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

[2024] SGHC 331

Criminal Case No 5 of 2024

Between

Public Prosecutor

… *Prosecution*

And

(1) Soh Jing Zhe
(2) Pong Jia Rong Kenji

… *Defendants*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Evidence — Admissibility of evidence — Similar fact evidence]
[Evidence — Adverse inferences]

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Public Prosecutor
v
Soh Jing Zhe and another

[2024] SGHC 331

General Division of the High Court — Criminal Case No 5 of 2024
Mavis Chionh Sze Chyi J
20–21 February, 18 March, 8 July, 30 September 2024

31 December 2024

Mavis Chionh Sze Chyi J:

Introduction

1 This case concerned a joint trial of two accused persons. The first accused was Soh Jing Zhe ("Soh"), while the second accused was Pong Jia Rong Kenji ("Pong").

2 Pong faced a charge of trafficking in a Class A controlled drug on 14 April 2020 at about 9.50pm, by having in his possession five bundles, containing not less than 42.02g of diamorphine (the "Drug Bundles"), for the purpose of trafficking. This was an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA").

3 Soh was jointly tried with Pong on a charge of abetting by intentionally aiding Pong to traffic the Drug Bundles on 13 April 2020 at about 5.18pm – an

offence under s 5(1)(*a*) read with s 12 and punishable under s 33(1) of the MDA.

4 At the start of the trial, the Prosecution expressed its intention to rely on the presumption in s 18 of the MDA that Pong knew of the nature of the drugs in his possession (*ie*, that Pong knew that the Drug Bundles contained diamorphine). Over the course of the trial, it became apparent that neither Soh nor Pong sought to rebut this presumption. It was also incumbent upon the Prosecution to prove that Pong was in possession of the Drug Bundles *for the purpose of trafficking*; and it was in respect of this element of the offences that the two accused sought to challenge the Prosecution's case. At the conclusion of the trial, I found that the Prosecution had proven the respective charges against the two accused beyond a reasonable doubt; and I convicted both accused accordingly. I now set out in these written grounds the reasons for my decision.

The undisputed facts

5 The following facts were not in dispute.

The arrests of Soh and Pong and the seizure of exhibits

6 On 14 April 2020, a team of officers from the Central Narcotics Bureau ("CNB") conducted an operation to arrest Soh and Pong.

7 Soh was apprehended sometime between 5.30pm and 8.45pm while he was inside a rental car. Among the items seized from Soh was a black iPhone ("Soh's Phone"),[1] which was found inside the rental car.

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[1] Agreed Bundle ("AB") 63.

8 Pong was arrested sometime at or after 8.45pm in the vicinity of Block 864 Yishun Ave 4 ("Block 864"). A number of items (which are not material to the charges) were seized from him and his vehicle. Following his arrest, at around 9.50pm, Pong was escorted by officers from the CNB to his flat at #09-33 of Block 864, where the officers conducted a search of his bedroom in his presence. Among the items seized by the officers were the Drug Bundles, contained in a white plastic bag bearing the word "carter's" (the "Carter's Bag") (Exhibit "A1A"),[2] which in turn was found inside a box labelled with a sticker containing the letters "DHL" (the "DHL Box") (Exhibit "A1").[3] In addition, the officers also seized a black iPhone ("Pong's Phone").[4]

9 Soh's Phone and Pong's Phone were sent to the Technology Crime Forensic Branch ("TCFB") of the Criminal Investigation Department for forensic examination. 20,149 WhatsApp messages ("the WhatsApp Messages") exchanged between Soh and Pong were extracted.[5] The oldest of these messages dated from 15 November 2019, while the most recent messages were sent close to the time of Soh's and Pong's arrests on 14 April 2020. During the trial, it was not disputed that the phones belonged to Soh and Pong respectively and that the messages which were sent from the phones emanated from them.[6]

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2 AB33.

3 AB32.

4 AB62.

5 AB64.

6 Notes of Evidence ("NE") 20/02/24 at pp 8:22–30, 9:1–20, 16:16–22.

The forensic analysis of the Drug Bundles

10 The Health Sciences Authority ("HSA") analysed the Drug Bundles which were seized from Pong's bedroom and found the quantity of drugs to be as follows:[7]

S/N	Marking	Quantity of Drugs
1	A1A1A1	460.6g of granular/ powdery substance containing not less than **8.73g of diamorphine**.[8]
2	A1A2A1	461.9g of granular/powdery substance containing not less than **8.06g of diamorphine**.[9]
3	A1A3A1	461.9g of granular/powdery substance containing not less than **8.92g of diamorphine**.[10]
4	A1A4A1	460.5g of granular/powdery substance containing not less than **8.31g of diamorphine**.[11]
5	A1A5A1	461.1g of granular/powdery substance containing not less than **8.00g of diamorphine**.[12]

7 AB11–AB15.

8 AB44.

9 AB45.

10 AB46.

11 AB47.

12 AB48.

11 Blood specimens were later obtained from Soh and Pong.[13] Following analysis by the HSA,[14] Pong's DNA profile was found on the interior and exterior of the DHL Box and the exterior of the Carter's Bag, while Soh's DNA profile was found on the packaging of the Drug Bundles. Soh's DNA was found on the tapes of the exhibits marked "A1A1" to "A1A5",[15] on swabs which were taken from the exhibits marked "A1A3-SW" to "A1A5-SW",[16] and on the interior of the plastic packaging marked "A1A1A".[17]

The CCTV footage

12 Two videos containing closed-circuit television ("CCTV") footage were adduced by the Prosecution at trial. The first of these videos was dated 13 April 2020 and was taken from lift lobby B of Blk 126 Yishun St 11 ("Block 126"). This footage was procured by Mr Tan Leong Poh, a CNB officer who was assigned to investigate Soh's alleged drug trafficking activities.[18] At the material time, Soh was residing in unit #07-423 of Block 126. Soh could be seen bringing the DHL Box from the seventh floor, down to the first floor of Block 126, on 13 April 2020 at around 5.15pm.[19] At trial, it was not disputed that this was around the time when Soh transferred over to Pong possession of the DHL Box which contained the Drug Bundles.

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13 AB8–AB9.

14 AB10.

15 AB34–AB38.

16 AB53–AB55.

17 AB39.

18 Conditioned Statement of Tan Leong Poh ("PS29") at para 4.

19 AB19, from 17:15:10 to 17:16:10, and from 17:18:57 to 17:19:04.

13 The second video contained CCTV footage dated 14 April 2020 taken from the lift lobby of Block 864. This footage was procured by Mr Huang Weilun, a CNB officer who was assigned to investigate Pong's alleged drug trafficking activities.[20] Pong could be seen holding the Carter's Bag at the lift lobby on 14 April 2020 at around 3.33pm.[21]

The statements recorded from Pong

14 A total of eleven investigative statements were recorded from Pong:

(a) two contemporaneous statements recorded on 14 April 2020 at 11.24pm and 15 April 2020 at 3.00am;[22] and

(b) nine long statements recorded on 19 to 21 April 2020, 15 June 2020, 18 February 2021, 16 June 2021, 11 August 2021, 6 October 2021, and 1 June 2022.[23]

15 Pong did not challenge the admissibility or voluntariness of these statements. In these statements, Pong advanced three different versions of events to explain how he came to be in possession of the Drug Bundles and what he intended to do with them. All three versions of events differed from the case put forward by Pong at trial.

16 In his first version, given in his third long statement on 21 April 2020, Pong claimed that the Drug Bundles belonged to his friend "Ah Cute", from

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20 Conditioned Statement of Huang Weilun ("PS19") at para 30; NE 21/02/24 at p 14:15–26.

21 AB18, from 15:33:15 to 15:33:46; NE 21/02/24 at p 15:13–24.

22 AB20–AB21.

23 AB22–AB28, AB67–AB68.

whom Pong had previously purchased Viagra tablets. "Ah Cute" had allegedly reached out to Pong in the days leading up to Pong's arrest, asking if he wanted to purchase more Viagra tablets. Pong declined, but "Ah Cute" told Pong that the Viagra tablets had already been delivered, and asked Pong to keep the Viagra tablets with him for the time being. Pong then found the Carter's Bag placed behind a flowerpot near Pong's residence, which he then took and placed in his bedroom.[24]

17 Subsequently, Pong was informed by CNB officers that Soh's DNA had been found on the Drug Bundles. In his fifth long statement on 18 February 2021, Pong stated that he wanted to "say the truth now". He then proceeded to suggest that it was Soh – and not "Ah Cute" – who had asked him if he wanted to purchase more Viagra tablets. He maintained, however, that he had declined to purchase the Viagra tablets because there was no demand for Viagra tablets at the time, and that he had only agreed to keep the Drug Bundles temporarily. He claimed that he had lied to cover for Soh because Soh was a "very good friend" who had helped Pong in the past by paying for his court bail.[25]

18 In his seventh long statement on 11 August 2021, Pong changed his story yet again. Contrary to his earlier claim that he had declined to accept the Drug Bundles, he claimed in this statement that he had agreed to safekeep the Drug Bundles because Soh was a childhood friend. He insisted, however, that he had believed the Drug Bundles to contain Viagra tablets, and that he had neither seen nor known anything about heroin.[26]

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24 AB23 at paras 35–38.

25 AB25 at paras 57–60.

26 AB27 at para 77.

The contested evidence

19 I next summarise the contested evidence. I start with the WhatsApp Messages exchanged between Soh and Pong, as these formed a key component of the Prosecution's case as to Pong's possession of the Drug Bundles *for the purpose of trafficking* (*ie*, Pong's state of mind at the material time) and as to Soh's knowledge that Pong possessed the drug bundles for the purpose of trafficking (*ie*, Soh's state of mind at the material time).

The WhatsApp Messages

20 It is helpful to separate the WhatsApp messages into two broad categories: (a) the messages exchanged prior to 13 April 2020 ("the Prior Messages");[27] and (b) the messages exchanged between 13 and 14 April 2020 ("the Material Messages").[28]

The Prior Messages

21 Both Soh and Pong contended that the Prior Messages constituted inadmissible similar fact evidence: according to them, the Prosecution was seeking to adduce these messages for the purpose of reasoning by propensity.[29] I deal with this argument in the later section of these written grounds, at [75]–[92]. In this section, I will first set out the contents of the messages and the Prosecution's submissions on the interpretation of these messages. For clarity,

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27 AB64 at pp 1–30 (S/Ns 161–19302).

28 AB64 at pp 30–83 (S/Ns 19303–20149).

29 1st Defendant's Closing Submissions dated 30 April 2024 ("Soh's 30/04/24 Submissions") at para 56; 2nd Defendant's Submissions at the Close of Prosecution's Case dated 8 March 2024 ("Pong's 08/03/24 Submissions") at paras 21–33; 2nd Defendant's Closing Submissions dated 30 April 2024 ("Pong's 30/04/24 Submissions") at para 15(d); 2nd Defendant's Reply Submissions dated 21 May 2024 ("Pong's 21/05/24 Submissions") at paras 3(b), 11–23.

I reproduce the messages verbatim as they appeared in evidence in the tables below, and where multiple messages are sent by one user in quick succession, these are grouped in one row and separated by an en-dash. Some messages, which were not entirely relevant to the respective conversations, have been omitted from my analysis below.

(1) Soh asked Pong to help him sell heroin

22 First, the Prosecution sought to rely on a series of messages exchanged between Soh and Pong on 25 November 2019. According to the Prosecution, these messages showed Soh asking Pong to help him sell heroin in return for a share of the profits.[30] Specifically, Soh had one pound of good, brown-coloured heroin ("*Good milo type*") that he wanted Pong's help to sell ("*Got one hot with me help me out can*"). Pong then asked Soh for the sale price, apparently on behalf of a prospective buyer. In replying, Soh offered Pong the opportunity for equal profit-sharing.[31]

Time	From	Message
22:37:39	Soh	Bro – Can help me – One thing
22:37:53	Pong	Whats ip – Up
22:37:57	Soh	Got one hot with me help me out can
22:38:04	Pong	How much
22:38:31	Soh	U want do? – Just out – One stone – Good one
22:38:41	Pong	I find people

30 Prosecution's Closing Submissions dated 30 April 2024 ("Prosecution's 30/04/24 Submissions") at para 43; AB64 at pp 4–6 (S/N 324–354).

31 Prosecution's 30/04/24 Submissions at para 44.

22:38:41	Soh	Good milo type
22:38:51	Pong	I ask now – Gimme awhile
22:42:28	Pong	What price bro – I no earn nvm – U earn – Give u – I forward msg can alr – He wan know price firstb
22:48:29	Soh	I give u 2250 – U give 2600 – My hot I swear to my mom 1900 I get reach Singapore for 1 only – I earn 350 u earn 350 – How

(2) Pong and Soh handled capital quantities of drugs

23 Next, the Prosecution sought to rely on a series of messages which (according to them) showed that Soh and Pong were wary of being arrested by the CNB for drug trafficking, particularly because they were handling capital quantities of drugs.[32] These messages were exchanged between Soh and Pong over three separate occasions (13 December 2019, 12 January 2020, and 2 to 3 March 2020).

24 On 13 December 2019, Pong messaged Soh, apparently to tell Soh that he (Pong) would be bringing drugs to a location known as "Emerald" for packing. Soh then warned Pong of the dangers of being arrested by the CNB while travelling with the drugs ("*U bring here bring there one time kena u sure die*"; "*Halfway u tio piang by ah b? I outside guilt all the way de leh*"; "*U think properly u on the way to there time if ah b piang ur car u die*"). It was not disputed that "*ah b"* in the context of this exchange referred to the CNB. Soh

[32] Prosecution's 30/04/24 Submissions at paras 45–48.

also told Pong that if he were to be arrested by the CNB at home, he would be able to flush the drugs down the toilet or throw them in his mother's room.[33]

Time	From	Message
02:08:23	Pong	Emerald pack can ?
02:08:25	Soh	How u bring – It's more danger u know anot
02:08:35	Pong	Go take and cao
02:08:43	Soh	And one whole kg U let bella see – Even my gf don't know wad I doing with me life
02:08:59	Pong	My house yest my father also – Walaneh – Keep ask what i doing – Cause i keep got plastic sound – Bro bro – Pass me 20 – Plastic
02:09:23	Soh	Tmr i do at my car – U bring here bring there one time kena u sure die – Ask u don't do de things u ti ki later accident then u know
02:10:45	Soh	Why u will have this mindset – bring to emerald to pack – Wtf
02:11:04	Pong	Here noisy also nvm ma – My house – Walaneh
02:11:20	Soh	Halfway u tio piang by ah b ? I outside guilt all the way de leh – U don't tell me won't happen – If my mind like u I can last to now?

[33] Prosecution's 30/04/24 Submissions at para 45; AB64 at pp 7–10 (S/Ns 712–762).

02:11:37	Pong	I now go home first – But pass me plastic – And 100 dance – I throw outside my house
02:12:07	Soh	I do tmr the pack – U run here and there night with 1 kg anything u die I ourside guilty all the way – Really brainless u this person sometimes dk wad u thinking
02:13:32	Soh	Follow my advise sure long long dw listen go drink kena case once alr this time die one don't anyhow – If u not my bro u bring to police station – I also no care
02:13:56	Pong	Then now is how
02:14:33	Soh	I dunno u la bring to emerald is don't la accident there Bella masok cmc with u one – U think properly u on the way to there time if ah b piang ur car u die – Home can flush or wad – Throw ur mum room

25 On 12 January 2020, Soh messaged Pong to tell him to be "very careful", apparently because Soh had a bad feeling about being followed by the CNB "(*I don't feel good*"): according to Soh, the last time he felt this way about his workers, they ended up in prison facing capital charges ("*…two lines they all*").[34]

Time	From	Message
02:37:55	Soh	Bro be very careful recently

[34] Prosecution's 30/04/24 Submissions at paras 46–47; AB64 at pp 12–13 (S/Ns 3480–3502).

02:38:27	Pong	Why leh – Any thing suspicious
02:38:57	Soh	I tell u first bro my feeling Zhun one – Last time I tell my worker all be careful I don't feel good for u all – After that two lines they all
02:39:49	Pong	Yeah I Will
02:40:04	Soh	But u not my worker u my brother I still feel weird liao – I very long never feel like that liao – Last time no matter how I smoke I also not scared de I do until very daring
02:40:28	Pong	Ok bro i careful these few days
02:41:23	Soh	Bro my things coming soon is more and more kuazhang – Bro if ah b follow they won't be seen by u one – I very worry when u go poke time they come this I can't even save u – Bro I say srs one – I coming 5 stick soon liao don't joke joke – One small mistake gg

26 Further, between 2 and 3 March 2020, Pong had apparently conducted a drug drop of 5kg of "ice" (*ie*, methamphetamine) on behalf of Soh, and had sent Soh a video of the drop location. The drugs went missing; and in the messages they exchanged, Soh and Pong could be seen discussing how that could have happened. Soh then warned Pong again about the danger of facing capital charges should they be caught by the CNB.[35]

[35] Prosecution's 30/04/24 Submissions at para 48; AB64 at pp 21–29 (S/Ns 10659–10795).

Time	From	Message
03:04:39	Soh	Bro u not scared ? – They never come straight – Slowly monitor u – U do more and more daring already u don't see i like no care no care u also no care
03:04:59	Pong	I suspect is my leg take – That's why no care
03:05:23	Soh	I very jaga ur safety de I tell u wad ever danger to u I protect u first even if 100 k sgd stock there I also ask u go off first – Money to me nth as long as I'm outside I can earn easily – U must care la
03:06:04	Soh	Trust me I last this long I every small detail also care – Even if empty bbl. drop I also kanjiong – We handle de amount is die sure die if u anyhow anyhow one mistake and u are dead bro – I very care all small details de if not how I last til today?

