

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 38

Court of Appeal / Criminal Appeal No 22 of 2022

Between

Mohammad Shaffy bin Hassan

... Appellant

And

Public Prosecutor

... Respondent

GROUND OF DECISION

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

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Mohammad Shaffy bin Hassan

v

Public Prosecutor

[2026] SGCA 38

Court of Appeal — Criminal Appeal No 22 of 2022
Tay Yong Kwang JCA, Steven Chong JCA and Ang Cheng Hock JCA
2 July 2026

25 August 2026

Ang Cheng Hock JCA (delivering the grounds of decision of the court):

1 Mohammad Shaffy bin Hassan (“Appellant”) was convicted by a judge sitting in the General Division of the High Court (“Judge”) of one charge of possession of diamorphine (otherwise referred to as heroin) for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). The Judge rejected the Appellant’s defence that he had collected a mistaken consignment of heroin and did not intend to traffic any of the three packets of heroin, as he had only ordered ecstasy from his supplier. As the Appellant was not issued a certificate of substantive assistance and was not found to be a courier under s 33B(2) of the MDA, he was sentenced to the mandatory death penalty under s 33(1) read with the Second Schedule of the MDA (*Public Prosecutor v Mohammad Shaffy bin Hassan* [2022] SGHC 111 (“GD”)).

2 CA/CCA 22/2022 (“CCA 22”) is the Appellant’s appeal against his conviction and sentence. CCA 22 is a case where, on appeal, the Appellant sought to rely on a defence that was mutually inconsistent with his primary defence at trial. Specifically, the Appellant ran the defence that he had intended to order and traffic only two packets of heroin rather than three, and that he had collected the third packet by mistake. On this basis, the Appellant submitted that the Prosecution had failed to prove beyond a reasonable doubt that he had possessed the third packet for the purpose of trafficking, which would have brought the quantity of heroin he intended to traffic below the threshold attracting the mandatory death penalty.

3 In considering a new defence that is wholly inconsistent with an accused person’s primary defence at trial, it is well-established that an appellate court will have regard only to the evidence led at trial (*Mohamed Kunjo v Public Prosecutor* [1977-1978] SLR(R) 211 (“*Mohamed Kunjo*”) at [19]–[20]; *Mohd Suief bin Ismail v Public Prosecutor* [2016] 2 SLR 893 (“*Suief*”) at [25]–[26], [34]; *Chandroo Subramaniam v Public Prosecutor* [2021] SGCA 110 (“*Chandroo Subramaniam*”) at [83]). The key question before this court was thus whether the Appellant was able to show that the Judge’s finding that there was no reasonable doubt that he intended to traffic the third packet of drugs was plainly wrong or against the weight of the evidence based on the evidence led at trial.

4 On 2 July 2026, we heard and dismissed the Appellant’s appeal in CCA 22. These are the grounds of our decision.

Facts surrounding the arrest

5 For the purpose of this appeal, we do not propose to repeat the facts in full, save to highlight the facts which are salient to this appeal. The parties’ factual accounts were summarised in the GD at [4]–[28].

Background to the Appellant’s drug operations

6 In early 2018, the Appellant came to know one “MB”. According to the Appellant, MB would give him instructions on the orders to place with a Malaysian drug supplier, one “M2”. The Appellant would then place orders directly with M2 and M2 would inform him when and where to collect the drug orders. MB would pay the Appellant \$300 for each delivery.

Events leading up to the Appellant’s arrest

7 On 19 June 2018, MB instructed the Appellant to order “2 packets”. The Appellant proceeded to send a WhatsApp message to M2 saying, “tomorrow 2” in Malay. For completeness, we noted that the Appellant tended to communicate in a mixture of English and Malay. We adopt the English translations throughout these grounds, save where the original wording is necessary to preserve the context of the communications.

8 On 20 June 2018, at about 7.00am, M2 sent a WhatsApp message to the Appellant informing him that his order was ready for collection. Sometime that evening, the Appellant collected the drugs from the vicinity of Jurong Bird Park (“JBP”). The Appellant claimed that he had collected a white plastic bag containing the drugs (“Plastic Bag”). That same night at about 11.07pm, the Appellant sent a WhatsApp message to M2 stating “[d]one boss” to inform M2 that the drugs had been collected.

9 The Appellant claimed that the drug orders were to be delivered to two customers. Specifically, one packet was to be delivered to “Wak” at Boon Lay Mall for approximately \$3,000 and another packet was to be delivered to one Mohamed Hanafiah (also known as “Scar”) (“Hanafiah”) at Macpherson for \$3,200. As Wak had not picked up the phone and Hanafiah was unable to collect the goods that day, the Appellant brought the drugs back to his flat (“Unit”).

10 On 21 June 2018, at about 4.00am, the Appellant claimed to have opened the Plastic Bag and discovered two big bundles wrapped in black tape (Exhibits A1A1 and A1A2) and one small bundle wrapped in blue tape (Exhibit A1A3). He “felt something was wrong because [he] had ordered 2 packets but there were 2 big packets and 1 small packet inside the [P]lastic [B]ag”. It should be noted that, on appeal, the Appellant’s case on what was “wrong” about the bundles shifted from the position that he took at trial – at trial, the Appellant claimed that he had ordered two packets of ecstasy instead of three packets of heroin; on appeal, the Appellant claimed that he had ordered two packets of heroin, instead of three.

11 The Appellant proceeded to unwrap the black and blue tape from the bundles in Exhibits A1A2 and A1A3 respectively but left the bundle in Exhibit A1A1 intact. He then removed one of the small packets from Exhibit A1A3 (which contained a few small packets) and smashed it on the outside to make its contents powdery. He then took a bit of powder from the small packet, placed it on a foil, burnt it, and smoked it. As he had damaged this small packet in the process of smashing it, the Appellant transferred its remaining contents into a new small plastic packet (Exhibit A1A3B) and placed this new small packet into Exhibit A1A3.

12 That same day at about 10.58am, Hanafiah texted the Appellant “Today” along with a thumbs-up emoji, which he claimed was to arrange for collection of one “batu” of heroin. At around 5.00pm, the Appellant replied that he would meet Hanafiah at about 7.00pm.

13 On the same day, earlier at about 4.26pm, the Appellant received a call from one “Danny”. The Appellant claimed that, during this phone call, Danny asked if he was going to Haig Road, to which the Appellant then asked Danny if MB would be at Haig Road as he wanted to “tell [MB] about the wrong stuff” so as to “make arrangement[s] to exchange”. The Appellant claimed that he intended to meet MB at Haig Road at or around 7.00pm and to deliver the drugs to Hanafiah thereafter.

14 Before leaving his Unit, the Appellant placed Exhibits A1A1, A1A2 and A1A3 into an NTUC plastic bag (Exhibit A1A). Exhibit A1A was then placed into his Gucci bag (Exhibit A1). The Appellant then claimed that he had left his Unit at about 7.00pm to fetch his girlfriend before heading to Haig Road.

The Appellant’s arrest and searches conducted following his arrest

15 On 21 June 2018, at about 7.35pm, a vehicle driven by the Appellant (“Car”) was intercepted by Central Narcotics Bureau (“CNB”) officers on a slip road near an expressway exit. Both the Appellant and his girlfriend were arrested. The Car was then driven by a CNB officer, with the Appellant and another CNB officer seated in the backseat, to a multi-storey carpark (“Carpark”).

16 At about 7.45pm, Sergeant Dadly (“Sgt Dadly”) asked the Appellant whether he had anything to surrender, to which the Appellant replied that “[t]here are two parcels in my bag”.

17 At about 7.50pm, Staff Sergeant Au Yong (“SSgt Au Yong”) did a search of the Car in the Carpark. On the floorboard of the driver’s seat, he found a “Gucci” sling bag (Exhibit A1), which contained the NTUC plastic bag (Exhibit A1A), which in turn contained the following items:

- (a) One black bundle (Exhibit A1A1) containing a packet of brown granular substances (Exhibit A1A1A) weighing 450.9g, which was subsequently analysed and determined to contain not less than 6.29g of diamorphine;
- (b) One packet (Exhibit A1A2) containing one packet of brown granular substances (Exhibit A1A2A) weighing 449.9g, which was subsequently analysed and determined to contain not less than 7.71g of diamorphine; and
- (c) One packet (Exhibit A1A3) which, based on SSgt Au Yong’s statement, contained “four (04) packets of brown granular substances”. However, it should be noted that, later, when the exhibits were being processed at CNB Headquarters (“CNB HQ”), Exhibit A1A3D was found to contain a smaller packet, Exhibit A1A3D1 (“Extra Packet”), of granular substances. The circumstances surrounding the discovery of the Extra Packet will be elaborated on at [21] below. Exhibits A1A3A, A1A3B, A1A3C, and A1A3D weighed a total of 142.65g, and were subsequently analysed and determined to contain not less than 2.31g of diamorphine. The Extra Packet weighed 3.57g, and was subsequently analysed and determined to contain not less than 0.03g of diamorphine.

