IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 55

Court of Appeal / Criminal Appeal No 11 of 2022

Between

Muhammad Izwan bin Borhan

… *Appellant*

And

Public Prosecutor

… *Respondent*

And

Court of Appeal / Criminal Appeal No 12 of 2022

Between

Ahmad Suhaimi bin Ismail

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 32 of 2019

Between

Public Prosecutor

And

(1) Muhammad Izwan bin Borhan
(2) Ahmad Suhaimi bin Ismail

JUDGMENT

Criminal Law — Statutory offences — Misuse of Drugs Act

TABLE OF CONTENTS

THE CHARGES ……1

FACTS.....5

THE DRUG EXHIBITS 8

THE PROSECUTION'S CASE AT THE TRIAL 9

IZWAN'S DEFENCE AT THE TRIAL 10

SUHAIMI'S DEFENCE AT THE TRIAL 11

DECISION OF THE TRIAL JUDGE.....12

THE DECISION OF THE COURT OF APPEAL.....13

THE CHAIN OF CUSTODY OF THE DRUGS WAS NOT BROKEN 13

The overall drug exhibits.....13

The chain of custody of F1B1 was not broken 16

IZWAN'S STATEMENTS TO THE CNB ARE ADMISSIBLE 20

The arguments at the trial 20

The Judge's decision 23

Arguments on appeal.....27

Our decision on Izwan's Statements 29

(1) Izwan's Third, Fourth and Fifth Statements 30

(2) Izwan's First Statement.....35

THE HEROIN CHARGES ARE MADE OUT BEYOND REASONABLE DOUBT.....36

There was no reduction in the order for heroin to one "biji" 36

The order for heroin was not for Izwan alone 47

Izwan possessed the five "biji" of heroin for the purposes of trafficking *52*

Suhaimi knew of Izwan's intention to traffic in the heroin *53*

The further evidence in the Remittal Hearing does not assist the appellants *55*

THE ICE CHARGES ARE PROVED BEYOND REASONABLE DOUBT 61

Izwan did not intend to consume part of his 125g portion of Ice *62*

Izwan trafficked in the Ice and was not a mere bailee for Suhaimi's share of the Ice *68*

Suhaimi conspired with Izwan for Izwan to possess 375g of Ice *69*

Suhaimi knew that Izwan intended to traffic in the 125g of Ice *71*

MISCELLANEOUS ISSUES 72

The particulars of the timing and location stated in Izwan's Charges did not raise reasonable doubt *72*

Izwan's Ice Charge is not defective *73*

The Judge did not err in not impeaching ASP Bong's credit *74*

CONCLUSION 77

Muhammad Izwan bin Borhan
v
Public Prosecutor and another appeal

[2025] SGCA 55

Court of Appeal — Criminal Appeal Nos. 11 and 12 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Belinda Ang Saw Ean JCA
10 July 2025

3 December 2025 Judgment reserved.

Tay Yong Kwang JCA (delivering the judgment of the court):

The Charges

1 There are two related appeals before us, CA/CCA 11/2022 ("CCA 11") and CA/CCA 12/2022 ("CCA 12"). After considering the parties' written submissions and hearing their oral submissions, we reserved judgment. This is our judgment dismissing both appeals.

2 In CCA 11, Muhammad Izwan bin Borhan ("Izwan"), a Singaporean male born in November 1985, appealed against his conviction and sentence on the following two charges:

> (a) That you, on 29 September 2017, at about 11.50am, in the vicinity of 31 Toh Guan East, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession

for the purpose of trafficking, five packets containing not less than 1996.15g of granular/powdery substance found to contain not less than 26.19g of diamorphine, without any authorization under the said Act or the Regulations made thereunder and you have thereby committed an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the MDA, or you may alternatively be liable to be punished under s 33B of the said Act ("Izwan's Heroin Charge"); and

(b) That you, on 29 September 2017, at about 11.50am, in the vicinity of 31 Toh Guan East, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule of the MDA, to wit, by having in your possession for the purpose of trafficking, at least one packet containing not less than 372.93g of crystalline substance and found to contain not less than 252.04g of methamphetamine, without any authorization under the said Act or the Regulations made thereunder and you have thereby committed an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the MDA, or you may alternatively be liable to be punished under s 33B of the said Act ("Izwan's Ice Charge").

3 In CCA 12, Ahmad Suhaimi bin Ismail ("Suhaimi"), a Singaporean male born in May 1992, appealed against his conviction and sentence on the following two charges:

(a) That you, on or before 29 September 2017, in Singapore, did engage in a conspiracy with Izwan to do a certain thing, namely to traffic in a controlled drug specified in Class A of the First Schedule of the MDA, namely 26.19g of diamorphine, and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 29 September 2017 in the vicinity of 31 Toh Guan East, Singapore,

where Izwan had in his possession for the purpose of trafficking at least five packets containing not less than 1996.15g of granular/powdery substance found to contain not less than 26.19g of diamorphine, without any authorization under the said Act or the Regulations made thereunder and you have thereby abetted the offence of trafficking of the said controlled drug and committed an offence under s 5(1)(a) read with s 12 and punishable under s 33(1) of the MDA or you may alternatively be liable to be punished under s 33B of the said Act ("Suhaimi's Heroin Charge"); and

(b) That you, on or before 29 September 2017, in Singapore, did engage in a conspiracy with Izwan to do a certain thing, namely to traffic in a controlled drug specified in Class A of the First Schedule of the MDA, namely 252.04g of methamphetamine, and in pursuance of that conspiracy, and in order to the doing of that thing, an act took place on 29 September 2017 in the vicinity of 31 Toh Guan East, Singapore, where Izwan had in his possession for the purpose of trafficking at least one packet containing not less than 372.93g of crystalline substance found to contain not less than 252.04g of methamphetamine, without any authorization under the said Act or the Regulations made thereunder and you have thereby abetted the offence of trafficking of the said controlled drug and an offence under s 5(1)(a) read with s 12 and punishable under s 33(1) of the MDA or you may alternatively be liable to be punished under s 33B of the said Act ("Suhaimi's Ice Charge").

4 Suhaimi's Heroin Charge originally referred to one packet containing not less than 2270.95g of granular/powdery substance, found to contain not less than 29.63g of diamorphine. Izwan's Heroin Charge originally referred to five packets containing these same quantities. On the fourth day of the trial in the

General Division of the High Court (6 April 2021), the Prosecution sought to amend Suhaimi's Heroin Charge to refer to five packets instead of one, while maintaining the same weights for both the granular/powdery substance and the diamorphine. The trial Judge ("the Judge") allowed the amendment.

5 Subsequently, the Judge decided to amend again both Izwan's and Suhaimi's Heroin Charges by excluding the drugs found in an aluminium tray (marked as "A3") in Izwan's home. This was because he held that there was a reasonable doubt whether the heroin found in A3 was solely from the drugs that Izwan collected on 29 September 2017 or whether it included heroin from a previous purchase. The amount of drugs in A3 was excluded accordingly and Izwan's Heroin Charge and Suhaimi's Heroin Charge therefore showed the present reduced amounts of not less than 1996.15g of granular/powdery substance and not less than 26.19g of diamorphine.

6 However, even with these reductions, both the Heroin Charges remained capital charges which attracted the death penalty. Both Ice Charges were also capital charges.

7 The Judge convicted Izwan and Suhaimi (collectively, the "appellants") on their respective charges in *Public Prosecutor v Muhammed Izwan bin Borhan and another* [2022] SGHC 40 (the "First Judgment"). For sentencing purposes, the appellants each received a certificate of substantive assistance but they were not found to be mere couriers in the drug transactions. Accordingly, the Judge imposed the mandatory death penalty on both appellants. Both appellants appealed against their conviction and sentence.

8 Before their appeals were heard, Suhaimi applied to the Court of Appeal by way of a Criminal Motion to seek an order that additional evidence be taken

from Eddie Lee Zhengda ("Eddie") and Sumardi bin Sjahril Habibie ("Sumardi") pursuant to s 392(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). We granted the order and directed that this matter be remitted to the Judge for the said additional evidence to be taken. We also directed that the parties could call any further witnesses that the Judge may deem necessary.

9 The additional evidence was heard by the Judge on 26 and 27 November 2024 and submissions were heard on 29 November 2024. After considering the additional evidence, the Judge concluded that even if the additional evidence had been available during the trial, he would have arrived at the same verdict. He found no reasonable doubt raised by the additional evidence on the issue whether the order of heroin had been reduced from five "biji" to only one "biji". We will elaborate on this issue which was pivotal in the appeals. The Judge gave his reasons in a supplemental judgment in *Public Prosecutor v Muhammed Izwan bin Borhan and another* [2025] SGHC 15 (the "Second Judgment").

Facts

10 As is common in the drug trade, various jargon was used to refer to drugs. The terms "panas", "ubat" and "heroin" referred to diamorphine, "sejuk," "air batu" and "Ice" meant methamphetamine and "cook" or "cooking" described the packing of drugs. A "biji" or "batu" of heroin referred to a packet of the drug which typically weighed about 450g (or about one pound), while half a "batang" of Ice meant approximately 500g of methamphetamine.

11 The persons named were known by various aliases. The appellants Izwan was also known as "Neo" or "Prapa" and Suhaimi as "Hustler". Mohamed Yusof bin Kasim ("Yusof") was also known as "Kimo" or "Momo"

and a Malaysian drug supplier named "Arun" was referred to by Izwan as "Mamak".

12 Izwan and Suhaimi first met in 2008 and later reconnected in 2014 while attending prison school. During their time in prison, each of them met Yusof separately. After their release – Izwan in 2015 and Suhaimi in 2016 – they re-established contact with Yusof. They knew that Yusof dealt in drugs, including heroin sourced from Arun. Izwan admitted to having previously purchased heroin from Yusof and to dealing in heroin and Ice. Suhaimi admitted to dealing in Ice but denied dealing in heroin. He claimed that he only referred customers who wanted heroin to Izwan. Both appellants sourced their drugs from Arun but Suhaimi was the one who communicated with Arun.

13 Izwan was residing in a flat on the 12th floor of Block 27 New Upper Changi Road ("Block 27") at the material time. On 29 September 2017, Izwan left his residence at about 11.38am and arrived in a taxi at Toh Guan East at around 12.22pm. There was a traffic jam along the journey. At around 12.46pm, at a location near 31 Toh Guan East, Izwan collected five "biji" of heroin and one packet of 500 grams of Ice. He placed cash in Arun's runner's motorcycle basket in exchange for the drugs. He then went home in a GrabCab.

14 In his flat, Izwan repackaged one "biji" of heroin into smaller packets. These were subsequently marked "A4" (five packets), "B2A1" (five packets) and "B3A" (one packet). He placed the balance of the heroin from that one "biji" in an aluminum tray ("A3"). The remaining four "biji" of heroin were left intact. He followed Suhaimi's instructions to repackage the 500g of Ice into four packets of 125g each. At Suhaimi's request, he left one of the 125g packets at an electrical box on the 11th floor of Block 27 for one of Suhaimi's customers to collect.

15 Later that afternoon, Suhaimi arrived at the ground level of Block 27 in a black Subaru with Yusof and another person named Muhammad Zafar ("Zafar"). Izwan handed Suhaimi a black plastic bag ("F1") containing two packets of Ice ("F1B1"). Subsequently, Suhaimi claimed that F1 and F1B1 were not what Izwan had handed to him.

16 Izwan was arrested around 4.10pm that day at the void deck of Block 27 and escorted to his flat. Officers from the Central Narcotics Bureau ("CNB") subsequently seized various drug exhibits from his bedroom, including multiple packets of heroin and Ice and his handphone. The 125g packet of Ice left at the electrical box on the 11th floor was not recovered and was not included in the charges against him and Suhaimi. Izwan's wife, mother and stepfather were in Izwan's flat. They were also arrested.

17 At about 4.15pm, Suhaimi, Yusof, and Zafar were arrested at a petrol station. They and the Subaru were driven to a multi-storey carpark nearby at Block 2A Bedok South Avenue 1 (the "Carpark"). A search of the Subaru revealed packets of Ice which Yusof admitted belonged to him. These were not the subject of this case. The CNB officers also found a black plastic bag F1 in the car containing small ziplock bags ("F1A") and another black plastic bag ("F1B") which in turn contained two packets of Ice ("F1B1"). Suhaimi, Zafar, and Yusof denied ownership of these items. Suhaimi's handphone was seized during the arrest.

18 During the investigations, the CNB officers recorded ten statements each from Izwan and Suhaimi (which we shall refer to as Izwan's or Suhaimi's First to Tenth Statements). Both men also underwent psychiatric evaluation at the Changi Prison Complex Medical Centre, with their respective examining

doctors each providing a medical report detailing Izwan's and Suhaimi's accounts.

The drug exhibits

19 The heroin exhibits seized from Izwan's bedroom were found by the HSA to contain not less than 29.63g of diamorphine:

Exhibit	**Weight of Diamorphine**	**Description**
A1A	5.39g	One packet containing one "biji" of heroin
A1B	6.92g	One packet containing one "biji" of heroin
A1C	6.78g	One packet containing one "biji" of heroin
A2A	4.77g	One torn taped bundle containing one "biji" of heroin
A3	3.44g	Aluminium tray containing heroin
A4	0.46g	Five smaller packets of heroin
B2A1	0.48g	Five smaller packets of heroin
B3A	1.39g	One smaller packet of heroin

20 The Ice exhibits were found by the HSA to contain not less than 252.04g of methamphetamine:

Exhibit	**Weight of methamphetamine**	**Description**
Exhibits seized from Izwan's bedroom		
A5	3.10g	One smaller packet of Ice
B1A1	59.03g	Seven smaller packets of Ice
B2B1A	16.82g	Two smaller packets of Ice
B3B1	4.29g	One smaller packet of Ice
Exhibit seized from the Subaru		
F1B1	168.8g	Two packets of Ice

21 As mentioned earlier, Izwan left a packet of 125g of Ice at the electrical box on the 11th floor of Block 27. That was not recovered and was not included in the charges against Izwan and Suhaimi.

