IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 70

Criminal Appeal No 31 of 2021

Between

Munusamy Ramarmurth

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 29 of 2021

Between

Public Prosecutor

And

Munusamy Ramarmurth

JUDGMENT

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Constitutional Law — Accused person — Rights]
[Evidence — Weight of evidence]

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Munusamy Ramarmurth
v
Public Prosecutor

[2022] SGCA 70

Court of Appeal — Criminal Appeal No 31 of 2021
Judith Prakash JCA, Tay Yong Kwang JCA and Steven Chong JCA
8 July 2022

27 October 2022 Judgment reserved.

Judith Prakash JCA (delivering the judgment of the court):

Introduction

1 The appellant, Munusamy Ramarmurth, was convicted in the General Division of the High Court ("High Court") on one charge of possessing 57.54g of diamorphine for the purposes 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 appellant did not receive a certificate of substantive assistance from the Prosecution and, accordingly, he received the mandatory death penalty. He now appeals against his conviction and sentence. Aside from challenging the court's findings on the elements of the charge, he also raises arguments regarding misconduct by law enforcement officers during the trial.

Factual background

2 The facts of the present case were recounted in detail by the High Court Judge ("the Judge") in *Public Prosecutor v Munusamy Ramarmurth* [2021] SGHC 255 ("the Judgment"). We provide a brief summary.

3 On 26 January 2018, sometime after 11am, the appellant parked his motorcycle ("the Motorcycle") at an open-air carpark ("the Carpark") located along Harbourfront Avenue and proceeded to Harbourfront Centre, Tower 2, to take up his duties as a cleaner. At some point thereafter he opened the rear box of the Motorcycle and thereafter closed it before leaving the Carpark. Sometime after 1pm, officers from the Central Narcotics Bureau ("CNB") were positioned at Harbourfront Avenue. They located the Motorcycle in the Carpark and thereafter kept an eye on it. No one approached the Motorcycle while it was under observation.

4 Several hours later, at around 4.05pm, the appellant was arrested by the CNB officers in a cleaners' room at Harbourfront Centre, Tower 2. He was then escorted to the Carpark and a search of the Motorcycle was conducted in his presence. A red plastic bag ("the Red Bag") was recovered from the rear box of the Motorcycle. Packages inside the Red Bag were analysed and found to contain not less than 57.54g of diamorphine ("the Drugs").

5 During investigations, the appellant voluntarily gave nine statements ("the Statements") to the CNB. These included four contemporaneous statements on the day of his arrest (the 1st to 4th Statements individually; the "Contemporaneous Statements" collectively); a cautioned statement one day later (the 5th Statement); and four long statements on 31 January and 2 February 2018 (the 6th to 9th Statements individually; the "Long Statements" collectively). In the Statements, the appellant alleged that he had not seen the

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Red Bag prior to his arrest; that he did not know what it contained; and that his involvement with a man called Saravanan, a Malaysian who could not enter Singapore, was limited to collecting money on Saravanan's behalf.

6 The appellant was charged with possession of the Drugs for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA. He claimed trial in the High Court. At the trial, contrary to his earlier position, he did not dispute that he had known that the Red Bag was in the rear box of the Motorcycle. Instead, he argued that he did not know that it contained the Drugs and that he did not possess it for the purpose of trafficking.

7 In his testimony, the appellant claimed that on the day of his arrest, Saravanan had called him and had told him that a person (referred to as "Boy") had placed the Red Bag in the rear box of the Motorcycle. During the conversation, Saravanan also referred to a previous incident in July 2017 ("the July 2017 Incident") in which Saravanan had asked him to store stolen handphones which were later retrieved by Boy and Saravanan. Thereafter the appellant had returned to the Carpark to unlock the rear box of the Motorcycle. When he did so, he saw the Red Bag inside the box but did not open it to check its contents. He alleges that he then closed the rear box without locking it.

8 Thus, the appellant's defence was that he thought that the Red Bag contained stolen handphones and that Boy would retrieve them later. On the latter point, he did not assert that the Drugs were for himself. Instead, his defence was that since he thought the Red Bag would be retrieved by Boy, he did not possess it with the intention that it would be moved along any supply or distribution process, *ie*, he invoked the "bailment" defence.

