosecution. The burden is on Hanafi to rebut the presumption of trafficking on a balance of probabilities (*Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 at [26]).

81 As noted above at [58], Hanafi's defence is that he chanced upon the Bundles while in the Car and formed the intention to consume them on the spot. Having considered the evidence, I find that Hanafi has not rebutted the presumption of trafficking under s 17(*c*) of the MDA on a balance of probabilities. My reasons are these.

(1) The reason for meeting Nagib

82 Given that a key plank of Hanafi's defence is that he had chanced upon the drugs fortuitously, the reason why Hanafi and Nagib met up on 27 April 2021 is an important aspect of his defence. In court, Hanafi's account of why he met with Nagib spontaneously that day is set out at [36] above. Essentially, he denied that there was any prior arrangement to carry out a drug transaction.

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197 NE for 4 September 2023 at page 44 lines 9 to 13.

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However, the WhatsApp messages between Hanafi, and Nagib, Zaihidir and Abu Alok are telling, and contradict his position.

83 At 3.44pm, Hanafi received a message from Nagib asking Hanafi to call Nagib back urgently.[198] At 4.08pm, Hanafi responded that he would do so shortly.[199] A call took place between them after.[200] According to Hanafi, it was only during this call that he knew that Nagib needed to go to Woodlands.[201] Yet, at 4.08pm, Hanafi had also sent a message to Zaihidir asking Zaihidir if he was free, and followed up at 4.09pm indicating that this was "[v]ery urgent. i need transporter".[202] Given the proximity in time of the two messages, as well as the apparent urgency of both matters, a possible inference is that the urgent need for transport referred to by Hanafi in his message to Zaihidir, and the urgent matter referred to in Nagib's message, relate to the same matter. This would suggest that Hanafi had already known that Nagib had an urgent matter *prior* to their call. (While it is plausible that the call between Hanafi and Nagib lasted less than a minute, this was not Hanafi's case at trial.) As I will show in the paragraphs which follow, this inference is supported by the evidence as a whole.

84 When Hanafi was questioned on his texts to Zaihidir at 4.08pm and 4.09pm, he claimed that his text to Nagib about Nagib's urgent matter, and his text to Zaihidir on urgent transport, related to *different* matters.[203] He claimed that he had told Zaihidir that he needed to go to Yishun urgently because he

198 AB498 at para 45; AB549 read with AB167.

199 AB549; AB167 at S/Ns 99 to 100.

200 NE for 5 September 2023 at page 3 lines 15 to 26.

201 NE for 5 September 2023 at page 3 lines 27 to 29.

202 AB553.

203 NE for 5 September 2023 at page 22 lines 21 to 31.

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needed to fix PMDs.[204] This was a claim that only surfaced during the trial itself. In his statements, he made no mention of any plans to fix PMDs. Instead, he had claimed that he was going to meet his girlfriend.[205] Hanafi also acknowledged that the Superdry Bag did not contain PMD tools, even though he typically had them in his bag to carry out repair jobs.[206] The WhatsApp messages therefore do not square well with Hanafi's claim that he had no prior arrangement to meet Nagib on 27 April 2021.[207]

85 Moreover, earlier that day at 2.27pm, Hanafi had received a WhatsApp message from one Abu Alok, a mutual friend of both Nagib and Hanafi,[208] telling Hanafi that Nagib "had an appointment" with Hanafi.[209] Hanafi replied to Abu Alok at 4.08pm saying "Ok", confirming that he knew Nagib had an appointment with him.[210] If the meeting between Hanafi and Nagib was indeed spontaneous, it is difficult to see how a third party would have known of their meeting so early on. As the Prosecution pointed out, Hanafi showed no sense of surprise that Abu Alok knew of their meeting. When questioned on this, Hanafi's only response was that he did not think much of this.[211]

86 As for Hanafi's claim that out of concern for Nagib, he went from Orchard to Serangoon to meet Nagib to proceed to Woodlands, I note that both

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204 NE for 24 August 2023 at page 40 lines 2 to 4; NE for 5 September 2023 at page 23 lines 20 to 26.

205 AB492 at para 12.

206 NE for 24 August 2023 at page 43 lines 6 to 10.

207 NE for 5 September 2023 at page 20 lines 1 to 12.

208 AB492 at para 15.

209 AB85 at S/N 42; AB572 (MH-44).

210 AB85 at S/N 43; AB572 (MH-44).

211 NE for 5 September 2023 at page 21 lines 26 to 31.

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men conceded that they had only known each other for around one month at the relevant time.[212] While I can accept that one would want to help a friend, Hanafi's claim is illogical when I take into account that he had apparently been rushing to Yishun for PMD repairs or to meet his girlfriend, both or either of which were sufficiently urgent to him that he would ask Zaihidir for urgent transport. His explanation plainly does not square with his existing WhatsApp messages with Nagib, Zaihidir and Abu Alok, which all converged at 4.08pm. To claim that all three messages related to different matters, in light of the content of these messages, would require an incredibly strained reading of the texts.

87 Taking the above together, Hanafi's conduct was inconsistent with that of a person who had spontaneously decided to meet up with a friend. He was aware that he needed to meet Nagib that day.

(2) The explanation for obtaining and keeping the Bundles

88 The circumstances leading up to Hanafi's purported collection of the Bundles (and Blocks) from Nagib in the Car are also of central importance. Yet, his testimony in this regard is riddled with material inconsistencies:

(a) First, as regards why Hanafi took the bag containing the Bundles and Blocks from Nagib and intentionally opened the bag *unprompted*, there are inconsistencies between his statements and his testimony. In his statement on 4 May 2021, Hanafi claimed that he had opened the bag out of frustration at Nagib (see [24(g)] above).[213] During

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212 NE for 4 September 2023 at page 77 lines 15 to 20; NE for 12 September 2023 at page 30 lines 5 to 10.

213 AB486 to AB487.

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cross-examination, Hanafi claimed that he had unwrapped the parcel containing the Bundles because he was "curious".[214] When confronted on this inconsistency, Hanafi claimed that he could not remember.[215] I stress that his act of opening a bag that did not belong to him is inherently bizarre, and requires a reasonably plausible explanation. His inability to provide a consistent and believable explanation for doing so is therefore troubling.

(b) Second, as regards why he chose to retain possession of the bag *despite* finding out that there were drugs in the bag, I am not persuaded that it was due to his spontaneous intention to consume the drugs.

(i) In his statement recorded on 4 May 2021, Hanafi claimed that when he opened the black plastic surrounding the Bundles and saw diamorphine, he "confronted Nagib", and did not pass Nagib back the bag as he was "angry" (see [24(g)] above).[216]

(ii) In his statement recorded on 8 May 2021 at 1.30pm, Hanafi claimed that he kept the drugs and did not say anything to Nagib because he believed that Nagib did not know of the drugs, as Nagib looked "lost" (see [25] above).[217] This is materially at odds with his claim that he "confronted" Nagib once he found out about the drugs.

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214 NE for 4 September 2023 at page 46 line 31 to page 47 line 3.

215 NE for 5 September 2023 at p 50, lines 4 to 5.

216 AB487.

217 AB493 at para 20.

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(iii) Crucially, Hanafi's defence is that he never ordered the drugs.[218] Yet, he claims to have formed the intention to consume all the drugs, on the spot, despite knowing that it was *not his*. He adds that this is "entirely financially sensible", and that he would be saving money by retaining the Bundles without having to spend money to purchase more heroin.[219] I find this to be an incredible argument. There is no evidence of any arrangement as between Nagib and Hanafi for Hanafi to freely take Nagib's drugs without remuneration; it is also absurd to believe that Nagib would willingly part with such a large quantum of heroin free of charge.

89 Hanafi argues that his conduct must be assessed in light of the circumstances that when the drugs came into his possession, he was "dizzy" and "unable to fully appreciate the situation that he was in".[220] In his intoxicated state and "in the spur of the moment… [Hanafi] only saw some heroin and decided to retain possession" of the Bundles (and Blocks) for consumption.[221] This argument is inconsistent with the contemporaneous evidence.

90 During the IMH assessment, Hanafi did not inform Dr Cheow that he had been in a state of intoxication during the events of 27 April 2021. Dr Cheow firmly indicated that Hanafi never informed him of any memory lapses, contrary to what Hanafi now asserts. This is a significant issue which Dr Cheow would

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218 1DCS at para 116(a); NE for 5 September 2023 at page 57 line 18 to page 58 line 5.

219 1st Accused's Reply Submissions dated 23 January 2024 ("1DRS") at paras 14 and 27.

220 1DCS at para 116(b).

221 1DRS at para 38.

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have noted down,[222] given that a purpose of his examination was to determine if Hanafi had been of unsound mind at the time of the alleged offence.[223] On the contrary, Dr Cheow assessed that Hanafi was able to provide a "logically coherent account" with "quite a bit of detail" on what had occurred.[224] I accept the evidence of Dr Cheow, and find that Hanafi has overstated the effects of his Epam consumption in order to buttress his defence. Even if Hanafi had been feeling "dizzy", that is very different from Hanafi's submission that he was "unable to fully appreciate the situation that he was in".[225]

91 Accordingly, I find that Hanafi's evidence lacks credibility in these material aspects of his defence. These point away from his claim that he had come into possession of the drugs by chance and formed the intention to consume the diamorphine on the spot.

(3) The drugs were found in different compartments

92 Perhaps the most striking indication that Hanafi did not chance upon the drugs, was the fact that the drugs had been recovered by the CNB from different compartments of the Superdry Bag.

93 In his statement recorded on 8 May 2021 at 1.30pm, Hanafi claimed to have put the drugs into the Superdry Bag *prior* to the CNB's interception (see [25(b)] above).[226] Subsequently, in his IMH report, Hanafi was recorded as having "panicked and stuffed the black bundle into his own bag" during the

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222 NE for 15 September 2023 at page 4 line 26 to page 5 line 18.

223 NE for 15 September 2023 at page 3 lines 22 to 30.

224 NE for 15 September 2023 at page 4 line 26 to page 5 line 18.

225 1DCS para 116(b).

226 AB493 at para 20.

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interception.[227] At trial, Hanafi asserted that when the CNB intercepted the Car, he "chucked" the drugs, which were on his lap, into the Superdry Bag.[228] However, the objective evidence points against these subsequent assertions.

94 When the CNB seized the drugs, the drugs were found in different compartments of the Superdry Bag. As set out above at [11], two of the Blocks, *ie*, Exhibits A1E1A and A1E2A, were found in the right and left compartments of the Superdry Bag respectively, while the Bundles and one of the Blocks, *ie*, A1B1, were found in the main compartment. The Superdry Bag was also zipped at the point of seizure.[229] Hanafi's shift in position to claim that he hurriedly packed the drugs at the point of interception, and that he was high on Epam, is unbelievable.[230] The latter has been dealt with at [90] above. As for the former, I find it to be contradicted by the objective evidence. The fact that the drugs were recovered in different compartments shows that Hanafi had ample time, and had made the purposeful decision, to separate the Bundles and the Blocks, before zipping the Superdry Bag.

95 Notably, when Hanafi was questioned on this, he did not challenge the correctness of this fact, and could provide no explanation of this finding:[231]

> Q And if what you are saying is true, which is that because of this collision, everything was placed into the Superdry bag, there is no reason for A1E and A1F to then be in separate compartments. Everything should be in the main compartment, correct?

