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

[2026] SGHC 137

Criminal Case No 16 of 2025

Between

Public Prosecutor

And

Thina Vengades Rao

GROUNDS OF DECISION

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

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Public Prosecutor
v
Thina Vengades Rao

[2026] SGHC 137

General Division of the High Court — Criminal Case No 16 of 2025
Christopher Tan J
11–13, 20, 21, 24–27 March 2025, 4 June 2026

23 June 2026

Christopher Tan J:

1 The accused, Mr Thina Vengades Rao ("the Accused"), is a 29-year-old Malaysian male. He claimed trial to the following two charges of importing controlled drugs without authorisation, in contravention of s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

(a) the first charge pertained to ten packets containing not less than 4,512.6g of granular/powdery substance that had been analysed and found to contain not less than 42.18g of diamorphine; and

(b) the second charge pertained to one packet containing not less than 490.4g of crystalline substance that had been analysed and found to contain not less than 330.8g of methamphetamine.

2 After a ten-day trial, I found the Accused guilty of both charges and convicted him accordingly. Upon conviction, I sentenced him to a global

sentence of life imprisonment and 24 strokes of the cane. The reasons for my decision are set out below.

Facts

3 At the material time, the Accused worked as a lorry attendant for a Malaysian company based in Johor Bahru – Dickson Agro Trading ("Dickson Agro") – that delivers bean sprouts to Singapore. His job involved assisting with loading bean sprouts onto a lorry in Johor Bahru and accompanying the lorry to Singapore.[1]

4 On 18 December 2020, the Accused accompanied one of Dickson Agro's lorries ("Lorry") from Johor Bahru to Singapore. The Accused sat at the front passenger seat of the Lorry, which was driven by his colleague ("Lorry Driver").[2] The Lorry arrived at Woodlands Checkpoint at 5.43pm,[3] at which time the police were conducting routine operations at the Cargo Clearance Centre ("CCC") for lorry arrivals. At about 5.50pm, police officers directed the Lorry aside for an inspection. They then proceeded to conduct checks on the Lorry Driver while an officer from the Singapore Immigration and Checkpoints Authority, Checkpoint Inspector 2 R Subramaniam ("CI2 Subra"), conducted checks on the Accused.[4]

5 After getting the Accused to alight from the Lorry, CI2 Subra climbed

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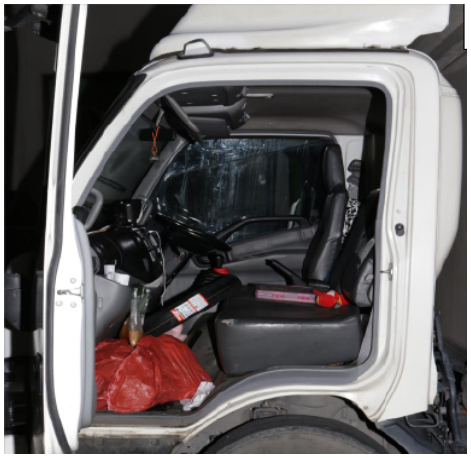
1 Accused's first long statement dated 24 December 2020 at paras 4-5, exhibited in the Agreed Bundle of Documents dated 10 January 2025 ("AB") at pp 262–263.

2 Accused's second long statement dated 26 December 2020 ("2nd Long Statement") at paras 32–36 (AB pp 269–270).

3 See the travel movement records of the Accused from the Immigration and Checkpoints Authority (AB p 160).

4 R Subramaniam's Conditioned Statement dated 6 April 2022 ("CI2 Subra's CS") at paras 2–3 (AB p 152).

up the passenger side of the Lorry's cabin. Kneeling on the seat of the front passenger seat, CI2 Subra proceeded to inspect the space behind the front passenger seat (*ie*, behind the backrest).[5] For better visualisation of the front passenger seat, two photographs of the Lorry's cabin (captured from the passenger's side) are set out below.[6] The right photograph shows the front passenger seat with its backrest folded down, allowing the viewer to see the space behind it:



6 When CI2 Subra shone his torch into the space behind the front passenger seat, he spotted a dark blue bag bearing the Nike brand ("Blue Nike Bag").[5] He then climbed down from the Lorry's cabin and asked the Accused to retrieve the Blue Nike Bag from behind the front passenger seat. The Accused replied that the Blue Nike Bag was too heavy, to which CI2 Subra *insisted* that he retrieve it. The Accused thus climbed up the Lorry's cabin to retrieve the Blue Nike Bag from behind the front passenger seat. It was undisputed that at this point, the Blue Nike Bag contained bundles wrapped in black tape – referred to in this judgment as "black bundles". The Accused took a few minutes to

5 CI2 Subra's CS at para 4 (AB p 152).

6 Extracted from AB pp 7 & 9.

retrieve the Blue Nike Bag from behind the front passenger seat, prompting CI2 Subra to query about the delay. The Accused replied that the Blue Nike Bag was stuck.[7] Eventually, the Accused managed to get the Blue Nike Bag out from behind the front passenger seat and passed the same to CI2 Subra.

7 It was from this point that the accounts of the Prosecution and Defence witnesses materially diverged:

(a) According to CI2 Subra, when the Accused handed the Blue Nike Bag to him, CI2 Subra had shone his torch into it only to see that it was *empty*. Sensing that something was amiss, CI2 Subra climbed up the passenger side of the Lorry's cabin and, once again, shone his torch into the space behind the front passenger seat. This time, he spotted the black bundles there. CI2 Subra reached behind the front passenger seat to take out one of the black bundles. He showed the black bundle to the Accused and asked him what it was, to which the Accused replied that *he did not know*. CI2 Subra placed the black bundle on the seat of the front passenger seat and reached behind the front passenger seat to take out a second black bundle. CI2 Subra asked the Accused what this second black bundle was, to which the Accused again replied that *he did not know*. CI2 Subra then placed the second black bundle on the seat of the front passenger seat, together with the first black bundle. According to CI2 Subra, even after he had taken these two black bundles out from behind the front passenger seat and (after showing them to the Accused) placed them on the seat of the front passenger seat, there were still *more* black bundles in the space behind the front passenger seat.[8]

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7 CI2 Subra's CS at para 4 (AB pp 152–153).

8 CI2 Subra's CS at para 5 (AB p 153).

(b) The Accused, on his part, explained that he had taken some time to retrieve the Blue Nike Bag because it was stuck behind the front passenger seat. To release the Blue Nike Bag, he had to tug at it with some force. This caused the zipper to come open, allowing the black bundles to tumble out of the Blue Nike Bag.[9] Still, the Accused maintained that (contrary to CI2 Subra's account), the Blue Nike Bag was *not* empty when he passed it to CI2 Subra. The Accused maintained that even after the black bundles tumbled out of the Blue Nike Bag, there was still *one* black bundle remaining in it when he handed the Blue Nike Bag to CI2 Subra.[10]

8 Suspecting that the black bundles contained drugs, CI2 Subra had then notified the Central Narcotics Bureau ("CNB").[11] At around 6.10pm, three CNB officers – Woman Staff Sergeant Goh Li May ("W/SSgt Goh"), Staff Sergeant Muhammad Munawwar bin Mohamed Ismail ("SSgt Munawwar"), and Staff Sergeant Abdul Hafiz bin Roslan ("SSgt Hafiz") – arrived at the CCC. SSgt Hafiz noticed that the Blue Nike Bag was placed on the seat of the front passenger seat, along with the two black bundles that CI2 Subra had retrieved from behind the front passenger seat and shown to the Accused. SSgt Hafiz also spotted more black bundles in the space behind the front passenger seat. He then took one of the two bundles that CI2 Subra had placed on the seat of the front passenger seat and asked the Accused if he knew what it contained. The Accused replied "chemical". SSgt Hafiz then used a scalpel to make a cut in the black bundle and saw brownish granular substance inside. SSgt Hafiz showed

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9 See transcripts of trial ("Transcripts") for 24 March 2025 at p 10 (lines 19–31); 2nd Long Statement at para 38 (AB p 271).

10 Transcripts for 24 March 2025 at pp 11 (line 2) – 12 (line 26); 2nd Long Statement at para 38 (AB p 271).

11 CI2 Subra's CS at para 6 (AB p 153).

this to the Accused and asked if the latter maintained his answer, to which the Accused repeated his response: "chemical".[12] SSgt Hafiz then proceeded to retrieve the remaining black bundles from behind the front passenger seat. According to SSgt Hafiz, he retrieved an additional five black bundles from behind the front passenger seat which, together with the two black bundles that CI2 Subra had taken out and placed on the seat of the front passenger seat, amounted to a total of seven black bundles.[13] After ascertaining that there were no more black bundles in the Lorry's cabin, SSgt Hafiz seized the seven black bundles and placed them in a resealable bag. The Blue Nike Bag was also seized.[14] The Accused and the Lorry Driver, as well as the seized items, were brought to the CCC office where SSgt Hafiz recorded the Accused's first contemporaneous statement ("1st Contemporaneous Statement").[14]

9 Thereafter, the seven black bundles were transported to the CNB Headquarters for processing, where they were found to contain: (a) ten packets of granular/powdery substance; and (b) one packet of crystalline substance.[15] These were despatched to the Health Sciences Authority ("HSA") for analysis. The HSA subsequently issued reports confirming that:

(a) the ten packets of granular/powdery substance were collectively found to contain not less than 42.18g of diamorphine;[16] and

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12 Abdul Hafiz bin Roslan's Conditioned Statement dated 4 April 2022 ("SSgt Hafiz's CS") at para 3 (AB p 164).

13 SSgt Hafiz's CS at para 4 (AB p 165).

14 SSgt Hafiz's CS at para 5 (AB p 165).

15 For the list of exhibits that were photographed, see Tan Lye Cheng, Michelle's Conditioned Statement dated 7 April 2022 ("Insp Michelle's CS") at para 21 (AB pp 231–232).

16 See the HSA certificates exhibited in (AB pp 82–91 & 94–103).

(b) the packet of crystalline substance was found to contain not less than 330.8g of methamphetamine.[17]

10 A urine sample was also taken from the Accused for testing. This was subsequently found to contain methamphetamine.[18]

Parties' cases

11 It was not in dispute that the Accused was in possession of the Blue Nike Bag and that he knew that this contained the black bundles, although he claimed not to have known *exactly* how many black bundles were in the Blue Nike Bag.[19] Arising from these facts, two statutory presumptions were at play:[20]

(a) the presumption of possession in s 18(1)(*a*) of the MDA, which the Prosecution relied on to establish that the Accused was in possession of the drugs in the black bundles; and

(b) the presumption of knowledge in s 18(2) of the MDA, which the Prosecution relied on to establish that the Accused knew the nature of those drugs.

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17 See the HSA certificate exhibited in (AB pp 92–93).

18 See the HSA certificates exhibited in (AB pp 343–346).

19 Transcripts for 24 March 2025 at p 11 (lines 6–10) and pp 12 (line 27) – 13 (line 4). Prosecution's Closing Submissions dated 30 May 2025 ("PCS") at para 45; Defence's Closing Submissions dated 30 May 2025 ("DCS") at para 24; Defence's Reply Submissions dated 19 June 2025 ("DRS") at para 6.

20 PCS at paras 28, 50–52 & 119.

Defence's case

12 The Accused sought to rebut these presumptions by claiming that he thought the black bundles contained chemicals for cleaning toilets.[21] Specifically, he claimed that one "Deva" had passed him the Blue Nike Bag while they were in Johor Bahru and asked him to bring it to Singapore, where the Accused was to then pass it to Deva's brother "Mages".[22] According to the Accused, Deva had informed him that the black bundles contained chemicals that could cause a virus if touched – an explanation which the Accused claimed to have believed.[23] The Accused testified that when Deva handed him the Blue Nike Bag, Deva assured him that the chemicals in the black bundles would not cause any issues at the customs checkpoint – the customs authorities would at the very most discard the chemicals if they were not allowed to be brought in.[24]

13 Fuller details of the Accused's account as to how he came to deliver the black bundles for Deva were set out in his second long statement recorded by the CNB on 26 December 2020 ("2nd Long Statement"). The most salient portions of the 2nd Long Statement are set out below:

> (a) On the evening of 17 December 2020, *ie*, the day before the arrest, the Accused was attending a friend's party in Johor Bahru. There, he was introduced to Deva. Deva had asked if the Accused could deliver food and clothing to Deva's brother, Mages, in Singapore. The Accused agreed. Deva had then asked for the Accused's contact number, which

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21 Transcripts for 24 March 2025 at p 31 (lines 24–27).

22 DCS at para 24.

23 Transcripts for 24 March 2025 at pp 28 (line 21) – 29 (line 1).

24 Transcripts for 24 March 2025 at pp 28 (line 13) – 29 (line 5); 25 March 2025 at pp 12 (line 20) – 13 (line 15).

the Accused provided. The relevant section of the 2nd Long Statement is extracted below:

> [I]n the evening, I went to my friend's "Pacai" home for a party. … At about 8 plus in the evening, I reached Pacai's place and we started drinking. … During the drinking session, one of my friend "Sago" introduced us to one "Deva". … "Deva" then asked me if I was working in Singapore and I replied yes. I told him that I travel in a lorry into Singapore. "Deva" then asked me if I could send food and clothing to his brother "Mages" in Singapore. I said ok. He then asked me for my contact number, and I gave him my contact number. He then asked me if the customs are ok with me sending food and clothes into Singapore. I then told him that all this while, it was fine and the Customs would just be checking only. Nothing would happen.

The party ended at about 4–5am on the morning of 18 December 2020, *ie*, the day of the Accused's arrest.[25]

(b) At about 12 noon on 18 December 2020, Deva communicated with the Accused via WhatsApp, repeating his query as to whether the Accused could make the delivery to Mages in Singapore. However, this time, he asked if the Accused could deliver *chemicals* (as opposed to food and clothing) to Mages. Deva also asked the Accused if the customs authorities would be fine with this, to which the Accused replied that the items would be allowed into Singapore so long as they were permitted by the customs authorities. The relevant portion of the 2nd Long Statement is set out below:[26]

> On 18/12/2020 at about 12pm in the afternoon, I woke up from my sleep. I then looked at my phone and saw that "Deva" had sent me a Whatsapp message. He asked me if I could send things to his brother "Mages" later in Singapore. He then informed me that the items are

[25] 2nd Long Statement at para 25 (AB p 267).

[26] 2nd Long Statement at para 26 (AB pp 267–268).

> chemicals and if the customs are ok. I told him that if the customs check and find that the items are allowed be brought, I will be cleared to bring into Singapore. I then asked him what time. He then told me that he will come at 4pm at my factory …

(c) At about 4pm, Deva turned up at the factory in Johor Bahru where the Accused worked and met with him.[27] During the meeting, Deva passed the Accused the Blue Nike Bag, asking him to bring it to Singapore and pass it to Mages at Kranji MRT station. The Accused opened the Blue Nike Bag and saw the black bundles inside.[28] This was the first time that the Accused had seen such bundles wrapped in black tape, not ever having seen such black-taped bundles before. He had then taken one of the black bundles out of the Blue Nike Bag and asked Deva what it was. Deva replied that the black bundles contained dangerous chemicals that could transmit a virus if touched, to which the Accused promptly dropped the black bundle back into the Blue Nike Bag. The relevant portion of the 2nd Long Statement is as follows:[29]

> I then opened the bag and checked what was inside. I saw black tapes bundles inside the bag and I asked "Deva" what they were. He then told me that the bundles were dangerous chemicals and that I should not touch them. He told me that if I touched them, I will get a virus. When I checked the contents of the bag and saw the black taped bundles, I carried one of the bundles and asked "Deva" what it was. The moment he told me that the bundles contained chemicals, I dropped the bundle back into the bag. He told me to just pass the bag with the black taped bundles to his brother "Mages" in Singapore.

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27 2nd Long Statement at para 28 (AB p 268).

28 See also Transcripts for 24 March 2025 at p 9 (lines 17–29).

29 2nd Long Statement at paras 29–30 (AB pp 268–269).

The Accused was not told by Deva how many black bundles were in the Blue Nike Bag, nor did the Accused count them.[29]

(d) The Accused then took the Blue Nike Bag from Deva and placed it behind the front passenger seat of the Lorry. Less than two hours thereafter, the Lorry was ferrying the Accused and the Blue Nike Bag to Singapore, where the Accused was arrested at the Woodlands CCC.[30]

14 In his third long statement recorded on 28 December 2020 ("3rd Long Statement"), the Accused elaborated further on what Deva told him about the black bundles. Specifically, the Accused recounted how Deva told him that the black bundles contained chemicals *for washing toilets* and were dangerous, as anyone touching them could contract skin problems and a virus. The relevant portion of the 3rd Long Statement is set out below:[31]

> "Deva" only told me that these bundles contained chemicals used for washing toilet and that they are dangerous. "Deva" also told me that these chemicals are hard to find in Singapore. If one touches the bundle, he or she would get a skin problem and a virus. This was told to me by "Deva". I was asked why I would bring such dangerous chemicals into Singapore when it can cause harm to a person. I did not think about this matter as I was on a rush to make deliveries into Singapore. I did not suspect anything.

During the trial, the Accused retracted the portion of the 3rd Long Statement where he recounted that Deva *told him* that the chemicals were for washing toilets. The Accused clarified that while Deva told him that the black bundles contained chemicals that could cause a virus, Deva did *not* elaborate that the chemicals were for washing toilets. Rather, the Accused clarified that it was the

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30 2nd Long Statement at para 31 (AB p 269).

31 Accused's third long statement dated 28 December 2020 ("3rd Long Statement") at para 59 (AB p 278).

Accused himself who surmised that the chemicals were meant for washing toilets.[32]

15 The Defence also contended that the Accused suffered from *mild* intellectual disability ("ID") and that this condition rendered him more gullible than others. According to the Defence, this explained why the Accused had been particularly trusting of Deva when the latter told him about the contents of the black bundles, when normal people might have questioned Deva's motives.[33]

16 Furthermore, the Defence submitted that the chain of custody over the drugs had not been proven by the Prosecution beyond reasonable doubt.[34]

Prosecution's case

17 The Prosecution's case was that the Accused knew that the black bundles contained drugs.[35] It submitted that quite apart from the operation of the presumption of knowledge at [11(b)] above, the evidence sufficed to *prove* that the Accused knew about the nature of the drugs in the black bundles.[36] To support this contention, the Prosecution raised the following factors:

(a) The Accused's surreptitious behaviour when CI2 Subra was inspecting the Lorry's cabin.[37]

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32 Transcripts for 24 March 2025 at p 32 (lines 1–28).

33 DCS at para 25.

34 DCS at para 48.

35 Prosecution's Opening Statement dated 4 March 2025 ("POS") at para 17.

36 PCS at para 27.

37 PCS at paras 89–103.

(b) The constant evolution in the Accused's account of what he thought the black bundles contained.[38]

(c) Various circumstances that rendered the Accused's claim of being ignorant about the black bundles' contents implausible.[39]

(d) Material contradictions in the Accused's account of his relationship with Deva, as evinced by various pieces of evidence, including records of messages exchanged between both men.[40]

18 The Prosecution also rejected the Defence's claim that the Accused suffered from mild ID, maintaining that he did not have ID and was, in any case, not so gullible as to have been misled by Deva about the contents of the black bundles.[41]

19 Finally, the Prosecution maintained that the chain of custody had remained intact from the seizure of the seven black bundles until the point when the packets of drugs in them were sent to the HSA for testing.[42]

My decision

20 I begin with an overview of the law on drug importation under s 7 of the MDA. This offence has three elements – see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili Chibuike Ejike*") at [27]:

(a) the accused person must be in possession of the drugs

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38 PCS at paras 65–68.

39 PCS at paras 73–88.

40 PCS at paras 78, 105 & 115.

41 PCS at paras 164–168.

42 PCS at paras 174–175.

("possession requirement");

(b) he must have had knowledge of the nature of the drugs ("knowledge requirement"); and

(c) he must have intentionally brought the drugs into Singapore without prior authorisation.

21 It was undisputed that the Accused lacked authorisation to import the drugs in the black bundles. As such, the elements which were contested in this case were the possession requirement and the knowledge requirement. The key issues in this case were thus as follows:

(1) Whether the ***possession*** *requirement* was satisfied, *ie*, whether the Accused could be regarded as having been in possession of the drugs in the black bundles when he transported them to Singapore.

(2) Related to issue (1), whether the ***chain of custody*** *over the black bundles and the packets of drugs extracted therefrom* had been sufficiently established, such that what was in the Accused's possession could be linked to the HSA reports at [9] (which certified the drugs as containing not less than 42.18g of diamorphine and not less than 330.8g of methamphetamine).

(3) Whether the ***knowledge*** *requirement* was satisfied – *ie*, whether the Accused could be regarded as having *known* of the nature of the drugs, if they were indeed in his possession.