27 It was not disputed that the word "*leg*", as used in the above context, referred to a "person".[36]

(3) Pong performed a heroin drop for Soh

28 Next, the Prosecution relied on messages exchanged on 24 February 2020, which (according to them) showed Pong dropping off heroin for Soh. In these messages, Pong could be seen first sending Soh an image taken from

[36] AB66, p 1; NE 21/02/24 at p 42:8–21.

inside a vehicle located in a carpark ("Image A") and informing Soh that he was delivering Soh's heroin. Pong subsequently realised that he had one packet of heroin left in the car, and sent an image to Soh showing a plastic bag bearing the words "*Full Bitz FULL BITE SIZE WAFER STICK*" ("Image B").[37]

Time	From	Message
13:35:34	Pong	*Image A* – At here putting your hot
14:07:04	Pong	Still have one packet left at car – *Image B*
16:52:10	Soh	The chooosye is wad – Cholowte – Chocolate
16:52:25	Pong	Heroin la – Wait pass u
16:52:38	Soh	One stone ?

The Material Messages

29 I now turn to the Material Messages.

30 At trial, it was not disputed that the Material Messages constituted relevant and admissible evidence. What was hotly disputed, however, was the interpretation of these messages – *ie*, what each accused meant to convey to the other and how their messages were to be understood. During the trial, much time was spent by lead counsel for Soh and Pong (Mr Andre Jumabhoy ("Mr Jumabhoy") and Mr Eugene Thuraisingam ("Mr Thuraisingam") respectively) cross-examining the Prosecution's witnesses on their opinions as to how the Material Messages were to be understood. I summarise the opinions

[37] Prosecution's 30/04/24 Submissions at para 49; AB64 at pp 19–20 (S/Ns 9389–9405).

expressed by these witnesses at [46]–[66]). In this section, I first summarise the contents of the Material Messages.

(1) 13 April 2020, from 1.45pm to 7.05pm – Soh's Initial Instructions

31 On 13 April 2020 at around 1.45pm, Soh asked Pong to take his heroin ("*Can come take my hot*") and to put it at Pong's place ("*Put ur there*"). I will refer to this portion of the Material Messages as "Soh's Initial Instructions":[38]

Time	From	Message
13:45:31	Soh	Can come take my hot – Put ur there – Now sell hot like idiot – Sell one cold earn many more
13:48:23	Pong	Ok – Wru – I send bella to emerald – Then go your there take – Bath firsy

32 It was not disputed that "*hot*" as used in this context referred to heroin, and more specifically, the Drug Bundles; while "*cold*" referred to methamphetamine.

33 At around 5.14pm, Pong sent a message to Soh, saying "*Bro go take I wan go alr*", to which Soh replies "*Ok ok I go up*".[39] These messages were sent shortly before Soh was seen in CCTV footage dated 13 April 2020 of the lift lobby of Block 126 (the block where Soh lived).[40] At trial, it was not disputed that this was around the time when Soh passed the Drug Bundles to Pong.

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38 AB64 at pp 30–31 (S/Ns 19310–19317).

39 AB64 at p 36 (S/Ns 19396–19397).

40 NE 21/02/24 at p 27:10–13.

34 Shortly after Pong collected the Drug Bundles, at around 6.23pm, Soh instructed Pong to "throw" the Drug Bundles, apparently for the purpose of a sale ("*The hot i go sell*"). In response, Pong asked Soh to tell him the quantity to be "thrown" and the time at which he should do so:[41]

Time	From	Message
18:23:57	Soh	Bro – My hot at ur there – Later can throw – The hot i go sell
18:24:33	Pong	U lmk – What time – In advance
18:30:21	Soh	Later u throw out bro
19:00:34	Soh	Ok throw bro
19:05:11	Pong	How many – 1 ?
19:05:27	Soh	All later
19:05:32	Pong	Ok – Faster tell me what time – I wan go emerald alr

(2) 13 April 2020, from 8.40pm to midnight – Soh's Persuasion

35 More than an hour after the above exchange of messages, Soh still had not given Pong a time for "throwing" the Drug Bundles. Instead, Soh could be seen asking Pong to "soon… help [him] out" in return for financial remuneration ("*One month I tiap u 15k*"). I will refer to this portion of the Material Messages as "Soh's Persuasion":[42]

41 AB64 at pp 38–40 (S/Ns 19437–19463).

42 AB64 at pp 40–42 (S/Ns 19465–19494).

Time	From	Message
20:40:02	Soh	U soon u help out me can – Don't say work – Help out
20:40:34	Pong	Give me a time ma – I cannot be waiting
20:40:48	Soh	One month tiap u 15 m – K – Sgd – Me need ppl Help out – My things – Start tmr – One month I tiap u 15 k – Plus my leg few u do Lor
20:41:45	Soh	U no do for anyone – Right – If have must say leh
20:41:51	Pong	No lw – La – Do for ppl for what
20:41:55	Soh	Ok – Then u help out not work for me – Help out – I cannot come out

36 In the ensuing messages, Pong repeated his question to Soh as to the time for "throwing" the Drug Bundles. When eventually told by Soh "*Tmr start lor*", Pong stated that he would "go put [all] at car". Soh then responded by saying that there was no need for Pong to do so for the moment ("*Now no – Don't need*") and also warning him – in an apparent allusion to the capital threshold – not to be "*siao siao*" ("*Don't – Out over gram – Thing at car – Anything happen Choy Choy – The bail I pay de leh – Lol – U don't siao siao – Tmr start – U now relax Lor*"). In addition, Soh repeated his suggestion that Pong "help [him] out", telling Pong that he would stand to gain an extra $10,000

to $15,000 a month. Soh further explained to Pong that he himself was unable to "*come out*" to "*throw*" because his name was "*top with [CNB] now*":[43]

Time	From	Message
20:42:03	Pong	U whqt – Time – Tell me – I need pick bella all
20:42:13	Soh	Tmr start lor – When thing come – Or when my leg want – U throw throw – Like that
20:42:29	Pong	I go put – All at car
20:42:35	Soh	Now no – Don't need – Don't – Out over gram – Thing at car – Anything happen Choy Choy – The bail I pay de leh – Lol – U don't siao siao – Tmr start – U now relax Lor
20:43:21	Soh	I one month will pay u extra 10-15 k just throw throw – Plus U oneself sell de – Not enough u tell me
20:44:46	Pong	Why dw throw – U
20:48:42	Soh	Cannot come out do liao – Ppl gaodai me a – My name top with c now – My side ppl say u my best bro – U can help out – I never say i going with u – U with me how Long – U anything – I also throw all my money save u one – I from day 1 groom u until now leh – Lol
20:50:36	Pong	Dont tell ppl i help or whwt

[43] AB64 at pp 42–45 (S/Ns 19493–19550).

20:50:47	Soh	Do my few leg only – Only loti know but Loti very jiap me de ma – He know u with me better – Anything he can protect u also
20:52:11	Pong	Just say not me help out lo
20:58:10	Soh	Nobody know la – I more scared than u – I want oneself do – My side ppl – Ask me don't – Say I fucking hot – Ur name ok – Me and Clifford TOP 2 now – Now don't seh then my leg 4-5 now

37 Soh proceeded to offer increasingly attractive incentives for Pong to "help out", including (*inter alia*) an increase of salary to $20,000 a month,[44] an offer to pay for the rental of a "*best car*",[45] and an offer to pay for the rental of a condominium unit.[46] Soh offered to pay Pong more than what Pong had previously been earning, promising to "*push some [customers] give u*", and to "*cut all [other person's] drug supply*" so that "*only [Pong] earn[s]*".[47]

38 Shortly thereafter, Soh informed Pong of some "*barang*" that he would be receiving the next day, and asked the latter to rent a place to store the "*barang*". In response, Pong commented on the quantity of "barang" ("*Wa so many things*"). Pong also expressed the concern that "(*r*)*ent house need sign*",

44 AB64 at p 49 (S/N 19600).

45 AB64 at pp 46–47 (S/Ns 19566–19569).

46 AB64 at p 46 (S/N 19564).

47 AB64 at p 50 (S/Ns 19616–19621).

and wondered aloud about where he should put these "barang" ("All put where sia").[48]

39 In between these messages, Soh also enquired about the Drug Bundles and reminded Pong to keep them "properly" ("*Bro – Where my hot – Keep – Properly*").[49]

Time	From	Message
23:00:56	Soh	Bro – Ade barang mason – Masok – I sell u de price tmr tell u – Ok not bro – Tmr – Today sleep – Early – Besok ade barang
23:08:28	Pong	What time – Then the barang all put where
23:08:53	Soh	U have place
23:12:26	Soh	Bro – Where my 5 got – Hor – Hot – Wad ever past work link u have all cut off – Now me and u
23:20:29	Soh	Bro – Where my hot – Ah
23:21:44	Pong	With me ah – U wan ?
23:21:50	Soh	Keep – Properly
23:22:00	Pong	Ok i put store
23:22:15	Soh	Eh bro – Tmr 10 batu and wine and 3 fish – Morning can boss – Now dun need I intro leg – Legs many

48 AB64 at pp 51–55 (S/Ns 19636–19646, 19668, 19682, 19685 and 19698).

49 AB64 at pp 52 (S/Ns 19654–19660).

23:53:58	Pong	No need intro – All have bro
23:54:03	Soh	Ya bro – U now – My boss already – My legs – Control sg
23:54:23	Pong	Wa so many things – All put where sia
23:54:32	Soh	Inside ur pants – Rent a pose – Place
23:55:12	Pong	Hmmm – Rent house need sign
23:56:00	Pong	How – Put where – My store – Cant let my father see – Or temporary put bicycle – Eh no – Tmr i get a car

40 It was not disputed that the word "*batu*", as used in these messages, referred to heroin (although the parties did not agree on the exact quantity of heroin this word referred to), that "*wine*" referred to Nimetazepam (Erimin-5 tablets), and that "*fish*" referred to methamphetamine.[50]

41 The conversation continued for a while without any real resolution, with Soh complaining about ongoing feuds with various persons. Pong, for his part, continued to ask Soh to think of a place where he could put the "barang" when they arrived ("*Then after that i put where*", "*Quick – Think – Put where – Put where after come*", "*But wan put where*"), in response to which Soh – seemingly in jest – told Pong that he should simply hide it in his underwear ("*put in ur underwear*").[51]

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50 Conditioned Statement of Muhammad Faizal bin Baharin ("PS21") at para 4; NE 20/02/24 at p 61:9–17.

51 AB64 at pp 57–73 (S/N 19741–19997).

(3) 14 April 2020, from 10:28am to 5.40pm – Soh's Apparent Change of Instructions

42 The following day, sometime in the mid-morning, Pong asked Soh if he wanted to "throw" the heroin.[52]

Time	From	Message
10:28:28	Soh	Bro – U freee
11:29:27	Pong	U wan throw the hot or what – I just wake – Wan I jju bath all throw lioa

43 Soh did not immediately reply to Pong. However, on the same day at around 4.11pm, Soh messaged Pong to tell him to "*come pass back*" the heroin. This apparent change in instructions (which I will refer to as "Soh's First Change of Instructions") seemed to cause some confusion on Pong's part, as he initially responded by asking Soh what he was talking about:[53]

Time	From	Message
16:11:13	Soh	Where got – hot – Come pass back
16:13:52	Soh	Hot come back
16:14:17	Pong	hot come back? – What u talkikg
16:14:25	Soh	I got 5 hot – With u wad
16:14:31	Pong	ya – with me – at my room
16:14:38	Soh	I come take back

[52] AB64 at p 78 (S/N 20067–20071).

[53] AB64 at pp 78–79 (S/N 20073–20092).

16:14:43	Pong	Ok

44 Soh subsequently informed Pong of his location and requested Pong to "[*c*]*ome find* [*him*]". Pong then asked if he should bring the Drug Bundles along with him, to which Soh replied in the negative, calling Pong "*siao*" for making such a suggestion. Soh then told Pong to "*throw*" the Drug Bundles for him (hereinafter referred to as "Soh's Second Change of Instructions"), and Pong agreed:[54]

Time	From	Message
17:39:00	Soh	I with loti at batok eh – Come find me lor
17:39:19	Pong	bring the batu comr ah? – come
17:39:23	Soh	No la – Siao – Batu throw for me – Can
17:39:46	Pong	i now go back throw lo – i back yishun tell u

45 Both Soh and Pong were arrested shortly after the above exchange of messages.

Key witnesses called by the Prosecution

46 Having set out the key contents of the WhatsApp messages, I next outline the evidence of the four Prosecution witnesses who were called to testify at trial.

54 AB64 at pp 80–81 (S/N 20110–20119).

Mr Muhammad Faizal bin Baharin ("PW1")

47 Assistant Superintendent Mr Muhammad Faizal bin Bahari ("PW1") was called by the Prosecution as an expert witness on the terminology and slang used by drug traffickers.[55] In his conditioned statement, PW1 explained the meaning of the following terms:

(a) *hot*, which means heroin;[56]

(b) *batu*, which means a pound of heroin;[57]

(c) *stone*, which means a pound of heroin;[58]

(d) *milo type*, which means brown-coloured heroin;[59] and

(e) *throw*, which refers to "doing a drug drop" or "to pass".[60]

48 In his evidence-in-chief, PW1 also explained that a drug drop was a drug trafficker's *modus operandi*, whereby an individual would place the drugs at a location for the recipient to collect later without having to meet the supplier.[61]

49 In cross-examination, PW1 was asked by Mr Thuraisingam for his opinion on the interpretation of the messages sent by Soh around 1.45pm on 13 April 2020 ("*Can come take my hot – Put ur there – Now sell hot like idiot*

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55 PS21 at para 2.

56 PS21 at para 4(a).

57 PS21 at para 4(c).

58 PS21 at para 4(d).

59 PS21 at para 4(j).

60 PS21 at para 5.

61 NE 20/02/24 at p 54:22–26.

– *Sell one cold earn many more*"). PW1 stated that he agreed with Mr Thuraisingam's suggested interpretation of these messages:[62]

> Q Would you agree with me, based on the terminology here, what Mr Soh is saying "Can you come take my heroin? Put at your place. Now selling hot is not good. Selling methamphetamine can earn much more." Would you agree with me that's the context of these four messages?
>
> A Agree, Your Honour.

50 This interpretation was also broadly consistent with the interpretation put forth by PW1 in his evidence-in-chief.[63]

51 Next, PW1 was asked for his interpretation of the messages sent by Soh around 6.23pm on 13 April 2020 ("*My hot at ur there – Later can throw – The hot i go sell*"). PW1 stated that the interpretation of the word "throw" would depend on the context of the conversation.[64] In his evidence-in-chief, PW1 had initially expressed the view that Soh was instructing Pong to "do a drop" of the Drug Bundles.[65] In cross-examination, however, PW1 agreed with Mr Thuraisingam's suggestion that there was some ambiguity in Soh's Initial Instructions as to whether "throw" – as used in the context of these messages – meant that Pong was to pass the Drug Bundles to a third party, or whether it meant that Pong was to pass the Drug Bundles back to Soh.[66]

> Q: … will you agree with me that it' s not clear what kind of a---whether it's a drop, a pass, or anything from just looking at: "Later can throw."
>
> A: Yes, Your Honour.

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62 NE 21/02/24 at p 37:7–15.

63 NE 20/02/24 at pp 48:23–32, 49:1–32, 50:1.

64 NE 20/02/24 at p 72:9–11.

65 NE 20/02/24 at pp 54:27–31, 57:5–13.

66 NE 20/02/24 at pp 78:21–32, 79:1–25.

> Q: It could mean, "Pass it to somebody else." It could mean, "Leave it for somebody else to collect." It could also mean, "Leave it for Mr Soh to collect back", correct?
>
> A: Yes, Your Honour.
>
> …
>
> Q: … Would you agree with me that it's more likely than not, what these few messages mean is Mr Soh is saying to Kenji Pong, "My heroin is with you. Later, you pass back to me. I will go and sell." Would you agree with me that's a probable interpretation?
>
> A: I will agree to the first sentence, "My heroin is with you" ---the third sentence, "Later I go and sell", but not the second sentence.
>
> Q: Right, because it's too ambiguous yet---for you to come to any proper conclusion yet, correct?
>
> A: Yes, Your Honour.

52 In cross-examination, PW1 was asked as well for his interpretation of the message sent by Pong around 11.29am on 14 April 2020 ("*U wan throw the hot or what*"). He agreed with Mr Thuraisingam's suggestion that the word "throw", as used in this context, was ambiguous:[67]

> Q: "You want throw the hot or what?" Again, at this stage, difficult to say for certain what "throw" is referring to exactly here, correct? Whether it's pass, deliver, return, we can't say for sure yet, correct?
>
> A: Yes, Your Honour. It could be one of it.

53 PW1 also agreed with Mr Thuraisingam's suggestion that it was more likely than not that Soh's First Change of Instructions ("*Hot come back – I got 5 hot – With u wad – I come take back*") constituted an instruction from Soh to Pong to return him the Drug Bundles:[68]

> Court: Mr Thuraisingam showed you earlier on 14th April at 4.14pm, [Soh] said: "I got five hot with you, what." And

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67 NE 20/02/24 at p 80:20–24.

68 NE 20/02/24 at p 86:6–12; NE 21/02/24 at p 36:21–30.

> then scroll down. And then at 4.14 again, [Soh] says: "I come take back." So Mr Thuraisingam is saying to you and asking you whether you agree, looking at the context of the earlier messages at 4.14, the later message---Can you scroll to the one where it says "*Batu* throw to me"?
>
> 2DC: "*Batu* throw for me" at 20115.
>
> Court: "Throw for me", sorry. Yes. Mr Thuraisingam is saying that in the context of the messages you saw earlier at 4.14pm where [Soh] said, "I got five hot with you, what. I come take back", the later messages he sends at 5.39pm, "*Batu* throw for me", would more probably than not mean, "You put the heroin somewhere for me to collect." Do you agree with what he says or not?
>
> A: I agree, Your Honour.

Mr Huang Weilun ("PW2")

54 Station Inspector Mr Huang Weilun ("PW2") was a CNB officer who was assigned to investigate the alleged drug trafficking activities of Pong. PW2 recorded four of Pong's statements and obtained Pong's blood sample. He was a factual witness and did not hold himself out to be an expert on the terminology and slang used by drug traffickers.

