

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

[2023] SGHC 173

Criminal Case No 62 of 2021

Between

Public Prosecutor

And

Tristan Tan Yi Rui

GROUND S OF DECISION

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

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Public Prosecutor

v

Tan Yi Rui Tristan

[2023] SGHC 173

General Division of the High Court — Criminal Case No 62 of 2021
Aedit Abdullah J
16–19, 23–25, 30 November 2021, 22–24 February, 1 March, 27, 29
September 2022, 12 January, 9 February 2023

21 June 2023

Aedit Abdullah J:

Introduction

1 The accused, Tristan Tan Yi Rui, was charged under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) for trafficking in a controlled drug, by having in his possession for the purpose of trafficking a packet containing not less than 337.6g of methamphetamine (“the Drugs”).¹ Having considered the submissions and the evidence, I found the accused guilty of the offence and convicted him of the charge. Given that his role had not been restricted to that of a courier, *ie*, within the meaning of s 33B(2)(a) of the MDA, and no certificate of substantive assistance was issued by the Public Prosecutor,² I sentenced him to death pursuant to s 33(1) of the

¹ Arraigned Charge dated 17 September 2021 at p 1.

² Notes of Evidence (“NEs”) (9 February 2023) at p 6 lines 8–23, 31–p 7 lines 1–4.

MDA read with the Second Schedule therein. These Grounds of Decision explain my decision on conviction and sentence.

Background

2 On the morning of 27 September 2018, a team of Central Narcotics Bureau (“CNB”) officers proceeded to the area around Fourth Lok Yang Road to conduct an operation involving PW51 Muhammad Hakam bin Suliman (“Hakam”),³ who was suspected of being involved in drug activities.⁴

3 At about 6.15pm, the accused, who was driving a white Volkswagen car (“the white car”), parked outside 3 Fourth Lok Yang Road. PW46 Muhammad Hanis bin Mohamed Mokhtar (“Hanis”) was seated in the front passenger seat of the white car.⁵

4 At about 7.40pm, a green Suzuki car (“the green car”) arrived at 3 Fourth Lok Yang Road as well.⁶ Hakam exited the green car and Hanis exited the white car.⁷ They met and proceeded to board the white car together, which the accused then drove to the vicinity of a coffee shop located at 21 Kian Teck Road (“the Kian Teck Road coffee shop”).⁸ Hanis alighted from the white car and entered

³ Agreed Statement of Facts (“ASOF”) at para 2.

⁴ Statement of Station Inspector Tay Keng Chye dated 13 August 2020 at para 3 (Agreed Bundle (“AB”) at p 102).

⁵ ASOF at para 3.

⁶ ASOF at para 4.

⁷ ASOF at para 4; Statement of Staff Sergeant Au Yong Hong Mian dated 13 August 2020 at para 5 (AB at p 130).

⁸ ASOF at para 4.

the coffee shop for a short while before returning to the white car.⁹ The accused then drove the white car back to Fourth Lok Yang Road.¹⁰

5 At about 8.20pm, two unknown riders, on motorcycles bearing Malaysian licence plates, arrived at Fourth Lok Yang Road. One of the unknown riders met up with Hakam behind the white car.¹¹ Both motorcycles left Fourth Lok Yang Road thereafter.¹²

6 Shortly thereafter, the accused drove the white car from Fourth Lok Yang Road to a Housing Development Board (“HDB”) block in Tampines, with Hanis still seated in the front passenger seat.¹³ Upon arrival, the accused stopped the white car along the service road beside the block.¹⁴ A team of CNB officers then moved in to arrest the accused and Hanis.¹⁵

7 The officers proceeded to carry out a search on the white car in the presence of the accused and Hanis.¹⁶ A red and black taped bundle was retrieved from the white car (“the bundle”) and was thereafter sent to the Health Sciences Authority (“HSA”) for analysis.¹⁷ The bundle contained a plastic packet, which

⁹ ASOF at para 4.

¹⁰ ASOF at para 4.

¹¹ ASOF at para 5.

¹² ASOF at para 5.

¹³ ASOF at paras 6–7.

¹⁴ ASOF at para 7.

¹⁵ ASOF at para 8.

¹⁶ ASOF at para 9.

¹⁷ ASOF at paras 9 and 16.

was found to contain not less than 499.0g of crystalline substance, which was analysed and found to contain not less than 337.6g of methamphetamine.¹⁸

The parties' respective cases

The Prosecution's case

8 The Prosecution submitted that the accused possessed the Drugs, knew the Drugs to be methamphetamine, and intended to traffic in the Drugs.¹⁹ The Prosecution sought to prove the accused's possession of the Drugs and knowledge of their nature, whilst relying on the presumption under s 17(h) of the MDA to establish the element of trafficking.²⁰

9 The Prosecution relied on a few key pieces of evidence to show that the accused intended to and did take possession of the Drugs by making arrangements with an individual known to him as "Hari",²¹ whom the accused testified had previously supplied him with small amounts of methamphetamine for his own consumption.²²

10 First, the Prosecution relied on messages found on two mobile phones which allegedly belonged to the accused, "TT-HP1" and "TT-HP2". The messages on TT-HP1 allegedly showed the accused's intention to take possession of the Drugs knowing that it was methamphetamine, and to traffic in

¹⁸ ASOF at para 17.

¹⁹ Prosecution's Closing Submissions dated 5 December 2022 ("PCS") at para 14.

²⁰ PCS at para 14.

²¹ PCS at para 15.

²² NEs (22 February 2022) at p 10 line 29; p 11 line 12.

the Drugs.²³ These messages essentially involved negotiations between the user of TT-HP1 and Hari regarding the sale and handover of the Drugs.²⁴

11 The Prosecution argued that, contrary to the accused’s testimony that TT-HP1 had been used by other persons,²⁵ the accused had in fact been the sole user of TT-HP1, and hence the messages found on TT-HP1 discussing the sale of drugs on 27 September 2018 had been sent by the accused.²⁶ In support of this argument, the Prosecution relied on personal messages found on TT-HP1 between the accused and his then-fiancée, PW53 Ho Yan Yan “Sherane” (“Sherane”),²⁷ which the accused acknowledged had all been sent by him.²⁸ The Prosecution also contended that the striking similarity in the content of the messages found on TT-HP1 and the messages found on TT-HP2, which the accused testified was his personal mobile phone, indicated that the accused had been the sole user of TT-HP1.²⁹

12 The Prosecution argued further that “Travis”, the individual whom the accused testified had passed him TT-HP1 on the day of the arrest, was not a real person and did not exist outside of the accused’s story.³⁰ Instead, “Travis” was the accused’s alias which he used for his drug transactions.³¹ This was evidenced

²³ PCS at para 16.

²⁴ Exhibit P96 (Aide Memoire for selected WhatsApp messages extracted from “TT-HP1”) at pp 1–16.

²⁵ NEs (22 February 2022) at p 34 lines 8–10; p 35 lines 20–21; p 72 lines 1–11.

²⁶ PCS at para 43.

²⁷ PCS at paras 31–39.

²⁸ NEs (22 February 2022) at p 77 lines 9–12.

²⁹ PCS at para 17, 40–43.

³⁰ PCS at para 44.

³¹ PCS at para 45.

by messages found on TT-HP2 which showed the accused telling his friends to contact TT-HP1 for the purpose of drug transactions, and to address him as “Travis” when doing so.³²

13 Next, the Prosecution relied on the testimony of Hanis, who had been arrested in the front passenger seat of the white car driven by the accused at the material time. Hanis testified that the day of the arrest was the first time he had met the accused and that he was only there to facilitate, on behalf of Hari, the accused’s collection of the Drugs that evening.³³ He explained that his role was to “see through” the deal on behalf of Hari.³⁴ His evidence was that the accused had taken possession of the bundle from Hakam, and that the accused had been in the midst of packing his things, including the bundle, which the accused had placed near the handbrake area of the white car, at the time of the arrest.³⁵

14 Lastly, the Prosecution relied on the presence of the accused’s DNA on the interior of the bundle to show that he had taken possession of the Drugs. The Prosecution drew attention specifically to the fact that the DNA was found not on the exterior surface of the bundle, but rather on the packet wrapped within it.³⁶

15 The Prosecution argued that taken together, these key pieces of evidence proved that the accused had intended to take possession of the Drugs and knew the Drugs were methamphetamine. First, the fact that the accused was the sole

³² PCS at para 45(b).

³³ PCS at para 18.

³⁴ PCS at para 19.

³⁵ PCS at para 19.

³⁶ PCS at paras 20 and 61.

user and author of the messages found on TT-HP1 showed that he had arranged for the purchase and receipt of the Drugs.³⁷ The element of possession was further supported by Hanis' evidence of the accused's possession of the Drugs as well as the presence of the accused's DNA on the packet of methamphetamine which was wrapped within the bundle.³⁸

16 As for the element of possession with intention to traffic, the Prosecution relied on the presumption of trafficking under s 17(h) of the MDA.³⁹ The Prosecution argued that the Defence had not succeeded in rebutting this presumption.⁴⁰ Furthermore, the messages on TT-HP1 indicated that the accused had been actively engaged in trafficking activity.⁴¹

The accused's version of events

17 The accused testified that he was a regular drug user and that Hari was his supplier.⁴² He would usually buy 1.25g of methamphetamine each time from Hari, which would last him about three to four days.⁴³ Sometimes, Hari would give the accused drugs for free, in exchange for the accused doing him favours.⁴⁴ These favours usually involved the accused ferrying Hari's friends around in his car or helping them to withdraw money.⁴⁵

³⁷ PCS at para 51.

³⁸ PCS at paras 56 and 61.

³⁹ PCS at para 73.

⁴⁰ PCS at paras 73 and 79.

⁴¹ PCS at paras 77–78.

⁴² NEs (22 February 2022) at p 10 line 29; p 11 line 12.

⁴³ NEs (22 February 2022) at p 39 lines 5–10; NEs (23 February 2022) at p 3 lines 28–32.

⁴⁴ NEs (22 February 2022) at p 11 lines 9–10.

⁴⁵ NEs (22 February 2022) at p 34 lines 1–3.

18 The accused testified that on 27 September 2018, at roughly 4am in the morning, he had called Hari to order some methamphetamine for his own consumption. They agreed to meet in Bedok for the accused to collect this order. However, instead of accepting the accused's payment, Hari declined and told the accused that if he agreed to do him a favour, Hari would not charge him for that order. The accused agreed to perform the favour, which was to accompany Hari, albeit in separate cars, from Bedok to Anson Road and then to Marina South Pier.⁴⁶

19 After accompanying Hari to Marina South Pier, the accused made his way back to his then-fiancée, Sherane's, flat in Tampines.⁴⁷ However, shortly after he returned to the flat, Hari called him and told him to meet Travis, one of Hari's friends, and send Travis to Marina South Pier.⁴⁸ The accused proceeded to meet Travis and to send him to Marina South Pier.⁴⁹ After spending some time waiting in the car at Marina South Pier, Travis left the car and told the accused to meet Hari back in Tampines.⁵⁰ It was then that Travis allegedly left the mobile phone, TT-HP1, in the accused's car.⁵¹ As observed earlier at [10], the Prosecution's case relied significantly on the messages found on TT-HP1. Thus, the questions of the ownership of TT-HP1 and the messages which were found on it were crucial in this case and will be discussed in greater detail below.