(4) Related to issue (3) above, whether the Defence had successfully demonstrated that the Accused suffered from *mild* ***ID*** and, if so, the impact this would have on the knowledge requirement.

My conclusions on each of these four issues are set out below.

Issue 1: Whether the Accused was in possession of the drugs

22 The Accused was – without a doubt – in possession of the *Blue Nike Bag* as he had intentionally transported the same.[43] The next question was whether he was in possession of the black bundles in it. For that, he must have been *aware* at the material time that the black bundles were in his physical possession. As explained in *Adili Chibuike Ejike* (at [31]):

> … all that is required in this context of establishing the fact of possession is that the accused person must know of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug; it is *not necessary* that the accused person also knows that the thing *was in fact* a controlled drug, much less its specific nature. [emphasis in original]

23 In the present case, the Accused clearly *knew* that the black bundles were in the Blue Nike Bag. Upon receiving the Blue Nike Bag from Deva, he had opened it and taken out one of the black bundles to ask Deva about it – see [13(c)] above. The Accused must thus be regarded as having been in possession of the black bundles at the material time. His possession of the black bundles in turn triggered the presumption under s 18(1)(*a*) of the MDA, which reads:

> (1) Any person who is proved to have had in his possession or custody or under his control —

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43 Transcripts for 24 March 2025 at p 9 (lines 12–22); Accused's first cautioned statement dated 19 December 2020 ("1st Cautioned Statement") (AB p 257); Accused's second cautioned statement dated 29 June 2021 ("2nd Cautioned Statement") (AB p 260); 2nd Long Statement at para 31 (AB p 269).

> (a) anything containing a controlled drug;
> …
> shall, until the contrary is proved, be presumed to have had that drug in his possession.

As the drugs were contained in the black bundles, the operation of s 18(1)(*a*) of the MDA meant that the Accused was presumed to be in possession of these drugs.

24 The Defence's submissions contended that the statutory presumptions under, *inter alia*, s 18(1) of the MDA had been rebutted.[44] Yet, these submissions offered no explanation whatsoever as to just *how* it had been rebutted. In attempting to make sense of the Defence's contention, I noted that an accused person can rebut the presumption of possession by demonstrating that the drugs were *planted* in his bag or vehicle – see *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [35]. Under such circumstances, he cannot be said to have *known* that the drugs were in his physical possession. Viewed from this lens, there appeared to be one angle which neither the Defence nor the Prosecution had touched upon. As explained at [7(b)] above, the Accused claimed that as he was attempting to retrieve the Blue Nike Bag, its zipper came open, allowing the black bundles inside to tumble into the space behind the front passenger seat. This then had to be juxtaposed against the Accused's position that he did not know exactly *how many* black bundles were in the Blue Nike Bag – he claimed only to have known that there were multiple black bundles in it.[45] That being the case, was it possible for any of the black bundles seized from behind the front passenger seat (see [8] above) *not* to have dropped from the Blue Nike Bag? Put another way, could any of the black bundles found behind the front passenger seat have been

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44 DCS at para 21.

45 Transcripts for 24 March 2025 at p 11 (line 9) – 13 (line 4).

planted there by someone other than the Accused, prior to the Lorry's departure to Singapore? If so, this could potentially pose an obstacle to establishing the possession requirement, at least in respect of any such planted bundle(s).

25 While this was *not* the case run by the Defence at trial, I nevertheless examined this issue for completeness. In doing so, I noted that when SSgt Hafiz recorded the 1st Contemporaneous Statement on the evening of the arrest, he specifically asked the Accused:

> Q1) What are these? (Recorder's note: referring to ***7 black bundles*** and a "Nike" backpack)
>
> A1) I don't know. I swear I don't know.
>
> Q2) To whom do these items belong to?
>
> A2) It belongs to "De[v]a". He was the one who gave it to me.
>
> Q3) Who is "De[v]a"?
>
> A3) He is just someone I know yesterday night through another friend. … Earlier today, at about 4pm, at my warehouse in Ulu Tiram, Johor Bahru, "De[v]a" met up with me and passed me the "Nike" backpack containing ***all the black bundles***. I opened the bag to see what it had contained. When I saw the black-taped bundles, I asked him how come they were packed that way. "De[v]a" said that they were dangerous chemicals that cannot come into contact with anyone as it is like a "virus"
>
> [emphasis added]

A perusal of the 1st Contemporaneous Statement clearly showed that the Accused's possession of all seven black bundles was never in issue. SSgt Hafiz had referred to the "7 black bundles" and the Accused, in the course of his answer, alluded to the Blue Nike Bag containing "all the black bundles" which, viewed against the immediately preceding context, must have been a reference to the "7 black bundles" that SSgt Hafiz had just referred the Accused to.

26 More importantly, the thrust of the Accused's case was that all the black bundles came from Deva, with nothing on the record to suggest that Deva (or anyone acting on Deva's behalf) might have climbed up the Lorry and planted any of the black bundles into the space behind the front passenger seat.

27 I therefore concluded that the Accused had failed to rebut the presumption under s 18(1)(*a*) of the MDA. In other words, the presumption that the Accused was in possession of the drugs in the black bundles – triggered by proof of his possession of the black bundles – stood unrebutted.

Issue 2: Whether the chain of custody was broken

28 A further contention raised by the Accused pertained to the chain of custody over the drugs after they were seized from the Lorry's cabin.[46] Even if the Accused was in possession of the drugs in the seven black bundles, the importation charges would be undermined if a reasonable doubt existed as to whether the drugs seized from the Lorry:

(a) might *not* be the same drugs sent; or

(b) might have been *contaminated* prior to being sent,

to the HSA for testing. Such reasonable doubt would certainly stand in the way of me ruling that the Accused was in *possession* of the drugs that were the subject of the HSA reports at [9] above, upon which the charges were premised.

29 It is trite that the Prosecution bears the burden of proving, beyond a reasonable doubt, that the drugs analysed by the HSA were indeed the ones seized from the Accused. In *Mohamed Affandi bin Rosli v Public Prosecutor*

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[46] DCS at paras 48–50.

[2019] 1 SLR 440 ("*Affandi*"), the Court of Appeal explained (at [39]):

> … Much of the discussion in this area has been framed in terms of whether such a doubt has been raised as to a possible break in the chain of custody. *But this obscures the fact that it is first incumbent on the Prosecution to establish the chain.* ***This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis***. In the context of the Prosecution establishing the chain of custody, ***the Defence may also seek to suggest that there is a break in the chain of custody. This refers not necessarily to challenging the Prosecution's overall account but to showing that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. Where this is shown to be the case and a reasonable doubt is raised as to the identity of the drug exhibits, then the Prosecution has not discharged its burden*** … ***To put it another way, the Prosecution must show an unbroken chain. There cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits*** … [emphasis in original in italics; emphasis added in bold italics]

30 The Court of Appeal in *Affandi* also cited (at [41]) the case of *Lai Kam Loy v Public Prosecutor* [1993] 3 SLR(R) 143, where the Court of Appeal admonished (at [38]) that:

> … it cannot be that in every drug case it lies on the Prosecution to laboriously call every single witness to establish the chain of possession of the seized drugs. The need to do so only arises where a doubt as to the identity of an exhibit has arisen.

Notwithstanding this, the Prosecution in the present case *did* adduce evidence from every individual who handled the seven black bundles, as well as the packets of drugs extracted therefrom, to demonstrate an unbroken chain of custody from the point of seizure of the black bundles to the point when the packets of drugs therein were sent to the HSA for analysis. From the evidence, the following chain of events that can be pieced together:

(a) As explained at [7(a)] above, CI2 Subra's evidence was that he had taken two of the black bundles from behind the front passenger seat

and shown them to the Accused, before placing them on the seat of the front passenger seat. He then left both the black bundles there, with the other black bundles remaining behind the front passenger seat.[47]

(b) CI2 Subra was then relieved by the CNB officers arriving at the scene.[48] They included SSgt Hafiz, who saw the two black bundles placed by CI2 Subra on the seat of the front passenger seat, as well as the black bundles behind the front passenger seat. As explained at [8] above, SSgt Hafiz retrieved five black bundles from behind the front passenger seat. During this process, the Accused was standing outside the passenger side door and could see SSgt Hafiz retrieving the black bundles.[49] SSgt Hafiz then placed all seven bundles in an empty resealable bag.[50]

(c) W/SSgt Goh then took custody of the seven black bundles and the Blue Nike Bag, after which the party returned to the CCC office with the Accused and the Lorry Driver.[51] There, W/SSgt Goh had at two junctures handed the seven black bundles to her fellow CNB officers for purposes of statement-taking:[52]

(i) At around 6.59pm, she handed the seven black bundles to SSgt Munawwar to facilitate the recording of the Lorry Driver's contemporaneous statement. After showing the seven

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47 CI2 Subra's CS at para 5 (AB p 153).

48 SSgt Hafiz's CS at para 2 (AB p 164).

49 SSgt Hafiz's CS at para 4 (AB p 165).

50 SSgt Hafiz's CS at para 5 (AB p 165); Goh Li May's Conditioned Statement dated 6 April 2022 ("W/SSgt Goh's CS") at para 5 (AB p 176).

51 W/SSgt Goh's CS at para 5 (AB p 176).

52 W/SSgt Goh's CS at para 6 (AB p 176).

black bundles to the Lorry Driver, SSgt Munawwar returned them to W/SSgt Goh.[53]

(ii) Shortly after, at around 7.19pm, she handed the seven black bundles to SSgt Hafiz to facilitate the recording of the 1st Contemporaneous Statement from the Accused. Upon conclusion of the recording of the statement at 8.13pm, SSgt Hafiz returned the seven black bundles to W/SSgt Goh.[54]

(d) At about 8.43pm, at the CCC office, W/SSgt Goh handed the seven black bundles to Woman Senior Staff Sergeant Siti Hawa binte Sulaiman ("W/SSSgt Siti"),[55] who brought them to the CNB's B3 office.[56] At about 9.44pm, W/SSSgt Siti placed each black bundle and the Blue Nike Bag into individual tamper-proof bags and sealed the same, in W/SSgt Goh's presence, before putting the seven black bundles into a locked cabinet.[57]

(e) About 5½ hours later, at about 4.10am on 19 December 2020, W/SSSgt Siti withdrew the seven black bundles from the locked cabinet and handed them to Assistant Superintendent Ng Zhi Hao ("ASP Ng").[58] ASP Ng also took over custody of the Accused and the Lorry Driver and escorted them from the Woodlands Checkpoint to the Tanglin Police

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53 See also Muhammad Munawwar bin Mohamed Ismail's Conditioned Statement dated 5 April 2022 at para 6 (AB p 182).

54 See also SSgt Hafiz's CS at para 7 (AB p 165).

55 W/SSgt Goh's CS at para 7 (AB p 176).

56 Siti Hawa binte Sulaiman's Conditioned Statement dated 5 April 2022 ("W/SSSgt Siti's CS") at para 3 (AB p 192).

57 W/SSSgt Siti's CS at para 3 (AB p 192); W/SSgt Goh's CS at para 9 (AB p 176).

58 W/SSSgt Siti's CS at para 4 (AB p 192). See also Ng Zhi Hao's Conditioned Statement dated 5 April 2022 ("ASP Ng's CS") at para 3 (AB p 194).

Divisional Headquarters, where he left both men to serve a "Stay-Home Notice" pursuant to COVID-19 measures.[59]

(f) Thereafter, ASP Ng brought the seven black bundles back to the CNB Headquarters where, at about 6.03am, he handed them to Woman Inspector Tan Lye Cheng, Michelle ("Insp Michelle").[60]

31 At 6.07am, Insp Michelle and three other CNB officers commenced the processing of the seven black bundles, within the Exhibit Management Room ("EM Room").[61] As to what happened during the processing, this could be gleaned from the evidence of Insp Michelle[62] and the three other CNB officers, *ie*, Assistant Superintendent Fernandez Anthony Leo ("ASP Anthony"),[63] XT3 Haifaa binte Mohamed Anwar ("XT3 Haifaa")[64] and XT3 Lee Jia Ying, Cheryl ("XT3 Cheryl").[65] The processing of the seven black bundles was executed as follows:

(a) The seven black bundles and the Blue Nike Bag were placed on clean sheets of brown paper,[66] with labels placed against each item, and

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59 ASP Ng's CS at para 4 (AB p 194). See also Transcripts for 18 March 2025 at p 3 (lines 1–7).

60 ASP Ng's CS at para 5 (AB p 194). See also Insp Michelle's CS at para 17 (AB p 230).

61 Insp Michelle's CS at para 16 (AB p 230).

62 Insp Michelle's CS at paras 18–20 (AB pp 230–231).

63 Fernandez Anthony Leo's Conditioned Statement dated 4 April 2022 ("ASP Anthony's CS") at paras 10–11 (AB pp 236–237).

64 Haifaa binte Mohamed Anwar's Conditioned Statement dated 6 April 2022 ("XT3 Haifaa's CS") at paras 4–7 (AB pp 30–31).

65 Lee Jia Ying, Cheryl's Conditioned Statement dated 6 April 2022 ("XT3 Cheryl's CS") at paras 5–9 (AB pp 1–2).

66 XT3 Haifaa's CS at para 5 (AB p 30).

photographed. The Blue Nike Bag was labelled as "A1" while the seven black bundles were respectively labelled as "A2" to "A8".

(b) XT3 Haifaa and XT3 Cheryl had then proceeded to cut the wrappings of the black bundles to take out their contents.[67] XT3 Haifaa explained that prior to cutting the black bundles, she noticed that one of them had "a partially cut mark",[68] although she did not specifically relate this to the cut that SSgt Hafiz had made with a scalpel on one of the black bundles (see [8] above). Upon cutting the seven black bundles open, it was found that:

(i) A2 and A8 each contained one packet of brown granular/powdery substance;

(ii) A3, A4, A6 and A7 each contained two packets of brown granular/powdery substance; and

(iii) A5 contained (*inter alia*) one packet of white crystalline substance.

The seven black bundles were thus found to collectively contain ten packets of brown granular/powdery substance and one packet of white crystalline substance (collectively, "the 11 Packets").

(c) As XT3 Haifaa and XT3 Cheryl were cutting the seven black bundles open to extract the 11 Packets, they found that all of the 11 Packets were leaking.[69] XT3 Haifaa testified that she could not tell if the leak was caused by their act of cutting of the black bundles open (to take

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67 Transcripts for 11 March 2025 at pp 74 (line 19) – 75 (line 3); 76 (line 8) – 77 (line 1).

68 Transcripts for 11 March 2025 at p 74 (lines 11–17).

69 Transcripts for 11 March 2025 at p 78 (lines 1–4).

the 11 Packets out) or whether the 11 Packets were already leaking before that.[70] The 11 Packets were then swabbed by XT3 Haifaa for DNA[71] and photographed by XT3 Cheryl. Given the leakage, powdery residue could be seen on the brown paper when the 11 Packets were being photographed. Thereafter, the 11 Packets were placed in resealable bags to preserve exhibit integrity, with the residue placed in the resealable bag containing the specific packet from which the residue had leaked.[72]

32 The processing of the seven black bundles (and the 11 Packets extracted therefrom) ended at around 10.08am, following which XT3 Haifaa and XT3 Cheryl left for other duties.[73] As for Insp Michelle and ASP Anthony, they remained in the EM Room from about 10.15am to about 10.20am to weigh the 11 Packets. Insp Michelle recorded the weight values in the investigation diary.[74] After the weighing was done, the tamper-proof bags containing the 11 Packets were then sealed.[75] As it was already Saturday morning, Insp Michelle brought the 11 Packets to her office within the CNB Headquarters and locked them inside, before leaving for the weekend. Only she could unlock her office as she held the only key.[76]

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70 Transcripts for 11 March 2025 at pp 75 (line 30) – 76 (line 25).

71 Insp Michelle's CS at para 18 (AB p 230); XT3 Haifaa's CS at para 5 (AB p 30).

72 Insp Michelle's CS at para 19 (AB pp 230–231); XT3 Haifaa's CS at para 6 (AB pp 30–31); XT3 Cheryl's CS at para 8 (AB p 2).

73 XT3 Haifaa's CS at para 7 (AB p 31).

74 ASP Anthony's CS at para 11 (AB p 236).

75 Transcripts for 12 March 2025 at p 76 (lines 10–11).

76 Insp Michelle's CS at para 24 (AB p 234); Transcripts for 12 March 2025 at pp 76 (line 12) – 77 (line 19).

33 On the morning of Monday, 21 December 2020, Insp Michelle returned to her office and retrieved the 11 Packets, which then passed through the following hands:

(a) At about 9.30am, Insp Michelle handed all the case exhibits (including the 11 Packets)[77] to Inspector Muhammed Ridlwan bin Mohamed Raffi ("Insp Ridlwan").[78]

(b) At about 10.28am, Insp Ridlwan handed the case exhibits (including the 11 Packets) to Sergeant (3) Kovalan s/o Gopala Krishna ("Sgt Kovalan") at the CNB Exhibit Management Team ("EMT") office.[79] Sgt Kovalan placed the 11 Packets inside a locked metal cabinet in the EMT office and kept the key to the cabinet.[80]

(c) Sometime before 4.55pm, Sgt Kovalan retrieved the 11 Packets from the locked metal cabinet in the EMT office and handed them to Sergeant (3) Muhammad Sufyan bin Mohamed Khairolzaman ("Sgt Sufyan").[81] At 4.55pm, Sgt Sufyan handed the 11 Packets to the HSA Illicit Drugs Laboratory for analysis.[82]

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77 Muhammad Ridlwan bin Mohamed Raffi's Conditioned Statement dated 4 April 2022 ("Insp Ridlwan's CS") at para 9(a) (AB p 240).

78 Insp Michelle's CS at para 25 (AB p 234).

79 Insp Ridlwan's CS at para 9 (AB p 240); Kovalan s/o Gopala Krishna's Conditioned Statement dated 6 April 2022 ("Sgt Kovalan's CS") at paras 2–3(a) (AB p 202).

80 Sgt Kovalan's CS at para 4 (AB p 203); Transcripts for 21 March 2025 at p 8 (lines 5–7).

81 Sgt Kovalan's CS at para 5(b) (AB p 203); Muhammad Sufyan bin Mohamed Khairolzaman's Conditioned Statement dated 7 April 2022 ("Sgt Sufyan's CS") at para 2 (AB p 206).

82 Sgt Sufyan's CS at para 2 (AB p 206).

34 Notwithstanding the evidence above, the Defence raised the following issues to cast doubt on whether the chain of custody was indeed intact:

(a) Firstly, the Defence argued that there were questions as to how many black bundles were inside the Blue Nike Bag,[83] especially since the Accused claimed not to have even known just how many black bundles were in it[84] (see [24] above).

(b) Secondly, the Defence argued that there was uncertainty about the circumstances surrounding the custody of the black bundles while they were still at the Woodlands Checkpoint, given the following:[84]

(i) No photographs were taken of the black bundles when they were at the Woodlands Checkpoint.

(ii) After being removed from the Lorry, the black bundles were locked in a cabinet in the CNB's B3 office at Woodlands Checkpoint by W/SSSgt Siti (see [30(d)] above). Yet, Insp Michelle made no checks on the black bundles while they were locked in that cabinet.

(c) Thirdly, the Defence challenged the process by which the black bundles and the 11 Packets within them had been processed by Insp Michelle and the three other CNB officers at the EM Room in the CNB Headquarters. Specifically, the Defence contended that the processing suffered from the following irregularities:[85]

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83 DCS at para 52.

84 DCS at para 49; DRS at para 6.

85 DCS at para 49; DRS at para 32.

(i) The Accused was not present in the EM Room during the processing of the seven black bundles.

(ii) During the processing, powdery residue from the drug exhibits had leaked onto the brown paper (see [31(c)] above). Yet, there were no photographs focusing specifically on the spillage, *ie*, in isolation from the 11 Packets. This, argued the Defence, gave rise to questions as to whether the spillage was only from some of the 11 Packets or from all of them.[86]

(iii) Although Insp Michelle had weighed the 11 Packets and recorded the values in the investigation diary (see [32] above), her conditioned statement failed to stipulate what these values were. This, argued the Defence, left a question mark over the weights of the 11 Packets, while they were still in the EM Room.

(iv) The 11 Packets were sealed in tamper-proof bags only *after* they had been weighed by Insp Michelle and not before. Insp Michelle testified that when XT3 Haifaa and XT3 Cheryl were done with photographing the 11 Packets and other exhibits, these were placed into tamper-proof bags *without* the bags being sealed. The tamper-proof bags were sealed only after the 11 Packets were weighed by Insp Michelle[87] (see [32] above).

(d) Finally, the Accused took issue with the fact that the drug exhibits were in Insp Michelle's office over the weekend, from the morning of Saturday, 19 December 2020 to the morning of Monday, 21 December 2020 (see [32] above).