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9 The Judge rejected the appellant's version of events, primarily on the basis that it never appeared in any of the Statements – he was thus unable to rebut the presumption of knowledge under s 18(2) of the MDA and was also found to have possessed the Drugs for the purposes of trafficking. Accordingly, he was convicted and sentenced as stated.

Issues on appeal

10 Before us, the appellant has raised many challenges to the soundness of the conviction. These may be categorised into four broad areas:

(a) Challenges relating to the weight to be placed on the Statements ("the Statements Issue").

(b) Challenges relating to the presumption of knowledge under s 18(2) of the MDA ("the Knowledge Issue").

(c) Challenges relating to whether he possessed the Drugs for the purposes of trafficking ("the Trafficking Issue").

(d) A challenge relating to the conduct of the investigating officer, Derek Wong ("IO Wong"), and whether this caused prejudice ("the Prejudice Issue").

11 We will consider the merit of each ground in turn.

The Statements Issue

12 As we have noted, the appellant relied on two main defences before the Judge. First, with regard to the element of knowledge, he claimed that he thought the Red Bag contained stolen handphones, not the Drugs. Secondly, in relation to the element of possession for the purposes of trafficking, he claimed that he was told that Boy would retrieve the Red Bag from him, and thus he was

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only a "bailee". Both were rejected by the Judge. On appeal, he continues to rely on these defences, arguing that the Judge was wrong to reject them.

13 He is impeded in establishing these defences by the fact that the Statements do not contain the details of either defence. In explaining these omissions, the appellant argues that the Contemporaneous Statements were either not accurately recorded or were fabricated. Such assertions were raised before the Judge, but were rejected.

14 On appeal, he maintains this contention. He also argues that less weight should be given to his Statements as he had not been advised on the operation of the presumptions in the MDA, and it had not been made clear to him during investigations what presumptions would be operating against him. In making these arguments, he raises his right to counsel under Art 9(3) of the Constitution of the Republic of Singapore (2020 Rev Ed) ("the Constitution"), as well as the case of *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal*").

The accuracy and authenticity of the Contemporaneous Statements

15 During the trial, the appellant challenged the accuracy and authenticity of the Contemporaneous Statements. A large portion of the Judge's reasoning was spent on this challenge, and she ultimately rejected it as being unmeritorious. In his petition of appeal, the appellant again raised this challenge, but he did not mention this line of argument in his oral and written submissions. For completeness, we deal briefly with this point.

16 In our judgment, the Judge was correct to reject the contentions. To begin with, the appellant's allegation that the 4th Statement was fabricated by the CNB officers is a non-starter. It was set out in the Agreed Statement of Facts

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accepted by the appellant at the trial that the 4th Statement was given by him voluntarily. Neither during the trial nor on appeal, did the appellant explain this inconsistency. Further, he did not try to remove this concession from the Agreed Statement of Facts.

17 Turning to the 1st Statement, the appellant alleged that the recording officer had left out several details which he had mentioned. The Judge rejected this contention, noting that the appellant had signed the statement, and that the evidence of another CNB officer corroborated that it was recorded accurately. On appeal, the appellant has offered nothing to challenge the Judge's reasoning. Further, there is nothing in the evidence to suggest that her conclusion was wrong. We thus uphold her finding on this point.

18 Next, we deal with the appellant's allegations pertaining to the 2nd and 3rd Statements. These two statements form one series of questions and answers, but they were recorded at two different times on the day of the appellant's arrest. The 2nd Statement was recorded at 4.55pm, and the 3rd Statement was recorded four hours later at 8.58pm. The appellant claims that two points recorded in these statements were not recorded properly. It is notable, however, in relation to the 2nd and 3rd Statements, that the appellant was unable to explain during the trial why, at the time he was signing the statements, he was unable to spot and point out or correct the alleged errors.

19 His first contention relates to a point that was recorded in both the 2nd and 3rd Statements. In both these statements, the appellant either stated or accepted that he had passed a package to someone else before his arrest. In the 2nd Statement, the appellant is recorded as saying that he had given a package to a man named "Abang", and that Abang had then given him $8,000. In the

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3rd Statement, he was asked what he had given to Abang, and he replied that he only remembered that it was "one package".