18 The items found in the Car and the Appellant’s personal properties were then packed into tamper-proof bags. The tamper-proof bags were all sealed and placed into a duffel bag (“Duffel Bag”). The items that were recovered during

a subsequent search of the Appellant's Unit were also placed and sealed in tamper-proof bags, which were then placed in the Duffel Bag. After the search of the Unit concluded, the Appellant was escorted to CNB HQ.

19 Additionally, while the search of the Car was ongoing at about 9.19pm, the Appellant received a WhatsApp call from M2 on his handphone which he did not answer. At about 9.26pm, Sgt Dadly directed the Appellant to return M2's call and the Appellant spoke to M2 using the loudspeaker function in Sgt Dadly's presence. Sgt Dadly transcribed the contents of this conversation in his field diary. M2 then called the Appellant a second and third time at about 9.39pm and 10.11pm respectively. Both conversations were similarly transcribed by Sgt Dadly.

At CNB HQ

20 Shortly after arriving at CNB HQ, the CNB officer who was holding onto the Duffel Bag then handed the exhibits in the Duffel Bag to Investigating Officer Neo Zhan Wei ("IO Neo"), who then handed the exhibits to the Forensic Response Team officers ("FORT Officers"), namely Senior Staff Sergeant Nurliyana Bte Mohamed Idros ("FORT Officer Nurliyana") and Home Team Specialist Haifaa binte Mohamed Anwar ("FORT Officer Haifaa").

21 The Appellant was escorted to a room adjacent to the Exhibit Management Room ("EMR"), where he had a clear view of the EMR as the two rooms were separated by a glass window. The FORT Officers unsealed the tamper-proof bags and laid the exhibits on a table to facilitate photography, DNA collection, marking and weighing of the exhibits. When they laid Exhibit A1A3D on the table, IO Neo noticed a packet of granular/powdery substance within Exhibit A1A3D. He thus instructed FORT Officer Nurliyana to remove the Extra Packet from Exhibit A1A3D and marked it as Exhibit A1A3D1. The

Exhibits were all subsequently sent off for analysis by the Health Sciences Authority (“HSA”).

The proceedings below

The Prosecution’s case at trial

22 At trial, to establish the charge of possession of a controlled drug for the purpose of trafficking, the Prosecution argued as follows:

(a) First, the Prosecution argued that the Appellant had actual possession of the drugs at the time of his arrest, and that the chain of custody of the drug exhibits was intact from the point of seizure through exhibit processing and until their submission to the HSA.

(b) Second, the Prosecution contended that the Appellant was unable to, on a balance of probabilities, rebut the presumption under s 18(2) of the MDA that he knew the nature of the drugs. This was because the Appellant had admitted to knowing that Exhibits A1A2 and A1A3 contained heroin, whilst remaining indifferent to the contents of Exhibit A1A1.

(c) Third, the Prosecution argued that the Appellant had possession of the drugs for the purpose of trafficking which could be inferred from (i) the large quantity of heroin in his possession, which was not for his consumption; and (ii) the drug trafficking paraphernalia seized from his Unit.

23 The Prosecution further contended that the Appellant’s case (*ie*, that he had ordered ecstasy pills from his supplier and had mistakenly collected heroin) was inherently incredible, being contradicted by his own investigative

statements and the objective evidence adduced at trial. In particular, the Appellant had arranged a delivery to Hanafiah despite allegedly being in possession of the heroin that he claimed to have mistakenly collected, and his conduct after collection was inconsistent with a person who intended to return it.

24 Finally, the Prosecution contended that even on the Appellant's own case, the elements of the offence had been established:

- (a) As to possession, the Appellant did not dispute his possession of six out of seven packets in the drugs exhibits (leaving aside Exhibit A1A3D1), which contained not less than 16.31g of diamorphine out of the 16.34g seized. This was still above the capital threshold.
- (b) As to knowledge, the same argument at [22(b)] above applied.
- (c) As to trafficking, the Appellant admitted to intending to return the bundles to M2, which would itself constitute trafficking given his knowledge of M2's involvement in drug supply and distribution and his consequent awareness that doing so would facilitate that supply and distribution. In any event, the bailment defence was unavailable as there had been no prior arrangement with M2 for the safekeeping of the drugs at the point of collection.

25 On sentence, the Prosecution submitted that the Appellant was not a courier, relying on Hanafiah's testimony that he had directly ordered heroin from the Appellant.

The Appellant's case at trial

26 The Appellant contended that the Prosecution had failed to prove its case beyond a reasonable doubt:

(a) As to possession, the Appellant challenged the chain of custody of the drug exhibits, specifically by denying possession of the Extra Packet which was unaccounted for by the CNB officers at the time of seizure. The Appellant also challenged the accuracy of the method used by the HSA analyst to analyse the weight of the drug exhibits.

(b) As to knowledge, the Appellant denied that he had actual knowledge that the drugs were heroin, arguing that he only *suspected* that they contained the substance. The Appellant further contended that, since he had not opened Exhibit A1A1, he could not have known its contents, even if he knew that Exhibits A1A2 and A1A3 contained heroin. Accordingly, knowledge could only be attributed to him in respect of the two bundles totalling 10.05g of diamorphine, instead of the amount of 16.34g which he was charged with. It bears reiteration that the Appellant's primary defence at trial was that he mistakenly believed that the bundles he collected contained ecstasy pills because that was what he had ordered from M2. Upon discovering that they contained heroin, he intended to return them to his supplier (*ie*, "Knowledge Defence").

(c) As to trafficking, the Appellant contended that he had not intended to traffic the drugs, as he had at all material times intended to return them.

27 As to sentence, the Appellant contended that he was a mere courier, his role being limited to ordering drugs on behalf of MB, collecting them, and delivering them to recipients.

The Judge's decision

28 The Judge found that the Prosecution had proved the charge against the Appellant beyond a reasonable doubt. Since the Prosecution had not issued the Appellant a certificate of substantive assistance and the Judge found that he did not qualify as a courier within the meaning of s 33B(2)(a) of the MDA, she imposed the mandatory death sentence (GD at [2] and [122]–[126]).

Chain of custody & mass of heroin

29 The Judge found that the Prosecution had established beyond a reasonable doubt the chain of custody of the seized drug exhibits (GD at [32]).

30 First, the Judge rejected the Appellant's claim that he had not witnessed the search of the Car or the kitchen of the Unit and did not know what items were recovered from those locations. The Judge accepted the testimony of several CNB officers who stated that the Appellant was standing near the Car and kitchen entrance, observing the search and seizure of items. Crucially, the Appellant did not dispute the items recovered from the Car. Moreover, the items recovered from the kitchen of the Unit were not material to the integrity of the chain of custody of the drugs, since the drugs themselves were found in the Car (GD at [33]–[35]).

31 Second, the Judge rejected the Appellant's submission that the CNB officers' inability to account for the Extra Packet until it was discovered during the exhibit processing cast doubt on the integrity of the chain of custody of the

drugs. The Judge accepted the CNB officers' account of how the seized drug exhibits were sealed in tamper-proof bags and placed in the Duffel Bag, and how they were passed from one CNB officer to another until they were in exhibit processing (GD at [37]). In particular, regarding the Extra Packet, the Judge was satisfied that the CNB officers' initial assumption that there were only four packets in Exhibit A1A3 was "unremarkable". The officers had recorded their observations based solely on the external appearance of Exhibit A1A3, and since the Extra Packet was concealed inside Exhibit A1A3D, it remained undetected during their initial examination. Consequently, the Extra Packet was only discovered when the FORT Officers were unsealing the tamper-proof bags in the Duffel Bag (GD at [38]–[41]). Significantly, the Judge found that, even excluding the Extra Packet, the total weight of heroin in the remaining packets of drugs would still have exceeded the threshold that attracted the death penalty (GD at [46]).

32 Further, the Judge rejected the Appellant's submission that the process of drug analysis by the HSA was inherently defective. The Judge accepted the process by which the drugs were weighed and analysed, and found that applying a 15% variation during the drug quantitation process was in fact in the Appellant's favour (GD at [51]–[55]).