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227 AB293 at para 12.

228 NE for 5 September 2023 at page 60 lines 11 to 18; NE for 4 September 2023 at page 18 line 18 to page 19 line 30.

229 AB494; NE for 10 August 2023 at page 57 line 9 to page 58 line 4.

230 1DRS at para 61; 1DRS to the Court at para 12.

231 NE for 5 September 2023 at p 65, line 3 to 14.

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A It's correct.

Q And you have therefore no explanation for why A1E and A1F are---were found---

A One side---

Q ---from the separate compartments in your---

A No, I have---

Q ---Superdry bag?

A ---no explanation, Your Honour.

96 Further, consistent testimony was provided by SI Muhammad Fardlie Bin Ramli,[232] SSgt Goh,[233] and Insp Eugene,[234] that less than a minute passed between the point of interception and the point of opening the passenger door of the Car to effect the arrest. It would have been difficult for Hanafi to have separated the drugs *and* zip the Superdry Bag within this short period of time. If Hanafi had indeed "chucked" everything into his Superdry Bag as he subsequently claimed, one would imagine that the drugs would have been found in a more haphazard state, forcibly shoved into a single compartment. This is especially given his insistence that he had been intoxicated on Epam tablets at the time.

97 Moreover, when I invited further submissions on this point, Hanafi did not dispute that from the time a photograph of a plastic bag was sent by Nagib to Baiya in the Car at 7.21pm (see [202] below), to the time of interception by the CNB at 7.28pm, approximately seven minutes passed.[235] It seems to me that after Nagib returned to the Car, there was ample time for Hanafi to take hold of

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232 NE for 10 August 2023 at page 104 lines 5 to 10.

233 NE for 10 August 2023 at page 81 lines 5 to 12.

234 NE for 15 August 2023 at page 55 lines 3 to 8.

235 1DRS to the Court at para 10.

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the drugs, and to pack the Bundles and the Blocks into the Superdry Bag. In short, the state in which the drugs were seized undermines Hanafi's claim that he had come into ownership of the drugs by chance, and casts further doubt on the reliability of his narrative.

(4) WhatsApp messages from Hanafi sourcing for potential buyers of heroin

98 Specifically, in relation to the Bundles, I address the Prosecution's argument that Hanafi possessed the drugs for the purposes of trafficking as he had been searching for heroin purchasers on 27 April 2021, the same day that he received the Bundles.[236] In response, Hanafi argues that he was not looking for potential buyers of heroin, but simply following up on previous queries on the price of heroin.[237]

99 In particular, the Prosecution relies on Hanafi's conversations with one Boy Steam. Hanafi claims that Boy Steam is a friend whom he met in prison, who is "also an addict".[238] On 27 April 2021, Hanafi texted Boy Steam the following:[239]

S/N	From	Time	Message	Translation
30	Hanafi	5.41pm	Stanby buyer P, biji	Standby buyer P, piece
31	Hanafi	5.46pm	Setengah biji, 3K	Half a piece, 3K
32	Hanafi	5.48pm	2.7k	NA

236 PCS at paras 54 to 59.

237 1DRS at paras 22 to 26; 1DCS at paras 20 to 21.

238 NE for 24 August 2023 at page 30 lines 15 to 18.

239 P172 at pp 3 to 4, S/N 30 to 32.

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100 According to Insp Khairul, in the message at S/N 30, Hanafi was informing Boy Steam to "standby" a buyer of possibly one pound of heroin. At S/N 31, Hanafi was informing Boy Steam that half a pound of heroin costs $3,000.[240] When questioned on these messages, Hanafi claimed that he was simply "following up" on a matter as Boy Steam had previously asked him about the pricing for heroin.[241] I am not persuaded by Hanafi's explanation, which is inconsistent with the plain wording of these texts. In fact, Hanafi himself accepted that he had been asking Boy Steam to "stand by" as there was a buyer of heroin:[242]

> Q There, you were asking Mr "Boy Steam" to stand by a buyer for a pound of heroin, correct?
>
> A Yah, correct.

101 Hence, I disbelieve Hanafi that he was simply following up on an inquiry of the prices of heroin.

102 Likewise, at 5.48pm on 27 April 2021, Hanafi had texted Zaihidir as follows: "See who wants, half tablet is 2.7k".[243] In his statement recorded on 8 May 2021 at 1.30pm, Hanafi confirmed that he was asking if Zaihidir knew anyone who wanted half a packet of heroin for $2,700. He claimed that he was asking on behalf of a friend, whose identity he did not wish to reveal.[244] During cross-examination, Hanafi shifted in his position and stated that he was asking Zaihidir if Zaihidir himself wanted half a pound of heroin, and that it was someone else who was enquiring about the price of heroin. He could not

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240 NE for 22 August 2023 at page 38 lines 8 to 13.

241 NE for 5 September 2023 at page 28 lines 3 to 15.

242 NE for 5 September 2023 at page 28 lines 5 to 7.

243 AB137 at S/N 6.

244 AB498 at para 49.

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remember who this was.[245] Hanafi's assertion that he was simply following up on a price inquiry requires a strained reading of his message to Zaihidir, where he expressly asked Zaihidir to "[s]ee who wants" heroin. I therefore do not accept his explanation of the messages. His inability to remember any further details as regards the messages renders his account unsatisfactory.

103 Taken in the round, I accept that Hanafi had been looking for heroin purchasers on 27 April 2021 and was not simply following up on price inquiries. This is consistent with an intention to traffic the diamorphine in the Bundles. As the Prosecution pointed out during Hanafi's cross-examination, it would have been an incredible coincidence for Hanafi to have been asking for heroin buyers on 27 April 2021, only to chance upon a large consignment of heroin that very evening.[246]

(5) Hanafi's defence of consumption

104 Based on all of the above, I reject Hanafi's claim that he fortuitously came into possession of the drugs. Even if I were to accept this claim, on analysis, Hanafi's consumption defence fails as Hanafi has not provided any credible evidence of his rate of consumption of diamorphine.

105 In *A Steven s/o Paul Raj v Public Prosecutor* [2022] 2 SLR 538 ("*A Steven*") at [25], the Court of Appeal emphasised that the "key pillar and essential foundation" of the consumption defence is an accused person's rate of consumption. The court further expounded on the relevant considerations when determining if the presumption under s 17 of the MDA has been rebutted:

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245 NE for 5 September 2023 at page 30 lines 4 to 31.

246 NE for 5 September 2023 at page 28 lines 16 to 23.

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> 24 Where (as in the present case) the drugs in question were not re-packed or apportioned in any particular manner to differentiate the amount intended to be sold from that intended to be consumed, the court must look at the totality of the circumstances to determine whether the appellant has rebutted the presumption in s 17: *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [29]. Relevant factors include: (a) whether there is credible evidence of the appellant's rate of drug consumption and the number of days the supply is meant for; (b) the frequency of supply of the drugs; (c) whether the appellant had the financial means to purchase the drugs for himself; and (d) whether the appellant had made a contrary admission in any of his statements that the *whole* quantity of drugs was for sale (*Muhammad bin Abdullah* at [30]–[31]). …
>
> 25 The key pillar and essential foundation of the consumption defence is, however, *the appellant's rate of consumption of the relevant drug.* The appellant bears the burden of establishing the extent of his personal consumption, and it is incumbent on him to show, by credible evidence, his rate of consumption (see [*Sulaiman bin Jumari v PP* [2021] 1 SLR 557] at [117]). Other factors – such as the appellant's financial means to support his drug habit, how he came to be in possession of the drugs, and his possession of drug trafficking paraphernalia – are secondary. ***Thus, without credible and consistent evidence to establish his claimed rate of consumption on a balance of probabilities, an accused person who seeks to rely on the consumption defence will generally face insuperable difficulties.***
>
> [emphasis in italics in original; emphasis added in bold italics]

106 Counsel for Hanafi argues that in his case, his rate of consumption is *not* the "key pillar and essential foundation" of his consumption defence. This is because Hanafi's case is of a different fact pattern from cases in which a defence of consumption is raised, and hence, the principles above are not applicable to him. In *A Steven* and *Saridewi bte Djamani v Public Prosecutor* [2022] 2 SLR 1362 ("*Saridewi*"), the accused persons had ordered a significant amount of diamorphine. Thus, in both cases, it was not reasonably sensible for each accused person to incur huge costs to stockpile a large quantity of drugs, unless

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they were able to show a sufficiently high rate of consumption.[247] In contrast, in Hanafi's case, he had not ordered the diamorphine, but had chanced upon them. Hence, he did not appreciate the amount of drugs he possessed, and this was "not a case where the accused person ordered or knew that there was a significant amount of drugs and claims to have intended to consume it over a long period of time".[248] The rate of consumption is therefore not a key pillar of Hanafi's defence. Instead, counsel for Hanafi urges the court to consider the totality of circumstances as the guiding principle.[249]

107 Hanafi's claim that he chanced upon the drugs, as opposed to having ordered them, forms the basis of his argument that his case is distinguishable from *Saridewi* and *A Steven*. However, as I explained above, I am not persuaded that he had chanced upon the drugs. Hence, Hanafi's legal submissions on *Saridewi* and *A Steven* are not strictly relevant. Nevertheless, I observe preliminarily that even where an accused person claims to have chanced upon the relevant drugs in question, the rate of consumption would remain a key consideration of his or her defence. After all, there would be no reason for an accused person to retain drugs which he or she would not consume to begin with. A very compelling explanation would be required in such situations. In this regard, Hanafi has failed to provide reliable evidence of his rate of consumption.

108 Before I go to Hanafi's rate of consumption of heroin, however, I should point out that it is not altogether clear whether prior to the arrest, Hanafi was consuming heroin at all. From 27 April to 3 May 2021, when Hanafi was

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247 1DCS at paras 112–114.

248 1DCS at para 118.

249 1DCS at paras 115–118.

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monitored at CGH, he did not inform the CGH doctor that he was consuming heroin, despite the fact that he admitted to abusing methamphetamine, benzodiazepine, and alcohol.[250] Although Hanafi did inform Dr Cheow, his IMH examining doctor who saw him on 21 and 27 May 2021, that he had previous use of "almost every type of illicit drug available" and "recent use of … heroin",[251] Hanafi had also informed Dr Cheow that he tried to quit drugs one week prior to his arrest.[252] During the trial, Hanafi clarified that this was "not to the extent of going cold turkey", but that he did "cut down" on his consumption.[253]

109 More importantly, even if Hanafi was abusing heroin at the relevant time, Hanafi has provided no credible evidence of his daily rate of heroin consumption. According to Hanafi's statement recorded on 7 January 2022, he began smoking heroin in 2020.[254] He would consume heroin together with "ice", and would only consume drugs before and after clubbing. His frequency of consuming heroin in a week was thus the same as that for ice.[255] As to his frequency of clubbing, he claimed that he went either three or four times a week, or sometimes not at all.[256]

110 In his testimony, however, he claimed that the frequency of consumption was mood dependent, and that he consumed drugs when he "[felt] like it".[257] He

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250 AB254; NE for 15 August 2023 at page 62 line 13 to page 64 line 15.