55 In his examination-in-chief, PW2 was shown the two videos containing the CCTV footage obtained from Block 126 and Block 864 (see [12]–[13] above). PW2 was the officer who retrieved the CCTV footage from Block 864.[69] He positively identified Soh and Pong in the respective videos.[70] He also agreed that based on the CCTV footage taken from Block 126, viewed together with the messages sent between Soh and Pong around 5.14pm on 13 April 2020, Soh had passed the Drug Bundles to Pong at around 5.14pm on 13 April 2020.[71]

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69 NE 21/02/24 at p 14:15–26; PS19 at paras 30–31.

70 NE 21/02/24 at pp 15:18–28, 20:13–31.

71 NE 21/02/24 at p 26:10–13.

56 During cross-examination, PW2 was asked for his views on the interpretation of some of the Material Messages. This was the first time that PW2 had the opportunity to see these messages.[72]

57 PW2 agreed with the interpretation suggested by Mr Thuraisingam of Soh's Initial Instructions ("*Can come take my hot – Put ur there – Now sell hot like idiot – Sell one cold earn many more*"), namely:[73]

> Q: Thank you. So to recap, what we have seen is Mr Soh telling Kenji Pong, "Come collect my heroin to put at your place." "Selling heroin now is not as profitable as selling methamphetamine." Correct?
>
> A: To a certain extent, yes.

58 PW2's attention was then directed to Soh's First Change of Instructions and to Soh's message at around 5.39pm on 14 April 2020 ("*Batu throw for me*"). PW2 initially testified that "throw", as used in this context, meant to "throw away the *batu*".[74] However, he then clarified that this was the first time he had seen the word "throw" used in the context of drug-related slang.[75] After he was shown PW1's conditioned statement (in which it was explained that the term "throw" referred to a drug drop), PW2 agreed with Mr Thuraisingam's suggestion that "*Batu throw for me*" was an instruction by Soh for Pong to place the drugs somewhere for Soh to collect.[76]

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72 NE 21/02/24 at p 23:3–7.

73 NE 21/02/24 at p 25:3–6.

74 NE 21/02/24 at p 32:1–8.

75 NE 21/02/24 at p 33:17.

76 NE 21/02/24 at p 34:3–8.

Mr Wong Png Leong ("PW3")

59 Mr Wong Png Leong ("PW3"), a language officer attached to the investigation division of the CNB, was a certified Mandarin interpreter who was asked by the Prosecution to transcribe and translate several voice notes exchanged between Soh and Pong.[77] Three of these transcriptions and translations were adduced as evidence by the Prosecution.[78]

60 In his evidence-in-chief, PW3 explained that the word "脚" seen in one of the transcribed voice notes was a Mandarin word which literally meant "*leg*" but which was used colloquially to refer to a "person".[79] PW3 was not cross-examined by the Defence.

Ms Oh Hui Quan ("PW4")

61 Deputy Superintendent Ms Oh Hui Quan ("PW4") was a CNB officer who took over the investigations into Pong's alleged drug trafficking activities from PW2. She recorded three of Pong's statements.[80] She was aware of the contents of the Material Messages at the time when she was carrying out the investigations and interviewing Pong.[81] However, as with PW2, she was called as a factual witness for the Prosecution and did not hold herself out to have specialised knowledge of the terminology and slang used by drug traffickers.

62 In cross-examination, PW4 agreed with Mr Thuraisingam that during her investigations, she had not come across evidence which suggested that Pong

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77 Conditioned Statement of Wong Png Leong ("PS39") at paras 1–3.

78 AB66.

79 NE 21/02/24 at p 42:8–21.

80 Conditioned Statement of Oh Hui Quan ("PS20") at paras 2–12.

81 NE 21/02/24 at p 48:7–11.

was involved in selling heroin.[82] She also agreed with Mr Thuraisingam's suggestion that Soh's Initial Instructions ("*Can come take my hot – Put ur there – Now sell hot like idiot – Sell one cold earn many more*") did not amount to an instruction from Soh for Pong to sell heroin for him, but instead, gave the impression that Soh was simply keeping the heroin with Pong because it was not a good time to sell heroin.[83]

63 PW4 also testified that she had seen the videos containing the CCTV footage from Block 126 and Block 864. She agreed with Mr Thuraisingam that the CCTV footage from Block 864 showed Pong bringing the Drug Bundles up to his flat on 14 April 2020 "because he had left the five bundles in his car overnight on the 13th".[84]

64 PW4's attention was then drawn to Soh's messages at around 6.23pm on 13 April 2020 ("*My hot at ur there – Later can throw – The hot i go sell*"). PW4 said that she could not be sure whether "throw", as used in this context, meant that Pong was to pass the Drug Bundles back to Soh, or whether he was to "pass it to a location for [Soh] to sell, or whether "[Soh] can get another person to collect [the Drug Bundles]".[85] However, she went on to opine – in agreement with Mr Thuraisingam – that the impression given by these messages was that Soh wanted his heroin back and was asking Pong to "throw" it for him (Soh).[86] She also testified that during the statement-recording process, Pong's response – when asked about his interpretation of the word "throw" – was that

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82 NE 21/02/24 at p 49:4–9.

83 NE 21/02/24 at p 49:10–16.

84 NE 21/02/24 at p 52:11–20.

85 NE 21/02/24 at p 55:3–16.

86 NE 21/02/24 at p 55:20–21.

"throw" meant to "place it somewhere for [Soh] to collect it himself".[87] In re-examination, PW4 stated that she got the impression from this particular text exchange that Soh wanted the return of the heroin because Soh had told Pong "*the hot I go sell*".[88]

65 In respect of Soh's Persuasion, PW4 opined – in agreement with Mr Thuraisingam – that these messages should be understood as an attempt by Soh to encourage or persuade Pong to sell the Drug Bundles.[89] She also agreed with Mr Thuraisingam that Pong never agreed to do so, despite Soh apparently trying to tempt him with offers of financial reward.[90]

66 In respect of Soh's First Change of Instructions, PW4 accepted Mr Thuraisingam's suggestion that by this point in the text exchange, Soh had stopped trying to convince Pong to sell the Drug Bundles, and was instead asking for the return of the Drug Bundles.[91] PW4 also accepted Mr Thuraisingam's suggestion that these messages appeared to show that Soh had been deceptive at the outset, in that he had given Pong the impression that it was not a good time to sell heroin, when he in fact wanted Pong to sell heroin on his behalf.[92]

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87 NE 21/02/24 at pp 56:31–32, 57:1–2; AB27 at para 77 (Answers 4 and 5).

88 NE 21/02/24 at p 75:15–18.

89 NE 21/02/24 at pp 57:26–31, 58:1–4, 60:9–16.

90 NE 21/02/24 at pp 60:17–21, 61:7–18, 62:5–6, 64:9–10, 65:3–4.

91 NE 21/02/24 at p 66:12–24.

92 NE 21/02/24 at p 70:10–15.

Submission of "no case to answer" by the Defence at the close of the Prosecution's case

67 At the close of the Prosecution's case, Mr Jumabhoy and Mr Thuraisingam both submitted that there was "no case to answer". The Prosecution and both counsel filed written submissions; and after considering their submissions, I held that the Prosecution had made out a *prima facie* case against both accused persons. I called upon both accused for their defence to the respective charges against them. In the next section of these written grounds, I explain my reasons for finding that the Prosecution had made out a *prima facie* case against both accused.

The test to be applied at the close of the Prosecution's case

68 The test to be applied at the close of the Prosecution's case was succinctly summarised by See Kee Oon JC (as he then was) in *Public Prosecutor v Wong Wee Keong* [2016] 3 SLR 965 ("*Wong Wee Keong*"). At [33] of *Wong Wee Keong*, See JC cited Chan Sek Keong CJ's judgment in *Re Nalpon Zero Geraldo Mario* [2012] 3 SLR 440 ("*Re Nalpon*"), in which Chan CJ had explained that the question to be asked at the close of the Prosecution's case was not whether the evidence as it presently stood had *already* established the guilt of the accused beyond a reasonable doubt but whether the evidence – *if* it were all accepted as accurate – *would* do so (at [26] of *Re Nalpon*). See JC then went on to set out the manner in which the court should approach the evidence at the close of the Prosecution's case:

> 33 … At a minimum, the evidence put forward has to cover every constituent element of the offence in question; if it did not, then it would plainly be impossible for a conviction to be lawfully sustained. In deciding whether to call on the accused to enter his defence, regard should be had to the following guiding propositions:

> (a) All evidence of primary fact should be accepted as being true, unless it is so inherently incredible that no reasonable person would be able to accept it as being true or if it has been discredited or shown to be wholly unreliable. This may happen, for example, during the course of cross-examination (see *Haw Tua Tau* at [15]; *Re Nalpon* at [25].
>
> (b) Inferences may be drawn, but only if they are reasonable – it is not enough that the inference may be credible or not inherently incredible. In this regard, there is a different standard which applies to primary facts and inferences in so far as the former should be accepted as true unless it is inherently incredible whereas inferences can only be accepted if they can reasonably be drawn (see *Re Nalpon* at [25]). It is not necessary that the inference be irresistible or that it must be [the] only possible inference that may be drawn from the facts.
>
> (c) The totality of the evidence has to be considered when determining whether evidence is so inherently incredible that it can be accepted or if the inferences sought to be drawn are reasonable enough to pass muster. The court cannot only look to those parts of the evidence which are favourable to the Prosecution's case and ignore those which are detrimental: *ie*, it cannot pick out only the plums and leave the duff behind (see *PP v IC Automation (S) Pte Ltd* [1996] 2 SLR(R) 799 at [17]).

69 In respect of the charge against Pong, the essential elements of the offence under s 5(1)(*a*) read with s 5(2) of the MDA were as follows (see the Court of Appeal's decision in *Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 at [4]):

> (a) possession of a controlled drug (the "Possession Element") – in this case, the Drug Bundles;
>
> (b) knowledge of the nature of the drug ("the Knowledge Element"); and
>
> (c) the said possession of the drug having been for the purpose of trafficking which was not authorised (the "Purpose Element").

70 In respect of the charge against Soh, this was one of abetment by intentionally aiding Pong to traffic the Drug Bundles. The essential elements of this offence were as follows (see the Court of Appeal's decision in *Mohammad Azli bin Mohammad Salleh v Public Prosecutor* [2020] 1 SLR 1374 ("*Mohammad Azli*") at [45]):

> (a) the abettor (Soh) did something which facilitated the commission of the primary offence (the "Facilitating Act"); and
>
> (b) the abettor did so intentionally, with knowledge of the circumstances constituting the offence (the "Abettor's Knowledge"). In the context of intentionally aiding the commission of the offence of trafficking under s 5(1)(a) of the MDA, knowledge of the circumstances constituting the offence requires knowledge: (i) that the primary offender had possession of the thing which turned out to be the drug; (ii) of the nature of the drug in the primary offender's possession; and (iii) that the primary offender intended to traffic the drug (see *Mohammad Azli* at [46]).

71 Applying the approach set out in *Re Nalpon* and *Wong Wee Keong*, I considered whether, at the close of the Prosecution' case against Pong and against Soh, evidence had been adduced which, if it were all accepted as accurate, would establish each of the essential elements of their respective charges.

72 In respect of Pong, it will be recalled that the evidence adduced by the Prosecution showed that the Drug Bundles had been found in a plastic bag which was in turn contained in a box found in Pong's bedroom at home. In the course of the Prosecution's case, Pong did not dispute the Possession Element. It will also be recalled that the Prosecution indicated at the start of the trial that

it would be invoking the presumption in s 18 of the MDA that Pong knew of the nature of the drugs in his possession, *ie* he knew that the Drug Bundles contained heroin. In the course of the Prosecution's case, Pong did not seek to refute this presumption or to dispute the Knowledge Element in any way. Instead, Pong chose to challenge the Prosecution's case on the Purpose Element by contending that the evidence adduced by the Prosecution was incapable of establishing a *prima facie* case that his possession of the Drug Bundles had been for the purpose of trafficking.[93]

73 The above position was echoed by Soh in his submission of "no case to answer". Soh contended that the Prosecution's evidence was insufficient to show a *prima facie* case that Pong had been in possession of the Drug Bundles *for the purpose of trafficking*; and that it therefore followed that there could not be a *prima facie* case against Soh himself on the charge of abetting Pong by intentionally aiding him to traffic in the Drug Bundles.[94]

74 Given the positions taken by the two accused, I had to consider whether the evidence at the close of the Prosecution's case sufficed to establish a *prima facie* case that Pong's possession of the Drug Bundles had been for the purpose of trafficking.

The admissibility of the Prior Messages

The parties' positions on the admissibility of the Prior Messages

75 By way of a preliminary issue, both Pong and Soh argued that the Prior Messages constituted inadmissible similar fact evidence because in relying on

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93 Pong's 08/03/24 Submissions at paras 51–52.

94 1st Defendants submissions at the close of Prosecution's case dated 8 March 2024 ("Soh's 08/03/24 Submissions") at paras 37–44.

these messages, the Prosecution was (in their words) seeking to "reason by propensity". Pong also argued that the Prior Messages were "irrelevant" because they "[did] not relate to the Drug Bundles that [were] the subject-matter" of the respective charges in this case. The Prosecution, for its part, took the position that while the Prior Messages did not relate to the Drug Bundles *per se*, they did not constitute inadmissible similar fact evidence: according to the Prosecution, these messages were relevant and should be admitted because they showed that Pong was "trafficking drugs on Soh's behalf"; that Pong "knew that Soh was selling heroin"; and that Pong "had assisted Soh to sell heroin for profit, and perform heroin drops".[95]

76 I rejected Pong's and Soh's arguments as to the inadmissibility of the Prior Messages. My reasons were as follows.

The principles governing the admission of similar fact evidence

77 First, there is no *blanket* rule against the admission of similar fact evidence (*Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 ("*Rosman*") at [32]). As the Court of Appeal pointed out in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*") at [41]:

> The underlying rationale for the rule excluding similar fact evidence is that to allow it in every instance is to risk the conviction of an accused not on the evidence relating to the facts but because of past behaviour or disposition towards crime. Such evidence without doubt has a prejudicial effect against the accused. However, at times, similar facts can be so probative of guilt that to ignore it via the imposition of a blanket prohibition would unduly impair the interests of justice.

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95 Prosecution's submissions at the close of Prosecution's case dated 22 February 2024 ("Prosecution's 22/02/24 Submissions") at para 15.

78 In *Tan Meng Jee*, the court held (at [43]) that the correct approach in considering the admissibility of similar fact evidence was to balance the probative value of the evidence against its prejudicial effect. The court went on to make clear (at [48]–[50]), specifically, that this balancing approach was to be applied to evidence sought to be admitted for the purposes set out in s 14 of the Evidence Act 1893 (2020 Rev Ed) ("EA") (*ie*, facts showing the existence of any state of mind or body or bodily feeling when the existence of any such state of mind or body or bodily feeling is in issue or relevant), as well as s 15 (*ie*, facts bearing on the question of whether an act was accidental or intentional). As to the actual content of the balancing process, there were three non-exhaustive factors which would be useful in guiding a trial judge; namely, cogency, strength of inference, and relevance (at [52]).

79 *Tan Meng Jee* itself illustrates how the balancing approach should be applied. In that case, the appellant was caught in possession of a bag containing drugs, and charged with trafficking in the said drugs by transporting them. At trial, the appellant testified that he had delivered the bag to one "M2" at Ghim Moh carpark, but claimed that he had believed the bag to contain money. In finding the appellant guilty of trafficking in the drugs, the trial judge had referred in his judgment to (*inter alia*) the accused's own evidence that he had on previous occasions supplied drugs to his "group of addict friends". On appeal, the Court of Appeal held that on the facts of the case, the strength of the inference from the similar facts was too weak and the effect of the evidence too prejudicial. The court explained (at [56]):

> The appellant was transporting the drugs to M2. The similar facts, however, involved trafficking with a view to distributing among his circle of addict friends. The Prosecution had argued in the High Court that the likely inference from the facts of the case was that the appellant was transporting the drugs back to his Ghim Moh flat where he would use the paraphernalia to

> prepare the drugs for subsequent sale. The trial judge in his grounds of judgment referred to the appellant's evidence that he was to deliver the white plastic bag [containing the drugs] to M2 at the Ghim Moh carpark and held that testimony to be clear evidence of "transportation for trafficking". The similar facts adduced were then relied upon by the trial judge to affirm this "clear evidence". We think that given the version of facts which the trial judge chose to believe, he should not have relied on the similar facts. The judgment does not show any acceptance of the theory that the appellant was in the act of transporting with the ultimate purpose of supplying his circle of addict friends as he had done on previous occasions. If this were the case, then the evidence could possibly be relevant. However, the case here revolves around the transporting to M2. We find the facts in illustration (o) indistinguishable from the present case. The similar fact evidence in this case epitomises the sort of evidence that the exclusionary rule was developed to deal with. Because he has trafficked before to his addict friends does not mean, without more, that he was going to traffic to M2. The one does not lead to the other. Its effect is simply too prejudicial to the accused and should not have been relied upon or admitted.

80 For completeness, the appeal in *Tan Meng Jee* was dismissed by the Court of Appeal (at [57]) because the appellant had not rebutted the presumptions of possession and knowledge of the nature of the drug, and had given evidence that he was in possession of the package so that he could hand it to M2.