Possession of the drugs

33 The Judge found that the Appellant's possession of the drugs was clearly established: he had placed the drugs in the Gucci bag, which was then found in the Car. Crucially, the Judge reasoned that the Appellant's own defence – that he intended to exchange the three bundles for ecstasy pills upon discovering that they contained heroin – was predicated upon his possession of the drugs (GD at [57]).

Knowledge of the nature of the drugs

34 The Judge found that the Appellant had failed to rebut the presumption of knowledge under s 18(2) of the MDA, which had been relied on by the Prosecution. The Judge went further to find that the Appellant had actual knowledge that the drugs were heroin when he placed the drugs in the Car on 21 June 2018, when he saw the contents of Exhibits A1A2 and A1A3 in his Unit, and even earlier when he collected the Plastic Bag at JBP since that was what he had ordered from M2 (GD at [58] and [112]).

35 In relation to the presumption under s 18(2) of the MDA, the Judge found that the Appellant had failed to rebut it because he remained indifferent to the contents of Exhibits A1A1 and A1A2 despite having the means and opportunity to verify them, whilst he had confirmed that Exhibit A1A3 contained heroin after smoking some of it (GD at [58] and [62]).

36 As mentioned earlier, the Judge found that the Appellant actually knew that all three bundles contained heroin when he saw the contents. The Appellant knew that Exhibits A1A2 and A1A3 contained heroin from inspecting their contents and smoking some of Exhibit A1A3. Given that Exhibit A1A1 resembled the unwrapped Exhibit A1A2, the Judge also found that the Appellant knew that Exhibit A1A1 contained heroin. This conclusion was reinforced by the Appellant's own defence, which relied on his knowledge of the nature of the drugs to argue that he had collected the wrong type of drugs in *all three* bundles (GD at [60]–[61]).

37 The Judge also found that the Appellant knew the nature of the drugs when he placed his order with M2 on 19 June 2018 and collected the Plastic Bag at JBP (GD at [58] and [63]). This finding was based on six main reasons.

(a) First, the Judge accepted Hanafiah's testimony that he had ordered one "batu" of heroin from the Appellant for collection on 21 June 2018, which was corroborated by WhatsApp messages and phone call records (GD at [64] and [66]). Hanafiah testified that since June 2018, he had ordered heroin from the Appellant twice or thrice before (GD at [64]). Hanafiah further testified that he had ordered heroin as he had ordered one "batu" which referred to heroin, and he would have used the codeword "ikan" if he had intended to order ecstasy pills (GD at [68]). The Judge accepted Hanafiah's testimony, given that he had no reason to fabricate evidence that would implicate himself (GD at [65]). The fact that the Appellant intended to deliver heroin to Hanafiah was further inferred from the Appellant's decision to omit mentioning in his fourth statement this conversation with Hanafiah after collecting the drugs on 20 June 2018 (GD at [72]–[73]).

(b) Second, the Judge disbelieved the Appellant's explanation that he had assumed the "2 packets" MB instructed him to order were ecstasy pills. This assumption was allegedly based on a single occasion where the Appellant had exchanged ecstasy pills for Wak and a previous occasion when MB had informed him that the stuff he delivered were pills. The Judge further found that the Appellant's court testimony and fourth statement claiming that MB never specified what the "2 packets" contained contradicted his first and second contemporaneous statements to Sgt Dadly that he had ordered ecstasy pills (GD at [74]–[77]).

(c) Third, the Judge disbelieved the Appellant's claims of being merely a "deliveryman" and that he had never ordered, dealt with or delivered heroin to anyone (GD at [78]). The Judge accepted Hanafiah's testimony which established that he had contacted the Appellant directly

for drugs and had ordered heroin from him (GD at [64]–[69] and [79]). Additionally, the WhatsApp messages between the Appellant and one Faliq (who was a potential customer) demonstrated his active role in drug transactions, including communications to procure drugs and quoting prices (GD at [80]–[83]).

(d) Fourth, the Judge found that the Appellant’s post-arrest communications with M2, made on Sgt Dadly’s instructions, supported the fact that he knew he was collecting heroin from JBP. In particular, M2 stated that the Appellant had always ordered “panas” (*ie*, the street name for heroin) and refuted the Appellant’s claim that he had ordered ecstasy (GD at [84]–[90]).

(e) Fifth, the Judge found that the Appellant’s failure to inform M2 that he had collected the wrong number of bundles or drugs supported the inference that he knew that he had obtained the correct delivery. The Judge found that the Appellant had fabricated the existence of a “protocol” to account for the absence of any messages or phone calls with M2 and rejected his assertion that he had intended to meet up with MB to arrange for an exchange of the drugs (GD at [91]–[95]).

(f) Sixth, the Judge rejected the Appellant’s defence that he intended to return the drugs, noting that he never informed M2 and MB of the wrong delivery of drugs prior to his arrest, failed to mention this intention in his statements, and had arranged to deliver the drugs to Hanafiah (GD at [96]–[108]).

(g) Relatedly, the Judge also rejected the Appellant’s argument that he was supposed to collect a red (as opposed to white) plastic bag containing two bundles of drugs at JBP, which was relied upon to

support his contention that he had collected the wrong consignment and intended to return it (GD at [113]–[119]).

38 Overall, the Judge found that the Appellant lacked credibility due to his inconsistent accounts of what he believed he had ordered from M2 and what he had intended to do with the drugs (GD at [109]–[111]).

Possession for the purpose of trafficking

39 Based on the totality of the evidence, the Judge was also satisfied that the Prosecution had proven beyond a reasonable doubt that the Appellant was in possession of the drugs for the purpose of trafficking. The Judge rejected the Appellant’s claim that he had collected an erroneous consignment and intended to return the drugs. In particular, the evidence showed that the Appellant had arranged to deliver some of the drugs to Hanafiah on 21 June 2018 before his arrest (GD at [120]).

The appeal

Petition of Appeal

40 On 18 June 2024, the Appellant’s previous counsel for the appeal filed a Petition of Appeal (“POA”). The primary defence advanced in the POA was that the Appellant had wrongly collected three packets of drugs as he had ordered and intended to traffic only “one batu of heroin”. The Appellant testified at trial that one “batu” weighs approximately 445g, which also approximated the weight of *one* packet of heroin (Exhibit A1A1 and A1A2 weighed approximately 450.9g and 449.9g respectively) (“Quantity Defence 1”).

41 However, in the written submissions filed by his new counsel for CCA 22 on 5 June 2025, the Appellant relied primarily on a different defence –

that he had wrongly collected the drugs in Exhibit A1A3 since he ordered only two packets of heroin, namely Exhibits A1A1 and A1A2 (“Quantity Defence 2”). This was the defence that the Appellant ultimately relied on at the hearing of CCA 22 before us.

42 On 31 July 2025, the Prosecution filed their Reply Submissions, contending that it was “improper” for the Appellant to have raised Quantity Defence 2 in his Written Submissions without the court’s permission, as Quantity Defence 2 was not set out in the POA.

43 On 12 November 2025, the Appellant filed CA/CM 28/2025 (“CM 28”), in which he sought permission to amend his POA to include Quantity Defence 2 as a ground of appeal. In a case management conference before an assistant registrar on 14 November 2025, the Prosecution confirmed that they had no objections to CM 28. On 13 January 2026, this court granted CM 28, allowing the Appellant to amend his POA to include Quantity Defence 2 as a ground of appeal.

CA/CM 33/2025 – Application to adduce further evidence

44 On 26 December 2025, the Appellant filed an application in CA/CM 33/2025 (“CM 33”) to adduce further evidence to support his Quantity Defence 2 in CCA 22, pursuant to s 392(1) of the Criminal Procedure Code 2010 (2020 Rev Ed). In CM 33, the Appellant sought to adduce further evidence in the form of two affidavits – one by Nor Azman bin Mustaffa (who was allegedly MB) and the other by Muhammed Izwan bin Borhan (“Izwan”), both of whom were allegedly members of the same secret society as the Appellant.

45 In MB’s affidavit, MB asserted as follows:

(a) He knew that the Appellant had placed an order for two packets of drugs with one “JB Mamak” (who appeared to be M2), which were to be collected at JBP. M2 had called him the day after the Appellant collected the order, during which M2 informed him that the Appellant had collected the wrong order and had not paid for the order he had wrongly collected. M2 also asked that the Appellant return the wrongly collected white plastic bag and take the red plastic bag instead.

(b) Following the wrong collection incident by the Appellant, M2 stopped trusting MB or did not want to supply any drugs to him.