20 The appellant's assertion is that he had actually told the recording officer that *Abang was the one who passed a package to him*, not the other way around. The Judge had rejected this for several reasons set out in [42] to [47] of the Judgment pertaining to the credibility of the appellant's version. We agree with those reasons. Further, in our view, the main difficulty with the appellant's assertion is that it requires the court to believe that the same inaccuracy was recorded in two different statements recorded at two different times. It is unlikely that such a mistake would be made inadvertently on two separate occasions. If the suggestion is that this was deliberately done by the recording officers, in our view the suggestion is illogical – there was no reason for the recording officers to deliberately make such a mistake. We thus agree with the Judge that the appellant's challenge on this point has no merit.

21 Moving on to the appellant's second contention, in the 2nd Statement, the appellant was recorded as mentioning Saravanan for the first time. Aside from the details of his relationship with Saravanan, he was also recorded as mentioning that Saravanan would always instruct "his man" to bring "*dadah*" into Singapore, the word "*dadah*" meaning "drugs".

22 The appellant claimed that the word *dadah* was not used and instead the word *barang* (meaning "item") was used. We do not accept this. As observed by the Judge, the appellant's assertions on this point were inconsistent. At trial, the defence case that was put to the Prosecution's witnesses was that the *only inaccuracy* was the use of the word *dadah*. Yet later, when testifying, the appellant asserted that he did not say the *entire sentence* containing the word *dadah*.

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23 We thus reject the appellant's arguments regarding the Contemporaneous Statements and proceed on the basis that they were accurately recorded.

Whether less weight should be given to the Statements

24 The appellant's next argument is that less weight should be given to the Statements because he did not have access to counsel when he gave them. Consequently, he was not advised on how the MDA presumptions operate and thus less weight should be given to the fact that he omitted to mention details of his defence in the Statements. Alternatively, he argues that this amounted to a breach of his right to counsel under Art 9(3) of the Constitution.

25 Dealing first with the argument that the appellant's constitutional right of access to counsel had been breached, it was established by this court in *Jasbir Singh and another v Public Prosecutor* [1994] 1 SLR(R) 782 ("*Jasbir Singh*") at [45]–[49] that the constitutional right afforded to an accused person is that he has a right to consult counsel after a *reasonable amount of time* has passed since his arrest. This ruling balanced the interests of the accused person with those of law enforcement personnel who need time to complete investigations. Thus, that the appellant did not have access to counsel when he gave the Statements does not in itself mean that his constitutional right had been infringed. In this case four of the Statements were taken on the day of arrest itself, the fifth a day later and all the Statements had been recorded by 2 February 2018, eight days later. Statements taken on the day of arrest must be regarded as having been taken within a reasonable time and even eight days would not appear to be unreasonably long.

26 During oral submissions, counsel for the appellant focused on the 5th Statement which was the appellant's *cautioned statement*. He argued that by

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the time the cautioned statement was administered, the police had completed their investigations. Thus, at this point, the interest of allowing the police time to complete their investigations unencumbered was no longer a concern, and counsel should be present when accused persons give their cautioned statements.

27 We disagree. *Jasbir Singh* itself was a case that involved a cautioned statement, albeit one recorded pursuant to a previous version of the Criminal Procedure Code ("CPC"), *viz*, the 1985 Revised Edition. There, this court did not find that there had been a breach of the accused person's right to counsel. Indeed, *Jasbir Singh* does not stand for the proposition that the right to counsel starts once investigations are complete. All it stands for is that the right to counsel will accrue after a "reasonable time". There, two weeks was held to be a "reasonable time"; here, the 5th Statement was recorded *one day* after the appellant's arrest. In our view, there was no infringement of the appellant's right to counsel.

28 Moving on to the issue of whether less weight should be given to the Statements because the MDA presumptions were not explained to the appellant, we return to the case of *Jasbir Singh*. There, the first appellant was also faced with a charge of drug trafficking. Yet the court did not hold that the MDA presumptions should have been explained to him by a lawyer during the recording of his cautioned statement. Instead, it noted that the only requirement was for an accused person to "state any fact which he intends to rely on in his defence in court", referencing the statutory "caution" found in s 122(6) of the version of the CPC in force at that time.