251 AB292 at para 6.

252 AB292 at para 7.

253 NE for 4 September 2023 at page 73 line 27 to page 74 line 31.

254 AB609 at para 90.

255 AB609 at para 87.

256 AB609 at para 88.

257 NE for 24 August 2023 at page 15 lines 7 to 9.

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was unable to estimate how frequently he consumed ice, as this depended on what he had available.[258] He also accepted that he was unable to provide a consistent rate of heroin consumption.[259] Yet, he also claimed that he would consume heroin about two to three times a week,[260] and that there were no weeks where he did not consume heroin.[261] When pressed, Hanafi admitted that his claim that he consumed heroin at least once a week was untrue:[262]

> Q And so I put it to you that your claim that you would consume heroin at least once a week and the evidence that you gave to elaborate on that, that is untruthful. Agree or disagree?
>
> A Erm, I agree, Your Honour.
>
> Q Sorry, you?
>
> A Agree.

111 Given Hanafi's evolving position and his unequivocal admission that he had lied about consuming heroin once a week, I find that Hanafi has failed to provide credible evidence on his daily rate of consumption.

112 Additionally, Hanafi's evidence on the amount of heroin he consumed, and the duration for which they lasted him, lacked veracity. Hanafi claimed that he would purchase five packets of heroin at a time. However, he did not know the weight of heroin in one packet,[263] how many straws one packet of heroin

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258 NE for 24 August 2023 at page 15 lines 23 to 25.

259 NE for 4 September 2023 at page 56 lines 26 to 28.

260 NE for 24 August 2023 at page 16 at lines 22 to 24.

261 NE for 4 September 2023 at page 66 line 27 to page 67 line 4.

262 NE for 4 September 2023 at page 72 lines 16 to 19.

263 AB610 at para 94; NE for 24 August 2023 at page 20 lines 28 to 32.

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could be repacked into,[264] or how long it took him to finish his supply before placing another order.[265]

113 As such, Hanafi has failed to provide credible evidence on his daily rate of consumption, and the number of days his supply could last for. This is a serious shortfall in his case, given that he claims that the heroin, which weighed 2307.5g in its unprocessed form, which is approximately five pounds, was for his personal consumption.

114 On the contrary, based on the objective evidence, I accept the Prosecution's argument that Hanafi was not a heavy abuser of heroin.[266] In particular, Hanafi was able to carefully apportion and restrain his intake depending on his financial circumstances:[267]

> Q Alright, to make my questions, to put it in context. You would reduce---sorry, you would let your existing supply of heroin last you longer because finances are limited, yes?
>
> A Ah, correct, Your Honour.
>
> Q And if finances are adequate, then you may consume at a faster rate, your existing supply of heroin, that's what you are telling the Court, correct?
>
> A Depends also, Your Honour.

115 Before leaving this point, I address Hanafi's claim that he has been consistent from the start of investigations in claiming that the drugs were for his personal consumption.[268] However, as can be seen from the analysis above,

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264 NE for 4 September 2023 at page 61 lines 30 to 32.

265 NE for 4 September 2023 at page 64 lines 7 to 18.

266 PCS at paras 43 to 45.

267 NE for 4 September 2023 at page 58 lines 6 to 12.

268 1DCS at para 116(e).

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Hanafi's claim that the drugs were for his personal consumption is internally inconsistent with his own evidence on his rate of heroin consumption. Moreover, while an accused person's internally consistent account would lend credibility to his case, there is a further inquiry of whether his account coheres with the other aspects of his evidence, as well as the external objective evidence. As I have explained above, there are further reasons pointing to the lack of veracity of his evidence, as well as the inconsistency of his account with the external objective evidence.

Conclusion

116 Given all of the above, I reject Hanafi's defence, and I find that Hanafi has not rebutted the presumption of trafficking under s 17(*c*) of the MDA. I therefore convict him of the first charge.

Blocks of cannabis

Possession

117 Turning next to the Blocks, following *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 (at [31] and [35]), to prove possession, the Prosecution need only prove that the accused person knew of "the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug". The accused need not know that "the thing *was in fact* a controlled drug" [emphasis in original].

118 In this case, Hanafi claimed in his cross-examination that while he had noticed the presence of the Bundles, he did not notice the Blocks, or what they

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contained (see [40] above).[269] This suggests that he had no knowledge of the presence of the Blocks. This is unconvincing. In the statement recorded on 8 May 2021 at 1.30pm, Hanafi had unequivocally claimed ownership over the Blocks and claimed that they were for his consumption.[270] He also asserted that the drugs looked like "Mushroom or Cannabis".[271] Even in cross-examination, he did not dispute that he should have touched the Blocks, as he needed to put everything, including the Blocks, into the Superdry Bag.[272] This first element is only concerned with knowledge of a thing that turns out to be drugs, and not knowledge of the specific nature of the drug. By his own position at the trial, possession is thus established.

119 More importantly, when the Prosecution put this element of the charge to him, Hanafi admitted to possession of the Blocks:[273]

> Q Now Mr Hanafi, I will be putting to you the elements of the cannabis trafficking charge. I put it to you that on 27th of April 2021, at about 7.28pm, inside vehicle registration number SJA1446S, at the junction of Woodlands Industrial Park E7 and Woodlands Avenue 8, you did have in your possession 4 blocks containing not less than 499.99 grams of vegetable matter, which was analysed and found to be cannabis.
>
> A I agree, Your Honour.

120 Further, in his written and reply submissions, Hanafi dealt with the Blocks and Bundles in the round, and made no submission disputing that the

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269 NE for 4 September 2023 at page 44 lines 5 to 14; NE for 5 September 2023 at page 50 line 23 to p 51, line 5.

270 AB494.

271 AB494.

272 NE for 5 September 2023 at page 51 lines 16 to 18.

273 NE for 5 September 2023 at page 98 lines 24 to 30.

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Blocks were in his possession. I therefore find that Hanafi had possession of the Blocks.

Knowledge

121 Having established the fact of possession, the Prosecution relies on s 18(2) of the MDA to presume that Hanafi knew that the Blocks contained cannabis. Again, I point out that during cross-examination, Hanafi claimed not to have noticed the Blocks, or to know what they contained. However, this is at odds with his assertion in the statement recorded on 8 May 2021 at 1.30pm that the Blocks contained "Mushroom or Cannabis", indicating his knowledge of the nature of the drugs. To round off, I note that Hanafi has advanced no submission disputing this element of the offence. He has not shown the "negative" belief that the Blocks did not contain the drugs in question (*Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [57]). Instead, he has focused both his closing and reply submissions on whether he possessed the drugs for the purposes of trafficking. He has therefore not rebutted the presumption of knowledge, and I turn to the remaining issue.

Possession for the purposes of trafficking

122 Having considered the evidence before me, I am persuaded that Hanafi was in possession of the Blocks for the purpose of trafficking.

123 As held in *Ong Ah Chuan and another v Public Prosecutor* [1979–1980] SLR(R) 710 ("*Ong Ah Chuan*") (at [14] and [15]), where an accused is caught conveying controlled drugs from one place to another in a quantity much larger than that needed for his own consumption, there would be an irresistible inference that he was transporting them for the purpose of trafficking, unless he is able to provide a plausible explanation.

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124 In this case, Hanafi was caught conveying 499.9g of cannabis, which far exceeds the statutory threshold of 15g. I accept the Prosecution's argument (see [49] above) that while the Prosecution is not relying on s 17 of the MDA, the statutory threshold of 15g acts as a suitable reference point to determine if the quantity of drugs in question is substantial, and whether it invites an inference that they were for the purposes of trafficking. Based on the sheer quantum of cannabis involved in this case, I find that the inference that they were for trafficking is "irresistible".

125 Hanafi maintains that the cannabis was for his personal consumption. The principles above at [105]–[107] would thus apply. At this juncture, I observe that the principles in *A Steven* and *Saridewi* were decided in the context of *rebutting* the presumption of trafficking pursuant to s 17 of the MDA, where the accused person bears the burden of proving his or her defence on a balance of probabilities. In this case, however, the legal burden remains on the Prosecution to establish beyond reasonable doubt that the Blocks were for the purposes of trafficking. Nevertheless, I find that the guiding principles in *A Steven* and *Saridewi* remain instructive, even if the legal burden does not fall on the accused to rebut the presumption of trafficking on a balance of probabilities. Indeed, as *Ong Ah Chuan* notes (at [14] and [15]), an accused need only raise a "plausible" explanation.

126 Having dealt with this preliminary point, I find that Hanafi has not raised a plausible explanation for his possession of 499.9g of cannabis for the following reasons.

127 Hanafi's defence is that he had been consuming cannabis at the time of his arrest, albeit not regularly, which proves that the Blocks were intended for

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his consumption.[274] Applying *A Steven*, the key inquiry as regards the consumption defence is Hanafi's cannabis consumption rate. In Dr Cheow's report, he noted that:[275]

> 6. [Hanafi] reported previous use of *almost every type of illicit drug available* and reported *recent* use of "ICE" (methamphetamine), "Epam", "Erimin" (both illicit benzodiazepines), ecstasy and heroin. …
>
> [emphasis added]

128 While cannabis is not specifically listed in Dr Cheow's report, in his oral testimony, Dr Cheow clarified that Hanafi had "rattled off a list of drugs" that Hanafi had previously used, which included drugs such as cannabis. Although Dr Cheow did not think it necessary to set out all the drugs in full detail, his impression was that Hanafi had consumed almost every type of illicit drug.[276] As for Hanafi's "recent" usage of drugs, which referred to the period of two to three months prior to Hanafi's arrest,[277] Dr Cheow's evidence was that Hanafi did not report any consumption of cannabis in this period.[278] Dr Cheow's evidence therefore suggests that while Hanafi had previously consumed cannabis, he had not been consuming it at the time of his arrest.

129 While counsel for Hanafi relies on the following exchange as evidence that Hanafi had been consuming cannabis at the time of his arrest,[279] albeit not regularly, I am not persuaded that this exchange supports his argument:[280]

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274 1DCS at para 32(d).

275 AB292 at para 6.

276 NE for 8 August 2023 at page 18 lines 14 to 19.

277 NE for 8 August 2023 at page 18 lines 20 to 24.

278 NE for 15 September 2023 at page 12 lines 9 to 16.

279 1DCS at para 32(d), footnote 87.

280 NE for 4 September 2023 at page 45 lines 7 to 14.

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Q Right. And just in case my question is unclear, let me just repeat it. You are familiar with how heroin looks like as of the time of your arrest, agree?

A Yes, Your Honour.

Q Now let's turn to two other drugs very briefly. You also dealt with ice as of the time of your arrest.

A Yes, Your Honour.

Q *And you also dealt with cannabis as of the time of your arrest.*

A *Used to. Not---not regularly, but used to.*

Q Right. And it would be accurate to say that you are familiar with the street terms used to refer to these drugs?

A Yes, Your Honour

[emphasis added]

130 As can be seen, Hanafi had unequivocally stated that he knew how heroin looked like at the time of his arrest, and that he had dealt with ice at the time of the arrest. Yet, when questioned on his dealing with cannabis at the time of his arrest, his response was that he "[u]sed to". In other words, Hanafi's response is that he had *previously* dealt with cannabis. His subsequent statement that he dealt with it "not regularly, but used to", entails that even when he dealt with cannabis in the past, he did not do so regularly. Counsel for Hanafi's reliance on this exchange as support for the proposition that Hanafi was consuming cannabis *at the point of arrest*, but not regularly, is therefore not entirely persuasive.