(c) On the day after the Appellant collected the wrong order, MB was waiting for the Appellant because a friend had called MB and informed him that the Appellant wanted to meet. However, the Appellant never met MB as the Appellant was subsequently arrested.

46 In Izwan’s affidavit, Izwan asserted as follows:

(a) Whilst MB was sharing a cell with him in 2019, MB informed him that the Appellant had made a mistake in the order of drugs for which he had been charged by collecting a white plastic bag instead of a red plastic bag, and that the ultimate supplier was very angry that he was never paid for the drugs.

(b) Whilst he was sharing a cell with the Appellant, the Appellant had asked him three times for permission to call MB as a witness in his case to testify “who MB is and that he was involved in [the Appellant’s] case and that MB knows that [the Appellant] had collected the wrong packets of drugs”. However, Izwan informed the Appellant that he could

not do this on all three occasions, as this would be against the rules of the Secret Society.

47 It is well-established that the admission of further evidence on appeal is governed by the three conditions laid down in *Ladd v Marshall* [1954] 1 WLR 1489 (“*Ladd v Marshall*”). First, the evidence *must not have been available* in that it could not have been obtained with reasonable diligence for use in the lower court (“non-availability condition”). Second, the evidence must be *material* in the sense that it would probably have an important influence on the result of the case, although it need not be decisive (“materiality condition”). Third, the evidence must be *reliable*, as in apparently credible, although it need not be incontrovertible (“reliability condition”). Notably, in applications to adduce further evidence made by an accused person where issues of life and liberty are potentially at stake, the key considerations are the relevance and reliability of the evidence, and the condition of non-availability is relatively less paramount (*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 (“*Ariffan*”) at [46] and [49]). Further, it is also relevant for the court to consider the proportionality of admitting the further evidence (*Ariffan* at [72]).

48 However, where an accused person raises on appeal a defence inconsistent with the one advanced at trial, this court has cautioned against attempts to seek a retrial in the guise of an application to adduce additional evidence. That is not to say that such applications are never permissible. Indeed, in *Iskandar bin Rahmat v Public Prosecutor* [2017] 1 SLR 505, we allowed the appellant to rely on the defence of diminished responsibility for the first time on appeal and admitted new psychiatric evidence in support, but we made clear that this was “highly unsatisfactory” and that we may “reject such drip-feed applications in the future” (at [67]). Where such purported applications to

introduce additional evidence in support of an inconsistent defence are tantamount to seeking a retrial, they will constitute an abuse of process and will be dismissed (*Masri Bin Hussain v Public Prosecutor* [2025] SGCA 9 at [1] and [12]; *Azuin bin Mohd Tap v Public Prosecutor* [2025] 1 SLR 259 (“*Azuin*”) at [32]). This is because, as we stated in *Azuin* at [27], “[t]here would be no end to litigation if the appellate process is allowed to be used as a rewind button for a litigant to engage in trial and error of different permutations of his or her case”, and there is a need for finality in litigation.

49 In CM 33, we found that the evidence in both MB’s and Izwan’s affidavits comprised hearsay and also failed to satisfy the conditions in *Ladd v Marshall*. We thus dismissed CM 33.

50 In relation to MB’s affidavit, our findings were as follows:

(a) Even before considering the conditions in *Ladd v Marshall*, MB’s intended evidence was inadmissible hearsay evidence (see *Chan Sze Ying v Management Corporation Strata Title Plan No 2948* [2021] 1 SLR 841 at [95]; *Oversea-Chinese Banking Corp Ltd v Ravichandran s/o Suppiah* [2015] SGHC 1 at [13]). It was premised on what he had been allegedly told over the phone by M2 and his friend, and he did not have personal knowledge of those facts. For instance, his intended evidence about the Appellant’s wrong collection was based on his phone call with M2, in which M2 allegedly told him that the Appellant had collected the wrong order. MB had no personal knowledge of whether the Appellant had actually collected the wrong order and was merely recounting what M2 had allegedly told him. Significantly, MB did not say that he had instructed the Appellant only to order two packets or “batu” of heroin from M2. MB’s affidavit also

relied on a separate phone call from a friend telling him that the Appellant had wanted to meet on the day of his arrest, which was again hearsay. MB's evidence did not fall within any of the exceptions to the hearsay rule under the Evidence Act 1893 (2020 Rev Ed).

(b) Even if MB's affidavit were to be admitted, it did not satisfy the reliability condition in view of its hearsay character (see *Lee Yuen Hong v Public Prosecutor* [2000] 1 SLR(R) 604 at [69]; *Chew Gim Ser v Public Prosecutor* [2005] 1 SLR(R) 201 at [32]; *Public Prosecutor v Kong Hoo (Pte) Ltd* [2017] 4 SLR 421 at [27]). MB's affidavit, which set out his version of what M2 and his friend had told him, was simply not reliable. No real weight could be given to MB's intended evidence since he was not able to speak with personal knowledge as to whether the Appellant had ordered two packets of heroin and collected three packets instead by mistake.

51 In relation to Izwan's intended evidence, our findings were as follows:

(a) Izwan's assertion regarding how MB had informed him of the Appellant's mistaken collection of the drugs was inadmissible hearsay. Izwan's intended evidence was premised on what he had been told by MB, who had in turn been told of the mistaken collection by M2 – this was double hearsay and did not fall under any of the statutory exceptions to the hearsay rule. Further, even if Izwan's affidavit were to be admitted, it also would not have satisfied the reliability condition as it was double hearsay. Izwan did not have personal knowledge of whether there had indeed been a mistaken collection by the Appellant.

(b) Izwan's assertion regarding why MB could not have been called as a witness at the Appellant's trial did not satisfy the materiality

condition, which questioned whether the intended evidence would have an important influence on the result of the *substantive case*. Izwan’s assertion did not bear on the merits of the Appellant’s arguments in CCA 22 and instead only explained why the non-availability condition ought to be satisfied for MB’s evidence in CM 33. As we had rejected the application to adduce MB’s affidavit, Izwan’s assertion in this regard was clearly of no relevance.

52 Given our view that the “new evidence” did not satisfy the requirements of *Ladd v Marshall*, there is no need for us to decide whether CM 33 is an abuse of process, although we did observe that the Appellant was effectively seeking a re-trial based on this “new evidence” which he claimed would buttress his new case that he intended to traffic in only two of the three packets of heroin, a defence wholly inconsistent with the one pursued below. Therefore, we dismissed CM 33 and the Appellant proceeded with his appeal on the basis of the evidence that was available at trial.

The parties’ cases in CCA 22

The Appellant’s case in CCA 22

53 The Appellant’s first contention was that Quantity Defence 2 was reasonably available based on the evidence led at trial. The evidence showed that the Appellant had only ordered two packets of drugs (namely, Exhibits A1A1 and A1A2), and not the full quantity he was apprehended with. He argued that he had collected the third packet (namely, Exhibit A1A3) by mistake, which would bring the amount below the threshold for the mandatory death penalty. He submitted that the burden lay on the Prosecution to prove that he intended to traffic all three packets, and this burden had not been discharged

in respect of the third packet. In support, the Appellant raised the following points:

(a) First, the evidence at trial established that the Appellant had ordered at most two packets of drugs from M2 for delivery to two persons.

(b) Second, there was “no compelling evidence of what the Appellant intended to do with the excess portion [of drugs]”. At most, he “wanted to take some action in regards to it” whether by discussing the matter with MB or returning the drugs to JBP. But this intention had not been firmed up. Such an indeterminate intention fell short of an intention to traffic.

(c) Third, and in any case, the Prosecution had failed to prove beyond a reasonable doubt that the Appellant had intended to traffic all the drugs he was apprehended with. If the court accepted that he had only ordered two of the three bundles, a doubt would immediately arise as to whether he possessed the third bundle for the purposes of trafficking. The Prosecution’s case rested entirely on an inference of trafficking drawn from the Appellant not being a heavy consumer and the presence of drug trafficking paraphernalia at his home. The Appellant submitted that this, without more, was insufficient to establish the requisite intention beyond a reasonable doubt in respect of the third packet. He further argued that much of the evidence relied upon by the Judge to convict him was equally consistent with an intention to traffic only two of the bundles.

54 The evidence relied on by the Appellant is set out in greater detail at [77]–[91] below.

55 Further and/or in the alternative, the Appellant's second contention was that there was reasonable doubt about the chain of custody, as the Extra Packet (namely, Exhibit A1A3D1) was not accounted for by the CNB officers at the time of seizure, which cast doubt on the entire chain of custody for *all* the drugs.