81 The case of *Muhammad Abdul Hadi bin Haron v Public Prosecutor and another appeal* [2021] 1 SLR 537 ("*Abdul Hadi*") provides further illustration of the courts' approach to similar fact evidence. In *Abdul Hadi*, the first accused Hadi was charged with having in his possession not less than 325.81g of methamphetamine for the purpose of trafficking, while the second accused Salleh faced a charge of abetment by instigation of Hadi's offence. In gist, Hadi had gone to Johor Bahru on 22 July 2015, collected two bundles from a woman known to him as "Kakak", and returned to Singapore with these bundles hidden in a concealed compartment under his motorcycle seat. Salleh had instructed Hadi on the collection of the bundles and coordinated the transaction with

"Kakak". Hadi had also performed a number of similar deliveries on Salleh's instructions prior to this occasion, as evinced by his and Salleh's phone records. At trial, Salleh claimed in his defence that he had a subsisting oral agreement with Hadi and "Kakak" not to traffic in capital amounts of methamphetamine. The trial judge found that Salleh evidently had "no qualms" for Hadi to be, on his instructions, in possession of any quantity of drugs, including capital amounts. In making this finding, the trial judge relied *inter alia* on messages exchanged between Salleh and Hai on 19 June 2015 as evidence of past transactions. On appeal, counsel for Salleh raised concerns about the trial judge's reliance on these past messages, arguing that it might have "clouded [the judge's] consideration of the evidence for the transaction on [22 July 2015] that form[ed]the basis of the present charges" (at [52] of *Abdul Hadi*).

82 In rejecting counsel's argument, the Court of Appeal referred to its previous decisions in *Rosman* and *Tan Meng Jee*, reiterating that there was no blanket rule against the admission of similar fact evidence (at [53]). The mischief which the similar fact evidence rule sought to prevent was reasoning by propensity, *ie*, the rule existed to prevent the inference that an accused's past misconduct increased his disposition or tendency to have committed the offence for which he was now charged. Thus, for example, similar fact evidence could be utilised "in the *limited* manner envisaged within a *strict application* of… ss 14 and 15 of the Evidence Act" (*Abdul Hadi* at [53] citing *Rosman* at [32]). In *Abdul Hadi*, the Court of Appeal found that the past messages were admissible and did not constitute inadmissible similar fact evidence. Noting that s 14 of the EA provided for the relevance of facts "showing the existence of any state of mind, such as intention [or] knowledge" when any such state of mind was in issue or relevant, the court held that this entailed "a balancing exercise between the probative weight and the prejudicial effect of the evidence, with such similar fact evidence being admitted only if the former outweigh[ed] the latter; the three

factors being that of cogency, strength of inference, and relevance" (at [55]). On the facts of *Abdul Hadi*, the court found (at [56]) that:

> … Salleh's previous messages and past dealings with "Kakak" and Hadi on 19 June 2015 were not only relevant but also highly significant to his state of mind when considering the transaction for which he was charged – namely, whether he was content with transporting any quantity of drugs, even a large amount, or whether he had (as he claimed) an agreement not to deal in more than 250g of methamphetamine. It was thus appropriate for the court to take into account the messages for the *limited purpose* of demonstrating a specific state of mind on the part of Salleh, in that he was content for Hadi to transport any quantity of drugs. The strength of the inference is also heightened especially when regard is had to the fact that these messages came merely a month prior to the transaction that forms the basis for the present charge.
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> [emphasis in original]

83 For completeness, the Court of Appeal also noted (at [57]) that the past messages were in any event not pivotal in its analysis and ultimate conclusion, because even leaving aside the past messages, there was sufficient evidence adduced at trial to show that Salleh had been prepared for Hadi to collect the quantity of drugs he had in fact collected at the material time. The effect of the evidence of the previous drug transaction was simply to fortify the court's conclusion that Salleh and Hadi "had no qualms with dealing in a quantity of drugs that exceed[ed] the capital threshold".

Applying the balancing approach to the Prior Messages

84 Bearing the above principles in mind, I applied the balancing approach set out in *Tan Meng Jee* and *Abdul Hadi* in considering the admissibility of the Prior Messages. The cogency of this evidence was not in issue, since both Pong and Soh did not seek to deny at trial that the messages in question emanated from them. Insofar as certain specific terms such as "hot", "stone", "batu" "Milo

type", "cold", "fish", "wine" and "throw" were used in these messages, both accused also did not dispute the interpretation which the Prosecution's expert witness PW1 gave to these terms in his conditioned statement and during his testimony (save that parties did not agree on the exact quantity of heroin which the term "batu" referred to).[96]

85 As to the relevance of the Prior Messages and the strength of the inference to be drawn from them, it must be remembered that Pong was charged with being in possession of the five bundles of heroin identified as the Drug Bundles on 14 April 2020, for the purpose of trafficking in the said Drug Bundles. Contrary to the Prosecution's submission, I did not think that the Prior Messages should be admitted to show that Pong had *on previous occasions* trafficked drugs on Soh's behalf and/or assisted Soh to sell heroin for profit and perform heroin drops. That he had on previous occasions allegedly trafficked drugs on Soh's behalf and/or assisted the latter to sell heroin or to make heroin drops did not mean, without more, that on 14 April 2020 he was in possession of the Drug Bundles for the purpose of trafficking in those specific bundles. To seek to use the Prior Messages in this manner would be tantamount to reasoning by propensity – something which the similar fact evidence rule was intended to prevent.

86 On the other hand, I did accept the Prosecution's submission that the Prior Messages were relevant to Pong's state of mind at the material time when he was in possession of the Drug Bundles on 14 April 2020: specifically, they were relevant to the existence of any knowledge on his part that Soh was selling heroin. I explain.

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96 PS21 at para 4.

87 The definition of "traffic" in s 2 of the MDA is "to sell, give, administer, transport, send, deliver or distribute" or to offer to do any of these things. As highlighted in the Prosecution's further submissions at the close of its case,[97] the judgment of the Court of Appeal in *Roshdi bin Abdullah Altway v Public Prosecutor and another appeal* [2022] 1 SLR 535 ("*Roshdi*") (at [120]) has made it clear that the term "deliver" may include the act of returning drugs to a person originally in possession of them. In *Roshdi*, the Court of Appeal referred to its earlier decision in in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*"), in which the court had held *inter alia* that "a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking", and that consequently, a person who "holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs 'for the purpose of trafficking'" (at [110] of *Ramesh*). In referring to this passage from its judgment in *Ramesh*, the Court of Appeal in *Roshdi* stressed (at [115]) that *Ramesh* "did not establish the general proposition that any 'bailee' who receives drugs intending to return them to the 'bailor' will *never* be liable for trafficking (or possession for the purpose of trafficking)". The court noted that much would depend on the circumstances; and in this connection, the key inquiry would be "whether the 'bailee' in question *knew or intended* that the 'bailment' was in some way part of the process of supply or distribution of the drugs". As the court explained (at [108]–[120]):

> 108 … Taking a purposive approach to interpretation, we concluded (at [108]–[109] [of *Ramesh*]) that in enacting the MDA

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97 Prosecution's further submissions at the close of Prosecution's case dated 29 February 2024 ("Prosecution's 29/02/24 Submissions") at para 11.

> and imposing harsh penalties for trafficking offences, Parliament was not simply concerned with addressing the movement of drugs *per se*, but the *movement of drugs along the supply chain towards the end-users*. The legislative intention was to target those involved in the supply and distribution of drugs.
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> ……
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> 111 … The key thrust of our reasoning in *Ramesh* (at [110]) was that the mere act of receiving drugs from and returning them to a "bailor" would not *ordinarily* be sufficient in itself to make out the element of trafficking. This is because such a transfer would not necessarily form part of the process of distributing drugs to end-users, which is what underlies the principal legislative policy behind the MDA. This may be contrasted with a transfer of drugs onwards to a third party, which would "presumptively" be part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.
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> 112 This is made clear at [114] of *Ramesh*, where we specifically stated that if "a person … merely holds the drugs as 'bailee' with a view to returning them to the 'bailor' who entrusted him with the drugs in the first place", "[s]uch a person cannot, *without more*, be liable for trafficking because the act of returning the drugs is not part of the process of supply or distribution of drugs" [emphasis in original]. …
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> …
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> 116 … [T]he legislative policy behind the MDA is to target those involved in the supply and distribution of drugs within society. A "bailee" who engages in a "bailment" arrangement *knowing* or *intending* that the "bailment" would be part of this process of supply and distribution falls within the class of persons targeted by that legislative policy. Conversely, in the absence of such knowledge or intention, the "bailee" cannot be said to be "trafficking" in a purposive sense.
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> 117 While we are concerned here with the "bailee's" subjective state of mind at the material time, the requisite knowledge and/or intention may be inferred from the *surrounding objective facts*, including the "bailee's" own conduct and any other relevant circumstances.
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> …

> 120 … (W)e reiterate the point made at [114] of *Ramesh* that in establishing the fact of trafficking (or possession for the purpose of trafficking), there is *no requirement* that the Prosecution must prove that the accused person was moving the drugs in a particular direction closer to their ultimate consumer. It would be naive to think that drug syndicates engage only in the uni-directional movement of drugs from supplier to dealer to consumer. Instead, in the bid to evade detection by the authorities, there will often be twists and turns in the chain of supply and distribution, with suppliers, couriers, safekeepers, dealers and other operators forming links in a circuitous chain.
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> [emphasis in original]

88 In *Roshdi*, the appellant Roshdi was charged with having in his possession for the purpose of trafficking a capital amount of diamorphine ("the Drugs"). He admitted to having both possession of the Drugs and knowledge of their nature, but denied that he had the Drugs in his possession for the purpose of trafficking. His defence was that he was only "safekeeping" the Drugs for one Chandran and had intended all along to return them to Chandran. In dismissing his appeal and upholding his conviction, the Court of Appeal noted that not only did Roshdi know of the nature of the drugs he was allegedly "safekeeping" for Chandran, he knew that Chandran was engaged in trafficking diamorphine. Indeed, his evidence was that when Chandran's customers wanted the drugs, he would deliver the drugs that he was allegedly safekeeping either to Chandran or to Chandran's couriers. As the Court of Appeal pointed out (at [124] of *Roshdi*):

> In these circumstances, Roshdi was undoubtedly aware that by supposedly safekeeping the Drugs for Chandran, he was facilitating the process of their intended sale and distribution. Roshdi's intended act of returning the Drugs to Chandran would therefore fall within the purposive interpretation we have given to the terms "delivery" and "trafficking" as set out in the MDA. It follows that even on the case that Roshdi mounted at trial, he would nevertheless have been in possession of the Drugs for the purpose of trafficking.

89 It being clear that the definition of "traffic" in the MDA may include the act of delivering the drugs back to the person originally in possession of them, even on the assumption that Pong was "safekeeping" the Drug Bundles until their "return" to Soh, he could still be liable for possession of the Drug Bundles for the purpose of trafficking if he knew or intended that his "safekeeping" of these drugs was in some way part of the process of supply or distribution of the drugs. To reiterate the exhortation by the Court of Appeal in *Roshdi*, the key inquiry is whether the person keeping the drugs (referred to in *Roshdi* as the "bailee") knew or intended that the "bailment" was in some way part of the process of supply or distribution of the drugs.

90 Insofar as it could reasonably be inferred from the Prior Messages that Pong knew that Soh was engaged in trafficking heroin, these messages were relevant to show Pong's state of mind at the time of his possession of the Drug Bundles on 14 April 2020. These would be the WhatsApp exchanges on 25 November 2019 (at [22] above) and on 24 February 2020 (at [28] above): the first set of messages showed Soh asking Pong to "help [him] out" by finding a buyer for "[g]ood milo type" heroin, while the second set showed Pong informing Soh about a heroin drop he was carrying out for Soh. I found these two sets of messages to be relevant in showing that Pong knew Soh to be engaged in the supply and/or distribution of heroin. To borrow the words of the Court of Appeal in *Abdul Hadi* (at [56]), it was thus appropriate for me to consider these messages for the limited purpose of demonstrating a specific state of mind on Pong's part, in that he knew Soh to be trafficking heroin. The strength of the inference was also heightened especially when it became apparent that Pong had known for some time prior to 14 April 2020 about Soh trafficking in heroin.

91 For the reasons I have explained, therefore, the WhatsApp exchanges on 25 November 2019 and on 24 February 2020 did not constitute inadmissible similar fact evidence.

92 I did not come to a similar finding, however, vis-à-vis the WhatsApp messages exchanged between Pong and Soh on 13 December 2019, 12 January 2020 and 2–3 March 2020 (at [23]–[26] above). These exchanges did not specifically mention the distribution and/or delivery of heroin and were dominated by Soh's concerns about Pong getting caught by CNB while in possession of capital amounts of drugs (*eg,* 5 kg of "ice" or methamphetamine, *per* the messages of 2–3 March 2020). The inference which the Prosecution seemed to draw from these exchanges was that both Pong and Soh had, prior to 13–14 April 2020, handled capital amounts of drugs. In my view, this would be an inference that the two accused's past misconduct made it more likely that Pong's possession of the Drug Bundles on 14 April 2020 was for the purpose of trafficking. This would be an instance of reasoning by propensity; and any probative weight to be accorded to these messages would be outweighed by their prejudicial effect. Accordingly, I did not have regard to these messages at the close of the Prosecution's case when considering whether the Prosecution was able to make out a *prima facie* case for the two accused to answer.

Interpretation of the Material Messages

93 In evaluating the evidence adduced at the close of the Prosecution's case, I also considered the Material Messages; in particular, what inferences about Pong's purpose in possessing the Drug Bundles could reasonably be drawn from the Material Messages and about Soh's knowledge of Pong's purpose. In the interests of clarity, I summarise below the conversation between

the two accused in the Material Messages, insofar as they appeared to discuss the Drug Bundles.

94 When Soh first asked Pong to "[c]ome take" the Drug Bundles to keep at his place ("*Put ur there*", at 13:45:33 on 13 April 2020),[98] Soh explained that it was not financially profitable to sell heroin at that point and that more money could be made selling methamphetamine ("*Now sell hot like idiot – Sell one cold earn many more*", at 13:45:43 on 13 April 2020).[99] Some four odd hours later, Soh appeared to be prepared to sell the heroin, as he told Pong to "throw" the Drug Bundles for Soh to "*go sell*" ("*My hot at ur there – Later can throw – The hot I go sell… Later u throw out bro"*, between 18:24:00 and 18:30:21 on 13 April 2020).[100] Pong then sought instructions on the amount he was to "throw" ("*How many – 1 ?*") and the time, to which Soh responded by saying he was to "throw" all the Drug Bundles ("*All later*").[101] Soh did not, however, indicate the time at which Pong was to "throw" the drugs, which led to the latter chasing him for further instructions at various intervals between 18:24:38 and 20:42:15 on 13 April 2020 ("*U lmk – What time… Faster tell me what time… Give me a time ma – I cannot be waiting… Time – Tell me – I need pick bella* [Pong's girlfriend] *all*").[102] At 20:42:13 on 13 April 2020, Soh clarified that Pong would only need to take action the following day ("*Tmr start lor*").[103] When Pong responded by saying that he was going to put the Drug Bundles in

98 AB64 at p 30 (S/N 19311).

99 AB64 at p 31 (S/Ns 19312–19313).

100 AB64 at pp 38–40 (S/Ns 19438, 19439, 19442 and 19456).

101 AB64 at p 40 (S/Ns 19458–19460).

102 AB64 at pp 39–42 (S/Ns 19443, 19446, 19462, 19468, 19471, 19496, 19498 and 19500).

103 AB64 at p 42 (S/N 19499).

the car ("*I go put – All at car*"),[104] Soh told him not to do so, in view of the risk arising from the quantity of the drugs, and reiterated that Pong was only to act the following day ("*Now no – Don't need – Don't – Out over gram – Thing at car – Anything happen Choy Choy…U don't siao siao – Tmr start – U now relax Lor*").[105]

95 The following morning (14 April 2020), Soh messaged Pong at 10:28:28 to ask if he was free, to which Pong responded by asking if Soh wanted him to "*throw the hot*".[106] Soh did not reply immediately, and it was hours later on the same day at 16:11:13 that he messaged Pong again to tell the latter to "[*c*]*ome pass back*" the "*hot*" ("*Where got – hot – Come pass back – Hot come back*").[107] This appeared to confuse Pong who asked Soh what he was talking about ("*hot come back? – what u talkikg*" [*sic*]).[108] Soh reiterated "*I come take back*" to which Pong then responded by stating "*ok*", that he was "*going bukit batok then back*" and that he would "*meet [Soh at his] house downstairs*".[109] Some one and a half hours later, Soh appeared to inform Pong that he (Soh) was actually at Bukit Batok with another individual and asked Pong to "find" him ("*I with loti at batok eh – Come find me lor*") at 17:39:00.[110] When Pong asked if he should bring the heroin with him ("*bring the batu comr ah*" [*sic*]), Soh responded in the negative and told Pong to "throw" the heroin for him ("*No la – Siao – Batu*

104 AB64 at p 43 (S/Ns 19505 and 19508).

105 AB64 at p 43 (S/Ns 19509–19514, 19517–19519).

106 AB64 at p 78 (S/Ns 20067–20069).

107 AB64 at p 78 (S/Ns 20073–20075 and 20079).

108 AB64 at p 79 (S/Ns 20084–20085).

109 AB64 at p 79 (S/Ns 20091–20094).

110 AB64 at p 80 (S/Ns 20109–20110).

throw for me – Can", at 17:39:23 to 17:39:38). Pong answered that he would "*now go back throw*" (at 17:39:46).[111]

96 In respect of the above series of messages, the Prosecution submitted in the first instance that although Soh had appeared to change his instructions from "*later can throw*" (at 18:24:04 on 13 April 2020) to "*I come take back*" (at 16:14:38 on 14 April 2020), his subsequent message "*Batu throw for me*" at 17:39:36 on 14 April 2020 represented yet another change of instructions in which he asked Pong "to proceed with the drug drop".[112] As I understood it, the Prosecution was suggesting that Soh's last instruction to Pong just prior to their arrests was still to carry out a drug drop of the heroin *for the purpose of collection by third parties*. On scrutinising the messages sent by the two accused at 17:39:23 on 14 April 2020 and thereafter, I did not think this was a reasonable inference. This was because in the further messages exchanged between Pong and Soh following Soh's message "*Batu throw for me*", both accused appeared to be talking about Pong passing the Drug Bundles directly to Soh. Thus for example, Pong had at 19:02:39 asked where Soh was ("wri" [*sic*]) and informed Soh at 19:02:47 on 14 April 2020 that he was "reaching home", to which Soh replied that he was "[c]oming back". Pong then told Soh that he would wait for Soh "at home", to which Soh responded by asking him to "[c]ome down lah".[113]

97 This was not fatal to the Prosecution's position at the close of its case, because the Prosecution had an alternative argument: *ie*, even if Pong had been going to pass the Drug Bundles back to Soh, he could still be liable for

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111 AB64 at pp 80–81 (S/Ns 20111–20116 and 20119).