The Prosecution's case at the trial

22 The Prosecution's case was that Izwan and Suhaimi jointly ordered five "biji" of heroin (two for Izwan's customers and three for Suhaimi's) and 500g of methamphetamine (125g for Izwan's customers, 375g for Suhaimi's). The

Prosecution contended that Izwan was in possession of these drugs when he collected them on 29 September 2017, he knew they contained diamorphine and methamphetamine and intended to traffic in the drugs by selling his portion and by delivering Suhaimi's share to him. Alternatively, under ss 17(c) and (h) of the MDA, Izwan was presumed to have possessed the drugs for the purpose of trafficking. As for Suhaimi, the Prosecution argued that he conspired with Izwan by coordinating Izwan's collection of the drugs and making the joint order. The conspiracy was for Izwan to possess the drugs for the purpose of trafficking and an unlawful act, namely Izwan's possession of the drugs for trafficking, took place pursuant to this conspiracy.

Izwan's defence at the trial

23 In respect of the heroin, Izwan claimed he should be charged for trafficking in only one "biji" because he had changed his order from five "biji" to one "biji". He explained that five "biji" were delivered to him incorrectly and he had made arrangements to return the four extra "biji". He was unaware he had collected five "biji" at the time of collection. He therefore contended that Izwan's Heroin Charge should be amended to possession of no more than 5.77g of diamorphine for the purpose of trafficking. In his oral testimony, Izwan mentioned that the heroin in A3 might have included some leftover from a previous purchase although he could not confirm this.

24 As for the Ice, Izwan contended that 125g belonged to him and he intended to keep two packets out of the seven found in B1A1 for his own consumption. He therefore contended that the two packets should be excluded from the trafficking charge. For the Ice found in F1B1 recovered from the Subaru, he claimed he should only be charged with possession because he was merely a bailee for those drugs. He said that he merely helped Suhaimi to collect

the Ice and was only concerned with returning it to Suhaimi. Alternatively, since he did not know what Suhaimi intended to do with the Ice in F1B1, the charge against him should be for an offence under s 5(1) read with s 12 of the MDA for doing an act preparatory to the commission of the offence of trafficking by Suhaimi.

25 Izwan also argued that his First, Third, Fourth, and Fifth Statements were made involuntarily. He also claimed that there was reasonable doubt about the chain of custody for all the drugs seized, or alternatively, for the drugs in A3.

Suhaimi's defence at the trial

26 Suhaimi contended that the chain of custody for A3 was broken. As for the charge for conspiracy to traffic in diamorphine, Suhaimi stated that he placed the order on behalf of Izwan and that Izwan simply told him to order "as usual" without specifying a quantity. Therefore, Suhaimi did not know the quantity of heroin involved. Suhaimi also did not know Izwan's intentions for the heroin. In any event, he contended that because of the misdelivery of four extra "biji" of diamorphine to Izwan, Suhaimi was only part of an agreement for Izwan to possess no more than one "biji" of diamorphine.

27 For the charge for conspiracy to traffic in methamphetamine, Suhaimi argued that the chain of custody for exhibit F1B1 was broken and that F1B1 was not the Ice that Izwan passed to him. As for Izwan's 125g of Ice, Suhaimi maintained that he was not part of any agreement for Izwan to order this amount as Izwan made the order without consulting him. Additionally, Suhaimi stated he did not know what Izwan intended to do with his 125g of Ice. He therefore did not engage in any conspiracy to traffic it.

Decision of the trial Judge

28 In the First Judgment and the Second Judgment, the Judge found that:

(a) Izwan's First, Third, Fourth and Fifth Statements were admissible;

(b) the chain of custody of the drugs was not broken;

(c) the fact that Izwan was not in the vicinity of 31 Toh Guan East at 11.50am on 29 September 2017 did not affect the charges against him as he was there at around 12.22pm and knew what the offence he was charged with was about;

(d) Izwan and Suhaimi ordered the heroin jointly with three "biji" meant for Suhaimi and two for Izwan;

(e) there was no reduction in the order of heroin from five to one "biji";

(f) Izwan and Suhaimi knew each other's intention to traffic in their respective shares of heroin;

(g) the heroin in A3 (3.44g) could have included heroin from Izwan's previous purchase. It was therefore excluded from the total weight of heroin;

(h) Izwan and Suhaimi ordered 500g of Ice jointly;

(i) Izwan did not intend to consume any part of the Ice and Suhaimi knew that Izwan intended to traffic his share of the Ice; and

(j) the additional evidence in the Remittal Hearing did not assist the appellants.

29 Except for the exclusion of A3 from the total weight of heroin, Izwan and Suhaimi contend that the Judge was wrong on all the above points.

The decision of the Court of Appeal

30 After considering the parties' written and oral submissions, we now dismiss both appeals against conviction and sentence. We set out our reasons below.

The chain of custody of the drugs was not broken

31 The appellants argue that there was reasonable doubt about the chain of custody for all the drugs seized or, alternatively, for the drugs in A3 and F1B1. The Judge rejected these arguments. We agree with the Judge's decision.

The overall drug exhibits

32 As the Judge has excluded A3 because the heroin in A3 could have included heroin from Izwan's previous purchase (First Judgment at [125]–[127]), we see no need to address the appellants' arguments regarding the chain of custody of A3. As for the overall drug exhibits, there was a discrepancy in the record concerning the time at which ASP Bong took custody of the exhibits from SSgt Au Yong. SSgt Au Yong noted that it was at 2.45am while ASP Bong's diary stated 5.22am. Izwan argued this time gap indicated a break in the chain. However, the Judge disagreed, stating that despite this discrepancy, there was no period when the exhibits' custody was unknown. SSgt Au Yong held them until he handed them to ASP Bong. Therefore, no reasonable doubt was raised regarding the integrity of the overall drug chain of custody: First Judgment at [72]–[74].

33 On appeal, the appellants submitted that following *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Mohamed Affandi*"), the Judge erred in holding that there was "no gap in the chain of custody in that there was no moment during which it was not known who had custody of the exhibits" because it was not sufficient for the Prosecution to broadly show that the drug exhibits could have, would have or should have at all points in time been in the possession of the CNB officers taken as a collective whole.

34 In *Mohamed Affandi*, Mohamed Affandi bin Rosli ("Affandi") was convicted of possessing drugs for the purpose of trafficking while Mohamad Fadzli bin Ahmad was convicted of abetting by instigating Affandi to commit the offence. Both were sentenced to death. They appealed to this court. The central issue in the appeal was whether the prosecution had proved beyond reasonable doubt the integrity of the chain of custody for the drug exhibits from the point they were seized until they were analysed by the HSA.

35 The majority in the Court of Appeal found that the Prosecution failed to do so. There were two conflicting accounts from the arresting officers about how the drugs were handled after seizure, involving the following material inconsistencies (*Mohamed Affandi* at [48]):

(a) whether the exhibits were on the front passenger seat or locked in the boot when the CNB vehicle was moving between MBS, Affandi's flat and the Woodlands Checkpoint;

(b) whether SSI David Ng or SSSgt Alwin Wong held the exhibits during the search of Affandi's flat;

(c) whether the exhibits were in the CNB vehicle or with SSSgt Wong during the search of Affandi's car; and

(d) whether the exhibits were handed to SSSgt Jenny Woo by SSI Ng at 10.47pm or still with SSSgt Wong at that time.

These inconsistencies created reasonable doubt about whether the drugs analysed were the same as those seized and the Prosecution's attempt to present multiple inconsistent scenarios was fundamentally unfair to the accused: *Mohamed Affandi* at [51]–[52].

36 The majority in the Court of Appeal also rejected the argument that the CNB officers should be considered as a collective group because they were "operating in a team effort". The fact that two officers gave conflicting testimony about who held the exhibits left open the possibility that either one was not truthful or, if both were truthful, that there might have been two bags of exhibits in the vehicle. This was plausible, as Staff Sergeant Sunny Tay had said that at 1.57am on the day after the exhibits were seized, he only saw SSI David Ng bringing a trash bag to the CNB HQ Exhibit Management Room but was not certain whether the bag contained the exhibits in question: *Mohamed Affandi* at [52] and [49(b)].

37 In our judgment, the essential questions on chain of custody of drug exhibits concern the identity and the integrity of those exhibits. The inquiry examines the questions whether there is reasonable doubt, on the evidence, that (a) the CNB officers had another set of drugs besides the drug exhibits seized from Izwan's premises and from the Subaru; and (b) the exhibits had been contaminated or otherwise tampered with.

38 The evidence in this case did not raise any reasonable doubt about the identity or the integrity of the drug exhibits in issue. Although the discrepancy in SSgt Au Yong's account and ASP Bong's account of the timing of the handover was more than two-and-a-half-hours (2.45am according to SSgt Au Yong and 5.22am according to ASP Bong), the fact remained that the exhibits were either with SSgt Au Yong or ASP Bong at all material times. Either SSgt Au Yong or ASP Bong could have recorded the time of handover wrongly but there is no suggestion nor any basis on the evidence for suggesting that, at any time, the drug exhibits in issue were not in the possession of one or the other of the two officers. Unlike in *Mohamed Affandi*, where the possibility of the CNB officers having other drug exhibits with them was raised, there was no evidence in this case which suggested that the CNB officers had another set of drugs in their possession. There was also no suggestion that the drug exhibits had been contaminated or tampered with in some way.

The chain of custody of F1B1 was not broken

39 Suhaimi argued at the trial that F1B1 was not the Ice that Izwan handed to him. He asserted that he placed the black plastic bag (F1) on the centre console instead of the driver's door compartment where it was found. Further, his DNA was not found on F1 or its contents and the weight of F1B1 was different from the two packets of Ice which Izwan allegedly handed to him.

40 The Judge pointed out that Suhaimi's argument disputed ownership, not chain of custody. F1B1 came into the CNB's custody after it was seized from the Subaru and there was an unbroken chain of custody thereafter: First Judgment [83]–[84]. The Judge rejected Suhaimi's claim that F1B1 was not the Ice that Izwan handed to him. Izwan passed to Suhaimi a black plastic bag containing 250g of Ice. No other similar bag containing 250g of Ice was found

inside the Subaru. Izwan identified F1 and its contents (including F1B1) as the things that he handed to Suhaimi and Izwan's DNA was found on the exhibits.

41 Further, Suhaimi never denied ownership of F1B1 in his statements and even identified it (in Suhaimi's Fourth Statement) as the Ice that he had ordered. The black plastic bags (F1 and F1B1) matched those from Izwan's apartment, with forensic analysis confirming that they were likely printed using the same printing plate.

42 Suhaimi pointed out that Izwan said he weighed two packets of Ice at 125g each, including the packaging, totalling 250g. However, ASP Bong weighed F1B1 with its packaging at 265.66g and HSA weighed F1B1's contents (only the crystalline substance without the packaging) at only 249.5g. Therefore, F1B1 could not be the two packets handed to him by Izwan.

43 The Judge rejected Suhaimi's contentions for the same reasons set out earlier. The Judge found it more logical that Izwan would have weighed 250g of the substance itself, excluding the packaging. The fact that HSA weighed the contents as 249.5g was strong evidence that Izwan did so. In any event, Suhaimi's contention merely assumed that Izwan's weighing process was accurate. He did not adduce any evidence of the accuracy of Izwan's weighing scale although he bore the burden of proof on this point: First Judgment at [89]–[96].

44 On appeal, Suhaimi relied on Izwan's unchallenged testimony that the entire amount of Ice that Izwan passed to Suhaimi, including the packaging, weighed 250g. Suhaimi argued that this was inconsistent with the weight of F1B1 which ASP Bong recorded as 265.66g (including the packaging) and with HSA's recorded weight of the crystalline substance in F1B1 at 249.5g. Suhaimi

relied on the dissenting judgment by Chao Hick Tin J (as he then was) in *Lim Swee Seng v Public Prosecutor* [1995] 1 SLR(R) 32 ("*Lim Swee Seng*"). There, the Judge noted that the gross weight of some drug exhibits obtained by the investigating officer was inconsistent with the gross weight of the same drugs obtained by the scientific officer in the Department of Scientific Services and this raised a reasonable doubt as to the custody of those drugs (at [66] and [71]). Suhaimi submitted that as Izwan's testimony was unchallenged, it was not open to the Judge to question (a) Izwan's evidence that the weight of 250g was inclusive of the packaging; or (b) the accuracy of Izwan's weighing process.

45 Suhaimi relied on *Lim Swee Seng* in his submissions. We do not accept Suhaimi's contentions. The discrepancy in *Lim Swee Seng* concerned inconsistent drug weights recorded by different officials handling the same exhibits. In contrast, the alleged discrepancy here is between an informal measurement by Izwan using equipment of unknown accuracy and precision and the subsequent official measurements by law enforcement officers and the HSA using calibrated equipment. The slight variations in weight recorded by the CNB and the HSA were easily explicable by the different weighing methodology used. Moreover, unlike in *Lim Swee Seng*, there is compelling evidence linking F1B1 to both appellants. Izwan's DNA was found on the exhibits, the packaging matched materials from Izwan's apartment and Suhaimi, in his Fourth Statement, identified F1B1 as the Ice that he ordered.

46 Suhaimi also alleged that there were contradictory accounts of how F1B1 was handled at the carpark. He claimed that SI Jason said he weighed F1B1 but Yusof stated an Indian officer weighed it. Sergeant Yogaraj s/o Ragunathan Pillay ("Sgt Yogaraj"), another officer at the scene, did not see SI Jason weighing or handling the drug exhibits. Suhaimi also testified that Staff Sergeant Muhammad Fardlie bin Ramli ("SSgt Fardlie") showed him F1B1,

while Zafar claimed that Senior Staff Sergeant Bukhari bin Ahmad ("SSSgt Bukhari") showed him F1B1 when there was no evidence of transfer of the package between the two officers: First Judgment at [85].

47 The Judge rejected the argument. Yusof testified during his re-examination that an Indian officer placed the drug exhibits on the weighing scale and the Chinese officer recorded the weight. Sgt Yogaraj testified that he did not see SI Jason weighing the drug exhibits as he was preoccupied with searching the car. Finally, SSSgt Bukhari testified that he did not show Zafar the drug exhibits: First Judgment at [86]–[88].

48 Suhaimi argues on appeal that the Judge erred in treating Yusof's evidence – that both SI Jason and Sgt Yogaraj were involved in weighing F1B1 – as consistent with SI Jason's evidence that he was the only one involved in weighing F1B1. In our judgment, this does not create any reasonable doubt as to the chain of custody of the drugs. F1B1 was always with SI Jason. Whether Sgt Yogaraj was involved in weighing F1B1 did not affect the chain of custody of F1B1.