⁴⁶ NEs (22 February 2022) at p 16 lines 14–26.

⁴⁷ NEs (22 February 2022) at p 17 lines 1–6.

⁴⁸ NEs (22 February 2022) at p 17 lines 5–11; NEs (23 February 2022) at p 22 line 7–p 23 line 7.

⁴⁹ NEs (22 February 2022) at p 17 lines 13–20.

⁵⁰ NEs (22 February 2022) at p 17 lines 18–26.

⁵¹ NEs (22 February 2022) at p 17 lines 18–20.

20 After leaving Marina South Pier, the accused returned to Tampines and met Hari, who then asked the accused to meet Travis again at a nearby multi-storey carpark.⁵² Upon meeting Travis at the multi-storey carpark, the accused was asked by Travis, ostensibly on the instructions of Hari, to meet Hanis, another friend of Hari's, at another HDB block in Tampines.⁵³

21 The accused proceeded to meet Hanis, who instructed him to drive to the Lok Yang area in Tuas.⁵⁴ The accused thus drove to Fourth Lok Yang Road with Hanis in his car.⁵⁵ Upon reaching Fourth Lok Yang Road, and after waiting for a while, the accused saw Hanis talking to Hakam outside the car.⁵⁶ Thereafter, he drove Hanis and Hakam to get cigarettes and drinks at the Kian Teck Road coffee shop.⁵⁷ He then drove them back to Fourth Lok Yang Road.⁵⁸

22 The accused, Hanis and Hakam waited at Fourth Lok Yang Road for some time, with Hanis and Hakam outside the car, before a motorcycle arrived and stopped next to the accused's car.⁵⁹ Upon the arrival of the motorcycle, Hanis returned to the passenger seat whilst Hakam met the motorcyclist.⁶⁰ The motorcyclist handed a red plastic bag to Hakam, who handed it to the accused through the window of the car.⁶¹ The accused took the red plastic bag and passed

⁵² NEs (22 February 2022) at p 17 line 30–p 18 line 10.

⁵³ NEs (22 February 2022) at p 18 line 12–p 20 line 24.

⁵⁴ NEs (22 February 2022) at p 21 lines 6–13.

⁵⁵ NEs (22 February 2022) at p 21 line 19.

⁵⁶ NEs (22 February 2022) at p 22 lines 13–18.

⁵⁷ NEs (22 February 2022) at p 23 lines 1–4.

⁵⁸ NEs (22 February 2022) at p 23 lines 20–22.

⁵⁹ NEs (22 February 2022) at p 25 lines 6–14.

⁶⁰ NEs (22 February 2022) at p 25 lines 10–19.

⁶¹ NEs (22 February 2022) at p 25 lines 21–25.

it to Hanis.⁶² Hakam proceeded to hand some money over to the motorcyclist, who then left the location.⁶³ Hakam returned to his own vehicle which was across the street,⁶⁴ after which the accused and Hanis left Fourth Lok Yang Road for Tampines in the accused's car.⁶⁵

23 When the accused and Hanis reached Sherane's block in Tampines, he parked the car and stepped out of it. It was then that the CNB officers moved in to arrest him.⁶⁶

The Defence's case

24 The Defence argued, in line with the accused's version of events, that the messages found on TT-HP1 relating to discussions on the sale of drugs on 27 September 2018 had not been sent by the accused.⁶⁷ Instead, TT-HP1 was not the accused's mobile phone and had in fact been used by a number of people at the material time.⁶⁸ The Defence also contended that "Travis" was not a nickname or alias which the accused used to conduct drug transactions; instead, Travis was a distinct person who had sent the messages to Hari found on TT-HP1, arranging for the transaction on 27 September 2018.⁶⁹

⁶² NEs (22 February 2022) at p 26 lines 2–6.

⁶³ NEs (22 February 2022) at p 26 lines 8–25.

⁶⁴ NEs (22 February 2022) at p 26 lines 24–25.

⁶⁵ NEs (22 February 2022) at p 26 lines 27–28.

⁶⁶ NEs (22 February 2022) at p 26 line 30–p 27 line 2.

⁶⁷ Defence Closing Submissions dated 6 December 2022 ("DCS") at para 23.

⁶⁸ DCS at para 21.

⁶⁹ DCS at para 21.

25 The Defence further argued that the Drugs had not been meant for the accused and instead that Hari and members of his group had purchased the Drugs for themselves. Thus, the accused had merely been acting as a driver for Hanis, who had been tasked to collect the Drugs for the group. In support of this narrative, the Defence relied on WhatsApp conversations between members of Hari's group,⁷⁰ which will be discussed in greater detail later.

26 Based on the above reasons, the Defence submitted that the accused merely performed the role of a driver in the transaction involving the Drugs on 27 September 2018, and that he possessed neither knowledge of the nature of the Drugs nor an intention to traffic in them.⁷¹ Hence, the charge was not proven beyond a reasonable doubt.⁷²

The issues to be determined

27 The following issues arose for determination:

- (a) Common evidential issues going to credibility and strength of evidence. There were several issues which straddled various elements of the charge, and which had to be dealt with holistically:
 - (i) the use of TT-HP1, which underpinned the evidence relied upon by the Prosecution in respect of the elements of the charge;
 - (ii) the Defence's contention that Hari and members of his group had bought the Drugs for themselves;

⁷⁰ DCS at paras 28 and 34.

⁷¹ DCS at paras 48 and 54–58.

⁷² DCS at para 59.

- (iii) the accused's actions on the day of the arrest;
 - (iv) Hanis' credibility; and
 - (v) the evidence of PW52 Muhammad Arif bin Roslan ("Arif") and PW51 Hakam.
- (b) The elements of the charge itself, namely:
- (i) whether the accused's possession of the Drugs was established;
 - (ii) whether the accused's knowledge of the nature of the Drugs was established; and
 - (iii) whether the accused's possession of the Drugs was for the purpose of trafficking.

Common evidential issues

The use of the mobile phone TT-HP1

28 The question of the identity of the user of TT-HP1 formed the crux of this case. This was because the messages found on TT-HP1 involved the user of TT-HP1 negotiating the purchase and handover of drugs from Hari, with the handover to take place on 27 September 2018.⁷³ These messages included an exchange between the user of TT-HP1 and Hari on 25 September 2018, in which the user of TT-HP1 asked if it would be possible to arrange a sale of drugs before Hari went on a trip for ten days. This exchange of messages

⁷³ Exhibit P96 at p 8 S/Ns 155–159, p 10 S/N 215–p 11 S/N 227.

appeared as follows (note that “ESKIMO” was the WhatsApp username of the user of TT-HP1):⁷⁴

ESKIMO: Bro really when u are away there isnt at all any way to be able to arrange my loadings?

ESKIMO: Cos im thinking not only like after this current load

ESKIMO: U away 10 days might need 2 probably or even 3

ESKIMO: [Crying face emoticons]

ESKIMO: Just tell me when all is confirmed

29 On 27 September 2018 itself, the owner of TT-HP1 tried to negotiate with Hari a reduction in price for the drugs to be handed over and confirmed that he would be receiving twice the usual order from Hari, since Hari would be away for ten days. When Hari replied “[i]f [you] don’t want it’s ok”, the user of TT-HP1 answered “I want of [course]!!!”, thereby confirming that he wished to proceed with the transaction. The messages are reproduced below (note that “AYAM REP” was Hari’s WhatsApp username):⁷⁵

ESKIMO: Anw what i wanna ask u is...the 250 seond will is there a drop in price or even charge me as 500g nye harge?

AYAM REP: Credit kan?

ESKIMO: Yes credit

ESKIMO: Today im handing over 5400 for as pernormakl order.

ESKIMO: However i will be receiving twice the normal order

ESKIMO: Due to u being 10 days away

ESKIMO: Correct?

AYAM REP: If u don’t want it’s ok

ESKIMO: I want of cos!!!

ESKIMO: Haha

⁷⁴ Exhibit P96 at p 8 S/Ns 155–159.

⁷⁵ Exhibit P96 at p 10 S/N 215–p 11 S/N 227.

ESKIMO: The 10 days u awayi no need pening kepala

ESKIMO: Its a genius arrangement

ESKIMO: Swear it is

30 Thus, it appears from the exchange between the user of TT-HP1 and Hari that the user of TT-HP1 had negotiated a deal with Hari for a larger-than-usual order of drugs, in view of the fact that Hari was going away for 10 days. The handover of the drugs was to be performed on 27 September 2018, as shown by the messages “[t]oday im handing over 5400 for as pernormakl order” followed by “[h]owever i will be receiving twice the normal order”.⁷⁶ While the Prosecution sought to rely on the accused’s confirmations during cross-examination to prove that these exchanges related to the sale of the Drugs specifically,⁷⁷ the aforesaid confirmations were not a reliable basis on which to establish such a finding: the accused’s position at trial was that he did not send these messages, accordingly, the Prosecution’s questioning of the accused on these WhatsApp messages required the accused to comment on conversations which he claimed not to have participated in. In this context, the accused’s answers on what he thought these messages related to were irrelevant in ascertaining what they were truly about.

31 Nevertheless, it suffices to say that the messages indicated clearly that the user of TT-HP1 had negotiated for the purchase and handover of drugs from Hari – the quantity of which was much larger than his usual order – with the handover to be performed on 27 September 2018. The Prosecution sought to rely on these messages, which they alleged had been sent by the accused, to show that the accused had purchased the Drugs from Hari and thus had intended

⁷⁶ Exhibit P96 at p 10 S/Ns 218–219.

⁷⁷ PCS at paras 54 and 71(c); NEs (24 February 2022) at p 39 line 15–p 40 line 3.

to take possession of the packet of methamphetamine that was passed to him at the Lok Yang area on 27 September 2018.⁷⁸ The Prosecution's case was that TT-HP1 was a mobile phone used by the accused to conduct his drug transactions, and that he went by the alias "Travis" when using TT-HP1.⁷⁹ Thus, the messages sent in TT-HP1 regarding the sale of drugs on 27 September 2018 were in fact sent by the accused, leading to the conclusion that he had arranged to purchase the Drugs from Hari.⁸⁰

32 The fact that these messages involved arrangements between the user of TT-HP1 and Hari for the sale of the Drugs was not disputed by the Defence.⁸¹ Rather, the Defence submitted that it was Travis, instead of the accused, who had communicated with Hari to arrange this transaction.⁸² The Defence's case was that TT-HP1 was owned by either Hari or Travis and would only be passed to the accused for the purpose of contacting Hari when he was carrying out favours for them.⁸³ Thus, the messages sent in TT-HP1 regarding the sale of the Drugs were not sent by the accused, but instead by Travis.⁸⁴

33 I was satisfied beyond any reasonable doubt that TT-HP1 was used by the accused up to and at the time of the transaction involving the Drugs, and that the messages sent on TT-HP1 concerning the drug transaction on 27 September 2018 were all sent by him as well. Three pieces of evidence supported this

⁷⁸ PCS at para 54.

