

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

**[2022] SGHC 85**

Criminal Case No 7 of 2021

Between

Public Prosecutor

And

Wan Azasar bin Wan Yusoff

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**JUDGMENT**

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[Criminal Law — Statutory offences — Misuse of Drugs Act]  
[Criminal Procedure and Sentencing — Statements — Admissibility]

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**Public Prosecutor**  
**v**  
**Wan Azasar bin Wan Yusoff**

**[2022] SGHC 85**

General Division of the High Court — Criminal Case No 7 of 2021  
Dedar Singh Gill J  
9–11 February, 2–4, 9–11, 18, 25 March, 28 May, 26–29 July, 23 September,  
28 October 2021, 18 April 2022

18 April 2022

Judgment reserved.

**Dedar Singh Gill J:**

1 The accused, Mr Wan Azasar bin Wan Yusoff, claimed trial to three charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”):

- (a) One charge of importing not less than 27.34g of diamorphine into Singapore, an offence under s 7 of the MDA and punishable under s 33(1) of the MDA (the “First Charge”).
- (b) One charge of importing not less than 340.43g of methamphetamine into Singapore, an offence under s 7 of the MDA and punishable under s 33(1) of the MDA (the “Second Charge”).
- (c) One charge of importing not less than 656.53g of vegetable matter which was analysed and found to be cannabis into Singapore, an

offence under s 7 of the MDA and punishable under s 33(1) of the MDA (the “Third Charge”).

Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the punishment prescribed for unauthorised importation in these quantities is death. Pursuant to s 33B(1)(a) of the MDA, the court has a discretion not to impose the death penalty if the requirements set out in s 33B(2) of the MDA are satisfied.

2 It is undisputed that the diamorphine (which I refer to as “heroin”) forming the subject matter of the First Charge, the methamphetamine forming the subject matter of the Second Charge and the cannabis forming the subject matter of the Third Charge were recovered from the accused’s car bearing registration number JRJ 6150 (the “Car”) at the Woodlands Checkpoint located at 21 Woodlands Crossing, Singapore (the “Woodlands Checkpoint”).<sup>1</sup>

3 The following table sets out the initial markings by the officers (see [6]–[7]) and the eventual markings by Investigation Officer Neo Zhan Wei (“IO Neo”) of the drug exhibits recovered from the Car (individually referred to as the “Exhibit”, more than one or collectively referred to as the “Exhibits”).

<b>Location retrieved from</b>	<b>Initial marking</b>	<b>Description of Exhibit</b>	<b>IO Neo’s marking</b>		<b>Description of sub-Exhibit</b>
Compartment of the left armrest at the rear seats of the Car	Collectively placed in a larger exhibit bag marked “L”	One black bundle	A1	A1A	One zip-lock containing granular / powdery substance

<sup>1</sup> Statement of Agreed Facts of 9 February 2021 (“SOAF”) at paras 4, 7, 20–24; Prosecution’s Closing Submissions of 23 September 2021 (“PCS”) at para 3; Defence’s Closing Submissions of 24 September 2021 (“DCS”) at para 8.

Location retrieved from	Initial marking	Description of Exhibit	IO Neo's marking		Description of sub-Exhibit
(location later marked "A")				A1B	One zip-lock containing granular / powdery substance
				A1C	One zip-lock containing granular / powdery substance
		One black bundle labelled "3"	A2	A2A1A	One plastic packet containing granular / powdery substance
		One black bundle	A3	A3A	One zip-lock containing granular / powdery substance
				A3B	One zip-lock containing granular / powdery substance
		One black bundle	A4	A4A	One zip-lock containing granular / powdery substance
				A4B	One zip-lock containing

Location retrieved from	Initial marking	Description of Exhibit	IO Neo's marking		Description of sub-Exhibit
					granular / powdery substance
		One block of vegetable matter	A5	A5A	One block of vegetable matter
Compartment of the right armrest at the rear seats of the Car (location later marked "B")	Collectively placed in a larger exhibit bag marked "R"	One black bundle labelled "3"	B1	B1A	One zip-lock containing granular / powdery substance
				B1B	One zip-lock containing granular / powdery substance
				B1C	One zip-lock containing granular / powdery substance
		One black bundle labelled "250g"	B2	B2A	One zip-lock containing crystalline substance
				B2B	One zip-lock containing crystalline substance
		One black bundle	B3	B3A	One zip-lock containing crystalline substance

Location retrieved from	Initial marking	Description of Exhibit	IO Neo's marking		Description of sub-Exhibit
				B3B	One zip-lock containing crystalline substance
Fuse-box beneath the steering wheel (location later marked "C")	"C1"	One wrapped bundle	C1	C1A1	One zip-lock containing granular / powdery substance
				C1B	One zip-lock containing granular / powdery substance
				C1C1	One zip-lock containing granular / powdery substance
Beneath the air-conditioning vent located in front of the front passenger seat of the Car (location later marked "D")	"C2"	One wrapped bundle	D1	D1A	One zip-lock containing granular / powdery substance
				D1B	One zip-lock containing granular / powdery substance
				D1C	One zip-lock containing granular /



<b>Location retrieved from</b>	<b>Initial marking</b>	<b>Description of Exhibit</b>	<b>IO Neo's marking</b>		<b>Description of sub-Exhibit</b>
					powdery substance
Beneath the backrest cover of the left seat in the middle row of passenger seats of the Car (location later marked "E")	Collectively marked "D1"	Five blocks of vegetable matter	E1	E1A	One block of vegetable matter
			E2	E2A	One block of vegetable matter
			E3	E3A	One block of vegetable matter
			E4	E4A	One block of vegetable matter
			E5	E5A	One block of vegetable matter
Beneath the backrest cover of the middle and right seats in the middle row of passenger seats of the Car (location later marked "F")	Collectively marked "D2"	Five blocks of vegetable matter	F1	F1A	One block of vegetable matter
			F2	F2A	One block of vegetable matter
			F3	F3A	One block of vegetable matter
			F4	F4A	One block of vegetable matter
			F5	F5A	One block of vegetable matter

4 The accused’s defence is that out of the 27.34g of heroin, he had only knowingly imported the 3.75g of heroin in Exhibits “B1A”, “B1B” and “B1C”. He denies knowledge of the nature of the remaining 23.59g of heroin, the entire 340.43g of methamphetamine and the entire 656.53g of cannabis (“the Ignorance Defence”).<sup>2</sup>

### **Agreed facts**

5 During a random check, officers from the Immigration and Checkpoints Authority (“ICA”) inspected and searched the Car at the Woodlands Checkpoint. ICA officers arrested the accused on 29 October 2018 at or about 1.50pm as exhibits suspected to be drugs were found in the Car.<sup>3</sup> Central Narcotics Bureau (“CNB”) officers were notified and arrived at the scene.

6 After arresting the accused, officers searched the Car twice. The first search was conducted at about 1.55pm on the same day by Sergeant (2) Ng Jian Zuan (“Sgt Ng”) and Sergeant (2) Saranraj s/o Ramachandran (“Sgt Saranraj”). The Exhibits discovered in the armrests at the rear seats of the Car were recovered by Senior Staff Sergeant Muhammad Khairul Bin Khairudin (“SSSgt Khairul”) and Staff Sergeant Muhammad Saifuddin Rowther Bin Mohidin Pitchai (“SSgt Saifuddin”).

7 The second search was conducted at about 1.15am on 30 October 2018 by Sergeant (2) Muhammad Syamil Bin Bueari (“Sgt Syamil”), Senior Staff Sergeant Ritar d/o Diayalah (“SSSgt Ritar”) and Sergeant (2) Tao Junwei, Amos (“Sgt Amos”).

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<sup>2</sup> DCS at para 8.

<sup>3</sup> SOAF at paras 2–3.

8 In all, the officers retrieved the Exhibits from six locations in the Car, later marked “A”, “B”, “C”, “D”, “E” and “F”, which corresponded to the first letter in the final marking of the Exhibits and indicated that the Exhibit was retrieved from the said location (see summary at [3]).

9 The following table summarises the results of the analysis of these Exhibits, which are not in dispute.

Exhibit marking	Quantity of drug	Results of analysis by HSA
A1A	1.17g	Diamorphine
A1B	1.08g	
A1C	1.29g	
A2A1A	8.49g	
A3A	1.46g	
A3B	1.00g	
A4A	1.20g	
A4B	0.99g	
B1A	1.21g	
B1B	1.22g	
B1C	1.32g	
C1A1	1.01g	
C1B	1.18g	
C1C1	0.89g	

<b>Exhibit marking</b>	<b>Quantity of drug</b>	<b>Results of analysis by HSA</b>
D1A	1.17g	
D1B	1.41g	
D1C	1.25g	
B2A	84.93g	Methamphetamine
B2B	85.3g	
B3A	85.1g	
B3B	85.1g	
A5A	112.1g	Cannabis
E1A	60.34g	
E2A	48.35g	
E3A	29.06g	
E4A	44.62g	
E5A	53.42g	
F1A	76.86g	
F2A	45.37g	
F3A	60.55g	
F4A	52.82g	
F5A	73.04g	

10 The following statements (which I shall refer to collectively as the “Statements”) were recorded from the accused at various times after his arrest:

(a) On 29 October 2018, at 6.15pm in an interview room at the CNB office at the Woodlands Checkpoint, SSSgt Khairul recorded a contemporaneous statement from the accused (the “First Contemporaneous Statement”). SSSgt Khairul conducted the interview in Malay and contemporaneously recorded the accused’s answers in English in the First Contemporaneous Statement.<sup>4</sup>

(b) On 30 October 2018, at 2.47am in an interview room at the CNB office at the Woodlands Checkpoint, SSgt Khairul Bin Jalani (“SSgt Khairul”) recorded a contemporaneous statement from the accused (the “Second Contemporaneous Statement”). SSgt Khairul conducted the interview in Malay and contemporaneously recorded the accused’s answers in English in the Second Contemporaneous Statement.<sup>5</sup>

(c) On 30 October 2018, at 2.42pm in ‘A’ Division lock-up, IO Neo recorded a statement from the accused under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the “CPC”) (the “First Cautioned Statement”).<sup>6</sup> The accused spoke in Malay and Mr Mohammad Farhan Bin Sani (“Mr Farhan”) served as his interpreter.

(d) On 30 October 2018, at 3.14pm in ‘A’ Division lock-up, IO Neo recorded a statement from the accused under s 23 of the CPC (the

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<sup>4</sup> SOAF at para 67; Agreed Bundle of Documents (“ABOD”) at pp 162–163.

<sup>5</sup> SOAF at para 67; ABOD at p 175.