49 As for Zafar's claim that SSSgt Bukhari showed him F1B1 despite there being no record of transfer of F1B1 between SSgt Fardlie and SSSgt Bukhari, Suhaimi submits on appeal that Zafar's claim ought to be believed as Zafar was the owner of the car and he would have been shown all the drug exhibits seized from the car. However, Zafar's claim is contradicted by SSSgt Bukhari's evidence that he did not do that so as to minimise the change of custody and the processing time for the case. In any event, even if SSSgt Bukhari was mistaken, that cannot raise any reasonable doubt as to the identity or integrity of F1B1.

Izwan's Statements to the CNB are admissible

The arguments at the trial

50 Izwan's primary defence in relation to the heroin is that he initially ordered five "biji" of heroin but later reduced this order to one "biji". The Prosecution's response is that this was not mentioned in any of his Ten Statements. When questioned about this omission, Izwan claimed he did not mention it due to threat, inducement or promise ("TIP") made by the CNB officers in relation to his First, Third, Fourth and Fifth Statements.

51 These are the details of Izwan's First, Third, Fourth and Fifth Statements:

(a) On 29 September 2017 at about 5.40pm, Staff Sergeant Muhammad Helmi bin Abdul Jalal ("SSgt Helmi") recorded a contemporaneous statement from Izwan in his apartment ("Izwan's First Statement"). In this statement, Izwan identified the seized exhibits as "ubat" (diamorphine) and "air batu" (Ice or methamphetamine) and said that they belonged to him and were meant for selling but he was "just a worker". He did not want to reveal whom he worked for. He stated that "Suhaimi had earlier messaged me to collect 250g of 'air batu' so I met to pass him the 'air batu'".

(b) On 3 October 2017 at about 10.18am, ASP Bong recorded a statement under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") from Izwan ("Izwan's Third Statement"). In this statement, Izwan said that Suhaimi instructed him to pick up five "biji" of diamorphine and half "batang" (500g) of Ice, told him that all of the Ice

save for 125g and three "biji" of heroin would be for Suhaimi's customers and asked him to hold on to the three "biji" of heroin first.

(c) On the same day (3 October 2017) at about 4.30pm, ASP Bong recorded a statement under s 22 of the CPC from Izwan ("Izwan's Fourth Statement"). In this statement, Izwan claimed that two and a half months before his arrest, he began receiving half "biji" of heroin daily from Suhaimi and that prior to his arrest, Suhaimi had asked Izwan to help him collect heroin on three occasions (the third being the pickup leading to the arrest). Izwan agreed to do so as he needed money. Izwan stated that while he was not paid for picking up the drugs, he knew he could earn money by selling the drugs to his own customers. It is not clear from the statement whether Izwan's "payment" was in drugs or whether Izwan's own drugs were simply lumped together with Suhaimi's.

(d) On 4 October 2017 at about 10.45am, ASP Bong recorded a statement under s 22 of the CPC from Izwan ("Izwan's Fifth Statement"). In this statement, Izwan said that of the five "biji" of diamorphine that he collected on the day of his arrest, the one "biji" which he had opened and repacked belonged to him and the other four "biji" belonged to Suhaimi "and were meant for his customers". He also reiterated that Suhaimi had instructed him three times to collect drugs. Izwan said he was not paid for picking up the drugs as Suhaimi did not offer him any money and he was afraid to ask because he needed the drugs to sell to his own customers for quick profit. Finally, he claimed that before he was sent to court on 30 September 2017, Suhaimi had tried to "buy" him to "not reveal [Suhaimi's] involvement with drugs" and that the reason he revealed Suhaimi's involvement "is because it is a fact and I think I

should not be the one facing the death penalty as I am just a worker under [Suhaimi]".

52 The Judge held two ancillary hearings to determine the admissibility of these statements. In the First Ancillary Hearing, the focus was on Izwan's Third, Fourth and Fifth Statements. Izwan alleged that ASP Bong made the following TIPs to him:

(a) On 30 September 2017 at around 5.16am, after the drug exhibits had been weighed, he spoke to ASP Bong and asked her to "let go" of his wife. ASP Bong replied: "Look, I have looked through your handphone. You give me Ahmad Suhaimi involvement in this and I will let your wife off." ASP Bong also told him: "If you play me out, I will pull your wife back."

(b) Shortly after that on the same day, while Station Inspector Eng Chien Loong Eugene ("SI Eugene") and Woman Senior Staff Sergeant Norizan binte Merabzul ("W/SSSgt Norizan") were escorting Izwan back to the lock-up, SI Eugene asked W/SSSgt Norizan who would be "facing the capital charge" the next day and she replied that Izwan and his wife would be. On hearing that, Izwan asked why his wife would face the capital charge when ASP Bong had promised to let her off. W/SSSgt Norizan then made a phone call after which she told Izwan that only Izwan would face the capital charge the next day.

(c) On 3 October 2017, before recording Izwan's Third Statement, ASP Bong told him: "Look, whatever we have discussed in the exhibit room regarding your wife, just remember that". During the recording of the statement, ASP Bong would also tell him to "[t]hink properly" and

"[r]emember your wife" whenever "certain things were not in her favour" during the recording of the statement.

(d) On the same day, before recording Izwan's Fourth Statement, ASP Bong told him: "Whatever we have discussed in the exhibit room, think about it properly" and "[t]hink of your wife".

(e) On 4 October 2017, before recording Izwan's Fifth Statement, ASP Bong told him: "Remember what we have discussed in the exhibit room. Please think properly" and "think about your wife". On the same day, after his Fifth Statement was recorded, ASP Bong rewarded him with a video call with his children in the presence of his mother-in-law ("Mdm Fauziah") and his sister-in-law.

53 The Second Ancillary Hearing addressed the voluntariness of Izwan's First Statement which was a contemporaneous statement recorded by SSgt Helmi in Izwan's bedroom. Izwan claimed that before recording the contemporaneous statement, SSgt Helmi asked him to whom the items in the bedroom belonged and he remained silent. After Izwan's wife left the bedroom, Ssgt Helmi's tone changed and he told Izwan that "he doesn't care and he will continue to take the statement because it's [Izwan's] life". He alleged that SSgt Helmi told him: "Okay, make it simple, if you admit that all these items belong to you, I will let go of --- I will let go your parents". When Izwan said "Okay, what about my wife?", SSgt Helmi told him to "ask the IO about that". Izwan then said "Okay" and the recording continued: First Judgment at [58]–[60].

The Judge's decision

54 The Judge found that the Prosecution had proved beyond reasonable doubt that ASP Bong had made no TIP to Izwan (in respect of Izwan's Third,

Fourth and Fifth Statements). His finding was based on several factors (First Judgment at [49]–[57]):

(a) ASP Bong's evidence that no TIP was given was corroborated by Shaffiq's evidence. Shaffiq was a freelance interpreter and thus an independent and objective witness, whose testimony withstood cross-examination.

(b) Sergeant Muhammad Hidayat bin Jasni ("Sgt Hidayat"), who was present during the weighing of exhibits and was escorting Izwan, confirmed that nothing unusual occurred at the material time. W/SSSgt Norizan and SI Eugene also denied Izwan's allegations regarding the discussion about who would face capital charges.

(c) Izwan's mother-in-law initially claimed Izwan made a video call but later clarified it was likely a regular phone call and she did not believe a video call was possible from a police station.

(d) While Izwan's wife was not charged, the reasons for this were not in evidence and she was not involved in the drugs which were central to the trial, making the fact that she was not charged equivocal at best.

(e) The Judge agreed with the Prosecution that Izwan likely gave his statements because he knew his WhatsApp messages with Suhaimi would incriminate them both anyway.

55 As for Izwan's First Statement, the Judge did not believe that SSgt Helmi had made any TIP to Izwan, citing several reasons (First Judgment at [62]):

(a) There was no reason for SSgt Helmi to start questioning Izwan about the items in the bedroom before he commenced recording the statement.

(b) Izwan's claim that he was induced by the promise to let his parents off without knowing if his wife would be released was illogical.

(c) There was no evidence that Izwan even tried to ask ASP Bong to let his wife off after ASP Bong arrived at the flat.

(d) The Judge opined that Izwan could not say that Sgt Helmi agreed to let his wife off for the purpose of the First Statement because, in challenging the Third, Fourth and Fifth Statements during the first ancillary hearing, he had alleged that ASP Bong promised to release his wife.

56 Izwan later submitted that the court should review the admissibility of his statements because a "key plank" of the Prosecution's case during the first ancillary hearing had become undermined. At that ancillary hearing, the Prosecution submitted that ASP Bong could not have asked Izwan to incriminate Suhaimi because when she was recording the statements, she had not checked Izwan's handphone and did not know that Suhaimi was known as Hustler. During the main trial, ASP Bong was recalled to testify and she clarified that she did know Suhaimi was known as "Hustler" before recording Izwan's Third Statement as she had gone back to check the investigation papers concerning Yusof and realised that Yusof had identified himself as Kimo and Suhaimi as Hustler in his statement recorded on 2 October 2017: First Judgment at [66].

57 The Judge disagreed with Izwan's submission. He held the view that ASP Bong's knowledge of Suhaimi's alias did not affect his reasons previously given for admitting Izwan's statements: First Judgment at [67].

58 Izwan also submitted that Shaffiq, when explaining what "something unusual" was such that he would note it down, referred only to "force or threat" and did not mention inducement or promise. Hence, it was not clear whether Shaffiq looked out for promises as well. The Judge rejected this submission, noting that Shaffiq used "force or threat" as examples of what "something unusual" meant and clarified during re-examination that he would have noted down anything sounding "like a promise or a threat": First Judgment at [68].

59 In Izwan's Sixth Statement, he stated that the initial agreement was for him to have two "bijis" of heroin and to safekeep the remaining three under Suhaimi's instructions. Izwan opened one "biji" for his own customer but Suhaimi could take the one "biji" of unopened heroin under Izwan's account if Suhaimi wanted. He also said that Suhaimi was the one who ordered the 500g of Ice. The Judge noted that Izwan did not challenge the admissibility of his Sixth Statement: First Judgment at [100(c)].

60 As the Sixth Statement appeared to incriminate both Izwan and Suhaimi, we asked Izwan's counsel at the appeal why it was admitted without challenge. Izwan's counsel explained that Izwan did not challenge the admissibility of his Sixth Statement because of the Judge's findings at the ancillary hearings that the Third, Fourth and Fifth Statements were voluntarily made. He contended that ASP Bong's promise to Izwan (to let his wife off) was still operating on Izwan's mind when he gave his Sixth Statement.

Arguments on appeal

61 In relation to Izwan's Third, Fourth and Fifth Statements, Izwan and Suhaimi submit that the Judge erred in:

(a) accepting ASP Bong's evidence as her credibility ought to have been impeached;

(b) placing too much weight on the interpreter Shaffiq's evidence;

(c) accepting the bare denials made by SI Eugene, W/SSSgt Norizan and Sgt Hidayat although they were not corroborated by supporting evidence;

(d) accepting that the evidence of Mdm Fauziah did not support Izwan's explanation that he was rewarded with a video call;

(e) not according more weight to the fact that Izwan's wife was not charged;

(f) not considering the objective evidence that Izwan made untrue assertions in his statements; and

(g) finding that Izwan gave his statements because he would have known that the WhatsApp messages between him and Suhaimi would incriminate both of them anyway.

62 Izwan and Suhaimi also highlighted that during Izwan's psychiatric evaluation, Izwan told the examining doctor, Dr Cheow Enquan, that it was unfair of the CNB to charge him for trafficking five bundles of heroin when he ordered only one bundle. He claimed he did not know why there were four extra bundles of heroin and said that he was planning to return the excess to the drug supplier as the quantity exceeded his capacity to sell. This psychiatric evaluation

was done between Izwan's Fifth and Sixth Statements. However, in Izwan's Sixth Statement, recorded on 13 December 2017 at about 2.24pm under s 22 of the CPC, Izwan did not mention to ASP Bong what he had said to Dr Cheow. Instead, he implicated Suhaimi by stating, among other things, the following:

> I remembered I was informed by Hustler to collect the 1/2 batang of Air Batu. In the whatsapp conversation, I casually asked Hustler if he ordered Panas, Hustler then asked me if I wanted to order. I told Hustler my stock of Panas was running low and that we could order the Panas. Hustler agreed. The usual amount for each order from Mamak is 5 "biji" of Panas. The initial agreement was to have 2 "biji" of Panas for me and to safekeep the other 3 "biji" of Panas under Hustler's instructions. However, I have only opened 1 "biji" of Panas which was meant for my own customer. Hustler could take the 1 "biji" of unopened Panas under my account if he wanted to.
>
> …
>
> Hustler was the one who ordered the [1/2 batang of] Air Batu.

63 Izwan asserts that his account to Dr Cheow during his psychiatric evaluation, given when he was in the "safe confines of the interview", was the truth. He contends that his subsequent reversion to a different narrative in his Sixth Statement demonstrates that TIP was made.

64 In relation to Izwan's First Statement, the appellants submit that the Judge erred in:

(a) finding no reason for SSgt Helmi to start asking him about the items in the bedroom before he commenced recording the statement.

(b) finding it illogical that Izwan would be induced by SSgt Helmi's promise about his parents, without knowing whether his wife would be let off.

(c) finding no evidence that Izwan tried to ask ASP Bong to let his wife off after ASP Bong arrived at the flat in Block 27.

65 As for Izwan's Sixth Statement, the appellants maintain on appeal that Izwan did not challenge the Sixth Statement at the trial because the Judge had already decided at the first ancillary hearing that no TIP was made by ASP Bong. If the court finds that there is a reasonable doubt that ASP Bong did make a TIP to Izwan, then the Sixth Statement should also be excluded, given Izwan's testimony that the promise was still operating on his mind when ASP Bong recorded his Sixth Statement.

66 At the appeal hearing, when Izwan's counsel was asked to identify exactly what was false or omitted from Izwan's statements, counsel submitted that Izwan was told to incriminate Suhaimi with a "free hand". The respective CNB officers did not dictate what he should say. Izwan's evidence was that he was told to "give … Suhami's involvement" in his statements. As such, Izwan claimed he concocted the details of Suhaimi's involvement in the heroin and the Ice in his First, Third, Fourth and Fifth Statements.