⁷⁹ PCS at para 46.

⁸⁰ PCS at para 51.

⁸¹ DCS at para 21.

⁸² DCS at paras 21 and 23.

⁸³ DCS at para 21; NEs (22 February 2022) at p 34 lines 8–10; p 35 lines 20–21; p 72 lines 1–11.

⁸⁴ DCS at para 21.

conclusion: (a) personal messages found on TT-HP1; (b) messages sent from TT-HP2 to the accused's contacts; and (c) the striking similarity between messages sent from TT-HP1 and TT-HP2.

34 First, the messages found on TT-HP1, between the accused and his then-fiancée, Sherane, were very personal and were not of the sort that would have been left on a mobile phone that was being shared or used by others. Some messages involved deeply personal quarrels between the accused and Sherane.⁸⁵ Other messages involved the sharing of individual thoughts and concerns⁸⁶ and the arrangement of daily errands such as sending their child to school⁸⁷ – matters which were unlikely to be discussed on a phone which was allegedly used by other persons and only passed to the accused when he was doing favours for Hari and Travis. The existence of these personal messages on TT-HP1 indicated that the accused was the sole user of TT-HP1.

35 Second, messages sent from both TT-HP1 and TT-HP2 to the accused's contacts showed that TT-HP1 belonged to the accused and was used by him to conduct drug transactions. The accused acknowledged that TT-HP2 was his own personal mobile phone.⁸⁸ When the accused's contact, saved in TT-HP2 as "CHUN HOWE A P K" ("Chun Howe"), messaged the accused on TT-HP2 asking for help to secure drugs,⁸⁹ the accused sent him the number for TT-HP1, telling him to "[c]ontact that number" and characterising it as "[m]y other

⁸⁵ Exhibit P96 at pp 57–78.

⁸⁶ Exhibit P96 at p 61.

⁸⁷ Exhibit P96 at p 60 S/Ns 73–85; p 71 S/Ns 329–335; pp 72–73 S/Ns 362–393.

⁸⁸ NEs (22 February 2022) at p 60 lines 25–26; NEs (23 February 2022) at p 10 lines 4–8.

⁸⁹ NEs (23 February 2022) at p 41 line 17–p 42 line 10.

numbet [*sic*]”.⁹⁰ When cross-examined on why he told Chun Howe this, the accused replied “I don’t know why” and “it’s just the other number I’m holding”.⁹¹

36 Similarly, when communicating with another contact, “AH BOI Y S L” (“Ah Boi”), on TT-HP2 regarding the acquisition of drugs, the accused was asked by Ah Boi “U got any other nicknames to call u?”, to which the accused replied “Travis”.⁹² He then told Ah Boi “[m]y this line name Travis”,⁹³ before sending him the number for TT-HP1.⁹⁴ About an hour later, Ah Boi messaged TT-HP1, asking to purchase drugs.⁹⁵

37 Taken together, the messages between the accused, Chun Howe, and Ah Boi showed that the accused had used TT-HP1 for drug transactions, and, when asked by his contacts for drugs, had indicated to them in the messages on his personal mobile phone TT-HP2 that TT-HP1 was his other phone which they should contact for the purpose of arranging drug purchases. The accused also told Ah Boi to address him as “Travis” when contacting TT-HP1 – this indicated that “Travis” was an alias which the accused used when conducting drug transactions on TT-HP1.

⁹⁰ NEs (23 February 2022) at p 41 line 27–p 42 line 4; p 42 lines 22–31; Exhibit P-CD3 at Annex E p 83 S/Ns 1905 and 1907.

⁹¹ NEs (23 February 2022) at p 43 lines 8–12.

⁹² NEs (23 February 2022) at p 43 line 17–p 44 line 4; Exhibit P-CD3 at Annex E p 472 S/Ns 10788–10789.

⁹³ NEs (23 February 2022) at p 44 lines 8–10; Exhibit P-CD3 at Annex E p 471 S/N 10790.

⁹⁴ NEs (23 February 2022) at p 44 lines 16–18; Exhibit P-CD3 at Annex E p 472 S/N 10796.

⁹⁵ NEs (23 February 2022) at p 47 line 20–p 48 line 22; Exhibit P-CD2 at Annex C p 397 S/Ns 1883–1887.

38 Other messages on TT-HP1 indicated that the accused’s contacts knew that they were communicating with the accused when they messaged TT-HP1. For example, a series of messages between the user of TT-HP1 and “STEPH” (“Steph”) on 18 August 2018 showed them discussing orders of drugs.⁹⁶ In one of these messages, Steph told the user of TT-HP1 “[o]ne day you at sch nearby hear I shout TRISTANNNN you must come down save me”.⁹⁷ The accused confirmed in cross-examination that Steph was one of his friends.⁹⁸ Similarly, in a conversation between the user of TT-HP1 and “TIN AV” (“Tin AV”) on 14 July 2018, Tin AV opened the conversation by simply saying “Tris”, to which the user of TT-HP1 replied “Yes”.⁹⁹ After agreeing on a purchase of drugs and its collection from the accused’s house, Tin AV asked “Tris? You coming now? If not [I] can go meet you”, to which the user of TT-HP1 replied “U come over”.¹⁰⁰

39 These messages between the user of TT-HP1, Steph, and Tin AV showed that both Steph and Tin AV were aware, without any prompting from the user of TT-HP1, that they would be communicating with the accused by messaging TT-HP1. This was not consistent with the accused’s account that TT-HP1 was being used by multiple persons and would only be with him on occasions where he was out doing favours for Hari or Travis. Rather, the messages from Steph and Tin AV suggested that the accused was the sole user of TT-HP1, and his contacts knew that. The replies from the user of TT-HP1, which did not correct Steph and TIN AV’s addressing of him as “Tris” or

⁹⁶ Exhibit P96 at p 32 S/N 1–p 33 S/N 25, NEs (24 February 2022) at p 34 lines 5–12.

⁹⁷ Exhibit P96 at p 32 S/N 20.

⁹⁸ NEs (24 February 2022) at p 34 lines 2–4.

⁹⁹ Exhibit P-CD2 at Annex C p 9678, S/Ns 47404–47405.

¹⁰⁰ Exhibit P-CD2 at Annex C p 9681, S/Ns 47417–47418.

“Tristan”, were also telling – they showed that each time, it was the accused who had replied to the messages on TT-HP1.

40 Lastly, there were messages sent from TT-HP1 regarding drug transactions which the accused claimed were not sent by him, but which bore remarkable similarities to messages sent from TT-HP2, his personal mobile phone. On 30 July 2018, the accused, using TT-HP2, complained to Sherane about the quality of a shipment of methamphetamine which he had received.¹⁰¹ The following day, on 31 July 2018, the user of TT-HP1 sent a message to Hari and “Hong Taxi 1”, another contact, informing them that there was an issue with a shipment of methamphetamine and attempting to assure them that the issue would be resolved.¹⁰²

41 On another occasion, the user of TT-HP1 sent messages to Hari at around 5am on 27 September 2018, expressing alarm and surprise that a meeting at Marina South Pier was supposed to have taken place at 5am instead of 5pm.¹⁰³ The accused denied having been the user of TT-HP1 at that time.¹⁰⁴ The messages read as follows:¹⁰⁵

AYAM REP: Wry?

AYAM REP: Takmo kecoh bro....

ESKIMO: Hey bro

ESKIMO: Im home

ESKIMO: What happen?

¹⁰¹ P96 at p 61 S/Ns 100–103; NEs (23 February 2022 at p 69 lines 19–21.

¹⁰² NEs (23 February 2022) at p 69 line 1–p 70 line 14; P96 at pp 1–2 S/Ns 15–18, pp 35–36 S/Ns 35–37.

¹⁰³ Exhibit P96 at pp 9–10 S/Ns 196–206.

¹⁰⁴ NEs (23 February 2022) at p 68 lines 10–14.

¹⁰⁵ Exhibit P-CD2 at Annex C pp 2827–2830 S/Ns 13610–13623.

AYAM REP: 0500hrs

ESKIMO: HUH??

ESKIMO: We pagi???

AYAM REP: Yest I tell u bro

ESKIMO: I thot was pm!

ESKIMO: I know its 5

AYAM REP: No bro..they are at msp already

ESKIMO: Omg its now???!!!

ESKIMO: Fuck im flying down

42 At around 8am on 27 September 2018, the accused sent a series of messages to Sherane on TT-HP2, expressing similar unhappiness about a mix-up in timing for a meeting which took place in the morning but which the accused had thought was scheduled for the afternoon.¹⁰⁶ The messages read as follows:¹⁰⁷

Tristan: Im at msp now waitung ti load

Tristan: Omg had a major miscounication ytd

Tristan: My guy said standby from 630 to 830

Tristan: Obviously since when is morning right?

Tristan: This fucking time its am. Morning

43 These conversations showed a striking similarity in the content of the messages sent from TT-HP1 and TT-HP2 regarding the drug transactions. These messages did not merely describe a strikingly similar mix-up but also bore similarity in the feelings and sentiments which the sender of the messages expressed. This indicated that the messages on both phones had been sent by the same person – *ie*, the accused.

¹⁰⁶ NEs (23 February 2022) at p 65 line 22–p 66 line 24.

¹⁰⁷ Exhibit P-CD3 at Annex E p 281 S/Ns 6443–6449.

44 Overall, the overwhelming weight of the evidence was in favour of the conclusion that TT-HP1 had been used solely by the accused, primarily for the purpose of conducting drug transactions. First, he used TT-HP1 to discuss personal matters with his then-fiancée, Sherane. He also sent messages from TT-HP2 telling his contacts to contact him on TT-HP1 for the purpose of discussing drug transactions. Despite him telling them to address him as “Travis” when contacting TT-HP1, some of the accused’s contacts continued to address him as “Tristan” or “Tris”, and he did not correct them when they did so. Finally, the messages sent on TT-HP1 and TT-HP2 were on some occasions so similar in content, feelings, and sentiments as to lead to the conclusion that they must have been sent by the same person, namely the accused.

45 All of this supported the narrative that TT-HP1 was the accused’s own mobile phone, which he used to conduct drug transactions and which he attempted to distance himself from by asking others to call him “Travis” when sending messages to that phone. In contrast, the Defence contended that TT-HP1 had been used by various persons, and that on 27 September 2018, the accused had only used TT-HP1 at certain times, *ie*, when the phone had been passed to him by Travis. Specifically, the accused testified that Travis had left TT-HP1 with him at Marina South Pier sometime in the afternoon of 27 September 2018, such that the messages sent from TT-HP1 to Hari prior to 3.03pm had been sent by Travis, but the messages sent from TT-HP1 to Hari from 3.03pm until 3.29pm had been sent by the accused.¹⁰⁸ The accused testified that the messages sent to Hari after 3.29pm had been sent by Travis, as the accused had met with Travis again back at Tampines. The accused explained that Travis had taken over the phone until 5.30pm, which had been when he left

¹⁰⁸ NEs (22 February 2022) at p 75 lines 17–25; NEs (23 February 2022) at p 56 lines 4–15.