<sup>6</sup> SOAF at para 67–68; ABOD at pp 261–263 (P64).

“Second Cautioned Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>7</sup>

(e) On 30 October 2018, at 3.41pm in ‘A’ Division lock-up, IO Neo recorded a statement from the accused under s 23 of the CPC (the “Third Cautioned Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>8</sup>

(f) On 5 November 2018 at 10.16am in ‘A’ Division lock-up, IO Neo recorded a statement from the accused under s 22 of the CPC (the “First Long Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>9</sup>

(g) On 5 November 2018 at 2.15pm in ‘A’ Division lock-up, IO Neo recorded a statement from the accused under s 22 of the CPC (the “Second Long Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>10</sup>

(h) On 2 May 2019 at 2.18pm in Changi Prison Complex, IO Neo recorded a statement from the accused under s 22 of the CPC (the “Third Long Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>11</sup>

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<sup>7</sup> SOAF at para 67–68; ABOD at pp 264–266 (P65).

<sup>8</sup> SOAF at para 67–68; ABOD at pp 267–269 (P66).

<sup>9</sup> SOAF at para 67–68; ABOD at pp 270–273 (P67).

<sup>10</sup> SOAF at para 67–68; ABOD at pp 274–311 (P68).

<sup>11</sup> SOAF at para 67–68; Prosecution’s Bundle of Documents (“PBOD”) at pp 32–35 (P69).

(i) On 21 June 2019 at 2.30pm in Changi Prison Complex, IO Neo recorded a statement from the accused under s 22 of the CPC (the “Fourth Long Statement”). The accused spoke in Malay and Mr Farhan served as his interpreter.<sup>12</sup>

11 It is undisputed that the Statements set out in the preceding paragraph, except for the Third Long Statement (at [10(h)]), were voluntarily provided by the accused.<sup>13</sup> The accused challenged the Third Long Statement on the basis that two threats were uttered to the accused during the statement recording. The accused also challenged the accuracy in the recording of paragraphs 50, 52, 54, 57, 59 and 61 in the Third Long Statement. Therefore, I held an ancillary hearing to determine if the Third Long Statement was admissible (see [41]–[60] below).

12 At the main trial, the accused challenges the accuracy in the recording of:

- (a) the First Contemporaneous Statement at Q1/A1 to Q3/A3;<sup>14</sup>
- (b) the First Long Statement at paragraphs 5, 11 and 13;<sup>15</sup>
- (c) the Second Long Statement at paragraphs 18, 33 and 36;<sup>16</sup>

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<sup>12</sup> Notes of Evidence (“NE”): 9 March 2021, pp 58:24–31 and 59:1–11; NE: 28 July 2021, p 19:24–29; ABOD at pp 312–320 (P69).

<sup>13</sup> SOAF at para 69.

<sup>14</sup> DCS at para 59(a)–(d).

<sup>15</sup> DCS at paras 338–343.

<sup>16</sup> DCS at paras 347–349.

(d) the Third Long Statement at paragraphs 50, 51, 52, 54, 57, 59 and 61;<sup>17</sup> and

(e) the deletion of “I have nothing to say” in the First Cautioned Statement.<sup>18</sup>

13 While the Defence appears to challenge the accuracy of the Second Contemporaneous Statement and the Fourth Long Statement generally, it does not substantively dispute their contents.<sup>19</sup>

### **The parties’ cases**

#### ***The Prosecution’s case***

14 The Prosecution advances two alternative cases.

15 The Prosecution’s primary case is that the evidence proves, beyond a reasonable doubt, that the accused possessed the drugs in the Exhibits for the purpose of intentionally importing the Exhibits into Singapore without prior authorisation.<sup>20</sup> In summary, the Prosecution says that the accused knew at all material times that the Exhibits in his possession contained heroin, methamphetamine and cannabis. The Prosecution relies on the following admissions:

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<sup>17</sup> DCS at paras 383–400.

<sup>18</sup> DCS at paras 11(c), 12 (Third Long Statement), 54 (First Contemporaneous Statement), 111–113 (Cautioned Statements), 123–125 and 336–353 (First Long Statement), and 359–362 (Second Long Statement).

<sup>19</sup> DCS at paras 69–72 (Second Contemporaneous Statement) and 447–448 (Fourth Long Statement).

<sup>20</sup> PCS at para 28.



(a) The accused's response to SSSgt Khairul's question on the identity of the Exhibits from locations later marked "A" and "B" that they were "panas" (heroin) and "sejuk" (methamphetamine) in Room B-318 on 29 October 2018 at about 2.35pm.<sup>21</sup>

(b) In the accused's First Contemporaneous Statement, he said that the Exhibits retrieved from locations later marked "A" and "B" were "panas" (heroin) and "sejuk" (methamphetamine), which he understood to be drugs.<sup>22</sup>

(c) In the accused's Second Contemporaneous Statement, he said that Exhibits "C1" (retrieved from location later marked "C") and "D1" (retrieved from location later marked "D") were "panas" (heroin) and Exhibits "E1", "E2", "E3", "E4" and "E5" (retrieved from location later marked "E") and "F1", "F2", "F3", "F4" and "F5" (retrieved from location later marked "F") were "ganja" (cannabis).<sup>23</sup>

(d) In the accused's Third Long Statement, he admitted that he had placed the Exhibits in the Car.<sup>24</sup>

(e) The accused confessed to Dr Jerome Goh Hern Yee ("Dr Goh") on 21 November 2018, 27 November 2018 and 4 December 2018 that he had knowingly brought "ice", "heroin" and "ganja" into Singapore.<sup>25</sup>

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<sup>21</sup> PCS at para 28(a); PS26 at para 7: ABOD at p 160.

<sup>22</sup> PCS at para 28(b); P55 at Q1/A1–Q2/A2: ABOD at p 162.

<sup>23</sup> PCS at para 28(c); P60 at Q13/A13–Q17/A17: ABOD at p 175.

<sup>24</sup> PCS at para 28(d); P69: PBOD at pp 32–35.

<sup>25</sup> PCS at para 28(e); P63T at p 8 / P63 at p 9: PBOD at p 20.

16 The Prosecution’s alternative case is that the Exhibits were in the possession of the accused pursuant to the presumption under s 21 of the MDA.<sup>26</sup>

This provision states that:

**Presumption relating to vehicle**

**21.** If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

17 Further to [16], the accused knew that the Exhibits contained heroin, methamphetamine and cannabis by virtue of the presumption under s 18(2) of the MDA. This provision states that:

**Presumption of possession and knowledge of controlled drugs**

...

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

18 The Prosecution has to defeat the accused’s Ignorance Defence on either of its cases. In this regard, the Prosecution submits that the Ignorance Defence is not credible for the following reasons.<sup>27</sup>

19 First, full weight should be given to the accused’s confessions in his statements at [15] and the admissions to Dr Goh corroborate this.<sup>28</sup> According to the Prosecution, his attempts to challenge the accuracy of the statements should not be believed because:

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<sup>26</sup> PCS at para 29.

<sup>27</sup> PCS at para 59.

<sup>28</sup> Prosecution’s Reply Submissions (“PRS”) at paras 46–47 and 51.

(a) While the accused alleges that IO Neo and Mr Farhan were unreliable witnesses and fabricated aspects of the Third Long Statement, the evidence does not bear out any apparent or real inconsistency nor provide substantiation for the claim of manipulation.<sup>29</sup> Rather, the falsity of the accused’s contention as to the voluntariness of the Third Long Statement is made apparent by his “cherry-picking” of certain exculpatory parts of the statement as being voluntary.<sup>30</sup>

(b) The accused alleges that the First Contemporaneous Statement, the First, Second and Third Long Statements, and the First Cautioned Statement were inaccurately recorded. However, the evidence shows that the statements were read back to the accused and there is no basis for the accused’s allegation that the contents – including amendments – of the statements were fabricated.<sup>31</sup>

(c) The accused’s claims that portions of Dr Goh’s clinical notes were recorded inaccurately and that the interpreter, Mr Shaffiq Bin Selamat (“Mr Shaffiq”), was affiliated to CNB, are misconceived.<sup>32</sup>

(d) The Ignorance Defence is an afterthought. The confessions in the accused’s statements should be preferred over his testimony at trial as they set out a contemporaneous and consistent account of the offences.<sup>33</sup>

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<sup>29</sup> PRS at paras 57–61.

<sup>30</sup> PCS at paras 52–53.

<sup>31</sup> PRS at paras 62–84.

<sup>32</sup> PRS at paras 48–51.

<sup>33</sup> PCS at para 59.

In contrast, the accused was unable to satisfactorily explain his departure from the admissions in the statements provided (see list at [15]).<sup>34</sup>

20 Second, the allegations against the statement recorders and interpreter of the First Contemporaneous Statement, the First, Second and Third Long Statements and the First Cautioned Statement are fanciful and self-serving.<sup>35</sup> In this regard, the Prosecution emphasises that the evidence from the statement recorders and the interpreter is coherent and logical, and there was no impropriety in the statement recording process.<sup>36</sup> Thus, the accused’s confessions as to his knowledge of the nature of the Exhibits should be accorded full weight.

21 Third, the accused’s claim that he had kept silent when SSSgt Khairul posed the question on the Exhibits retrieved from locations later marked “A” and “B” (see [15(a)]) was an afterthought.<sup>37</sup> In making this submission, the Prosecution underscores the accused’s failure to put the allegation to SSSgt Khairul, the absence of any reason for SSSgt Khairul to lie in his evidence and SSgt Saifuddin’s corroboration of SSSgt Khairul’s contemporaneous narration of the accused’s response that the Exhibits from locations later marked “A” and “B” were “panas” (heroin) and “sejuk” (methamphetamine).

22 In respect of the Prosecution’s alternative case set out at [16]–[17], the accused argues that the presumptions in ss 21 and 18(2) of the MDA have not

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<sup>34</sup> PCS at para 59.

<sup>35</sup> PCS at para 59.

<sup>36</sup> PRS at paras 56–64.

<sup>37</sup> PCS at para 38.

been invoked or that the said presumptions have been rebutted by him.<sup>38</sup> In this connection, the accused submits that there may have been a break in the chain of custody of the Exhibits,<sup>39</sup> in which case the presumptions in ss 21 and 18(2) of the MDA are not successfully raised.