56 Further and/or in the alternative, the Appellant's third contention was that the Judge erred in finding that the Appellant was not a courier, as the evidence showed that his role was limited to transporting the drugs.

The Prosecution's case in CCA 22

57 The Prosecution raised the following four arguments on appeal.

58 First, the Prosecution argued that the three defences raised by the Appellant at trial, in the POA and in his Written Submissions on appeal were mutually incompatible.

59 Second, the Prosecution contended that Quantity Defence 2 lacked merit as (a) the Appellant failed to adduce sufficient evidence at trial to support this defence; and (b) the Prosecution and the Appellant led substantial evidence at trial which contradicted Quantity Defence 2. In so far as Quantity Defence 2 rested on the same claim of a mistaken collection, it suffered from the same fatal evidential shortcomings as the Knowledge Defence. In particular: (a) the Appellant had remained silent for 15 hours between his alleged discovery of the mistake and his arrest, and made no attempt to contact M2 or MB despite allegedly having collected the wrong order; (b) his claim that he was on his way to return the drugs to MB at approximately 7.35pm was contradicted by his prior arrangement to deliver heroin to Hanafiah at 7.00pm; (c) his handling of the drugs, including damaging the packaging of the bundles and consuming some of the drugs, was inconsistent with a belief that he had collected a mistaken

consignment; and (d) he had provided five different accounts of his intended actions following his arrest. The Prosecution further argued that the Appellant's alleged intention to return the packets to M2 could not constitute a defence, as there was no arrangement for the Appellant to safekeep the drugs on M2's behalf and he therefore could not be considered a "bailee" in the typical sense. In any event, the Appellant would have known that returning the drugs to M2 would facilitate M2's subsequent supply or distribution of those drugs.

60 Third, the Prosecution submitted that the Appellant had all the drugs in his possession for the purpose of trafficking based on several factors: (a) the substantial weight of the drugs, (b) the fact that the Appellant did not possess any drugs for personal consumption, as corroborated by his clean urine sample, (c) the drug trafficking utensils found in his Unit, and (d) the messages to Hanafiah and Faliq, and Hanafiah's testimony, which established that he was trafficking. This was further supported by the Appellant's own submission on appeal that he intended to traffic the drugs found in Exhibits A1A1 and A1A2. Notably, the Appellant did not give evidence at the trial as to what he intended to do with the third packet, Exhibit A1A3, despite this being a fact within the Appellant's knowledge. His claim that he intended to return the drugs was rejected by the High Court for being against the weight of the evidence. With the weight of the evidence showing the Appellant's intention to traffic all the drugs in his possession, and with the rest of his testimony regarding the mistaken collection rejected, the Appellant bore an evidential burden to explain his intentions regarding Exhibit A1A3. His vague claim that he "wanted to take some action in regards to [Exhibit A1A3] and that this action was not firmed up" was insufficient to discharge this evidential burden.

61 Fourth, the Prosecution argued that the chain of custody of the drug exhibits was proven beyond a reasonable doubt at trial, with every moment

accounted for and supported by credible witness testimony. The Appellant’s challenges including the Prosecution’s failure to call every witness involved in the chain of custody, and Sgt Dadly’s unaccompanied travel with the drug exhibits to CNB HQ, amounted to mere speculation and theoretical possibilities that did not give rise to reasonable doubt.

Applicable law

62 Preliminarily, we address the issue of whether an inconsistent defence can be raised on appeal.

63 As alluded to above at [3], an appellant is in principle allowed to rely upon a defence that is raised for the first time on appeal as “the courts afford maximum flexibility to accused persons in establishing their respective defences (particularly in capital cases)” (*Suief* at [25]–[26]; see also *Mohamed Kunjo* at [19]–[20]). However, in considering this new defence, the appellate court “*will have regard only to the evidence which had been led at the trial itself* in order to ascertain whether *that defence* was *reasonably available on the evidence* before the court *at the trial*” [emphasis in original] (*Suief* (at [25])).

64 This court in *Chandroo Subramaniam* (at [83]) further fleshed out what it means for the new defence to be “reasonably available on the evidence”, namely that the new defence must be “reasonably *made out* on the evidence at trial” [emphasis added]. In other words, something more than a bare denial is necessary to establish the alternative defence.

65 In *Suief*, the accused took the position at trial that he did not know that *any* of the bundles in his possession contained diamorphine. This defence was rejected by the trial judge as not being made out on the evidence. On appeal, the accused changed his defence, arguing for the first time that he only intended to

traffic three of the ten bundles of diamorphine. Despite noting that the accused’s “evidence at first instance was wholly inconsistent with his current position” [emphasis in original omitted], the court did not dismiss the appeal on that basis and instead proceeded to analyse whether the new defence was reasonably available on the evidence at trial (*Suief* at [35]).

66 For completeness, we considered the applicability of the case of *Public Prosecutor v Mas Swan bin Adnan* [2012] 3 SLR 527 (“*Mas Swan*”), which both parties relied on. In *Mas Swan*, a couple (Mas Swan and Roshamima) was jointly charged with importing diamorphine after having been apprehended with three bundles of diamorphine in their vehicle. At trial, Mas Swan contended that he knew the three bundles were in the car because Roshamima had told him so. He also claimed Roshamima had told him the bundles contained only ecstasy pills. Roshamima denied any such conversation and maintained that she was wholly unaware of the three bundles. The High Court acquitted Mas Swan and convicted Roshamima, on the basis that she had run an “all or nothing” defence admitting of only two possibilities – either she was ignorant of the existence of the bundles and should be acquitted, or she was lying and should be convicted. The trial judge found that the latter was the case.

67 On appeal, this court held that the trial judge erred in not considering the possibility that Roshamima might also have believed the bundles contained ecstasy pills, since this was what she had told Mas Swan. The fact that Roshamima adopted an “all or nothing” defence should not have deprived her of any other available defence that could reasonably be made out on the evidence, particularly since relying on the alternative defence at trial would inevitably have undermined her primary defence. This court accordingly held that a trial judge should not shut his mind to the possibility of an alternative defence that might reasonably be available to the accused person, even if that

defence had never been put forward or was seemingly inconsistent with the primary defence advanced (at [68]).

68 The parties drew different conclusions from *Mas Swan*. The Appellant argued that it stood for the proposition that an accused who adopts an “all or nothing” defence should not thereby be precluded from relying on an alternative defence – here, that he had only ordered and intended to collect two packets of heroin and did not intend to traffic the third packet which was collected by mistake. The Prosecution, on the other hand, contended that *Mas Swan* was confined to its unique facts, which involved the risk of uneven outcomes between two co-accused persons on the same findings of fact, and should not be extended beyond that context (see *Mohammad Azli bin Mohammad Salleh v Public Prosecutor* [2020] 1 SLR 1374 (“*Azli*”) (at [97])).

69 In our view, *Mas Swan* cannot be interpreted too broadly. As we observed in *Azli* (at [96]), while a trial judge should consider alternative defences that might reasonably be available to an accused person, even if these are inconsistent with the primary case run by the defence, *this must be constrained by reference to the available evidence*. As we stated in *Azli*, it was difficult to see how the trial judge in *Mas Swan* could have considered Roshamima’s knowledge of the contents of the bundles, given that she never ran any case on knowledge at all, and more importantly, there was no evidence at all on her state of knowledge (at [96]):

... The only evidence that was before the court was the testimony of Mas Swan to the effect that Roshamima did know there were three bundles in the car and she had told Mas Swan that they contained ecstasy pills. Mas Swan did not even testify as to whether he had reason to believe that Roshamima believed that to be true, and she certainly ran no such case. Given the operation of the s 18(2) presumption, we find it difficult to see how the court could have found that the presumption had been rebutted in the absence of any evidence: see *Obeng Comfort v*

Public Prosecutor [2017] 1 SLR 633 at [39]. With respect, in our judgment, had the court been troubled by this, as it evidently was, the more appropriate course would have been to remit the matter to the trial judge for any further evidence to be taken and tested. Finally, we note in passing that a similar need to qualify the seeming breadth of the holding in *Mas Swan* was also noted by this court in *Mohd Suief bin Ismail v Public Prosecutor* [2016] 2 SLR 893 at [30]–[32].

70 This qualification of *Mas Swan*’s apparent breadth is consistent with the approach taken in *Suief* and the other cases discussed above. This qualification also supports the conclusion that *Mas Swan* does not assist an appellant who seeks to rely on an alternative defence that finds no evidential basis whatsoever in the evidence adduced at trial.