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86 DCS at para 52; DRS at para 33.

87 Transcripts for 12 March 2025 at pp 75 (line 31) – 76 (line 11).

35 The following sets out my assessment of each of the four points raised by the Defence above – all of which in my view hold no merit.

36 Firstly, as regards the contention that the Accused did not know how many black bundles were in the Blue Nike Bag, I failed to comprehend how this was even a chain of custody issue. Based on the evidence, there was nothing to suggest that any of the seven black bundles originated from anywhere other than the Blue Nike Bag, which had in turn been in the Accused's possession at all material times. As explained at [25] above, the Defence's case contained no suggestion to this effect – the Accused did not insinuate that any of the seven black bundles had been planted in the space behind the front passenger seat by someone else. Even if he did not know the exact number of black bundles in the Blue Nike Bag, while he was transporting it across the border, this did not alter the fact that he was in possession of the Blue Nike Bag's contents.

37 Secondly, in relation to the window of time when the black bundles were still at the Woodlands Checkpoint, the Accused failed to identify any break in the chain of custody that might have occurred during this period. The fact that no photographs were taken of the black bundles while they were at the Woodlands Checkpoint is of little impact, given the comprehensive testimonies of the witnesses establishing that the black bundles seized from the Lorry were indeed those eventually sent to the CNB Headquarters. The evidence showed how the seven black bundles from the Lorry had been seized by SSgt Hafiz and passed to W/SSgt Goh, who then handed them to W/SSSgt Siti. W/SSSgt Siti had then locked the black bundles in the cabinet in the CNB B3 office, before taking them out and passing them to ASP Ng (who then transported the black bundles to the CNB Headquarters). That Insp Michelle did not check on the black bundles after they were placed in the cabinet by W/SSSgt Siti is also immaterial as there was no suggestion that anybody could have tampered with

the black bundles while they were stored there. W/SSSgt Siti testified that she had *locked* the cabinet after placing the black bundles inside, unlocking it only to take the black bundles out and pass them to ASP Ng. When the Defence cross-examined W/SSSgt Siti on this, she made it clear that no one else had the key to the cabinet except her.[88]

38 Moving on to the Defence's contentions about the purported irregularities when the drugs were being processed in the EM Room (at [34(c)] above), I found that these failed to disclose any breaks in the chain of custody.

(a) Firstly, the fact that the Accused was not present in the EM Room when the seven black bundles were opened and photographed did not taint the process. The CNB had its reasons for placing the Accused in the Tanglin Police Divisional Headquarters despite the processing having been conducted in the CNB Headquarters – this was to comply with COVID-19 quarantine safety measures (see [30(e)] above). More to the point, the inability of an accused person to observe the processing of the drug exhibits does not mean that the chain of custody is broken for the duration of non-observation. I can do no better than echo the words of Philip Jeyaretnam J in *Public Prosecutor v Yogesswaran C Manogaran* [2024] 6 SLR 624 ("*Yogesswaran*") at [45]:

> I begin by observing that the reason why a drug exhibit is ordinarily kept within sight of an arrested person until it has been sealed is to eliminate or reduce the possibility of that arrested person asserting that there has been a break in the chain of custody. This minimises disputes and hence facilitates proof at the trial of the chain of custody. However, *this does not mean that the inability of an accused person to observe the processing and/or sealing of a drug exhibit automatically breaks the chain of custody during that*

[88] Transcripts for 11 March 2025 at pp 97 (line 27) – 98 (line 23).

> *period of non-observation. What ultimately matters is the actual chain of custody of the material drug exhibit(s) by the police, as opposed to the accused person's observation of that chain of custody.* A period during which the accused did not have the opportunity to observe the exhibit merely raises a question that must be answered by the evidence of someone who in fact had custody of the material drug exhibit(s) during that period. If credible evidence is given in that regard, then the necessary link in the chain of custody would be established. [emphasis added]

In that case, the accused persons were present during the weighing of the drug exhibits but absent when these exhibits were subsequently photographed and sealed. Jeyaretnam J held (at [46]) that the Prosecution had established an unbroken chain of custody through the evidence of two CNB officers who were present throughout the photo taking and subsequent sealing of the exhibits – the officers attested that the drug exhibits did not (contrary to the accused persons' assertions) get mixed up. Reverting to the present case before me, the processing of the black bundles and the 11 Packets extracted from them had similarly been attested to by multiple individuals: Insp Michelle, ASP Anthony, XT3 Haifaa and XT3 Cheryl. All of them had testified and subjected themselves to cross-examination as to how the drug exhibits had been handled in the EM Room. There was nothing to suggest that the chain of custody was broken at any point during the processing or when the 11 Packets were subsequently weighed and sealed in tamper-proof bags.

(b) As regards the Accused's concerns about how powdery residue from the drug exhibits had leaked onto the brown paper, the purport of this submission was unclear to me. If the concern was with contamination, the CNB officers had explained that after the 11 Packets were photographed, they were placed into resealable bags, with the

residue corresponding to each packet being placed into the resealable bag containing the packet from which the residue had leaked, to maintain exhibit integrity – see [31(c)] above. More importantly, there was no suggestion that the brown paper on which the seven black bundles had been placed, opened and photographed contained drugs from any other source.

(c) Next, the fact that Insp Michelle did not stipulate the weights of the 11 Packets in her conditioned statement was irrelevant. The Defence did not allege any discrepancy between the weights of the 11 Packets as recorded by Insp Michelle in the EM Room, as compared to the weights recorded at any other stage (*eg*, when they were weighed by the HSA). Under cross-examination, Insp Michelle re-iterated that she had recorded the weights of the 11 Packets in the investigation diary but the Defence did not even see a need to ask her for the recorded figures.[89] Plainly, the weights of the 11 Packets as recorded by Insp Michelle was never an issue.

(d) Finally, the Accused did not explain why the processing of the exhibits should be viewed as tainted in any way, just because the 11 Packets were sealed within the tamper-proof bags only after (and not before) they were weighed in the EM Room. There was nothing to suggest that the weighing process itself might have tainted the integrity of the 11 Packets in any way.

39 Finally, the fact that Insp Michelle locked the 11 Packets (as sealed in tamper-proof bags) in her office for the weekend also did not break the chain of

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89 Transcripts for 12 March 2025 at pp 75 (line 16) – 76 (line 11).

custody. She explained that no one else had the key to the office except her (see [32] above). There was also no suggestion of any unauthorised entry into her office over the weekend, while the 11 Packets were stored there. The Court of Appeal in *Affandi* was faced with a similar factual matrix, *ie*, where the seized drug exhibits had been locked in the investigating officer's office over the weekend. The court rejected the defence's argument that the *possibility* of the exhibits having been tampered with while they were in the investigating officer's office broke the chain of custody (see *Affandi* at [54]–[55]). The Court of Appeal remarked (at [56]):

> … speculative arguments that seek to raise a theoretical possibility of a break in the chain of custody would not suffice. What must be raised is a reasonable doubt that there was such a break and on the facts, we are satisfied that the Defence has failed to establish this in relation to this aspect of its case. The IO's office was locked and even though the keys to her office were centrally available, there was a clear protocol to be followed. Her personal authorisation was required before anybody else could enter the office. During the period in question, no one had requested such access, and there is nothing to suggest that the protocol had been compromised. In short, this was nothing but a fanciful notion which might have been theoretically possible but was wholly unsupported and baseless.

Those remarks applied with equal force here, as regards the duration of the weekend when the 11 Packets were locked in Insp Michelle's office.

40 I thus found that the Prosecution had established beyond reasonable doubt that the chain of custody, from the point the black bundles were seized from the Lorry's cabin to the time when the 11 Packets were sent to the HSA for analysis, remained intact throughout.

Issue 3: Whether the Accused knew about the nature of the drugs in the black bundles

41 I now turn to the knowledge requirement, which was the focal point for the bulk of the disputes in this case. Given that the Accused was presumed to be in possession of the drugs in the black bundles, he was also presumed – by the operation of s 18(2) of the MDA – to have known about the nature of the drugs in the black bundles. That subsection states:

> Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

In *Obeng Comfort*, the Court of Appeal explained the purport of this presumption (at [36]):

> … [I]f an accused is either (a) proved to have had the controlled drug in his possession; or (b) presumed under s 18(1) of the MDA to have had the controlled drug in his possession and the contrary is not proved, the presumption under s 18(2) that he has knowledge of the nature of the drug would be invoked. This follows because an accused person, who, it has been established, was in possession of the controlled drug should be taken to know the nature of that drug unless he can demonstrate otherwise. …

42 The Court of Appeal then held (at [37]) that an accused person seeking to rebut the presumption must do so by proving, on a balance of probabilities, that he did not have knowledge of the nature of the drugs in his possession. In doing so, the accused person should be able to say what he *thought* the drugs were, so as to allow the court to assess if the presumption had indeed been rebutted. The Court of Appeal explained (at [39]):

> In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It

> would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. … The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of, and to rebut this, he must give an account of what he thought it was.

The Court of Appeal then observed that the assessment of the accused's claim as regards what he thought he was carrying would be "a highly fact-specific inquiry": *Obeng Comfort* at [40].

43 The following sets out my assessment of whether the Accused had managed to establish, on a balance of probabilities, that he did *not* have knowledge of the nature of the drugs in the seven black bundles. I concluded that the Accused had failed to do so. That conclusion was grounded on the following findings by me:

(a) Firstly, the Accused's reaction when the drugs were first discovered strongly suggested that he *did* know of the contents of the black bundles.

(b) Secondly, the Accused's account of how he came to meet Deva – being the person whom the Accused claimed had passed him the black bundles and who was thus the central figure around which the Accused's entire defence revolved – was underpinned by a highly material lie.

(c) Thirdly, there were numerous other factors which showed that the Accused's claim to ignorance was simply not credible.

Each of these findings is covered in turn below.

The Accused's reaction when the drugs were discovered

44 The Prosecution's case was that after CI2 Subra spotted the Blue Nike Bag, the Accused had clearly tried to obstruct him from examining its contents. Specifically, the Prosecution contended that the Accused made *not one but two* attempts to resist passing the Blue Nike Bag to CI2 Subra, as set out below:

(a) When CI2 Subra first asked the Accused to bring the Blue Nike Bag down from the Lorry's cabin, the Accused tried to sidestep the request by saying that the Blue Nike Bag was too heavy (see [6] above). It was only after CI2 Subra *insisted* on seeing the Blue Nike Bag that the Accused climbed up the Lorry cabin to bring it down.

(b) Even when the Accused was retrieving the Blue Nike Bag, he took a few minutes to take it out from behind the front passenger seat of the Lorry's cabin, to the point that CI2 Subra had to query about the delay. The Prosecution's case was that the delay was attributable to the Accused taking steps to *empty* the Blue Nike Bag of the black bundles before handing it to CI2 Subra. As set out at [6] above, CI2 Subra's evidence was that when the Accused eventually brought the Blue Nike Bag down and passed the same to CI2 Subra, it was empty.

45 The Accused denied that he *deliberately* emptied the Blue Nike Bag of *all* the black bundles before passing the same to CI2 Subra. As detailed at [7(b)] above, he claimed that the Blue Nike Bag was stuck behind the front passenger seat and, when he yanked at it, the zipper came open. This resulted in the black bundles tumbling out of the Blue Nike Bag and into the space behind the front passenger seat. Based on this, the black bundles had thus fallen out of the Blue Nike Bag *inadvertently*. Furthermore, the Accused disagreed with CI2 Subra's account that the Blue Nike Bag was *empty* when the Accused passed it to him,

contending instead that there was still *one* black bundle in the Blue Nike Bag that was handed to CI2 Subra (see [7(b)] above). The Accused's contention was presumably to convey the notion that if he was still handing *one* of the black bundles to CI2 Subra, it would not be open to this court to infer that the Accused was trying to hide any of the black bundles from CI2 Subra.

46 CI2 Subra was not in court to be cross-examined as he had unfortunately passed away by the time of trial. His conditioned statement was thus admitted under the hearsay exception in s 32(1)(*j*)(i) of the Evidence Act 1893 (2020 Rev Ed). Notwithstanding, I was of the view that CI2 Subra's account (as encapsulated in his conditioned statement) – when coupled with evidence of the surrounding circumstances – was sufficiently compelling to sustain the conclusion that the Accused *did* attempt to obstruct CI2 Subra from gaining access to the Blue Nike Bag's contents. In contrast, I found the Accused's claims to be sorely lacking in credit, for the following reasons:

(a) Firstly, the Defence was unable to explain how CI2 Subra could possibly have been mistaken in perceiving the Blue Nike Bag to be *empty*, given that he arrived at this perception only after *shining a torch* into the Blue Nike Bag (see [6] above).

(b) Secondly, given how CI2 Subra had insisted that the Accused retrieve the Blue Nike Bag despite the latter's protests about it being too heavy (see [6] above), it must have been obvious to the Accused that CI2 Subra was highly interested in the Blue Nike Bag's contents. The Accused would thus have been acutely aware that if – as he claimed – *all but one* of the black bundles in the Blue Nike Bag had just dropped into the space behind the front passenger seat (through the Accused's own actions, no less), this would have been highly material to CI2 Subra.

> Yet the Accused simply handed the Blue Nike Bag to him without breathing a word about the black bundles that the Accused *knew* had just dropped behind the front passenger seat. This omission was plainly incongruent with the actions of someone not trying to hide anything.

In my view, the evidence was far more consistent with the Accused's act of dropping the black bundles into the space behind the front passenger seat being a *deliberate* (rather than inadvertent) one, leaving the Blue Nike Bag *empty* when it was passed to CI2 Subra.

47 During the trial, the Accused tried to explain why he did not alert CI2 Subra to the black bundles that had dropped behind the front passenger seat. Specifically, he suggested that there was *no need* to alert CI2 Subra to the black bundles that fell out from the Blue Nike Bag because CI2 Subra would likely have *seen* at least two of the black bundles which fell out. In this respect, the Accused testified that when he had tried to pull the Blue Nike Bag out from behind the front passenger seat (causing its zipper to come open), *not all the black bundles fell* ***behind*** the front passenger seat. One of the black bundles had fallen *onto the seat* of the front passenger seat while another had fallen *onto the floor* beneath the front passenger seat, in full view of CI2 Subra.[90] As seen from the photograph at [5] above, the seat of and the floor beneath the front passenger seat appear to be within the line of sight of someone standing outside the Lorry (such as CI2 Subra). If the Accused's account were true, it would detract from the suggestion that his failure to alert CI2 Subra to the black bundles dropping out from the Blue Nike Bag arose from any desire to conceal them – there would be no need to alert CI2 Subra if he could already *see* some of the black bundles dropping out.

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90 Transcripts for 24 March 2025 at pp 14 (line 1) – 15 (line 22).

48 As a preliminary observation, I note that the Accused's account of how the two black bundles had fallen within CI2 Subra's line of sight was not captured anywhere in CI2 Subra's conditioned statement. More critically, it was plainly contradicted by *the Accused's* own description of his interactions with CI2 Subra, as captured in the following paragraphs of the 2nd Long Statement:

> 38 … I was then asked to remove the bag from the back of the passenger seat. I then went up to my seat and tried to remove the bag. I had difficulties removing the bag because there was an issue with the seat. I told the ICA officers [*ie*, CI2 Subra] on this. I then kept pulling the bag with force and the bundles came out from the bag. The zips of the bags were forcefully opened. I then passed the bag which had only one bundle in it to the ICA officer. I was asked how I knew that there was a bundle in the bag. ***After I removed the bag from the back seat, I saw that there was one left while the other bundles had dropped behind the back seat***. I then showed ***the bag which was opened and containing one bundle*** to the ICA officer from my seat. He then asked me to alight from my lorry.
>
> 39. ***The ICA officer then took the bag with the bundle from me and asked me to move aside. He then shined a torch at the back of my seat and saw the bundles***. To my recollection, there ***were two bundles which was dropped on my seat***. [CI2 Subra] then told me that there were six to seven bundles and asked me if they were mine.
>
> [emphasis added]

It was thus evident from the 2nd Long Statement, as extracted above, that the Accused meant to convey the narrative that the black bundles fell *behind* (and not in front of) the front passenger seat, except for one black bundle remaining in the Blue Nike Bag. The 2nd Long Statement also described how CI2 Subra had then climbed up the Lorry's cabin and spotted the black bundles *behind* the front passenger seat. Finally, it went on to record the Accused as saying that to his recollection, *two* bundles were dropped on the seat (and not on the floor beneath the seat) – this dovetailed with the account by CI2 Subra (at [7(a)] above) that he had taken two of the black bundles from *behind* the seat, showed

them to the Accused and placed both black bundles on the seat of the front passenger seat. SSgt Hafiz had also confirmed that he had seen these two bundles on the seat of the front passenger seat when he arrived at the scene to relieve CI2 Subra (see [8] above). There was nothing in the 2nd Long Statement about any black bundles falling onto the seat – much less the *floor* – of the front passenger seat, when the Accused was retrieving the Blue Nike Bag. It was thus plain to me that the Accused's assertion – that CI2 Subra saw two of the black bundles falling out of the Blue Nike Bag – was no more than an afterthought.

49 In a further bid to justify why he failed to alert CI2 Subra to the black bundles falling out of the Blue Nike Bag, the Accused testified that CI2 Subra had, upon seeing them fall out, *immediately* directed the Accused not to say anything or touch anything.[91] However, the Accused's testimony about being directed not to say anything had to be contrasted with the subsequent portion of his oral evidence, in which he explained that when CI2 Subra saw the black bundles falling out, he had *asked the Accused* what those items were (to which the Accused replied that they were passed to him by a friend).[92] This directly contradicted the prior assertion that when the black bundles fell out of the Blue Nike Bag, the Accused was immediately directed not to say (or touch) anything. The Accused nevertheless sought to qualify that it was only after this verbal exchange – in which CI2 Subra asked the Accused what the black bundles were – that the Accused was asked to climb down from the Lorry's cabin and directed not to say or touch anything.[93] The Accused was evidently unable to maintain a consistent account of just when CI2 Subra issued the directive to him not to say anything. This inspired little confidence about whether such a directive was ever

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91 Transcripts for 24 March 2025 at pp 14 (line 29) – 15 (line 7).

92 Transcripts for 24 March 2025 at pp 18 (line 5) – 19 (line 11).

93 Transcripts for 24 March 2025 at pp 19 (lines 14–22) & 21 (lines 3–15).

issued at all. Certainly, it was neither reflected in CI2 Subra's conditioned statement, nor in the Accused's own statements to the CNB.

50 The Accused's *behaviour* was thus strongly supportive of the inference that he had attempted to obstruct CI2 from accessing the Blue Nike Bag. When the Accused failed to fob off CI2 Subra's request to see the Blue Nike Bag with the excuse that it was too heavy (see [6] above), he resorted to deliberately emptying the Blue Nike Bag of *all* seven bundles before passing it to CI2 Subra. The Accused's explanations for his omission to tell CI2 Subra about the black bundles that had dropped from the Blue Nike Bag were unbelievable.

51 Apart from his behaviour, another notable feature of the Accused's reaction to CI2 Subra lay in his *words* – specifically his reply when CI2 Subra asked him what the black bundles were. To recapitulate, CI2 Subra's evidence was that the Accused replied – *not once but twice* – that he did not know what the black bundles contained (see [7(a)] above). If the Accused truly believed that the black bundles contained chemicals which (according to Deva) would cause no issues at the customs checkpoint (see [12] above), it was inexplicable why he did not simply relay this to CI2 Subra in response to the latter's query. Instead, the Accused mentioned that the black bundles contained "chemicals" only *later*, relaying this to the CNB officers who subsequently arrived at the scene to relieve CI2 Subra – see [8] above. The Accused's behaviour towards CI2 Subra was reminiscent of the facts in *Pang Siew Fum v Public Prosecutor* [2011] 2 SLR 635, where the accused person who was caught in possession of heroin claimed that she thought that she was carrying precious stones and Buddha pendants. Yet, when the bag containing the heroin was first opened in her presence by the authorities, she showed no reaction upon seeing the drugs. The Court of Appeal in that case made the following observation (at [67]):

> 67 In the context of these circumstances, [the accused's] non-reaction is perhaps not as significant. However, about ten to fifteen minutes later after the inspection of the contents of the luggage, Senior Staff Sergeant Choo Thiam Hock put to her some questions, amongst which was this question:
>
> > Q10: Do you know what is inside the luggage? …
> > A10: I do not know. ….
>
> In so answering, she had failed to give her version of the facts – namely, that she was carrying precious stones and Buddha pendants. This, coupled with her lack of reaction upon seeing the powdery substance, is wholly consistent with the fact that she knew that she was carrying drugs.