23 In reply, the Prosecution makes the following submissions:

(a) First, no reasonable doubt has arisen in this regard as it is undisputed that the Exhibits were recovered from various locations in the Car,<sup>40</sup> and the chain of custody between the initial seizure of the Exhibits and their eventual analysis by the Health Sciences Authority (“HSA”) is unbroken on the totality of the evidence.<sup>41</sup>

(b) Second, in relation to the accused’s submission that the ss 21 and 18(2) presumptions have been rebutted by virtue of the Ignorance Defence, the arguments set out above at [19]–[21] refute the accused’s claim of his lack of knowledge of the nature of the Exhibits retrieved from locations other than the location later marked “B”.<sup>42</sup>

24 For all the above reasons, the Prosecution urges the court to convict the accused.

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<sup>38</sup> PRS at para 2; DCS at para 559.

<sup>39</sup> DCS at paras 10 and 281.

<sup>40</sup> PRS at para 6.

<sup>41</sup> PRS at paras 8–44.

<sup>42</sup> PRS at paras 45–64.

***The Defence's case***

25 To recapitulate, the accused's defence is that he did not have actual knowledge of the nature and existence of the drugs<sup>43</sup> and the Prosecution failed to prove his possession of the Exhibits beyond reasonable doubt.<sup>44</sup> He claims that he only knew that the Exhibits "B1A", "B1B" and "B1C" contained heroin.<sup>45</sup> He denies knowledge of the nature of the remaining 23.59g of heroin in the First Charge, the entire 340.43g of methamphetamine in the Second Charge and the entire 656.53g of cannabis in the Third Charge. Further, even though the accused knew that the Exhibits "B1A", "B1B" and "B1C" contained heroin, he only knew this because a person known as "Din" told him so.<sup>46</sup> The accused makes the following points in support of the Ignorance Defence.

26 First, no weight should be given to the Third Long Statement.<sup>47</sup> Notwithstanding the admissibility of the statement, the contents of the Third Long Statement should be disregarded for two main reasons:

- (a) The credibility of the statement recorder, IO Neo, should be doubted because he had been "evasive" in his evidence on the reason for the recording of the Third Long Statement and the prior assistance rendered by Mr Farhan to him on other occasions.<sup>48</sup> Similarly, the credibility of the interpreter, Mr Farhan, is called into question because

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<sup>43</sup> DCS at para 5.

<sup>44</sup> DCS at paras 6–7.

<sup>45</sup> DCS at para 8(a).

<sup>46</sup> DCS at para 8(c).

<sup>47</sup> DCS at paras 11(c) and 12.

<sup>48</sup> DCS at paras 366–368.

he was not forthcoming in his responses<sup>49</sup> and his answers were inconsistent.<sup>50</sup>

(b) Certain portions of the Third Long Statement were answers “prompted” or “fabricated” by IO Neo.<sup>51</sup>

27 Second, no weight should be accorded to the incriminating aspects of Dr Goh’s notes in the Psychiatric Clerking Case Sheet (marked as “P63”).<sup>52</sup> Specifically, the Defence emphasises that the clerical error made by Dr Goh in recording the words “for charging heroin, ganja and ice into Singapore” supports the inference that the accused had told Dr Goh that he was being *charged* for bringing in heroin, “ganja” and “ice”. This is opposed to Dr Goh’s testimony that he had erroneously recorded “charging” when he intended to record “bringing”, *ie*, “for bringing heroin, ganja and ice into Singapore”.<sup>53</sup> Further, Dr Goh’s omission to record whether he had explained to the accused the limits of confidentiality and his primary duty to the court on some occasions, and his inability to confirm whether he had done so, places the accuracy of his notes into question.<sup>54</sup> The Defence posits that a portion of Dr Goh’s record instead corroborates the accused’s evidence that he had kept the packets from “Din” which were found at location later marked “B”.<sup>55</sup>

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<sup>49</sup> DCS at paras 406, 412 and 417.

<sup>50</sup> DCS at paras 407 and 427.

<sup>51</sup> DCS at paras 385, 387, 394–396 and 399.

<sup>52</sup> DCS at para 11(a)–(b).

<sup>53</sup> DCS at paras 91–93.

<sup>54</sup> DCS at para 96.

<sup>55</sup> DCS at paras 94–95.

28 In support of its submission that no weight should be placed on the incriminating portions of Dr Goh’s clinical notes P63, the Defence submits that the interpreter for the accused in the interviews conducted by Dr Goh, Mr Shaffiq, was in fact affiliated with CNB, and therefore urges the court not to take into account the accused’s admissions in Dr Goh’s clinical notes P63.<sup>56</sup> The Defence also points to the fact that Mr Shaffiq had not interpreted what Dr Goh recorded in respect of the accused’s answers back to the accused.<sup>57</sup>

29 Third, the Defence appears to suggest that limited weight should be accorded to the First and Second Contemporaneous Statements, the First Cautioned Statement, and the First and Second Long Statements. The following summarises, *inter alia*, the arguments put forth by the Defence:

(a) In respect of the First Contemporaneous Statement, the accused had allegedly remained silent when the statement recorder, SSSgt Khairul, asked him what the “A” and “B” Exhibits were. SSSgt Khairul then asked whether he took drugs, and the accused responded “panas” and “sejuk”. The accused claims that Q3 was not asked by SSSgt Khairul.<sup>58</sup>

(b) In relation to the Second Contemporaneous Statement, the statement recorder, SSgt Khairul, likely did not read the statement back to the accused as he had not read back phrases describing his actions to the accused,<sup>59</sup> and no photographs were shown to the accused.<sup>60</sup> An

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<sup>56</sup> DCS at paras 102–104.

<sup>57</sup> DCS at paras 105–106.

<sup>58</sup> DCS at para 59(a)–(d).

<sup>59</sup> DCS paras 64 and 70.

<sup>60</sup> DCS at para 72.



example of such a phrase recorded in the statement is “... (pointing to one bundle of brownish granular substance found behind the speedometer)”.

(c) Aside from the deletion in the First Cautioned Statement as set out in [12(e)], the Defence further argues that Mr Farhan had likely neglected to interpret the entirety of the charges and the corresponding statements for the accused,<sup>61</sup> and the accused did not initially express that he had nothing to say.<sup>62</sup> Hence, there is doubt over the accuracy of the Cautioned Statements.

(d) In respect of the First Long Statement, the deletions made by IO Neo merely operated as a façade to portray that the said statement had been translated and read back to the accused.<sup>63</sup>

(e) The Second Long Statement was inaccurately recorded by IO Neo.<sup>64</sup>

30 Fourth, the Defence seems to contest SSSgt Khairul’s testimony on what the accused had told him prior to the recording of the First Contemporaneous Statement. To this end, the Defence takes issue with the evidence led from SSgt Saifuddin, that he had not *heard*, but instead *learned*, that the accused told SSSgt Khairul that the Exhibits from locations later marked “A” and “B” contained “panas” and “sejuk”.<sup>65</sup>

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<sup>61</sup> DCS at paras 112 and 118.

<sup>62</sup> DCS at paras 316–319.

<sup>63</sup> DCS at paras 124 and 335–337.

<sup>64</sup> DCS at para 350.

<sup>65</sup> DCS at para 48.

31 Moving next to the Defence's submission that the Prosecution has failed to invoke the presumptions under ss 21 and 18(2) of the MDA, the following propositions are raised to show that the Prosecution has not proven the chain of custody of the Exhibits beyond reasonable doubt:

- (a) the Exhibits were inconsistently marked; and
- (b) the movement of the Exhibits in and out of zip-lock bags, and between zip-lock bags and tamper-proof bags, may result in a break in the chain of custody.

32 Even if the presumptions under ss 21 and 18(2) of the MDA are operative, the Defence argues that the presumptions have been successfully rebutted.<sup>66</sup>

#### **Issues to be determined**

33 Based on the foregoing, the issues for my determination are as follows:

- (a) whether the Prosecution has established beyond a reasonable doubt that the accused knowingly imported the Exhibits into Singapore;
- (b) whether the Prosecution has successfully relied on the presumptions under ss 21 and 18(2) of the MDA; and
- (c) whether the accused has established, on the balance of probabilities, the Ignorance Defence.

34 In relation to the actual possession of the Exhibits, I consider the following sub-issues:

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<sup>66</sup> DCS at para 559.

- (a) whether the Prosecution has proven beyond a reasonable doubt that the chain of custody of the Exhibits was unbroken;
- (b) the relevance and weight to be accorded to the First and Second Contemporaneous Statement and the First, Second and Third Long Statements;
- (c) the reliability of the accused's admissions to Dr Goh and the contemporaneous clinical notes P63; and
- (d) the evidential significance of the accused's DNA on the cling wraps of Exhibit "E3".

35 In respect of actual knowledge of the nature of the Exhibits, I contemplate the sub-issues set out at [34(b)]–[34(d)].

36 Moving to the inquiry at [33(b)], I will first consider whether the presumptions have been successfully invoked by the Prosecution proving the unbroken chain of custody of the Exhibits beyond a reasonable doubt.

37 Finally, in respect of the inquiry at [33(c)], I consider if the Ignorance Defence has introduced a reasoned doubt in the Prosecution's primary case of actual possession and knowledge or rebutted the Prosecution's alternative case which relies on the presumptions.

### **Elements of the Importation Charges**

38 The elements of the offence of importation of a controlled drug under s 7 of the MDA are set out in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [27] as follows:

- (a) the accused person was in possession of the drugs (the “possession element”);
- (b) the accused person had knowledge of the nature of the drugs (the “knowledge element”); and
- (c) the drugs were intentionally brought into Singapore without prior authorisation (the “authorisation element”).

39 It is not in dispute that the accused did not have any prior authorisation to bring the drugs into Singapore. For the possession element, it is necessary to establish that the accused person was in physical possession of the drugs and knew that he was in possession of the items in question which turn out to be the drugs (*Adili* at [32]).

40 In proving the elements of the offence, the Prosecution may prove the elements beyond a reasonable doubt or rely on statutory presumptions. In the present context, the possession element may be fulfilled by reliance of the presumption of possession under s 21 of the MDA, *ie*, if any controlled drug is found in any vehicle, the person in charge of the vehicle for the time being is presumed to be in possession of the drug. The knowledge element may be satisfied with the presumption of knowledge under s 18(2) of the MDA, *ie*, any person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of the drug.

### **Whether the Third Long Statement was made voluntarily**

41 I held an ancillary hearing within the main trial as the accused challenged the admissibility of the Third Long Statement. The Third Long

Statement was recorded by IO Neo on 2 May 2019 at 2.18pm, in Changi Prison Complex, with the assistance of the certified Malay interpreter, Mr Farhan.

42 At the end of the ancillary hearing, I admitted the Third Long Statement pursuant to s 258(1) of the CPC as I found that it was voluntarily made and accurately recorded.