131 Hanafi's oral evidence that he was not dealing with cannabis at the time of his arrest, though he had previously dealt with cannabis, is fully consistent with Dr Cheow's evidence. I add further that Hanafi had omitted to mention his consumption of cannabis in his statement recorded on 7 January 2022, despite

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being expressly asked on his drug consumption habits prior to his arrest.[281] Hanafi also stated that he seldom consumed cannabis because he did not like this specific drug.[282] He maintains this in his written submissions, admitting that it was his least favourite drug.[283]

132 Given the above, it is difficult to accept Hanafi's argument that the cannabis was intended for his consumption. Further, as I explained above at [82]–[97] above, I do not find Hanafi to be credible in relation to material aspects of his defence. In particular, I do not accept that Hanafi had chanced upon all the drugs unexpectedly. In my view, Hanafi and Nagib had a prior arrangement to pick up the drug consignment (which ultimately comprises the Bundles and the Blocks). It is unbelievable that Hanafi would retain almost half a kilogram of a drug (*ie*, cannabis) he had chanced upon for his personal consumption, when he did not even enjoy said drug, and was not in the habit of consuming it regularly. As for Hanafi's argument that he has been consistent in stating that the cannabis was for his personal consumption,[284] the reasons at [115] above are similarly applicable.

133 Consequently, I find that the Prosecution has proven beyond reasonable doubt that Hanafi possessed the Blocks for the purpose of trafficking.

WhatsApp messages of Hanafi running a drug trafficking business

134 As analysed at [98]–[103] above, the Prosecution relies on text messages sent by Hanafi on 27 April 2021 to Boy Steam and Zaihidir in relation to the

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281 AB609 at para 87.

282 NE for 4 September 2023 at page 52 lines 18 to 21.

283 1DCS at para 32(d).

284 1DRS at para 32.

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Bundles of diamorphine. As for the Blocks, the Prosecution argues that based on Hanafi's WhatsApp messages prior to 27 April 2021, Hanafi had been running a drug trafficking business which involved, amongst others, cannabis.[285] In response, Hanafi argues that his past messages make no reference to any trafficking activity, and are confined to sharing information on drug availability and prices.[286]

135 While Hanafi has raised no procedural objections to the Prosecution's reliance on these other messages, I have some reservations on their relevancy to the specific transaction between Hanafi and Nagib on 27 April 2021. This category of messages relied on by the Prosecution does not specifically concern Hanafi's dealings with Nagib; nor were these messages sent on 27 April 2021, although I note that they are relatively proximate in time. Similar concerns have been raised in the context of such communications (see, for *eg*, *Public Prosecutor v Beh Chew Boo* [2020] SGHC 33 at [10]–[17]; *cf Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [12]–[13] and *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 at [39]–[41]). Ultimately, the inquiry on the admissibility and weight to be placed on such statements is fact-specific one, and depends on a balancing test between the probative force of a piece of evidence, as against its prejudicial value (*Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [41]–[52]).

136 In any case, these past messages are not pivotal for the issue of liability. I am satisfied that the Prosecution has adduced sufficient evidence proving beyond reasonable doubt that Hanafi was in possession of the Blocks for the purposes of trafficking.

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285 PCS at paras 76 to 77.

286 1DRS at paras 34 to 38.

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Conclusion

137 Given my findings that all three elements of the offence have been established, I convict Hanafi of the second charge.

Decision: Nagib

138 I turn now to the case against Nagib.

The law

139 The two charges against Nagib are of trafficking by delivering the Blocks and Bundles under s 5(1)(*a*) of the MDA. To establish a charge of trafficking under s 5(1)(*a*) of the MDA, two elements must be proved (*Public Prosecutor v Hashim bin Ismail and others* [2023] SGHC 165 at [12], citing *Raj Kumar s/o Aiyachami v Public Prosecutor and another appeal* [2022] 2 SLR 676 at [54]), which are:

(a) the act of trafficking in a controlled drug without authorisation; and

(b) knowledge of the nature of the controlled drug, which can be proved or presumed.

140 Pursuant to s 2 of the MDA, the term "traffic" includes to "sell, give, administer, transport, send, deliver or distribute".

Delivery of the Bundles and the Blocks

141 On the first element of the act of trafficking by Nagib delivering the drugs to Hanafi, the Prosecution's evidence includes the testimonies of Hanafi and Zaihidir, other circumstantial evidence, as well as the contents of Hanafi's statements implicating Nagib. To recapitulate, Nagib denied passing anything,

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especially the Bundles and Blocks, to Hanafi in the Car. Instead, he claimed that Hanafi was the one in possession of the drugs all along.

Zaihidir's evidence

142 In this connection, as set out at [20] above, Zaihidir's evidence implicates Nagib in the delivery of the drugs to Hanafi. To reiterate, Zaihidir testified that when he was driving off after Nagib returned from urinating, Zaihidir had checked his blind spot, and witnessed a bag being passed from Nagib to Hanafi.[287]

143 Nagib contends that Zaihidir's evidence is unreliable.[288] In the main, Nagib argues that Zaihidir had based his testimony on his "assumptions" instead of his personal observations.[289] This was because Zaihidir had also claimed that Hanafi's bag slid from the front to the back row of the Car.[290] While I appreciate Nagib's point that there was some inconsistency in Zaihidir's testimony, I am persuaded that Zaihidir's evidence in this regard is reliable. Zaihidir's evidence was that:[291]

> Q And after you drove off, can you tell us whether anything happened in the car?
>
> A I *thought* Hanafi bag slide behind and then I *saw* like movement, the old man [*ie*, Nagib] give Hanafi bag. But I don't know because I need to check my blind spot, right? So I see that bag, I thought is Hanafi bag. I also never thought much.
>
> [emphasis added]

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287 NE for 16 August 2023 at page 78 lines 15 to 16.

288 2DCS at paras 48 and 54; 2nd Accused's Written Replies to 1st Accused's Closing Submissions dated 23 January 2024 ("2DRS to Hanafi") at paras 23 to 24.

289 2DCS at paras 48 and 54; 2DRS to Hanafi at paras 23 to 24.

290 NE for 16 August 2023 at page 78 lines 15 to 16.

291 NE for 16 August 2023 at page 78 lines 14 to 17.

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144 In other words, while Zaihidir *thought* that *Hanafi's* bag had slid from the front to the back row, what he *saw* was Nagib passing Hanafi *a* bag. More importantly, when questioned on this inconsistency, Zaihidir was able to detail the specific sequence of events in that moment, namely, that he had been checking his left blind spot, and that he had seen the bag being passed through the "centre portion" of the front row of the Car.[292] As highlighted by the Prosecution, it is telling that Zaihidir's testimony is consistent with Hanafi's evidence both in terms of the timing and direction in which the bag containing the drugs was passed,[293] both of which are material aspects of the case against Nagib. In these circumstances, I am persuaded that Zaihidir's evidence is reliable.

WhatsApp messages between Nagib and Baiya on 27 April 2021

145 Nagib's WhatsApp messages with Baiya are the subject of dispute. As stated at [53] above, the Prosecution argues that based on the messages between Nagib and Baiya, Nagib had arranged to collect a drug consignment on the day of his arrest.[294] In response, Nagib argues that the Prosecution's submissions are speculative, and that there is no evidence of Baiya being a drug supplier. Hence, the Prosecution's submissions should be disregarded.[295]

146 By way of context, Nagib claims that while he was in the Car with Hanafi and Zaihidir, and before he had the urge to urinate, he received a call

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292 NE for 17 August 2023 at page 7 lines 14 to 20.

293 PCS at para 85(ii).

294 PCS at paras 100 to 107.

295 2nd Accused's Written Replies to the Prosecution's Closing Submissions dated 11 December 2023 ("2DRS to the Prosecution") at paras 15 to 18.

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from an unknown man asking him to look for a white lorry.[296] When confronted by the CNB with the messages between him and Baiya, he claimed that it was Baiya who had asked him to look for a white lorry.[297] This sets the scene for the following messages between them on 27 April 2021, where Nagib was providing constant updates on his whereabouts and movements to Baiya:[298]

(a) At 4.30pm, Nagib informed Baiya via a voice message that his Grab was arriving soon.[299] A further update was provided in a text message at 5.33pm that Nagib was "[o]n the way" in a cab.[300]

(b) From 5.10pm to 7.14pm, Nagib sent various photographs of his location to Baiya via WhatsApp, as he moved from one place to another. Of note that is that at 6.38pm, Nagib sent Baiya a picture of the entrance to the park alongside Riverside Road.[301] Nagib claimed that this was a picture Baiya had previously sent to him, possibly at around the same time,[302] and that in sending it back to Baiya, Nagib was trying to show Baiya that there was no lorry.[303]

(c) From 7.12pm to 7.14pm, Nagib sent Baiya pictures of his location near Riverside Road.[304] Specifically, in relation to the picture

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296 AB620 at para 28.

297 AB650 at para 44.

298 P181.

299 AB57 at S/N 78.

300 AB59 at S/N 83.

301 AB667 to AB668; NE for 13 September at page 33 lines 18 to 26.

302 NE for 13 September at page 34 line 28 to page 35 line 11.

303 AB650 at para 44; NE for 13 September at page 32 lines 2 to 3.

304 AB671 to AB677.

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sent at 7.14pm,[305] which was taken by Nagib at the location he alighted to urinate,[306] Nagib confirmed that this was the *same* location as shown in the photograph that Baiya had sent him (and which Nagib sent back to Baiya) at 6.38pm.[307] The two photographs are reproduced side by side for ease of comparison:[308]

(d) In his statement of 5 May 2021 at 5.48pm, Nagib claimed that he "[could not] remember why [he] sent [Baiya] the pictures" above at 7.14pm.[309] When questioned in court, Nagib claimed that he sent this picture to inform Baiya where he was, and further, that he had omitted this explanation because the CNB officers had not asked him why he sent this picture.[310]

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305 AB675 to AB677.

306 NE for 13 September 2023 at page 42 lines 17 to 18.

307 NE for 13 September 2023 at page 33 lines 10 to 26.

308 AB677; AB667.

309 AB651 at para 46.

310 NE for 13 September 2023 at page 46 lines 1 to 11.

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(e) At 7.21pm, Nagib sent a photograph of a plastic bag to Baiya.[311] In his statement of 5 May 2021 at 5.48pm, he claimed to not remember what it was, and that he did not remember taking the photograph.[312] During cross-examination, he reiterated that he did not know where he had taken these photographs from.[313] He also added that it was "chaotic" at the time,[314] because he was receiving repeated calls and was "fed up" and stressed,[315] and had also been in a state of "high".[316] Nagib denies that the plastic bag contained drugs.[317]

147 Based on Nagib's messages with Baiya, it appears to me that after Baiya had sent Nagib a photograph of a specific location at around 6.38pm (*ie*, the entrance to the park at Riverside Road), Nagib proceeded to locate this area, and had alighted at the same location at 7.14pm, where he sent a photograph to Baiya of the location, confirming that he had found the place. The messages were indicative of a person who had been *directed* to locate a specific destination, and not one who had alighted spontaneously to relieve himself.

148 Given that the messages show that Nagib had been updating Baiya on his whereabouts, the reason behind these updates was a crucial plank of Nagib's claim that he had no knowledge of any drug transaction and was simply

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311 AB678 to AB679.