112 Prosecution's 22/02/24 Submissions at para 22.

113 AB64 at pp 81–82 (S/Ns 20124–20129).

possession of these drugs for the purpose of trafficking.[114] *Per* the judgment of the Court of Appeal in *Ramesh* at [114] and *Roshdi* at [120], it was clear that there was no requirement for the Prosecution to prove that an accused person was moving the drugs in a particular direction closer to their ultimate consumer. After all, as the court in *Roshdi* pointed out, it would be naive to think that drug syndicates engage only in the uni-directional movement of drugs from suppliers to dealers to consumers. The Prosecution submitted that in this connection, the key inquiry was whether Pong knew that his possession of the Drug Bundles was part of the process of supplying or distributing drugs. The Prosecution highlighted the court's observation in *Roshdi* (at [116]) that the legislative policy behind the MDA was to "target those involved in the supply and distribution of drugs", and that a "bailee" who engaged in a "bailment" arrangement *knowing or intending* that the "bailment" would be part of this process of supply and distribution would fall within the class of persons targeted by that legislative policy.

98 I accepted the Prosecution's alternative argument. In my view, on the totality of evidence adduced at the close of the Prosecution's case, it was reasonable to infer that Pong knew that his possession of the Drug Bundles was part of the supply and distribution of the drugs; and that whilst Soh's last instruction appeared to be for Pong to pass the Drug Bundles back to him, Pong nevertheless remained aware that this movement of the drugs also formed part of the supply and distribution process. I based these inferences on the following evidence:

(a) The prior WhatsApp exchanges on 25 November 2019 and on 24 February 2020 which I examined above (see [22] and [28]), which

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114 Prosecution's 22/02/24 Submissions at paras 23–27.

appeared to show that Pong already knew even before 14 April 2020 that Soh was trafficking in heroin;

(b) Soh's WhatsApp message to Pong at 13:45:31 on 13 April 2020, in which he alluded to the profitability of selling heroin versus selling methamphetamine when explaining his request for Pong to "take [his] hot", as well as Pong's reply agreeing to the request;[115]

(c) Soh's WhatsApp messages to Pong at 18:23:57 on 13 April 2020, instructing Pong to "throw" the Drug Bundles "(l)ater" for Soh to "go sell";[116] and Pong's responses in seeking further instructions on the quantity of the drugs to be "thrown" as well as the time to "throw" the Drug Bundles.[117]

99 In considering the Material Messages at the close of the Prosecution's case, I was aware that in cross-examining the Prosecution's witnesses, Mr Thuraisingam had suggested to the witnesses an interpretation of the Material Messages and what they disclosed of Pong's state of mind, which differed from the Prosecution's interpretation of those messages. In gist, Mr Thuraisingam suggested that the Material Messages showed that Soh had persuaded Pong to "safekeep" the Drug Bundles for him on the pretext that it was not profitable to sell heroin at that point in time; that after Pong took possession of the Drug Bundles, Soh had then attempted to cajole and/or pressurise Pong to traffic the said drugs for him; that Pong had rebuffed these attempts to get him to traffic the drugs; and that Pong's intention "from start to

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115 AB64 at pp 30–31 (S/Ns 19310 and 19314).

116 AB64 at pp 38–39 (S/Ns 19437–19439 and 19442).

117 AB64 at pp 39–42 (S/Ns 19443, 19446, 19458–19460, 19462, 19468, 19471, 19496, 19498 and 19500).

end" was to return the bundles to Soh. The Prosecution submitted that this "safekeeping" case theory was not viable, given the state of the law relating to such "bailment" defences and the state of the evidence as to Pong's knowledge of Soh's trafficking activities.[118] As they also acknowledged, however, it was not necessary for me to come to any conclusions on the viability of the suggested "safekeeping" case theory at the close of the Prosecution's case;[119] and I did not venture to do so.

Pong's submissions on the nature of the Prosecution's case

100 I should add that in considering whether the Prosecution was able to make out a *prima facie* case against the two accused, I also considered Pong's argument that the case put forward by the Prosecution at trial obliged the Prosecution to establish that Pong had obtained the Drug Bundles from Soh "for the purpose of dropping them off ***for collection by third parties***" [emphasis in original];[120] and that it was precluded from advancing the alternative position set out in its submissions. I found no merit in this argument for the following reasons.

101 First, as I noted earlier, it has been stressed by the Court of Appeal on more than one occasion that there is no requirement that the Prosecution must prove that the accused person was moving the drugs in a particular direction closer to their ultimate consumer (*Ramesh* at [114]; *Roshdi* at [120]). Nothing in the charges and other materials filed by the Prosecution indicated that the Prosecution was seeking to prove a case premised on Pong having obtained the drugs for the purpose of dropping them off for direct collection *by third parties.*

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118 Prosecution's 29/02/24 Submissions at para 10.

119 Prosecution's 29/02/24 Submissions at para 13.

120 Pong's 08/03/24 Submissions at para 7.

102 Next, in its opening statement, the Prosecution stated at para 11 that its case was that Pong "obtained the Drug Bundles from Soh *for the purpose of dropping off the Drug Bundles at a date, time, and location to be advised by Soh*" [emphasis added]. This statement was followed by the observation that in the WhatsApp messages exchanged between the two accused, Soh had stated that Pong "stood to benefit financially by performing such drop-offs of drugs, ostensibly for the purpose of trafficking these drugs to third parties". According to Pong, this sentence meant that the Prosecution's case was premised on Pong having obtained the Drug Bundles for the purpose of dropping them off for collection *by these "third parties" themselves*.[121] With respect, however, this was a strained interpretation of the two sentences which misrepresented the Prosecution's case. Reading the Prosecution's opening statement as a whole, it would have been plain to both accused persons that the Prosecution rejected any suggestion that Pong was merely "safekeeping" the Drug Bundles for Soh with the intention of returning these bundles to Soh. On any reasonable reading, the reference to Soh's remarks about financial benefits which Pong could potentially gain from performing drug drop-offs was made by the Prosecution for the purpose of establishing the context in which Pong obtained the Drug Bundles: *ie*, Pong obtained the Drug Bundles from someone who was in the business of supplying and distributing drugs to third parties for financial gain. Further, the statement that Pong had obtained the drugs *for the purpose of dropping them off at a date, time, and location to be advised by Soh* encompassed the possibility that such "advice" from Soh could comprise (*inter alia*) instructions to pass the drugs back to Soh. It was thus not inconsistent for the Prosecution to have suggested that Pong had obtained the drugs to perform drug drop-offs at the advice of Soh, and that Pong could – under Soh's

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121 Pong's 08/03/24 Submissions at para 7.

instructions – pass the drugs back to Soh. Certainly, nothing in the opening statement suggested that the Prosecution's case was wholly or exclusively premised on Pong having obtained the Drug Bundles for the purpose of dropping them off for collection by third parties. I did not think the two accused could reasonably have understood otherwise, especially having regard to the Prosecution's treatment of the evidence led in the course of the trial.

103 Thus, for example, the Prosecution did not take issue with Mr Thuraisingam's suggestion during his cross-examination of PW1 that the meaning of the term "throw" (as used in the WhatsApp Messages) depended "on the context of the whole conversation", and that Soh's message at 18:24:04 on 13 April 2020 ("*Later can throw*", referring to Soh's "*hot*" which was then with Pong) could mean either to leave the Drug Bundles somewhere for somebody else to collect or to leave them somewhere for Soh himself to collect. Nor did the Prosecution seek to re-examine PW1 on his answers agreeing with this suggestion. The Prosecution also did not take issue with Mr Thuraisingam's suggestion during his cross-examination of PW1 that Soh's message at 17:39:36 on 14 April 2020 ("*Batu throw for me*") "more likely than not" meant that Pong was to leave the drugs somewhere for Soh to collect. Nor did the Prosecution seek to re-examine PW1 on his answers agreeing with Mr Thuraisingam's suggestion. The Prosecution also did not take issue with Mr Thuraisingam putting the same suggestions to the investigating officer PW4. Indeed, after PW4 testified that she understood the message "*Later can throw*" as possibly referring either to Pong leaving the Drug Bundles for Soh to collect or for Soh to get someone else to collect, the Prosecution's re-examination of PW4 focused on getting PW4 to explain that she had formed this understanding because in

the same WhatsApp exchange, Soh had stated at 18:24:32 on 13 April 2020, "*The hot I go sell*".[122]

104 In its first set of written submissions at the close of its case, the Prosecution suggested that although Soh had appeared to change his instructions from "*later can throw*" (at 18:24:04 on 13 April 2020) to "*I come take back*" (at 16:14:38 on 14 April 2020), his subsequent message "*Batu throw for me*" at 17:39:23 on 14 April 2020 represented yet another change of instructions in which he asked Pong "to proceed with the drug drop".[123] However, the Prosecution also expressly pointed out in the same set of submissions that even on the alternative hypothesis (as suggested by Mr Thuraisingam) that Pong was "asked by [Soh] to keep the drugs as it was supposedly not a good time to sell them" and that he always intended to return them to Pong,[124] the offence of being in possession of the Drug Bundles for the purpose of trafficking would still be made out if there was evidence that Pong knew his possession of the Drug Bundles was part of the process of supplying or distributing drugs.[125] For the reasons explained in the preceding paragraphs ([96]–[103]), I rejected Pong's submission that the Prosecution had conducted its case in such a manner that it should be barred from making this alternative submission.[126]

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122 NE 21/02/24 at pp 74:20–75:18.

123 Prosecution's 22/02/24 Submissions at [22].

124 Pong's 08/03/24 Submissions at [15] and [52].

125 Prosecution's 22/02/24 Submissions at [23]–[27].

126 Pong's 08/03/24 Submissions at paras 40–49.

Sufficient evidence at close of Prosecution's case to establish prima facie case of each essential element of the charges

105 To recapitulate: at the close of the Prosecution's case, neither Pong nor Soh disputed Pong's possession of the Drug Bundles and his knowledge of the nature of the said drugs. Their position was that the Prosecution could not mount a *prima facie* case that Pong's possession of the Drug Bundles had been for the purpose of trafficking; and in respect of Soh, that the Prosecution accordingly could not mount a *prima facie* case that Soh had abetted by intentionally aiding Pong to traffic in the said drugs. I did not accept these arguments. For the reasons I explained at [96]–[104] above, I was satisfied that at the close of the Prosecution's case, there was sufficient evidence to show a *prima facie* case that Pong knew that his possession of the Drug Bundles was part of the supply and distribution of the drugs; and that whilst Soh's last instruction appeared to be for Pong to pass the Drug Bundles back to him, Pong nevertheless remained aware that this movement of the drugs also formed part of the supply and distribution process.

106 Given the content of the Material Messages I have earlier referred to, there was clearly also sufficient evidence to show a *prima facie* case that Soh knew that Pong had obtained possession of the Drug Bundles for the purpose of trafficking. I refer, in particular, to Soh's own messages to Pong on 13 April 2020 explaining his reasons for asking Pong to keep the Drug Bundles, and his stated intention on the same day to "go sell" the drugs (see [98(b)]–[98(c)] above).

107 After I called upon Soh and Pong for their defence to the respective charges against them, both accused persons elected to remain silent. Both accused persons also elected not to call any witnesses. In the closing

submissions filed on their behalf, both sought to elaborate on their respective defence.

108 I summarise at [109]–[128] below the submissions made by the Prosecution and by the two accused. I start with the Prosecution.

The Prosecution's case

The case against Pong

The Possession Element

109 In respect of Pong, the Prosecution noted that at trial, Pong did not dispute the Possession Element of his charge, and that he had admitted to the same in his investigation statements.[127]

The Knowledge Element

110 As to the Knowledge Element of Pong's charge, the Prosecution relied on the presumption of knowledge under s 18(2) of the MDA.[128] It was not disputed that since Pong had elected to remain silent, there was no evidence before the court to rebut this presumption.[129]

The Purpose Element

111 As to the Purpose Element, the Prosecution submitted that the evidence, and in particular the Material Messages, showed that Soh had informed Pong the Drug Bundles were for sale, and Pong had agreed to perform a drop of the

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127 Prosecution's 30/04/24 Submissions at para 38; AB23 at paras 25–31, 35–41; AB24 at para 55; AB25 at paras 57–58.

128 Prosecution's 30/04/24 Submissions at para 39.

129 Pong's 21/05/24 Submissions at para 10.

Drug Bundles at a date, time, and location to be advised by Soh.[130] Even if Soh's Initial Instructions appeared on the face of the messages to be a request for Pong to "safekeep" the heroin, this arrangement was for the purpose of a future sale of heroin by Soh.[131] At 18:23:57 on 13 April 2020, Soh could be seen clearly instructing Pong to perform a heroin drug drop ("*My hot at ur there – Later can throw – The hot I go sell*"), in response to which Pong chased Soh for the details necessary to perform the drop.[132] Further, the Prosecution submitted that Soh's final instruction to Pong ("*batu throw for me*" at 17:39:23 on 14 April 2020) was an instruction to Pong to "*throw*" the heroin, *ie*, for Pong to proceed with the drug drop.[133]

112 It should be noted that in respect of the messages on 13 April 2020 which I described earlier as "Soh's Persuasion" (at [35]–[41]), the Prosecution's position was that these messages were *not* attempts by Soh to persuade Pong to traffic *the Drug Bundles*. Instead, these messages represented attempts by Soh to persuade Pong to perform drug drops for Soh *exclusively*, as Soh was unable to perform drug drops himself.[134] In this connection, the Prosecution also sought to rely on the Prior Messages to show that Pong had previously been involved in performing drug drops for Soh.[135]

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130 Prosecution's Opening Statement dated 20 February 2024 ("POS") at para 11.

131 Prosecution's 30/04/24 Submissions at para 55.

132 Prosecution's 30/04/24 Submissions at para 56; Prosecution's Reply Submissions dated 21 May 2024 ("Prosecution's 21/05/24 Submissions") at para 12(b).

133 Prosecution's 30/04/24 Submissions at para 61.

134 Prosecution's 30/04/24 Submissions at para 58; Prosecution's 21/05/24 Submissions at para 13.

135 Prosecution's 30/04/24 Submissions at para 66(b).

113 Further, notwithstanding that Soh's First Change of Instructions appeared to be a request for Pong to return him the Drug Bundles, the Prosecution submitted that the evidence showed that Pong knew or intended, at all times, that his possession of the Drug Bundles was in some way part of the process of supply or distribution of drugs.[136] As such, Pong could not avail himself of a defence of "bailment" as defined by the Court of Appeal in *Ramesh* and clarified in *Roshdi*.[137]

114 Given Pong's decision to remain silent, the Prosecution also argued for an adverse inference to be drawn against him by the court.[138] Pong's lies to the investigation officers in the course of the investigation, as well as his omission to raise his "safekeeping" defence in his statements, were said to amount to corroborative evidence of his guilt.[139]

The case against Soh

The Facilitating Act

115 In respect of Soh, the Prosecution noted that he did not dispute having passed the Drug Bundles to Pong on 13 April 2020 at about 5.18pm.[140]

The Abettor's Knowledge

116 As to Soh's knowledge, the Prosecution pointed out that the Material Messages showed Soh making it clear to Pong that the Drug Bundles were for

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136 Prosecution's 30/04/24 Submissions at para 63.

137 Prosecution's 30/04/24 Submissions at paras 92–95.

138 Prosecution's 30/04/24 Submissions at para 102.

139 Prosecution's 30/04/24 Submissions at paras 88–91, 96–101.

140 Prosecution's 30/04/24 Submissions at paras 103–107.

sale. The gist of Soh's instructions to Pong was for the latter to take the Drug Bundles for the purpose of performing a drug drop of the bundles at a date, time and location to be advised by Soh. In the circumstances, Soh clearly knew that the Pong possessed the Drug Bundles for the purpose of trafficking.[141]

117 The Prosecution also submitted for an adverse inference to be drawn against Soh, having regard to his decision to remain silent in the face of the evidence against him.[142]

The defence's case

118 I next summarise the cases put forward by the two accused persons, starting with Pong.

Pong's defence

119 In respect of Pong, it should be noted at the outset that as with the position taken at the close of the Prosecution's case, Mr Thuraisingam sought to argue again at the conclusion of the trial that the Prosecution was required to prove that Pong had specifically intended to traffic the Drug Bundles *to third parties*.[143] He contended that the Prosecution was unable to prove this on the basis of the evidence available which – according to him – supported Pong's defence of "safekeeping".

120 It should be noted that while the term "safekeeping defence" was used repeatedly throughout the closing submissions filed on behalf of Pong, it appeared that Pong's "safekeeping defence" was not intended to be any different

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141 Prosecution's 30/04/24 Submissions at paras 108–110.

142 Prosecution's 30/04/24 Submissions at para 111.

143 Pong's 30/04/24 Submissions at para 20.

from the defence of bailment referred to in cases such as *Ramesh* and *Roshdi.* The gist of Pong's case was that Soh had asked him to "safekeep" the Drug Bundles for Soh, on the pretext that it was not a good time to sell heroin, as compared to selling methamphetamine; that Pong had agreed to "safekeep" the Drug Bundles for Soh on that basis; that it was "never" Pong's "impression" that he would be facilitating the supply or distribution of heroin by agreeing to hold on to the Drug Bundles; and that Pong's "expectation" was that he was to do nothing more than to return the Drug Bundles to Soh.[144]

121 In support of this case theory, Mr Thuraisingam advanced the following alternative interpretation of the Material Messages (hereinafter, the "Alternative Interpretation"):[145]

(a) Soh's Initial Instructions were actually a "ploy" by Soh to convince Pong to help him safekeep the Drug Bundles. Soh led Pong to believe that it was not a good time to sell diamorphine and that it was more profitable to sell methamphetamine, so that Pong would agree to take possession of the Drug Bundles.