### ***Voluntariness of the Third Long Statement***

43 The accused submitted that Mr Farhan uttered two threats to him in Malay while the Third Long Statement was being recorded. As a result, the accused provided involuntary incriminating responses to some of the questions he was asked. Mr Farhan uttered the first threat – “you have to cooperate with us, if not you will go and die” – at paragraph 50 of the Third Long Statement (“the First Threat”).<sup>67</sup> The second threat – “you must cooperate, if not you will die” – was uttered by Mr Farhan just before Q2 at paragraph 50 of the Third Long Statement was asked (“the Second Threat”).<sup>68</sup> The First Threat and the Second Threat are collectively referred to as the “Threats”. The accused’s case was that the Threats were uttered by Mr Farhan “possibly” with IO Neo’s authority.<sup>69</sup>

44 On the other hand, the Prosecution submitted that neither Mr Farhan nor IO Neo issued any threat, inducement or promise to the accused. Accordingly, the Third Long Statement was made voluntarily and was admissible under s 258(1) of the CPC.<sup>70</sup>

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<sup>67</sup> Accused’s submissions (“AS”) at para 7.

<sup>68</sup> AS at para 12.

<sup>69</sup> AS at para 7.

<sup>70</sup> Prosecution’s submissions (“PS”) at paras 44–45.

45 In *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 (“*Sulaiman*”) at [39], the Court of Appeal reaffirmed the two-stage test for determining the voluntariness of a statement:

- (a) whether objectively there was a threat, inducement or promise made to the accused, and having reference to the charge against him (the “objective limb”); and
- (b) whether subjectively, the threat, inducement or promise was such that it would be reasonable for the accused to think that by making the statement he would gain some advantage or avoid any adverse consequences in relation to the proceedings against him (the “subjective limb”).

46 Further, where an ancillary hearing is convened to determine the admissibility of a statement, the legal burden of proof falls on the Prosecution to establish beyond reasonable doubt that the statement was given voluntarily (*Sulaiman* at [36]).

*Whether the two alleged threats were uttered by Mr Farhan*

47 I began by examining the objective limb of the test of voluntariness under s 258(3) of the CPC. To provide context for the following discussion, I set out the accused’s account of events leading up to the alleged Threats:<sup>71</sup>

- (a) At paragraph 50 of the Third Long Statement, Mr Farhan asked the accused why his DNA was found on the Exhibits. However, the accused was not informed at this point in time that his DNA was found only on Exhibit “E3”.

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<sup>71</sup> AS at paras 8–9.

- (b) In response, the accused said he had only put three to four items in the back of the Car behind the driver’s seat. Mr Farhan then revealed that his DNA was found on Exhibit “E3”, but the accused maintained that he had only kept three to four items as described above. Mr Farhan did not believe the accused.
- (c) An alleged conversation between IO Neo and Mr Farhan took place in English (“the Alleged Conversation”). The accused claimed that both of their faces looked unhappy.
- (d) Mr Farhan’s face changed colour and he scolded the accused in English (“the Alleged Scolding”). The accused was unable to understand the scolding.
- (e) Mr Farhan then uttered the First Threat to the accused in Malay: “You must work together with us, if not you will go and die”.
- (f) Subsequently, prior to the asking of Q2 in paragraph 50, Mr Farhan uttered the Second Threat in Malay, “You have to cooperate with us. If not, you will go and die.”<sup>72</sup>

48 Having scrutinised the evidence adduced in the course of the ancillary hearing, I found that the Prosecution had proven beyond a reasonable doubt that no threats were issued by Mr Farhan or IO Neo. My reasons were as follows.

49 First, both IO Neo and Mr Farhan denied the utterance of any threats when the Third Long Statement was recorded.<sup>73</sup> I focused my attention on what

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<sup>72</sup> NE: 10 March 2021, pp 28:19–22, 31:3–24; NE: 11 March 2021, pp 11:15–17, 18:7–9.

<sup>73</sup> NE: 9 March 2021, p 68:8–13 (IO Neo, First Threat); NE: 10 March 2021, pp 28:19–23 (Mr Farhan, First Threat), 31:3–7 (Mr Farhan, First and Second Threat).

transpired during the recording of paragraph 50 of the Third Long Statement as the Threats were allegedly issued at that time. In this regard, IO Neo's and Mr Farhan's evidence corroborated each other. Both of them testified that: (a) the accused was informed that his DNA was found on Exhibit "E3" and was asked to account for this; and (b) the accused then said that his DNA was found on Exhibit "E3" as he "could have touched [Exhibit "E3"]" when keeping it inside the Car ("the accused's first response at paragraph 50"). Further, contrary to the Defence's case, both IO Neo and Mr Farhan testified that the accused did not speak about keeping items in other locations of the Car when asked to explain the presence of his DNA on Exhibit "E3" at paragraph 50.<sup>74</sup> On the whole, IO Neo's and Mr Farhan's evidence contradicted the accused's allegation that the Threats were issued.

50 Second, and in contrast to the Prosecution's witnesses, the accused's version of events was rife with inconsistencies. In respect of the First Threat, the accused vacillated over who had issued it and the events leading up to it:

(a) When cross-examining IO Neo, the Defence did not take a clear position on who issued the First Threat. The Defence initially put it to IO Neo that the First Threat was "from you and/or Farhan". Only after the court and Prosecution sought greater clarity did the Defence accept that "I think the better person ... is to put to Mr Farhan".<sup>75</sup>

(b) The accused provided conflicting accounts of when Mr Farhan performed the Alleged Scolding. When the Defence cross-examined Mr Farhan, it was put to him that he scolded the accused *after* the Alleged

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<sup>74</sup> NE: 9 March 2021, p 67:30–31 (IO Neo); NE: 10 March 2021, p 28:10–11 (Mr Farhan).

<sup>75</sup> NE: 9 March 2021, p 68:12–22.



Conversation and First Threat.<sup>76</sup> Under cross-examination, the accused said that the Alleged Scolding occurred *before* the Alleged Conversation and First Threat.<sup>77</sup> To compound matters, in his submissions, the accused claimed that he was scolded after the Alleged Conversation but before the First Threat was uttered.<sup>78</sup>

(c) The accused's account of whose face changed colour before the First Threat was allegedly uttered was problematic. This was material as it was relevant to whether IO Neo had been frustrated with the accused's responses and had a motive to authorise the Threats. At one point during the cross-examination, the accused said that IO Neo's face changed colour.<sup>79</sup> Contrastingly, in his submissions, the accused asserted that Mr Farhan's face changed colour before the Alleged Scolding although both Mr Farhan and IO Neo had an "expression of unhappiness" during the Alleged Conversation.<sup>80</sup>

51 Further, in respect of the Second Threat, it was not even put to IO Neo that this Threat had allegedly been uttered.<sup>81</sup> Mr Farhan took the stand after IO Neo and it was only during the former's cross-examination that the allegation of the Second Threat surfaced. Mr Farhan denied uttering the Second Threat.<sup>82</sup>

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<sup>76</sup> NE: 10 March 2021, p 28:24.

<sup>77</sup> NE: 11 March 2021, p 8:8–11.

<sup>78</sup> AS at para 9.

<sup>79</sup> NE: 11 March 2021, p 10:5–9.

<sup>80</sup> AS at para 9.

<sup>81</sup> NE: 9 March 2021, p 68:8–13.

<sup>82</sup> NE: 10 March 2021, p 31:3–7.

52 These inconsistencies did not paint the testimony of the accused on the Threats to be credible.

53 Third, the accused’s claim that the Threats operated intermittently on his mind was difficult to accept. While this point was directly relevant to the subjective limb of the test of voluntariness, it also undermined the claim that any threat was issued at all. The accused testified that he understood the Threats as Mr Farhan wanting him to “confess to *everything* which was asked of [him] in [the] statement” [emphasis added].<sup>83</sup> Yet, the accused remained able to provide exculpatory responses in various parts of the Third Long Statement. To take one example, in the final sentence of paragraph 51 of the Third Long Statement, the accused was recorded as saying “I do not know the contents of ‘A1’, ‘A2’, ‘A3’, ‘A4’ and ‘A5’ before I kept them inside my car”.<sup>84</sup> The position of the accused that the first half of the sentence (on not knowing the contents of the packages found at location later marked “A”) was given voluntarily while the second half of the sentence (where he admitted to keeping those items inside the Car) had been involuntary, was hard to accept.<sup>85</sup> This intermittent operation of the Threats contradicted his *own* understanding that Mr Farhan wanted him to confess to everything, and was another factor undermining the credibility of the accused’s allegation of the Threats having been made.

54 For these reasons, I found that there were no threats made by IO Neo or Mr Farhan during the recording of the Third Long Statement. The challenge to the voluntariness of the Third Long Statement under s 258(3) of the CPC

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<sup>83</sup> NE: 11 March 2021, p 15:9–11.

<sup>84</sup> PBOD at p 33.

<sup>85</sup> NE: 10 March 2021, p 49:21–28.

therefore failed. Consequently, I did not need to address the subjective limb of the test of voluntariness or whether the Threats proceeded from “a person in authority”.

***Inaccuracies in the Third Long Statement***

55 In the course of challenging the voluntariness of the Third Long Statement, the accused also alleged that certain questions and responses therein were recorded inaccurately. Chan Seng Onn J in *Public Prosecutor v Parthiban Kanapathy* [2021] 5 SLR 372 at [34] made clear that “... unless and until the part of the recorded statement alleged to be inaccurate or inauthentic is determined to be accurate and authentic at the conclusion of an ancillary hearing, it is obvious that it *ought not to be considered as part of the Prosecution’s evidence* from which the court will decide whether the accused is to be called upon to enter his defence.” [emphasis added]. Accordingly, a distinct but related issue flowing from the challenge to voluntariness was whether there were inaccuracies in the Third Long Statement which affected its admissibility.

56 A summary of the alleged inaccuracies in the Third Long Statement is as follows:

S/N	Paragraph in Third Long Statement	What is recorded in the Third Long Statement	Alleged inaccuracy
1.	[50]	(Recorder’s note: accused was informed that his DNA was found on the cling wraps on exhibit ‘E3’. The accused was shown photograph 57 and asked to explain why was his DNA found on the said exhibit.) I could have touched the exhibit and that was why my DNA was found on it. I could have touch [ <i>sic</i> ] the exhibit when I kept it inside the car.	The accused alleged: (a) Mr Farhan initially only told the accused that his DNA was found on an exhibit, without specifying Exhibit “E3”; <sup>86</sup> and (b) both before and after it was revealed to him that the Exhibit with his DNA was “E3”, his response was that he had only put three or four items at the back compartment behind the driver’s seat of the car. <sup>87</sup>
2.	[50], Q1	Did you keep all the items shown in photographs 55 and 57 inside the car?	The alleged question was “Yes, is this your car? Were the items---are these items the one that are found in your car?” <sup>88</sup>
3.	[50], Q2	Which part of the vehicle did you keep the items shown in photographs 55 and 57?	The accused alleged that he was also shown photograph 37. <sup>89</sup>

<sup>86</sup> NE: 10 March 2021, p 43:10–14.