In my view, a similar inference could be derived from the Accused's answers to CI2 Subra (that he *did not know* what the black bundles were), coupled with his attempts to obstruct CI2 Subra from accessing the Blue Nike Bag's contents. Viewed collectively, these reactions were highly consonant with him *knowing* what the black bundles in the Blue Nike Bag contained.

The Accused's false claims about his relationship with Deva

52 A further ground for my conclusion that the presumption of knowledge stood unrebutted stemmed from the blatant lie that the Accused told the CNB about his relationship with Deva, by falsely claiming that he first met Deva on the night before his arrest when he knew Deva long before that. It must be stressed at the outset that this was not a lie pertaining to a supporting actor in the plot, or an inconsequential fib about some ancillary detail. Deva's involvement formed the *centrepiece* of the defence. According to the Accused, it was Deva who gave him the drugs and misled him into thinking that they were chemicals. It was Deva who was going to give the Accused instructions on delivering the drugs when the latter arrived in Singapore. That the Accused lied about such a pivotal feature of his case thus severely undermined the credibility of his attempt to rebut the presumption of knowledge. The following sets out the circumstances by which the lie was purveyed.

53 In multiple statements recorded by the CNB, the Accused maintained that he met Deva *for the first time* at a party in Johor Bahru on 17 December 2020, *ie*, on the night before the arrest. In the 1st Contemporaneous Statement, which SSgt Hafiz recorded from the Accused shortly after the arrest, the Accused explicitly stated that he never met Deva before the party on 17 December 2020. This was seen in his answer in A3, extracted below:[94]

> Q3) Who is "De[v]a"?
>
> A3) *He is just someone I know yesterday night through another friend.* Yesterday night at around 8pm, I was at a friend's house in Taman Gaya, Ulu Tiram, Johor Bahru. He had organised a dinner cum drinking session for all his friends. *There were a couple of his friends that I had never met before. One of them was an Indian male named "De[v]a*". We started chatting, and he asked me whether I was the one sometimes deliver food or clothes to my mum and sister in Singapore from Johor. *I did not know how he knew that, but I said yes. He then asked for a favour. He wanted help to pass some "chemicals" to his younger brother named "Mages"* in Singapore. I said okay. He said he would give me $10 SGD for the favour. …
>
> [emphasis added]

The rest of the Accused's answer in A3, in which he recounted what happened when Deva met him the next day – *ie*, the day of the arrest – and passed him the Blue Nike Bag, is extracted at [25] above.

54 Thereafter, the Accused *perpetuated* his account that he was "introduced" to Deva at the party, in the following statements to CNB:

(a) His first cautioned statement recorded on 19 December 2020 ("1st Cautioned Statement").[95]

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94 1st Contemporaneous Statement at A3 (AB p 168).

95 Exhibited in AB p 257.

(b) His 2nd Long Statement, recorded on 26 December 2020. In fact, as seen in the extract from this statement at [13(a)] above, the Accused clearly recounted in this statement that during the party, Deva *asked for the Accused's contact number, and the Accused had provided it to Deva*.

For completeness, I should add that after the CNB statements above were recorded, interviews with the Accused were conducted in January 2021 by Dr Koh Wun Wu Kenneth Gerard ("Dr Koh"), the psychiatrist called by the prosecution. In these interviews, the Accused repeated the same narrative, *ie*, that he had met Deva for the first time at the party on the night before the arrest.[96]

55 However, the Accused's narrative about meeting Deva for the first time at the party on 17 December 2020, as conveyed by him in the three CNB statements above and in his interview with Dr Koh, was flatly contradicted by a report subsequently issued by the Criminal Investigation Department's Technology Crime Forensic Branch on 27 October 2021 ("TCFB Report"). The TCFB Report showed that based on records extracted from the Accused's phone, the Accused was acquainted with Deva well before the party on 17 December 2020. Specifically, the call records for the month of December 2020 showed that there were *over 100 calls* between the Accused's number and the number which he said belonged to Deva, from the beginning of the month of December 2020 to the day of the arrest.[97] Records of voice and text messages sent between the Accused's number and Deva's number also suggested that they knew each other, even before the party.

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96 Report of Dr Koh dated 20 January 2021 ("Dr Koh's 1st Report") at para 7 (AB p 350).

97 TCFB addendum report bearing case number TCFB/2021/462 ("TCFB Report") exhibited in AB pp 59–76.

56 Relatedly, the Prosecution argued that the call records suggested that the Accused likely carried out deliveries of similar black bundles for Deva in the past.[98] Specifically, two videos were extracted from the Accused's phone, with one taken at 11.31pm on 4 December 2020 and the other taken five minutes later at 11.36pm. The first video showed a black bundle being dropped into a white bag, while the second showed a black bundle being deposited at the foot of a tree near a bus stop. Shortly after that, from 12.53am to 1.01am, *12 missed calls* were made from Deva's number to the Accused's mobile phone. At about 1.02am, the Accused answered the call and spoke to Deva for over a minute.[99] During this period, no one else called the Accused and he similarly did not call anyone else. I was of course mindful that there was no conclusive proof linking the depositing of the black bundles in the two videos with Deva, apart from the proximity of the calls. Still, the call records conclusively showed that the narrative which the Accused had repeatedly relayed, *ie*, that he met Deva for the first time only at the party on 17 December 2020, was patently false.

57 The Accused was subsequently interviewed by the Defence's psychiatrist, Dr Jacob Rajesh ("Dr Rajesh"), over the course of several sessions commencing in August 2022, *ie*, ***after*** *the release of the TCFB Report*. During these interviews, he told Dr Rajesh that he first met Deva *six to seven months* before his arrest.[100] In cross-examination, the contradictions between the Accused's CNB statements (in which the Accused said that he met Deva only at the party on 17 December 2020) and the account which he gave to Dr Rajesh (that he already knew Deva for six to seven months before that) were put to the

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98 PCS at paras 106–108.

99 TCFB Report at p 17 (AB p 75).

100 Report by Dr Jacob Rajesh dated 3 April 2023 ("Dr Rajesh's Report") at para 32 (AB p 374).

Accused. The Accused confirmed that the correct version was that which he had given to Dr Rajesh, *ie*, that he had known Deva for six to seven months prior to the arrest. The Accused also conceded that this version was "completely the opposite" of what he had said in his statements to the CNB.[101]

58 In his oral evidence, the Accused tried to rationalise the contradictions by saying that he was "in a state of shock" when giving the contemporaneous statement extracted at [53] above.[102] While his statements to the CNB captured him as saying that did not know Deva prior to the party, the Accused explained that he actually meant to say that he *did not know Deva* ***well*** prior to the party – the party being the occasion where both men got the chance to speak at length – and not that he did not *know Deva* ***at all*** prior to the party.[103]

59 Even then, this rationalised narrative failed to cohere with the text and voice messages between both men, which clearly suggested that they *were* ***well*** *acquainted* with each other, even before the party on 17 December 2020. Set out below are the messages that both men exchanged *on* ***16 December 2020*** (*ie*, the day before the party)[104] – these have been translated from Tamil:

From	To	Voice /Text	Time	Message
Accused	"Deva"	Voice	11:55	Good morning brother, good morning brother.
		Text	22:13	Brother, brother.

101 Transcripts for 25 March 2025 at p 32 (lines 12–26).

102 Transcripts for 25 March 2025 at p 35 (lines 18–26).

103 Transcripts for 25 March 2025 at pp 32 (line 27) – 33 (line 4), 38 (lines 1–16), 40 (lines 4–6) & 44 (lines 16–20); DRS at para 24; see also Dr Rajesh's Report at para 32 (AB p 374).

104 Transcription and translation report prepared by RMA Contracts Pte Ltd for the CNB ("T&T Report") at Annex p 1 (AB p 40).

60 The messages providing the most revealing insights were those exchanged between both men *on **17 December 2020*** itself, *ie*, the day the party was allegedly held (*ie*, the day before the arrest). These are extracted below:[105]

From	To	Voice /Text	Time	Message[106]
Accused	"Deva"	Voice	00:28	(Sound of "background noise") (00:00:00) "words not clear"
"Deva"	Accused	Voice	00:53	I am at Kuala Lumpur brother, at Kuala Lumpur.
Accused	"Deva"	Voice	02:18	OK '***la***' brother, OK '***la***' brother, OK '***la***' brother.
			12:50	Brother, brother (00:00:00) "words not clear"
			13:25	(00:00:00) "words not clear"
			17:15	Brother, brother
			18:08	Brother, (00:00:00) "words not clear"
"Deva"	Accused	Voice	18:09	"***Alamak***" brother, I am in Kuala Lumpur. Suddenly I won't be able to arrange for cash. Then I will return to J.B. tonight. Once I reach I will contact you.
				I will be back tonight, if not in the morning. I don't know, let's see how.
Accused	"Deva"	Voice	18:24	Brother, OK '***la***' brother (00:00:00) "words not clear". I will (00:00:00) "words not clear" (Sound of "background noise") Thanks '***uh***' brother.
			18:25	Don't mind me brother, don't be mind me brother.
		Text	18:39	Thank you brother, don't be '***meh***'.
		Voice	18:57	Brother, today did you go to work?
			19:03	(00:00:00) "words not clear", today I am on leave. Yesterday I went to work. Today I am on leave brother.

105 T&T Report at Annex pp 1–3 (AB pp 40–42).

106 Words translated from Tamil into English are underlined. Words spoken in a language that is unknown or other than English are romanised and highlighted in bold and italics.

From	To	Voice /Text	Time	Message[106]
"Deva"	Accused	Voice	19:05	Is it brother? How was the checking yesterday. It must have been real warm inside.
Accused	"Deva"	Voice	19:26	No, brother, no brother, (00:00:00) "words not clear", nothing brother. That day there was no checking inside. Never check anything.
				Inside OK brother. There is nothing inside. Yesterday I went and there is nothing inside. No, brother, it was empty. The situation was as usual.
			20:16	No brother, no brother (00:00:00) "words not clear", nothing really. Nothing happened brother and as usual.
			20:18	Don't mind me brother, don't be mind me brother.

Bearing in mind the Accused's position that he attended the party on 17 December 2020 *at about* ***8pm***,[107] the following preliminary insights may be drawn from the phone records above:

(a) The Accused and Deva were already exchanging phone messages within the three-hour window leading up to the Accused showing up at the party. Yet the Accused stated in the 2nd Long Statement that after he and Deva were introduced to each other at the party, Deva had *asked for the Accused's contact number* (see [13(a)] above). It was thus clear to me that the Accused, in a bid to portray a more diluted level of familiarity between him and Deva, told a blatant lie – the premise for which had been unequivocally debunked by the phone records. It was impossible to construe this patent falsehood as an inadvertent miscommunication, notwithstanding the Accused's attempts

107 Transcripts for 25 March 2025 at p 42 (lines 13–14).

at [58] above to rationalise the contradictions in his CNB statements. When the Accused was pressed on this in cross-examination, he could offer no explanation save for the incredible tale that Deva did ask for his number at the party *despite* having exchanged numerous messages with the Accused just hours before that.[108]

(b) It was also critical to note that the party allegedly took place in *Johor Bahru*. Yet, there was a message from Deva timestamped 18:09 (see the table above), *ie*, less than two hours before the Accused's arrival at the party, in which Deva said that he was *still in Kuala Lumpur*. There were no messages from Deva thereafter intimating that he had arrived in Johor Bahru or alluding to meeting up with the Accused at the party. In fact, although two tables above purported to capture the messages exchanged between both men on 16 and 17 December 2020, they contained no mention of the party (which both men allegedly attended) at all. It was thus highly doubtful whether the party even happened.

61 More importantly, even the Accused's *revised* account – that he only came to know Deva *well* at the party on the evening of 17 December 2020 (see [58] above) – could not be reconciled with the messages sent on 17 December 2020. This could be seen in Deva's message to the Accused timestamped 19:05 in the table at [60] above, about whether the Accused had undergone any checks the day before. By way of background, the Accused had travelled through the customs checkpoint on 16 December 2020. Deva's message at 19:05 on 17 December 2020 had thus queried the Accused: "How was the checking yesterday. It must have been real warm inside." In court, the Accused confirmed that the "checking yesterday" which Deva was asking about pertained to the

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108 Transcripts for 25 March 2025 at pp 33 (line 22) – 34 (line 20).

checks that the Accused had undergone at the Woodlands Checkpoint on 16 December 2020.[109] Twenty minutes after that message from Deva, the Accused responded with the following message timestamped 19:26 (see [60] above): "That day there was no checking inside. Never check anything". The Accused explained that he was telling Deva that no checks were done at the Woodlands Checkpoint and "everything was as usual".[110] This exchange took place less than an hour *before* the Accused turned up at the party, where he supposedly got to know Deva *well* for the first time and gave Deva his number. It was impossible to fathom why the Accused was discussing with Deva whether he had undergone customs checks when passing through the Woodlands Checkpoint the day before, if both men were still not well acquainted with each other then.

62 Clearly, the phone records demonstrated that the Accused *knew* Deva, and knew him *well* at that, long before the alleged party on 17 December 2020. Yet, over the course of three statements to the CNB, the Accused advanced the false narrative that he first came to know Deva only at the party and had exchanged numbers with Deva then. The only inference which can be drawn is that the Accused was actively attempting to conceal the true nature of his relationship with Deva from the CNB. It cannot be overemphasised that the Accused's account of his relationship with Deva went to the very heart of his defence. That he had *repeatedly* lied about it inspired very little confidence in the credibility of his attempt to rebut the presumption of knowledge.

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109 Transcripts for 25 March 2025 at p 46 (lines 1–8).

110 Transcripts for 25 March 2025 at p 47 (lines 1–2).

Other factors betraying the lack of credibility in the Accused's account

63 Apart from the Accused's lies about his relationship with Deva, there were other material signs of the abject lack of credibility in the Accused's claim to ignorance as regards what the seven black bundles contained.

64 Firstly, as explained at [12] above, his defence at trial was that he thought that the black bundles contained chemicals used for cleaning toilets and could cause a virus if touched. However, his claim to having this belief was undermined by how his statements – as to what he *thought* the black bundles contained – kept evolving. The following sets out the chronology of the Accused's ever-changing accounts:

(a) As highlighted at [7(a)], when the Accused was first detained on 18 December 2020, he was asked by CI2 Subra – *twice* – as regards what the black bundles contained. The Accused had replied to CI2 Subra on *both* occasions that he did not know. No mention was made of the black bundles containing chemicals.

(b) When the CNB officers subsequently arrived at the scene to relieve CI2 Subra, the Accused was questioned again as to what the black bundles contained. This time, the Accused described the black bundles' contents as "chemical". Specifically, the Accused told SSgt Hafiz this on two occasions, once before and once after SSgt Hafiz had used a scalpel to make a cut in one of the black bundles to reveal the brownish granular substance inside – see [8] above. The Accused made no mention to SSgt Hafiz about the chemicals (i) giving rise to a "virus" if touched; or (ii) being used for washing toilets.

(c) SSgt Hafiz had then brought the Accused back to the CCC office to record his contemporaneous statement, during which the Accused was referred to the seven black bundles and asked what they were. In his response (see [25] above), the Accused initially said "I don't know. I swear I don't know", after which he said that he was told by Deva that "they were dangerous chemicals that cannot come into contact with anyone as it is like a 'virus'." The narrative that the "chemicals" could give rise to a virus was then repeated by the Accused subsequently, in

(i) the 1st Cautioned Statement;[111] and

(ii) the 2nd Long Statement (extracted at [13(c)] above).

No mention was made in any of these statements about the chemicals being for washing toilets.

(d) Finally, in the 3rd Long Statement, the Accused mentioned for the first time that the chemicals were for washing toilets. He recounted that *Deva told him* that the black bundles contained chemicals for washing toilets and that anyone touching them could get a skin problem and a virus – see the extract of the statement at [14] above.

From the chronology above, it was clear that the Accused was incapable of providing a narrative that had any semblance of consistency, as regards what he thought the black bundles contained.

65 Furthermore, the delay by the Accused in expressing his belief that the black bundles contained chemicals *for washing toilets* gave rise to doubts whether he genuinely harboured such a belief. The nature of the "chemicals"

111 Exhibited in AB p 257.

would have been highly material, seeing as how that term could conceivably encompass a wide range of substances, from the innocuous (*eg*, cleaning chemicals) to the illicit (*eg*, prohibited drugs, hazardous toxins or even explosives). The Accused was explicitly warned when the 1st Cautioned Statement was recorded, one day after his arrest, that any fact or matter which he failed to raise may be regarded as less believable.[112] Yet, it was only in the 3rd Long Statement (see [64(d)] above), which was recorded *ten days* after his arrest, that the Accused mentioned about the chemicals being meant for washing toilets. If he honestly believed this to be true, it is hard to see why he had waited so long to say it – see also *Public Prosecutor v Lee Zheng Da Eddie* [2022] SGHC 199 at [50].

66 The Accused's account of *how* he came to believe that the black bundles contained chemicals for washing toilets was also marred by a material contradiction. As explained at [64(d)] above, the Accused recounted in the 3rd Long Statement that *Deva told him* that the chemicals were for washing toilets (see extract at [14] above). However, during the trial, the Accused retracted this and said that Deva did *not* tell him that the chemicals were meant for washing toilets, and that it was the *Accused himself who deduced* that the chemicals were meant for washing toilets.[113] Pertinently, this subsequent iteration of his story raised even more doubts about his defence. The Accused had previously worked in two different jobs as a cleaner,[114] but he had never seen washing or cleaning products packed in the same manner as the black-taped bundles.[115] In fact, he claimed never to have seen such black-taped bundles before (see [13(c)] above).

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112 1st Cautioned Statement (AB p 256).

113 Transcripts for 24 March 2025 at p 32 (lines 1–14).

114 Dr Rajesh's Report at para 11 (AB p 368).

115 Transcripts for 25 March 2025 at p 23 (lines 8–10).

That being the case, I found it difficult to conceive how he could have come to deduce – of his own accord and without Deva or anyone else telling him – that the chemicals were meant for washing toilets.

67 The difficulties riddling the Accused's account thus pointed strongly to one conclusion: Deva never told him that the black bundles contained chemicals, whether for washing toilets or any other purpose.

68 That conclusion was also reinforced by what happened *after* the Accused was arrested on 18 December 2020. After his arrest, the CNB officers had created a cover story for him to relay to Deva, to facilitate follow-up operations for nabbing the intended recipient of the black bundles. The cover story contained the following key points:[116]

(a) the Lorry was delayed because the Lorry Driver had a fever which necessitated COVID-19 tests at the customs checkpoint; and

(b) the Lorry had just been released and was on its way to Pasir Panjang, so Deva should arrange for the black bundles to be picked up.

69 For context, the messages exchanged between the Accused and Deva on the evening of the arrest, *ie*, on 18 December 2020, are set out below:[117]

From	To	Voice /Text	Time	Message[118]

116 Shanmugam s/o Subra's Conditioned Statement dated 4 April 2022 at para 5 (AB pp 183–184); Transcripts for 25 March 2025 at p 55 (lines 17–26).

117 T&T Report at Annex pp 3–5 (AB pp 42–44).

118 Words translated from Tamil into English are underlined. Words spoken in a language that is unknown or other than English are romanised and highlighted in bold and italics.

From	To	Voice /Text	Time	Message[118]
Accused	"Deva"	Voice	17:01	Brother, brother, brother (00:00:00) "words not clear"
				(00:00:00) "words not clear".
			17:19	Brother I reach JB custom. I have reached JB custom brother (00:00:00) "words not clear"
			17:37	(00:00:00) "words not clear".
"Deva"	Accused	Voice	17:40	OK brother, OK brother, After you are released, message me.
Accused	"Deva"	Text	22:43	Words un clear.
		Voice	22:49	Brother, sorry brother. Sorry brother. Something happened at Customs. He was retained because he has fever and then they asked to do the Covid checking. Now, then we are going out of Custom. Now, I am going to Pasir Panjang. So can you come over there brother. I am going Pasir Panjang brother.
"Deva"	Accused	Voice	22:49	No brother, no brother, don't t [*sic*] do the work, don't do the work. Bring and come.
			22:50	Is the motor parts? Its OK, pick up and come, pick up and come.
Accused	"Deva"	Voice	23:17	Brother, brother (00:00:00) "words not clear" you really don't want it, brother. I will pick up and come. Now, I am going that's why I am asking. You really don't want? OK. Send everything behind. (00:00:00) "words not clear"

The hiatus in messages between 17:40 and 22:43 presumably reflected the window of time when the Accused was in custody. The message containing the cover story sent by the Accused to Deva was the one timestamped 22:49.