(b) After Pong had taken possession of the Drug Bundles, Soh tried to persuade Pong to traffic the said drugs, on Soh's behalf, to other people. The series of messages described earlier as Soh's Persuasion showed Soh trying to tempt Pong to traffic the Drug Bundles by offering him material wealth in increasing quantities. However, Pong steadfastly rebuffed Soh's attempts and his various offers of material reward.

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144 Pong's 30/04/24 Submissions at paras 4, 18–19, 23–28.

145 Pong's 30/04/24 Submissions at para 4.

(c) Soh's Change of Instructions came about because Soh realised the futility of his ploy to get Pong to traffic the Drug Bundles. Soh then proceeded to arrange for Pong to return the Drug Bundles to him.

122 According to Mr Thuraisingam, the Alternative Interpretation was supported by a plain reading of the Material Messages and by the evidence of the Prosecution witnesses regarding *their* interpretation of the messages.[146] In particular, the WhatsApp messages exchanged between Soh and Pong at the point in time closest to the alleged offence unequivocally reflected Pong's intention to return the Drug Bundles to Soh.[147] According to Mr Thuraisaingam, the evidence given by the Prosecution's witnesses in cross-examination also supported the proposition that at the point in time closest to the alleged offence, Pong had been intending to return the Drug Bundles to Soh. It was submitted that given the unequivocal evidence as well as the evidence from the Prosecution's witnesses, no adverse inference ought to be drawn against Pong.[148] It was further submitted that it would be inappropriate to draw an adverse inference against Pong on the basis of earlier messages, as these were "too ambiguous" to allow for any "proper conclusion" as to whether Pong was to drop off the Drug Bundles for collection by Soh or for collection by third parties.[149]

123 Based on the Alternative Interpretation, Mr Thuraisingam argued that Pong's possession of the Drug Bundles was not part of the process of supply or distribution of drugs. First, this was an isolated and spontaneous occurrence as

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146 Pong's 08/03/24 Submissions at paras 18–19 and Annex B.

147 Pong's 30/04/24 Submissions at para 11.

148 Pong's 30/04/24 Submissions at para 13.

149 Pong's 30/04/24 Submissions at para 18(b).

compared to a systematic arrangement for safekeeping diamorphine; second, Pong was offered no remuneration or reward to hold on to the Drug Bundles for Soh; and third, there was no evidence that Pong's "bailment" of the said drugs was intended to assist Soh in evading detection.[150] Mr Thuraisingam argued that these factors enabled Pong to avail himself of a defence of "bailment" even if he knew that returning the Drug Bundles to Soh would mean that the Drug Bundles would "*eventually*" find its way into the hands of third parties.[151] In any event, according to Mr Thuraisingam, the Prosecution did not have sufficient evidence to prove beyond a reasonable doubt that Pong knew his act of returning the Drug Bundles to Soh would lead to the drugs being trafficked to end-users.[152]

124 As with the position taken at the close of the Prosecution's case, Mr Thuraisingam also sought at the close of the trial to object to the Prosecution's reliance on the Prior Messages on the basis that such reliance would fall afoul of the rule against similar fact evidence.[153] In any event, according to Mr Thuraisingam, the Prior Messages did not objectively establish that Pong had previously trafficked heroin on behalf of Soh. In respect of the WhatsApp exchange on 25 November 2019 (reproduced above at [22]), Mr Thuraisingam argued that the messages in question did not show Pong replying to Soh's proposal.[154] There was also other evidence to show that Pong had never previously trafficked heroin: PW4 had stated during cross-examination that she had not come across any evidence of Pong selling heroin;

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150 Pong's 30/04/24 Submissions at para 29.

151 Pong's 30/04/24 Submissions at paras 30–35.

152 Pong's 30/04/24 Submissions at paras 36–39.

153 Pong's 08/03/24 Submissions at paras 21–27.

154 Pong's 08/03/24 Submissions at paras 29–31.

and the two weighing scales seized from Pong contained no traces of diamorphine, even though they contained traces of other drugs.

Soh's defence

125 As for Soh, his case was premised on the proposition that Pong had never intended to traffic in the Drug Bundles, and that Soh himself therefore could not have had knowledge of any such intention.[155] In advancing this proposition, Soh did not expressly accept or agree with Pong's Alternative Interpretation of the Material Messages. Instead, Mr Jumabhoy submitted that the Material Messages did not disclose any instructions from Soh to Pong to do a drug drop for the purpose of sale:[156] it was argued that Soh's Initial Instructions did not explain what was intended, while the subsequent messages merely disclose an intention for the Drug Bundles to be returned to Soh.[157] In making this argument, Mr Jumabhoy too sought to rely on the opinions expressed by the various prosecution witnesses on the meaning to be attributed to various WhatsApp messages: in particular, PW1's, PW2's, and PW4's testimony that the word "throw" as used in these messages did not mean "to sell the drugs to a third party". Unlike Pong, however, Soh did not put forward his own positive case as to how the various WhatsApp messages should be understood.

126 Like Mr Thuraisingam, Mr Jumabhoy also sought to reprise the objections to the Prosecution's reliance on the Prior Messages, again on the basis that the Prosecution was using these messages to reason by propensity.[158]

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155 Soh's Closing Submissions dated 30 April 2024 ("Soh's 30/04/24 Submissions") at para 27.

156 Soh's 30/04/24 Submissions at para 42.

157 Soh's 08/03/24 Submissions at paras 27–36; Soh's 30/04/24 Submissions at paras 42–43.

158 Soh's 30/04/24 Submissions at paras 59 and 63.

Furthermore, Mr Jumabhoy argued that even if the Prior Messages could be used to inform a reading of the Material Messages, they did not assist the Prosecution's case because the Material Messages contained a dearth of detail as compared to the Prior Messages, including the quantity, price, profit-sharing, and sourcing of customers for the sale of diamorphine.[159]

127 *Per* Mr Jumabhoy's submission, since the primary offence could not be made out against Pong (there being no evidence of Pong's intention to traffic the Drug Bundles to third parties), Soh could not be convicted of abetting by intentionally aiding in an offence that had not been committed.[160]

128 As for the Prosecution's submission for an adverse inference to be drawn against Soh, Mr Jumabhoy argued that the submission had no basis. According to Mr Jumabhoy, since the Material Messages clearly showed an absence of any intention on Pong's part to traffic the Drug Bundles to third parties, and since Soh therefore had no knowledge of any such intention on Pong's part, this was a situation which called for no further explanation from Soh; and no adverse inference should be drawn against him for his failure to testify.[161]

The key issue at the conclusion of the trial

129 Having regard to parties' submissions, the key issue at the conclusion of the trial was whether the Prosecution had proven beyond a reasonable doubt that Pong possessed the Drug Bundles *for the purpose of trafficking*; *ie*, the Purpose Element. In this connection, it will be noted that since both Pong and Soh elected not to give evidence and not to call any witnesses, the body of evidence which

159 Soh's 30/04/24 Submissions at paras 60–62.

160 Soh's 30/04/24 Submissions at paras 46–50.

161 Soh's 30/04/24 Submissions at para 74.

I had to consider was the same body of evidence adduced at the close of the Prosecution's case.

130 In considering this body of evidence, I did not accept the defence's argument that the Prosecution was required to prove that Pong had specifically intended to traffic the Drug Bundles *to third parties*.[162] I have explained my reasoning on this issue at [96]–[104] above. In gist, I accepted that the Prosecution's case was as articulated in its opening statement; *ie,* that Pong had "obtained the Drug Bundles from Soh *for the purpose of dropping off the Drug Bundles at a date, time, and location to be advised by Soh*". For the reasons I explained earlier (at [102]), this was not inconsistent with such "advice" from Soh possibly comprising (*inter alia*) instructions for Pong to pass the drugs back to Soh. For the reasons I explained earlier, I was satisfied that neither accused was at any point misled as to the nature of the Prosecution's case.

The Prior Messages

131 In assessing the evidence relied on by the Prosecution at the conclusion of the trial, I noted firstly that both Pong and Soh sought to reprise their objections to the Prosecution's reliance on the Prior Messages, on the basis that these messages constituted inadmissible similar fact evidence. I have explained earlier (at [84]–[92]) my findings in relation to the Prior Messages. To recapitulate, I found that the WhatsApp exchanges on 25 November 2019 (at [22] above) and on 24 February 2020 (at [28] above) were relevant to show Pong's state of mind at the time of his possession of the Drug Bundles on 14 April 2020, in that they went towards establishing that Pong knew Soh to be engaged in the supply or distribution of heroin. I have also explained earlier (at

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162 Pong's 30/04/24 Submissions at para 20.

[86]–[90]) why the question of Pong's knowledge of Soh's involvement in the supply or distribution of heroin was relevant in the present case. The first set of WhatsApp messages on 25 November 2019 showed Soh asking Pong to "help [him] out" by finding a buyer for "(g)ood milo type" heroin. Pong replied that he would "ask now" and asked Soh what the price was. Pong then stated that he did not mind letting Soh earn from the transaction while he (Pong) earned nothing ("*I no earn nvm – U earn – Give u*"). Soh, in turn, suggested that they could both split the profit ("*I earn 350 u earn 350*"). As for the second set of WhatsApp messages on 24 February 2020, these showed Pong alerting Soh to a heroin drop which he was carrying out for Soh. About half an hour after alerting Soh, Pong informed Soh that he still had "one packet" left in the car and sent Soh an image of what appeared to be a plastic bag for containing chocolate wafers. When asked by Soh what this was, Pong informed that it was heroin which he would pass to Soh, whereupon Soh asked if it was "(o)ne stone" (*ie*, one pound of heroin).[163]

132 I found at the close of the Prosecution's case that it was reasonable to infer from these messages that Pong knew of Soh's involvement in the supply or distribution of heroin. At the conclusion of the trial, there was no evidence before me to suggest an alternative interpretation that might plausibly be given to these WhatsApp messages. Indeed, given the nature of the transactions being discussed between Pong and Soh in these WhatsApp exchanges and the easy familiarity with which the two of them conducted their discussions, the messages did not appear to me to be susceptible to some alternative interpretation whereby Pong remained somehow ignorant of Soh's involvement in the supply or distribution of heroin.

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[163] PS21 at para 4.

133 For the avoidance of doubt, I agreed with Mr Thuraisingam that the messages of 25 November 2019 did not show Pong eventually proceeding to participate – whether as an intermediary or otherwise – in a concluded sale of heroin. However, this did not assist either Pong or Soh, because I did not in any event consider these messages for the purpose of determining whether they showed Pong to have trafficked heroin on previous occasions such that they increased his disposition or tendency to have committed the offence for which he was tried. This would be an impermissible use of the messages, since it would amount to reasoning by propensity. Instead, as I have explained, these messages were relevant for the purpose of showing Pong's knowledge of Soh's involvement in the supply or distribution of heroin.

134 I have also explained earlier my findings on the cogency of this evidence and the strength of the inference to be drawn (see [84]–[90]). In the interests of completeness, I should make it clear that in considering the evidence against Pong and Soh at the conclusion of the trial, I continued to disregard the prior messages exchanged between them on 13 December 2019, 12 January 2020 and 2–3 March 2020 (at [92] above). As I noted in my findings at the close of the Prosecution's case, these WhatsApp exchanges did not specifically mention the distribution and/or delivery of heroin and featured primarily discussions between the accused persons in relation to other drug transactions, as well as their own concerns about getting caught by CNB. Any attempt to infer from these messages that both accused had, prior to 13–14 April 2020, handled capital drug amounts, would really amount to an inference that their past misconduct made it more likely for Pong's possession of the Drug Bundles on 14 April 2020 to have been for the purpose of trafficking. This would be an instance of reasoning by propensity; and any probative weight to be accorded to these messages would be outweighed by their prejudicial effect.

The Material Messages

What the Material Messages showed vis-à-vis Pong's state of mind

135 I next address the evidence of the Material Messages. The interpretation of these messages was hotly contested as between the Prosecution and the two accused. In this regard, the responsibility of interpreting the Material Messages rested *solely* with the court: I had to make a finding of fact in relation to the interpretation of these messages, by "sifting, weighing and evaluating the objective facts within their circumstantial matrix and context in order to arrive at a final finding of fact" (see the Court of Appeal's decision in *Eu Lim Hoklai v Public Prosecutor* [2011] 3 SLR 167 ("*Eu Lim Hoklai*") at [44]). Further, the legal burden was on the Prosecution to prove its interpretation of the Material Messages beyond a reasonable doubt. The Court of Appeal's definition of a reasonable doubt as a "reasoned doubt" mandates that all doubt, for which there is a logical reason related to and supported by the evidence presented, must be excluded (see *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [127]; *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 ("*Sakthivel*") at [79], citing *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [55]). The court must be able to state precisely *why* and *how* the evidence supports the Prosecution's theory of the accused's guilt, or (in the case of an acquittal) the defence's theory of the accused's innocence (*GCK* at [138]–[139], citing *Jagatheesan* at [56]).

136 Having examined the Material Messages in their full context, I found that they showed that Pong had received the Drug Bundles with the understanding that he would perform a drop of the Drug Bundles at a date, time, and location to be advised by Soh; and that he was very much aware that Soh was involved in the supply or distribution of heroin. My reasons for this finding were as follows.

(1) Pong knew that the Drug Bundles were intended for sale

137 The Material Messages showed that Pong knew that Soh was a purveyor of heroin, and that the Drug Bundles were intended for the purpose of sale to third parties.

138 Soh had initially asked Pong to collect the Drug Bundles on the premise that it was not a good time to sell heroin and that there was more money to be made from selling methamphetamine ("*Now sell hot like idiot – Sell one cold earn many more*").[164] In my view, the only logical inference to be drawn from Soh's message was that the heroin was intended for a future sale, perhaps when the market for heroin improved. No alternative argument was put forward by the defence to suggest that Soh had asked Pong to collect the Drug Bundles for some other purpose (*eg*, consumption), and indeed, no alternative argument could be supported on the evidence, especially when these messages were read together with the next series of messages sent by Soh from 18:23:57 onwards on 13 April 2020.

139 At 18:24:00 on 13 April 2020, Soh messaged Pong to ask that he "throw" the Drug Bundles that he had earlier collected from Soh ("*My hot at ur there – Later can throw*").[165] In asking Pong to "throw" the Drug Bundles, Soh made it clear that he (Soh) would be proceeding to sell these drugs ("*The hot i go sell*").[166] In this connection, the expert witness PW1 testified in cross-examination that the meaning of the word "throw" depended on the context of the whole conversation in which it was used; and that depending on the context, "throw" could mean passing the drugs to somebody else, leaving the drugs

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164 AB64 at p 31 (S/Ns 19312–19313).

165 AB64 at p 38 (S/Ns 19438–19439).

166 AB64 at p 39 (S/N 19442).

somewhere for somebody else to collect, or leaving them for Soh himself to collect.[167] In my view, the word "*throw*" – as used in the context of the above messages – meant, to perform a "drug drop" *for the purpose of sale to third parties*. Notably, Pong replied without hesitation to ask Soh what time he should proceed with the drop and in what quantity ("*U lmk – What time – In advance… How many – 1?*"), but did not ask Soh who would be collecting the drugs.[168] In other words, as far as Pong was concerned, the identity of the person who would collect the Drug Bundles after the drop was immaterial. What Pong knew was that the Drug Bundles would be sold to third parties as a consequence of him "*throwing*" the Drug Bundles on the advice of Soh.

140 The defence sought to argue that in the above messages, Soh was simply instructing Pong to return the Drug Bundles to Soh. Viewing the messages in chronological order, however, the Defence's narrative appeared highly illogical and improbable. Pong having just collected the Drug Bundles from Soh at 5.18pm, it made no sense for Soh to ask him an hour later (at 6.23pm on the same day) to return the Drug Bundles. Moreover, Soh's instruction to Pong to "throw out" the heroin was prefaced with the express statement that he intended to "go sell" the heroin ("*Later can throw – The hot I go sell*").

(2) Pong needed no persuasion to traffic the Drug Bundles

141 The Material Messages also showed that Pong readily agreed to "*throw*" the Drug Bundles at a time to be advised by Soh in the first instance when Soh requested him to do so ("*U lmk – What time – In advance*"). Further, Pong agreed to "*throw*" the Drug Bundles with the full knowledge that the drugs were

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167 NE 20/02/24 at pp 72:3–18; NE 20/02/24 at pp 78:21–30.

168 AB64 at p 38 (S/Ns 19443, 19446 and 19449).

to be sold to third parties ("*The hot i go sell*"). This showed that Pong needed no persuasion to traffic the Drug Bundles.

142 In addition, Pong's reaction to Soh's First Change of Instructions strongly suggested that he had initially believed the Drug Bundles were to be dropped off for collection by third parties. Pong expressed confusion ("*Hot come back? What u talkikg[talking]*") when Soh told Pong to return the Drug Bundles to Soh. Soh was required to clarify that he intended to "*come take back*" the Drug Bundles. In this connection, I agreed with the Prosecution that the use of the phrases "*come take back*" and "*come pass back*" by Soh would have been unnecessary if Pong had always understood the term "*throw*" to mean a return of the Drug Bundles to Soh.[169]

143 In finding that the Material Messages showed Pong to have needed no persuasion to traffic the Drug Bundles, I noted that the defence had a different narrative. According to Mr Thuraisingam, the series of messages I have described as Soh's Persuasion represented failed attempts by Soh to convince Pong to traffic heroin on Soh's behalf. However, this narrative could not be supported on a plain reading of the messages. The alleged attempt to persuade Pong to traffic the heroin on Soh's behalf came at 20:40:02 on 13 April 2020, after Soh had asked Pong to "*help out*" as and when his "things" came in or when there was a demand for his things ("*When thing come – Or when my leg want – U throw throw*"). Soh explained that because he was at the "top" of CNB's list, he was unable to perform drug drops and he therefore required Pong's assistance. In these messages, no reference was made by Soh to the Drug Bundles at all. It was only sometime later (at 23:12:30) that he asked Pong "*Where my 5 [hot]*". In my view, since Pong had already agreed in their earlier

169 Prosecution's 30/04/24 Submissions at para 65(b)(ii).

text exchange to "*throw*" the Drug Bundles on behalf of Soh, there was simply no need for Soh to seek to persuade Pong.