312 AB651 at para 47.

313 NE for 12 September 2023 at page 19 lines 15 to 20.

314 AB651 at para 47.

315 NE for 12 September 2023 at page 19 line 23 to page 20 line 1; NE for 13 September 2023 at page 55 lines 14 to 15 and page 55 line 29 to page 56 line 2.

316 NE for 13 September 2023 at page 56 lines 20 to 23.

317 NE for 13 September 2023 at page 55 lines 23 to 24; NE for 13 September 2023 at page 56 lines 3 to 7.

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answering a call of nature when he alighted the Car. Yet, Nagib's explanations in this regard were unsatisfactory, and further undermined the credibility of his evidence. As can be seen from [146], Nagib's explanations for his messages with Baiya were a mix of his inability to remember why he had sent these messages, and his claim that he was updating Baiya on a white lorry. He denied that there was any ongoing transaction between them.[318] When questioned on the significance of the white lorry in court, Nagib provided an elaborate tale on how Das wanted a cabinet from Nagib and Baiya wanted a scooter from Nagib, which were both in Nagib's home. The lorry was to collect these items.[319] This explanation on the white lorry is found *nowhere* in his statements, despite the CNB's *numerous* inquiries to Nagib during the investigations directed at his communications with Baiya. Nagib never mentioned this as the reason for looking for a white lorry.[320] His belated explanation was clearly an afterthought, introduced to plug a gap in his story. This casts serious doubt on the veracity of his evidence.

149 Indeed, Nagib's conduct on 27 April 2021, as evinced by the messages, was consistent with that of a person updating another of his whereabouts pursuant to a *pre-arranged* agreement. His was not the conduct of a person acting as a helpful friend, aiding another in search of a lorry. The circumstances surrounding their communications are made even more suspicious when one considers Baiya's practice of deleting messages in their chat, which would not have been necessary if they were as innocuous as Nagib claimed and related purely to locating a white lorry. Moreover, the night before, on 26 April 2021,

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318 NE for 13 September 2023 at page 37 lines 4 to 6 and page 55 line 19; NE for 14 September 2023 at page 11 lines 6 to 8.

319 NE for 12 September 2023 at page 19 lines 3 to 12.

320 AB650 to AB651.

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Baiya sent a voice message to Nagib at 9.24pm and said that "… Bang, I think tomorrow we can 100% work …". Nagib texted Baiya in response at 9.28pm, "OK Bang".[321] Nagib's explanation that Baiya was simply informing Nagib that Baiya *alone* had to work[322] is a strained reading of the message and adds to the unreliability of Nagib's version of events.

150 Taking the above together, the contemporaneous messages between Nagib and Baiya on 27 April 2021 point towards a pre-arrangement made by Nagib to collect the drug consignment, thereby supporting the Prosecution's case of his subsequent delivery of the Bundles and Blocks to Hanafi in the Car.

Hanafi's evidence

151 I then go to Hanafi's testimony. In this regard, Hanafi did not waiver as regards the point in time he came to possess the drugs. He was firm that the drugs were not with him prior to meeting Nagib,[323] and that he came into possession of the drugs after Nagib returned to the Car after alighting to urinate.[324] On these key aspects, his evidence in court is internally consistent.

152 As set out at [39] above, in examination-in-chief, Hanafi said that after Nagib returned to the Car, Hanafi saw Nagib "playing with his phone, taking picture". Also, Nagib was "fondling with… a bag or something".[325] Hanafi asked him to "pass it to the front, to pass the bag".[326] Although Hanafi did not

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321 AB56 at S/Ns 73 to 74.

322 NE for 4 September 2023 at page 23 lines 22 to 27 and at page 24 lines 17 to 28.

323 NE for 24 August 2023 at page 68 lines 5 to 9; NE for 4 September 2023 at page 22 lines 6 to 19 and at p 23, lines 22 to 27.

324 NE for 24 August 2023 at page 49 line 20 to page 51 line 3.

325 NE for 24 August 2023 at page 48 lines 21 to 26.

326 NE for 24 August 2023 at page 48 lines 26 to 27.

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remember clearly, he thought that there was a bag "being passed to the front".[327] The next thing Hanafi remembered was tearing up plastic, and then he found "the bundle" with "drugs inside" on his lap. Hanafi placed the "whole thing inside [his] bag", and the Car was intercepted.

153 However, in cross-examination, Hanafi shifted his stance, and testified that he could not remember if a bag had been passed to him by Nagib.[328] Hanafi added that the "only thing" he could remember was a bag being on his lap, but that he did not know where it came from.[329] During re-examination, he stated that he could not remember the act of asking for the bag to be passed to him, or the physical act of the bag being passed to him.[330]

154 On these aspects, not only did Hanafi depart from the contents of the statements, and his evidence-in-chief, but ultimately, he also contradicted his own case that Nagib was the protagonist who had arranged to collect the drugs, and who had done so under the pretext of going to urinate when he alighted from the Car. That said, it is worth noting that even based on Hanafi's revised position in court, he does not absolve Nagib of involvement. Specifically, Hanafi did not definitively say that Nagib did not pass him the bag, but in the course of cross-examination, had conveniently and vaguely claimed that he did not recall the events. It is evident that the change in position was but a vain attempt on Hanafi's part to exonerate Nagib, while seeking to not be completely inconsistent with his previous accounts. On this score, at no time did Hanafi

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327 NE for 24 August 2023 at page 51 lines 1 to 3.

328 NE for 4 September 2023 at page 21 lines 18 to 29; page 23 lines 3 to 13; page 24 lines 6 to 15.

329 NE 4 September 2023 at page 12 lines 8 to 31; NE for 24 August 2023 at page 70 lines 12 to 17.

330 NE 5 September 2023 at page 102 line 31 to page 103 line 21.

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allege that Zaihidir, the only other person in the Car, passed the drugs to him. From the whole of Hanafi's testimony, and indeed, from his case that Nagib was the "protagonist", I draw the irresistible inference that it was Nagib who passed him the bag with the drugs. In this regard, I also rely on my discussion at [82] to [87] above, that the meeting between Hanafi and Nagib that day was pre-arranged for the specific purpose of carrying out the drug transaction, and my acceptance of Zaihidir's evidence of a bag being passed from the *back* to the *front* of the Car (see above at [20] and [144]).

155 In so far as Hanafi's revised position suggests that when Nagib returned to the Car from urinating, there was no passing of any bag to Hanafi, *but* that the bag containing the drugs was subsequently found on Hanafi's lap, *even though* Hanafi did not have the drugs prior to Nagib returning to the Car, it is illogical. For completeness, I should add that while I disbelieved certain aspects of Hanafi's evidence, especially in relation to how he fortuitously came into possession of the drugs, and the defence of consumption, I am of the view that his implication of Nagib, especially in his examination-in-chief, of the delivery of the drugs is reliable.

Hanafi's confessions as against Nagib under s 258(5) of the CPC

156 The Prosecution also relies on s 258(5) of the CPC to use Hanafi's statements against Nagib.

157 Section 258(5) of the CPC provides as follows:

> **Admissibility of accused's statements**
>
> …
>
> (5) When 2 or more persons are tried jointly in any of the following circumstances, and a confession made by one such person affecting that person and any other such person is

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> proved, the court may take into consideration the confession as against the other person as well as against the person who made the confession:
>
> …
>
> > (*b*) ***the proof of the facts alleged in the charge for the offence*** for which one of those persons (*A*) is tried (excluding any fact relating to any intent or state of mind on the part of *A* necessary to constitute the offence for which *A* is tried) would, for each of the rest of those persons, result in the proof of the facts alleged in the charge for the offence for which that person is tried (excluding any fact relating to any intent or state of mind on the part of that person necessary to constitute the offence for which that person is tried);
>
> …
>
> *Illustrations*
>
> …
>
> (*c*) *A* is charged with an offence of corruptly giving a gratification to *B* under section 5(*b*) of the Prevention of Corruption Act 1960. *B* is charged with an offence of corruptly receiving the same gratification from *A* under section 5(*a*) of the Prevention of Corruption Act 1960. *A* and *B* are jointly tried for those offences. If a confession made by *A* affecting both *A* and *B* is proved, and the same facts are alleged in the charges against *A* and *B*, the court may take into consideration the confession as against *B*, even though *A* and *B* are charged with offences that have different elements.
>
> [emphasis in italics in original; emphasis added in bold italics]

158 As for what constitutes a "confession", s 258(7) of the CPC states that:

> (7) In this section, "confession", in relation to any person who is tried for an offence, means any statement made at any time by the person stating or suggesting the inference that the person committed that offence.

159 In relation to the Prosecution's reliance on these provisions, Nagib has raised certain objections, and three interrelated sub-issues arise for consideration as follows:

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(a) whether Hanafi's statements amount to confessions within s 258(7) of the CPC;

(b) if so, whether Hanafi's confessions may be taken against Nagib within s 258(5) of the CPC; and

(c) if so, the extent to which Hanafi's confession may be taken into consideration.

Whether Hanafi's statements amount to confessions

(1) Prosecution's arguments

160 The Prosecution argues that during the investigations, Hanafi confessed that Nagib had delivered the drugs to him. Given that the voluntariness of Hanafi's statements has not been disputed, these confessions should be taken into consideration.[331] In particular, in his cautioned statement recorded on 10 May 2021 in relation to the first charge, Hanafi admitted to trafficking in diamorphine with Nagib, in furtherance of their common intention. He exonerated Zaihidir altogether and claimed that he was merely helping Nagib. He also said that he took ownership of the drugs as he intended to consume them. Hanafi's other statements reinforce this general position. The fact that he qualified his position to say that he intended to consume the drugs does not mean that these were not confessions.[332]

(2) Hanafi's arguments

161 Hanafi advances no real argument on whether his statements amount to confessions under s 258(7) of the CPC. Nevertheless, he claims that while he

331 PCS at para 9.

332 PRS at paras 21 to 24.

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admitted to the first charge in his first cautioned statement recorded on 10 May 2021, he retracted this admission in his second cautioned statement recorded on 10 November 2021 in relation to the second charge. In this regard, he had only admitted to ownership of the drug exhibits because he was the last person holding on to them.[333]

(3) Nagib's arguments

162 Nagib argues that Hanafi's statements were self-serving and not direct confessions which were sufficiently clear to implicate Nagib. Instead, Hanafi was attempting to reduce his own culpability.[334] Moreover, while Hanafi attempted to implicate Nagib in his statements, these did not constitute confessions, as Hanafi never admitted that he was "in collusion with Nagib" in trafficking the drugs as charged.[335] For the Prosecution to reject Hanafi's evidence save for his implication of Nagib is "highly selective".[336]

(4) Analysis

163 Following *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [46], a statement amounts to a confession so long as it "states or suggests the inference that the accused committed the offence". More importantly, for a statement to amount to a confession, it need not be of a plenary or unqualified nature, so long as it connects the accused to the offence in some way (*Tong Chee Kong and another v Public Prosecutor* [1998] 1 SLR(R) 591 ("*Tong Chee Kong*") at [18]).

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333 1DCS at para 8.

334 2DCS at paras 77, 78 and 97.

335 2DCS at para 97.

336 2DRS to the Court at paras 16 to 22.