70 Deva's response to the cover story, captured in the entry timestamped 22:50, was telling. That response made no mention of "chemicals" and instead alluded to "motor parts". If it were indeed true that Deva had duped

the Accused into thinking that the black bundles contained chemicals, this response (referring to motor parts) would have been plainly inexplicable. *Even* if Deva had somehow caught on that the game was up and the Accused's message was no more than bait set by the CNB, there was still no reason for Deva to allude to "motor parts" in his message. After all, the "chemicals" narrative was – by the Accused's own account – coined by Deva to conceal the true nature of the black bundles' contents. If Deva had meant to maintain the charade in front of the CNB, he would logically have continued using the "chemicals" façade. There was no conceivable reason for him to make a reference – out of the blue – to "motor parts". When asked why Deva had alluded to "motor parts" instead of "chemicals", the Accused conceded that there was *no reason* for Deva to have done so.[119] In my view, Deva's response pointed strongly to the inference that he never told the Accused that the black bundles contained chemicals. I thus felt compelled to agree with the Prosecution's deduction as to what must have happened, as set out in the following extract from its submissions:[120]

> … We submit that there is only one explanation why Deva said what he did – namely, Deva never told Thina that the Black Bundles contained chemicals, and both Deva and Thina knew that the Black Bundles contained the Drugs but when caught, Thina came up with one lie (chemicals) and Deva came up with another lie (motorcycle parts) since they had not earlier coordinated their cover stories …

71 It was also noteworthy that the messages exchanged on the day of the arrest contained absolutely no mention of Mages, thereby detracting from the Accused's account that Deva wanted him to deliver the black bundles to Mages.

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119 Transcripts for 25 March 2025 at pp 57 (lines 5) – 58 (line 1).

120 PCS at para 80.

72 Apart from the above, there were also other material contradictions in the Accused's testimony. His case was that Deva had passed him the black bundles on 18 December 2020 (*ie*, the day of the arrest), at about 4pm (see [13(c)] above). In court, the Accused explained that in doing so, *Deva had* ***assured the Accused*** that the chemicals were not going to pose any issues, even if discovered by the customs authorities, as they would at most discard the chemicals (see [12] above). However, in the 2nd Long Statement, the Accused recounted that sometime earlier that same day, at about 12 noon, Deva had contacted him via WhatsApp and ***questioned the Accused*** whether the authorities would be fine with the chemicals being brought through the checkpoint (see the extract of the 2nd Long Statement at [13(b)] above). The Accused's account of his dealings with Deva on the day of his arrest thus simply did not add up: At noon, Deva was raising concerns about whether the chemicals would face issues with the customs authorities but, just four hours later at 4pm, he was reassuring the Accused that the chemicals would not cause any issues at the customs checkpoint. When this inconsistency was highlighted to the Accused, he agreed that both accounts were inconsistent.[121] He nevertheless explained that there was a mistake in the 2nd Long Statement, in that during the WhatsApp exchange at 12 noon, it was he who questioned Deva (and not the other way around) about whether the chemicals would raise any concerns at the customs checkpoint. I reject the Accused's attempt to explain the contradiction, given that he never corrected the purported error in the 2nd Long Statement when it was read back to him.[122] An inference could be made that Deva never offered him any assurances about the chemicals posing no issues at the customs checkpoint.

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121 Transcripts for 25 March 2025 at pp 13 (line 3) – 14 (line 31).

122 Transcripts for 25 March 2025 at p 15 (lines 10–23).

Conclusion on the requirement that the Accused knew about the nature of the drugs in the black bundles

73 Accordingly, I found that the knowledge requirement was satisfied. The Accused was presumed under s 18(2) of the MDA to know the nature of the drugs in the seven black bundles. His attempt to rebut that presumption failed, given the utter lack of credibility in his claims that he thought that the black bundles contained chemicals for washing toilets.

Issue 4: Impact of the Accused's claim that he had mild ID on the knowledge requirement

74 It cannot be gainsaid that by the Accused's own account of how he had been approached by Deva, the circumstances by which the Accused came to be handed the black bundles were awash with red flags. I set some of these out below:

(a) As explained at [13(a)] above, it was the Accused's case that when Deva first approached him at the party on 17 December 2020, he began with a rather innocuous request – for the Accused to send *food and clothing* to Mages. However, Deva subsequently followed up with a request that the Accused transport something much more unnerving: "chemicals" that could cause a virus. Deva made this request with nary an explanation as to just what these chemicals were. The Accused initially gave a statement to the CNB saying that Deva *told him* that the chemicals were meant for cleaning toilets (see [64(d)] above) but subsequently retracted this at trial, saying that it was *the Accused himself* who surmised that the chemicals were meant for cleaning toilets (see [66] above). Effectively, this meant that Deva *never* told him what the chemicals were, despite the cryptic warning that they could cause a virus.

(b) The appearance of the black bundles was also highly unusual, even from the Accused's *subjective* perspective. In recounting how he first opened the Blue Nike Bag and saw the black bundles, the Accused affirmed that he had *never* seen such black-taped bundles before (see [13(c)] above). Deva's request to transport something that looked so obscure, coupled with his lack of explanation about their contents, must have given the Accused more than ample cause for hesitation.

(c) Furthermore, the instructions which the Accused claimed to have received from Deva for delivering the black bundles to Mages sounded like something from the plot of a spy movie. The Accused was not given Mages's contact number. He also did not know what Mages looked like, so there was no way for him to recognise Mages. As Mages similarly had not met the Accused before, he would have to identify the Accused from the logo on the Lorry. No timing was arranged for the meeting between the Accused and Mages. The precise location was also not confirmed, save that it would be at Kranji. The Accused was supposed to contact Deva upon arrival in Singapore, upon which the latter would arrange for Mages to meet the Accused. If the Accused failed to meet Mages at Kranji, he was to proceed to his next destination at Pasir Panjang. As with the Kranji rendezvous, neither the timing nor the exact location of the meeting point at Pasir Panjang was fixed, with the Accused again having to rely on Deva as regards what to do upon arrival.[123]

(d) Any reservations about Deva's request for the Accused to embark on such a clandestine errand must surely have been amplified

[123] Transcripts for 25 March 2025 at pp 25 (line 14) – 27 (line 22).

by the fact that Deva (on the Accused's own evidence) was someone with whom the Accused had little familiarity. As explained at [53] above, the Accused gave multiple statements to the CNB saying that he came to *know Deva* only at the party on the night before his arrest (*ie*, 17 December 2020) and they had exchanged contact numbers then. The Accused then retracted this at trial, saying that he already *knew Deva* for about six to seven months before the party but only came to *know Deva* ***well*** at the party itself (see [58] above). Even if the latter account were accepted, it still meant that the Accused had known Deva "well" for *less than 24 hours* before he undertook to import the black bundles for Deva, despite the suspicious circumstances enumerated above.

(e) What would really have set the alarm bells off was the fact that *before* the party on 17 December 2020, Deva was querying the Accused about whether the latter had undergone any checks when travelling through the customs checkpoint the day before (see [61] above). That this was even of concern to Deva would have made anyone question Deva's motives in asking the Accused to transport the black bundles.

75 Despite these red flags, the Accused did not make further inquiries as to what the virus-causing chemicals in the black bundles were. All he did was to blithely *assume* that they were chemicals used for washing toilets, even though:

(a) as explained by the Accused at trial, Deva did *not* tell him this (see [14] above); and

(b) by his own account, the Accused (despite previously having held two different jobs as a cleaner) had never seen cleaning products packaged in such a manner (see [66] above).

76 If a person is asked to transport illicit substances under highly suspicious circumstances, the fact that he readily agrees to do so without making further inquiries can (when coupled with the surrounding circumstances) support the inference that he must have *known* about the nature of what he was asked to transport. As explained by the Court of Appeal in *Adili Chibuike Ejike*:

> 45 … the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all the other relevant evidence, might sustain a factual finding or inference that the accused person had *actual knowledge* of the fact in question. … . What all these cases have in common is that they treat the accused person's deliberate refusal to investigate a suspicious state of affairs as evidence that he did not merely suspect, but *actually knew* the truth of the matter. …
>
> 46 On this view, the circumstances will have been so suspicious that it would have been natural for any innocent person in the accused person's position to take steps to investigate the true position. The failure to do so in the light of all the circumstances might persuade a court that the accused person actually *did know* the truth, and deliberately avoided investigating in order to maintain a façade of ignorance.
>
> [emphasis in original]

77 The Accused's willingness to transport the black bundles, despite the patently suspicious circumstances at [74] above, thus lent itself to the inference that he actually knew what the black bundles contained. Axiomatically, this also served to undermine his attempt to rebut the presumption of knowledge under s 18(2) of the MDA.

78 The Defence nevertheless sought to address this by contending that the Accused had *mild* ID and was, by virtue of that, *gullible*. Accordingly, even if people of normal intelligence in the Accused's shoes may have suspected that the contents of the black bundles were not what Deva represented them to be, the Defence argued that the Accused could not be expected to react in the same

way.[124] At trial, one of the key documents adduced was the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association Publishing, 5th Ed, 2013) ("DSM-5").[125] The portion of the DSM-5 most relevant to the Defence's contentions on gullibility is set out below:[126]

> Intellectual disability is a heterogeneous condition with multiple causes. There may be associated difficulties with social judgment; assessment of risk; self-management of behavior, emotions, or interpersonal relationships; or motivation in school or work environments. Lack of communication skills may predispose to disruptive and aggressive behaviors. *Gullibility is often a feature, involving naiveté in social situations and a tendency for being easily led by others.* Gullibility and lack of awareness of risk may result in exploitation by others and possible victimization, fraud, unintentional criminal involvement, false confessions, and risk for physical and sexual abuse. *These associated features can be important in criminal cases, including Atkins-type hearings involving the death penalty.* [emphasis added]

79 As the Defence bore the burden of rebutting the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities (see [42] above), it would correspondingly have to establish, on a balance of probabilities, its contention that the Accused was suffering from mild ID. As observed by the Court of Appeal in *Obeng Comfort* (at [37]):

> The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that *nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities.* [emphasis added]

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124 DCS at paras 25–27.

125 Admitted and marked as Exhibit P-108.

126 Exhibit P-108 at p 38; Transcripts for 27 March 2025 at pp 70 (line 13) – 71 (line 3).

To show that the Accused had mild ID, the Defence adduced expert evidence from the following witnesses:

(a) Dr Rajesh, a Senior Consultant Psychiatrist at Promises (Winslow) Clinic, who prepared a psychiatric report dated 3 April 2023[127] ("Dr Rajesh's Report").

(b) Ms Pearlene Lim ("Ms Lim"), a Senior Clinical Psychologist at Promises Healthcare Pte Ltd, who prepared a psychological report dated 8 November 2022[128] ("Ms Lim's Report").

80 The Prosecution, on its part, responded with expert evidence from the following witnesses:

(a) Dr Koh, a Senior Consultant at the Institute of Mental Health ("IMH"), who prepared two psychiatric reports – a first report dated 20 January 2021[129] ("Dr Koh's 1st Report") and a second report dated 10 November 2023[130] ("Dr Koh's 2nd Report").

(b) Dr Jackki Yim ("Dr Yim"), a Principal Clinical Psychologist at the IMH, who prepared a psychological report dated 30 October 2023[131] ("Dr Yim's Report").

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127 Exhibited in AB pp 365–379.

128 Exhibited in AB pp 380–392.

129 Exhibited in AB pp 349–351.

130 Exhibited in AB pp 354–357.

131 Exhibited in AB pp 358–364. An edited version of the report with paragraph numbers added was admitted and marked as Exhibit P-5A.

81 The experts for both the Prosecution[132] and the Defence[133] agreed that the relevant diagnostic criteria for ID were those in the DSM-5, which states that the following three criteria must be satisfied to support a diagnosis of ID:[134]

> [**Criterion A**] *Deficits in intellectual functions*, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> [**Criterion B**] *Deficits in adaptive functioning* that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
>
> [**Criterion C**] Onset of intellectual and adaptive deficits *during the developmental period.*
>
> [emphasis added in italics]

The three criteria are *conjunctive*, *ie*, a subject must satisfy *all* three before he can be diagnosed as having ID. The experts agreed that if one (or more) of the three criteria is not met, a diagnosis of ID cannot be reached.[135]

82 Based on the DSM-5 diagnostic criteria, Dr Rajesh[136] and Ms Lim[137] opined that the Accused suffered from mild ID, on account of what they

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132 Transcripts for 20 March 2025 at pp 11 (line 17) – 12 (line 14) and 21 March 2025 at p 18 (lines 10–16).

133 Transcripts for 26 March 2025 at pp 59 (line 26) – 60 (line 13); Dr Rajesh's Report at para 37 (AB p 377).

134 Exhibit P-108 at p 33.

135 Transcripts for 21 March 2025 at p 22 (lines 9–10) and 27 March 2025 at pp 22 (line 30) – 23 (line 6).

136 Dr Rajesh's Report at para 41 (AB p 379).

137 Report by Ms Pearlene Lim dated 8 November 2022 ("Ms Lim's Report") at para 37 (AB p 389).

perceived to be deficits in all three criteria above. In contrast, Dr Koh[138] and Dr Yim[139] opined that the Accused did not have ID. In arriving at their respective conclusions, the experts from both sides relied heavily on clinical interviews which they conducted with the Accused's family members and acquaintances. As these family members and acquaintances were *not* called to testify, the factual assertions made by them during the clinical interviews were technically out-of-court statements caught by the rule against hearsay evidence – see *Anita Damu v Public Prosecutor* [2020] 3 SLR 825 at [30]–[31]. Nevertheless, I did not take issue with this as neither party objected to the veracity of the factual assertions. Rather, both sides focused their respective attacks on the *methodology* employed by the other side's experts in drawing conclusions from these factual assertions.

83 In the face of the conflicting expert views, it was necessary for me to assess the "consistency and logic" of the experts' conclusions, as per the guidance in *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 ("*Sakthivel*"), where V K Rajah JA explained at [75]:

> Where there is conflicting evidence between experts it will not be the sheer number of experts articulating a particular opinion or view that matters, but rather the consistency and logic of the preferred evidence that is paramount. Generally speaking, the court should also scrutinise the credentials and relevant experience of the experts in their professed and acknowledged areas of expertise. Not all experts are of equal authority and/or reliability. In so far as medical evidence is concerned, an expert with greater relevant clinical experience may often prove to be more credible and reliable on "hands-on" issues although this is not an inevitable rule of thumb. Having said that, there is no precise pecking order or hierarchy relating to expert evidence. Experts may sometimes be abundantly eminent while lacking credibility in a particular matter.

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138 Transcripts for 21 March 2025 at p 26 (lines 23–24).

139 Report by Dr Jackki Yim dated 30 October 2023 ("Dr Yim's Report") (Exhibit P-5A) at para 27 (AB pp 363–364).

Having scrutinised the expert evidence with these guidelines in mind, I found the views of the Prosecution's experts to be far more persuasive than those of the experts for the Defence. The reasons for my conclusion, set out below, sequentially address the three criteria (A, B and C) needed for a diagnosis of ID.

Criterion A: Deficits in intellectual functions

84 I began with Criterion A, which relates to deficits in intellectual functions. The relevant section of the DSM-5 elaborating on this deficit is set out below:[140]

> Criterion A refers to intellectual functions that involve reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding. Critical components include verbal comprehension, working memory, perceptual reasoning, quantitative reasoning, abstract thought, and cognitive efficacy.

85 The DSM-5 explains that intellectual functions are "typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence." To that end, the psychologists from both sides each administered tests to measure the Accused's intellectual functions. Dr Yim administered the Leiter International Performance Scale – Third Edition ("Leiter-3"), while Ms Lim administered the Comprehensive Test of Nonverbal Intelligence, Second Edition ("CTONI-2"). Both these tests were *non-verbal* in nature. Dr Yim and Ms Lim both shared the view that non-verbal tests were more appropriate in this case as they were not biased against someone with poor proficiency in the English language such as the Accused[141] (as opposed to tests that may require the subject to heavily call

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140 Exhibit P-108 at p 37.

141 Transcripts for 20 March 2025 at p 28 (lines 12–21) and 26 March 2025 at pp 46 (lines 8–13) and 80 (line 26) – 81 (line 2).

upon linguistic abilities in the English language).

86 The DSM-5 also prescribes the scoring range under which a subject may be regarded as suffering from deficits in intellectual functions:[140]

> Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65–75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance.

Both the Leiter-3 and CTONI-2 adopt this scoring range, *ie*, a mean score of 100 and a standard deviation of 15.[142] Accordingly, under *either* test, a score falling within the range of 65–75 would indicate a deficit in intellectual functions for the purpose of Criterion A.

87 The results of the tests conducted by the psychologists from both sides diverged significantly:

(a) Under the Leiter-3 conducted by Dr Yim, the Accused attained a *score of **95***, which placed him in the "average" range of intellectual functioning. This score exceeded that of 37% of peers in his age group.[143] Dr Yim accordingly concluded that the Accused did *not* suffer a deficit in intellectual functions, thus failing to satisfy Criterion A.

(b) Under the CTONI-2 conducted by Ms Lim, the Accused attained a *score of **72***, which placed him in the "poor" range of intellectual functioning. This score matched or exceeded only 3% of individuals his

142 Transcripts for 20 March 2025 at p 49 (lines 6–9) and 26 March 2025 at p 63 (lines 7–24).

143 Dr Yim's Report (Exhibit P-5A) at para 22 (AB p 362).

age.[144] Ms Lim consequently concluded that the Accused *did* suffer a deficit in intellectual functions, which satisfied Criterion A.

88 In addition to performing the CTONI-2, Ms Lim also applied another test called the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV).[145] This test measures four areas of intellect: verbal comprehension, perceptual reasoning, working memory and processing speed. However, Ms Lim performed sub-tests under the WAIS-IV for only two of these areas:[146]

(a) Working memory, being the ability to "temporarily retain information, perform some operation or manipulation with it and produce a result"; and

(b) Processing speed, being the ability "to quickly and correctly scan, sequence and discriminate simple visual information".

Ms Lim explained that she decided to measure only these two areas because they were not covered by the CTONI-2 and she wanted to get a more comprehensive picture of the Accused's cognitive abilities. She also explained that she did not administer the full gamut of the WAIS-IV as its tests were largely "language dependent" (unlike the CTONI-2, which was non-verbal – see [85] above) and thus not suited to someone such as the Accused, who was not proficient in English. Accordingly, she had selected only those sub-tests for working memory and processing speed that did *not* rely on language.[147] Having performed these sub-tests, she found the Accused's scores for working memory

144 Ms Lim's Report at para 27 (AB p 386).

145 Ms Lim's Report at pp 7–8 (AB pp 386–387).

146 Ms Lim's Report at paras 28–29 (AB pp 386–387).

147 Transcripts for 26 March 2025 at pp 33 (line 27) – 34 (line 10).

and processing speed to lie in the "low average" range.[148] According to Ms Lim, these scores did not on their own suffice to demonstrate a deficit in intellectual functions, as required by Criterion A.[149]

89 As for Dr Yim, she explained that she declined to apply the CTONI-2 and the WAIS-IV as these tests had been administered by Ms Lim on the Accused only recently. Dr Yim thus wanted to "minimise practice effects",[150] *ie*, prevent the test scores from being influenced by the fact that the subject had taken the same test before.[151] In this respect, just a month before Dr Yim assessed the Accused, the latter had relayed that he recalled being seen by Ms Lim and could recall the tests performed on him.[152] Dr Yim also explained that as regards the WAIS-IV specifically, she did not see a need to perform the sub-tests done by Ms Lim because they had just been conducted by Ms Lim and (as explained in the preceding paragraph) the results did not indicate any deficit in either working memory or processing speed.[153]

90 The Defence nevertheless sought to discredit Dr Yim's choice of the Leiter-3 test on two fronts:

(a) Firstly, the Defence's experts alluded to the Leiter-3 being less commonly used. Ms Lim testified that the CTONI-2 is more widely used than the Leiter-3.[154] Dr Rajesh went further and said that he had not heard

148 Ms Lim's Report at paras 28–29 (AB pp 386–387).

149 Transcripts for 26 March 2025 at pp 87 (line 28) – 88 (line 2).

150 Dr Yim's Report (Exhibit P-5A) at para 21 (AB p 362).

151 Transcripts for 20 March 2025 at p 28 (lines 20–26).

152 Dr Koh's 2nd Report at para 8 (AB p 355).

153 Transcripts for 20 March 2025 at pp 54 (line 15) – 56 (line 16).

154 DRS at para 31; Transcripts for 26 March 2025 at p 47 (lines 11–12).

of the Leiter-3 before and "in so many years of practice in both IMH or even the UK" had never seen any psychologist use the Leiter-3.[155]

(b) Ms Lim also explained that the CTONI-2 used a larger sample of individuals to derive its norms (about 2,800 people) compared to the Leiter-3 (about 1,600 people) and would therefore yield a more stable and reliable estimate of test characteristics, such as the mean score and the standard deviation (alluded to at [86] above). That would in turn contribute to the consistency of the test results and reduce the potential for bias that might otherwise arise from smaller samples.[156]

91 As regards Dr Rajesh's claim that he had never heard of the Leiter-3 test in all his years of practice, I derived no assistance from this as it was, with respect, no more than a hyperbolic declaration devoid of underlying science. In contrast, Ms Lim's views contained much more granularity that helped cast light on what both tests were about. In her examination-in-chief, Ms Lim explained how both tests are conducted. As regards the Leiter-3, Ms Lim explained that this test focuses on the subject manipulating *physical* items:[157]

> … [T]he Leiter-3 has … a frame and block format where basically … it tests non-verbal problem solving, fluid reasoning, visual spatial abilities, *but they use manipulatives, meaning that there is a physical concrete item that the---the examinee would be able to use at that point in time.* So the Leiter-3 does use frame blocks, foam pieces that are brightly coloured that the person can---can manipulate during the course of the test. Then *it may be more accommodating to individuals who are … more used to working with their hands because it's just a more* ***concrete*** *way of---of doing it.* [emphasis added in italics and bold italics]

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155 Transcripts for 27 March 2025 at p 32 (lines 2–8).