71 Accordingly, the Appellant was not barred from relying on Quantity Defence 2, notwithstanding the fact that it was mutually inconsistent with the Knowledge Defence. That said, as we go on to explain, the present case illustrated the difficulties faced by the defence in taking such an approach.

72 Bearing in mind the threshold for appellate intervention (*Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32]–[33]), the question was therefore whether the Judge’s findings were plainly wrong or against the weight of evidence.

73 In this regard, we noted that the Judge had already considered and rejected both the Appellant’s claim that he had mistakenly collected three instead of two packets of drugs (GD at [115] and [119]) and his claim that he had not intended to traffic all three packets but rather return them (GD at [96]–[108]). Although these were ancillary to the primary defence advanced at trial, namely the Knowledge Defence, the Judge had nonetheless addressed and rejected them.

74 Having rejected the Appellant’s case that he had mistakenly collected three packets instead of two, and that he had intended to return any of the drugs, the Judge found that the charge of possession for the purpose of trafficking was made out in relation to all the drugs in the Appellant’s possession, including the third packet (GD at [120]). The burden in this appeal therefore fell on the Appellant to show that the Judge’s finding that there was no reasonable doubt that the Appellant intended to traffic all packets of drugs, including the third packet, was plainly wrong or against the weight of the evidence.

Issues to be determined

75 Based on the foregoing, three issues arose for determination:

- (a) first, whether the Judge erred in finding that there was no reasonable doubt that the Appellant intended to traffic the third packet of drugs;
- (b) second, whether the Judge erred in finding that the chain of custody had been proven beyond a reasonable doubt; and
- (c) third, whether the Judge erred in finding that the Appellant was not a courier.

76 We address each of these issues in turn.

Whether the Judge erred in finding that there was no reasonable doubt that the Appellant intended to traffic the third packet of drugs

The Appellant’s case

77 The critical issue before us was whether Quantity Defence 2 was reasonably made out on the evidence at trial. In CCA 22, the evidence relied on

by the Appellant was directed at establishing that: (a) he had ordered two packets of drugs and had mistakenly collected the third packet, (b) he had intended to deliver only those two packets to two persons, and (c) his *modus operandi* was to act only on MB's orders and not to traffic or collect orders of his own volition. We will proceed to set out the various pieces of evidence relied on by the Appellant in supporting each of the three contentions.

78 However, at the outset, we highlight that the Appellant's case with respect to the third packet of drugs was unclear. He contended, first, that there was some evidence he had intended to return it. He then shifted to arguing that his intention with respect to the third packet had never crystallised, and that an uncrystallised intention could not form the basis of a finding of an intention to traffic. Finally, he contended at the hearing of the appeal that he need not take any position on the matter at all as it fell to the Prosecution to prove beyond a reasonable doubt his intention to traffic the third packet, and that he had raised a reasonable doubt simply by establishing the matters set out above at [77].

The Appellant's contention that he had only ordered two packets of drugs

79 The Appellant claimed that the evidence showed that he had only intended to order two packets of drugs. These included his statements, trial testimony, WhatsApp messages to M2, and his post-arrest conversation with M2.

80 In his statements, the Appellant consistently stated that he had ordered only two packets of drugs on MB's instructions, and that he "felt something was wrong" upon discovering that he had collected three packets instead of two. This was evident from the following excerpts in his fourth statement:

2. On 19 June 2018, I was instructed by "MB" to order "**2 packets**". ... After receiving the instructions from "MB", I

“Whatsapp” a Malaysian number saying “**tomorrow 2**” in Malay language. ...

3. On 20 June 2018, I received a whatsapp message informing me that I can collect the “**2 packets**” that I ordered ... I collected the “**2 packet**” inside a bush near the AYE exit to Jurong Bird Park. ...

....

5. After I reached home, I opened the plastic bag that I have collected and I felt something was wrong with the drugs. **I felt something was wrong because I had ordered 2 packets but there were 2 big packets and 1 small packet inside the plastic bag.** Usually it will come in blue tape but the 2 big packets were in black tape and the smaller packet was in blue tape. I opened one of the bigger packets and the smaller packet. I had already thrown away the tapes that were used to wrap the drugs. After I opened the packet, I realized that it was heroin. I smoke a little of the heroin from the smaller packet.

...

[emphasis added in bold]

81 At trial, the Appellant reiterated this account on several occasions. One such instance is reproduced below:

Court: ... So what you had collected is essentially the three parcels which you thought were actually supposed to be two parcels, right?

[A]: Yes, Your Honour.

82 The Appellant also relied on WhatsApp messages to M2, which he contended corroborated his account. In these messages, the Appellant texted M2 “Besok 2” meaning “tomorrow 2”, which he explained at trial as placing an order for two packets of drugs.

83 The Appellant further relied on the recorded post-arrest conversation with M2, which reads as follows (translated from Malay):

M2: That you mean all three bundles are not yours or two bundles are yours another one not yours?

[A]: All three are not

M2: All three are not? **They said those both are Heroin**

[emphasis added in bold]

The Appellant placed emphasis on M2’s use of the word “both”, arguing that it suggested his order had been for two bundles only.

84 Additionally, the Appellant claimed, both at trial and on appeal, that the discrepancy in quantity arose because he had mistakenly collected a white plastic bag containing three packets of heroin instead of a red plastic bag which should have contained two bundles. In support of this, he contended that Sgt Dadly had failed to record part of his first call with M2, during which he had informed M2 of the mix-up. His evidence was that, in a call at approximately 9.26pm, he had told M2 he had retrieved a white plastic bag, to which M2 responded: “It’s not red colour plastic bag?”. M2 then said “never mind” and that he would update the Appellant later, before the call ended.

85 The Appellant submitted that this omitted exchange was corroborated by the following messages sent by M2 around 9.36pm on 21 June 2018, approximately ten minutes later:

M2: Bro there are **2 bundle**

M2: **Red plastic**

M2: U say have extra u put back

M2: We see hw

[emphasis added in bold]

The Appellant’s contention that he only intended to traffic two packets of drugs

86 Next, the Appellant contended that the evidence led at trial also supported the fact that he had only intended to traffic two packets of drugs to

two persons. These included his statements, phone records, Hanafiah’s evidence, and a message from M2.

87 In the Appellant’s fourth and fifth statements, he stated:

3. ... I was supposed to deliver the drugs to **2 locations**. The first location is Boon Lay mall and the second location is Block 37 Mcpherson. I use my mobile phone ... to call the **2 persons** that were supposed to collect the drugs from me. Both of them did not pick up my call and I was not able to deliver the drugs to them. I was also supposed to collect money from them. **They will give me the money in a red packet but I do not know the exact amount that I need to collect. I do know that it is around 3000 Singapore dollars.** At this point of time, I knew the items were drugs but I did not know what type of drugs is it. **“MB” was the one who told me to deliver the drugs to these 2 persons and collect money from them.** ...

....

15. ... The pick-up point is also always the same and it was around the bird park area. It was the same place that I had picked up the drugs that I was arrested with. For these items, I will only send them to Boon Lay mall and block 37 Mcpherson area. ...

16. ... **Other than “Wak” and “Scar”, I do not send drugs to anybody else.**

[emphasis added in bold]

88 The Appellant also relied on phone records showing that after collecting the drugs, he called only two customers – Hanafiah (saved as “Scar2”) and Wak (saved as “Uncle”) – to arrange for collection.

89 The Appellant further relied on evidence from himself and Hanafiah regarding the weight and price of the drugs to support his case that he had only intended to traffic two packets of drugs. Hanafiah stated in his long statement that he intended to order one “batu” of heroin from the Appellant for \$3,200, and testified at trial that one “batu” weighs approximately 445g. This

approximated the weight of Exhibits A1A1 (450.9g) and A1A2 (449.9g). By contrast, the drugs in Exhibit A1A3 amounted to approximately 157.02g. The Appellant similarly stated in his fourth statement (see above at [87]) that he was to collect approximately \$3,000 from each of his two customers, and testified to the same effect at trial. On this basis, the Appellant submitted that the evidence showed that he was to deliver one packet each to Hanafiah and Wak, supporting his case that he had only ordered and intended to traffic two packets (*ie*, Exhibits A1A1 and A1A2).

90 The Appellant also relied on a message sent by M2 on 20 June 2018, which he testified related to his payment of \$6,500 to M2: “Os 6500 Old 1700”. He submitted that this \$6,500 payment approximated the combined sum he expected to receive from selling two packets of heroin, further supporting his defence.