67 To summarise, Izwan claims that contrary to what he stated in those statements, the truth is that he was not Suhaimi's worker and that he had changed his order of heroin from five "biji" to one "biji" during the early hours of 29 September 2017. Therefore, four extra "biji" were delivered and he did not safe-keep three "biji" of heroin for Suhaimi.

Our decision on Izwan's Statements

68 In our judgment, the Judge was correct in concluding that Izwan's Statements were made by him voluntarily without any TIP. Additionally, as we will explain later, Izwan and Suhaimi are not able to raise any reasonable doubt

regarding the number of bundles of heroin ordered and delivered nor as to Izwan's intention to traffic all the Ice. There is also no reasonable doubt as to Suhaimi's knowledge of Izwan's intention to traffic all the Ice.

(1) Izwan's Third, Fourth and Fifth Statements

69 We do not accept the submission that Izwan's Third, Fourth and Fifth Statements should be excluded because ASP Bong's credit ought to have been impeached. ASP Bong may not have been meticulous in her recording of the drugs and/or her recollection of certain events. However, there is nothing which suggests that she was careless, let alone untruthful, when recording Izwan's Statements. In any event, even if ASP Bong were impeached, that would not result in the automatic exclusion of statements taken by her: see *Pigg, Derek Gordon v Public Prosecutor and another matter* [2022] SGHC 5 ("*Pigg v PP*") at [48].

70 The Judge did not err in relying on Shaffiq's evidence. Izwan's submission is that Shaffiq was only looking out for force or threat used against Izwan, rather than promises or inducement made, based on his testimony during cross-examination. As the Judge pointed out, Shaffiq testified in re-examination that he would have noted down "Remember what we talked earlier on. Make sure you do it" if those words had been uttered because they "sound[s] like a promise or threat".

71 Suhaimi submits that Shaffiq was not an independent witness as he had been providing interpretation services for CNB for more than three years before Izwan's case. Also, he did not participate substantially in the interview process as most of the interview was conducted in English. By Shaffiq's own admission, his services were mostly engaged only at the end of the interview, when the

contents of ASP Bong's typed interview were printed out and he interpreted the statement in Malay to Izwan. Hence, Suhaimi argues that it was "unlikely that he could have been definitive or conclusive about whether ASP Bong had issued a threat, inducement or promise at any point in the course of the interview or statement-taking process". In our view, even if Shaffiq was not as engaged in the interview as a typical interpreter would have been because of the circumstances of the interview, this is merely a neutral factor which does not make Shaffiq's evidence less reliable.

72 The fact that Shaffiq had interpreted for CNB for over three years at the time of the taking of the statements does not make him a witness who lacks impartiality. The logic of Suhaimi's submissions would mean that every experienced interpreter used by the CNB or the police cannot be a reliable witness in court.

73 We do not think that the Judge was wrong in accepting the evidence of SI Eugene, W/SSSgt Norizan and Sgt Hidayat that nothing unusual occurred and that there was no discussion about who would face capital charges while they were escorting Izwan. Izwan submits that their denials were "equivocal" and did not prove beyond a reasonable doubt that nothing happened during the escorting of Izwan to the lock-up as they said that they could not remember various details instead of denying them outright. SI Eugene only started to disagree with the Defence's put questions in cross-examination. Suhaimi submits that the CNB officers' denials were bare ones. However, it must be remembered that more than three years had elapsed between the arrest and the trial. In this context, what the CNB officers were saying was merely that nothing unusual or noteworthy occurred as far as they could recall.

74 Mdm Fauziah was asked in her evidence-in-chief "what was the type of call that was made" to her mobile phone. She replied that it was a video call and that Izwan spoke to her and his children over a video call. In cross-examination, however, she testified that she could not remember well because it had been "quite some time" and that it could have been a normal phone call rather than a video call. She then added that a video call may not have been possible because Izwan was then in custody at the Cantonment Police Complex.

75 The appellants submit that Mdm Fauziah's evidence was speculative. Suhaimi submits further that Mdm Fauziah spoke the truth when she was allowed to tell her own story in examination-in-chief. Her subsequent uncertainty about her evidence, upon realising that a detainee is usually unable to make video calls, does not make her own memory and recollection wrong. The Prosecution submits that Mdm Fauziah's testimony shows that Izwan's claim of the video call was fictitious.

76 The Judge found that Mdm Fauziah "did not recall any video call from Izwan after he had been arrested" and that she would have recalled if there was a video call: First Judgment at [53]. In the circumstances set out above, we do not see how such a finding could be said to be against the weight of the evidence.

77 Next, Izwan and Suhaimi argue that the Judge erred in not placing more weight on the fact that Izwan's wife was eventually not charged as supporting Izwan's contention about TIP having been made which would impugn the voluntariness of his statements. The Judge found that the fact that Izwan's wife was not charged was equivocal at best, as she was not involved in the drugs that were the subject matter of the trial: First Judgment at [54]. However, Izwan and Suhaimi submit that serious doubts are raised by Izwan's wife's quick exoneration. According to them, the CNB's case against her was dropped

suddenly at a very early stage. As at the date of arrest on 29 September 2017, she was suspected to be involved in drug trafficking. W/SSgt Norizan testified that she served the Mandatory Death Penalty ("MDP") Notice on Izwan's Wife. Despite this, Izwan's wife was not charged and her DNA sample was not even obtained for analysis in relation to the drug exhibits. This was unusual because on 4 October 2017, the CNB collected DNA samples from the other occupants in Izwan's flat, namely Izwan, his mother and his stepfather. The appellants point out that the CNB was not able to explain why Izwan's wife was not charged.

78 The Prosecution submits that these arguments are "pure conjecture". There was a dearth of evidence linking Izwan's wife to the drugs found in the bedroom. Izwan accepted that there were no messages or phone call logs in his mobile phones that would have incriminated his wife. Further, Izwan had informed the CNB officers that his wife was not involved in the drugs found in his bedroom.

79 We agree with the Judge that CNB's decision not to charge Izwan's wife or to take samples of her DNA is a neutral factor. The CNB's decision not to charge Izwan's wife would be the logical outcome of its investigations and assessment and its decision would be supported amply by Izwan's own statement exculpating her and the absence of any incriminating evidence against her in the messages and phone call logs retrieved from his mobile phones.

80 Suhaimi submits that the Judge failed to consider that Izwan made untrue assertions in his statements to the CNB. These assertions pertained to the inconsistencies between Izwan's Fifth Statement (which stated a one-four sharing of the bundles of heroin between Izwan and Suhaimi) and Izwan's Third and Sixth Statements as well as the parties' cases of a two-three sharing of the

bundles between Izwan and Suhaimi. Suhaimi claims that this shows that Izwan lied while giving his statements, indicating that Izwan was induced into giving untrue statements.

81 In our judgment, however, there is no inconsistency once one looks at this portion of Izwan's Sixth Statement:

> The initial agreement was to have 2 "biji" of Panas for me and to safekeep the other 3 "biji" of Panas under Hustler's instructions. However, I have only opened 1 "biji" of Panas which was meant for my own customer. Hustler could take the 1 "biji" of unopened Panas under my account if he wanted to.
>
> …
>
> Hustler was the one who ordered the [1/2 batang of] Air Batu.

Izwan admitted that their eventual arrangement was that Suhaimi could take the second "biji" under Izwan's account if Suhaimi wanted it.

82 Even if Izwan lied regarding the above or was giving an evolving account to the CNB, that is nothing unusual because the cases show that accused persons often do so in various degrees. It does not point necessarily to the conclusion that the lies or half-truths resulted from TIP from the recording officer. It is ultimately for the trial court to decide what the truth is after considering all the evidence adduced.

83 Our comments on inconsistent investigating statements apply also to Izwan's account to Dr Cheow. Izwan told Dr Cheow that he did not know why there were four extra bundles of heroin and said that he was planning to return the excess to the drug supplier as the quantity exceeded his capacity to sell. Whether this is true has to be determined after considering all the evidence. We therefore disagree with the submissions that this is the truth because it differs from Izwan's statements and that he only dared to tell the truth to Dr Cheow

because he was then in the "safe confines of the interview" and away from ASP Bong's TIP.

(2) Izwan's First Statement

84 We agree with the Judge that Izwan's First Statement recorded in his bedroom in the flat was made by him voluntarily. It was strange for Izwan not to ensure that his wife would not be implicated in the drugs before agreeing to SSgt Helmi's alleged demand to make things simple and admit that all the drug items belonged to him. Although SSgt Helmi took 80 minutes to record Izwan's First Statement comprising 21 questions, compared to Suhaimi's First Statement which comprised 18 questions and took only 40 minutes, it is speculative to say that the longer time taken suggested that parts of the conversation between SSgt Helmi and Izwan were not recorded. Some people speak and write faster than others. There could also be moments of silence when either the recording officer or the accused person pauses to think. Even Izwan testified that he remained silent when SSgt Helmi asked him about the ownership of the drugs items in the bedroom.

85 The appellants submit that the Judge erred in finding that there was no evidence that Izwan tried to ask ASP Bong to let his wife off. Izwan was not cross-examined on whether he attempted to speak to ASP Bong. The CNB officer would have been occupied with other matters and there was no evidence that Izwan saw her arrive at the scene. Further, Izwan testified in Court that he did ask to speak to ASP Bong in private when he had a reasonable opportunity to do so.

86 We have set out the Judge's reasons for admitting Izwan's Statements. We see no reason to disagree with the Judge's findings as they cannot be said to be against the weight of the evidence.

The Heroin Charges are made out beyond reasonable doubt

87 Izwan and Suhaimi argue that Izwan reduced his order of heroin from five to one "biji". In any event, there was no joint order of heroin. Izwan asked Suhaimi to place an order for heroin "macam biasa" ("as usual" in Malay) without specifying the quantity and Suhaimi merely relayed "Izwan order as usual" to Arun without knowing what "as usual" meant. Suhaimi also claimed that he knew little about heroin and had never packed it. Further, the appellants did not know of each other's intention to traffic in the respective shares of heroin.

There was no reduction in the order for heroin to one "biji"

88 The appellants claim that in the early hours of 29 September 2017, Suhaimi used Izwan's phone to call Arun, telling Arun that Izwan wanted to reduce his order of heroin from five to one "biji". After Izwan took over the call, Arun agreed reluctantly. The appellants also claim that Izwan did not know there were five "biji" in the bag when he collected it later. According to Izwan, after collecting the drugs and just before he boarded the private hire car to head home, he told Suhaimi over the phone that something was amiss with the order. Suhaimi then told Izwan to contact Arun if there was anything wrong with the order. Izwan did so and made arrangements with Arun to return the excess bundles of heroin.

89 The Judge rejected this defence and we agree with the Judge. First, the sequence of communications showed that the original order was for five "biji"

of heroin and 500g of Ice. The alleged reduction of the heroin to one "biji" supposedly occurred in the early hours of 29 September 2017. However, the subsequent messages between Arun and Suhaimi continued to relate to the original order and were focused entirely on payment arrangements, with no mention of any reduction in the order or of excess drugs to be returned.

90 Izwan sought to explain this by saying that he deleted call logs related to drug activities to avoid quarrelling with his wife. Like the Judge, we disbelieve this explanation. Izwan did not delete the WhatsApp messages containing far more details about Izwan's drug activities than a mere call log.

91 Second, the appellants' account about the events after Izwan collected the drugs is irreconcilable with the messages between the appellants and with Suhaimi's Eighth Statement:

(a) When Suhaimi messaged Izwan at 1.58pm on 29 September 2017 asking him to "[c]heck if everything is enough". Izwan replied, "Enough boss. If not enough, you know my mouth later". This exchange would not have taken place if Izwan had already spoken to Suhaimi about something being amiss.

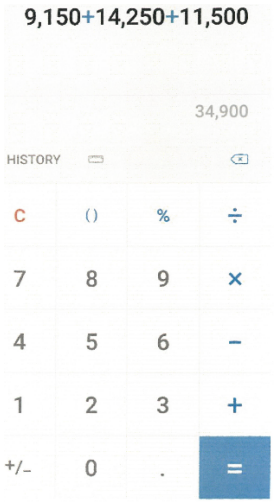
(b) In Suhaimi's Eighth Statement, he asserted that during a phone call while Suhaimi was on his way to meet Izwan, Izwan sounded a little angry. When the appellants met, Izwan questioned Suhaimi about an "excess" in the order. Suhaimi merely replied that he did not know and "did not bother to ask much" because "it was not my problem" and because of Izwan's unhappy tone towards him. Suhaimi then went back into the car and told Yusof about what Izwan said and asked him to contact Arun directly. However, Yusof asked Suhaimi to make the call

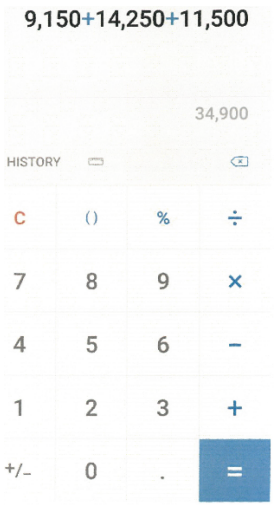
> instead. Before they could decide who would contact Arun, the persons in the car were arrested. Again, this is inconsistent with the evidence. Izwan collected the drugs around 12.46pm. If Izwan had spoken to Suhaimi about something having gone amiss before boarding the car to go home, none of the above events detailed in Suhaimi's Eighth Statement would have happened.

92 If Izwan had cancelled the orders for four "biji" in Suhaimi's presence in the early hours that day, it is implausible that he would not have mentioned this specific excess over the phone subsequently. Further, if Izwan truly believed that there was an excess delivery, he would have spoken to Suhaimi directly about the four excess "biji" since Suhaimi was the primary contact with Arun, instead of making only a general complaint about an "excess". Suhaimi's alleged reaction of nonchalance is totally at odds with the seriousness of the matter since he was aware of the drastic reduction in the order in the early hours that day.

93 Third, there were no messages from the appellants to Arun about the reduction in the order for the heroin from five to one "biji". There was also no evidence of any phone call made to Arun from Izwan's mobile phones at the material time.