29 This "caution" was present in the version of the CPC that was in force at the time of the appellant's arrest, *viz*, the 2012 Revised Edition. Section 23(1)

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of that version required that law enforcement officers inform accused persons that if they "keep quiet … about any fact or matter in [their] defence" and only raise it in court, "the judge may be less likely to believe [them]".

30 It may be argued that the use of the word "defence" in this warning suggests that accused persons should be informed of *how* the law operates, especially where the "defence" involves the rebutting of presumptions under the MDA. Indeed, the appellant's counsel submits that an accused person could only state facts to rebut the s 18(2) presumption if he understands how it works in the first place.

31 But such an argument overlooks the point that the presumptions under the MDA do not change *what* needs to be proved in court; they only change *how* the relevant facts are proved. An accused person only needs to state the facts that show that he did not commit the offence that he has been charged with. Thus, an understanding of how the MDA presumptions operate should not affect the accused person's ability to state exculpatory facts.

32 In any case, many of the Statements included questions from the CNB officers that specifically elicited facts from the appellant pertaining to the elements of the charge. For example, in the 2nd Statement, he was asked about what was in the Red Bag, such question pertaining to the element of knowledge. Also in the 2nd Statement, he was asked what he was going to do with the Red Bag, a question which pertained to the element of possession for the purposes of trafficking.

33 By the time the 5th Statement was recorded, the appellant would have known that he was facing charges of drug trafficking and would have understood what facts he would have to state in his defence. Indeed, the contents

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of the 5th Statement show exactly this, as it records the appellant disclaiming involvement in the case, claiming that somebody else had placed the Drugs in the rear box of the Motorcycle, and that he never touched the Drugs. We thus cannot accept that he was prejudiced by not having the MDA presumptions explained to him, and agree that the Judge was correct to accord full weight to the Statements.

The applicability of the Zainal *case*

34 We now deal with the appellant's final argument regarding the Statements. This argument also pertains to the MDA presumptions. It was raised three days before the hearing of this appeal by way of supplemental written submissions. The essence of this argument is that it should be made clear to accused persons, *during investigations*, what presumptions will be relied upon by the Prosecution. In support of this, the appellant cites [53] of *Zainal*.

35 This argument is completely untenable because it makes the fundamental mistake of conflating the *investigative role* of the police with the *prosecutorial role* of the Attorney-General. This is abundantly clear from a reading of the extract at [53] cited by the appellant, which we reproduce below:

> 53 In the present case, we did not receive such assistance from the Prosecution. In our judgment, it is incumbent on the Prosecution to make clear which presumption(s) it relies on when advancing its case in the trial court and on appeal, because this would assist the trial and appeal courts in assessing whether the Prosecution's case is made out, and, more fundamentally, it would give the accused a fair chance of knowing the case that is advanced against him and what evidence he has to adduce (and to what standard of proof) in order to meet that case. It would not be sufficient for the Prosecution to simply state, for instance, that the elements of possession of the drugs, knowledge of the nature of the drugs and possession for the purpose of trafficking have *either* been proved or presumed without making clear the precise nature of the primary case that is being put against the accused.

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[emphasis in original]

Nowhere in this passage is there any mention of the role of law enforcement officers in making clear what presumption will be relied upon *during the investigative process*. Rather, all this passage does is to exhort the Prosecution to make it clear (at trial and on appeal) what presumption it relies upon, if any.

36 Here, the Prosecution *did* make clear at the trial what presumptions it intended to rely on. It made it clear that it intended to rely on (and still does) the presumption under s 18(2) of the MDA. Thus, we see no merit in the appellant's argument.

The Knowledge Issue

37 Turning to the next set of contentions, to begin with, it should be noted that the Prosecution did not take a position on *who* placed the Drugs in the rear box because the identity of that person did not emerge from the Prosecution's evidence. This was presumably because the CNB officers were only in place to observe the appellant/the Motorcycle at around 1.40pm, and on the appellant's account, he had arrived and parked at the Carpark sometime after 11am. Further, according to the appellant, Saravanan had told him around 12 noon that Boy would be placing items in the rear box of the Motorcycle.