The Appellant’s contention that he would not have trafficked the third packet of drugs

91 Finally, the Appellant explained in his statements and at trial that his *modus operandi* from May 2018 was to act solely on MB’s instructions: MB would dictate the price and quantity for each collection; the Appellant would place the corresponding order with M2, collect it and deliver it to the customers; and MB would pay him \$300 per delivery. The Appellant testified that he was a mere “delivery boy”. He further stated in his sixth statement that he was not involved in any other drug activities, beyond transporting drugs for MB.

92 Based on the foregoing, the Appellant claimed that he would not order drugs in excess of customers’ orders. It followed, he argued, that if the court accepted he had mistakenly collected more drugs than he had ordered, there would have been no customer to whom he could have delivered the excess.

Quantity Defence 2 was not reasonably made out on the evidence at trial

93 In our judgment, the appeal could not succeed as the Appellant could not show that the Judge’s finding that there was no reasonable doubt that he intended to traffic the third packet of drugs was plainly wrong or against the weight of evidence. This was for two reasons:

(a) First, the Appellant had not shown that the Judge erred in rejecting his defence of mistaken collection, specifically that he had, by mistake, collected three packets of drugs instead of two (GD at [115]).

(b) Second, even if we were to accept that the third packet were mistakenly collected, the Appellant had not shown that the Judge erred in rejecting his case that he intended to return the drugs (GD at [96]–[108]) and thus, in finding that he had possessed the third packet for the purpose of trafficking (GD at [120]).

Defence of mistaken collection

94 In respect of the Appellant’s defence of mistaken collection, the Judge found that there was no evidence that the Appellant had mistakenly collected three packets of drugs instead of two (GD at [115]). Central to this finding was the Appellant’s failure to contact M2 upon allegedly discovering this alleged discrepancy in the drugs he had collected (GD at [91]). The Judge further rejected the Appellant’s claims that he had collected the wrong colour plastic bag (GD at [114]) and bundles wrapped in the wrong tape (GD at [118]), both of which the Appellant had relied on in support of his mistaken collection defence.

95 To our minds, the Judge’s findings were not plainly wrong or against the weight of the evidence, and these findings were critical in her decision to reject the Appellant’s defence of mistaken collection.

96 First, we agreed with the Judge that the Appellant’s failure to contact M2 or MB for 15 hours after allegedly discovering the mix-up was telling. Had he genuinely collected the wrong order, one would reasonably expect him to have raised this with M2 or MB at the earliest opportunity. At trial, the Appellant gave two explanations for why he had not done so:

(a) The Appellant explained that he could only provide “feedback” or inform M2 of any issues with the delivered goods after M2 messaged him to say, “[a]ll okay” (“Protocol”), and that he had to obey the Protocol even if M2 had delivered the wrong drugs. The Appellant claimed that he could not send any feedback beforehand because M2’s phone would be turned off and he would not reply to the message.

(b) Further, the Appellant testified that he instead wanted to see MB, who was his “boss”, to discuss the order that he had mistakenly collected as MB “has the connection to ... M2 directly”. Therefore, he did not intend to inform M2 that he had collected the wrong order before first meeting with MB to discuss what to do with the mistaken collection.

97 We agreed with the Judge that this explanation of the Protocol was unbelievable and unsupported by the evidence (GD at [94]). The WhatsApp messages showed prior conversations between the Appellant and M2 on other matters without any “all okay” prompt from M2. In fact, after collecting the drugs on 20 June 2018, the Appellant messaged M2 at 11.07pm stating “Done boss”, which contradicted the existence of the Protocol. Accordingly, there was no basis for the Appellant’s claim that he could not contact M2 under any

circumstances unless M2 initiated contact. Further, the Appellant did not mention the Protocol in any of his statements. In fact, in his second statement, he said that he was going to return the drugs to JBP and would contact M2 thereafter.

98 We also did not accept that he was meeting MB to discuss what to do with the drugs or to arrange an exchange, as we address below at [111].

99 Second, we agreed with the Judge that there was no evidence as to the colour of the Plastic Bag that the Appellant had collected, as he claimed to have disposed of the Plastic Bag and placed the drugs in Exhibit A1A. His contention that he had collected a white plastic bag rather than a red one was therefore a bare assertion. Crucially, he had made no mention of the Plastic Bag's colour in any of his statements when he could have done so (GD at [114]). We similarly agreed with the Judge's rejection of the Appellant's claim that he had collected the wrong bundles based on the colour of their tape, given that there was no evidence as to the original colours of the tape, which he claimed to have discarded (GD at [118]).

100 Third, the Appellant smoked some of the drugs from Exhibit A1A3, which was the very packet he claimed to have collected by mistake. We agreed with the Prosecution that this conduct was plainly inconsistent with that of someone who believed he had collected a wrong consignment and intended to return it.

101 Finally, the Judge further observed that it was "possible that he had collected only two bundles and that [the Appellant] had unwrapped one bundle and which could have contained both Exhibits A1A2 and A1A3" (GD at [115]). At the hearing of CCA 22, the Appellant submitted that the Judge's finding that

it was possible for the Appellant to have collected only two bundles was against the weight of the evidence. In this regard, the Appellant argued that it was “illogical” that the two bundles – with one bundle purportedly containing Exhibit A1A1 and the other bundle purportedly containing Exhibits A1A2 and A1A3 – would be of such different weights (with the second bundle weighing 30% more) when they were supposed to be identical and sent to two different people. Additionally, such drugs were typically “transacted in 1 pound”.

102 In our judgment, the Appellant had not shown that the drugs could only have been for delivery to two persons or that they were only transacted in bundles of one pound each. In this regard, we agreed with the Judge that the evidence did not bear out the Appellant’s characterisation of himself as a passive middleman acting solely on MB’s instructions (see [91] above for the evidence relied on by the Appellant). His communications with Hanafiah and Faliq showed he was actively accepting orders on his own accord (GD at [79]–[83]):

(a) Hanafiah testified that, while he would typically place orders with MB, he had on two or three occasions from June 2018 placed orders directly with the Appellant. In fact, Hanafiah further testified that he had ordered one “batu” of heroin from the Appellant for collection on 21 June 2018.

(b) In text messages from Faliq on 20 June 2018, the day before his arrest, the Appellant confirmed he had “hot per bag” and quoted a price of \$140. This undermined his claim that he would never have ordered or delivered drugs beyond MB’s instructions, or repacked them himself.

103 In the circumstances, it was our judgment that the Judge rightly rejected the Appellant's defence that he had mistakenly collected three packets, instead of two packets of heroin.

Possession of the third packet for the purpose of trafficking

104 Even taking the Appellant's case at its highest and accepting that he had intended to order only two packets of drugs, Quantity Defence 2 was still not reasonably made out on the evidence at trial.

105 As explained above at [78], the Appellant's case with respect to his intentions regarding the third packet was not clear. The Appellant could not point to any evidence at trial to show that he had not intended to traffic the third packet specifically, nor had he identified precisely what his intentions were with respect to it. It was insufficient for the Appellant to decline to take a position as to his intentions in respect of the third packet in CCA 22. This is especially so when there was clear evidence at the trial, as earlier described, that the Appellant was taking orders from customers, lending itself readily to the inference that he could easily have trafficked the third packet of drugs to customers of his own beyond Wak and Hanafiah, and that he did not intend to consume that third packet of heroin.

106 On appeal, counsel for the Appellant submitted that the burden lay on the Prosecution to prove beyond a reasonable doubt that the Appellant intended to traffic the third packet of drugs. We accepted this. However, we also agreed that the Prosecution had discharged its evidential burden by establishing that the Appellant intended to traffic all three packets of drugs. The evidential burden therefore shifted to the Appellant to raise a reasonable doubt as to whether that intention extended to the third packet. To discharge this burden on appeal, the Appellant had to show, *by reference to the evidence led at trial*, that the Judge's

finding, that there was no reasonable doubt that he intended to traffic the third packet of drugs, was plainly wrong or against the weight of evidence. The Appellant could not sidestep the issue by simply asserting that the burden lay on the Prosecution to prove that he intended to traffic the third packet of drugs, while ignoring the fact that the Prosecution had already discharged its legal and evidential burden at trial and that, on appeal, any challenge to that finding had to be mounted by reference to the Judge's findings of fact, the evidence led at trial, and the applicable appellate standard of review.

107 In order to establish a reasonable doubt, the Appellant had to take some position as to what his intention with respect to the third packet was, as this was a fact squarely within his knowledge. Had the evidence at trial clearly shown that he had always intended to return the third packet, he might well have been entitled to rely on Quantity Defence 2 and might well have succeeded. However, there was no clear evidence at trial which showed what the Appellant intended to do with the third packet of drugs in a scenario where he was already going to deliver the other two packets of drugs to his customers.