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164 Applying the principles above, I am satisfied that Hanafi's statements were confessions within the meaning of s 258(7) of the CPC. I have set out the contents of his two cautioned statements above at [26] to [27]. As contended by the Prosecution, in the cautioned statement on 10 May 2021 in relation to the first charge, he admitted to the first charge. Contrary to his claim that there was a subsequent retraction of this admission, Hanafi had only qualified his confession by providing an explanation for his possession of the drugs.

165 In both his 4 May 2021 statement and his 8 May 2021 statement at 1.30pm, Hanafi said that Nagib had passed him a bag, and that Hanafi had opened this bag to find the Bundles and Blocks.[337] In his 8 May 2021 statement at 1.30pm, Hanafi also added that:[338]

> … I admit to the possession of all the drugs found in the car for my own consumption and I wish to be sentenced as soon as possible. I would like to say that my friend [Zaihidir] was not involved at all and that he was at the wrong place at the wrong time. This is the same for "Nagib" as well.

166 On all accounts, Hanafi's statements amounted to confessions, as he had unequivocally admitted to the element of possession of the drugs. While he had also asserted that the drugs were for his personal consumption, as in *Tong Chee Kong*, such qualified statements may nevertheless amount to confessions. As for Hanafi's statement on Nagib's involvement, this is an issue unrelated to the preliminary question of whether Hanafi himself had made a confession. This issue is more suitably dealt with under the rubric of s 258(5) of the CPC, which I now turn to.

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337 AB487; AB493 at para 20.

338 AB499 at para 53.

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Whether reliance can be placed on Hanafi's confession as against Nagib

167 I requested further submissions from the parties on the applicability of s 258(5) of the CPC. As I explain further below, this was due to a difficulty surrounding the interpretation of s 258(5)(*b*) following its recent amendments.

(1) Prosecution's submissions

168 The Prosecution submits that pursuant to s 258(5)(*b*), Hanafi's confession may be taken against Nagib, based on the charges that have been framed against both accused persons, for the following reasons. First, establishing the facts alleged in Nagib's first and second charges would result in the proof of facts alleged in Hanafi's first and second charges.[339] Second, flowing from this, the fact that Hanafi's charges do not mention Nagib's delivery to him is inconsequential. There is no requirement in s 258(5)(*b*) of the CPC for the charges of individuals jointly tried to be mirrored.[340] Third, based on a plain and contextual reading of s 258(5)(*b*), there is no need to confine "person *A*" to the person who made the confession. Hence, the fact that the confession came from Hanafi is no basis to cast him as "person *A*". No prejudice results from such an interpretation.[341]

(2) Nagib's submissions

169 Nagib submits that s 258(5)(*b*) of the CPC is not applicable. In essence, he argues that because Hanafi and Nagib face "distinct and independent

339 Prosecution's Response to the Court's Queries dated 14 June 2024 ("PRS to the Court") at para 10.

340 PRS to the Court at paras 12 to 14.

341 PRS to the Court at paras 16 to 20.

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offences", s 258(5) of the CPC is not engaged.[342] To this end, Nagib relies on the cases of *Public Prosecutor v Ramesh a/l Perumal and another* [2017] SGHC 290 ("*Ramesh (HC)*") and *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh (CA)*").[343]

(3) Hanafi's submissions

170 Hanafi agrees with Nagib that s 258(5)(*b*) is inapplicable, albeit on different grounds. The fact that Nagib had delivered the drugs to Hanafi is not a fact alleged in the first and second charges proceeded against Hanafi. Relying on illustration (*c*) of s 258(5) of the CPC, Hanafi argues that there was clear legislative intent for s 258(5) to only apply where the same facts are alleged in each of the respective charges against both accused persons. Accordingly, s 258(5)(*b*) is inapplicable to the present case.[344]

(4) Analysis

171 Section 258(5) of the CPC was amended by s 74 of the Criminal Justice Reform Act 2018 (Act 19 of 2018) ("CJRA"). The previous version stated as follows:

> (5) When more persons than one are being tried jointly for the *same offence*, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.
>
> *Explanation* — 'Offence' as used in this section includes the abetment of or attempt to commit the offence.
>
> [emphasis added]

342 2DRS to the Court at paras 10 to 11.

343 2DRS to the Court at paras 4 to 13.

344 1DRS to the Court at paras 4 to 9.

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172 Compared with the applicable provision set out at [157] above, the key change introduced by the CJRA is that there is no longer a need for an accused and a co-accused to be charged for the "same offence" in order for s 258(5) to be engaged. While this remains one ground for invoking the provision under s 258(5)(*a*) of the CPC, there are two additional grounds stipulated in s 258(5)(*b*) and (*c*) of the CPC in which an accused person's confession may be used against a co-accused.

173 At this juncture, I reproduce the relevant charges against Hanafi and Nagib as follows:

Hanafi's first charge	That you, [Hanafi], on 27 April 2021, at about 7.28 p.m., inside vehicle bearing registration number SJA 1446S … did traffic in a controlled drug …, to wit, *by having in [his] possession for the purpose of trafficking*, five (5) packets containing not less than 2307.5 grams of granular/powdery substance which was analysed and found to contain not less than 58.86 grams of diamorphine … [emphasis added]
Hanafi's second charge	That you, [Hanafi], on 27 April 2021, at about 7.28 p.m., inside vehicle bearing registration number SJA 1446S … did traffic in a controlled drug … to wit, *by having in [his] possession for the purpose of trafficking*, four (4) blocks containing not less than 499.99 grams of vegetable matter which was found to be cannabis … [emphasis added]
Nagib's first charge	That you, [Nagib], on 27 April 2021, sometime before 7.28 p.m., inside vehicle bearing registration number SJA 1446S, did traffic in a controlled drug … *by delivering five (5) packets*

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	containing not less than 2307.5 grams of granular/powdery substance which was analysed and found to contain not less than 58.86 grams of diamorphine *to one Muhammad Hanafi bin Abdul Talip …* [emphasis added]
Nagib's second charge	That you, [Nagib], on 27 April 2021, sometime before 7.28 p.m., inside vehicle bearing registration number SJA 1446S, did traffic in a controlled drug … *by delivering four (4) blocks* containing not less than 499.99 grams of vegetable matter which was analysed and found to be cannabis *to one Muhammad Hanafi bin Abdul Talip …* [emphasis added]

174 Based on the charges as framed, while Nagib's charges make express reference to Hanafi as the person to whom the controlled drugs were delivered to, Hanafi's charges do not contain an equivalent reference to Nagib. Hence, the question is whether the fact that Nagib delivered the drugs to Hanafi *is*, and/or even *needs to be*, one of the "facts alleged in" the first and second charges against Hanafi, in order for s 258(5)(*b*) to be invoked. Having considered the parties' further submissions, I find that s 258(5)(*b*) is applicable to the present case for the following reasons.

175 I begin by addressing Nagib's argument that Nagib and Hanafi are facing distinct offences. While Nagib relies on *Ramesh (HC)* and *Ramesh (CA)* to support this proposition, I find that these cases are of no assistance to him.

176 In *Ramesh (HC)*, the first accused person was charged for possession of diamorphine for the purposes of trafficking, while the second accused person was charged for delivery of the same. The trial judge declined to use the second

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accused's confessions against the first accused under s 258(5) of the CPC, reasoning that both accused persons were not being "tried jointly 'for the same offence'" (at [46]). On appeal, the court in *Ramesh (CA)* agreed with the trial judge's analysis and added that the two accused persons had been tried for "*distinct and independent* offences" [emphasis in original], to which s 258(5) of the CPC did not apply (at [62]).

177 Nagib's reliance on *Ramesh (CA)* and *Ramesh (HC)* is misplaced. These two decisions were decided based on the pre-amendment version of s 258(5) of the CPC, where there was a requirement for accused persons to be charged for the "same offence". Following the amendments in the CJRA, however, there are two additional grounds under ss 258(5)(*b*) and (*c*) under which an accused person's confession may be used against a co-accused, both of which do not require accused persons to be charged for the same offence (see *Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] 5 SLR 640 at [103]). Hence, I am not persuaded by Nagib's reliance on these cases.

178 Next, I deal with whether the requirement that the "proof of the facts alleged in the charge for which one of those persons (*A*) is tried … would, for each of the rest of those persons, result in the proof of the facts alleged in the charge for the offence for which that person is tried", is satisfied in this case.

179 As detailed above at [168] and [170], Hanafi and the Prosecution propose competing interpretations. According to Hanafi, s 258(5)(*b*) requires the *same facts* to be alleged in the charges of both accused persons. As Hanafi's charges do not state that the drugs were received from Nagib, s 258(5)(*b*) cannot be invoked. Hanafi relies on illustration (*c*) to support this interpretation. In comparison, the Prosecution argues that on a plain reading of s 258(5)(*b*), there is no requirement for the charges to be mirrored.

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180 In my view, based on the plain wording of s 258(5)(*b*) of the CPC, the "facts alleged in the charge" for persons jointly tried need *not* correspond exactly to each other. Section 258(5)(*b*) stipulates that the facts alleged in the charge for "*one* of those persons" tried must result in the proof of facts alleged in the charges for all other persons jointly tried. It does not go so far as to say that the proof of facts in the charges of *any of the persons tried*, must result in the proof of facts in the charges of all other persons jointly tried. This entails that where persons *X*, *Y* and *Z* are jointly tried, so long as the proof of facts in *X*'s charges results in the proof of facts in *Y*'s and *Z*'s charges, s 258(5)(*b*) is satisfied as against both *Y* and *Z*. There is no additional requirement that the proof of facts in *Y*'s charges must also result in the proof of facts in *X*'s and *Z*'s charges, or for the proof of facts in *Z*'s charges to result in the proof of facts in *X*'s and *Y*'s charges. To impose such a requirement would effectively suggest that the charges of *X*, *Y* and *Z* must correspond *exactly* to one another, which is not mandated on the face of s 258(5)(*b*) of the CPC.

181 Further, I agree with the Prosecution that the person who made the confession is not necessarily the person cast as "person (*A*)" under s 258(5)(*b*) of the CPC. To recapitulate, where any of the conditions in s 258(5)(*a*)–(*c*) are satisfied, s 258(5) allows a confession to be taken into consideration as against both "the person who made the confession" and "the other person" affected by the confession. Of note is that s 258(5) makes specific reference to "the person who made the confession". In comparison, s 258(5)(*b*) of the CPC makes no such reference. Instead, it utilises the broader phrase of "one of those persons (*A*) [who] is tried". If Parliament had intended for the accused person making the confession to be cast as person *A*, it would have employed the specific phrase "the person who made the confession" under s 258(5)(*b*). Given this difference in wording, it follows that an accused person cast as person *A* need not be "the

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person who made the confession". In this regard, illustration (*c*) of s 258(5) does not assist Nagib. While illustrations may be helpful examples of how the law was anticipated to apply to a given factual scenario, they cannot be read so as to unduly circumscribe the plain meaning of a statutory provision (*Shaikh Farid v Public Prosecutor and other appeals* [2017] 5 SLR 1081 at [25]).

182 Taking the above together, this means that: first, where the proof of facts alleged in an accused person *A*'s charge would result in the proof of facts alleged in a co-accused person *X*'s charge, and second, a confession is made by ***either*** *X* or *A* affecting the other, s 258(5)(*b*) may be invoked to utilise one's confession against the other.