38 But in the end, the question of *who* placed the Drugs in the rear box is immaterial. It was undisputed that the appellant knew that the Red Bag (which contained the Drugs) was in the rear box – in other words he had *knowing possession*. Thus, the issue is whether he knew that the Red Bag contained the Drugs. In proving that this was the case, before the Judge, the Prosecution relied upon the s 18(2) presumption, which provides that "[a]ny person who is proved or presumed to have had a controlled drug in his or her possession is presumed,

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until the contrary is proved, to have known the nature of that drug." This placed the onus on the appellant to prove that it was more likely than not that he had a positive belief that was incompatible with the presumption of his actual knowledge of the nature of the Drugs: *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") at [60].

39 At the trial, the appellant claimed that he thought the Red Bag contained stolen handphones, and part of the reason why he believed this was due to the July 2017 Incident when he had stored stolen handphones for Saravanan. It is undisputed, however, that the appellant only raised his belief about the contents of the Red Bag being stolen handphones during trial. Such a claim cannot be found anywhere in the Statements. The Judge found that the appellant's version of events (including the July 2017 Incident) was a fabrication. She thus found that he was unable to rebut the s 18(2) presumption and thus had knowledge of the nature of the Drugs.

40 The appellant argues that the Judge erred in doing so, raising two main points on appeal. First, he argues that she should have paid more attention to his repeated denials of knowledge in the Statements. Second, he points to the fact that the Judge had accepted some aspects of his evidence as being true, but nonetheless went on to reject his case that he thought the Red Bag contained stolen handphones.

41 We are unable to accept the appellant's contentions. Briefly, although he did deny knowledge in his earlier statements, a denial by itself could not rebut the s 18(2) presumption. Further, the Judge was entirely entitled in this case to accept certain parts of the appellant's evidence, but yet reject his assertion that he thought the Red Bag contained stolen handphones.

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The appellant's denial of knowledge in the Statements

42 The appellant repeated at various times in the Statements that he did not know what was inside the Red Bag, and also insisted that it did not belong to him. For example, in the 5th and 7th Statements he stated that he was not involved in the case and that he did not know about the Drugs. On appeal, he argues that the Judge should have given more weight to these denials in deciding whether he had rebutted the s 18(2) presumption.

43 It is now settled, however, that a denial of knowledge is not sufficient to rebut the s 18(2) presumption: see *Gobi* at [64], citing *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39]. Instead, the accused must put forward a "positive belief that [is] *incompatible* with knowledge that the thing he was carrying was the specific drug in his possession" [emphasis in original]: *Gobi* at [60]. Thus, as a matter of law, the appellant's denials do not even get him off the starting block in rebutting the s 18(2) presumption.

44 At most, his denials amounted to a case of indifference which would also be insufficient to rebut the s 18(2) presumption: *Gobi* at [65]. The appellant had the means and opportunity to verify the contents of the Red Bag as, according to his own account of when he learned it had been placed there, it was in the rear box of his Motorcycle for several hours before his arrest, and nobody was around to stop him from checking. During this period, he had gone back to the Carpark, opened the rear box and seen the Red Bag inside it. But he asserted that he had not looked into the Red Bag to see what it contained. In other words, he failed to take steps that an ordinary reasonable person would have taken to establish its contents, and had no plausible explanation for that failure, *ie*, he was indifferent.

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45 As a final point, it seems to us that the appellant's emphasis on these denials of knowledge contradicts his testimony at trial. His case at trial was *not* that he did not know what was inside the Red Bag. Instead, it was that he thought the Red Bag contained stolen handphones because he had previously stored stolen handphones in July 2017. We now turn to this contention.

The appellant's purported belief that the Red Bag contained stolen handphones

46 At the trial, the appellant testified that he thought the Red Bag contained stolen handphones. He claimed that Saravanan had previously asked him to store stolen handphones during the July 2017 Incident. On the day of his arrest, Saravanan had called him and told him that someone had placed something in his rear box as had been done for the July 2017 Incident. He thus thought that the Red Bag contained stolen handphones.