108 In any case, we explain why the Judge rightly rejected the Appellant's claim that he intended to return all three packets of drugs (GD at [96]–[108]).

109 First and foremost, the Appellant gave several different explanations as to what he intended to do with the drugs after his arrest:

- (a) In his first statement, taken approximately ten minutes after his arrest, when asked by Sgt Dadly “[w]hat are you going to do with the stuff?”, the Appellant replied, “I want to deliver to someone”. Approximately one hour later, in his second statement, he said he wanted to “send back” the parcels to JBP and then WhatsApp M2 to inform him

of the situation. Crucially, he referred to all three packets *collectively*, which was inconsistent with his defence on appeal that he had intended to traffic two packets to Wak and Hanafiah while returning only the third. In his fourth statement, he offered yet another account, stating that he had kept the drugs in his car simply because he did not want his mother to know he was dealing with drugs, and that there was no other reason why he brought the drugs out.

(b) Between 15 to 20 days after his arrest, the Appellant told Dr Cheow Enquan of the Institute of Mental Health that, after realising the consignment was a mistake, “he still intended to deliver the packages as he did not want to be blamed for any loss”.

(c) Finally, at trial, the Appellant claimed for the first time that he was going to meet MB to “discuss” and “clarify” the drugs, as he believed he had been dealing with ecstasy pills as opposed to heroin. He had previously never mentioned being on his way to meet MB in his statements. Notably, there was no mention at this stage of any intention to return the drugs. It was only later in his trial testimony that he stated he had wanted to return all the bundles to M2 in JBP, after discussing the matter with MB. His testimony was that he wanted to go to Haig Road to meet MB “[t]o tell him about the wrong stuff ... then [MB] will eventually tell [the Appellant] to make arrangement to exchange”. Significantly, however, the Appellant’s evidence was that he wanted to return *all* three packets and not merely the third packet. That being the case, there was no evidence led at trial to support his assertion that he wanted to return *only* the third packet of heroin which was allegedly collected by him as a result of mistake, but not the other two packets. In a way, this was an inevitable consequence of the Appellant’s position at

trial that he had never ordered heroin and had collected the three packets of heroin by mistake, and that he wanted to return *all* three packets of heroin.

110 Across these various accounts, the Appellant was never consistent – not only as to what he intended to do with the third packet specifically, but as to all three packets collectively. More fundamentally, none of these accounts was consistent with an absence of intention to traffic the third packet of heroin. Taken together, these shifting explanations undermined the credibility of his account and did not raise a reasonable doubt as to his intentions with respect to the third packet.

111 In addition to the fact that the Appellant’s own evidence was inconsistent as regards to what he intended to do with the third packet, we agreed with the Judge that the Appellant’s explanation that he intended to meet MB to discuss returning all the drugs was not believable on the evidence (GD at [93]). There was no evidence of communications between the Appellant and MB to support the claim that he intended to inform MB about the wrong delivery (GD at [97]). The Appellant merely claimed to have asked Danny to tell MB that he wanted to meet to discuss something. We agreed with the Judge that this explanation was fabricated to justify why he had not contacted MB directly.

112 It was also not the Prosecution’s burden to identify the ultimate buyer of all drugs in a trafficking case. As this court observed in *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 (“*Ramesh*”) (at [113]), “it would be wholly unrealistic to require proof that an accused who transfers, or intends to transfer, the drugs from one party to another has any end-user within his contemplation or any specific intention to purvey the drugs to consumers in particular” [emphasis in original omitted]. Furthermore, “such a requirement

would have the absurd effect of reducing s 5 of the MDA to a provision which only applies to those who are further down in the supply chain, while exempting those further up in the supply chain from liability” (*Ramesh* at [113]). Accordingly, the Judge could not be said to have erred in her conclusions merely because the Prosecution had not identified a specific buyer for the third packet.

113 Finally, there was never any assertion that the third packet was for the Appellant’s personal consumption. In any event, such an assertion would have been untenable since the Appellant’s own case at trial was that all three packets did not contain the drugs that he had ordered.

114 In our view, the Appellant had failed to show that the Judge’s finding, that there was no reasonable doubt that he intended to traffic the third packet of drugs, was plainly wrong or against the weight of the evidence.

Whether the Judge erred in finding that the chain of custody had been proven beyond a reasonable doubt

115 Although this submission was not raised at the oral hearing, the Appellant argued in his Written Submissions that the Judge had erred in finding that the Prosecution had established beyond a reasonable doubt the chain of custody of the drugs. The Appellant did not raise any new arguments in CCA 22 regarding the chain of custody, and instead relied on arguments that had already been raised before the Judge. Primarily, the Appellant argued that the fact that the Extra Packet had only been discovered when the exhibits were processed at the EMR in CNB HQ, despite the CNB officers having counted the number of packets in Exhibit A1A3 at the time of seizure, cast doubt on the entire chain of custody for all the drugs. He contended that this was because the Prosecution could not conclusively establish the integrity of the chain for the remaining drug exhibits, which were supposedly part of the same seizure.

116 We found that the Judge did not err in finding that the Prosecution had established beyond a reasonable doubt the chain of custody of the drugs, including the Extra Packet (GD at [37]). In particular, the Judge’s finding that the CNB officers’ “failure to notice the Extra Packet was unremarkable and did not affect the integrity of the [d]rugs” was not plainly wrong or against the weight of the evidence (GD at [38]). For one, the fact that the officers were able to count the remaining number of packets in Exhibit A1A3 did not mean that the officers must have necessarily counted the Extra Packet as well. Unlike the other packets which were placed directly in Exhibit A1A3, the Extra Packet was placed inside one of these packets (*ie*, Exhibit A1A3D) such that the officers would have had to spot the Extra Packet through two layers of plastic. Considering how the officers had counted the number of packets in Exhibit A1A3 through a visual inspection of its exterior without opening it, we agreed with the Judge that “[i]t was not unusual that [the CNB officer] had overlooked the Extra Packet” (GD at [39]).

117 In any case, we agreed with the Judge that the fact that the CNB officers failed to notice the Extra Packet at the point of seizure did not affect the integrity of the chain of custody. The Appellant had not pointed to any evidence demonstrating that the CNB officers had opened Exhibit A1A3 prior to exhibit processing at the EMR or that the exhibits in the sealed tamper-proof bags had been otherwise tampered with. Thus, the CNB officers’ failure to spot the Extra Packet in itself could not lead to an inference that the Appellant was not in possession of the Extra Packet at the time of his arrest.

118 We also rejected the Appellant’s argument that a reasonable doubt arose about the chain of custody due to the Prosecution’s failure to provide a conditioned statement from FORT Officer Haifaa, although she was present when the Extra Packet was discovered. The Appellant had not explained the

significance of the absence of FORT Officer Haifaa’s statement, such as how her statement would have differed from IO Neo’s and FORT Officer Nurliyana’s explanations of the circumstances surrounding the discovery of the Extra Packet.

119 Therefore, the Judge rightly found that the Prosecution had established beyond a reasonable doubt the chain of custody of the drugs.

Whether the Judge erred in finding that the Appellant was not a courier

120 Although this submission was similarly not raised at the oral hearing, the Appellant argued in his Written Submissions that the Judge erred in finding that he was not a courier within the meaning of s 33B(2)(a) of the MDA. This was relevant to the question of whether the Appellant could avail himself of the alternative sentencing regime under s 33B of the MDA where the court has the discretion to impose a sentence of life imprisonment (with caning), provided the accused satisfies the requirements under s 33B(2)(a) and receives a certificate of substantive assistance (“CSA”) from the Public Prosecutor pursuant to s 33B(2)(b) of the MDA.

121 The Judge rightly found that the Appellant could not avail himself of the alternative sentencing regime as the Prosecution had not issued a CSA to him and, in any case, his role had indeed gone beyond that of a courier. Apart from a bare assertion that “he was not involved in any other drug activities” “other than helping MB transport drugs”, the Appellant did not demonstrate how the Judge had erred in finding that he had taken an order from Hanafiah and placed an order for the drugs accordingly (GD at [123]). We agreed with the Judge that these acts went beyond acts that were merely facilitative or incidental to the transporting, sending or delivering of drugs (*Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [82]–[86], [91]).

122 Therefore, the Appellant’s appeal against sentence in CCA 22 was dismissed.

Conclusion

123 For the reasons given above, we affirmed the Judge’s decision and dismissed the Appellant’s appeal in CCA 22 in its entirety.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

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