94 Fourth, the messages between Arun and Suhaimi indicate that Arun was still asking for payment of five "biji" of heroin, even after the purported phone call to Arun to reduce the order for heroin. The sequence of messages between Arun and Suhaimi (translated from Malay to English) on 29 September 2017 is as follows:

Time (UTC+8)	From	Translated
12:59:36	Arun	
12:59:41	Arun	Abg [short for "abang", meaning "brother" in Malay], check correct or not
12:59:50	Suhaimi	How much is cold?
12:59:56	Suhaimi	Hot 2800?
13:00:17	Arun	11500 cold 2850 hot
13:00:52	Suhaimi	Hot cannot come back down boss?
13:00:56	Suhaimi	2800?
13:01:33	Arun	My boss give this price for this brg bang [short for "abang"]
13:01:45	Arun	If hot, the other one is 2800
13:01:51	Arun	This is good
13:01:56	Arun	Because of that
13:02:04	Suhaimi	😒

13:02:22	Arun	Never mind bang, I will give 2800 from the next work. I will deduct from my salary.
13:02:32	Suhaimi	👌
13:02:36	Arun	👍😭
13:02:51	Arun	Bang, is the balance correct?
13:02:56	Suhaimi	Correct
13:03:03	Arun	Ok tq
13:03:17	Arun	How much can abg give me tonight?
13:03:24	Arun	Estimate
13:03:47	Suhaimi	I will update in the evening
13:03:48	Arun	
13:03:56	Arun	Ok boss

95 The Judge reasoned that the above messages showed that Suhaimi was confirming that the computation in the calculator image was correct. He also pointed out that it was "no mere coincidence the total price of five 'biji' of

heroin at $2,850 per 'biji' is exactly $14,250". As for the figure "9150", the Judge stated that it was Suhaimi's own case that there was a running account with Arun: First Judgment at [117].

96 Suhaimi's response, both at the trial and on appeal, is that he understood Arun's question – "is the balance correct" – to refer to Arun's earlier message that said "11500 cold 2850 hot" (with "cold" referring to Ice and "hot" referring to heroin). He claimed that he did not see the image as he was driving at that time and this was evidenced by Arun re-sending the calculator image to Suhaimi. The Judge found Suhaimi's assertions incredible. Arun's earlier message was sent in reply to Suhaimi's questions as to the price of Ice and heroin and merely stated the price of one packet of 500g of Ice and one "biji" of heroin. There was no balance that required confirmation. The balance could only have referred to the sum of "34,900" in the calculator image. In Suhaimi's Seventh Statement, he also confirmed that the image was "the calculation of debt needed to be paid": First Judgment at [118].

97 We agree with the Judge. We do not believe that Suhaimi's response of "correct" was referring to the message "11500 cold 2850 hot". That makes little sense as Suhaimi had just tried unsuccessfully to lower the price of heroin. Given that Arun had stated that one "biji" of heroin would cost $2,850 just before he asked if the "balance" was correct, Arun was clearly not asking about the unit price of heroin. Moreover, Suhaimi's claim that he did not see the calculator image while somehow seeing the message "11500 cold 2850 hot" is contrived, especially as this message was sent merely four messages later and about 41 seconds after the calculator image. In any event, the calculator image was re-sent by Arun to Suhaimi at the end of this series of messages. It therefore defies belief that Suhaimi would not have clarified that he had to pay only

$2,850 for one “biji” rather than $14,250 if the order for heroin had already been reduced from five to one “biji”.

98 Izwan relies on three messages that Arun sent to Suhaimi on 29 September 2017 between 8.25pm and 8.41pm which indicated that Arun was trying to contact Suhaimi because “[his] man was waiting”. He claims that these messages show that arrangements had been made to return the alleged excess heroin.

99 We do not accept Izwan’s contention. We agree with the Judge (First Judgment at [120]) that Arun’s man was waiting to collect payment from Suhaimi because Arun was expecting some payment that night. This is evidenced by the fact that Arun had asked Suhaimi to estimate how much money he could pay that night and Suhaimi had replied that he would “update in the evening”. Izwan’s submission is also contradicted by Suhaimi’s Eighth Statement in which Suhaimi claimed that he and Yusof were arrested before they could call Arun to settle the issue of the excess heroin.

100 Izwan claimed he spoke to Arun in the early hours of 29 September 2017 to reduce the order of heroin from five to one “biji”. Later in the day, he called Arun again after collecting the drugs to inform him about the oversupply. Suhaimi argued that Arun's messages to him that afternoon showed that Arun was asking for the return of the extra four “biji” and that his runner was waiting to collect them. However, if Izwan was the one who arranged with Arun to return the excess four "biji", why would Arun then chase Suhaimi for the return of the extra four “biji”?

101 Clearly, Arun was chasing Suhaimi for some payment for the five “biji” of heroin and the 500g of Ice that were delivered because Suhaimi did not update

Arun about payment by evening time despite his promise to do so in the messages. The messages do not show in any way that there was a reduction of the order for heroin.

102 Fifth, Izwan's claim that he paid for only one "biji" of heroin in three separate instalments from 28–29 September 2017 is unconvincing. Izwan testified on 18 May 2021 that the cost of one "biji" of heroin was $3,400 and that on 28 September he made bank transfers of $1,000 and $1,400 to Arun. On 29 September, knowing that his final order was for only one "biji" of heroin, Izwan made a third payment of $1,400 in cash to Arun's runner, with the excess $400 paid meant as a token of goodwill for allowing the reduction of the order. On 19 May 2021, he changed his story, saying that the $3,400 included Yusof's debt to Arun which he helped to settle and that the price of one "biji" of heroin was only $2,800.

103 We do not believe his testimony:

(a) Suhaimi's own case was that he had a running account with Arun, meaning that Arun did not expect full upfront payment for each delivery. This is also shown in the messages between Arun and Suhaimi referred to above. In Suhaimi's Eighth Statement, he acknowledged that $11,500 was for the 500g of Ice and that it "will be on credit to Arun". Izwan's payment of $3,400 could therefore have been for a previous transaction.

(b) Izwan's bare allegation – that the price of one "biji" of heroin is $2,800 – is contradicted by the above messages in which Suhaimi's request for the price of one "biji" to be lowered from $2,850 to $2,800 was turned down.

(c) Izwan's sudden change in his testimony regarding the price of one "biji" from $3,400 to $2,800 shows that he was not telling the truth.

104 Sixth, Izwan's conduct after collecting the drugs contradicts his claim that there were four extra "biji" of heroin:

(a) Izwan would have known from the weight of the bundles that he collected that there were excess drugs. One "biji" of heroin weighs around 450g or about one pound. The excess four "biji" would weigh about four pounds. There is an obviously noticeable weight difference between a package of one pound and 500g (being the weight of the Ice) and a package weighing five pounds and 500g. This is especially so when the recipient is conscious of the fact that he has reduced his order just 10 to 11 hours earlier. Izwan handled drugs before. Despite the obvious discrepancy in weight, he did not raise any objections but merely brought the drugs back to his home.

(b) Suhaimi messaged Izwan at 1.58pm on 29 September 2017 asking him to "[c]heck if everything is enough". Instead of telling Suhaimi that there appeared to be too much, Izwan replied, "Enough boss. If not enough, you know my mouth later". According to Izwan's own testimony, he knew by then that he had received an excess of four "biji" of heroin. Izwan claimed that (a) when he replied "enough" to Suhaimi, he was referring to the one "biji" of heroin and 500g of Ice; and (b) he did not see any reason to inform Suhaimi about the excess four "biji" because he had already spoken to Arun about the same. The Judge found it unbelievable that having been asked to check if the drugs were 'enough', Izwan would not have mentioned the excess heroin: First Judgment at [119]. We agree with the Judge. There was also no evidence

> of any phone call between Arun and Izwan between 12.46pm on 29 September 2017 which, Izwan agreed, was roughly the time that he received the drugs and 1.58pm on 29 September 2017 when Suhaimi messaged Izwan. These show that Izwan's explanation was a lie and that the truth was that there was no reduction in the order for heroin.

105 Seventh, the appellants rely on the fact that Izwan opened and weighed only one of the five bundles of heroin, marked A7, and the 500g of Ice. The remaining four "biji" of heroin were left intact and the three "biji" of heroin which Izwan claimed in his Third Statement belonged to Suhaimi were not sent to Suhaimi. The appellants contend that it is axiomatic that drug peddlers would weigh their goods upon receipt to confirm that they had received what they paid for. Hence, if Izwan and Suhaimi had put up a joint order for five "biji" of heroin, logically the first thing they would have done after receiving the drugs would be to unpack the bundles and weigh each "biji" of heroin.

106 In our view, this factor is at best a neutral one if we consider the many events that took place after Izwan collected the drugs at Toh Guan East at around 12.46pm on 29 September 2017. From there, he left in a GrabCab for his home in New Upper Changi Road. A search on Google Maps shows that the distance between these two locations is about 25km and the journey by car would take approximately 30 minutes. Making allowance for traffic conditions on a weekday (29 September 2017 was a Friday), driving speed, walking time and time in the lift, Izwan would have arrived home at his 12th floor flat in Block 27 at around 1.30pm. This estimated time of 44 minutes for the journey home is consistent with the time taken for the initial journey from his home to Toh Guan East (see [13] above).

107 In his flat, Izwan had to do a number of tasks. These included:

(a) weighing and repackaging one packet of heroin into 11 smaller packets, with some time spent weighing each smaller packet, then placing the balance in the tray A3;

(b) repacking the 500g of Ice into four 125g packets, with some time spent weighing each packet;

(c) going down from his 12th floor flat to the 11th floor to place one 125g packet of Ice for Suhaimi's customer to collect;

(d) repackaging his own 125g packet of Ice into 11 small sachets, with some time spent weighing each one; and

(e) going down from his 12th floor flat to the ground level to meet Suhaimi and his two friends at about 4pm to pass Suhaimi the 250g of Ice.

The period for doing all these was about 2 hours and 30 minutes. Within this limited time frame, assuming that Izwan did not weigh the other unwrapped bundles of drugs, it was hardly surprising that Izwan would not have had the time to do so.

108 As for the reason why three "biji" of heroin said to be Suhaimi's share were not also delivered to Suhaimi together with his share of the Ice, the answer could be found in Izwan's Third and Sixth Statements. There, Izwan explained that three "biji" were for Suhaimi's customers and Suhaimi had told him to safe-keep the three "biji" first and wait for his instructions.

109 Eighth, the appellants have no satisfactory explanation for the following messages. At 10.29am on 29 September 2017, when Suhaimi re-sent to Izwan photographs received from Arun of five "biji" of heroin and 500g of Ice (as

Izwan was unable to open the same photographs sent earlier at around 12.44am that day), Izwan did not ask why there were five "biji" instead of one although he had allegedly reduced the order for heroin some hours earlier. When confronted with this, Izwan claimed that he only cared about the heroin's colour since he had informed Suhaimi already about the reduction.

110 The Judge disbelieved his explanation. There was no message from Izwan to Suhaimi asking to see the colour of the heroin. If Izwan wanted only to see the colour of the heroin, Suhaimi would not need to send photographs of the Ice as well: First Judgment at [113]. We agree with the Judge that Suhaimi sent the photographs to show Izwan that five packets of heroin and one packet of Ice would be delivered. Izwan's failure to ask why there were still five "biji" depicted in the photographs despite his earlier reduction of the order undermines his defence.

111 Finally, we agree with the Judge that Izwan's Third and Sixth Statements showed that he ordered five "biji" of heroin and he was supposed to safe-keep three "biji" for Suhaimi. Considered together, the evidence showed beyond reasonable doubt that Izwan ordered five "biji" of heroin and that he did not reduce the order to one "biji" at any time.

The order for heroin was not for Izwan alone

112 The Judge found that Izwan and Suhaimi made a joint order for five "biji" of heroin, which they would split two-three between their customers. First, as we have mentioned above, Izwan's Third and Sixth Statements showed that he ordered five "biji" of heroin, three of which he would keep for Suhaimi pending his instructions.

113 Second, on the night of 27 September 2017, two days before the drug transaction, Suhaimi messaged Arun on WhatsApp, telling him that his heroin was finishing. This showed that Suhaimi was also ordering heroin for himself and not just for Izwan. Suhaimi claimed that he was "actually referring to Izwan's heroin" but the Judge disbelieved this. If Suhaimi meant to refer to Izwan's heroin, he could have simply said so: First Judgment at [105].

114 Izwan submits on appeal that there was no evidence that Suhaimi gave any instruction regarding the heroin that was collected by Izwan. Suhaimi's voice message to Arun on 27 September 2017 that his "hot" was finishing was sent three minutes after Izwan sent Suhaimi a photograph of heroin in a tray with the text "I am just left with this". Izwan testified that he told Suhaimi the previous day (on 26 September) that his heroin stock was running out and he wanted to place an order. This supports Suhaimi's testimony that he was referring to Izwan's heroin supply, not his own.

115 In our judgment, whether Suhaimi was referring to his or to Izwan's supply of heroin does not cast reasonable doubt on Izwan's Third and Sixth Statements in which Izwan admitted that three "biji" were for Suhaimi. The evidence showed that Izwan bore a disproportionate risk in collecting, repacking and delivering drugs compared to Suhaimi. This indicates that Izwan was working for Suhaimi, as we elaborate at [128] below.

116 Third, the Judge found that the evidence contradicted Suhaimi's claim that he did not traffic in heroin (First Judgment at [106]):

> (a) Izwan's Fourth Statement: Izwan detailed multiple instances where Suhaimi involved him in heroin trafficking, including instructing him to repack heroin and deliver to Suhaimi's customers. Suhaimi's

WhatsApp message to Izwan on 18 September 2017, asking him to "cook" (meaning to repack) four "biji" of heroin, further supported this. Suhaimi offered no credible explanation for these messages.

(b) Suhaimi's other WhatsApp messages to Izwan: Suhaimi sent three messages to Izwan on 19 September 2017 within a three-minute time frame. In those messages, Suhaimi ordered a "half stone" of heroin for the next day and discussed whether there was a need to "cook" and when to deliver it. These showed clearly Suhaimi's active involvement in trafficking. Izwan's claim that Suhaimi was merely recommending customers or ordering on these customers' behalf was rejected by the Judge because the messages spoke for themselves.

(c) Suhaimi's WhatsApp Messages to Arun: In Suhaimi's messages to Arun on 21, 22 and 29 September 2017, Suhaimi told Arun that he would finish all his heroin by Sunday, asked Arun to deliver five pieces of heroin and 500g of Ice and mentioned that his customer wanted one piece of heroin on Sunday. All these indicated Suhaimi's involvement in trafficking. Suhaimi had no credible explanations for these messages.