183 In this case, proof of the fact that Nagib had delivered the Bundles and Blocks to Hanafi on 27 April 2021 sometime before 7.28pm, which is a fact alleged in Nagib's charge, would result in proof of the fact that Hanafi possessed the Bundles and Blocks on 27 April 2021 sometime before 7.28pm, which is a fact alleged in Hanafi's charge. Applying the principles above, Nagib would be cast as person *A*, while Hanafi would be "the person who made the confession", given that they need not be the same person. I highlight that if the contrary position were taken – *ie*, that person *A* must be the person who made the confession – then in order for Hanafi's confession to be used against Nagib, Hanafi's charges as framed would need to specify that the drugs were *received from Nagib*. I find this to be an onerous position, given that the fact of Hanafi receiving the drugs from Nagib is not an element of his offence.

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The weight to be placed on Hanafi's statements as against Nagib

184 Having established that Hanafi's confessions may be used against Nagib, the question is the *extent* to which Hanafi's confession may be relied upon.

185 The Prosecution argues that full weight should be accorded to Hanafi's implication of Nagib. Hanafi implicated Nagib in the 4 May 2021 statement, and maintained his account in his 8 May 2021 and 7 January 2022 statements.[345] Given that Hanafi implicated Nagib while rendering a self-incriminating account, his evidence in this regard is reliable and should be accorded significant weight.[346]

186 Even though I have admitted Hanafi's statements as against Nagib under s 258(5) of the CPC, I am cognisant of the caution by the Court of Appeal in *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 that when an accused person is convicted solely on a co-accused confession, such a confession must be "very compelling", and the court may consider the state of mind and the incentive of the confessor in giving evidence against the co-accused (at [59]). The Court of Appeal further considered these remarks in *Imran bin Mohd Arip v Public Prosecutor and other appeals* [2021] 1 SLR 744 ("*Imran*"). In *Imran*, the court held that even though the Prosecution was not relying solely on Imran's statements against Tamil, in light of the Prosecution's "heavy reliance" on Imran's statements, it was appropriate to "examine whether there [was] any reason … not to rely on Imran's statements in the case against Tamil" (at [60]–[61]). The same applies

345 PCS at paras 79 to 81.

346 PCS at paras 87 to 90.

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in this case, even though Hanafi's confessions do not form the only evidence against Nagib.

187 In *Imran* (at [62]), the court held that Imran's statements had essentially incriminated himself and only incidentally incriminated Tamil. These made the statements more reliable, as they had been made against the interest of the maker. This was even more so given that the statements incriminated Imran of a capital offence. In contrast, where an accused person seeks to exculpate himself while incriminating a co-accused, the court will "exercise special scrutiny" as regards the reliability and weight of such statements. Based on these remarks, where an accused person had incriminated himself and only incidentally incriminated his co-accused, there is greater credibility and veracity attached to such a statement.

188 In this case, I find that Hanafi's statements are reliable because he had incriminated himself while incidentally incriminating Nagib, and indeed, he had sought to distance Nagib from the offences. I have set out the contents of the five key statements above at [23] to [28]. In particular, in his statement of 8 May 2021 at 1.30pm, Hanafi stated that Nagib had passed him the drugs. Yet, he also tried to exonerate Nagib (see [165] above).

189 In my view, this lends credibility to Hanafi's claim that Nagib had passed him the drugs. While implicating Nagib in the delivery, Hanafi had, somewhat counterintuitively, sought to ensure that Nagib was distanced from the offences. Hanafi's admission that Nagib had passed him the bag, being incidental to his own confession, is therefore reliable. I add that the question of whether Nagib is liable for the charges against him is an inquiry reserved for the court, and Hanafi's bare assertion that Nagib was not involved does not suffice.

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190 While Hanafi's testimony was somewhat inconsistent with the contents of his statements, a fact which Hanafi himself recognises,[347] as I stated above, Hanafi was unwavering on the fact that he never had possession of the drugs until Nagib returned to the Car (see [151] above), which is a material fact in issue. Compared to the contents of his statements, Hanafi vacillated on these points in his oral testimony: (a) whether he saw Nagib taking out another bag out of his own sling bag when leaving the Car to urinate; (b) whether he saw Nagib returning with a "big black bag"; and (c) the physical act of Nagib passing a bag to him.

191 As regards (a), in Hanafi's statements on 4 May 2021 and 8 May 2021 at 1.30pm, he claimed that when Nagib left the car to urinate, he saw Nagib taking out another bag from his sling bag.[348] During his examination-in-chief, Hanafi claimed that this was inaccurate. He asserted that he meant to say that Nagib had been "adjusting" his bag, and that there was only one bag with Nagib.[349] I have doubts as to the credibility of this explanation. As Hanafi himself accepted, "every single aspect" of Hanafi's 4 May 2021 statement was read back to him,[350] for him to make any necessary changes. If Hanafi had really seen Nagib holding only one bag, this would have been straightforward to clarify. There is no reason why Hanafi would have claimed to see another bag in his 4 May 2021 statement, and *maintained* this fact when the statement was read back to him on 8 May 2021, if Hanafi had only seen Nagib "adjusting" his bag. In any event, I am of the view that this is not particularly material. The

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347 PCS at para 84.

348 2DCS at para 35.

349 NE for 24 August 2023 at page 55 lines 27 to 30 and at page 56 lines 11 to 27.

350 NE for 4 September 2023 at p 39, lines 14 to 22.

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issue is whether Nagib *returned* to the Car with a bag of drugs, and not whether he had left the Car with an additional bag.

192 This brings me to (b) and (c), which I deal with together. In his 8 May 2021 statement at 1.30pm, Hanafi claimed to have seen Nagib "hugging" a "big black bag" when Nagib returned to the Car. Hanafi subsequently asked Nagib to pass "the bag" to the front of the Car.[351] He also clarified that the bag carrying the parcel with the drugs was the YONEX bag.[352] In contrast, in his examination-in-chief, Hanafi claimed that Nagib had only been carrying the sling bag when he returned to the Car, but that he thought he remembered a bag being passed to him.[353] Later in cross-examination, Hanafi testified that he could not remember if a bag had been passed to him by Nagib.[354] Hanafi added that the "only thing" he could remember was a bag being on his lap, but that he did not know where it came from.[355] During re-examination, he clarified that he could not remember the act of asking for the bag to be passed to him, or the physical act of the bag being passed to him.[356]

193 As I said above (at [154]), I find his testimony in this regard to be lacking in veracity. His shifting testimony as to the events in the Car must be weighed against (a) his unwavering position in his statements that it was Nagib who had passed him a bag containing the drugs, a fact that he had only incidentally

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351 AB493 at paras 19 to 20.

352 AB494 at Exhibit A1C.

353 NE for 24 August 2023 at page 51 lines 1 to 3 and page 69 lines 6 to 16.

354 NE for 4 September 2023 at page 21 lines 18 to 29; page 23 lines 3 to 13; page 24 lines 6 to 15.

355 NE for 4 September 2023 at page 12 lines 8 to 31; NE for 24 August 2023 at page 70 lines 12 to 17.

356 NE for 5 September 2023 at page 102 line 31 to page 103 line 21.

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revealed, and (b) his consistent case in both his statements and his testimony that he never had the drugs prior to meeting Nagib.[357] In these circumstances, weighing his shifting testimony against his statements, I am satisfied that in this aspect, his statements are credible, and I place weight on them. That said, even if I were to be wrong as to whether the Prosecution is entitled to rely on the contents of Hanafi's statements as confessions against Nagib, based on the inference to be drawn from the entirety of Hanafi's evidence (which have I set out at [154] to [155] above), Zaihidir's evidence (see [142]–[144] above), as well as Nagib's contemporaneous WhatsApp messages with Baiya (see [145]–[150]), I am of the view that the Prosecution has proved beyond reasonable doubt that Nagib delivered the drugs to Hanafi in the Car.

Nagib's evidence

Nagib's account is inherently unreliable

194 Turning to Nagib's account, in addition to his inability to explain his WhatsApp messages with Baiya, I find Nagib's account of the events on 27 April 2021 to be incredible.

195 First, Nagib was unable to provide a consistent and believable account on why he needed to go to Woodlands in his statements:

(a) In his contemporaneous statement recorded on 27 April 2021, Nagib claimed that Hanafi had fetched him from Serangoon as they wanted to eat at Al-Ameen, a restaurant in Woodlands.[358]

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357 NE for 4 September 2023 at page 23 lines 22 to 27 and at page 24 lines 17 to 28.

358 AB414.

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(b) In his cautioned statement on 28 April 2021, Nagib claimed that he had wanted to go to Woodlands for a meal, and to meet his "old kampung friends to get together to do some contribution to give back to community" [*sic*].[359]

(c) In his statement on 4 May 2021, Nagib claimed that he wanted to go to the "[W]oodlands area" to visit his "old place of residence", "find food" and meet his old friends.[360] Nagib also explained that earlier that day, Das had called him to ask for money, and Nagib had told Das that he did not have money. Nagib claimed to have told Das that he was going to the Woodlands area as Das lived in Woodlands.[361] Later that day, while Nagib was in a Grab car with Hanafi on the way to Woodlands, he received a call from a male man asking him to go to Block 183 of Woodlands as the said man needed help.[362]

(d) In his statement on 5 May 2021 at 5.48pm, upon being confronted with certain text messages, Nagib claimed that it was Baiya who called him and told him to go to Block 183 of Woodlands.[363]

196 In addition, in his examination-in-chief, Nagib added that he went to Woodlands to collect a mobile phone from Das,[364] and to lend him money.[365]

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359 AB613.

360 AB618 at paras 16 and 18.

361 AB618 at para 16.

362 AB618 at para 18.

363 AB650 at para 41.

364 NE for 8 September 2023 at page 20 line 32 to page 21 line 2.

365 NE for 8 September 2023 at page 26 lines 7 to 8.

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During cross-examination, Nagib clarified that he was going to lend Das around $10 or $20.[366]

197 As can be seen, Nagib gave various reasons for going to Woodlands: to meet his friends and do charity work; to lend Das money and collect a mobile phone from him; and to eat with Hanafi. As to why he went to Block 183 of Woodlands specifically, he claims that it was because Baiya had told him to.[367] None of these explanations withstood even a shred of scrutiny. During cross-examination, Nagib admitted that he had not made any arrangements with his friends. He did not contact his friends prior to heading down to Woodlands, and he did not have an invitation to meet them. Neither did he know if his friends planned to do charity work on that day.[368] His claim that he was going to meet his friends to do "good deeds" is unbelievable, and inconsistent with his text messages sent to Hanafi stating that he had an urgent matter to attend to (see [36] above). During cross-examination, he admitted that there was no time limit to which his "good deeds" had to be completed.[369]

198 As for his claim that he was meeting Das to lend him money, I am unable to accept that he would have arranged for transportation from Serangoon to Woodlands to lend Das $10 to $20, especially when he had claimed that he had no money, was financially strapped, and had told Das that he had no money to lend to Das.[370] His claim that he wanted to collect a mobile phone from Das was

366 NE for 13 September 2023 at page 23 lines 30 to 32.

367 AB650 at para 41.

368 NE for 13 September 2023 at page 4 line 11 to page 5 line 6.

369 NE for 13 September 2023 at page 5 lines 21 to 30.

370 AB618 at para 16; NE for 13 September 2023 at page 23 lines 28 to 32.

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also raised belatedly in his testimony and can be found nowhere in his 15 investigation statements.