47 But neither this belief nor the July 2017 Incident was mentioned by the appellant in any of the Statements. Accordingly, the Judge found that the July 2017 Incident was a fabrication and that the appellant did not believe that the Red Bag contained stolen handphones.

48 On appeal, the appellant places some weight on the Judge's acceptance of some parts of his evidence, and her rejection of other parts. In his submissions, the appellant listed several aspects of his case that the Judge accepted, including the assertions that Saravanan and Boy existed and were known to him, and that he was storing the Red Bag for Saravanan. The appellant now argues that given her acceptance of these facts, the Judge's rejection of the July 2017 Incident is "questionable".

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49 This argument cannot stand. If a judge accepts certain parts of a witness's version of events, it does not mean that he or she must accept every facet of that version. Due to poor recall (or dishonesty), witnesses may give credible evidence on some facts, but not others. In our judgment, the Judge's findings were justified on the evidence before her. She accepted the parts of his evidence that were mentioned in the Statements. For example, the appellant mentioned Saravanan as early as the 2nd Statement and also mentioned that someone (who he later identified as Boy) had placed the Red Bag in the rear box.

50 But he did *not* mention the July 2017 Incident or his belief that the Red Bag contained stolen handphones. This was despite the fact that all of this allegedly involved Saravanan, his relationship with whom he had explained in great detail in the Statements. He even mentioned in the Long Statements that "since July last year [2017]" Saravanan had stopped coming into Singapore. Given his reference to this time period, there is no reason why the appellant would not have mentioned the July 2017 Incident – that he did not is telling.

51 Most damningly, his version of events on the stand was that when Saravanan had called him on the day of his arrest, the July 2017 Incident was specifically mentioned. If this had indeed happened, it is inexplicable that he did not mention the call in any of the Statements, especially the Contemporaneous Statements which were recorded only a few hours after Saravanan had allegedly spoken to him.

52 As a final observation, it seems to us that the Judge did not need to go so far as to find that the July 2017 Incident was a fabrication. Even if one accepts that the July 2017 Incident occurred, the fact remains that the Statements contained no mention of the appellant's purported belief that the Red Bag

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contained stolen handphones. This omission was *the* most significant obstacle in his attempts at rebutting the s 18(2) presumption and the July 2017 Incident by itself could not have explained this.

The Trafficking Issue

53 Having upheld the Judge's finding that the appellant was unable to rebut the s 18(2) presumption, we now come to the element of possession for the purposes of trafficking.

54 To begin, it is undisputed that the appellant did not possess the Red Bag (and thus the Drugs) for his own consumption. In any event, such a contention would be a difficult one to accept given the weight of the Drugs, such weight being suggestive of an intention to traffic, as pointed out by the Prosecution. The appellant challenges this suggestion raised by the Prosecution, arguing that it is tantamount to invoking the presumption of trafficking under the MDA, and that this is unacceptable given that the Prosecution is also relying on the presumption of knowledge. As we pointed out during the hearing of the appeal, however, this argument misunderstands the effect of a presumption. A presumption does not merely allow a court to draw an inference from a fact; it allows the court to shift the burden of proof completely.

55 This distinction was made clear in *Mohammad Rizwan bin Akbar Husain v Public Prosecutor and another appeal and other matters* [2020] SGCA 45 at [80]–[82]. There, the trial judge had seemingly relied on the presumption of trafficking under s 17(*c*) of the MDA while also relying on the s 18(2) presumption. On appeal, it was noted that this was not permissible, as ruled in *Zainal* at [39]–[47]. But this court went on to note that in any event, the "sheer amount of drugs involved … could lead only to the conclusion that they

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were intended for trafficking" and there was thus "no need to invoke the presumption in s 17(*c*) in any case".

56 Finally, it seems to us that such objections by the appellant are misguided given his own case. His case was that Boy was going to retrieve the Drugs. In other words, the Drugs were not *going* to stay with him; they were going to move on to someone else. If that were indeed so, the quantity of the Drugs would not matter. In such circumstances the strength of any argument that there was no trafficking by him would not depend on the quantity of the drugs but on other surrounding circumstances.