117 Izwan submits that even if Suhaimi trafficked heroin in the past, that was not proof that Suhaimi made a joint order of heroin with Izwan on this occasion. In our judgment, it is relevant that on 18–19 September 2017, Suhaimi ordered a "half stone" of heroin for his customer and instructed Izwan on how to repack and deliver them:

Time (UTC+8)	From	Translated
18/9/2017	Suhaimi	I have someone who wants 50

23:58		
23:59	Suhaimi	Have you cook?
	Izwan	He wants now
	Suhaimi	tomorrow
	Izwan	I already cook. Okay, earlier was half piece. I already sent my friend's. With two set okay.
19/9/2017 0:00	Izwan	I am not cooking the other 2 halves first. I will leave it first.
	Suhaimi	I order half stone for tomorrow. No need to cook.
0:01	Suhaimi	No need to cook the half stone. I advice you right, 1 piece 1 stone, you cook 30 bag first. Then the balance, you send the half stone. No need to cook
	Suhaimi	Have you cook? Did you get 60 bag?
	Izwan	Yes, I already have one half piece for standby. Done. Yes correct okay.
…		
0:02	Izwan	I called my father to do. I am cooking with my father.
0:03	Suhaimi	Okay okay okay. Now I am, the half stone that is uncooked, the one that do need to cook. For tomorrow, he wants it in the morning but I do not know what time he wakes up tomorrow.

These messages showed that Suhaimi worked with Izwan to traffic heroin and their mode of operation. The Judge was entitled to take the nature of their working relationship into account. The above messages were not from the

distant past but were exchanged about 10 days before the drug transaction in question here.

118 Suhaimi was charged with abetting Izwan to traffic in heroin, an offence under s 5(1) read with s 12 of the MDA. Section 12 of the MDA provides:

> **Abetments and attempts punishable as offences**
>
> **12.** Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

119 The word "abets" in s 12 of the MDA bears the same meaning as it does in s 107 of the Penal Code (see *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18 at [33]). Section 107 of the Penal Code reads:

> **Abetment of the doing of a thing**
>
> 107. A person abets the doing of a thing who —
>
> (a) instigates any person to do that thing;
>
> (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> (c) intentionally aids, by any act or illegal omission, the doing of that thing.

The Prosecution relies upon s 107(*b*) of the PC in charging Suhaimi. The elements of abetment by conspiracy are: (a) the person abetting must engage with one or more other persons in a conspiracy; (b) the conspiracy must be for the doing of the thing abetted; and (c) an act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing: *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Kelvin Chai*") at [76].

120 The fault element for abetting a drug trafficking offence by conspiracy is that the abettor must have: (a) intended to be party to an agreement to do an unlawful act; and (b) known the general purpose of the common design and that the act agreed to be committed is unlawful: *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 at [34]. It is not necessary for all the co-conspirators to be equally informed of the details of the common design; it suffices that they know the general purpose of the plot and that the plot is unlawful: *Nomura Taiji & Ors v Public Prosecutor* [1998] 1 SLR(R) 259 at [110]. The abettor must also have known of the nature of the drugs trafficked: *Chandroo Subramaniam v Public Prosecutor and other appeals* [2021] SGCA 110 at [35].

121 We have already rejected the appellants' claim that they called Arun in the early hours of 29 September 2017 to reduce the order for heroin. The Judge was correct in rejecting the appellants' claim that Suhaimi merely placed an order for heroin "as usual" on behalf of Izwan without knowing what the quantity was (First Judgment at [103]). That claim is contradicted by Izwan's Third and Sixth Statements. The evidence shows that Suhaimi placed and arranged the order for the five "biji" of heroin and instructed Izwan to collect the drugs. There was clearly a conspiracy for Izwan to possess five "biji" of heroin and the Ice. It was equally clear that Izwan possessed the heroin and the Ice for the purpose of trafficking and that Suhaimi not only knew this, he was actually deeply involved in the trafficking.

Izwan possessed the five "biji" of heroin for the purposes of trafficking

122 We agree with the Judge that it is clear from Izwan's Third Statement that "the arrangement between Izwan and Suhaimi was that two "biji" of heroin were for Izwan to sell and three were for Suhaimi to sell". The evidence

established Izwan's intention to traffic in the five "biji" of heroin by selling two of them and by delivering three of them according to Suhaimi's instructions. There can be no dispute that this would fall within the meaning of trafficking under s 2 of the MDA.

123 Further, since actual possession was proved, Izwan is presumed under ss 17(c) of the MDA to possess the five "biji" of heroin for the purpose of trafficking. However, there is no need to resort to this presumption because, as discussed above, the evidence of intention to traffic on the part of both Izwan and Suhaimi is clear.

Suhaimi knew of Izwan's intention to traffic in the heroin

124 The Judge held that Suhaimi knew that Izwan trafficked in heroin. This is clear from the messages which Suhaimi sent Izwan on 19 September 2017, in which Suhaimi told Izwan that he ordered a "half stone" of heroin and instructed Izwan on repacking and delivery of the heroin: First Judgment at [106(b)]. Suhaimi was not only aware that Izwan trafficked in heroin but also instructed Izwan on how to do so. The Judge further held that given the quantity of heroin involved, it was unbelievable that each of the appellants did not know that the other intended to traffic in his share of the heroin.

125 Suhaimi argues that he had no knowledge of what Izwan intended to do with the heroin beyond possessing it. We disagree. The fact that the arrangement was for Izwan to safe-keep three "biji" of heroin for Suhaimi meant that Suhaimi knew that Izwan intended to traffic the three "biji" of heroin to him or to others upon Suhaimi's instructions.

126 It was essentially a joint enterprise between the appellants to distribute drugs. This was buttressed by Suhaimi admission during the interview for his

psychiatric report that he and Izwan were in a "partnership". He claimed that "[Izwan] involved in heroin and I involved in Ice". For the reasons already discussed above, while we accept that the appellants were in a partnership to sell drugs, we do not accept that Izwan dealt only in heroin and Suhaimi dealt only in Ice.

127 Suhaimi also told the examining doctor that he and Izwan were "at the same level" and he was "not Izwan's superior" – therefore, he did not instigate Izwan to traffic heroin or Ice. Similarly, Izwan testified that Suhaimi was not his boss and neither of them worked for each other. This contradicts what was said in Izwan's First, Second and Fifth Statements, in which he said that he was "just a worker". In particular, Izwan even alleges in his Fifth Statement (at para 45) that Hustler (meaning Suhaimi) tried to strike a deal with him not to reveal Suhaimi's involvement in the drugs:

> 45 I would like to add that before I was sent to court with Kimo, Zafar and Hustler on 30/09/2017, Hustler secretly spoke to me. He offered to send my family some money and asked me for a bank account number to do the transaction. He told me that the money is for my son's milk powder or diapers. Hustler did not tell me why he offered me money or how much he offering, I also did not ask. I rejected the offer because I did not feel comfortable about it as I felt that Hustler was trying to buy me so I will not reveal his involvement with drugs. I am not sure if Kimo or Zafar overheard this conversation because it spoke secretly and very softly. The reason I revealed Hustler's involvement is because it is a fact and I think I should not be the one facing the death penalty as I am just a worker under Hustler.

128 The evidence showed clearly that Izwan was Suhaimi's worker. In this "partnership", Izwan bore a disproportionate amount of risk. He collected the drugs both for himself and for Suhaimi and brought the drugs home. He repacked and distributed them. That exposed him to a significant risk of being caught in possession of drugs by CNB officers. In contrast, Suhaimi maintained

a safe distance, receiving his share of Ice after Izwan had undertaken all the high-risk activities. This indicates that Suhaimi was the one calling the shots in their "partnership". It was obvious that Suhaimi not only knew that Izwan intended to traffic in the five "biji" of heroin, Suhaimi was in fact the managing partner giving the directions for the distribution of the drugs.

129 The evidence established all the elements of Izwan's and Suhaimi's Heroin Charges beyond reasonable doubt. The Judge was therefore correct in his decision to convict them on those charges.

The further evidence in the Remittal Hearing does not assist the appellants

130 As a result of a Criminal Motion filed by Suhaimi (see [8] above), the Court of Appeal ordered the Judge to take additional evidence relating to the issue whether the heroin order had been reduced from five to one "biji". The additional evidence adduced was as follows:

> (a) Sumardi, a prisoner serving life imprisonment for drug trafficking, testified that his supplier, "Arvin" (whom he knew from Malaysia), asked him in 2017 to "find this guy to give me back four batu" and sent a photograph of Suhaimi. Arvin did not provide Suhaimi's address or phone number. Sumardi later forwarded photographs of Suhaimi's charges to Arvin after obtaining them from Suhaimi's friend, Ashuk. He had a brief encounter with Suhaimi in prison when he saw Suhaimi passing by. He called out to Suhaimi and said "Hustler, Arvin sent me a picture of you". He could not hear Suhaimi's response. Sumardi did not recognize the phone numbers Suhaimi linked to Arun.

(b) Eddie, a prisoner awaiting capital punishment for drug trafficking, testified that his supplier, "Kelvin" (also known as "Arvin" or "Arun" among other aliases), sent him Suhaimi's photograph in 2018 or 2019 on WhatsApp. Kelvin told him, "This is Hustler" and asked if Eddie knew him. Eddie said he did not. Kelvin then said that "This guy got four stone with him that he never pass back" and asked for help finding him. Eddie said he would try to help but did not do anything as he did not know Suhaimi then. Later, in prison, he learned from another inmate ("AP") that "Hustler" shared the same supplier as AP and himself.

(c) Wang, a digital forensics expert engaged by Suhaimi, examined Sumardi's phone. He found a photograph of Suhaimi and two photographs of Suhaimi's charges, which he determined as likely received on WhatsApp on 30 September and 30 October 2017 respectively. The sender could not be identified. No accompanying messages were found and this could have been due to deletion or other reasons. No contacts named "Arun" or "Arvin" were found, although call and message logs showed interaction with phone numbers that Sumardi identified as Arvin's. Messages with "Ashuk TMP" (a contact associated with "Achok", the name of the supplier Sumardi initially provided) were also found but WhatsApp conversations prior to May 2018 might have been deleted.

(d) Suhaimi testified that he met Sumardi at the Tanah Merah Prison School in 2014. Sumardi left the prison school in 2015 and Suhaimi left in 2016. He had no interaction with Sumardi after that except for a brief encounter in Changi Prison when Sumardi mentioned that he had received a photo of him from "Arvin". Suhaimi later learned from AP

that Eddie had also received a photo of him from Arvin. These prompted Suhaimi to ask his lawyer to investigate.

131 The Judge found Sumardi's and Eddie's accounts unconvincing. Sumardi's account of Arvin randomly asking him to find Suhaimi, without providing Suhaimi's contact details, was questionable, especially if Arvin was indeed Arun who should have Suhaimi's number. Similarly, Eddie's similar claim of Kelvin asking him to find Suhaimi without providing contact details also lacks credibility: Second Judgment at [17] and [20]. We agree. If Arun wanted Sumardi and Eddie to find Suhaimi, he would have given them Suhaimi's number. This is even more so since Eddie told Kelvin (or Arun) that he did not know Suhaimi.

132 The Judge also said that Sumardi's evidence was weak because Sumardi admitted that Arvin did not know whether Sumardi knew Suhaimi: Second Judgment at [17]. On appeal, Suhaimi submits that previously, Arun had asked various contacts in Singapore to look for people that he was trying to locate here. For instance, Arun requested Suhaimi to track down another trafficker who had absconded with three blocks of drugs without making payment. However, the difference was that when Arun requested Suhaimi to track down the trafficker, he provided Suhaimi with the trafficker's two numbers:

> Abang, abang, you help me with one thing bang. Help me with this one thing bang. Okay I send these two numbers. Okay. Last week he said, either on Tuesday or Wednesday, this person brought my friend's blocks, he ran away with the 3 blocks bang. Entered and change hands. He carried and ran away, and made no payment. I call from a Malaysia number, he refused to answer. Abang help me call him from a Singapore number, can? Abang call and see from a Singapore number, if he answers, inform me bang.

Sumardi's evidence, that Arun did not give him Suhaimi's address or phone number, supported the Judge's disbelief regarding Arun supposedly asking Sumardi and Eddie to find Suhaimi but not providing Suhaimi's contact details.

133 The Judge also found that Eddie's claim that AP spontaneously mentioned Suhaimi sharing the same supplier as Eddie lacked plausibility. There was no reason for AP to volunteer information about "Hustler" having the same supplier during their casual conversation, especially since Eddie and AP had no prior discussions about Hustler/Suhaimi. There was also no evidence to suggest that AP believed Eddie knew Suhaimi: Second Judgment at [21].

134 Suhaimi argues that the Judge erred as it was natural for drug dealers to bring up matters relevant to their common experiences or contacts spontaneously. While we agree with Suhaimi that it is not unrealistic that AP would talk to Eddie about Suhaimi sharing the same drug supplier as Eddie, this does not raise any reasonable doubt about the evidence that the order for heroin was for five and not one "biji".

135 The Judge also found that although the photographs of Suhaimi and his charges were found on Sumardi's phone, the sender was not identifiable and there were no accompanying messages. Even if it was Arun who sent them, it was equally plausible that he was seeking payment from Suhaimi, who was arrested before he could arrange for payment to Arun that night. The charges in the photographs were also not identical to those in Suhaimi's original statements and it was not known where the photographs of the charges came from.

136 Suhaimi argues that Sumardi's unwavering testimony was that he had received a photograph of Suhaimi and photographs of Suhaimi's charge sheets even in the face of the "formidable expert evidence" from the Prosecution that

no such photographs were found in Sumardi's mobile phone. Suhaimi submits that this shows that Sumardi was a credible witness.