<sup>87</sup> NE: 10 March 2021, p 43:10–14; NE: 11 March 2021, p 7:24–30.

<sup>88</sup> NE: 10 March 2021, p 45:14–19.

<sup>89</sup> NE: 10 March 2021, p 46:24.

S/N	Paragraph in Third Long Statement	What is recorded in the Third Long Statement	Alleged inaccuracy
4.	[50], A2	I kept them at the center [ <i>sic</i> ] seat.	The accused's alleged response was "[t]his item was found in the area of the centre seat". <sup>90</sup> The accused claimed he knew this because he was shown photographs 55 and 57 and told by Mr Farhan that the items were found at the centre seat area. <sup>91</sup>
5.	[52]	I did not paste these yellow tapes when I kept them inside my car.	The accused alleged that "them" refers to the items he kept at location B only.
6.	[54], A3	Q3: What was the item shown in photograph 53? A3: Heroin.	In his examination-in-chief ("EIC"), the accused claimed he answered "heroin" because he was shown photograph 53 and it was explained by Mr Farhan. <sup>92</sup>

<sup>90</sup> NE: 10 March 2021, p 47:4–6.

<sup>91</sup> NE: 10 March 2021, p 47:11–18.

<sup>92</sup> NE: 10 March 2021, p 55:25–30.

S/N	Paragraph in Third Long Statement	What is recorded in the Third Long Statement	Alleged inaccuracy
			Under cross-examination, the accused claimed he recognised the items in photograph 53 to be heroin as they “had been opened before in the exhibit management room”. <sup>93</sup>
7.	[57], Q4	Q4: What are the items labelled as ‘B2A’, ‘B2B’, ‘B3A’ and ‘B3B’ shown in photograph 49? A4: Heroin.	Under cross-examination, the accused claimed that photograph 49 was not shown to him when Q4 was asked. <sup>94</sup>
8.	[59]	Previously, I informed the officer that I did not keep some of the items inside my vehicle and today I informed the officer that I kept all the items that were found inside my vehicle. I told a different story previously because I was afraid.	The accused claimed he did not provide the response recorded at [59]. <sup>95</sup>

<sup>93</sup> NE: 11 March 2021, p 33:19–22.

<sup>94</sup> NE: 11 March 2021, p 36:15–20.

<sup>95</sup> NE: 10 March 2021, p 62:1–5.

S/N	Paragraph in Third Long Statement	What is recorded in the Third Long Statement	Alleged inaccuracy
9.	[61], Q1	Q1: Did you keep the items labelled as 'F1', 'F2', 'F3', 'F4' and 'F5' shown in photograph 58 into your vehicle?  A1: Yes.	In his EIC, the accused claimed the answer "Yes" was involuntary. <sup>96</sup>  Under cross-examination, he claimed that he was shown a photograph to "explain whether this item was found in [the] car" and that his answer "Yes" was in response to this question. <sup>97</sup>

57 I begin by noting that the accused signed the Third Long Statement.<sup>98</sup> Both IO Neo and Mr Farhan testified that the Third Long Statement was read back to the accused in Malay before the accused appended his signature.<sup>99</sup> Further, IO Neo and Mr Farhan confirmed that the accused declined to make amendments to the Third Long Statement when offered the chance to do so.<sup>100</sup> Against the backdrop of my finding that no threats were made, the narration by IO Neo and Mr Farhan of the events leading up to the accused signing the statement was preferred over the accused's version of events. I note that the accused had signed the Third Long Statement after it was read back to him and he declined to make any amendments.

<sup>96</sup> NE: 10 March 2021, p 62:17–24.

<sup>97</sup> NE: 11 March 2021, p 39:16–18.

<sup>98</sup> PBOD at pp 32–35; NE: 11 March 2021, p 12:26–29.

<sup>99</sup> NE: 9 March 2021, p 56:16–19 (IO Neo); NE: 10 March 2021, p 16:4–11 (Mr Farhan).

<sup>100</sup> NE: 9 March 2021 p 57:13–15 (IO Neo); NE: 10 March 2021, p 18:3–5 (Mr Farhan).

58 In particular, with regard the challenge to Q1 at paragraph 61 of the Third Long Statement, the accused blew hot and cold about the nature of his challenge. This undermined the credibility of his challenge. While he claimed, at first, that his affirmative response was given involuntarily, he later said that he answered “Yes” voluntarily but in response to a different question than what was recorded. He later asserted that the question he had been asked was: “explain whether this item was found in [the] car”. The fluidity of his case aside, I did not think the question the accused alleged was asked at Q1 of paragraph 61 cohered with the rest of the Third Long Statement. At multiple points in the Third Long Statement, Mr Farhan asked the accused whether he *kept* certain items in various locations of the Car (eg, paragraph 53 Q1, paragraph 54 Q1 and Q2, paragraph 57 Q2). The accused did not challenge the fact that these questions were asked. The phrasing of Q1 at paragraph 61, as recorded, was entirely consistent with the wording of these earlier questions. The accused had not credibly demonstrated why the accuracy of the recording of Q1 at paragraph 61 should be doubted.

59 For the foregoing reasons, the challenges to the accuracy of the Third Long Statement failed.

### ***Conclusion on the admissibility of the Third Long Statement***

60 In conclusion, I dismissed the accused’s challenges to the voluntariness and accuracy of the Third Long Statement. The Third Long Statement was found to be admissible under s 258(1) of the CPC.



**Whether the Prosecution has established the possession element in respect of the Charges**

61 It is undisputed that the Exhibits were recovered from the Car<sup>101</sup> and the accused was in charge of the Car at the material time.<sup>102</sup>

*Integrity of the chain of custody of the Exhibits*

62 I deal first with the integrity of the chain of custody, as the Defence suggests that the chain of custody of the Exhibits was not established.<sup>103</sup> The Statement of Agreed Facts (“SOAF”) sets out how the Exhibits were recovered from the Car after the accused’s arrest and how they were passed from one officer to another until they ended up with IO Neo, and were finally submitted to the HSA for analysis.<sup>104</sup> Even putting aside what was agreed in the SOAF, I find that the chain of custody has been established on the evidence.

63 The legal principles are well established. It is incumbent on the Prosecution to prove beyond a reasonable doubt the chain of custody of the exhibits, and to account for the movement of the exhibits from the point of seizure to the point of analysis, such that there cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits (see the Court of Appeal’s decision in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 (“*Affandi*”) at [39]). That said, speculative arguments regarding the mere possibility of contamination are insufficient (*Affandi* at [118]).

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<sup>101</sup> SOAF at paras 4 and 21–24.

<sup>102</sup> NE: 27 July 2021, p 31:26–28.

<sup>103</sup> DCS at paras 10, 33–51 and 143–297.

<sup>104</sup> SOAF at paras 4–6, 10–11, 14, 21–25, 28, 30–32, 36–39, 41–42 and 47–48.

64 The Prosecution has adduced sufficient evidence to discharge its burden of proof demonstrating an unbroken chain of custody beyond a reasonable doubt.

*Exhibits retrieved from locations later marked “A” and “B”*

65 In respect of the Exhibits retrieved from locations later marked “A” and “B”, SSgt Saifuddin recovered the Exhibits in the presence of the accused<sup>105</sup> and placed each of them in clear zip-lock bags.<sup>106</sup> While the accused claims not to have seen where the Exhibits were retrieved from as he was at the table in photograph 15 of photo bundle P5 with his back facing the Car, the evidence set out below at [79]–[80] shows that he was in full view of the search and retrieval.

66 As summarised above at [3], the clear zip-lock bags<sup>107</sup> containing individual Exhibits later marked “A1”, “A2”, “A3”, “A4” and “A5” by IO Neo were placed in a larger zip-lock bag marked “L”.<sup>108</sup> Similarly, the three clear zip-lock bags<sup>109</sup> containing Exhibits later marked “B1”, “B2” and “B3” were placed in a large zip-lock bag marked “R”.<sup>110</sup> Subsequently, on 29 October 2018 at about 2.25pm, SSgt Saifuddin brought the two large zip-lock bags marked “R” and “L” containing the Exhibits retrieved from locations later marked “A” and “B” to Room B-318.<sup>111</sup> At around 2.35pm, SSgt Saifuddin retrieved Exhibit

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<sup>105</sup> NE: 2 March 2021, p 5:11–24.

<sup>106</sup> NE: 2 March 2021 at pp 6:22–23 and 9:4–6.

<sup>107</sup> P165B–P165F.

<sup>108</sup> P165A. NE: 2 March 2021, p 6:24–26.

<sup>109</sup> P166B–P166D.

<sup>110</sup> P166A. NE: 2 March 2021, p 9:6–8.

<sup>111</sup> NE: 2 March 2021, pp 10:28–32 and 11:1.

“A1” from the zip-lock bag and weighed it in the presence of the accused.<sup>112</sup> SSgt Saifuddin then placed Exhibit “A1” back into the zip-lock bag and brought all the Exhibits to the CNB office at the Woodlands Checkpoint. Thereat, SSgt Saifuddin weighed the rest of the Exhibits retrieved from locations later marked “A” and “B” and re-weighed Exhibit “A1” in the presence of the accused.<sup>113</sup>

67 The general approach was as follows:

(a) SSgt Saifuddin opened the large zip-lock bag and removed one of the clear zip-lock bags containing an Exhibit.

(b) He retrieved each Exhibit from its clear zip-lock bag to weigh it and check its contents before placing each Exhibit back into the clear zip-lock bag.<sup>114</sup>

(c) The clear zip-lock bags containing the Exhibits from locations later marked “A” and “B” were then placed back in the large zip-lock bags marked “L” and “R” respectively.<sup>115</sup>

68 SSSgt Zuraidah was present and recorded the retrieval and weighing of the Exhibits recovered from locations later marked “A” and “B” in the contemporaneous entries in her station diary P175.

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<sup>112</sup> NE: 2 March 2021, pp 12:1–7 and 13:24–27.

<sup>113</sup> NE: 2 March 2021, p 16:12–13 (SSgt Saifuddin); PS42 at p 2, para 8 (conditioned statement of SSSgt Zuraidah)

<sup>114</sup> NE: 2 March 2021, pp 17:1–32 and 18:1–11.