The appellant's claim that Boy was to retrieve the Drugs

57 Having dealt with this argument, we move on to the appellant's primary defence: that he was simply storing the Red Bag for Saravanan and that Boy (who worked for Saravanan) would retrieve it from the rear box at a later time. In other words, he raises the "bailment" defence set out in cases such as *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh a/l Perumal*"); *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 ("*Roshdi*"); and most recently, in *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 ("*Arun Ramesh Kumar*").

58 The defence of "bailment" allows an accused person to avoid liability where he intended to and in fact returned the drugs to the person who initially entrusted him with the drugs. This is because in such a case, the accused's actions would not necessarily form part of the process of distributing drugs to end-users: *Arun Ramesh Kumar* at [26]. Here, the appellant claimed that Boy had placed the Drugs in the rear box, and that Boy would later retrieve them – thus, he was a "bailee".

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59 This defence was raised before, and rejected by, the Judge as she did not accept the appellant's claim that Boy was going to retrieve the Red Bag. In our judgment, her conclusion was correct.

60 To begin with, it was not mentioned in any of the Statements that Boy would return to retrieve the Red Bag and the Drugs from the rear box. All that was said was that Boy had placed them there. One would have expected the appellant to have explained that Boy would retrieve them given that he had also disclaimed ownership. The fact that he did not suggests that his assertion was an afterthought.

61 It is also telling that in the 2nd Statement, the appellant had told the CNB officers that Saravanan would call him and tell him what to do with the packages given to him by Boy. Despite mentioning this, he did not go on to say that Saravanan had told him that Boy would return to retrieve the Red Bag. This revelation would only have been natural if the appellant truly believed that Boy was going to retrieve the Red Bag.

62 The second reason for upholding the Judge's finding on this point pertains to the question of whether the rear box was left unlocked by the appellant. At the trial, the appellant testified that he left the rear box unlocked so that Boy could come and collect the Red Bag. The Prosecution's case was that it was locked when the CNB officers escorted the appellant to the Motorcycle after his arrest and wanted to search it. In reply, it was suggested to the CNB officers that they had locked the rear box during the search, as it could be locked by simply pushing the lid down hard enough.

63 During the trial, the appellant's Motorcycle was brought to court and inspected by the parties and the Judge. Following the inspection, the parties

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were in agreement that whether the rear box was locked/unlocked would depend on the position of the keyhole, and on whether the rear box was "latched". Significantly, it was agreed that for the rear box to be *locked*, the keyhole must be in a *vertical* position. On the other hand, if the keyhole was in a horizontal position, the rear box could be easily opened.

64 This being the case, the appellant's claim that he left the rear box unlocked is unsustainable. The photograph of the rear box taken by the CNB officers at the time of the appellant's arrest shows that the keyhole was instead in a *vertical* position, *ie*, it was locked. Thus, it could not be the case that the appellant had left the rear box unlocked. This further undermines the credibility of his case that he thought that Boy was going to retrieve the Drugs from the rear box.

Whether the "bailment defence" would be established if it was intended for Boy to retrieve the Drugs

65 The conclusions above, in our view, suffice to deal with the appellant's bailee defence. If it is not accepted that the appellant thought that Boy was going to retrieve the Red Bag, he cannot possibly avail himself of the "bailment" defence. In any case, the appellant's version would not have been sufficient to establish the "bailment defence".

66 In *Roshdi*, this court elaborated on the requirements of the "bailment" defence, noting that a "bailee" who receives drugs intending to return them to the "bailor" *could still be liable* for trafficking or possession for the purpose of trafficking. The key inquiry is whether the "bailee" *knew or intended* that the "bailment" would in some way be part of the process of supply or distribution of the drugs: at [115]–[119], cited in *Arun Ramesh Kumar* at [27]–[28]. If the "bailee" knew or intended that the "bailment" was to be part of the supply chain,

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he would fall within the class of persons targeted by the legislative policy behind the MDA. Hence, he would be unable to avail himself of the bailment defence and would still be liable for trafficking/possession for the purpose of trafficking: *Arun Ramesh Kumar* at [27], *Ramesh a/l Perumal* at [101], *Roshdi* at [107].