TT-HP1 with the accused again, and after which the messages sent to Hari had all been sent by the accused.¹⁰⁹

46 However, even putting aside the various threads of evidence which showed that the accused had been the sole user of TT-HP1, there were other inconsistencies with the Defence’s account relating to the use of TT-HP1. First, while the accused testified that on 27 September 2018 TT-HP1 had been first left in his use at 3.03pm, he had in fact been messaging Sherane on TT-HP1 from as early as 12.11pm:¹¹⁰ Sherane had messaged TT-HP1 at 12.11pm to ask the accused where he was, to which the accused replied “Msp”.¹¹¹ When cross-examined on this apparent inconsistency, the accused’s only explanation for it was that at 12pm, he had been waiting with Travis at Marina South Pier, and that “[i]f Sherane messaged this phone, Travis would have passed [it] to me”.¹¹² I did not find this explanation to be convincing as it seemed to be contrived and *ad hoc*. Furthermore, and quite tellingly, it was Sherane who *first* messaged the accused at 12.11pm, asking him where he was. This showed that Sherane was confident that the accused would be using the phone at the time and thus she contacted TT-HP1 directly with the expectation that the accused would reply. This did not comport with the accused’s account that TT-HP1 would only have been with him sporadically. When questioned on this, the accused simply answered that he had been using TT-HP1 so much that Sherane would just contact him there.¹¹³ This explanation was not convincing either, as it likewise did not comport with the accused’s evidence that TT-HP1 would only have been

¹⁰⁹ NEs (23 February 2022) at p 56 line 16–p 57 line 4.

¹¹⁰ NEs (23 February 2022) at p 60 lines 20–28.

¹¹¹ Exhibit P96 at p 73 S/Ns 399–400.

¹¹² NEs (23 February 2022) at p 61 lines 1–8.

¹¹³ NEs (23 February 2022) at p 63 lines 8–14.

used by him sporadically, whenever he was doing favours for Hari or Travis. Instead, I found that these inconsistencies were best explained by the Prosecution's account that the accused had always been the sole user of TT-HP1 and Sherane had been aware of this.

47 The time periods during which Travis allegedly had TT-HP1 also seemed remarkably convenient for the accused's case. They all coincided with the timing of messages which related to the drug transaction on 27 September 2018. First, the accused testified that prior to 3.03pm, all messages sent from TT-HP1 to Hari on 27 September 2018 had been sent by Travis.¹¹⁴ These included the messages relating to the discussion of the sale and handover of drugs on that day. Next, the accused testified that from 3.03pm to 3.29pm, the messages sent from TT-HP1 to Hari had been sent by him.¹¹⁵ These messages did not relate to the drug transaction and were not incriminating. However, for the time period between 3.29pm and 5.30pm, during which the messages sent from TT-HP1 to Hari had discussed the price of the drugs,¹¹⁶ the accused testified that Travis had taken over the phone again.¹¹⁷ And at the precise moment when the messages switched from discussing the price for the drugs to other matters – there was a gap of only 14 seconds between the last message at 5.30.01pm discussing the drug transaction (which the accused testified Travis had sent) and the next message at 5.30.15pm comprising a photograph of a book (which the accused testified had been sent by himself to Hari)¹¹⁸ – the accused

¹¹⁴ Exhibit P96 at p 19 S/N 341; NEs (22 February 2022) at p 75 lines 15–18; NEs (23 February 2022) at p 55 lines 29–p 56 line 3; NEs (24 February 2022) at p 43 lines 13–19.

¹¹⁵ NEs (22 February 2022) at p 75 line 30; NEs (23 February 2022) at p 56 lines 4–9.

¹¹⁶ Exhibit P96 at p 18 S/Ns 325–340.

¹¹⁷ NEs (23 February 2022) at p 56 lines 16–19.

¹¹⁸ NEs (23 February 2022) at p 56 lines 23–27; p 57 lines 5–10.

testified that he had taken over the phone from Travis.¹¹⁹ Overall, this account of the phone being passed to-and-fro between the accused and Travis on 27 September 2018, with Travis conveniently, at least for the purposes of the accused's defence, having possession of it whenever incriminating messages were sent to Hari, was not believable and appeared to have been intricately constructed to dissociate the accused from these messages.

48 Furthermore, the accused's account and explanations had to be considered against all the evidence discussed above – including the accused's personal messages found on TT-HP1, the messages on TT-HP2 telling his friends to contact him on TT-HP1, and the similarities between the messages on both phones – which showed that TT-HP1 had been used solely by the accused and primarily for the purpose of conducting drug transactions. In light of all these reasons, I did not accept the Defence's arguments relating to the use of TT-HP1. The evidence clearly did not comport with the accused's account that TT-HP1 would only be passed to the accused by Hari or Travis on the occasions when he was out doing favours for them and for the limited purpose of contacting Hari. Thus, I was satisfied that TT-HP1 was used solely by the accused and therefore that the messages sent on TT-HP1 negotiating the sale of drugs on 27 September 2018 were sent by him.

The Defence's contention that Hari and members of his group bought the Drugs for themselves

49 The Defence argued, in line with its overall version of events, that the accused did not intend to purchase the Drugs and the Drugs were not meant for the accused. Rather, Hari and the members of his group were the ones who had planned to purchase the Drugs, and the accused had merely acted as a driver for

¹¹⁹ Exhibit P96 at p 19 S/N 341; NEs (23 February 2022) at p 57 lines 5–19.

Hanis, who had been tasked to collect the Drugs.¹²⁰ Thus, the accused did not have possession of the Drugs for the purpose of trafficking.¹²¹

50 In support of this theory, the Defence relied on WhatsApp messages found on Hanis' handphone, "MHB-HP2".¹²² First, the Defence contended that two WhatsApp messages between Hanis and Hari on 27 September 2018 showed that the Drugs were not meant for the accused.¹²³ The first message, sent by Hari to Hanis concerning the transaction involving the Drugs, read "[a]nd don't disclose anything", to which Hanis responded with the second message, which was an emoticon of a smirking face.¹²⁴ During cross-examination, Hanis testified that he assumed, by Hari's message, that Hari did not want Hanis to introduce one of Hari's friends, known as "Luffy", to the accused.¹²⁵ However, the Defence argued that Hanis was not being truthful in court, and that these messages showed instead that Hari did not want Hanis to disclose anything about their drug deal, which also involved Luffy, to the accused.¹²⁶

51 The Defence also submitted that certain WhatsApp messages between Hari and the members of his group; namely Hanis, Luffy and another individual known as "Cico2", showed that they had planned to buy the Drugs for

¹²⁰ DCS at para 3.

¹²¹ DCS at para 3.

¹²² DCS at para 33.

¹²³ DCS at para 28.

¹²⁴ DCS at para 29; AB at p 230.

¹²⁵ DCS at para 30; NEs (24 November 2021) at p 5 lines 14–16, 30–32–p 6 lines 1–2.

¹²⁶ DCS at para 31.

themselves.¹²⁷ First, the Defence referred to a conversation between Cico2 and Hanis on 27 September 2018 where Cico2 informed Hanis that Hari had a drug order for \$9,200.¹²⁸ Next, the Defence referred to a group chat created by Cico2 on the morning of 27 September 2018 which included Hari, Hanis, Cico2 and Luffy.¹²⁹ These messages essentially involved discussions between the members of the group regarding the sale and collection of the Drugs on that day.¹³⁰

52 The Defence’s contention that Hari and his group bought the Drugs for themselves was not credible. In relation to the conversation between Hanis and Hari where Hari told Hanis “[a]nd don’t disclose anything”, the messages appeared to support Hanis’ evidence that Hari had not wanted Hanis to introduce Luffy to the accused. A few messages after Hari told Hanis “don’t disclose anything”, he told Hanis “[the accused] is not to meet anybody...only u”, followed by the message “[o]nly u n me can meet laffy”.¹³¹ Thus, this exchange did not show that the accused had not known about the drug transaction and/or that he was being kept in the dark about it; rather, it seemed to concern Hari’s desire to conceal the identity of one of his contacts from the accused.

53 As regards the messages between Cico2 and Hanis as well as the group chat which included Hari and the members of his group, these did not show that the Drugs had been purchased by the group for themselves rather than for the

¹²⁷ DCS at paras 33–43; Exhibit D4 (WhatsApp messages between Hanis and Cico2 on 27 September 2018 from 4:32am onwards); Exhibit D7 (WhatsApp messages between Hanis, Cico2, Hari, and Luffy on 27 September 2018).

¹²⁸ DCS at para 35, Exhibit D4 at p 1 S/N 2.

¹²⁹ DCS at para 37; Exhibit D7.

¹³⁰ DCS at para 39–41; Exhibit D7.

¹³¹ AB at p 231.

accused. The conversation between Cico2 and Hanis simply involved Cico2 informing Hanis that Hari had a drug order for \$9,200.¹³² The messages in the group chat involved arrangements being made, by Hari's group, for the collection of the Drugs. For example, Cico2 messaged the group on the morning of 27 September 2018 "[s]o now we are waiting for the confirmation of time, place and amount to give upon collection of the 500g".¹³³ Other messages concerned the price for the Drugs as well as arrangements for payment, with Cico2 messaging the group "we will agree on 9.2 for 500g", to which Luffy replies "[c]an", and Cico2 later says "[s]o wat we have now is 7k..and we are asking whether the balance of 2.2k can be settled in 4 days".¹³⁴ Although these messages were not clear on who exactly was making payment and to whom, it suffices to note that the discussion of collection and payment for the Drugs by members of Hari's group was not inconsistent with the narrative borne out by the accused's messages on TT-HP1. The messages on TT-HP1 showed the accused negotiating with Hari for the purchase and handover of drugs on 27 September 2018; hence, Hari was acting as his supplier in this transaction and presumably procured the drugs from another source. Indeed, the accused himself testified that at the Lok Yang area, the red plastic bag containing the bundle and the packet of drugs had been handed over to Hakam by one of the motorcyclists riding a Malaysian-registered motorcycle.¹³⁵ Thus, the discussion between members of Hari's group regarding the collection of and payment for the Drugs was not inconsistent with Hari's role as the accused's supplier and the accused's role as the buyer and ultimate recipient of the Drugs. Members of Hari's group would have had to arrange for the collection of the Drugs from a

¹³² Exhibit D4 at p 1 S/N 2.

¹³³ Exhibit D7 at p 1 S/N 3.

¹³⁴ Exhibit D7 at p 2 S/Ns 12–13; p 3 S/N 19.

¹³⁵ NEs (22 February 2022) at p 25 lines 21–23.

source, which appeared to be precisely what they were doing in the WhatsApp conversations. Thus, the messages did not support the Defence's submission that the Drugs were being purchased by members of Hari's group *rather than the accused himself*, and that the accused had merely been acting as a driver on that day.