<sup>115</sup> NE: 2 March 2021, pp 17:4–13, 18:9–11, 18:19–27 and 20:4–7.

69 Following that, SSgt Saifuddin kept the two large zip-lock bags marked “L” and “R”<sup>116</sup> in the safe at the CNB office.<sup>117</sup> On the 29 October 2018 at about 6.15pm, SSgt Saifuddin took the two large zip-lock bags out of the safe and handed them to SSSgt Khairul for him to record the First Contemporaneous Statement from the accused.<sup>118</sup> SSSgt Khairul confirmed that he did not remove the Exhibits recovered from locations later marked “A” and “B” from the zip-lock bags, and merely pointed at the Exhibits to refer the accused to them.<sup>119</sup> After the First Contemporaneous Statement was recorded, SSSgt Khairul returned the two large zip-lock bags marked “L” and “R” containing the Exhibits retrieved from locations later marked “A” and “B” to SSgt Saifuddin, who placed them in the safe.<sup>120</sup>

70 The zip-lock bags containing the Exhibits from locations later marked “A” and “B” were handed over to Sgt Amos, who kept them in a safe at the CNB office and to which only he had the password to.<sup>121</sup>

*Exhibits retrieved from locations later marked “C”, “D”, “E” and “F”*

71 The Exhibits recovered from locations later marked “C”, “D”, “E” and “F” were similarly accounted for.<sup>122</sup> On 30 October 2018 at about 1.13am, at

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<sup>116</sup> P165A and P166A.

<sup>117</sup> NE: 2 March 2021, p 20:13.

<sup>118</sup> NE: 2 March 2021, p 20:17–25.

<sup>119</sup> NE: 2 March 2021, p 61:5–19.

<sup>120</sup> NE: 2 March 2021, pp 20:26–32 and 21:1 (SSgt Saifuddin); PS26 at para 9 (conditioned statement of SSSgt Khairul): ABOD at p 161.

<sup>121</sup> NE: 2 March 2021, p 21:9–10 (SSgt Saifuddin); NE: 3 March 2021, p 61:12–15 (Sgt Amos).

<sup>122</sup> NE: 3 March 2021 at p 62:31–32, p 63:1–20, p 64:1–23, p 65:1–18, p 67:17–32, p 68:1–11, 22–29 and p 69:5–14 (Sgt Amos); NE: 3 March 2021 at p 28:8–28, p 29:1–

the backscatter yard of the Woodlands Checkpoint, ICA and CNB officers searched the Car in the presence of the accused. SSSgt Ritar and Sgt Amos placed the Exhibits retrieved from locations later marked “C” and “D” in tamper-proof bags which were marked “driver seat speedometer, C1” and “Passenger side air-con vent, C2”.<sup>123</sup> Similarly, SSSgt Ritar and Sgt Amos placed the Exhibits retrieved from locations later marked “E” and “F” in zip-lock bags which were marked “D1 (Left rear)” and “D2 (Right rear)”.<sup>124</sup> Once the Exhibits were placed in their respective exhibit bags, Sgt Amos retained custody of the four exhibit bags.<sup>125</sup> Upon returning to the CNB office, SSSgt Ritar handed Sgt Amos six tamper-proof exhibit bags<sup>126</sup> to seal the Exhibits retrieved from locations later marked “E” and “F”.<sup>127</sup>

72 At about 2.28am, Sergeant Siti Nadirah Binte Hashim (“Sgt Nadirah”) and Staff Sergeant Zheng Renjie (“SSgt Renjie”) escorted the accused to the CNB office where the Exhibits retrieved from locations later marked “C” to “F” were weighed in his presence.<sup>128</sup> After weighing the Exhibits, Sgt Amos placed the Exhibits from locations later marked “C” and “D” back into the tamper-proof bags P168 and P169, while the Exhibits from locations later marked “E”

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8, p 33:21–32 (SSSgt Ritar); NE: 3 March 2021 at p 80:23–25 (SSgt Khairul); NE: 4 March p 22:11–12, 30–32, p 23:1–9 and p 24:16–32 (Sgt Nadirah); NE: 26 July 2021 at p 57:14–26, p 50: 1–11 and 29–31, p 51:1–4 (IO Neo); PS41 at para 14 (conditioned statement of IO Neo); ABOD at p 240; PS11 at paras 2 and 4 (conditioned statement of Staff Sergeant Mohammed Rafi s/o Anwar Badcha); ABOD at p 213 and 217.

<sup>123</sup> NE: 3 March 2021, pp 19–24 (SSSgt Ritar); NE:3 March 2021, pp 62:31–32, 63:1–20 and 64:1–23 (Sgt Amos); P168 and P169.

<sup>124</sup> NE: 3 March 2021, pp 25–30 (SSSgt Ritar); NE: 3 March 2021, pp 62:31–32, 63:1–20 and 64:1–23 (Sgt Amos); P170 and P171.

<sup>125</sup> NE: 3 March 2021, p 65:1–18.

<sup>126</sup> P172A–C and P173A–C.

<sup>127</sup> NE: 3 March 2021, p 31:3–19 (SSSgt Ritar); NE: 3 March 2021, p 66:1–31 (Sgt Amos).

<sup>128</sup> PS31 at para 13 (conditioned statement of Sgt Amos); ABOD at p 192.

and “F” were placed into tamper-proof bags P172A–C and P173A–C respectively.<sup>129</sup> The tamper-proof bags P172A–C and P173A–C containing Exhibits recovered from locations later marked “E” and “F” were placed into the large zip-lock bags P170 and P171 respectively.<sup>130</sup> Sgt Amos placed the exhibit bags in a safe in the CNB office, and later handed the Exhibits to SSgt Khairul for the recording of the Second Contemporaneous Statement from the accused.

73 After the recording of the Second Contemporaneous Statement, SSgt Khairul passed the Exhibits retrieved from locations later marked “C”, “D”, “E” and “F” back to Sgt Amos.<sup>131</sup> Sgt Amos placed the said Exhibits back into a safe at the CNB office and locked it using a combination lock that only he knew the numbers to.<sup>132</sup>

#### *Events following Sgt Amos’ retention of all the Exhibits*

74 Following Sgt Amos’ custody of all the Exhibits (see [70] and [73]), he retrieved all the Exhibits which were placed by him in the safe and handed them over to Sgt Nadirah<sup>133</sup> who tallied the Exhibits with the police report lodged. After tallying all the Exhibits with the police report, Sgt Nadirah kept the Exhibits in a black duffle bag to transport the Exhibits to CNB Headquarters.<sup>134</sup> Subsequently, she handed the Exhibits to IO Neo for the processing and

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<sup>129</sup> NE: 3 March 2021 at pp 67:17–32 and 68:1–29.

<sup>130</sup> NE: 3 March 2021 at pp 67:17–32, 68:10–11, 22–29 and 69:5–7.

<sup>131</sup> PS31 at para 16 (conditioned statement of Sgt Amos): ABOD at p 192.

<sup>132</sup> PS31 at para 16 (conditioned statement of Sgt Amos): ABOD at p 192.

<sup>133</sup> NE: 4 March 2021, p 15:9–16 (Sgt Nadirah); PS31 at para 17 (conditioned statement of Sgt Amos): ABOD at p 192; PS32 at para 10 (conditioned statement of Sgt Nadirah): ABOD at p 202.

<sup>134</sup> NE: 4 March 2021, pp 15:29–31 and 22:8–12 and 30–32.

photography of the Exhibits in the presence of the accused at the Exhibit Management Room located at level 3 of the CNB Headquarters (the “EMR Room”).<sup>135</sup>

75 At the door of the EMR Room, Sgt Nadirah handed over the Exhibits to IO Neo one by one based on his instructions,<sup>136</sup> and the accused witnessed the entire photography process involving IO Neo, Home Team Specialist Muhamad Nizam bin Abudol Ramin (“HTS Nizam”) and Home Team Specialist Nur Azfarinah binte Abdullah (“HTS Azfarinah”).<sup>137</sup> IO Neo placed them in sealed, tamper-proof bags and retained the Exhibits before handing them to Staff Sergeant Mohammed Rafi s/o Anwar Badcha (“SSgt Rafi”).<sup>138</sup> SSgt Rafi then submitted the Exhibits to the HSA for analysis on 30 October 2018 at about 4.35pm.<sup>139</sup>

76 The Defence raises three main contentions in its submission that the Prosecution has not proven the chain of custody of the Exhibits beyond a reasonable doubt.

77 The Defence’s first argument relates to the accused not witnessing the recovery of the Exhibits from the Car<sup>140</sup> and the weighing of the Exhibits subsequently.<sup>141</sup>

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<sup>135</sup> NE: 4 March 2021, p 23:13–28.

<sup>136</sup> NE: 4 March 2021, pp 24:16–32 and 25:1–2 (Sgt Nadirah); NE: 26 July 2021, p 57:14–26 (IO Neo).

<sup>137</sup> NE: 4 March 2021 p 25:5–12 (Sgt Nadirah); NE: 26 July 2021, p 49:24–27 (IO Neo); PS41 at para 9 (conditioned statement of IO Neo); ABOD at pp 231–232.

<sup>138</sup> PS41 at paras 14–15; ABOD at pp 240–241.

<sup>139</sup> PS11 at para 4; ABOD at p 217.

<sup>140</sup> DCS at paras 452 and 456.

<sup>141</sup> DCS at paras 278–279 and 491.

78 In relation to the former point that the accused did not observe the retrieval of the Exhibits, the accused's case is that he had not witnessed the search and recovery of the Exhibits. In relation to the recovery of the Exhibits from locations later marked "A" and "B" (the "First Search"), the accused testified that he was standing with his back facing the Car and was unable to see.<sup>142</sup> The accused also stated that he was seated and unable to see the search and recovery of the Exhibits from the locations later marked "C", "D", "E" and "F" (the "Second Search").<sup>143</sup>

79 However, SSSgt Khairul and SSgt Zuraidah testified that the accused was at the rear of the Car and had an unobstructed view of the search and seizure of the Exhibits during the First Search.<sup>144</sup> Although SSgt Saifuddin's evidence was that the accused was seated at the rear of the Car when he retrieved the Exhibits during the First Search, he attested to the accused's clear line of vision during the process.<sup>145</sup> In relation to the Second Search, while SSSgt Ritar was ultimately unable to recall whether the accused was seated,<sup>146</sup> Sgt Amos testified that he escorted the accused and he and the accused both witnessed the search and retrieval of the Exhibits.<sup>147</sup>

80 On the whole, I disbelieve the accused on his evidence that he had not witnessed the search and recovery of the Exhibits. In arriving at this conclusion, I considered the evidence of the officers who were with the accused at the time

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<sup>142</sup> NE: 27 July 2021, p 5:1–16.