199 Nagib's case requires the confluence of an incredible number of coincidences as between his friends and him in order to converge in their meeting at Block 183 of Woodlands. All these cast significant doubt on the veracity of his evidence, and lends credence to my finding that Nagib had an existing arrangement to meet Hanafi on 27 April 2021. It was not an impromptu arrangement.

200 Second, I agree with the Prosecution that Nagib was an unreliable witness,[371] who had no qualms in fabricating narratives to suit his defence:

(a) In his contemporaneous statement on 27 April 2021, Nagib claimed that he had never left the Car.[372] In his testimony in court, he admitted that he did.[373]

(b) In his contemporaneous statement on 27 April 2021, Nagib claimed to have never seen the Superdry Bag before.[374] In his testimony in court, he admitted that he had.[375]

(c) In his contemporaneous statement on 27 April 2021, Nagib was able to identify the Bundles as heroin.[376] In his statement on 5 May 2021 at 2.30pm, Nagib told the investigation officer that the Bundles

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371 PCS at paras 108 to 116 and at paras 147 to 150.

372 AB414 at S/N A9.

373 NE for 8 September 2023 at page 33 lines 3 to 4.

374 AB414 at S/N A10.

375 NE for 8 September 2023 at page 23 line 28 to page 24 line 4.

376 AB415 at S/N A11.

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contained "Gula Melaka or Palm Sugar".[377] When questioned on this inconsistency in court, Nagib claimed that he was jesting with the investigation officer.[378]

201 Taking the above together, I find that Nagib was an evasive witness who had no difficulty concocting evidence to suit his defence.

Nagib sent a photograph of a plastic bag to Baiya

202 Next, I deal with the photograph of a plastic bag sent by Nagib to Baiya (see [146(e)] above). The significance of this picture is heavily contested by Nagib, and I reproduce it for convenience:[379]

377 AB621.

378 NE for 13 September 2023 at page 58 lines 2 to 6.

379 AB679.

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203 Nagib argues that this blue plastic bag is not the black plastic bag found in Hanafi's possession containing the drugs. The plastic bag found in Hanafi's Superdry Bag, identified by Hanafi as A1D (see [25(c)]), was black, while the plastic bag in this picture is blue. In turn, no blue plastic bag was found by the CNB during the seizure. Hence, the plastic bag in this picture does not have any connection with the drugs in Hanafi's possession.[380]

204 In response, the Prosecution clarifies that it is not claiming the plastic bag in this picture to be the same plastic bag found in Hanafi's possession (*ie*, Exhibit A1D). Instead, the Prosecution's case is that this picture shows the drug consignment Nagib received. This is not the same as saying that it is the same plastic bag in Hanafi's possession.[381] In any case, the Prosecution argues that nothing turns on the colour of the plastic bag. Differences in background and lighting conditions could have caused the differences in colour. Moreover, the Prosecution relies on multiple strands of evidence, and not simply on this photograph.[382] Even if this picture depicts a blue plastic bag, a reasonable doubt does not arise within the Prosecution's case, or from the totality of the evidence. Hanafi's evidence as against Nagib is not undermined, and Nagib's response to this picture was wholly unsatisfactory. Hence, Nagib has not raised a reasonable doubt.[383]

205 I agree with the Prosecution that differences in background and lighting conditions could well have caused the differences in colour, as is evident from some of the other photographs placed before me. More importantly, I am

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380 2DRS to the Prosecution at paras 22 to 24.

381 PRS to the Court at paras 21 to 24.

382 PRS to the Court at paras 25 to 26.

383 PRS to the Court at para 27.

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satisfied that any inability to prove that the blue plastic bag photographed by Nagib was A1D found within the Superdry Bag, does not raise a reasonable doubt in the Prosecution's case. As I have analysed in the judgment, there exists an overwhelming amount of evidence pointing to Nagib's collection of the drugs, and the passing of the drugs to Hanafi. In arriving at my decision, what is important is the fact that the photograph of the plastic bag was sent to Baiya at 7.21pm, after Nagib returned to the Car from urinating, which shows that there was ample time for Hanafi to pack the drugs in the Superdry Bag before the interception by the CNB at 7.28pm. When I invited the parties to further submit on this point, both Hanafi and Nagib accepted that seven minutes elapsed between these events.[384] Beyond that, I do not see the need to make any specific finding in relation to picture of the blue plastic bag, or the blue plastic bag itself. In these circumstances, I find that this difficulty faced by the Prosecution is not fatal to its case.

Further arguments raised by Nagib

206 Finally, I address several other arguments raised by Nagib. First, Nagib points out that his DNA was not found on the Superdry Bag or the YONEX bag, and that the fibre transfer analysis found no fibre transfer between Nagib's sling bag and the YONEX bag. This shows that he never had possession of the Superdry Bag or the YONEX bag.[385] However, as observed in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 (at [82]), the absence of an accused person's DNA on specific items is not conclusive, though it may supplement the evidence already before the court. Accordingly, the absence of Nagib's DNA in itself is inconclusive in showing that Nagib did not come into

384 1DRS to the Court at para 10; 2DRS to the Court at para 26.

385 2DCS at paras 35, 37 and 42.

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contact with the YONEX bag. A similar point can be made about the absence of any fibre transfers between the exterior of the YONEX bag, and the interior of Nagib's sling bag.[386] While the presence of such fibre transfers might have indicated that Nagib pulled the YONEX bag out of the sling bag when he left the Car, the absence of such evidence is inconclusive.

207 Second, I address Nagib's argument that both his sling bag and the YONEX bag were not big enough to fit the Bundles and Blocks, and hence, he could not have had possession of the drugs. According to Nagib, as only Hanafi's Superdry Bag was sufficiently large to fit the drugs, this bolsters the inference that Hanafi had the drugs all along.[387] While it is doubtful whether Nagib's sling bag could have fit the drugs, this is not material, given my acceptance of Hanafi's evidence that Nagib had been "hugging" a "big black bag" when he returned to the Car, which Hanafi subsequently identified as the YONEX bag (at [192]–[193] above). In other words, Hanafi did not say that the drugs were in Nagib's sling bag. As for the YONEX bag, I had observed during the trial, following a demonstration, that the drugs in their processed form were able to fit into the YONEX bag.[388] Hence, Nagib's bare assertion that the drugs seized "clearly" could not fit into the YONEX bag is unsustainable.[389]

208 Third, I do not accept Nagib's argument that the drugs were in the Superdry Bag all along. Nagib claims that this is evident based on the photographs of Hanafi's Superdry Bag while he was at Orchard Towers on the

386 AB235 at para 10.

387 2DCS at paras 38, 43 and 62; 2DRS to the Prosecution at para 44.

388 NE for 4 September 2023 at page 37 line 27 to page 38 line 2.

389 2DCS at para 62.

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morning of 27 April 2021, which show that the bag was not empty.[390] The photographs do not support such an inference. They are of low resolution, and nothing on the face of these photographs indicate that the Superdry Bag was filled with anything in addition to Hanafi's personal items.

209 I observe that at various points in his written submissions, Nagib has alleged that Hanafi fabricated certain facts, and that Hanafi had only implicated Nagib in order to absolve himself of liability.[391] I have dealt with most of these claims over the course of my analysis, and I add only that when making such allegations, the defence bears the burden of adducing sufficient evidence of a witness's motive for making false allegations. General assertions would not suffice, and the motive must be specific to the witness concerned (*Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [102]). Nagib's bare allegations, without more, are thus insufficient. Indeed, in the various statements, and even in the course of giving evidence, it appears to me that Hanafi was seeking to dissociate Nagib from the offences.

210 For completeness, I address the Prosecution's reliance on various WhatsApp messages between Hanafi and Nagib which show an alleged delivery of heroin on 25 April 2021 from Hanafi to Nagib. The Prosecution argues that this contextualises their meeting on 27 April 2021, such that "the only viable explanation" for their meeting on 27 April 2021 was for a drug transaction.[392] While Nagib disputes that the heroin was erroneously delivered, as he did not order heroin,[393] I find that there is a bigger issue of the relevance of this

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390 AB601 to AB602; 2DCS at para 56; 2DRS to the Prosecution at para 65; 2DRS to the Court at para 35.

391 2DCS at paras 32, 59, 65, 77; 2DRS to Hanafi at paras 1, 13, 15 and 17.

392 PCS at para 97.

393 2DRS to the Prosecution at para 11.

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evidence, similar to my concerns raised at [135] above. In any case, this is not fatal, as I am satisfied that there is sufficient evidence proving that Nagib had possession of and had delivered the drugs to Hanafi.

Conclusion

211 Having established the element of possession, the Prosecution relies on the presumption of knowledge in s 18(2) of the MDA. Given the nature of his defence of denial, Nagib has led no evidence, nor made any submissions to specifically rebut this presumption of knowledge of the nature of the drugs which he delivered to Hanafi. Consequently, I find that the two charges against him have been proved beyond reasonable doubt.

Conclusion

212 By all of the foregoing, I find that the Prosecution has proven the first two charges each against Hanafi and Nagib beyond reasonable doubt. I therefore convict both Hanafi and Nagib of these two charges against them.

213 I deal finally with the other charges against Hanafi and Nagib (see [4] above). The four additional charges against Hanafi are brought under s 8(*a*) of the MDA, and concern his possession of other controlled drugs, *ie*, 0.20g of diamorphine, 19.77g of methamphetamine, 0.09g of MDMA, and multiple tablets of Eutylone.[394] These are the drugs found in the black pouch, *ie,* A1H, which was retrieved from the Superdry Bag (see [12] above). As for the three other charges which were proceeded against Nagib, these relate to the consumption of methamphetamine, the consumption of 2-[1-(Pent-4-en-1-yl)-1H-indazole-3-carboxamido]-3, 3-dimethylbutanoic acid or its hexanoic acid

394 PCS at Annex A; 1DCS at para 3.

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isomer or any of their respective pentenyl positional isomers in the pentenyl group, and the possession of paraphernalia intended for the consumption of a controlled drug, under s 8(*b*)(ii), s 8(*b*)(i) and s 9 of the MDA respectively.[395] To reiterate, unlike the two charges against them concerning the Bundles dealt with in detail in this judgment, these additional charges against Hanafi and Nagib do not carry capital punishment.

214 The facts supporting the elements of these charges are contained in the SOAF, and thus were admitted to by Hanafi and Nagib.[396] Both Hanafi and Nagib also offered no substantive defences to these charges. Over the course of trial, they adduced no evidence, nor raised any objections, challenging these charges. They also admitted to the elements of these charges put to them during the trial.[397] Accordingly, I also convict Hanafi and Nagib of these remaining charges.

215 I shall now proceed with the sentencing stage of these proceedings.

Hoo Sheau Peng
Judge of the High Court

Marcus Foo, Benedict Teong and Natalie Chu (Attorney-General's Chambers) for the Prosecution;
N K Rajarh (Damodara Ong LLC) and Sureshan s/o T Kulasingam

395 PCS at Annex A; 2DCS at para 128.

396 SOAF at paras 28 to 34.

397 NE for 5 September 2023 at page 99 line 7 to page 100 line 21; NE for 14 September 2023 at page 15 line 18 to page 16 line 16.

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for the second accused.

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