The accused's actions on the day of the arrest

54 The accused's account of the events on 27 September 2018 showed him going through a rather circuitous and long-drawn sequence of driving to various destinations and waiting at several of these destinations for many hours. The day began with him driving from Sherane's flat in Tampines to meet Hari at Bedok, slightly after 4am.¹³⁶ After meeting Hari, the two of them drove, in separate cars, to Anson Road.¹³⁷ They reached Anson Road at around 6am, following which the accused waited in his car for what he agreed to be "quite a while".¹³⁸ Closer to 7am, Hari told the accused to drive to Marina South Pier, which he did, and there he waited for some time again.¹³⁹ After waiting at Marina South Pier, Hari told the accused to drive back home.¹⁴⁰ This was at around 9–10am.¹⁴¹ However, shortly after returning to Sherane's flat, the accused got a phone call from Hari telling him to pick Travis up from another block in Tampines and to send him to Marina South Pier.¹⁴² At this stage, the accused

¹³⁶ NEs (23 February 2022) at p 11 lines 23–25, 32–p 12 line 1.

¹³⁷ NEs (23 February 2022) at p 14 lines 8–12.

¹³⁸ NEs (23 February 2022) at p 16 lines 4–7.

¹³⁹ NEs (23 February 2022) at p 18 lines 25–27; p 19 lines 20–21.

¹⁴⁰ NEs (23 February 2022) at p 21 lines 1–3.

¹⁴¹ NEs (23 February 2022) at p 22 line 3.

¹⁴² NEs (23 February 2022) at p 22 line 29–p 23 line 7.

had been driving around according to Hari's instructions for around seven hours, which he testified was already the longest such session to date.¹⁴³

55 After driving Travis to Marina South Pier, the accused waited there for what he agreed was probably "1 or 2 hours".¹⁴⁴ Eventually, Travis left the car and told the accused to drive back to Tampines to meet Hari.¹⁴⁵ At this point, more than eight hours had passed since the accused started driving at 4am in the morning, and he testified that at this time he still did not know why he was being asked to drive around and wait at these various locations.¹⁴⁶

56 Upon meeting the accused in Tampines, Hari told the accused to meet Travis again at a nearby block.¹⁴⁷ Travis then told the accused to drive to meet Hanis at another block in Tampines.¹⁴⁸ The accused did so and was then instructed by Hanis to drive to the Lok Yang area in Tuas.¹⁴⁹ There, in the accused's words, "there was a lot of waiting",¹⁵⁰ before the drug transaction finally took place at around 8.20pm.¹⁵¹ After that, the accused drove back to Sherane's block in Tampines, whereupon he was arrested when he got out of the car.

¹⁴³ NEs (23 February 2022) at p 23 lines 14–17.

¹⁴⁴ NEs (23 February 2022) at p 25 lines 21–22.

¹⁴⁵ NEs (23 February 2022) at p 26 lines 27–29.

¹⁴⁶ NEs (23 February 2022) at p 28 lines 9–12.

¹⁴⁷ NEs (23 February 2022) at p 30 lines 27–30.

¹⁴⁸ NEs (23 February 2022) at p 35 lines 1–5.

¹⁴⁹ NEs (22 February 2022) at p 21 lines 6–13.

¹⁵⁰ NEs (22 February 2022) at p 25 line 6.

¹⁵¹ ASOF at para 5.

57 Thus, the accused's account of the events on 27 September 2018 involved him driving to various locations, some of them repeated ones, and waiting for long periods of time at several locations. The truth of some of the details provided by the accused was doubtful; for example, given the finding that Travis was not a real person and was instead the accused's alias, it was unclear what exactly happened during the times the accused testified to have met and spent time with Travis. Nevertheless, the important part of the accused's testimony was that he had spent more than 16 hours (from 4am till past 8pm) driving around according to Hari's instructions. The fact that he had spent time driving to and waiting at various locations on that day was corroborated by messages sent by him to Sherane from both TT-HP1 and TT-HP2. On TT-HP2, the accused had messaged Sherane at 8.21am on 27 September 2018, telling her "Im at msp now waitung ti load".¹⁵² This corroborated his account of having waited at Marina South Pier that morning.¹⁵³ On TT-HP1, the accused had told Sherane at 12.11pm that he was at "Msp",¹⁵⁴ which corroborated his evidence that he had returned to Marina South Pier sometime around noon.¹⁵⁵ Later that day, at 7.47pm, the accused messaged Sherane on TT-HP1 saying that he was "[l]oading still".¹⁵⁶ When asked by her "[w]hy so Long one?",¹⁵⁷ he replied "[f]rom mornihgntill night", followed by "[h]aven even got shit".¹⁵⁸ This corroborated his account that he had spent much of the day waiting for protracted periods of time.

¹⁵² P-CD3 at Annex E p 281 S/N 6443.

¹⁵³ NEs (23 February 2022) at p 18 lines 25–27; p 19 lines 20–21.

¹⁵⁴ P-CD2 at Annex C p 6085 S/N 29512.

¹⁵⁵ NEs (23 February 2022) at p 24 line 31–p 25 line 1.

¹⁵⁶ P-CD2 at Annex C p 6089 S/N 29529.

¹⁵⁷ P-CD2 at Annex C p 6089 S/N 29530.

¹⁵⁸ P-CD2 at Annex C p 6089 S/N 29531; p 6090 S/N 29535.

58 The accused further testified that, throughout the day, he did not even ask why he was being instructed to drive to the various locations and to wait at them.¹⁵⁹ Only on one occasion – early in the morning at Anson Road – did he testify to having asked Hari what they were waiting there for.¹⁶⁰ However, when cross-examined on what Hari’s answer was, the accused stated that he could not remember.¹⁶¹ In relation to the time spent waiting at the Lok Yang area, when cross-examined on what he thought he was waiting there for, the accused replied “I don’t know what [was] it all about”.¹⁶²

59 The explanation the accused gave for going along with Hari’s instructions throughout the day was that he was already happy to have received 1.25g of free methamphetamine from Hari when they first met at Bedok.¹⁶³ He also added that he thought that by continuing to follow Hari’s instructions, he might receive additional drugs.¹⁶⁴ He testified that he felt that day’s events had been “just like all the other times”, referring to other instances where he had performed favours for Hari,¹⁶⁵ and that he had decided to just “go along with it”¹⁶⁶ and “go with the flow”.¹⁶⁷ This was despite his admission that what he was asked to do that day had been different from the usual favours of ferrying Hari’s

¹⁵⁹ NEs (23 February 2022) at p 13 lines 29–30; p 20 lines 8–9; p 23 lines 18–26.

¹⁶⁰ NEs (23 February 2022) at p 17 line 3.

¹⁶¹ NEs (23 February 2022) at p 17 lines 7, 11–12.

¹⁶² NEs (1 March 2022) at p 17 line 26.

¹⁶³ NEs (23 February 2022) at p 13 lines 16–18; p 20 lines 11–15.

¹⁶⁴ NEs (23 February 2022) at p 20 lines 28–31.

¹⁶⁵ NEs (23 February 2022) at p 29 line 7.

¹⁶⁶ NEs (23 February 2022) at p 29 line 15.

¹⁶⁷ NEs (23 February 2022) at p 31 line 32.

friends around and withdrawing money,¹⁶⁸ as well as the fact that that session of doing favours for Hari had been by far the longest one yet.¹⁶⁹

60 On the whole, I found it implausible that the accused had been willing to follow Hari's instructions throughout the day, spending an inordinate amount of time driving in a circuitous sequence whilst waiting for many hours at various locations, simply because he was happy to have obtained 1.25g of free methamphetamine and because Hari might have given him additional free drugs. The enticement from the small amount of free drugs was far too low to justify the tiresome sequence of tasks the accused was asked to do that day. It was also particularly striking that the accused did not ask and was not told at any point why he was being asked to follow the instructions, and yet he continued to comply. This lack of questions from the accused did not comport with the image of a person who had no idea as to why he was being asked to perform these strange favours.

61 Rather, I accepted the Prosecution's argument that in line with the narrative borne out by the messages in TT-HP1, which showed the accused negotiating for the sale and handover of drugs from Hari on 27 September 2018, the accused had followed Hari's instructions throughout that day with a view to eventually taking possession of the Drugs at some point. Furthermore, the messages cited above at [57] from TT-HP1 to Sherane showed that the accused had known that he had been involved in "loading" throughout the day, since he told her in the morning "Im at msp now waitung ti load"¹⁷⁰ and later in the

¹⁶⁸ NEs (23 February 2022) at p 17 line 26–p 18 line 3; p 18 lines 12–14.

¹⁶⁹ NEs (23 February 2022) at p 23 line 15.

¹⁷⁰ P-CD3 at Annex E p 281 S/N 6443.

evening “[l]oading still”.¹⁷¹ When the accused was at the Lok Yang area,¹⁷² he had also messaged Sherane “[a]nything happen watch where [I] go”, followed a while later by “[d]ealing right now ... heart thumping harder n faster”.¹⁷³ All these messages showed that contrary to the accused’s account, he had been aware that the events that day were all related to the “loading” of drugs.

62 Thus, the more credible explanation for the accused’s actions on the day of arrest was not that he had innocently followed Hari’s instructions because he was happy to have received some free drugs and wanted to get more, but rather that he had followed Hari’s instructions in order to ultimately receive the Drugs. This reason – the prospect of receiving the Drugs at the end of the day – carried the necessary inducement for the accused to tolerate the tedious sequence of driving to and waiting at various locations.

Hanis’ credibility

63 The credibility of Hanis’ evidence was also an important issue in the present case. Hanis had accompanied the accused, on Hari’s instructions, to the Lok Yang area.¹⁷⁴ There, Hanis had met up with Hakam,¹⁷⁵ and was later seated in the passenger seat of the accused’s vehicle when Hakam passed the red and black bundle to the accused through the window of the vehicle.¹⁷⁶

¹⁷¹ P-CD2 at Annex C p 6089 S/N 29529.

¹⁷² ASOF at para 4.

¹⁷³ Exhibit P96 at p 74 S/Ns 412–413, p 78 S/N 466.

¹⁷⁴ NEs (23 November 2021) at p 68 line 15–p 69 line 2.

¹⁷⁵ NEs (22 February 2022) at p 22 lines 13–18.

¹⁷⁶ NEs (22 February 2022) at p 25 lines 10–19.