<sup>143</sup> NE: 27 July 2021, p 6:1–2.

<sup>144</sup> NE: 2 March 2021, p 48:19–27 (SSSgt Khairul); NE: 26 July 2021 at p 4:3–23 (SSgt Zuraidah).

<sup>145</sup> NE: 2 March 2021 at p 5:11–17.

<sup>146</sup> NE: 3 March 2021 at p 55:2–3.

<sup>147</sup> NE: 3 March 2021 at p 62:2–8 and 12–18.



of the searches above at [79], and their explicit testimony that both the accused and themselves were able to observe the entire process. More importantly, the testimony of each escorting officer, SSSgt Khairul and Sgt Amos, shows that the accused had a clear view of the Car during both searches. At the First Search, SSSgt Khairul escorted the accused throughout the search,<sup>148</sup> and he testified that the accused witnessed the retrieval of the Exhibits and that they shared the same vantage point.<sup>149</sup> This was similarly the case for Sgt Amos who escorted the accused during the Second Search.<sup>150</sup>

81 On the latter point that the accused did not witness the weighing of the Exhibits, the Defence submits that the Prosecution did not show that the accused was present during the weighing of the Exhibits retrieved from locations later marked “A” and “B”.<sup>151</sup> This submission does not get the accused far; it is clear from the evidence that the weighing of Exhibit “A1” was in the accused’s presence at Room B-318, and the weighing of the other Exhibits retrieved from the locations later marked “A” and “B” commenced only after the accused was brought from Room B-318 to the CNB office at the Woodlands Checkpoint (where Exhibit “A1” was re-weighed as well).<sup>152</sup> Furthermore, this contention was not canvassed during the cross-examination of the prosecution witnesses and only arose when the accused took the stand. In the absence of any reasonable explanation from the accused as to the belatedness of the contention, it would be challenging to accord this argument any merit.

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<sup>148</sup> PS26 at para 4: ABOD pp 159–160.

<sup>149</sup> NE: 2 March 2021, p 48:19–27.

<sup>150</sup> NE: 3 March 2021, p 62:2–8 and 12–18.

<sup>151</sup> DCS at para 42.

<sup>152</sup> NE: 2 March 2021, p 16:12–13 (SSgt Saifuddin); NE: 26 July 2021, pp 13:30–32 and 14:2–8 (SSSgt Zuraidah); PS42 at paras 6–10 (conditioned statement of SSSgt Zuraidah); P175.

82 The Defence’s second argument relates to the potential break in the chain of custody in the movement of the Exhibits recovered from locations later marked “E” and “F” from the zip-lock bags to the tamper-proof bags.<sup>153</sup> It is not clear how the Defence envisages this potential break in the chain of custody. The Defence ventures to say that the resealable nature of the zip-lock bags P170 and P171, which contained the Exhibits found at locations later marked “E” and “F” respectively, lends to the ease of a break in the chain of custody between the point of recovery from the Car and the eventual analysis by the HSA.<sup>154</sup> However, this is insufficient to introduce a reasonable doubt in the chain of custody. Whether the resealable characteristic of the zip-lock bags was exploited has no grounding in the evidence.

83 The Defence postulates that SSSgt Ritar and Sgt Amos were not involved when the Exhibits retrieved from locations later marked “C” to “F” were weighed in the presence of the accused.<sup>155</sup> It is not SSSgt Ritar’s evidence that she was involved in the weighing of the Exhibits. Sgt Amos testified that he was involved in the weighing of the Exhibits,<sup>156</sup> and the Defence did not contest his involvement when they had the opportunity to cross-examine Sgt Nadirah and SSgt Renjie, who were also involved in the weighing of the Exhibits. In the same breath, the Defence contends that the markings of the Exhibits must have been mixed up by Sgt Amos sealing the Exhibits again after he weighed them.<sup>157</sup> I reject any submission that Sgt Amos was not involved in the weighing of the Exhibits. Further, the mere fact that Sgt Amos unsealed the

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<sup>153</sup> DCS at para 183.

<sup>154</sup> DCS at para 280.

<sup>155</sup> DCS at para 277.

<sup>156</sup> NE, 3 March 2021 at pp 67:14–32 and 68:1–11 (Sgt Amos).

<sup>157</sup> DCS at para 277.

two resealable zip-lock bags<sup>158</sup> (containing the Exhibits retrieved from locations later marked “E” and “F”) in order to weigh the Exhibits, before placing and sealing them in tamper-proof bags,<sup>159</sup> does not in itself result in any break in the chain of custody of the Exhibits.

84 The Defence’s third argument is that there are actual and apparent inconsistencies in the markings of the Exhibits.

85 First, in support of its submission, the Defence relies on SSgt Saifuddin’s evidence that he did not know (and therefore could not confirm) that the locations where the Exhibits were found were the locations later marked “A” and “B”.<sup>160</sup> This does not assist the Defence – SSgt Saifuddin explained that the location markings were assigned by IO Neo on 30 October 2018 at about 5.16am *after* his seizure of the Exhibits from the Car,<sup>161</sup> and attested to the specific locations from which he recovered the Exhibits (*ie*, the left-rear compartment of the Car (location later marked “A”) and the right-rear compartment of the Car (location later marked “B”))<sup>162</sup> which are consistent with IO Neo’s evidence on his marking of the locations depicted in photographs 20 and 22 in photo bundle P5 as “A” and “B” respectively.<sup>163</sup> Further, in retrieving and marking the Exhibits, SSgt Saifuddin did not label them individually, but placed each Exhibit into individual small zip-lock bags before placing them into a larger zip-lock bag marked “L” and “R” (which represented

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<sup>158</sup> P170 and P171.

<sup>159</sup> P172A–172C and P173A–P173C.

<sup>160</sup> DCS at para 45.

<sup>161</sup> NE: 2 March 2021, p 27:12–16; PS41 at para 7 (conditioned statement of IO Neo): ABOD at p 230.

<sup>162</sup> NE: 2 March 2021, pp 27:17–18 and 24–27.

<sup>163</sup> NE: 26 July 2021, p 48:10–18.

the left-rear compartment and the right-rear compartment of the Car where the Exhibits were retrieved from respectively).<sup>164</sup>

86 The initial markings by SSgt Saifuddin of the Exhibits retrieved from the locations later marked “A” and “B” and the eventual markings by IO Neo are set out below.

<b>Initial marking of Exhibit by SSgt Saifuddin</b> <sup>165</sup>	<b>Description of Exhibit</b>	<b>Location marking by IO Neo</b>	<b>Final marking of Exhibit by IO Neo</b> <sup>166</sup>	<b>Marking of the sub-packets within the Exhibit by IO Neo</b>
L <sup>167</sup>	Zip-lock bag containing five smaller zip-lock bags separately containing four black bundles and one block of vegetable matter	A	A1	A1A
				A1B
				A1C
			A2	A2A1A
			A3	A3A
				A3B
R <sup>168</sup>	Zip-lock bag containing three smaller zip-lock bags each containing a black bundle	B	B1	B1A
				B1B
				B1C
			B2	B2A
				B2B
			B3	B3A
	B3B			

<sup>164</sup> NE: 2 March 2021, pp 7:26–32, 8:1–10 and 9:1–13.

<sup>165</sup> P168–P171; NE: 2 March 2021, pp 5–10.

<sup>166</sup> NE: 26 July 2021, pp 51:14–32, 52 and 53:1–13.

<sup>167</sup> P165A.

<sup>168</sup> P166A.

87 Second, in relation to the Exhibits retrieved from the locations later marked “C”, “D”, “E” and “F”, the Defence argues that there are inconsistencies in the Exhibit markings,<sup>169</sup> and submits that the markings “surely had been mixed up” by the sealing and resealing of the bags containing the Exhibits during the weighing process.<sup>170</sup> While there were changes to the markings on the Exhibits (see below at [88]), the evidence shows that SSSgt Ritar and IO Neo had, in substance, referred to the same locations.

88 In summary, the initial markings by SSSgt Ritar of the Exhibits retrieved from locations later marked “C”, “D”, “E” and “F” and the eventual markings by IO Neo are as follows.

<b>Initial marking of Exhibit by SSSgt Ritar<sup>171</sup></b>	<b>Description of Exhibit</b>	<b>Location marking by IO Neo</b>	<b>Final marking of Exhibit by IO Neo<sup>172</sup></b>	<b>Marking of the sub-packets within the Exhibit by IO Neo</b>
C1	One wrapped bundle placed in a tamper-proof bag marked “driver seat speedometer, C1”	C	C1	C1A1
				C1B
				C1C1
C2	One wrapped bundle placed in a tamper-proof bag marked “Passenger side air-con vent, C2”	D	D1	D1A
				D1B
				D1C
D1	Five blocks of	E	E1	E1A

<sup>169</sup> DCS at paras 143, 166, 219, 239 and 243.

<sup>170</sup> DCS at para 277.

<sup>171</sup> P168–P171; NE: 3 March 2021, pp 62:31–32, 63:1–20 and 64:1–23.

<sup>172</sup> NE: 26 July 2021, pp 51:14–32, 52 and 53:1–13.

<b>Initial marking of Exhibit by SSSgt Ritar<sup>171</sup></b>	<b>Description of Exhibit</b>	<b>Location marking by IO Neo</b>	<b>Final marking of Exhibit by IO Neo<sup>172</sup></b>	<b>Marking of the sub-packets within the Exhibit by IO Neo</b>
	vegetable matter which were placed into one large zip-lock bag marked “D1 (Left rear)”		E2	E2A
			E3	E3A
			E4	E4A
			E5	E5A
D2	Five blocks of vegetable matter which were placed into one large zip-lock bag marked “D2 (Right rear)”	F	F1	F1A
			F2	F2A
			F3	F3A
			F4	F4A
			F5	F5A

89 IO Neo confirmed that the new markings for the Exhibits corresponded to the respective location markings, eg, Exhibit “D1” was found at the location later marked “D”.<sup>173</sup> More pertinently, IO Neo identified the Exhibit locations with reference to photographs in photo bundle P5, and explained that the specific locations and their associated markings correspond to the descriptions of the locations in the original markings by SSSgt Ritar. For example, IO Neo explained that the location later marked “D” depicted in photographs 35 to 37 of photo bundle P5 (where Exhibit “D1” was found)<sup>174</sup> corresponds to the location described in the original exhibit marking “Passenger side air-con vent, C2”. Using the same example, subsequently, during the photography of the Exhibit “D1”, IO Neo would instruct the forensic officers to remove the contents

<sup>173</sup> NE: 26 July 2021, p 50:17–22.