67 Whether an accused person knew or intended that the "bailment" was to be in some way part of the process of supply or distribution of the drugs can be inferred from the surrounding objective facts. This would include factors such as whether the "bailment" was part of a systematic arrangement or whether it was an isolated occurrence; whether the "bailee" was to receive some kind of remuneration or reward; and whether the "bailee" knew that the "bailment" was meant to assist in evading detection by the authorities (see *Roshdi* at [118]).

68 Applying this analysis here, it seems clear to us 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. Our reasons for this conclusion follow.

69 First, we find it difficult to believe that the appellant would have thought that Boy was going to return the Drugs to Saravanan. It is undisputed that Saravanan lived in Malaysia and as is clear from the 2nd Statement, the appellant knew that Saravanan would use someone to bring drugs *into* Singapore. Knowing this, it would be illogical for the appellant to think that Boy would then take the Drugs back *into* Malaysia to return to Saravanan.

70 Secondly, the appellant clearly had a systematic arrangement with Saravanan: he would be contacted by Saravanan who he claimed had provided him with a spare phone; he admitted to having worked for Saravanan previously; he stated that he would receive remuneration for his help; he

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admitted to knowing that Saravanan was involved in the drug trade; and he explained that Saravanan would call him and tell him what to do with the packages given to him by Boy.

71 Thus, based on the circumstances above, even if we accept the appellant's claim that Boy would retrieve the Drugs, he would not have been able to establish the "bailment" defence on the balance of probabilities.

The Prejudice Issue

72 The final broad point raised by the appellant related to the conduct of IO Wong. It is undisputed that during the trial, IO Wong had gestured to a CNB officer while the latter was testifying. He held up a field diary when the officer was being asked about the handover of exhibits and whether that had been recorded; he also mouthed the word "diamorphine" when this officer was asked by the court what the term "heroin" referred to. Finally, he admitted to speaking to this officer after court had adjourned for the day notwithstanding that the officer had not completed his testimony (although IO Wong explained that this was just to remind the officer to return to court the next day).

73 On appeal, the appellant argues that IO Wong's conduct caused prejudice to his case, and thus his conviction is unsafe. He is, however, unable to point us to any such prejudice. As the Judge rightly observed, IO Wong's actions related to immaterial or uncontentious parts of the evidence. And as the Prosecution pointed out, IO Wong was *not* involved in the investigations proper; he was (as described by the Prosecution) a "caretaker" investigation officer who only took over the matter *after* most of the investigations were complete. Neither of these facts has been challenged by the appellant in this court.

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74 Instead of pointing this court to a concrete example of prejudice, the appellant asks two questions. First, if IO Wong were "audacious enough" to prompt and influence a witness, what other areas of the investigation would he have compromised? And second, how can one prove that IO Wong has not done more than what was discovered? In his written submissions, the appellant does not offer any answers to these questions. When we sought clarification on these points during oral submissions, his counsel submitted that prejudice should be *presumed* where there has been misconduct by law enforcement officers.

75 We cannot accept such a submission – to do so would be throwing the baby out with the bathwater. It is difficult to accept that even minor misconduct would give rise to such a presumption. There is also nothing in our criminal jurisprudence to support the concept of "presumed prejudice". Even if we accept that such a presumption can arise (which we do not), it would need to be precipitated by, at the very least, *substantial misconduct*.

76 But no such substantial misconduct existed here. IO Wong was *not materially* involved in the investigations – thus it would be illogical to presume that he could have somehow tainted the investigative process. If the prejudice presumed was to do with the *trial process*, we are unable to glean anything from the record that would support such a presumption. As was submitted by the Prosecution, IO Wong's misconduct related to immaterial points. Thus, no prejudice was occasioned by his conduct. Having said that, we add that IO Wong's conduct in court was unacceptable and he should have known better than to behave as he did.

Conclusion

77 The appellant was unable to give a consistent or credible explanation of what he thought the Red Bag contained. The evidence also clearly showed that

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he possessed the Drugs with the knowledge or intention that they be advanced along the supply chain towards their end-users. The challenges he raised regarding the Statements and IO Wong's conduct had no legal or factual merit. Accordingly, we affirm the Judge's decision to convict the appellant on the charge that he faced. The sentence imposed was mandatory and cannot be varied. The appeal against conviction and sentence is, therefore, dismissed.

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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