64 The Prosecution relied on several key parts of Hanis' evidence. First, Hanis testified that his role in the transaction on 27 September 2018 had been to facilitate the accused's collection of the Drugs on behalf of Hari.¹⁷⁷ He also gave evidence that the accused had taken possession of the bundle when Hakam passed it to the accused through the vehicle window.¹⁷⁸ The Prosecution relied on these parts of Hanis' evidence to show that the accused had in fact taken possession of the Drugs that evening.¹⁷⁹

65 Hanis' evidence was also important for refuting the Defence's case that Hari and the members of his group had intended to purchase the Drugs for themselves, and that Hanis was supposed to collect the Drugs on behalf of them.¹⁸⁰ In the first place, his evidence that he had acted as a middleman to facilitate the accused's collection of the Drugs refuted the Defence's contention that Hari and the members of his group had been the intended ultimate recipients of the Drugs. The Defence also cross-examined Hanis on the messages found on his handphone, "MHB-HP2" (which have been discussed above at [50]–[51]) and suggested to him that the messages supported the theory that Hanis was supposed to have taken possession of the Drugs that evening on behalf of his group. However, as observed above at [50] and [52], Hanis testified that the messages from Hari asking him not to disclose anything to the accused related to the concealment of Luffy's identity, as opposed to the Defence's submission that Hari was trying to keep the accused in the dark with respect to the drug

¹⁷⁷ NEs (23 November 2021) at p 66 lines 15–23; p 67 lines 20–21; p 68 lines 4–6.

¹⁷⁸ NEs (23 November 2021) at p 74 line 17–p 75 line 12.

¹⁷⁹ PCS at paras 56 and 60.

¹⁸⁰ DCS at para 43.

transaction. Overall, he disagreed with the Defence's theory that he, rather than the accused, was supposed to take possession of the Drugs.¹⁸¹

66 The Defence sought to discredit Hanis' evidence, contending that Hanis had lied during the investigations regarding his involvement and that he would have wanted to avoid a capital charge.¹⁸² The Defence put to Hanis, at trial, that in order to escape a capital charge for being the one in possession of the Drugs, he had to testify that the Drugs were meant for the accused and that he had merely been helping the accused to collect the Drugs.¹⁸³ Hanis disagreed.¹⁸⁴

67 I found Hanis to be a credible witness despite his involvement in the criminal activity and his attempts to downplay his role in the transaction, which included his repeated emphasis at trial that his role was that of a middleman only¹⁸⁵ whose task had simply been to bring "somebody to meet somebody else"¹⁸⁶ and who had "no involvement" in the planning of the drug transactions.¹⁸⁷ Importantly, Hanis' evidence relating to the events on 27 September 2018 and his role in the transaction was corroborated by the messages found on TT-HP1 and MHB-HP2. Hanis' testimony cohered with the narrative borne out by these messages. First, the messages in MHB-HP2 showed that Hanis had indeed been asked by Hari to facilitate the accused's collection of the Drugs. Hanis had messaged Hari the planned location of the transaction

¹⁸¹ NEs (24 November 2021) at p 76 line 30–p 77 line 2.

¹⁸² DCS at para 44.

¹⁸³ NEs (25 November 2021) at p 41 lines 10–14.

¹⁸⁴ NEs (25 November 2021) at p 41 line 15.

¹⁸⁵ NEs (23 November 2021) at p 66 line 20; NEs (24 November 2021) at p 8 lines 19–20; NEs (25 November 2021) at p 62 line 29.

¹⁸⁶ NEs (24 November 2021) at p 8 lines 19–20.

¹⁸⁷ NEs (25 November 2021) at p 63 lines 2–6.

on 27 September 2018, saying “3 forth Lok Yang rd”.¹⁸⁸ Referring to the accused, Hari had instructed Hanis to “[c]ollect money from him 8500”.¹⁸⁹ This sum of \$8,500 was consistent with messages in TT-HP1 in which the accused confirmed with Hari that the amount of cash he was to hand over to Hari was “8500”.¹⁹⁰ These matching amounts showed that the accused had indeed been meant to pay Hari for the transaction that day, with the payment to be collected by Hanis.

68 Hari also informed Hanis of the vehicle which the accused drove, telling Hanis “[h]e drives a Volkswagen jetta”.¹⁹¹ When Hanis told Hari that he was already in the accused’s car, Hari replied “[h]e n u together go”,¹⁹² and reminded Hanis to “double check” the \$8,500 that was to come from the accused.¹⁹³ Hanis then attempted to confirm with Hari that all the Drugs were meant for the accused, asking “[o]kay then the goods to collect are all his/hers eh?”¹⁹⁴ Hari replied “[s]o, it is just to bring him/her to meet that Laffy. Collect goods and take money eh”.¹⁹⁵

69 Thus, the exchange of messages between Hari and Hanis cohered with Hanis’ narrative rather than the Defence’s case theory. The messages indicated that Hanis had been instructed by Hari to facilitate the accused’s collection of the Drugs and collect the agreed amount of money from the accused. Nothing

¹⁸⁸ AB at p 256 S/N 62.

¹⁸⁹ AB at p 256 S/N 67.

¹⁹⁰ Exhibit P96 at p 18 S/N 336.

¹⁹¹ AB at p 256 S/N 68.

¹⁹² AB at p 257 S/N 76.

¹⁹³ AB at p 257 S/N 81.

¹⁹⁴ AB at p 257 S/N 86.

¹⁹⁵ AB at p 258 S/N 87.

in the messages supported the accused's narrative that Hanis was supposed to be the ultimate recipient of the Drugs (on behalf of Hari's group), and that the accused had merely been involved as a driver.

70 The messages found on TT-HP1 also corroborated Hanis' narrative. As observed above at [48], the accused had been the user of TT-HP1 at all times and had sent the messages on 25 and 27 September 2018 arranging the sale and handover of drugs from Hari. This was in line with Hanis' evidence that the accused, not Hanis, was meant to collect the Drugs that day.

71 Thus, in light of the corroboration provided by the messages in both MHB-HP2 and TT-HP1, I found Hanis' narrative relating to the transaction involving the Drugs to be credible. Hanis' role was to facilitate the accused's collection of the Drugs on 27 September 2018, and the accused was the ultimate recipient of the Drugs who was meant to and did take possession of the Drugs that day.

The evidence of PW52 Arif and PW51 Hakam

72 I turn to address the evidence of two witnesses, PW52 Arif and PW51 Hakam, who were called as rebuttal witnesses for the Prosecution towards the end of the trial. Both the Prosecution and the Defence claimed that these two individuals formed important parts of the other side's case, with the Prosecution stating that it eventually called them as rebuttal witnesses largely so that the Defence would have the opportunity to cross-examine them.¹⁹⁶

¹⁹⁶ PCS at para 84; NEs (12 January 2023) at p 15 lines 5–30.

73 The Defence submitted that Arif was in fact the person known to the accused as “Hari” who had supplied the accused with the Drugs.¹⁹⁷ However, in cross-examination, Arif disagreed with the Defence that he was “Hari”.¹⁹⁸ He also denied having ever known or met either the accused or Hanis.¹⁹⁹ The Defence argued that these denials showed that Arif did not want to tell the truth in court because he and his associates were in fact the ones who had ordered the Drugs, and therefore he had decided to deny their involvement and let the accused take the blame for the Drugs.²⁰⁰

74 I did not accept the Defence’s argument on this point. Arif’s evidence did not raise any reasonable doubt as to the Prosecution’s case. Essentially, he denied having any links to Hari, Hanis, or the accused. This could not be extrapolated to raise any reasonable doubt that contrary to the Prosecution’s case, he and his associates had in fact been the ones who had purchased the Drugs. Importantly, Arif’s denials did not affect the crucial evidence underpinning the Prosecution’s case, which centred on the messages found on the accused’s mobile phones rather than any evidence coming from Hari.

75 Similarly, Hakam’s evidence was of limited probative value and did not affect the Prosecution’s case – he mostly responded in cross-examination that he could not remember the details of what had happened during the handover of the Drugs.²⁰¹ Thus, neither the evidence of Arif and Hakam nor the manner

¹⁹⁷ DCS at paras 46–48.

¹⁹⁸ NEs (27 September 2022) at p 31 lines 8–17.

¹⁹⁹ NEs (27 September 2022) at p 22 line 28–p 23 line 4; p 28 lines 5–11; p 30 lines 13–21.

²⁰⁰ DCS at para 48.

²⁰¹ NEs (27 September 2022) at p 13 line 26–p 16 line 9; p 18 lines 2–19.

or lateness of their being called as witnesses raised any reasonable doubt as to the Prosecution's case.

Summary of common evidential issues

76 The collective picture painted by the evidence discussed above showed that the accused had intended to take possession of the Drugs on 27 September 2018 and did in fact take possession of the Drugs. The messages in TT-HP1, which had all been sent by the accused, showed that the accused had negotiated for the sale and purchase of drugs from Hari, with the handover to have taken place on 27 September 2018. The accused's actions on the day of arrest – following Hari's instructions to various locations and waiting for long periods of time at these locations – were only plausible if he had been planning to take possession of the Drugs that day. Indeed, the messages to Sherane on TT-HP1 showed that the accused had known that the activities that day related to the “loading” of drugs. Furthermore, the messages in Hanis' handphone, MHB-HP2, showed that Hari, Hanis and other members of Hari's group had arranged for the collection of the Drugs by the accused on 27 September 2018. Finally, Hanis testified that the accused had in fact taken possession of the Drugs from Hakam at the Lok Yang area.

77 Taken together, the clear conclusion was that the accused's negotiation with Hari on TT-HP1 had been for the sale and handover of the Drugs on 27 September 2018, and that he had intended to and had in fact taken possession of the Drugs at the Lok Yang area that day.

78 The Defence's attempts to avoid this conclusion were incredible. I could not accept that the messages on TT-HP1 had been sent by Travis rather than the accused, as the evidence showed that the accused had been the sole user of TT-

HP1, and Travis appeared to have been an alias which he used when conducting drug transactions. Neither could I accept the Defence's narrative that the accused had merely been acting as a driver for Hanis and Hari and that Hari's group had purchased the Drugs for themselves. The messages on MHB-HP2 relied upon by the Defence did not support this narrative and were instead consistent with the Prosecution's case – corroborated by the messages in TT-HP1 – that Hari and the members of his group had been acting as the accused's suppliers in the transaction.

79 The factual background established by these evidential threads informed and supported the analysis in the next section, relating to the legal elements of the offence.

The elements of the charge

The applicable law

80 The charge under s 5(1)(a) read with s 5(2) of the MDA read as follows:²⁰²

That you, TRISTAN TAN YI RUI,

on 27 September 2018 at about 9.01pm, at Blk 230J Tampines Street 21, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), *to wit*, by having in your possession for the purpose of trafficking one red and black taped bundle which contained one ziplock packet containing not less than 499.0g of crystalline substance, which was analysed and found to contain not less than 337.6g of methamphetamine, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the MDA, and punishable under section 33(1) of the MDA, and further, upon your conviction under section 5(1)(a) read with section 5(2) of

²⁰²

Arraigned Charge dated 17 September 2021 at p 1.

the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

81 The elements of an offence under s 5(1)(a) read with s 5(2) of the MDA were laid out in *Mohammad Rizwan bin Akbar Husain v PP and another appeal and other matters* [2014] 3 SLR 721 at [59] and are as follows:

- (a) possession of a controlled drug;
- (b) knowledge of the nature of the drug; and
- (c) possession of the drug for the purpose of trafficking which was not authorised.