156 Transcripts for 26 March 2025 at p 29 (lines 20–28).

157 Transcripts for 26 March 2025 at pp 28 (line 31) – 29 (line 7).

92 Ms Lim thus said that the Leiter-3 "could be something that lends itself to … someone who is more used to working with his hands or someone who is perhaps used to thinking … in more *concrete* ways" [emphasis added].[158] In contrast, Ms Lim explained that the CTONI-2 requires the subject to manipulate pieces of information *in his head*, as opposed to manipulating the same in a *concrete manner*, and may consequently disadvantage individuals with *less abstract reasoning abilities*:[159]

> … in the case of the CTONI-2, it is a non-verbal test, but it relies very heavily on the aspects of, like I mentioned earlier, analogical reasoning, categorical reasoning and sequential pattern recognition and sequential reasoning. *It may disadvantage someone with less* ***abstract*** *reasoning abilities*, because the nature of the test would require the person taking the test to hold all the pieces of information in their heads mentally, and then *they have to manipulate it in their heads rather than in a concrete manner.* [emphasis added in italics and bold italics]

93 In cross-examination, Ms Lim elaborated on the distinction between *concrete* thinking and *abstract* reasoning, commenting that the Accused's thinking appeared a bit more concrete and he thus seemed less predisposed to abstract reasoning:[160]

> Q: … At this first session, did you have any concerns that [the Accused] had some intellectual disability?
>
> A: *His thinking appeared to be a bit more concrete and quite simplistic in nature.* … [W]hat I recall from that session as well, and it's also written in my report as well that his speech was not always clear, so I had to ask him to repeat himself several times here and there.
>
> …
>
> Q: Yes, you had concerns?

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158 Transcripts for 26 March 2025 at p 33 (lines 23–26).

159 Transcripts for 26 March 2025 at p 28 (lines 24–30).

160 Transcripts for 26 March 2025 at pp 54 (line 1) – 55 (line 22).

> A: Yes, yah. … So yes because, again, like I said, *his thinking was very simplistic*, *very concrete*, and I think some---there were times where there was---the manner in which he spoke was also not always very coherent, logical. So it just made me wonder. But at that time, honestly, I haven't done the assessment yet. I wouldn't know exactly whether there was any issue or not.
>
> …
>
> Court: Sorry, the word you used, "his thinking was concrete", what does the word "concrete" mean in this context?
>
> Witness: Okay, so *concrete versus abstrac*t, so---so concrete in a sense that maybe a person is able to think … ---*perhaps more simplistic manner* … . Let me think if I can give you an example. Okay. Let's say if I have… let's say, for example, this is a pen, and I say, like, "Okay, what is this?" You can tell me this is a pen, what you can do with a pen. You can probably say you can write with it or something like that. But maybe if I---if I had to ask a very hypothetical, abstract question like, you know, imagine if the pen could do something else that---that was completely fake or something like that, *that person may not be able to think of it in more abstract terms*. But in a very simplistic, concrete manner in that sense where---then the person would probably be able to. *It's---it's basically just less abstract reasoning*.
>
> [emphasis added]

94 Seizing on Ms Lim's statements that the Accused appeared predisposed to concrete thinking rather than abstract reasoning, the Prosecution tried to get Ms Lim to concede that the CTONI-2 was a *less appropriate* test of the Accused's intellectual functions than the Leiter-3 that Dr Yim had applied. As alluded to at [85] above, both Dr Yim and Ms Lim had respectively adopted the Leiter-3 and CTONI-2 because both tests are non-verbal in nature and (unlike tests that might be more linguistic-based) would *not* be biased against someone with poor proficiency in the English language such as the Accused. The Prosecution suggested to Ms Lim that this showed how psychologists selecting a test to measure intelligence must avoid tests which are inherently

disadvantageous to the subject's peculiar traits, as this could create a bias that artificially brings the test scores down. Accordingly, the Prosecution suggested to Ms Lim that the CTONI-2 was inappropriate because, as Ms Lim herself had explained (see [92] above), this test taxes the subject's abstract reasoning more heavily and would thus unduly disadvantage the Accused who – in Ms Lim's own words (see the extract in the immediately preceding paragraph) – was more predisposed to "concrete" thinking.[161] However, Ms Lim responded that the CTONI-2 was not inappropriate, simply because a subject's abstract reasoning ability is part of the intelligence that the test is *supposed* to measure:[162]

> Court: … Basically, the gist of your evidence is that you should not be applying a test where a person is disadvantaged because of his natural abilities. That's the gist of it, right?
>
> Witness: Yes, if a person has a language problem--- … you will not use … -- -a language-based test.
>
> …
>
> Court: Alright. So, similarly, the question is, would that disadvantage also arise if a person's abstract skills are not as strong? Would he similarly be disadvantaged if he were tested using CTONI-2 as opposed to using Leiter-3 where those abstract skills are not so critical? That's the question? …
>
> DPP: Yes.
>
> Witness: Thank you for clarifying. … That---that made it much clearer. Okay. But, Your Honour, … *the abstract reasoning skills is also a part of fluid intelligence, also a part of---of intelligence that you measure*. Right. So, in that sense, if somebody has lower abstract reasoning skills, that would just be reflected in your test and the test results that you get.
>
> [emphasis added]

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161 Transcripts for 26 March 2025 at p 78 (lines 2–24). See also PCS at paras 143–145 and 147.

162 Transcripts for 26 March 2025 at p 81 (lines 6–32).

95 I found the Prosecution's attempt to paint the CTONI-2 as being inherently less appropriate for the Accused to be rather speculative, especially since the Prosecution's own psychologist, Dr Yim, had not cast any such aspersions on the CTONI-2. Nevertheless, Ms Lim's testimony above prompted me to clarify with her whether this meant that *the **Leiter-3** might be regarded as inadequate* – in terms of failing to sufficiently stretch the Accused's abstract reasoning abilities – despite abstract reasoning being a part of intelligence that such tests are supposed to measure. To this, Ms Lim confirmed that the Leiter-3 is also *not* inadequate as compared to the CTONI-2, clarifying that both tests simply measure intelligence in different ways:[163]

> Court: Then aren't you saying that the Leiter-3 test is somehow inadequate because it doesn't capture abstract reasoning skills which you are saying is--- … a legitimate part of intelligence? …
>
> Witness: No. … Both tests are non-verbal tests of intelligence. Right. It's just that the way it is done is different. So one has actual things that a person can manipulate and then the other one doesn't. Everything is mental. Right. So you have to mentally hold the information, mentally manipulate the information. That's all. So that's the difference between the two. But … --- both would assess the intelligence, like, problem solving, reasoning; like, both would also have things that are---that assess that. It's just that's done differently.

96 I also asked Ms Lim whether a subject who is predisposed to concrete (rather than abstract) thinking would be at a greater disadvantage taking the CTONI-2, as compared to tests with lower demands for abstract reasoning such as the Leiter-3. Ms Lim agreed in cross-examination that this was *possible*:[164]

> So if somebody has a lower abstract reasoning skills to begin with, right, the possibi---like if---if we use these two tests as

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163 Transcripts for 26 March 2025 at p 82 (lines 1–18).

164 Transcripts for 26 March 2025 at pp 83 (line 30) – 84 (line 4).

> comparison, it might be---I'm not saying that it is but it might be a possibility that maybe you see the differences in---in performance like in the case---maybe the person is---might perform better on the Leiter-3 and then maybe not so good on the CTONI-2. That is a possibility.

97 Nevertheless, as can be seen from the extract above, Ms Lim's response was couched in a highly tentative manner. More importantly, although Ms Lim had earlier testified that the Accused's *thinking* was more concrete and simplistic rather than abstract (see the extract from her oral evidence at [93] above), she subsequently explained her comments, saying that it was the Accused's *expressions* (rather than his "thinking") that tended to be concrete and simplistic:[165]

> Q: … So then my question is this. If your impression then was that he has difficulties with abstract thinking, right, and you know that the CTONI-2 test disadvantages someone with less abstract thinking---
>
> A: No, no.
>
> Q: ---why did you administer the CTONI-2 test?
>
> A: … *[S]omeone who speaks very simply or very concretely* in terms of how they describe things and all that doesn't necessarily mean---at that point in time, right, doesn't necessarily mean that they lack the ability to have reasoning skills, et cetera, that---it doesn't mean that they cannot do something that the CTONI would … would require them to do. As in just because I---let's say, when I find interviewing you and I just noted that maybe you spoke in a certain way, … that's not the thing that would just tell me that, okay, I don't think … you definitely cannot perform at this test. …
>
> Q: Well, *you didn't just say he spoke in a simple way--- … you say concrete thinking*. That sounded serious to me.
>
> A: I say his---his *expressions* tendered to be concrete and simplistic at the time.
>
> [emphasis added]

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165 Transcripts for 26 March 2025 at pp 85 (line 21) – 86 (line 6).

Ms Lim's qualification above was also consistent with what she had stated in her report, which described the Accused's *expressions* (rather than his thinking) as concrete:[166]

> … his *expressions* tended to be concrete and simplistic and enunciation, not always clear (speech was slightly muffled). … [emphasis added]

98 Ms Lim then explained that just because a person's *expressions* are concrete, this does not mean they are incapable of *thinking* in an abstract manner:[167]

> Q: When you said that [the Accused's] expressions were concrete, are you saying that *that does not equate to you saying that he has difficulties with abstract reasoning*?
>
> A: *Yes, because someone who can have---someone who, again, in speech, may describe things in a more simple manner doesn't mean that they don't have the ability to think in an abstract manner.*
>
> [emphasis added]

99 Thus, it was clear to me from Ms Lim's evidence that the Leiter-3 was not in any way *less appropriate* than the CTONI-2, for purposes of measuring the Accused's intellectual functions. There was nothing to suggest that the Accused's concrete and simplistic *expressions* (which Ms Lim claimed to have observed) were necessarily indicative of a deficit in abstract reasoning that would have limited his score under the CTONI-2. By the same token, there was nothing to suggest that the Leiter-3 would confer an artificially high score on the Accused, simply by virtue of its relatively lighter focus on abstract

166 Ms Lim's Report at para 22 (AB pp 384–385).

167 Transcripts for 26 March 2025 at p 87 (lines 12–16).

reasoning. Critically, Ms Lim testified early on in her evidence that she did *not* believe that it was easier to do better on the Leiter-3 than on the CTONI-2.[168]

> Court: So based on what you said earlier about the cognitive demands underlying CTONI-2 versus Leiter-3, your point is that it is easier to do better for the Leiter-3 than the CTONI-2, is that is that what you are saying?
>
> Witness: I'm not saying that specifically. What I am saying, Your Honour, is that the---the nature of the test itself is quite different in terms of the structure as well as how it is administered.

100 In the end, just as I was unconvinced by the Prosecution's efforts to paint the CTONI-2 as a less appropriate test of the Accused's intellectual functions (see [95] above), there was also nothing to suggest that the Leiter-3 would have been in any way inappropriate for measuring his intellectual functions.

101 The Defence sought to impugn Dr Yim's conclusions by arguing that the Leiter-3 does not include sub-tests for working memory and processing speed, which can be found under the WAIS-IV[169] (and which Ms Lim had performed – see [88] above). The Defence complained that Dr Yim failed to perform these sub-tests despite agreeing that they measured areas that were relevant to ID.[170] In my view, this submission failed to undermine Dr Yim's conclusions. As set out at [89] above, Dr Yim clearly applied her mind to this and concluded that it was not necessary for her to conduct the WAIS-IV sub-tests as Ms Lim had just administered them and the results did *not* demonstrate any deficit in working memory or processing speed.[171] Dr Yim's position

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168 Transcripts for 26 March 2025 at pp 32 (line 26) – 33 (line 6).

169 DCS at para 47.

170 DCS at paras 35 & 47.

171 Transcripts for 20 March 2025 at pp 54 (line 15) – 56 (line 16).

cohered with Ms Lim's conclusions (at [88] above) that the Accused's scores for these two areas, which fell in the "low average" range, did not on their own suffice to demonstrate any intellectual deficit.

102 Given that the application of both the CTONI-2 and the Leiter-3 had yielded different conclusions, I had to assess the validity of the results for both tests. Having done so, I concluded that there was stronger reason to accept the test results under the Leiter-3 (conducted by Dr Yim) than those under the CTONI-2 (conducted by Ms Lim). The Prosecution's experts explained that where an individual has two very different scores on tests of intelligence, the true score is likely to be the higher one. Dr Yim explained that "it is easier for someone to underperform to get a lower score than to achieve a higher score" than he would ordinarily get.[172] She explained that a person can underperform for a myriad of reasons, including tiredness or a lack of interest.[173]

> Q: And why do you say that you believe he's at least performing at the score achieved in the Leiter-3 test?
>
> A: Your Honour, it---like I mentioned earlier, it is more challenging for someone to achieve a higher score. And it's less cha---you know, it's easier for someone to achieve lower score.
>
> Q: And why do you say that?
>
> A: Because someone could due to tiredness, could be there's no invested interest, there could be a lot of factors that could influence the score to be lower.
>
> Q: And what about someone doing better?
>
> A: At least he's performing at that level.

103 Dr Koh voiced a similar view in his report:[174]

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172 Transcripts for 20 March 2025 at p 50 (lines 24–25).

173 Transcripts for 20 March 2025 at p 51 (lines 12–19).

174 Dr Koh's 2nd Report at para 15 (AB p 356).

> Psychometric tests are reliant heavily on self-report and test performance. It is not inconceivable that one can intentionally or accidentally produce lower scores than what ought to be. And he has produced higher scores on the current IMH testing, indicating that his IQ scores are *at least of this level*, if not higher. [emphasis added]

In court, he explained why it would be harder for higher scores to be false:[175]

> … [I]t would be actually very difficult to pretend to be cleverer than you are and therefore produce higher IQ scores. But it will be certainly easy to---to fake lower scores. So therefore, I would---I would trust the higher score which is, in this case, Dr Yim's report.

104 In contrast, Ms Lim sought to defend the validity of the test scores derived by her from administering the CTONI-2 on the Accused, saying that he was unlikely to have performed badly on purpose, given that the Test of Memory Malingering performed by Ms Lim on the Accused revealed no concerns.[176] Ms Lim also opined that the Accused's test scores were unlikely to have been impacted by tiredness, given that her report reflected that he showed good attention and motivation throughout the assessment.[177] However, Ms Lim's explanations failed to address the gaping question: if these vitiating factors were absent, what was the explanation for the Accused scoring so much lower on the CTONI-2? Critically, when asked if a test subject could come across as more intelligent than he actually is, Ms Lim conceded that this was "[q]uite unlikely, if the test results are valid".[178]

105 Accordingly, I preferred the results of the Leiter-3 performed by Dr Yim as being the more accurate reflection of the Accused's intellectual functions,

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175 Transcripts for 21 March 2025 at p 21 (lines 16–21).

176 Transcripts for 26 March 2025 at pp 75 (lines 2–13) & 76 (line 22) – 77 (line 29).

177 Transcripts for 26 March 2025 at p 76 (lines 1–14).

178 Transcripts for 26 March 2025 at p 74 (lines 16–24).

over the results of the CTONI-2 performed by Ms Lim.

106 The Accused's score of 95 on the Leiter-3, being less than one standard deviation below the mean of 100 (see the scoring range prescribed by the DSM-5 at [86] above), showed that his intellectual functions were average. At the trial, Dr Rajesh also accepted that *if* Dr Yim's results were accurate, the Accused's intellectual functioning fell squarely and conclusively in the average range and did not even approach the low range.[179] In my view, the evidence thus failed to sufficiently demonstrate any deficit in the Accused's intellectual functions, as required by Criterion A. Given that this criterion is one of three criteria that must be *conjunctively* satisfied before a diagnosis of ID can be sustained (see [81] above), my finding on Criterion A sufficed to unhinge the Defence's case that the Accused suffered from mild ID. Nevertheless, for completeness, I went on to assess parties' submissions as to whether the other two criteria for establishing ID were met.

Criterion B: Deficits in adaptive functioning

107 Criterion B is concerned with the subject's adaptive functioning, which the DSM-5 describes as "how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and sociocultural background".[180] Adaptive functioning encompasses three domains: (a) conceptual, (b) social, and (c) practical. Each domain is described by the DSM-5 as follows:[180]

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179 Transcripts for 27 March 2025 at p 27 (lines 1–7).

180 Exhibit P-108 at p 37.

> The *conceptual (academic) domain* involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others.
>
> The *social domain* involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others.
>
> The *practical domain* involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization, among others.
>
> [emphasis in original; original passage broken into three paragraphs for easier reading]

108 The DSM-5 states that Criterion B is met when *at least one* of these three domains is "sufficiently impaired that *ongoing support* is needed … to perform adequately in one or more life settings at school, at work, at home, or in the community" [emphasis added]. Additionally, the DSM-5 requires the adaptive functioning deficits to "be *directly related* to the intellectual impairments described in Criterion A" [181] [emphasis added], to meet the diagnostic criteria for ID.

109 To assess if the Accused had deficits in adaptive functioning, both Dr Yim and Ms Lim administered the same test: the Adaptive Behaviour Assessment System – Third Edition ("ABAS-3"). This test is based on self-reporting,[182] with respondents providing ratings going towards the three domains.[183] Notably, Dr Yim[184] and Ms Lim[185] each arrived at scores under the

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181 Exhibit P-108 at p 38.

182 Ms Lim's Report at p 8 (AB p 387).

183 Transcripts for 20 March 2025 at p 38 (lines 2–5).

184 Dr Yim's Report (Exhibit P-5A) at para 26 (AB p 363).

185 Ms Lim's Report at p 13 (AB p 392).

ABAS-3 which were rather similar, across all three domains:[186]

Domain	Composite Score		Qualitative Range	
	Ms Lim	Dr Yim	Ms Lim	Dr Yim
Conceptual	62	57	Extremely low	Extremely low
Social	81	71	Below average	Low
Practical	78	79	Low	Low
General Adaptive	–	–	–	–

It is immediately apparent from the composite scores above that the Accused scored much lower for the *conceptual* domain, as compared to the *social* and *practical* domains of adaptive functioning. As a result of this significant variation, both Dr Yim[187] and Ms Lim[188] explained that it was not possible to derive a *General* Adaptive Composite score – being the overall score of adaptive functioning based on the composite scores from all three domains.[189]

110 The ABAS-3 test scores are nevertheless ***not*** *meant to be conclusive* as to whether there is a deficit in adaptive functioning. The DSM-5 states:[190]

> Adaptive functioning is assessed using *both* clinical evaluation and individualized, culturally appropriate, psychometrically sound measures … Scores from standardized measures and interview sources *must be interpreted using clinical judgment.* [emphasis added]

In other words, the tester must not simply rely on the scores from psychometric

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186 Transcripts for 20 March 2025 at p 57 (lines 18–19) and 26 March 2025 at p 88 (lines 28–32).