144 For the reasons explained above, I found that the alleged "persuasion" was entirely unrelated to the trafficking of the Drug Bundles.

(3) Soh never reneged on his intention to sell the Drug Bundles

145 In respect of Soh's Apparent Change of Instructions, I accepted that by 14 April 2020, Soh had indicated that he wanted Pong to return the Drug Bundles to him. In this connection, as I explained earlier (at [96]), I did not think that Soh's Second Change of Instructions could be understood in the manner suggested by the Prosecution, *ie* that Soh had once again changed his instruction by asking Pong to perform a heroin drop for third parties ("*Siao – Batu throw for me*").[170] However, I did agree that what was clear was that even as he requested the return of the Drug Bundles, Soh never reneged on his stated intention to sell the Drug Bundles. In the circumstances, Pong would have known that by dropping off the Drug Bundles back to Soh, such drop-off was intended for the purpose of furthering or facilitating the sale of the Drug Bundles to third parties. Essentially, Pong's intention remained the same throughout, *ie*, to drop off the Drug Bundles at a date, time, and location to be advised by Soh. Pong was indifferent as to whom the ultimate recipient of the Drug Bundles was, but he knew at all times that by dropping off the Drug Bundles as advised by Soh, these drugs would go into the supply and distribution chain to find their way into the hands of third parties.

146 In sum therefore, I found that the Material Messages, properly understood in context, established the following:

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170 AB64 at p 81 (S/Ns 20114–20115).

(a) Soh's instructions at 18:24:00 on 13 April 2020 were clear instructions for Pong to perform a drug drop of the Drug Bundles. Pong agreed to Soh's request and asked for confirmation of the quantity to be "thrown" as well as the time at which he was to do so. Pong was not concerned with the identity of the ultimate recipient of the Drug Bundles.

(b) Soh's messages at around 8.40pm on 13 April 2020 were unrelated to the Drug Bundles. The subject of the Drug Bundles only resurfaced at around 23:12:30 on 13 April 2020.

(c) Soh's messages at 16:11:17 on 14 April 2020 evinced a change of instructions, whereby Soh asked Pong to return the Drug Bundles to him. However, Soh did not renege on his stated intention to sell the drugs: it remained clear that the Drug Bundles were intended for sale to third parties.

Pong's attempt to advance an alternative interpretation of the Material Messages

147 As I alluded to earlier (at [121]), Mr Thuraisingam sought in his closing submissions to advance an alternative interpretation of the Material Messages. According to Mr Thuraisingam, Soh's remarks to Pong about the relative lack of profit to be made from selling heroin at that point ("*Now sell hot like idiot – Sell one cold earn many more*") were actually a "ploy" to get Pong to take possession of the Drug Bundles; and once Pong agreed to do so, Soh tried repeatedly to persuade him to traffic the Drug Bundles by offering him various financial rewards. Pong was "steadfast" in refusing to traffic the said drugs; and it was upon realising this that Soh asked for the drugs to be returned to him.

148 I rejected the Alternative Interpretation. My reasons were as follows.

149 In the first place, the narrative put forward in the Alternative Interpretation appeared to me to be strained; indeed, incredible. Even assuming that Soh wanted Pong to traffic the Drug Bundles to third parties, there was no reason why he should have been coy about saying so, and certainly no reason why he should have needed to trick Pong into taking possession of these drugs first *before* asking for his help to traffic them. Purely as a matter of logic, having Pong first take possession of the drugs did not in any way make it more likely that he would agree to traffic them.

150 Second, the Alternative Interpretation did not in fact accord with the plain and natural meaning of much of what was said in the Material Messages. Instead, the Alternative Interpretation required that the messages be interpreted subject to Mr Thuraisingam's theory about Pong's and Soh's subjective (and unspoken) motives. For example, although Soh had expressly stated in his messages at 13:45:43 and 13:45:47 on 13 April 2020 "(*n)ow sell hot like idiot – Sell one cold earn many more*", the Alternative Interpretation posited that Soh had not meant what he said about the relative lack of profit to be made from selling heroin and that he had made the statement only as a "ploy" to convince Pong to take the Drug Bundles before trying to tempt Pong into trafficking these drugs.

151 Further, while Mr Thuraisingam contended that the series of messages on 13 April 2020 which I have described as "Soh's Persuasion" represented Soh's attempt to convince Pong to traffic *the Drug Bundles*, this contention did not accord with the actual content of these messages. These messages made no references to the Drug Bundles at all, and were instead peppered with general references to Pong "help[ing] [Soh] out" in return for a monthly salary and other benefits such as a rental car and rental of a condominium. Indeed, in asking Pong to "help" him out, Soh also asked if Pong was "with" another individual

called "yp" and remarked that Pong should "change" to Soh ("*U with yp now de? – Change me*" at 20:40:39 and 20:40:41).

152 Third, the submissions made on behalf of Pong appeared internally inconsistent. On the one hand, it was contended that from the outset on 13 April 2020, Pong had understood Soh to be asking him to "safekeep" the Drug Bundles for Soh, and Pong had agreed to do no more than "safekeep". This was why it was "never" Pong's "impression" that he would be facilitating the supply or distribution of heroin by agreeing to hold on to the Drug Bundles. His "expectation" was that he was to "do nothing more than to return [the Drug Bundles] to [Soh]".[171] This was also why Pong was "steadfast" in refusing Soh's repeated suggestions that he traffic the Drug Bundles. On the other hand, it was also argued that only the messages closest in time to the alleged offence reflected Pong's unequivocal intention to return the drugs to Soh, whereas the earlier messages were "too ambiguous" to allow for any conclusions as to whether the Drug Bundles were to be left for collection by Soh or for collection by third parties. With respect, this made no sense. If Pong had already been asked by Soh at the outset to "safekeep" the Drug Bundles and did not expect to do anything more than to return them to Soh, why would the earlier messages between them be "ambiguous" about this arrangement? In my view, Pong appeared to be reverse-engineering his "safekeeping" defence by cherry-picking those WhatsApp messages favourable to his story.

153 Fourth, even if one were to focus only on those messages closest in time to the alleged offence, some of Pong's own communications were plainly inconsistent with the proposition that by this stage, he unequivocally intended to return Drug Bundles to Soh. For example. when told by Soh at 16:11:13 on

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171 Pong's 30/04/24 Submissions at paras 4, 18–19, 23–28.

14 April 2020 to "(c)ome pass back" the drugs ("*Where got – hot – Come pass back – Hot come back*"), Pong's initial response was one of confusion and incomprehension ("*hot come back? – What u talkikg*") – which it should not have been if his "unequivocal intention" by this point was simply to return the drugs to Soh.

154 Fifth, Mr Thuraisingam argued that the testimony of the Prosecution's witnesses provided support for his Alternative Interpretation of the Material Messages. In particular, Mr Thuraisingam (as well as Mr Jumabhoy) placed heavy reliance on the answers elicited from PW1 Assistant Superintendent Faizal in cross-examination, in which PW1 had agreed with Mr Thuraisingam's suggestion (*inter alia*) that Soh's Initial Instructions on 14 April 2020 ("*Can come take my hot – Put ur there*") were ambiguous as to *whom* Pong was instructed to "throw" the Drug Bundles to, and further, that Soh's subsequent instruction at 17:39:23 ("*Batu throw for me*") should be understood as a clear instruction to Pong to return the Drug Bundles to Soh.

155 PW1's answers formed the main basis for Mr Thuraisingam's argument that at the time closest to the charge, Pong only had an intention to return the Drug Bundles to Soh; and that earlier messages were "too ambiguous" to allow for any "proper conclusion" as to whether it was Soh or third parties who would collect the Drug Bundles upon Pong "throwing" them.[172] In similar vein, Mr Jumabhoy argued that based on PW1's testimony, Soh's Initial Instructions did not explain what was intended by either Soh or Pong, whereas the messages subsequent to Soh's Initial Instructions merely disclosed an intention for Pong to return the Drug Bundles to Soh.[173]

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172 Pong's 30/04/24 Submissions at para 18.

173 Soh's 30/04/24 Submissions at paras 42–43.

156 With respect, insofar as defence counsel's arguments were premised on PW1's evidence as to what Soh and/or Pong must have meant by certain remarks in their WhatsApp messages, this was an erroneous and impermissible use of opinion evidence. As an expert witness, PW1's opinion as to the meaning of specialised drug-related terms ("*hot*", "*batu*", "*cold*", "*stone*", "*throw*" etc) was relevant and admissible under s 47 of the EA (see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [64]). However, insofar as PW1 ventured to express his opinion on Soh's and Pong's intentions at the material time the WhatsApp messages were exchanged, such opinions were irrelevant and inadmissible as evidence in the present trial. As the Court of Appeal in *Eu Lim Hoklai* cautioned (at [44]):

> … Ultimately, all questions – whether of law or of fact – placed before a court are intended to be adjudicated and decided by a judge and not by experts. An expert or scientific witness is there only to assist the court in arriving at its decision; he or she is not there to arrogate the court's functions to himself or herself …

157 Ultimately, what Soh and Pong intended to convey to each other in the messages – *eg*, by the use of the word "throw" – was a question of fact for the court to decide based on all the available evidence. In this connection, PW1's expert opinion provided guidance to the court only for the limited purpose of establishing that the meaning of the word "*throw*" would depend on the context of the conversation,[174] and that one possible interpretation of the word "*throw*" – as used in the context of drug transactions – would refer either to "doing a drug drop" or to "pass".[175]

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174 NE 20/02/24 at p 72:9–11.

175 PS21 at para 5.

158 Apart from relying on PW1's opinion about what Soh and Pong intended to convey in their WhatsApp messages, Mr Jumabhoy and Mr Thuraisingam also sought to rely on answers given in cross-examination by two other CNB officers, PW2 Station Inspector Huang and PW4 Deputy Superintendent Oh, when certain suggestions about the meaning of the Material Messages were put to them. For example, reliance was placed on PW2's evidence in agreeing with Mr Thuraisingam that the message "*batu throw for me*" meant that Soh was asking Pong to place the drugs somewhere for Soh to collect.[176] Reliance was also placed on PW4's evidence in agreeing with Mr Thuraisingam that Soh's First Change of Instructions ("*Hot come back*" etc) evinced an intention by Soh to take back the Drug Bundles from Pong;[177] and that Pong did not intend to have anything to do with trafficking diamorphine despite Soh's Persuasion.[178]

159 Clearly, PW2's and PW4's evidence as to what Soh and Pong meant to convey in the Material Messages constituted opinion evidence; and with respect, counsel's attempt to rely on their evidence as the basis for interpreting these messages was yet again an erroneous and impermissible use of opinion evidence. PW2 and PW4 were called by the Prosecution as factual witnesses, having served as the investigation officers involved in the procuring of CCTV footage and the recording of Pong's statements. Unlike PW1, neither PW2 nor PW4 professed to have any expertise in the interpretation of drug-related terminology and slang. In fact, when PW2 was first cross-examined about the use of the word "*throw*" in some of his messages, PW2 was unsure of the meaning of the word "*throw*" and initially suggested that Soh was asking Pong

176 NE 21/02/24 at p 34:3–6.

177 NE 21/02/24 at pp 66:12–68:6.

178 NE 21/02/24 at pp 60:9–65:4.

to "*throw away*" the heroin.[179] In addition, as the Prosecution pointed out, both witnesses were shown only selected messages during cross-examination and were not asked to refer to the rest of the messages or to other evidence adduced at trial. More fundamentally, as factual witnesses, PW2's and PW4's *opinions* on what Soh and Pong intended to convey in the Material Messages were irrelevant and inadmissible, unless the evidence could be brought under s 32B(3) of the EA, which states:

> Where a person is called as a witness in any proceedings, a statement of opinion by him or her on a relevant matter on which he or she is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him or her, is admissible as evidence of what he or she perceived.

160 Plainly, PW2's and PW4's opinions about what the two accused intended to convey to each other did not fall within the category of lay opinion evidence envisaged by s 32B(3) of the EA. Whether Pong had an intention to return the Drug Bundles to Soh, or to leave the Drug Bundles somewhere for third parties to collect, was not something that PW2 nor PW4 had personally observed. Rather, as I noted earlier, it was the court's task to interpret the Material Messages based on the available (and admissible) evidence before the court.

Summary of findings based on the evidence adduced

161 *Per* my findings as set out in [131]–[134] and [135]–[146] above, I was satisfied at the conclusion of the trial that evidence from the Prior Messages and the Material Messages proved beyond a reasonable doubt Pong's knowledge that Soh was a purveyor of heroin who was engaged in the supply or distribution of drugs. Moreover, as I noted at [145], Soh had made clear to Pong that the

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179 NE 21/02/24 at pp 31:30–32:8.

Drug Bundles were intended to be sold at a time when it was financially profitable to do so; and throughout their WhatsApp communications on 13 and 14 April 2020, Soh had never reneged on his stated intention to sell the said drugs. On this basis, Pong clearly knew that keeping the Drug Bundles and subsequently dropping them off on Soh's advice or instructions constituted "in some way part of the process of supply or distribution of the drugs" – regardless of whether he dropped them off for collection by third parties or for return to Soh. Indeed, as I noted earlier (at [145]), Pong was indifferent to the identity of the person(s) who would be collecting the drugs upon drop-off – but this did not change the fact that he knew of Soh's involvement in purveying heroin, and he knew at all times that by dropping off the Drug Bundles as advised by Soh, these drugs would get into the supply and distribution chain.

162 Given my interpretation of the Material Messages, I was also satisfied that the Prosecution had proven beyond a reasonable doubt Soh's knowledge that Pong had obtained the Drug Bundles from him for the purpose of trafficking.

163 In this connection, I would also reiterate the point made by the Court of Appeal in both *Ramesh* (at [114]) and *Roshdi* (at [120]) that in order for the Prosecution to prove the fact of trafficking (or possession for the purpose of trafficking), there is no requirement that they must prove that the accused person was moving the drugs in a particular direction closer to their ultimate consumer, since it would be naive to think that drug syndicates and their various operators engage only in the uni-directional movement of drugs from supplier to dealer to consumer.

Bailment defence

164 I next address Pong's purported reliance on the defence of bailment, which was also referred to as a "safekeeping defence" in the course of the defence's submissions. According to these submissions, as a mere "bailee" of the Drug Bundles for Soh who intended to return the drugs to Soh, Pong should not be liable for possession of the drugs for the purpose of trafficking. In making the submission, the defence relied *inter alia* on the statement by the Court of Appeal in *Ramesh* (at [110]) that:

> … a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking". …

165 In citing the court's decision in *Ramesh*, Mr Thuraisingam challenged the Prosecution's reliance on the subsequent decision by the Court of Appeal in *Roshdi*, arguing that *Roshdi "*[did] not stand for the proposition that a bailee's knowledge that a bailor eventually intends to traffic the drugs renders the bailment to be part of the process of supply or distribution of drugs"[180] and that "a bailee's knowledge that the drugs he was safekeeping would eventually be further trafficked by the bailor does not in itself bar him from the safekeeping defence".[181] Instead, according to Mr Thuraisingam, a "bailee's" knowledge that a bailor intended to traffic the drugs should form only one of the factors to be considered by the court in determining whether the "bailment" formed part of the process of supply or distribution of the drugs. It was submitted that the cases

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180 Pong's 30/04/24 Submissions at para 30.

181 Pong's 30/04/24 Submissions at para 35.

of *Public Prosecutor v Shen Han Jie* [2022] SGHC 103 ("*Shen Han Jie*") and *Munusamy Ramarmurth v Public Prosecutor* [2023] 1 SLR 181 ("*Munusamy*") provided support for this proposition.

166 With respect, the above statement of the law was misconceived and contradicted by what the Court of Appeal actually held in *Roshdi.* In that case, the Court of Appeal emphasised that the key thrust of its reasoning in *Ramesh* at [110] was that the *mere act* of receiving drugs from and returning them to a "bailor" would not *ordinarily* be sufficient in itself to make out the element of trafficking, because such a transfer "would not necessarily form part of the process of distributing drugs to end-users, which is what underlies the principal legislative policy behind the MDA" (at [111] of *Roshdi*). As the Court of Appeal itself held in *Roshdi* at [115], *Ramesh* "did *not* establish the general proposition that any 'bailee' who receives drugs intending to return them to the 'bailor' will *never* be liable for trafficking (or possession for the purpose of trafficking)." Much would depend on the circumstances; and in this respect, it is useful to reiterate the guidance given by the Court of Appeal (at [115]–[116] of *Roshdi*):

> 115 …(T)he key inquiry is whether the "bailee" in question knew or intended that the "bailment" was in some way part of the process of supply or distribution of the drugs.
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> 116 This logically follows from a purposive interpretation of the term "traffic" in the MDA. As we stated in Ramesh (at [108]-[110]), the legislative policy behind the MDA is to target those involve in the supply and distribution of drugs within society. A "bailee" who engages in a "bailment" arrangement knowing or intending that the "bailment" would be part of this process of supply and distribution falls within the class of persons targeted by that legislative policy. Conversely, in the absence of such knowledge or intention, the "bailee" cannot be said to be trafficking in a purposive sense.