82 Several presumptions may apply in respect of the offence under s 5(1)(a) read with s 5(2) of the MDA. First, possession of a controlled drug may be presumed pursuant to s 18(1) of the MDA, which provides, *inter alia*, that any person who is proved to have had in his or her possession or custody or under his or her control anything containing a controlled drug is presumed, until the contrary is proved, to have had that drug in his or her possession.

83 Second, knowledge of the nature of the drug may be presumed under s 18(2) of the MDA, which provides that any person who is proved or presumed to have had a controlled drug in his or her possession is presumed, until the contrary is proved, to have known the nature of that drug.

84 Third, under s 17 of the MDA, any person who is proved to have had in his or her possession more than certain prescribed amounts of controlled drugs is presumed to have had the relevant drug in possession for the purpose of trafficking unless it is proved otherwise. Under s 17(h) of the MDA, the prescribed amount of methamphetamine which triggers this presumption is 25g.

85 The presumptions under s 18 of the MDA relating to possession and knowledge of the nature of the drug, and the presumption under s 17 of the MDA relating to trafficking, cannot run together: *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 (“*Zainal bin Hamad*”) at [45]–[49]. The presumption under s 17 of the MDA only arises where a person is *proved* to have had in their possession more than the specified amounts of certain drugs. Thus, where a person is presumed, rather than proved, to have possession and knowledge of the nature of the drug under s 18 of the MDA, the presumption of trafficking under s 17 cannot be relied on: *Zainal bin Hamad* at [47]–[49]. Hence, the Prosecution in the present case sought to prove the elements of possession and knowledge of the nature of the Drugs, whilst relying only on the presumption of possession for the purpose of trafficking under s 17 of the MDA.

Whether possession of the Drugs was established

86 Possession of drugs, as an ingredient of the offence of trafficking under the MDA, requires physical possession or custody over the drugs as well as knowledge of the existence of the thing which is later found to be a controlled drug: *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [31] and [35].

87 The accused’s possession of the Drugs was made out. This was established first by the evidence of Hanis that the accused had in fact taken possession of the bundle from Hakam, who had handed the bundle to the accused through the window of the accused’s car.²⁰³ This was in line with, as observed earlier at [77], other evidence, such as the messages in TT-HP1 and

²⁰³ NEs (23 November 2021) at p 74 line 20–p 75 line 9.

MHB-HP2, as well as the accused's actions on the day of arrest which indicated that he had intended to take possession of the Drugs at the Lok Yang area.

88 Second, the accused's possession of the Drugs was also established by the presence of the accused's DNA on the packet of powdery substance wrapped within the bundle.²⁰⁴ The Defence attempted to show that there could have been inadvertent transfers of the accused's DNA to the packet. To this end, the Defence suggested several possible scenarios, including possible transference of the accused's DNA from the surface of the car seat,²⁰⁵ or transfer of the accused's DNA by means of a handshake or other physical contact with a person who then touched the packet.²⁰⁶ However, these scenarios were wholly speculative and were to be juxtaposed against the clear evidence of Hanis, supported by the narrative borne out by the messages in TT-HP1 and MHB-HP2, that the accused had meant to and did take possession of the bundle and the packet. Thus, the Defence's attempts to show the possibility of inadvertent transfers of the accused's DNA did not raise any reasonable doubt as to the fact that the accused had handled the packet.

89 It was particularly incriminating that the accused's DNA was found not on the exterior surface of the bundle, but rather on the packet which was within the bundle. A photograph of the bundle, "A1", and the packet, "A1A", is reproduced below:²⁰⁷

²⁰⁴ ASOF at para 21; Exhibit P34 at Matchable Contributor "S150363" (DNA Profiling Report dated 23 November 2018) at p 4 (AB p 45).

²⁰⁵ NEs (19 November 2021) at p 49 lines 1–16.

²⁰⁶ NEs (19 November 2021) at p 47 lines 7–19; p 48 lines 4–9.

²⁰⁷ Exhibit P-CD1, image 14.

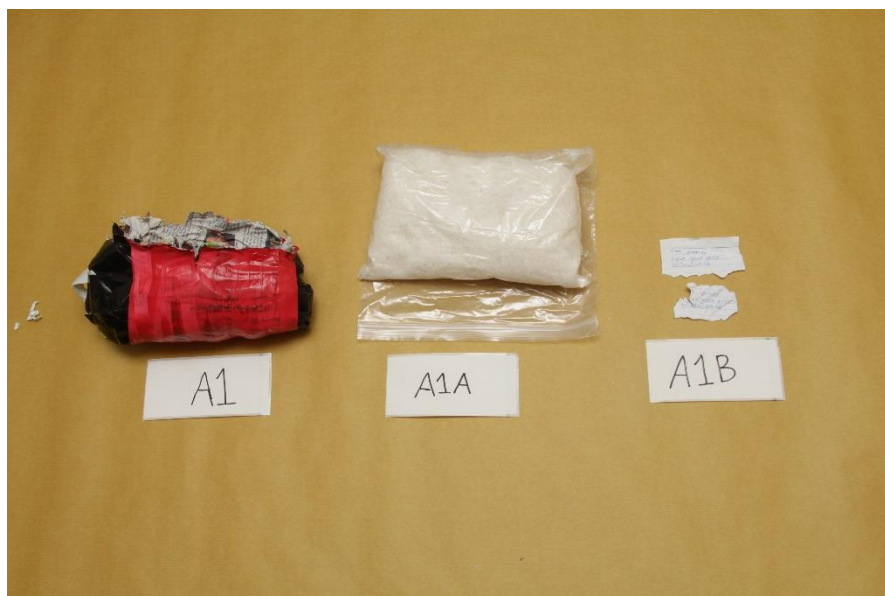


Figure 1: Photograph of exhibits A1, A1A and A1B

90 The presence of the accused’s DNA on the packet, “A1A”, showed that the accused had not merely handled the bundle but had also handled the packet within the bundle.

91 The fact that the bundle and the packet had been in the vehicle where another person, namely Hanis, had been present, did not mean that actual possession was lost. Possession would only be called into question if there was some indication of possession being transferred to the other person in that context, such as an attempt at exclusion by the other person. There was no such indication that possession had been transferred to Hanis. In any event, given the evidence of Hanis, which was to be preferred, the accused, not Hanis, was supposed to take possession of the Drugs and the accused did so.

92 Another element of the charge was knowledge of the existence of the thing which was later found to be a controlled drug. The accused’s handling of

the packet showed that he certainly had knowledge of the existence of the packet and the substance contained within it. As can be seen from fig 1, the packet itself was transparent and any person who handled it would thereby have been aware of the powdery substance in it, which was later found to contain methamphetamine. I was therefore satisfied that the accused had knowledge of the existence of the powdery substance within the packet, and therefore that his possession of the Drugs was established.

93 I observe that the Prosecution did not rely on s 21 of the MDA, under which any controlled drug found in any vehicle is presumed, until the contrary is proved, to have been in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being. This was presumably due to the Prosecution's decision to rely on the s 17 presumption of possession for the purpose of trafficking, which required them to prove possession and hence precluded them from relying on any presumption of possession under the MDA.

Whether knowledge of the nature of the Drugs was established

94 The accused's knowledge of the nature of the Drugs was established by the messages found in TT-HP1 concerning the sale and handover of drugs on 27 September 2018. Whilst these messages did not specifically mention that the drugs to be handed over were methamphetamine, it was clear when viewed against the entire factual context that the messages were indeed about the sale of the Drugs specifically – *ie*, methamphetamine. For example, other messages on TT-HP1 showed that the accused had known that he would be collecting methamphetamine at the Lok Yang area. At 5.45pm on 27 September 2018, when Hanis had entered the accused's car in Tampines but they had not left for

Lok Yang yet,²⁰⁸ Hari messaged the accused on TT-HP1, saying “spare me 25 later can?? and price u give?”.²⁰⁹ The accused did not dispute that he had been using TT-HP1 at this point in time as, according to him, Travis had left TT-HP1 with him from 5.30pm onwards that day.²¹⁰ In cross-examination, the accused confirmed that Hari’s message was referring to 25g of methamphetamine.²¹¹ Following that message, Hari then told the accused to pass this 25g of methamphetamine to Hanis.²¹² At 6.27pm, the accused replied Hari, quoting him \$700 for that amount of methamphetamine and showing his appreciation to Hari for “hooking me up”.²¹³ At trial, the accused denied that he had agreed to spare Hari the 25g of methamphetamine, saying that it was Travis who had told him to pass 25g to Hanis.²¹⁴ However, since I have found that Travis was not a separate person, there was in fact no such person who had told the accused to pass 25g to Hanis. The accused was therefore the one who had agreed with Hari to pass 25g of methamphetamine to Hanis. In any case, the accused’s reliance on the fact that Travis had told him to pass the 25g of methamphetamine to Hanis did not detract from the fact that the messages showed that he had known that a package of methamphetamine was going to be handed over at Lok Yang. Coupled with the context which showed that the accused had negotiated with Hari for the handover of drugs at Lok Yang on 27 September 2018, the accused’s agreement in these messages (which had been sent just before he

²⁰⁸ Exhibit P96 at p 20 S/N 345–359.

²⁰⁹ Exhibit P96 at p 20 S/N 346.

²¹⁰ NEs (22 February 2022) at p 57 lines 16–25.

²¹¹ NEs (24 February 2022) at p 49 lines 14–22; NEs (24 February 2022) at p 64 line 31–p 65 line 1.

²¹² Exhibit P96 at p 20 S/N 349.

²¹³ Exhibit P96 at p 21 S/Ns 355–358.

²¹⁴ NEs (24 February 2022) at p 66 lines 22–23; p 67 line 13.

drove to Lok Yang) to spare Hari 25g of methamphetamine “later” confirmed that he had known that he would be receiving a package of methamphetamine specifically at the Lok Yang area that day, from which the 25g was to be derived.

95 Furthermore, other facts also showed that the accused had known the nature of the Drugs. The messages on TT-HP1 between the accused and Hari often discussed the sale of “white”,²¹⁵ which was confirmed by the accused and PW45 ASP Zhong Kang Tai to refer to methamphetamine.²¹⁶ Also, the messages between Hanis and Cico2 made clear that the transaction on 27 September 2018, which had been negotiated by the accused, was for “white” – at 4.33am on 27 September 2018, Hanis had asked Cico2 if the transaction that day was “for green or white”, to which Cico2 replied “[w]hite”.²¹⁷ Finally, the accused had actually gone to the Lok Yang area on 27 September 2018, intending to take collection of drugs, and had knowingly taken possession of the packet of white crystalline substance. Thus, the factual context was as such: the accused had often discussed the sale of methamphetamine with Hari; the accused had negotiated for the purchase of drugs from Hari on 27 September 2018; Hanis’ messages confirmed that that transaction was for methamphetamine; and the accused had gone to the Lok Yang area and taken possession of what he knew to be a packet of white crystalline substance. In light of these facts, although the messages on TT-HP1 did not explicitly say that the drugs to be sold were methamphetamine, it was clear that the accused had known that the transaction he had negotiated with Hari was for the sale of the Drugs – *ie*, methamphetamine

²¹⁵ For example, P-CD2 at Annex C p 2731 S/N 13133; p 2729 S/N 13122; p 2728 S/N 13117; p 2720 S/N 13076; p 2710 S/Ns 13026–13027.