187 Transcripts for 20 March 2025 at p 38 (lines 15–17); Dr Yim's Report (Exhibit P-5A) at para 24 (AB p 363).

188 Transcripts for 26 March 2025 at pp 24 (line 26) – 25 (line 4); Ms Lim's Report at para 31 (AB p 387).

189 Transcripts for 20 March 2025 at p 38 (lines 10–12).

190 Exhibit P-108 at p 37.

tests such as the ABAS-3 (which are in any event based on self-reported ratings) to conclude that a deficit in adaptive functioning exists. Rather, the tester must also conduct a clinical evaluation.[191] Dr Yim explained that in the case of the Accused, a clinical evaluation was all the more imperative given the significant variation between his score for the conceptual domain versus that for the social and practical domains (as set out in the immediately preceding paragraph). She testified that according to the ABAS-3 manual, when there is such a wide discrepancy in the scores of the respective domains, the subject's adaptive functioning is best understood by a *practical* examination of the subject's performance in all three domains.[192] Ms Lim, on her part, similarly placed significant emphasis on a practical evaluation, explaining that an assessment of adaptive functioning did not rest on the ABAS-3 scores alone but had to be conducted with clinical examination.[193]

111 To that end, both Dr Yim[194] and Ms Lim[195] conducted clinical interviews with the Accused and his mother. Additionally, Dr Yim conducted clinical interviews with the Accused's two supervisors from Dickson Agro (see [3] above) and his sister.[196] Having concluded their respective clinical assessments, both psychologists again arrived at different conclusions. Dr Yim[197] (with whom

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191 Transcripts for 20 March 2025 at p 44 (lines 17–29).

192 Transcripts for 20 March 2025 at pp 41 (line 2) – 42 (line 4); Dr Yim's Report (Exhibit P-5A) at para 24 (AB p 363).

193 Transcripts for 26 March 2025 at pp 89 (line 28) – 90 (line 6).

194 Dr Yim's Report (Exhibit P-5A) at para 1(3) (AB p 358).

195 Ms Lim's Report at para 2 (AB p 381).

196 Dr Yim's Report (Exhibit P-5A) at paras 1(3) & 1(4) (AB p 358).

197 Transcripts for 20 March 2025 at pp 14 (lines 1–11) & 40 (lines 19–31).

Dr Koh agreed[198]) opined that Criterion B was *not* met. Ms Lim[199] (with whom Dr Rajesh agreed[200]) opined that it was.

112 Having assessed the experts' reasons for their findings, I agreed with the Prosecution that Criterion B was *not* met. In other words, the Accused was not suffering from a deficit in adaptive functioning. My reasons for this conclusion, set out below, canvass each of the three domains of adaptive functioning in the following sequence: conceptual, practical and social.

(1) Conceptual Domain

113 As seen from the scores at [109] above, the Accused had tested the lowest for the conceptual domain of adaptive functioning, under the ABAS-3 test performed by *both* psychologists.

114 As regards the findings by the Prosecution's experts, Dr Yim noted that while the Accused had "marked difficulty managing aspects of functional academics, mainly writing and reading of documents and managing financial resources", this did not necessarily point to an impairment in the conceptual domain of adaptive functioning. Critically, Dr Yim explained that these difficulties could be explained by reasons *other than* ID, such as the Accused's low educational level, lack of proficiency in the English language and possibly learning difficulties.[201] Dr Koh took a similar view, noting that any reading and writing impairments may be a result of the Accused "having not invested in

198 Transcripts for 21 March 2025 at p 24 (lines 5–8).

199 Ms Lim's Report at paras 36–37 (AB p 389).

200 Dr Rajesh's Report at para 39 (AB p 378).

201 Dr Yim's Report (Exhibit P-5A) at para 24 (AB p 363); Transcripts for 20 March 2025 at p 40 (lines 13–18).

academics at a young age". Dr Koh also did not rule out the possibility that the Accused had a reading or writing disability but emphasised that this was *quite distinct* from whether a subject has ID.[202]

115 As regards the findings by the Defence's experts, Ms Lim opined that the Accused's adaptive functioning in the conceptual domain was "extremely low", supporting this view by pointing to the Accused's inability to:[203]

(a) speak clearly and say irregular plural nouns correctly;

(b) explain the terms of a legal document;

(c) check the accuracy of charges on bills before making payment;

(d) complete written forms;

(e) check bank account statements; and

(f) write his full name, phone number, and address without help.

Dr Rajesh agreed with Ms Lim's views, relying on factors such as the Accused's "poor academic functioning during his schooling years, … his history of him dropping out of school in early secondary years, [and] his history of holding unskilled jobs".[204]

116 Having examined the views of the experts from both sides, I was not persuaded that the challenges faced by the Accused, as listed by Ms Lim in the preceding paragraph, were necessarily suggestive of any impairment in the conceptual domain. As Dr Yim and Dr Koh pointed out, these shortcomings

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202 Transcripts for 21 March 2025 at p 23 (lines 26–31).

203 Ms Lim's Report at para 32 (AB p 387).

204 Dr Rajesh's Report at para 36 (AB p 376).

could simply have been the result of low education and lack of proficiency in English. In her report, Ms Lim did not contradict this view but stated explicitly that the Accused's poor score for the conceptual domain was "consistent with his poor academic records and with his difficulties with speech and writing"[203] and "a reflection of his poorer scholastic achievements and reported speech and writing difficulties".[205] Critically, Ms Lim agreed that factors such as lack of education, language difficulties, and some learning disabilities are *not* necessarily indicative of ID.[206] By the same token, the factors raised by Dr Rajesh were entirely explicable on account of the Accused's limited education and language difficulties.

117 As such, the evidence did not in my view suffice to establish that the Accused's adaptive functioning was impaired in the conceptual domain.

(2) Practical Domain

118 Dr Yim also found that the Accused did not suffer any impairment in the practical domain of adaptive functioning. In her report, she noted that the Accused demonstrated the ability to "exercise independence in many day-to-day tasks".[207] In particular, both Dr Yim and Dr Koh raised a multitude of examples to show that the Accused was able to live independently, including the following:

(a) His ability to maintain adequate self-care.[208]

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205 Ms Lim's Report at para 35 (AB p 388).

206 Transcripts for 26 March 2025 at p 90 (lines 15–27).

207 Dr Yim's Report (Exhibit P-5A) at para 26 (AB p 363).

208 Dr Yim's Report (Exhibit P-5A) at para 26 (AB p 363); Dr Koh's 2nd Report at para 6 (AB p 355).

(b) With respect to navigation, the Accused was able to ask people for directions,[209] use public transport[210] as well as ride a motorcycle and drive.[211] As regards driving specifically, this was a skill that the Accused had taught himself, thus showing that he could acquire new skills with minimal supervision and guidance.[212]

(c) The Accused was familiar with technology, as seen in how he could (i) navigate unfamiliar destinations using the Google Maps application,[213] (ii) communicate using a variety of applications on his mobile device, including WhatsApp, MyChat, and Facebook Messenger[214] and (iii) maintain Facebook and Instagram accounts.[214]

(d) In relation to the Accused's occupational performance, Dr Yim noted the following:

(i) the Accused displayed manual dexterity;[207]

(ii) for his role at Dickson Agro, the Accused would often drive the company lorry around the Pasir Panjang wholesale centre's carpark to assist in the loading of goods,[215] while his

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209 Dr Yim's Report (Exhibit P-5A) at para 10 (AB p 360).

210 Dr Yim's Report (Exhibit P-5A) at para 10 (AB p 360); Dr Koh's 2nd Report at para 7 (AB p 355).

211 Dr Yim's Report (Exhibit P-5A) at para 10 (AB p 360); Dr Koh's 2nd Report at paras 6 & 12 (AB pp 355 & 356).

212 Dr Yim's Report (Exhibit P-5A) at para 27 (AB p 364).

213 Dr Yim's Report (Exhibit P-5A) at para 10 (AB p 360); Dr Koh's 2nd Report at para 6 (AB p 355).

214 Dr Koh's 2nd Report at para 6 (AB p 355).

215 Dr Yim's Report (Exhibit P-5A) at para 11 (AB p 360).

supervisors had provided feedback that the Accused was able to work with minimal supervision;[216] and

(iii) the Accused could follow instructions and enforce work safety regulations[207] (*eg*, when working as a cleaner, he could explain the importance of placing the "Slippery" warning sign on areas that had just been mopped; when he worked as a security guard, he recognised why it was necessary for vehicles entering the premises to be issued with visitor passes).[217]

(e) In terms of household responsibilities, the Accused could (i) do household chores, despite not being accustomed to such responsibilities, (ii) attend to minor household repairs (such as clearing clogged pipes and changing light bulbs) and (iii) maintain his family car and his motorcycle.[218]

(f) As regards his hobbies, the Accused (i) enjoyed dismantling and re-assembling parts of his motorcycle[218] and (ii) reared fighting cockerels, caring for them and seeking advice from others as to how to keep them in good condition.[219]

119 Dr Yim further explained that while the Accused may have faced challenges in areas such as planning recreational activities, making independent choices and exhibiting self-control, the "significant contributory factors" for

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216 Dr Yim's Report (Exhibit P-5A) at para 7 (AB p 359).

217 Dr Yim's Report (Exhibit P-5A) at para 6 (AB p 359).

218 Dr Yim's Report (Exhibit P-5A) at para 8 (AB pp 359–360).

219 Dr Koh's 2nd Report at para 6 (AB p 355).

these challenges stemmed from the Accused's attitude and lack of self-discipline[220] rather than from any cognitive impairment.

120 Ms Lim, on her part, concluded that the Accused's adaptive functioning *did* suffer from impairment in the practical domain. She observed that while the Accused was "fairly independent" in self-care, household chores (when told to do so), and at work, he still suffered from the following failings:

(a) In terms of personal grooming, the Accused's mother had alluded to various practices that a normal person would have been expected to perform regularly, including getting out of bed on time, brushing one's teeth before leaving for work or appointments, washing and rinsing the sink after brushing one's teeth, cutting and filing one's nails and wearing a variety of clothes. The Accused's mother reported that the Accused would only do some of these things sometimes, when needed.[221]

(b) As regards diet, the Accused did not regularly consume a variety of foods and he also failed to avoid unhealthy food and drinks. He also did not know how to plan his meals to get the necessary nutrition.[221]

(c) In terms of medical care, the Accused failed to make his own appointments to see a physician for annual check-ups and did not check the labels on his medication to ensure that they were not expired.[221] He also needed support in taking medication when he was sick.[222]

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220 Dr Yim's Report (Exhibit P-5A) at para 25 (AB p 363).

221 Ms Lim's Report at para 34 (AB p 388).

222 Ms Lim's Report at para 37 (AB p 389).

(d) He needed support with money management[222] and did not carry any credit or debit cards.[221]

(e) He required support when searching for a job[222] and had difficulty following a daily work schedule without reminders.[223]

(f) He did not carry any personal identification when travelling to nearby places in the community.[221]

(g) He would fail to buckle his seat belt when travelling in vehicles.[221]

121 I failed to see how the factors listed by Ms Lim above (whether taken individually or collectively) were necessarily indicative of impairment in the practical domain. I agreed with Dr Yim's assessment at [119] above that these factors appeared to be explicable on account of the Accused's attitude and lack of self-discipline. Given the Accused's ability to partake in hobbies that would have required careful attention (*eg*, raising fighting cockerels, as well as dismantling and re-assembling his motorcycle), his failure to properly engage in relatively mundane activities such as those listed by Ms Lim in the preceding paragraph could simply have been attributable to a lack of interest. Ms Lim conceded as much in cross-examination:[224]

> Q: Okay. So I will come to my next question. If he is able to perform tasks in a meticulous way when he is interested in it---… Any inability to perform certain tasks could be a result of lack of interest, correct?
>
> A: Potentially, yes.

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223 Ms Lim's Report at para 32 (AB p 387).

224 Transcripts for 26 March 2025 at p 97 (lines 14–21).

122 I also found Dr Yim's clinical assessment of the Accused's adaptive functioning to have been more comprehensive than Ms Lim's. Specifically, Dr Yim conducted clinical interviews with the Accused's work supervisors from Dickson Agro, when Ms Lim did not. Dr Yim explained that it was *crucial* to obtain corroborative information from a subject's employers about his work performance and interaction with colleagues, as these were very important facets of adaptive functioning that should be factored into the clinical assessment.[225] As seen from [118(d)(ii)] above, the inputs from the Accused's supervisors in this case had provided material insights into his ability to operate independently and with minimal supervision at work, thereby detracting from the suggestion that his adaptive functioning was impaired in the practical domain. Under cross-examination, Ms Lim conceded that information from the subject's supervisors *was* relevant to an assessment of adaptive functioning.[226]

123 In addition to functioning independently at work, there were also various tasks that the Accused was able to perform which suggested a certain level of cognitive abilities, which Ms Lim did *not* factor into her assessment. These included the Accused's ability to dismantle and reassemble his motorcycle[227] and his ability to navigate using the Google Maps application.[228] While I would hesitate to conclude that these abilities would in and of themselves undermine a diagnosis of mild ID, they did (when taken together with the rest of the evidence) paint a more complete picture of the Accused's cognitive abilities. As Dr Koh explained, it was not enough to simply focus on the test subject's impairments, many of which may exist even in persons who are *not* labouring

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225 Transcripts for 20 March 2025 at p 9 (lines 18–26).

226 Transcripts for 26 March 2025 at p 96 (lines 10–28).

227 Transcripts for 26 March 2025 at p 101 (lines 7–9).

228 Transcripts for 26 March 2025 at p 101 (lines 20–21).

under ID. Dr Koh stressed that a balanced clinical assessment would necessitate looking at the subject's *capabilities* as well.[229]

124 I thus preferred the views of the Prosecution's experts, to the effect that the Accused's adaptive functioning did not suffer from any impairment in the practical domain.

(3) Social domain

125 As regards the social domain of adaptive functioning, the Prosecution's experts similarly found that the Accused did not suffer any impairment. In arriving at this opinion, Dr Koh highlighted the following traits of the Accused:[230]

> He was quite socially capable. He's able to text, he's able to use messaging on three messaging platforms to communicate with other people, he's got a girlfriend for many years and was awaiting marriage, which would … presume that … her parents had agreed to him marrying their daughter. … [H]e was able to get advice from people as to how to manage [his pet] cockerels and feed them and give them the proper supplements …

Dr Yim similarly observed that the Accused was able to demonstrate empathy and was attuned to his family members.[231]

126 The Defence's experts, on their part, sought to show impairment, particularly in terms of how the Accused had placed himself in harm's way through his association with others who may take advantage of him. Ms Lim explained:[232]

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229 Transcripts for 21 March 2025 at p 14 (lines 11–18).

230 Transcripts for 21 March 2025 at p 16 (lines 3–13).

231 Transcripts for 20 March 2025 at p 103 (lines 5–7).

232 Ms Lim's Report at paras 33–34 (AB p 388).

> 33 … [The Accused] had a stable group of friends, had good relationships with his family, was able to invite others for fun activities and follow the rules (once explained to him) and engage in fun activities either by himself or with friends. He was often or always able to show sympathy for others when they were upset, and could listen to people sharing their problems. *By his self-report, he acknowledged that he never or almost never avoided people and social settings that may be harmful or dangerous*.
>
> 34 … By his own self-report, he also never buckles his seat belt when travelling in vehicles or *avoids people who might take advantage of him*. …
>
> [emphasis added]

Ms Lim also stated that the Accused "was indicated to have *significant difficulty … distinguishing truthful from exaggerated claims*"[233] [emphasis added], although I note that her report failed to elaborate on the basis on which she had arrived at this observation.

127 As for Dr Rajesh, his report was far more explicit on this point, alluding to how his clinical assessment of the Accused elicited, *inter alia*, "evidence of poor judgment in agreeing to transport items without due diligence and checking".[234] Dr Rajesh accordingly concluded that the Accused was *gullible*. To substantiate this, Dr Rajesh highlighted that the Accused's sister had recounted how people used to come to the Accused's home and give, *inter alia*, bags containing clothes for the Accused to transport to Singapore, some of which had *locks* on them. For those bags that were not locked, the sister had on occasion gone through them but was scolded by the Accused for doing so. The specific portion of Dr Rajesh's report capturing the sister's account is set out below:[235]

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233 Ms Lim's Report at para 32 (AB p 387).

234 Dr Rajesh's Report at paras 36 & 41 (AB pp 376–377 & 379).

235 Dr Rajesh's Report at para 27 (AB p 373).

> I spoke to his sister Shalini for corroborative history … She reported that people used to come to their house and give food, bags containing clothes to Thina for him to take to Singapore during covid lockdown in 2020 and asked him to deliver these items to people in Singapore. *She said that she had seen some bags with locks on some occasions. She said that she would sometimes check the unlocked bags* which mainly contained food items and clothes and occasionally motorcycle parts. She once saw a bag with clothes with a bank card inside, and she told Thina not to transport these items for people he did not know as he may get into trouble. However, he did not take this advice seriously and he would scold her for going through the items of others and told her it was not a good habit to go through other people's things. [emphasis added]

The Accused's sister had recounted to Dr Rajesh that some of the people who handed bags to the Accused were persons whom he had not met before, being "friends of his friends". She claimed that the Accused would nevertheless trust people easily and believe what they said at face value, instead of questioning them about the items they had asked him to transport.[235]

128 More pertinently, Dr Rajesh reasoned that the very circumstances under which the Accused came to take hold of the drugs from Deva evinced the Accused's gullibility. The relevant portion of his report reads:[236]

> … In his case, he was gullible and trusted Deva easily, even though he had met him only once and that too, on the day before the alleged offence. He trusted Deva, because his friend Arvin introduced Deva to him. He assumed that a friend of a friend was trustworthy. … . As stated in the paragraph above and as mentioned in DSM 5, people with mild intellectual disability are often gullible and lack awareness of risk, leading to unintentional criminal involvement. In this case, even though he was told by Deva that it contained dangerous chemicals, he did not ask further questions about this and did not think about the legal consequences of being arrested with these dangerous chemicals at the customs check point. Deva told him that if he touched these packets, he would develop an allergy, however it did not occur to him that if this was indeed true, the recipient of the packet would be vulnerable to the

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236 Dr Rajesh's Report at para 41 (AB p 379).

> same risks and he did not question Deva about this, which people of normal intelligence would be expected to do so.

129 The Prosecution's experts had a different view on whether the evidence did indeed demonstrate gullibility on the part of the Accused. In Dr Yim's report, she explained that while the Accused "would help his friends if they were in trouble", he "would not hesitate to confront or hit them if they were to cheat him".[237] In court, Dr Yim explained this portion of her report, saying that while the Accused was willing to help others, the fact that he was prepared to confront those who lied to or cheated him showed that he had an ability to reflect, reason and understand the consequences of certain actions.[238] As for Dr Koh, he also voiced doubts over the Accused's purported gullibility. The relevant portion of Dr Koh's oral evidence is set out below:[239]

> Q: Alright. So on your assessment, is there anything to suggest that Mr Thina is the gullible type or has some extent of gullibility?
>
> A: Your Honour, I found that he actually was able to make rational judgments, and it's all, I think, detailed in---in the---the notes. As in the statements as well, he was---he's able to---to find his way through---through life in general, he was able to change jobs and was able to give fairly good reasons as to why he wanted to change jobs, and to---I suppose it sounded like he wanted a better life, a better pay, less tedious work, for instance.

130 In the course of her clinical interviews, Dr Yim was informed by the Accused's mother that the Accused had a tendency to trust his friends and that this made him prone to being taken advantage of. For example, the Accused's mother recounted how a friend had *asked the Accused for his identity card so that the friend could apply for a loan*. Dr Yim had followed up by conferring

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237 Dr Yim's Report (Exhibit P-5A) at para 9 (AB p 360).

238 Transcripts for 20 March 2025 at pp 19 (line 25) – 20 (line 3).

239 Transcripts for 21 March 2025 at p 15 (lines 11–18).

with the Accused about this. The Accused had replied that he understood the possible consequences but was not at all concerned, smiling and saying: "I just have to service the loan".[240] Similarly, when Dr Yim asked the Accused about certain driving offences that he had committed in Malaysia, he said that it is common to drive without a licence in Malaysia and that if he was arrested, he would "[j]ust pay the fine".[241]

131 From the Accused's responses, Dr Yim reasoned that rather than showing impairment in the social domain of adaptive functioning, the Accused's actions demonstrated what appeared to be *indifference*, in that he knew the potential consequences of his actions but still went ahead.[242] This was also supported by the inputs that Dr Yim sought from the Accused's employers at Dickson Agro. In her report, Dr Yim explained how the Accused was wont to ignore warnings that his supervisors had given him:[243]

> … Both Ms Ng and Mr Tan mentioned that they had reminded him several times not to bring personal items when delivering goods to Singapore, but Thina ignored them. Consistent with this, [the Accused] indicated that he disliked being told what to do, and very much liked to do things his own way.

Dr Yim accordingly concluded that rather than displaying gullibility, the Accused was simply someone who preferred to do things his own way,[244] in line with his avowed dislike (set out in the extract above) for being told what to do. Dr Yim's views on this point were reinforced by Dr Koh, who observed that the

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240 Dr Yim's Report (Exhibit P-5A) at para 9 (AB p 360).