137 We agree with the Judge that the photographs were equivocal. It was more likely that Arun sent Sumardi the photograph of Suhaimi to ask Sumardi to facilitate collection of payment from Suhaimi. We have discussed the evidence that showed that Arun was expecting payment from Suhaimi on the night of Suhaimi's arrest on 29 September 2017. While Suhaimi highlighted the fact that Sumardi received his photograph just one day after Suhaimi's arrest, the timing is consistent with Arun seeking payment. The complete absence of accompanying messages is telling. It is suspiciously convenient that all of Sumardi's alleged communications with Arun regarding the return of the extra four "biji" of heroin took place by way of phone calls rather than WhatsApp messages, which was the mode by which Arun sent him the photograph of Suhaimi. The only messages in evidence among Izwan, Suhaimi and Arun concerned payment for five "biji" of heroin and the Ice. There were no messages discussing the alleged extra four "biji". All this points to the fact that Arun was looking for Suhaimi because he wanted payment for the five "biji" of heroin and the Ice. The photographs of Suhaimi's charges were sent around one month after Suhaimi's arrest by Ashuk to Sumardi who forwarded them to Arun. This was entirely consistent with the fact that Arun wanted payment and was probably informed that Suhaimi had been arrested. The charges were obtained by someone in order to convince Arun that Suhaimi was in custody and had not absconded without paying for the drugs.

138 The appellants argue that the Judge erred in discounting the weight of Sumardi's and Eddie's evidence because of the possibility that Suhaimi could have spoken to Sumardi and Eddie. In our judgment, the Judge did not discount the weight based on this possibility.

139 The Judge acknowledged that there was no direct evidence of collusion among Sumardi, Eddie and Suhaimi. He also noted that "[t]he absence of direct evidence of collusion or motive are just factors that I must take into consideration when assessing the probative value of, and hence the weight to be given to, Sumardi's and Eddie's evidence in the light of all of the evidence that has been adduced": Second Judgment at [23] and [25].

140 The Judge then proceeded to explain why the objective evidence against Suhaimi far outweighed the evidence given by Sumardi and Eddie, reiterating Izwan's First, Third and Fifth Statements, Izwan's failure to ask why the photograph which Suhaimi sent him contained five packets of heroin rather than one and the WhatsApp exchange between Suhaimi and Arun involving the calculator image: Second Judgment at [26]–[29]. Clearly, the Judge rejected Sumardi and Eddie's evidence not because of suspicion of collusion but because the objective evidence far outweighed their bare testimony.

141 The appellants criticise the Judge's comments that Suhaimi and Eddie had admitted that they had opportunities to speak to each other although both claimed not to have done so and that Suhaimi would have had opportunities to speak to Sumardi since Sumardi was in the same prison (Second Judgment at [23]). They argue that there was no evidence of such "opportunities".

142 In our judgment, the Judge's comments were completely justified. The evidence adduced in Suhaimi's Criminal Motion and at the Remittal Hearing was replete with such "opportunities":

> (a) Eddie said that he learned about Suhaimi's identity through conversations with AP;

(b) Eddie admitted that he knew Suhaimi and that there were opportunities for inmates to interact with one another although he maintained that he and Suhaimi never talked to each other;

(c) Suhaimi admitted that he had opportunities to interact with Eddie but he claimed not to have interacted with Eddie;

(d) Sumardi described an encounter where he was able to call out to Suhaimi when Suhaimi walked past; and

(e) Izwan also stated in his Fifth Statement that Suhaimi made him an offer secretly not to implicate Suhaimi after their arrest and before they were sent to court on 30 September 2017.

All this shows that the prisoners had opportunities at various stages to speak to one another.

143 Suhaimi submits that Sumardi and Eddie had no reason to give false evidence. Sumardi is serving life imprisonment and stood to lose his remission if found guilty of perjury. Eddie, awaiting capital punishment, would jeopardize his prospects of clemency if he was found to be lying in court.

144 The Judge did not conclude that the additional witnesses lied at the Remittal Hearing. However, he held that their additional evidence did not raise any reasonable doubt in the light of all the evidence adduced before him at the trial. We agree with the Judge's views, as explained above.

The Ice Charges are proved beyond reasonable doubt

145 The Prosecution alleged that there was a joint order for 500g of Ice between Izwan and Suhaimi, with 125g for Izwan's customers and 375g for

Suhaimi's. The charges, however, concerned only the 125g in Izwan's possession and the 250g in F1B1 delivered to Suhaimi. The remaining 125g which Izwan left at the electrical box on the eleventh floor was not recovered: First Judgment at [128]–[129].

146 Izwan did not dispute the joint order for 500g of Ice. His defence was that he intended to consume two of the seven packets in B1A1 (about 12.5g each), so they should be excluded from his Ice Charge. He also argued that the Ice in F1B1 should be excluded because he was merely a bailee for Suhaimi. Alternatively, he did not know what Suhaimi intended to do with the Ice in F1B1: First Judgment at [130].

147 Suhaimi denied that there was a joint order for 500g of Ice. He claimed that he was not a party to any agreement for Izwan to order 125g of Ice, asserting that Izwan ordered it without consulting or discussing with him. He also claimed he did not know what Izwan intended to do with his 125g of Ice: First Judgment at [131].

Izwan did not intend to consume part of his 125g portion of Ice

148 The Judge found that Izwan's claim that two Ice packets in B1A1 were for his own consumption was an afterthought. First, any intention to consume part of the Ice formed after repacking the Ice was irrelevant to Izwan's Ice Charge. What was relevant was Izwan's intent for the Ice at the time of possession when he collected it in Toh Guan East on 29 September 2017. Second, in Izwan's Fourth Statement, he referred specifically to B1A1, saying no one had ordered the Ice yet, without mentioning any intent to consume it. His explanation that he had "missed out" the part on personal consumption was a bare assertion. Third, his other statements also contained no mention of Ice

for his personal consumption. His explanation for this omission (wanting to "let his wife off") was unconvincing, as claiming personal consumption would not have implicated his wife. He had mentioned other drugs that were for his own consumption in Izwan's Fourth Statement. Lastly, Izwan's Case for the Defence dated 26 March 2020 (almost two-and-a-half years after his arrest), stated that he intended to sell the 125g of Ice. His explanation that he "missed out" on informing his counsel was another bare assertion that the Judge disbelieved: First Judgment at [132]–[137].

149 On appeal, the appellants argue that the Judge erred in finding that Izwan's partial consumption defence was an afterthought. Suhaimi argues that Izwan's testimony that he intended to consume the two Ice packets is consistent with his testimony that (a) he frequently consumed about 1–1.5g of Ice per day; and (b) he had no orders for the Ice in B1A1.

150 At the appeal, counsel for Suhaimi points out that Izwan's Case for the Defence stated two seemingly contradictory statements: "on 29 September 2017, the accused had 1 packet of 125g of 'Ice' to sell to his customers" (at para 3(b)) contrasted with "the accused was a consumer of methamphetamine and some of the methamphetamine found was for his consumption" (at para 3(e)). He argues that the only way to resolve this contradiction was to recognise that while the predominant intention was to sell the 125g of Ice, there was at the same time an intention to use some of it for personal consumption. This was supported by the fact that exhibit C1A, which Izwan admitted was for his own consumption, contained only 0.19g of Ice. The picture that emerged was therefore that Izwan's personal stash of Ice was running out and some of the 125g was meant to replenish it.

151 In our judgment, all these points do not raise any reasonable doubt as to Izwan's claim in his Third Statement that he intended to sell his 125g of Ice. Izwan stated in his Petition of Appeal at para 2(8)(a) that his intention to keep two of the seven packets in B1A1 for his own consumption only "concretized after the time stated in [Izwan's Ice Charge] (but he voluntarily formed such an intention before he was arrested)". The Petition of Appeal added that the Judge "erred in law when he held that any such intention was irrelevant for purposes of [Izwan's Ice Charge] because it was formed only after he repacked the seven packets in B1A1". This means that at the point in time when Izwan took possession of the Ice, his intention was to traffic in all 500g of it. This intention was amply shown by the fact that, upon returning to his flat, he repacked all 500g of Ice, including the 125g meant for himself, and very soon after repacking the Ice, he placed 125g of Ice on the eleventh floor of Block 27 and, at about 4pm, went to the ground level to deliver 250g of Ice to Suhaimi.

152 Izwan contends on appeal that the Judge was wrong in holding that any intention to consume part of the Ice which came about after repacking the Ice was irrelevant to Izwan's intention for the Ice at the time of possession in Toh Guan East on 29 September 2017. We agree with the Judge and disagree with Izwan's contention.

153 Parliament has specified expressly that the trafficking offence in s 5(1) of the MDA includes actual acts of trafficking, offers to traffic and doing or offering to do any act preparatory to or for the purpose of trafficking. Section 5(2) broadens the offence to mere possession for the purpose of trafficking by stating that "For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking".

154 It is axiomatic that where an offence consists of a physical element (*actus reus*) and a fault element (*mens rea*), the offence is complete once both elements coincide. Izwan's Ice Charge specifies that his possession of the Ice for the purpose of trafficking was at the time of collection of the drugs. Izwan does not dispute that his purpose or intention at the time of collection of the Ice was to sell his share and to deliver Suhaimi's share according to Suhaimi's instructions. Selling and delivering are acts of trafficking within the meaning of the MDA. It follows that once Izwan took possession of the Ice with this intention, the trafficking offence in respect of all the Ice was complete because the *actus reus* of possession and the *mens rea* of intention to traffic coincided.

155 In our judgment, in a charge of possession of drugs for the purpose of trafficking, what is material is the intention of the offender at the point in time when he comes into possession of the drugs. Once the offence in s 5(2) of the MDA is complete, it cannot be undone. Any change in intention relating to the amount of drugs for trafficking that comes about after the point of possession cannot change the trafficking offence into a less serious one in relation to the quantity of drugs meant for trafficking, in particular, by reducing a capital charge into a non-capital one (which Izwan is attempting to achieve with his belated assertion of partial personal consumption). Neither can change in intention to traffic constitute a defence to the charge, for example, by alleging that there is no longer any intention to sell or to deliver the drugs and the drugs will either be returned to the supplier or be kept for future personal consumption.

156 To illustrate, we draw an analogy with the offence of theft. If an offender takes someone's property (say $1,000) dishonestly and subsequently claims that he intends to return the entire amount of stolen money or part of it, the theft of $1,000 is nevertheless complete. The legal position is not altered to one of no

offence of theft (even if $1,000 is returned or intended to be returned) or to theft of a lesser amount (if part of the stolen money is returned or intended to be returned). There could be mitigation in sentence because of the total or partial restitution but the charge remains as one of theft of the entire amount of $1,000. In a case like the present appeal before us, where the offence carries a mandatory sentence, there can be no question of mitigation.

157 In any event, the evidence showed that Izwan's partial consumption allegation was clearly an afterthought and could not be true. In Izwan's Fourth Statement, he did not state that the Ice in B1A1 or part thereof was meant for personal consumption, even as he identified other packets of Ice meant for personal consumption:

> 23 I am now shown 5 photographs with items labelled starting "B". (Recorder's note: Subject is shown photographs of exhibits "Bl", "B1A", "BlA1 ", "B2", "B2A", "B2A1", "B2B", "B2B1", "B2B1A", "B3", "B3A", "B3B" and "B3B1".) They are all mine. The item BIA1 are the 12.5g of Air Batu I prepacked before I was arrested, no one has make any order for these Air Batu yet. …
>
> 24 I am now shown a photograph with items labelled starting with "C". The item C1A is the Air Batu for my own consumption.

The clear implication was that the seven packets in B1A1 would be sold once someone places an order for them. Izwan failed to explain why he did not raise his assertion of partial personal consumption in his statements, other than saying that he "missed out" on doing so.

158 The messages between Izwan and Suhaimi showed that the 125g of Ice was meant for Izwan to sell. Izwan messaged Suhaimi on 24 September 2017 at 9.42pm, saying "Someone wants S tomorrow 125", meaning someone wanted 125g of Ice the next day, 25 September 2017. Suhaimi agreed that this 125g of

Ice arrived only on 29 September 2017. To circumvent this problem, Izwan alleged that the 125g of Ice he asked for on 24 September 2017 was not part of the 500g of Ice that he collected on 29 September 2017. This is because he had obtained 125g of Ice by 25 September 2017:

> Q: Mr Izwan, can you just answer my question? As of 25th September, at 7.08pm, you were still asking Suhaimi about Ice?
>
> A: Yes.
>
> Q: And that is your order of Ice?
>
> A: Yes.
>
> …
>
> Q: And the reason why you were asking him about the Ice is because by 25th September, you had still not received the Ice that you had previously ordered?
>
> A: I disagree.
>
> Court: You disagree? You have received the Ice?
>
> Witness: Yes, yes, Your Honour, because I received it from another supplier, Your Honour, and I already gave it to my customer, Your Honour.
>
> Court: Yes.

Suhaimi also stated that "for the Ice that came in on the 29th September, I wouldn't know whether it was for that customer on the 24th".

159 We do not accept the appellants' contentions. Izwan's voice message to Suhaimi on 25 September 2017 at 7.04pm revealed that on that date, he was facing difficulty in procuring Ice, even from other drug sources:

> (inaudible) boss. Until now he has not answered my call. I am now having a headache. I want to find a new jockey boss. Now I am having difficulty. Everyone is afraid (inaudible) to bring in. My other jockey said there are heavy operation boss. Confirm not entering. His boss said that.

Four minutes later, at 7.08pm, he typed "Confirm eh no S". Then, on 28 September 2017 at 1.14pm, Suhaimi sent Izwan a screenshot, in which someone (probably Arun) told Suhaimi that the Ice could not be delivered as his runner did not come to Singapore and that the Ice would be delivered together with the heroin on 29 September 2017. Izwan's claim that he had obtained 125g of Ice from another source to satisfy an earlier order before 29 September 2017 is unsupported by the evidence. The evidence pointed to the reality that his share of 125g of the Ice collected on 29 September 2017 was meant for that earlier order. The Judge therefore did not err in finding that Izwan's consumption defence was an afterthought.

Izwan trafficked in the Ice and was not a mere bailee for Suhaimi's share of the Ice

160 Izwan argues that in relation to Suhaimi's 250g share of the 375g of Ice stated in the Ice Charges, Izwan's intention should have been treated as akin to a bailee as he was merely returning drugs to their owner, *ie*, Suhaimi. Izwan relies on *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 to support his argument. The Prosecution points out that in *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [28], the Court of Appeal held:

> Given that the test is one of the knowledge or intention of the purported "bailee" as to whether the arrangement is part of the supply or distribution chain, it seems to us that, where this takes place, it would follow that the subject accused did possess such knowledge or intention. This is because, as we observed in *Ramesh* and *Roshdi*, the defence of "bailment" contemplates that the drugs in question are returned to a person "who originally deposited those drugs with him" (see *Ramesh* at [110]; *Roshdi* at [109]). Where drugs appear to have been collected or obtained by an accused person on behalf of another person, it is less clear whether they had in fact been originally deposited with the accused by that other person, or whether this act moves the drugs towards their ultimate consumer, by constituting a new link in the supply chain. If it is in fact the

> latter, then such an act of collection would be understood as falling within the definition of "traffic" in s 2 of the MDA, *ie*, to "sell, give, administer, transport, send, deliver or distribute".