167 Mr Thuraisingam's statement of the law on "bailment" defences was also at odds with the decision of the Court of Appeal in *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 ("*Arun*"). In *Arun*, the appellant was

convicted of possession of methamphetamine and diamorphine for the purpose of trafficking. In his appeal against conviction, he sought to invoke the defence of "bailment" by arguing that he had intended to return the drugs to one "Sara". The Court of Appeal rejected the appellant's attempt to invoke the "bailment" defence. The court noted that his evidence was that he had collected the drugs from "Sara" for the purpose of delivering them to someone else who would collect them from him: as such, taking his case at its highest, his purported intention to return the drugs to "Sara" because no one collected them did not constitute him as a "bailee", and was at best an intention to avoid the consequences arising from an abortive attempt to traffic the drugs to that other person (at [33] of *Arun*). Importantly, the Court of Appeal also went on to hold (at [35]) that it agreed with the trial judge that "*in any event*, the appellant had knowledge of "Sara's" involvement in supplying or distributing drugs, *such that his defence of "bailment" must be rejected*." [emphasis added] The Court of Appeal also referenced (at [27]) its decision in *Roshdi*, noting again:

> We held in *Roshdi* that where a "bailee" receives drugs intending to return them to the "bailor", the key inquiry as to whether the "bailee" is liable for trafficking or possession for the purpose of trafficking, is if he knew or intended that the "bailment" was in some way part of the process of supply or distribution of the drugs (see *Roshdi* at [115]). …

168 As for the two cases cited by Mr Thuraisingam, neither case supported his statement of the law on "bailment" defences. In *Shen Hanjie*, the accused was charged with having 25 packets of diamorphine in his possession for the purpose of trafficking. At trial, he raised the defence of "bailment", citing *Ramesh*. The accused claimed that he had only been helping one "Alan" to keep the drugs and would return the drugs to Alan by placing them at various locations for Alan's men to collect. The High Court rejected the accused's "bailment" defence. The court found, firstly (at [153]), that the accused had admitted in a contemporaneous statement that Alan had told him to keep the

drugs to "pass it to others". He did not mention in this contemporaneous statement that he was going to pass the drugs to Alan's men. Second, the court found that the accused had also consistently admitted in a number of his long statements that Alan sent drugs to him so that he could deliver them to other persons; and notably, the accused had never mentioned in these statements that these other persons were Alan's men. In the court's view (at [155]), these admissions indicated that the arrangement between the accused and Alan involved the accused receiving drugs on Alan's behalf and then delivering or sending them to third parties on Alan's behalf. These admissions also demonstrated the accused's awareness that he was delivering drugs to third parties on Alan's behalf. The court concluded, therefore (at [157]), that the accused was in possession of the 25 packets of drugs "with the intention to deliver them to third-party recipient(s) as *per* his usual arrangement with Alan". In short, given that the court found the accused to have been in possession of the drugs with the intention to deliver them to third-party recipients, this was not even a case of "bailment" of the drugs. The decision was upheld by the Court of Appeal in *Shen Hanjie v Public Prosecutor* [2024] SGCA 6.

169 In *Munusamy,* the appellant was convicted of possession of diamorphine for the purpose of trafficking. The diamorphine was found in a red bag which was in turn found in the rear box of the appellant's motorcycle. On appeal, the appellant argued that the trial judge erred in rejecting his defence of "bailment". The appellant contended that he had simply been storing the red bag for one "Saravanan", and that one "Boy" (who worked for Saravanan) would retrieve it from the rear box of the motorcycle at a later time. The Court of Appeal rejected the appellant's contention. The court noted (at [58]) that the appellant's claim of being a "bailee" of the drugs rested on his assertion that Boy had placed the bag of drugs in the rear box, and that Boy would later retrieve them. However, the evidence did not support the appellant's claim that Boy was going to retrieve

the bag of drugs. First, despite disclaiming ownership of the drugs, the appellant had not mentioned in any of his statements to CNB that Boy would return to retrieve the drugs from the rear box. Second, the appellant's claim as to having left the rear box unlocked for Boy was found to be unsustainable on the basis of objective evidence (see [59]–[64] of *Munusamy*).

170 Importantly, having found no evidence that Boy would retrieve the drugs, the Court of Appeal went on to hold that even if it accepted the appellant's claim that Boy would retrieve the drugs, he would not be able to establish the "bailment" defence on the balance of probabilities, because it was clear "that the appellant knew or intended that his storing of the Drugs was to be part of the process of supply or distribution of the Drugs, *ie,* he knew that the Drugs were going to be moved onward to the end-users" (at [68]–[71] of *Munusamy*); and as the court had held in *Roshdi* and *Arun,* a "bailee" who knew or intended that the "bailment" was to be part of the drug supply chain would fall within the class of persons targeted by the legislative policy behind the MDA. Such a person would be unable to avail himself of the bailment defence and would still be liable for trafficking / possession for the purpose of trafficking (at [66] of *Munusamy*). In short, therefore, the court's reasoning in *Munusamy* directly contradicted Mr Thuraisingam's proposition that "a bailee's knowledge that the drugs he was safekeeping would eventually be further trafficked by the bailor does not in itself bar him from the safekeeping defence".[182]

171 I note that in citing *Munusamy* as an authority for his proposition, Mr Thuraisingam submitted that the court in *Munusamy* did not find the appellant's knowledge of Saravanan's involvement in the drug trade to be dispositive and merely "analysed" this knowledge "as a factor going towards the presence of a

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182 Pong's 30/04/24 Submissions at para 35.

systematic arrangement between [the appellant] and Saravanan".[183] With respect, this was an erroneous reading of the court's judgment in *Munusamy*. In that case, the court noted (at [67] that whether an accused knew or intended that the "bailment" was to be in some way part of the process of supply or distribution of the drugs could be inferred from the surrounding objective facts. Reading [68]–[71] of the judgment, it was clear that what the court held was that the appellant knew the drugs were going to be moved onwards to the end-users, and that it reached this conclusion because of two reasons: first, it was illogical for the appellant to think that Boy would take the drugs back *into* Malaysia to return to Saravanan when Saravanan lived in Malaysia, and the appellant knew that Saravanan would use someone to bring drugs *into* Singapore; second, the appellant "clearly had a systematic arrangement with Saravanan". It was in the context of the second reason that the court alluded to the various pieces of evidence which demonstrated this "systematic arrangement" – including the appellant's admission to having worked for Saravanan previously, having received remuneration for his help, and knowing that Saravanan was involved in the drug trade.

172 For the reasons explained, I rejected Mr Thuraisingam's submission as to how the decision in *Roshdi* should be understood. As to Pong's attempt to invoke the defence of bailment, I found that such a defence was not available to Pong on the facts. As I have explained earlier, based on the evidence adduced, I accepted that the Prosecution was able to prove beyond a reasonable doubt that Pong obtained the Drug Bundles from Soh for the purpose of dropping them off at a date, time and location to be advised by Soh. Pong was clearly indifferent to the identity of the person(s) who would be collecting the drugs upon drop-off: he was agreeable to "*throwing*" the drugs when told that Soh

183 Pong's 30/04/24 Submissions at para 34.

wanted to "*go sell*" them, and he was just as agreeable to "*throwing*" the drugs when subsequently told that Soh wanted them back. Based on the Prior Messages and the Material Messages, he knew of Soh's involvement in the supply or distribution of heroin, and he knew at all times that by dropping off the Drug Bundles as advised by Soh, these drugs would go into the supply and distribution chain to make their way to end-users.

173 I add that while the Material Messages did not show Soh and Pong coming to a specific agreement about any financial benefit which might accrue to Pong from dropping off the Drug Bundles as advised by Soh, the absence of a financial reward was not fatal to a finding that an alleged "bailment" was part of the process of supply or distribution of drugs. This was expressly emphasized by the Court of Appeal in *Roshdi* (at [119]) when it cautioned that while the presence of factors such as the receipt of remuneration or reward by the "bailee" for safekeeping of the drugs "could point towards a finding that the accused person was trafficking in drugs or in possession of drugs for the purpose of trafficking, their *absence* does not mean that the 'bailee' was therefore not acting as part of the process of supply or distribution" [emphasis in original]. The key inquiry remained whether the "bailee" knew or intended that the "bailment" was part of the process of supplying or distributing drugs; and if he did, he would be liable *even if* he did not receive any reward, the "bailment" was a one-off occurrence, or its purpose was not to evade detection (at [119] of *Roshdi*).

Adverse inferences against Soh and Pong

174 Finally, I also found it appropriate in this case for an adverse inference to be drawn against both Soh and Pong pursuant to s 261 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). On the evidence adduced, the

Prosecution was able to satisfy its evidential burden to prove that Pong possessed the Drug Bundles for the purpose of trafficking; and based on my interpretation of the Material Messages, the Prosecution's case called for an explanation that only the accused person can give.

175 As against Pong, I found that an adverse inference should be drawn for two reasons. First, Pong indisputably lied to the investigation officers in the course of investigations. In this connection, the Court of Appeal in *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 ("*Ilechukwu*", at [153]) held that the court's power to draw adverse inferences was a discretionary one based on the specific facts at hand (as seen from the wording of s 261 CPC); and that deliberate untruths or lies told by an accused could invite the drawing of adverse inferences (at [151] of *Ilechukwu*). The court held that the *Lucas* principles (*R v Lucas* [1981] QB 720) could be viewed as a set of guidelines for aiding the court's determination of whether to draw an adverse inference predicated on the lies and omissions of an accused person. In determining whether lies and/or omissions of an accused person might be used to corroborate evidence of guilt, the following requirements must be satisfied:

(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.

176 In the present case, it was not disputed that throughout the course of investigations, Pong maintained the fiction that he did not know that the Drug Bundles contained heroin, claiming instead that he believed they contained Viagra tablets. He also concocted an elaborate tale about how the Drug Bundles originated from one "Ah Cute" (see above at [16]), and he claimed in his further statements that he did so in order to protect Soh (see above at [17]). That Pong in fact knew of the nature of the drugs in his possession at all material times was plainly seen from his use of the terms "*hot*" and "*batu*" in the Material Messages when communicating with Soh about the Drug Bundles. In the circumstances, there could be no doubt that Pong had lied deliberately in the investigative statements, that these lies were material to the issue of his knowledge of the nature of the drugs in his possession, and that the independent evidence available proved his statements to be lies. I was also satisfied that the lies stemmed from a realisation of guilt and a fear of the truth. Pong's lies deliberately denied all knowledge that the Drug Bundles contained heroin when the unchallenged evidence pointed overwhelmingly to his knowledge. By choosing not to give evidence to explain his lies, there was simply *no explanation* for these lies – save that they were made in realisation of his guilt and out of a fear of the truth.

177 Second, by remaining silent at the close of the prosecution's case when the state of the evidence warranted an explanation that only he could have provided, Pong's silence was also corroborative of his guilt. Mr Thuraisingam cited the case of *Took Leng How v Public Prosecutor* [2006] 2 SLR(R) 70 ("*Took Leng How*") (at [43]) for the proposition that the accused's silence could not be used as a make-weight to fill any gaps in the Prosecution's case. However, what the Court of Appeal actually said in *Took Leng How* was that it would be a grave error for the court to draw an adverse inference of guilt if such an inference were "used solely to bolster a weak case". The court also went on

to stress (citing Professor Tan Yock Lin's observations in *Criminal Procedure* vol 2 (LexisNexis, 2005) at ch XV para 3003 and the Australian case of *Weissensteiner v R* (1993) 178 CLR 217) that an adverse inference is properly drawn if the accused's silence affects the probative value of the evidence given; and that where evidence has been given "which calls for an explanation which only the accused can give, then silence on his part may lead to an inference that none is available and that the evidence is probably true". Applying these principles, it was clear that the present case was one where Pong's silence had a material bearing upon the probative value of the Material Messages. If Pong's position was that he received the Drug Bundles with the intention all along to return them to Soh, then he should have taken the witness stand to explain (*inter alia*) why he thought that Soh would want the Drug Bundles back so soon after having handed them over, why he felt the need to ask Soh "(h)ow many" of the Drug Bundles he should "throw" when told by Soh to "throw out" the bundles, and why he initially expressed confusion when Soh asked for the return of the bundles. His failure to explain the various aspects of the Material Messages which called for an explanation allowed for the drawing of an adverse inference, namely that there was simply no explanation to support his interpretation of the Material Messages.

178 The second reason for drawing an adverse inference against Pong was equally applicable to Soh. Soh's position was that he *never* instructed Pong to traffic drugs on his behalf, and he had no knowledge that Pong was in possession of the Drug Bundles for the purpose of trafficking. This was not borne out at all from a plain reading of the Material Messages. The fact that Soh remained silent in the face of the Prosecution's evidence further reinforced my interpretation of the Material Messages.

Conclusion on the totality of the evidence

179 To sum up, the key issue in contention at the close of the trial was whether Pong was in possession of the Drug Bundles *for the purpose of trafficking*. The Purpose Element was the only element of the charge under s 5(1)(*a*) read with s 5(2) MDA which Pong challenged. For the reasons explained in these written grounds, I found that the Prosecution was able to prove beyond a reasonable doubt that Pong was in possession of the Drug Bundles in his possession for the purpose of trafficking. I therefore convicted Pong of the charge under s 5(1)(*a*) read with s 5(2) MDA.

180 As for Soh, he did not put forward a positive case in respect of the interpretation of the Material Messages. Instead, his defence was premised on the assertion that the element of the Abettor's Knowledge in the abetment charge against him could not be made out. According to Soh, since Pong had no intention to traffic the Drug Bundles and was not in possession of the said drugs for the purpose of trafficking, Soh himself could not have known of any such intention on Pong's part. As I explained above, however, I found that the Prosecution was able to prove beyond a reasonable doubt that Pong's possession of the Drug Bundles was for the purpose of trafficking. Given the evidence adduced (including, in particular, the content of the Material Messages), there could not be a reasonable doubt that Soh knew that Pong had possession of the Drug Bundles; he knew of the nature of the drugs in Pong's possession; and he knew that Pong intended to traffic the drugs (*Mohammad Azli* at [46]). Accordingly, I convicted Soh of the abetment charge under s 5(1)(*a*) read with s 12 of the MDA.

Conclusion

181 Having convicted Soh and Pong of the respective charges against them, I was also satisfied that the alternative sentencing regime in s 33B of the MDA was inapplicable in the present case.

182 In respect of Soh, Mr Jumabhoy put forward the argument that Soh's involvement in the offence was limited to transporting the drugs to Pong, after which he was involved merely in offering to relay information to Pong regarding subsequent deliveries and in offering to collect the Drug Bundles from Pong. According to Mr Jumabhoy, there was no evidence as to what Soh intended to do with the Drug Bundles after Pong returned these to him. Mr Jumabhoy contended that Soh's conduct fell within the scope of acts incidental to the "transporting, sending or delivering" of a controlled drug.[184] On the other hand, the Prosecution submitted that Soh had shown a clear intention to sell the Drug Bundles, and that this was dispositive of the issue as to whether he was a courier.[185] This conclusion was buttressed by the fact that Soh was driven by profit and was the decision-maker on the date, time and location for Pong to deliver the Drug Bundles.[186]

183 Having regard to the evidence adduced in this case and the findings I made, I found no basis for Mr Jumabhoy's submissions. The characterisation of Soh's conduct as merely "relaying" information to Pong was wholly unsupported by the evidence. Further, the WhatsApp messages exchanged between Soh and Pong showed clearly that the instructions given to Pong

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184 1st Defendant's Submissions on Sentence dated 23 August 2024 ("Soh's 23/08/24 Submissions") at paras 16–21.

185 Prosecution's Submissions on Sentence dated 23 August 2024 ("Prosecution's 23/08/24 Submissions") at paras 19–20.

186 Prosecution's 23/08/24 Submissions at paras 20(a)–20(b).

originated from Soh himself. It should be remembered that in seeking to argue that his conduct fell within one of the permitted types of activities stipulated in s 33B(2)(*a*)(i) to s 33B(2)(*a*)(iv) of the MDA, Soh bore the burden of proof: *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 ("*Zainudin*") at [2] and [109]. The evidence adduced in the course of the trial showed that right from the beginning, Soh had expressed a clear intention to sell the Drug Bundles ("*The hot i go sell*"). At no point did Soh renege on this stated intention. As the Court of Appeal has reiterated on multiple occasions, an intention to sell the drugs is dispositive of the issue as to whether an accused may be a courier: see *Public Prosecutor v Chum Tat Suan* [2015] 1 SLR 834 at [62] and *Zainudin* at [86]. Further, I agreed with the Prosecution that the tenor of the Material Messages showed that Soh wielded executive decision-making power in relation to the time and place for the drop of the Drug Bundles to take place. By remaining silent at the close of the Prosecution's case, Soh failed to adduce any evidence to suggest that the instructions he provided to Pong had originated not from him but from a third party.

184 In sum, therefore, I found that Soh was unable to prove on a balance of probabilities that his conduct fell within one of the permitted types of activities stipulated in s 33B(2)(*a*)(i) to s 33B(2)(*a*)(iv) of the MDA. In any event, Soh was not issued a certificate of substantive assistance pursuant to s 33B(2)(*b*) of the MDA.[187]

185 In respect of Pong, I was satisfied that Pong's role in the offence was limited to that of a courier. Based on the findings of fact I reached in this case, Pong's role was limited to performing a drop of the Drug Bundles at a time and location to be advised by Soh. He appeared to have little executive decision-

[187] NE 08/07/24 at p 16:22–32.

making powers and was content to follow Soh's instructions. As such, his conduct clearly fell within the scope of "transporting, sending or delivering a controlled drug" as set out in s 33B(2)(*a*)(i) of the MDA. The Prosecution also indicated that it did not object to the submission that Pong's role was that of a courier.[188] However, Pong too was not issued a certificate of substantive assistance, which rendered him similarly ineligible for the alternative sentencing regime in s 33B(2) of the MDA.[189]

186 Having found Soh and Pong guilty of their respective charges and being satisfied that the alternative sentencing regime in s 33B(2) of the MDA was inapplicable, I imposed the mandatory death penalty on both Soh and Pong.

Mavis Chionh Sze Chyi
Judge of the High Court

Jiang Ke-Yue, Wuan Kin Lek Nicholas, Cheah Wenjie and Koh Yi Wen (Attorney-General's Chambers) for the Prosecution;
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Eugene Singarajah Thuraisingam, Ng Yuan Siang (Eugene Thuraisingam LLP), Chooi Jing Yen and Chen Yongxin (Chooi Jing Yen LLC)for the second accused.

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188 NE 08/07/24 at p 16:10–13.

189 NE 08/07/24 at p 17:1–13.