241 Dr Yim's Report (Exhibit P-5A) at para 13 (AB p 361).

242 Transcripts for 20 March 2025 at pp 21 (line 17) – 22 (line 28).

243 Dr Yim's Report (Exhibit P-5A) at para 7 (AB p 359).

244 Transcripts for 20 March 2025 at p 59 (lines 25–32).

Accused appeared to have made conscious choices to ignore cautionary advice from others, including his employers and his sister, in favour of financial gain.[245]

132 Having assessed the views of the experts from both sides, I concluded that the Defence did *not* sufficiently demonstrate that the Accused's adaptive functioning was impaired in the social domain. I accepted the views of Dr Yim that the alleged impairments were consistent with poor decisions by someone who was indifferent to the consequences and disinclined to heed prudent advice. As Dr Yim stated in her report:[246]

> Although [the Accused] seems to have some knowledge of what is right and wrong, it is possible that his willful attitude may contribute to his at times poor judgement and imprudent decision-making.

133 As for Dr Rajesh's categorical assertion that the Accused was gullible (see [128] above), I rejected this as I found the *factual* basis for his conclusions to be suspect. Dr Rajesh had stated in his report (see [128] above) that the Accused "was gullible and trusted Deva easily, even though he had *met him only once and that too, on the day before the alleged offence*" [emphasis added]. However, this very premise ran directly counter to a statement in the very same report by Dr Rajesh that the Accused "mentioned that he had first met Deva in a car wash in Johor around *6 to 7 months prior to his arrest*."[247] It troubled me that Dr Rajesh was not able to even get the basic facts right, when these were cited to underpin such a central conclusion in his report.[248] As explained at [62]

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245 Transcripts for 21 March 2025 at p 15 (lines 19–28)

246 Dr Yim's Report (Exhibit P-5A) at para 28 (AB p 364).

247 Dr Rajesh's Report at para 32 (AB pp 374–375).

248 See also Transcripts for 27 March 2025 at p 85 (lines 25–26).

above, the narrative that the Accused met Deva only once, on the day before the offence, was a lie that the Accused had told the CNB.

134 This was not the only finding from Dr Rajesh that lacked factual grounding. As explained at [127] above, another plank undergirding Dr Rajesh's conclusion about the Accused's gullibility rested on the account given by the Accused's sister that "friends of his friends" would come to their home and give the Accused locked bags to transport to Singapore. According to the sister, she was only able to check the contents of the bags that were unlocked and – even then – the Accused would scold her for going through other people's things. Presumably, the point being made here was that the Accused's willingness to transport bags that he was not even able to access (on account of them being locked) highlighted just how oblivious he was to the risks of doing so, which in turn underscored his gullibility. However, Dr Rajesh's Report recorded the Accused's sister as merely saying that there were locks on the bag, with the implication that *she* was unable to open the locks (since she only managed to check the contents of those bags that were *not* locked). Critically, Dr Rajesh's Report said nothing about whether the *Accused* had access to the locked bags. Given that the Accused did *not* want his sister rummaging through the bags' contents and had scolded her for doing so, it is hard to see why he would have given her the keys *if* he had them. If the Accused did indeed have access to the locked bags, the entire narrative about him being willing to transport bags whose contents he had no ability to inspect would fall apart.

135 Dr Rajesh sought to plug this gap in his oral evidence, although he did so by going beyond what was in his report. Specifically, when Dr Rajesh was being cross-examined, he positively affirmed that the Accused was *unable* to

view the contents of locked bags,[249] going so far as to attest that the Accused *did not have the keys* to the locks on the bags.[250] Yet, these were critical *factual* assertions that had not been captured anywhere in Dr Rajesh's Report. The report made no mention of Dr Rajesh *confirming with the Accused* that the latter was asked to transport locked bags or, more importantly, ascertaining if he had access to the contents of such locked bags (if he did indeed transport them). There was also no evidence from any factual witness at trial (including the Accused) about the Accused transporting locked bags, let alone evidence that he had no key to their locks.

136 As mentioned at [82] above, parties appeared content to accept the veracity of factual assertions emanating from the Accused's family members and acquaintances over the course of clinical interviews by the experts, notwithstanding that these would technically have constituted hearsay. Even then, the assertion about the *Accused* (as opposed to his sister) having no keys to the locked bags that he was asked to transport was one step removed, in that this assertion did not appear to have emanated from the Accused or from any of his family members or acquaintances. If this assertion had indeed been made to Dr Rajesh during clinical interviews, one would expect it to have been captured in his report. Yet, it was not, meaning that if one looks at the record, the only person from whom this assertion emanated was Dr Rajesh himself. With respect, it is unacceptable for an expert to supplement his report with fresh *factual* assertions made under cross-examination, when these find no substantiation anywhere in the body of evidence adduced. In any event, I decided against discounting Dr Rajesh's expert opinion on account of this flaw

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249 Transcripts for 27 March 2025 at p 74 (lines 20–23).

250 Transcripts for 27 March 2025 at p 88 (lines 4–9).

– significant though it was in my view – since it was not picked up by the Prosecution in cross-examination.

137 Having said that, I still found Dr Rajesh's anecdote about the locked bags to be unhelpful. Dr Rajesh's report mentioned that according to the Accused's sister, the Accused had transported *bags* for "friends of his friends" whom the Accused had not met before (see [127] above). However, in so far as the ***locked*** *bags* were concerned, I had no inkling as to the relationship between the Accused and the persons who passed these bags to him. Neither did Dr Rajesh, who testified: "I don't know the relationship between the owner of the locked bag and [the Accused]".[251] Without any backdrop to the Accused's relationship with these persons, it was not possible for me to draw any meaningful inferences from the anecdote concerning the locked bags, as regards the Accused's purported gullibility.

138 In the end, I found myself in agreement with the Prosecution's experts. There was nothing to satisfy me that the Accused's adaptive functioning had any impairment in the social domain. Rather, it was clear that his actions arose out of a conscious choice to disregard the words of caution sounded to him by his family and employers, as he felt that the financial gain merited the risk.

(4) Conclusion on Criterion B

139 Accordingly, on the issue of whether Criterion B (deficit in adaptive functioning) was satisfied, I preferred the evidence of the Prosecution's experts over that of the Defence. The Defence's experts relied on factors that were not necessarily indicative of ID and which could instead be explained by other

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[251] Transcripts for 27 March 2025 at p 106 (lines 4–6).

causes, such as the Accused's limited proficiency in the English language and his difficulties in reading and writing (stemming in part from his limited education). Rather than being suggestive of cognitive deficits, the behaviour that the Defence's experts relied upon in supporting their conclusions could also be attributable to the Accused's attitude and lack of self-discipline.

140 I also preferred the Prosecution's experts' evidence because their clinical assessment was based on more relevant sources of information, some of which had been omitted by the Defence's experts. For example, only Dr Yim conducted clinical interviews with the Accused's work supervisors from Dickson Agro. Their inputs had proven material to the assessment of whether the Accused's adaptive functioning was impaired in the practical (see [118(d)(ii)] above) and the social (see [131] above) domains. At the trial, Ms Lim conceded that because her clinical assessment did not include interviews with the Accused's work supervisors (while Dr Yim's assessment did), Dr Yim's assessment was "more complete" in the context of work.[252]

141 From a holistic perspective, the approach of the Prosecution's experts was also more consistent with the DSM-5 diagnostic criteria. As alluded to at [108] above, the DSM-5 states that Criterion B is satisfied if a domain of adaptive functioning is sufficiently impaired that *ongoing support* is needed for the subject to perform adequately in one or more life settings at school, at work, at home, or in the community. The Prosecution's experts convincingly demonstrated how the Accused could carry out his daily activities quite independently.

142 Finally, it must be noted that the DSM-5 requires that the deficits in

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252 Transcripts for 26 March 2025 at p 96 (lines 17–28).

adaptive functioning under Criterion B be "directly related to the intellectual impairments described in Criterion A" (see [108] above). Consequently, *even* if the Accused was impaired in any of the three domains of adaptive functioning, the Defence had to show how these deficits were related to a deficit in *intellectual functions* under Criterion A. Having already found no such deficit in Criterion A (see [106] above), I was reinforced in my conclusion that any deficits in adaptive functioning, even if they did exist (which they did not), failed to support the Defence's case that the Accused suffered from mild ID.

Criterion C: Onset of deficits during the developmental period

143 Finally, I turned to Criterion C, which requires that the onset of the intellectual and adaptive deficits occurs during the test subject's developmental period (*ie*, childhood or adolescence):[253] Criterion C thus does not appear to be a standalone criterion but relates to *when* the deficits under Criterion A (intellectual functions) and/or Criterion B (adaptive functioning) commenced. As explained in the DSM-5:[254]

> The essential features of intellectual disability (intellectual developmental disorder) are deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age-, gender-, and socioculturally matched peers (Criterion B). *Onset is during the developmental period (Criterion C).* … [emphasis added]

144 Accordingly, if a subject has not been shown to possess deficits under *either* Criterion A or Criterion B, Criterion C becomes moot as there would be no deficits to speak of, for which the timing of the onset may be traced.[255]

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253 Exhibit P-108 at p 38.

254 Exhibit P-108 at p 37.

255 See also Transcripts for 26 March 2025 at p 105 (lines 13–21).

145 Nevertheless, I had some views on the expert evidence relating to Criterion C. Ms Lim found that this criterion was met, basing her conclusion on the fact that the Accused only started speaking when he was seven years of age.[256] Dr Rajesh agreed and sought to support his opinion with his observations about the Accused's poor academic performance, history of holding unskilled jobs and his reliance on family members to manage his financial affairs.[257] Dr Koh aligned himself somewhat with the Defence's experts in his assessment of Criterion C, opining that this criterion may be deemed as satisfied because the Accused's inability to speak until the age of seven could show some "grave developmental impairment".[258] Dr Koh's opinion about Criterion C being met was of course conditional on the premise that the deficits in Criterion A and Criterion B persisted to adulthood which, in his view, they did not. In this respect, Dr Koh was careful to caveat that the Accused's subsequent achievements in the social, practical and conceptual domains "all seem to be very intact" and that the Accused "seems to have caught up after that period of time".[259]

146 Given the evidence at hand, I was not particularly convinced that Criterion C was met. The conclusion by Ms Lim and Dr Koh about this criterion having been satisfied rested principally on the account by the Accused's mother that her son started to speak only at the age of seven. However, as pointed out by Dr Yim, the Accused's school reports would have better documented his

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256 Ms Lim's Report at para 8 (AB p 382); Transcripts for 26 March 2025 at p 102 (lines 2–17).

257 Dr Rajesh's Report at para 36 (AB p 376).

258 Transcripts for 21 March 2025 at p 25 (lines 2–7 & 13).

259 Transcripts for 21 March 2025 at p 25 (lines 8–10).

developmental history[260] and provided key insights into whether the developmental delay was indeed due to mild ID or other factors (such as language problems).[261] I also found the circumstances surrounding the absence of these school reports to be disquieting: the Accused's mother informed Dr Yim that she had given these reports to Dr Rajesh,[262] while Dr Rajesh denied that he had received them.[263] Yet, the Accused's mother was not called to explain the discrepant accounts.

147 I was thus more persuaded by Dr Yim's view that the conclusion about Criterion C having been met was not backed by any *objective* facts.[264] In any event, as I mentioned in [144] above, since the Defence failed to establish that either Criterion A or Criterion B was met, this alone sufficed for me to conclude that Criterion C was moot.

Conclusion on whether the Accused had mild ID

148 Accordingly, I concluded that the evidence did not sufficiently demonstrate, on a balance of probabilities, that the Accused was suffering from mild ID. Having scrutinised the opinions of the experts and assessed them for "consistency and logic" (see *Sakthivel* at [75]), I concluded that the opinions of Dr Rajesh and Ms Lim – to the effect that Criterion A to Criterion C were all satisfied – could not stand. Rather, I preferred the opinions of Dr Yim and

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260 Transcripts for 20 March 2025 at p 14 (lines 19–28).

261 Transcripts for 20 March 2025 at p 17 (lines 10–23).

262 Dr Yim's Report (Exhibit P-5A) at para 4 (AB p 359); Transcripts for 20 March 2025 at p 17 (lines 24–29).

263 Transcripts for 27 March 2025 at pp 44 (line 20) – 45 (line 4).

264 Transcripts for 20 March 2025 at p 91 (lines 2–5).

Dr Koh, which I thought to be based on much stronger grounding. To recapitulate:

(a) As regards Criterion A (deficits in intellectual functions), the Defence was unable to rationalise why the Accused could have achieved the higher scores under the Leiter-3, if he indeed possessed deficits in intellectual functions. The psychologists from both sides agreed that it is quite unlikely for a test subject to come across as more intelligent than he truly is if the test results are valid. I also accepted the evidence of both Dr Koh and Dr Yim that the Accused's lower test scores on the CTONI-2 could be explained by factors other than intellectual deficits.

(b) As regards Criterion B (deficits in adaptive functioning), the factors raised by the Defence to demonstrate impairments in the conceptual and practical domains could be explained by factors that were discrete from ID, including language difficulties, as well as attitude and self-discipline. As for the Defence's attempt to show that the Accused was impaired in the social domain, I rejected Dr Rajesh's conclusion about the Accused being gullible, as the factual bases for this conclusion were suspect.

(c) As regards Criterion C, this could not be met if both Criterion A and Criterion B were not satisfied.

Once the Defence's contention that the Accused had mild ID was rejected, the attendant claim – that mild ID had rendered him so gullible that he failed to suspect that Deva was asking him to transport something illicit – fell away.

149 I would observe that *even* if it was accepted that the Accused suffered from mild ID, the Defence had still failed to detail exactly how this went

towards rebutting the presumption of knowledge. I found Dr Rajesh's reasoning – that ID had rendered the Accused so gullible that he could be duped into transporting drugs – to be questionable. The relevant section of Dr Rajesh's Report is extracted below:[265]

> **Contributory link between his mild intellectual disability and alleged offences**
>
> 41. In my opinion from a psychiatric perspective at the material time, *he suffered from an abnormality of mind caused by his mild intellectual disability* (arose from a condition of arrested or retarded development of mind) which substantially impaired his mental responsibility for his actions amounting to the alleged offences. *In his case, he was gullible and trusted Deva easily*, even though he had met him only once and that too, on the day before the alleged offence.
>
> [emphasis in original in bold; emphasis added in italics]

Further portions of this section of the report can be found at [128] above.

150 In essence, Dr Rajesh's line of reasoning was that the Accused had mild ID which rendered him gullible, and that this gullibility led the Accused to accept Deva's instructions without question. Before assessing if Dr Rajesh's conclusions withstood scrutiny, it was necessary to have regard to Dr Koh's explanation that gullibility is *not* something which can be clinically measured.[266] Dr Koh also explained that if claims about an accused person's gullibility are pegged at a very general level, this would be no more than an exercise in theory, as the analysis must address whether the accused person displayed gullibility *with respect to the offence committed.* Dr Koh testified:[267]

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265 Dr Rajesh's Report at para 41 (AB p 379).

266 Dr Koh's 2nd Report at para 17 (AB p 357); Transcripts for 21 March 2025 at p 15 (lines 6–10).

267 Transcripts for 21 March 2025 at pp 17 (line 28) – 18 (line 2).

> … Once again, Your Honour, I think it's a matter of was he gullible and was he gullible *with respect to this offence*. That is key here. So while … someone with intellectual disability may be gullible, they may also not be gullible *with respect to that particular offence*. And I think that's the point that has to be proven here. *So waxing lyrical about whether he's gullible or not gullible, it's---it's pretty theoretical*. I think we need to draw the---the straight line that---that leads to whether he was gullible in this respect of the offence. [emphasis added]

Even Ms Lim was aligned with Dr Koh's view on this point, conceding that clinical interviews and IQ tests are *not* intended to measure the extent of one's gullibility. Ms Lim agreed that to determine whether someone was gullible in the context of a particular scenario, it is important to go beyond clinical interviews and IQ tests and consider all the facts relating to that scenario.[268]

151 In short, a finding that an accused person was gullibly tricked into committing an offence must be sufficiently grounded on *the factual circumstances of the case*. This was where the paucity in Dr Rajesh's reasoning became apparent. Dr Rajesh's Report merely asserted that the Accused was gullible as he had trusted Deva, despite hardly knowing him. With respect, this was nothing more than a bald statement that had not been sufficiently correlated with the specific facts of the case. Based on the Accused's own account of what happened, he had agreed to transport the black bundles for Deva under *highly* suspicious circumstances – see [74] above. Dr Rajesh failed to elaborate on how the Accused's purported gullibility, induced by the mild ID which Dr Rajesh had diagnosed to exist, might have operated to render the Accused oblivious to such a plethora of red flags staring him in the face.

152 Dr Rajesh also failed to explain how his conclusion about the Accused being gullible could be reconciled with the Accused's behaviour when the latter

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[268] Transcripts for 26 March 2025 at pp 105 (line 27) – 106 (line 11).

was caught with the drugs. Rather than relaying to the authorities the narrative which Dr Rajesh claims the Accused to have gullibly accepted from Deva, *ie*, that the black bundles contained chemicals that would not cause any problems at customs, the Accused had displayed patent stealth and deception:

(a) He tried to impede CI2 Subra from getting his hands on the black bundles – first by claiming that the Blue Nike Bag was too heavy (see [6] above) and then by emptying the Blue Nike Bag's contents before passing it to CI2 Subra (see [50] above).

(b) He had also falsely claimed ignorance about the black bundles' contents (see [7(a)] above).

(c) He further lied about highly material facts such as his relationship with Deva (see [62] above).

The behaviours above were particularly significant because the Accused *knew* that unauthorised importation of heroin and methamphetamine into Singapore was wrong and carried heavy consequences. As stated by Dr Koh in his report:[269]

> When asked directly, [the Accused] said that he had been amply aware that trafficking drugs into Singapore was illegal and had serious consequences. He said that his family members had warned him many times not to do so.

153 In short, when attempting to link the diagnosis of mild ID with the Accused's purported gullibility, Dr Rajesh had based his findings on sweeping assertions that failed to sufficiently engage with the facts.

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269 Dr Koh's 1st Report at para 8 (AB p 350).

Conclusion on conviction

154 I therefore found that the presumption of knowledge under s 18(2) of the MDA stood unrebutted. This conclusion stemmed from the following factors:

(a) The Accused's behaviour when the drugs were discovered;

(b) His false claims about his relationship with Deva; and

(c) The lack of credibility of the Accused's claim that he thought the black bundles contained chemicals, including his ever-evolving accounts of what he thought the black bundles contained.

155 Furthermore, when these factors were viewed together with how the Accused had agreed to transport the black bundles despite the patently dubious circumstances under which he claimed to have received them from Deva (see [74] above), a strong inference arose that the Accused must have known what the black bundles contained. Axiomatically, such an inference would also undermine the Accused's attempt to rebut the presumption of knowledge.

156 As for the Defence's submission that the Accused was suffering from mild ID and therefore gullible to the point that he was unable to spot the red flags in his dealings with Deva, this was wholly unconvincing.

157 With both the possession requirement and the knowledge requirement established, I found that the Prosecution had proven both the charges of importation beyond a reasonable doubt. I therefore found the Accused guilty of both charges and convicted him accordingly.

Sentence

158 Both charges of importation that the Accused faced were punishable with a capital sentence. However, under s 33B(1)(*a*) of the MDA, the court has a discretion to sentence the offender to life imprisonment and caning of not less than 15 strokes, in lieu of the capital punishment, so long as both the following conditions in s 33B(2) of the MDA are met:

(a) The offender proves that his involvement in the offence was restricted to the acts set out in s 33B(2)(*a*) of the MDA.

(b) The offender receives a certificate of substantive assistance ("CSA") from the Public Prosecutor.

159 Following the Accused's conviction, the Prosecution submitted that the Accused's role in the offences underlying both charges was restricted to the acts set out in s 33B(2)(*a*) of the MDA – *ie*, that he was a courier. The Defence also agreed with this submission, which I accepted. Based on the evidence, the Accused had not done anything beyond transporting, sending or delivering the drugs, or acts preparatory to that purpose. The Prosecution further confirmed that a CSA had been issued to the Accused, on account of him having substantively assisted the CNB in disrupting drug trafficking activities.

160 As the requirements under s 33B(2) of the MDA were met, I decided to exercise my discretion to impose a sentence of life imprisonment and caning – instead of the death penalty – for both charges. Specifically, I sentenced the Accused to life imprisonment and the minimum of 15 strokes of the cane, for each of the two charges. As the global number of strokes imposed could not exceed 24, under s 328(1) and (6) of the Criminal Procedure Code 2010 (2020 Rev Ed), the aggregate sentence of caning to be administered on the Accused

was thus 24 strokes.

Christopher Tan
Judge of the High Court

April Phang, Sivakumar Ramasamy and Hairul Hakkim (Attorney-General's Chambers) for the Prosecution; Elengovan s/o V Krishnan (Elengovan Chambers) and Wong Hong Weng Stephen (Matthew Chiong Partnership) for the accused.