161 In this case, it was not Suhaimi who deposited the Ice with Izwan. Izwan was collecting from a third person on behalf of Suhaimi. By delivering 250g of Ice to Suhaimi, Izwan was moving the drugs towards their ultimate consumer and was therefore trafficking in them. Whether that ultimate consumer was Suhaimi or one of Suhaimi's customers makes no difference. Hence, Izwan possessed the 375g of Ice for the purpose of trafficking – 125g to sell to his own customers and 250g which he delivered to Suhaimi.

Suhaimi conspired with Izwan for Izwan to possess 375g of Ice

162 At the trial, Suhaimi contended that he was not a party to an agreement for Izwan to order his 125g of Ice because Izwan made the order for that amount without consulting him. This 125g of Ice is significant for the purpose of punishment. The amount of Ice mentioned in Suhaimi's Ice Charge (to be precise, "not less than 372.93g of crystalline substance") contained not less than 252.04g of methamphetamine. If Izwan's 125g of Ice were excluded, the content of methamphetamine for the remaining 250g or so of Ice would in all likelihood be about one third less than the 252.04g of methamphetamine specified in Suhaimi's Ice Charge. The mandatory death penalty applies only if the quantity of methamphetamine trafficked is "more than 250 grammes" (Second Schedule of the MDA). Suhaimi's Ice Charge would then become a non-capital charge.

163 Suhaimi claimed that Izwan ordered the 125g of Ice on his own during the same phone call when the order for five "biji" of heroin was changed to one "biji". Suhaimi paid little attention to the conversation between Izwan and Arun.

164 The Judge held that the 500g of Ice was a joint order by both appellants. He rejected Suhaimi's claim that he was not a party to an agreement for Izwan to order his 125g of Ice. The Judge referred to the following evidence (First Judgment at [144]):

> (a) There was no dispute that Suhaimi ordered 500g of Ice from Arun, even if he would have been okay with 250g. Suhaimi claimed that Arun suggested 500g and he had to acquiesce to Arun's decision;
>
> (b) It was undisputed that the agreement before the collection of the drugs was that of the 500g of Ice, 125g was for Izwan and 375g (including F1B1) was for Suhaimi. Suhaimi testified Izwan wanted 125g from him and Izwan conceded that they agreed to split the order for 500g of Ice.
>
> (c) Izwan's Third Statement stated that prior to the collection of the drugs, Suhaimi informed him that 125g of Ice was for Izwan to sell to his customers and the rest would be for Suhaimi's customers.
>
> (d) There was no reason for Suhaimi to forward photographs of the Ice to Izwan if it was not part of their joint order.

165 We agree with the Judge. Even based on Suhaimi's and Izwan's testimony in court, Arun told Suhaimi that 500g of Ice would be delivered and Suhaimi said he accepted because "because [Arun] was supplier and I was on credit with him…whatever amount he wanted to give me, I just accept". Then, according to Izwan, in the early hours of 29 September 2017, during the same call in which Izwan reduced his heroin order to one "biji", Izwan placed his order for 125g of Ice. Thereupon, Arun suggested that since Suhaimi did not want the full amount of 500g of Ice which he had agreed to take from Arun,

Izwan could take 125g from the 500g. Izwan agreed, with Suhaimi present and listening in to the conversation on the handphone which was on speaker mode.

166 This sequence of events shows that Izwan would take 125g from the 500g of Ice which Suhaimi had already agreed to take from Arun and there was no protest from Suhaimi. In this sense, there was still a joint order for the Ice by both appellants and an agreement between them to take their respective shares. Suhaimi would therefore be guilty of abetting Izwan to be in possession of the Ice from Arun.

Suhaimi knew that Izwan intended to traffic in the 125g of Ice

167 The Judge found that Suhaimi knew that Izwan intended to traffic in his 125g of Ice. Suhaimi's claim that he did not know what Izwan intended to do with the Ice was contradicted by Izwan's Third Statement. There, Izwan stated that he was "informed by Hustler that 125g of [Ice] will be for me to sell to my own customer". Suhaimi knew that Izwan trafficked in Ice. Considering the quantity involved, it was unbelievable that Suhaimi did not know that Izwan's intended to traffic his 125g of Ice: First Judgment at [100(b)] and [145].

168 On appeal, Suhaimi submits that there was no direct evidence that Suhaimi knew what Izwan's intentions were in making the order for 125g of Ice. Suhaimi also contends that the Prosecution did not adduce any meaningful evidence of Izwan's past dealings with Ice, let alone Suhaimi's knowledge of the same.

169 The Prosecution highlights that Izwan and Suhaimi's entire relationship was built around their drug trafficking activities. It followed that Suhaimi would have known that the 125g that Izwan had obtained for himself was meant for

Izwan to sell to his customers. The Prosecution submits that the Judge was right to rely on Izwan's Third Statement and the sheer quantity of drugs involved.

170 In our judgment, the Judge did not err in finding that Suhaimi knew that Izwan intended to traffic his 125g of Ice. As we have explained earlier, on 24 September 2017, Suhaimi knew that Izwan intended to obtain 125g of Ice for one of his own customers. On 25 September 2017, Suhaimi knew that Izwan still did not manage to obtain any supply of Ice. On 28 September 2017 at 1.14pm, Suhaimi sent Izwan a screenshot, in which someone (probably Arun) told Suhaimi that the Ice could not be delivered as his runner did not come into Singapore and that the Ice would be delivered together with the heroin on 29 September 2017. Clearly, Suhaimi knew that the 125g of Ice was for Izwan to traffic in by selling to his customers, even if Suhaimi did not know who they were.

171 When all the evidence is considered, we see no reason to disagree with the Judge's findings. The Judge was obviously correct in holding that Izwan's and Suhaimi's Ice Charges were proved beyond reasonable doubt.

Miscellaneous issues

172 We now deal with some ancillary issues raised on appeal. In our judgment, none of them raises reasonable doubt as to the appellants' guilt on their Heroin and Ice Charges.

The particulars of the timing and location stated in Izwan's Charges did not raise reasonable doubt

173 It was submitted at the trial that Izwan's Heroin and Ice Charges required the Prosecution to prove that the alleged offences took place on 29

September 2017 at 11.50am in the vicinity of Toh Guan East. Izwan submits on appeal that at 11.50am, Izwan was nowhere in the vicinity of Toh Guan East and there was no evidence that he was in possession of anything illicit then. Izwan contends that the Judge erred in focusing on the question whether the charges gave him sufficient notice of the offence that he was charged with. Suhaimi did not submit on this issue on appeal.

174 Izwan arrived at Toh Guan East at around 12.22pm on 29 September 2017 (First Judgment at [97]) and collected five "biji" of heroin and one packet of 500 grams of Ice around 12.46pm (First Judgment at [15]). These timings come reasonably within the meaning of "at about 11.50am" stated in Izwan's charges. We agree with the Judge that s 124 of the CPC requires the charge to contain details of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of what he is charged with and that it was clear that Izwan knew what he was charged with: First Judgment at [98].

Izwan's Ice Charge is not defective

175 Izwan submits that his conviction on his Ice Charge is legally untenable because it contains two "distinct offences" – (a) possessing his share of the drugs for the purpose of selling to his own customers and (b) possessing Suhaimi's share of the drugs for the purpose of delivering it to Suhaimi. Hence, with respect to Suhaimi's share of the Ice, Izwan only took a preparatory step by collecting Suhaimi's Ice for the purpose of sending it to Suhaimi.

176 The Prosecution submits that no matter whether Izwan was selling the drugs himself or delivering them to Suhaimi, all the drugs were still for the purpose of trafficking, which is the only offence he has been charged with.

177 We agree with the Prosecution. In similar vein, even if Izwan's intention was to send the Ice to five different persons, he would still have the whole amount of Ice in his possession for the purpose of trafficking.

The Judge did not err in not impeaching ASP Bong's credit

178 Izwan argues that the Judge erred in not pronouncing his decision on Suhaimi's application to impeach ASP Bong. Izwan submits that the Judge failed to comply with his duty to give reasons, relying on the decision in *Thong Ah Fatt v Public Prosecutor* [2012] 1 SLR 676. However, as Suhaimi's counsel points out, there is no requirement that the trial judge must, at any stage of the trial, make a ruling on whether the credit of the witness is impeached: *Loganatha Venkatesan and others v Public Prosecutor* [2000] 2 SLR(R) 904 at [56]. What is important is whether the trial judge gave reasons for believing in the witness. In this case, the Judge believed ASP Bong because he found her evidence to be corroborated: see First Judgment at [50]–[52].

179 Nevertheless, the appellants submit that ASP Bong should have been impeached because of the inconsistencies in her evidence:

(a) ASP Bong claimed that she did not know that Hustler was Suhaimi when she recorded Izwan's Third Statement but admitted three weeks later that she did know, after it was made clear to her that her colleagues contradicted her evidence about Hustler.

(b) ASP Bong testified that she had not gone through Izwan's phone before taking his statement on 3 October 2017. If that were true, then Izwan's allegation that ASP Bong told Izwan: "Look, I have looked through your handphone. You give me Ahmad Suhaimi involvement in this and I will let your wife off" could not be true. However, ASP Bong

had done test calls on Izwan's phone sometime before 5.11am on 30 September 2017. She therefore had the means and opportunity to look through Izwan's phone before she made the TIP later that evening.

(c) Contrary to ASP Bong's initial assertion that she weighed A3 in Izwan's presence, the Judge found reasonable doubt as to whether A3 was weighed in Izwan's presence (First Judgment at [79]). In this regard, ASP Bong was not consistent on whether the weight of 2,132.65g at page 15 of her investigation diary, which she claimed to be the weight of all the heroin exhibits from Izwan's flat, included the weight of A3 or not. She provided three different versions as to how she derived that weight – first, she included A3 in the calculation but miscalculated, second, she had excluded E1 but not A3 and third, finally admitting that she had missed out A3 because she did not see it on the page.

180 According to Suhaimi, ASP Bong also had a "troubling proclivity" to take inconsistent positions even on non-material issues, such as her insistence that she commenced weighing 17 drug exhibits at 5.16am and concluded at 5.18pm, her quick change in position (within the span of a few questions) as to whether she asked Izwan what "panas" meant and her illogical attempt to reconcile her record in her Investigation Diary that Izwan was allowed to call his next-of-kin at 12.20pm and her annotation on Izwan's Fifth Statement that the interview concluded at 12.23pm. Her explanation was that she could have referred to her watch for the timing in the investigation diary and her laptop clock for the timing in her conditioned statement.

181 Suhaimi submits that the "fact that ASP Bong often took such absurd and indefensible positions suggests that she is a witness who is capable of saying things that make no sense with a straight face while under oath". Izwan submits

that the "credit of a witness who is proven to have given a former statement that is inconsistent with any part of her oral testimony, and is unable to satisfactorily explain the discrepancies, should be impeached" and that ASP Bong was such a person.

182 The Prosecution submits that a flawed witness does not equate to an untruthful witness. There was no material discrepancy that would shake ASP Bong's credibility. In relation to whether she went through Izwan's phone before taking his statement on 3 October 2017, the Prosecution submits that she clarified that she knew Suhaimi was "Hustler" not because she had gone through the handphones, which would directly contradict her earlier evidence, but because she had read Yusof's statement. This follows her evidence that she was too occupied with recording statements to go through the mobile phones at the time. Further, ASP Bong had no reason to be deliberately untruthful on this point during the ancillary hearing. Izwan's accusations against her were centred on her alleged promise to let Izwan's wife go and did not turn on when she found out that Suhaimi was "Hustler".

183 In our judgment, a witness who is unsure about many things or makes multiple mistakes in his testimony may be regarded as unreliable. This alone does not make the witness untruthful. However, even if a witness' credit has been impeached, it does not necessarily entail a total rejection of all his evidence. The court must scrutinise the whole of the evidence to determine which aspect might be true and which aspect should be disregarded: *Pigg v PP* at [48] citing *Public Prosecutor v Somwang Phattanasaeng* [1990] 2 SLR(R) 414 at [43].

184 We agree with the Prosecution that while ASP Bong's testimony may be flawed, that does not mean that she was an untruthful witness. More than

three years had elapsed between Izwan's arrest and ASP Bong's testimony in Court. ASP Bong admitted that she was mistaken when confronted with evidence that contradicted her recollection about whether she knew that Hustler was Suhaimi and whether she weighed A3 in Izwan's presence. There was no untruth or inaccuracy in ASP Bong's testimony that she had not gone through Izwan's handphone before taking his Third Statement. The fact that she had done test calls on the handphone does not mean that she had also looked through Izwan's messages in it.

185 In any event, even if ASP Bong's credit were impeached, that would not entail a rejection of all her evidence. The appellants' main purpose of impeaching her credit appears to be to establish that ASP Bong made TIPs to Izwan. There is no evidence that she was careless, let alone untruthful, in the recording of Izwan's statements. Those statements were therefore relevant and reliable evidence.

Conclusion

186 We agree with the Judge's finding that the respective charges against Izwan and Suhaimi were established beyond reasonable doubt. The Judge did not err in finding that Izwan failed to rebut the presumption of trafficking under ss 17(c) and (h) of the MDA although, as we have noted earlier, there was no need to rely on the presumption because of the ample evidence of Izwan's trafficking.

187 As for sentence, although both appellants received a certificate of substantive assistance, they were obviously not mere couriers. The mandatory death penalty therefore applies.

188 Accordingly, we dismiss both Izwan's and Suhaimi's appeals against their conviction and sentence.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Cheong Jun Ming Mervyn, Lim Yi Zheng (Advocatus Law LLP) and Chooi Jing Yen (Chooi Jing Yen LLC) for the first appellant;
Vergis S Abraham, Loo Yinglin Bestlyn (Providence Law Asia LLC), Suang Wijaya and Jordan Kow (Eugene Thuraisingam LLP) for the second appellant;
Kumaresan Gohulabalan and Stephanie Koh (Attorney-General's Chambers) for the respondent;