²¹⁶ NEs (23 November 2021) at p 29 line 18; NEs (24 February 2022) at p 35 lines 16–18.

²¹⁷ Exhibit D4 at p 1 S/Ns 5–6.

– specifically, as opposed to some other type of drugs. Indeed, the Defence did not dispute that the messages on TT-HP1 were about the sale and handover of the Drugs specifically.²¹⁸ Thus, the accused had actual knowledge that the nature of the Drugs he received at the Lok Yang area that day was methamphetamine.

Whether possession of the Drugs was for the purpose of trafficking

96 Given that the accused was in possession of not less than 337.6g of methamphetamine, the presumption of trafficking under s 17 of the MDA applied:

Presumption concerning trafficking

17. Any person who is proved to have had in his possession more than —

...

(h) 25 grammes of methamphetamine;

...

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

97 In addition to relying on the presumption of trafficking above, the Prosecution argued that the sheer amount of methamphetamine involved – not less than 337.6g – indicated that the accused could not have taken possession of the Drugs for his own consumption.²¹⁹ The Prosecution further contended that the accused had intended to repack a 25g portion of the Drugs and traffic that amount to Hanis, who testified that the accused had told him to collect 25g of methamphetamine after the deal was completed.²²⁰ Lastly, the Prosecution

²¹⁸ DCS at para 21.

²¹⁹ PCS at para 73.

²²⁰ PCS at para 74; NEs (23 November 2021) at p 77 lines 2–9.

argued that the accused's admission to having sold small quantities of methamphetamine to his friends before,²²¹ coupled with messages on TT-HP1 which showed that he had discussed fairly large quantities of methamphetamine with his friends,²²² indicated that he had been actively engaged in trafficking activity. This supported a finding that he had possessed the Drugs for the purpose of trafficking.

98 The Defence argued, in line with its case theory, that the accused had not intended to purchase the Drugs and the Drugs had not been meant for him. Rather, Hari and the members of his group were the ones who had planned to purchase the Drugs, and the accused had merely acted as a driver for Hanis who had been tasked to collect the Drugs.²²³ Thus, the accused did not possess the Drugs for the purpose of trafficking.²²⁴

99 In respect of the Prosecution's arguments, I could not conclude that the quantity of the Drugs alone was actual proof of an intention on the part of the accused to traffic in the Drugs. Also, the repacking of the Drugs for a smaller portion to be passed on to Hanis did not indicate trafficking of the Drugs as a whole. The quantity to be repacked, 25g, was significantly smaller than the quantity in the accused's possession. As observed earlier at [94], the messages on TT-HP1 indicated that the repacking of 25g of the Drugs, to be sold to Hari for \$700, had been done as a favour from the accused to Hari for setting him up with the transaction. Thus, this arrangement to repack and sell 25g of the Drugs was a special one agreed to by the accused in view of Hari's help, and could not

²²¹ PCS at paras 77–79; NEs (22 February 2022) at p 39 lines 18–26; NEs (23 February 2022) at p 4 lines 4–12.

²²² PCS at paras 77–79; NEs (24 February 2022) at p 33 line 23–p 34 line 12.

²²³ DCS at para 3.

²²⁴ DCS at para 3.

be relied on to show that the rest of the Drugs would similarly be sold off by the accused.

100 The accused's prior trafficking activity also could not be relied upon to prove that the accused had intended to traffic in the Drugs. In respect of this, the Prosecution referred to the accused's testimony that he had sold small amounts of methamphetamine – less than 1g each time – to his friends.²²⁵ The Prosecution also referenced messages on TT-HP1 in which the accused had discussed larger amounts of methamphetamine with his contacts.²²⁶ For example, a conversation with Hari on 28 August 2018 discussed three quantities of methamphetamine – 25g, 12.5g, and 5g.²²⁷ In another conversation with Steph on 18 August 2018, the accused referred to 50g of methamphetamine.²²⁸

101 With respect to the messages with Hari and Steph, it was not clear whether they related to the accused *selling* the quantities of methamphetamine referred to. Indeed, the Prosecution did not allege so, only going so far as to say that these messages had involved discussions about these various quantities of methamphetamine.²²⁹ Such discussions which were not clearly about trafficking even in relation to those previous amounts of methamphetamine certainly could not be extrapolated to show that the accused had planned to traffic in the Drugs.

102 As for the accused's admission that he had previously sold small amounts of methamphetamine to his friends, the Prosecution's reliance on this

²²⁵ NEs (23 February 2022) at p 4 lines 20–24; NEs (22 February 2022) at p 39 lines 24–26.

²²⁶ PCS at para 78.

²²⁷ Exhibit P96 at p 26 S/N 6; NEs (24 February 2022) at p 33 line 23–p 34 line 1.

²²⁸ Exhibit P96 at p 32 S/N 3, NEs (24 February 2022) at p 34 lines 2–9.

²²⁹ PCS at para 78.

piece of evidence appeared to contravene the rule against similar fact evidence. Whilst it is well-established in Singapore that there is no strict rule against the admission of similar fact evidence, with ss 14 and 15 of the Evidence Act 1893 (2020 Rev Ed) permitting reliance on similar fact evidence where such evidence is used to demonstrate the state of mind of the accused (see *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 at [32] and *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 (“*Tan Meng Jee*”) at [40]), a balancing process weighing the probative value of the evidence against its prejudicial effect must be applied in determining whether similar fact evidence should be admitted under those provisions: *Tan Meng Jee* at [50]. Three factors should be considered in this balancing process; namely, cogency, strength of inference and relevance: *Tan Meng Jee* at [52].

103 The cogency of the evidence here was not in question, since the source of the evidence was the accused’s own testimony. However, the strength of inference and the relevance of this evidence was doubtful: the accused’s evidence was that he had sold or given small amounts of methamphetamine to his friends, with these amounts having been derived from the usual packets of 1.25g of methamphetamine which Hari would have given or sold to him.²³⁰ This was quite different from the conduct which the Prosecution sought to prove – *ie*, that the accused had purchased the Drugs (which contained not less than 337.6g of methamphetamine) and intended to traffic the whole amount. Thus, the probative value of this evidence in showing the accused’s state of mind with respect to the Drugs was low. It did not follow, simply from the accused’s prior acts of selling to his friends small amounts of methamphetamine, which he had derived from the supply for his own consumption, that he had intended to traffic

²³⁰ NEs (22 February 2022) at p 39 lines 5–26.

in the Drugs, which contained a quantity of methamphetamine several hundred times larger than the amounts he admitted to having previously sold. Thus, the probative value of this evidence was significantly outweighed by its prejudicial effect and could not be relied on by the Prosecution to show that the accused had possessed the Drugs for the purpose of trafficking.

104 However, the Defence failed to rebut the presumption of possession for the purpose of trafficking on the balance of probabilities. The Defence essentially relied on the argument that the accused had not intended to possess the Drugs in the first place and had not known that the bundle contained methamphetamine, even if Hakam had indeed passed the bundle to him.²³¹ However, as observed earlier at [78], the Defence's account that Hari and his group had purchased the Drugs for themselves, with the accused merely acting as a driver for Hanis, was incredible. Rather, the evidence showed that the accused had negotiated for the purchase of the Drugs from Hari and had intended to and had in fact taken possession of the Drugs at the Lok Yang area. In view of this finding, the Defence's argument that the accused had not intended to possess the Drugs and had not known that the bundle contained methamphetamine could not stand. Thus, the Defence failed to rebut the presumption under s 17(h) of the MDA that the accused had possessed the Drugs for the purpose of trafficking. The result was that the presumption applied, and thus the element of possession for the purpose of trafficking was made out.

105 Overall, all three elements of the charge for trafficking in a controlled drug were made out. I therefore found the accused to be guilty of the charge and convicted him accordingly.

²³¹ DCS at paras 57–58.

Other matters

106 The Prosecution submitted that the accused's lies in his statements to the police corroborated his guilt. Specifically, the Prosecution contended that the accused's lie in his statements that TT-HP1 had belonged to Travis²³² satisfied the four criteria set out in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 ("*Ilechukwu Uchechukwu Chukwudi*") at [60] for what has been termed in case law as a "*Lucas lie*" – *ie*, a lie which amounts to corroboration of guilt.²³³ These criteria are as follows:

- (a) the lie told out of court is deliberate;
- (b) it relates to a material issue;
- (c) the motive for the lie is a realisation of guilt and a fear of the truth; and
- (d) the statement must clearly be shown to be a lie by independent evidence.

107 These criteria appeared to be satisfied in relation to the accused's lie in his statements that TT-HP1 had belonged to Travis. The lie told in his statements was deliberate and related to a material issue as the messages on TT-HP1 related to the arrangement of the sale and handover of drugs on 27 September 2018. These messages were highly incriminating and the accused's creation of the person of "Travis", who had allegedly owned TT-HP1, must have stemmed from the accused's guilt and fear of the truth, which was that he was the owner of TT-HP1 who had in fact sent these messages. This truth was evident from the evidence analysed earlier.

²³² AB at p 182 para 10; p 188.

²³³ PCS at para 81.

108 Thus, the criteria in *Ilechukwu Uchechukwu Chukwudi* for a “Lucas lie” appeared to be satisfied in the present case. Nevertheless, great emphasis should not be placed on the corroborative effect of this lie. As was the case in *PP v Lau Boon Huat* [1997] SGHC 148 (at [53]), there was no special requirement for corroboration of the accused’s guilt in the present case and the evidence discussed above already established the accused’s guilt without any need for corroboration from the lies in his statements.

Sentence

109 The accused’s role in the transaction involving the Drugs was clearly not limited to that of a courier. Rather, the evidence showed that he had negotiated the purchase and handover of the Drugs. The PP also did not issue a certificate of substantive assistance to the accused.²³⁴ Thus, there was no room for the application of the alternative sentencing regime under s 33B(1)(a) read with s 33(2) of the MDA. Accordingly, pursuant to s 33(1) of the MDA read with the Second Schedule therein, which prescribes the death sentence where the offence of unauthorised trafficking in controlled drugs containing more than 250g of methamphetamine is made out, I sentenced the accused to death.

Conclusion

110 The Prosecution made out its case beyond any reasonable doubt that the accused was guilty of the charge for trafficking in a controlled drug, by having had in his possession for the purpose of trafficking a packet containing not less

²³⁴ NEs (9 February 2023) at p 6 lines 8–23, 31–p 7 lines 1–4.

than 337.6g of methamphetamine. I therefore convicted the accused of the charge and sentenced him to death.

Aedit Abdullah
Judge of the High Court

Terence Chua Seng Leng and Chong Yong (Attorney-General's
Chambers) for the Prosecution;
Low Cheong Yeow (M/s Matthew Chiong Partnership), Krishna
Ramakrishna Sharma (Fleet Street Law LLC) and Zamiq Azmeer bin
Borhanudin (M/s Abdul Rahman Law Corporation) for the accused.