<sup>174</sup> NE: 26 July 2021, p 50:23–25.

of “D1” and assign markings to each individual sub-packet within “D1”, eg, “D1A”, “D1B” and “D1C” (with reference to photograph 54 of photo bundle P5).<sup>175</sup> The sub-packets found within the other Exhibits were given similar markings by IO Neo.<sup>176</sup> Therefore, there was no actual inconsistency in the marking of the Exhibits.

90 Turning to the Defence’s submission that the markings on the Exhibits retrieved from locations later marked “C”, “D”, “E” and “F” must have been mixed up during the weighing process,<sup>177</sup> I find no basis for this assertion in the evidence. Similar to the analysis at [82]–[83], the mere fact that the Exhibits were removed from the resealable zip-lock bags for weighing and subsequently placed in tamper-proof bags does not necessarily lead to the inference that there would be any mix-up of the labels of the Exhibits.

91 The Prosecution has therefore proven the unbroken chain of custody of the Exhibits beyond a reasonable doubt.

### ***The accused’s admissions to Dr Goh***

92 Before this court, Dr Goh testified that he had examined the accused on a total of four occasions, being, 14 November 2018, 21 November 2018, 27 November 2018, and 4 December 2018 at the Medical Centre at Changi Prison Complex.<sup>178</sup> Dr Goh recorded the interviews with the accused in his

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<sup>175</sup> NE: 26 July 2021, pp 50:28–32 and 51:1–9.

<sup>176</sup> NE: 26 July 2021, p 51:10–17.

<sup>177</sup> DCS at para 277.

<sup>178</sup> PS39 (conditioned statement of Dr Goh) at para 2: ABOD at p 142; NE: 9 March 2021, p 6:21–31.

hand-written clinical notes P63.<sup>179</sup> I will refer mainly to the type-written transcript P63T of Dr Goh’s hand-written clinical notes P63.

93 I deal first with the Defence’s objections to the reliability and accuracy of Dr Goh’s notes which record the accused’s admissions. The Defence’s position that Dr Goh’s notes ought to be given no weight is grounded on two premises.

94 First, the Defence submits that Dr Goh had inaccurately recorded his interviews with the accused. Based on his clinical notes P63, the accused told Dr Goh on 21 November 2018 that he was “charged for charging [*sic*] in heroin, ganja [*sic*] and ice”. Dr Goh clarified that he meant that the accused informed him that he was “charged for *bringing* in heroin, *ganja* and ice” [emphasis added].<sup>180</sup> The Defence contends that the accused must have told Dr Goh that he was *charged for bringing* in heroin, “ganja” and “ice”, and *not* that he *brought* in heroin, “ganja” and “ice”,<sup>181</sup> and points out that Dr Goh’s record of the accused saying that he faced two charges cannot be accurate as the accused was facing three charges by that time.<sup>182</sup>

95 The Defence’s interpretation does not withstand scrutiny. While Dr Goh’s handwritten clinical notes P63 included a clerical error, the rest of the handwritten notes for the interview on 21 November 2018, particularly at page 9, contain the accurate record of what the accused had said, which was: “I came to Sg to bring the items I was charged for ‘ice’ ‘heroin’ ‘ganja’”.

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<sup>179</sup> NE: 9 March 2021, p 7:8–13 and 19–21.

<sup>180</sup> NE: 9 March 2021, pp 17:18–32 and p 18:1–5.

<sup>181</sup> DCS at para 93.

<sup>182</sup> DCS at para 92.



96 The Defence’s characterisation of the evidence was not explored in its cross-examination of Dr Goh. The accused claims in his EIC that, contrary to Dr Goh’s notes, he had not told Dr Goh that he was sentenced for previous charges.<sup>183</sup> Even if I do not reject the Defence’s perspective, it remains that the few purported inaccuracies in Dr Goh’s notes are clerical or semantic. Such alleged inaccuracies are of no use to the Defence’s submission that no weight should be placed on the accused’s confessions in Dr Goh’s notes.

97 In this vein, the Defence has only offered a bare *denial* of other, arguably more incriminating, portions of Dr Goh’s notes (see below at [100]–[102]). For instance, the accused told Dr Goh on 21 November 2018 that he was “aware” that he was “bringing ice, heroin, ganja”,<sup>184</sup> expressed on 27 November 2018 that he entered Singapore as he wanted to “deliver the thing...that caused [him] to be arrested ‘ice, heroin, ganja’”<sup>185</sup> and later explained on 4 December 2018 that he “obtained ice, ganja, heroin from a friend of [his] ... called ‘Din’”.<sup>186</sup> Throughout these three interviews with Dr Goh, the accused consistently informed Dr Goh that he did so to obtain payment of RM15,000.<sup>187</sup> Instead, the Defence deals summarily with the accuracy of Dr Goh’s notes by underscoring that the interpreter, Mr Shaffiq, did not translate Dr Goh’s notes and read them back to the accused.<sup>188</sup>

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<sup>183</sup> DCS at para 493, NE: 27 July 2021, p 20:2–14.

<sup>184</sup> P63: PBOD at p 20; P63T at p 8.

<sup>185</sup> P63: PBOD at p 25; P63T at p 13.

<sup>186</sup> P63: PBOD at p 29; P63T at p 17.

<sup>187</sup> P63: PBOD at pp 20, 25 and 28; P63T at pp 8, 13 and 16.

<sup>188</sup> DCS at para 495.

98 Second, the Defence submits that Mr Shaffiq is affiliated with CNB. The evidence led at the trial does not support such an assertion. Mr Shaffiq’s evidence is that he is a freelance Malay language interpreter, and the Institute of Mental Health (“IMH”) solicited his services to assist Dr Goh in interviews with the accused.<sup>189</sup> While Dr Goh testified that he believed Mr Shaffiq was from the CNB,<sup>190</sup> he did not go so far as to attest to this as a matter of personal knowledge.<sup>191</sup> In any case, the general approach taken by Dr Goh was to seek his secretary’s assistance to make arrangements for an interpreter in situations where language was a concern.<sup>192</sup> I do not accept the Defence’s insinuation that Mr Shaffiq’s credibility is undermined by an affiliation, real or imagined, with the CNB.<sup>193</sup>

99 Having dealt with the Defence’s contentions on Dr Goh’s notes, I move now to consider the accused’s admissions as recorded in Dr Goh’s notes in the context of the possession element. As discussed above at [39], the Prosecution must prove both that the accused had physical possession and knew that he was in possession of the Exhibits which contained the drugs at the material time.

100 Referring to Dr Goh’s clinical notes P63, the accused admitted that he knowingly brought “ice”, “ganja” and “heroin” into Singapore in the interview on 21 November 2018. In particular, in response to Dr Goh’s question if he “[k]new that he was bringing in drugs then”, the accused replied that he was “aware that [he] was bringing ice, heroin, ganja” and provided details about

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<sup>189</sup> PS43 (conditioned statement of Mr Shaffiq) at paras 1–2.

<sup>190</sup> NE: 9 March 2021, p 33:19–20.

<sup>191</sup> NE: 9 March 2021, p 33:21–25.

<sup>192</sup> NE: 9 March 2021, p 34:6–8.

<sup>193</sup> DCS at para 104.

taking the “drugs from [somebody] call [*sic*] ‘Din’” and the agreed remuneration of RM15,000.<sup>194</sup>

101 On a separate occasion on 27 November 2018, the accused revisited the events of the date of the offending with Dr Goh, and intimated that he “wanted to deliver the thing – the thing that caused me to be arrested” and clarified that the thing was “[i]ce’, ‘heroin’, ‘ganja’”.<sup>195</sup> The accused shared that the drugs were from “a friend” called “Din”, and restated that he would be paid RM15,000 for this trip and that he drove the Car alone.<sup>196</sup>

102 Finally, during another interview on 4 December 2018, the accused told Dr Goh that he placed the drugs in the Car and indicated the area where the Exhibits containing the drugs were found, *viz*, “[i]tems found at last row at place where water bottles being held, right and left side”.<sup>197</sup> In this interview, the accused again reinforced that he had a RM15,000 monetary incentive for bringing in the drugs to Singapore, and that “Din” had given him the drugs to transport to Singapore.<sup>198</sup>

103 The consistent re-telling of the events surrounding the alleged offences by the accused to Dr Goh on three occasions lends weight to the finding that Dr Goh’s notes accurately captured the accused’s answers to his questions in their interviews. I consider the accused’s admissions to Dr Goh significant in their

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<sup>194</sup> P63T at p 8; NE: 9 March 2021, p 20:1–2.

<sup>195</sup> P63T at p 13; NE: 9 March 2021, pp 20:18–32 and 21:1–11.

<sup>196</sup> P63T at p 13.

<sup>197</sup> P63T at p 16.

<sup>198</sup> NE: 9 March 2021, p 22:1–28.

own right, and they provide corroboration of the voluntariness and accuracy of the Third Long Statement.

104 In respect of the possession element, the admissions by the accused to Dr Goh, as recorded in his clinical notes P63, render the Ignorance Defence hollow and buttress the finding that the accused knowingly held the Exhibits in his possession.

***The accused’s DNA on Exhibit “E3”***

105 It is not disputed that the accused’s DNA was detected on Exhibit “E3”. The Defence relies on the evidence of HSA analyst Ang Hwee Chen (“Ang”) that a person’s DNA may be indirectly transferred to an exhibit to support its submission that the DNA profile of the accused could have been transferred by another person to Exhibit “E3”.<sup>199</sup> However, this hypothetical possibility does not assist the accused. There is no evidence adduced to explain how the accused’s DNA could have ended up on the Exhibit. As such, this remains entirely theoretical. The accused’s DNA found on Exhibit “E3” is evidence which precipitated the accused’s confessions in the Third Long Statement. The objective finding that the accused’s DNA profile was found on Exhibit “E3” clearly refutes any claim that the accused did not know of the Exhibits retrieved from location later marked “E”, and undermines the Ignorance Defence: the accused has not been truthful about his claim that he had no knowledge of Exhibits other than those retrieved from location later marked “B”.

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<sup>199</sup> DCS at para 9.

***Weight to be accorded to the accused’s statements relevant to the possession element***

106 Following that, I deal with the accused’s statements which establish the possession element and the appropriate weight to be placed on them.

*First Contemporaneous Statement*

107 The First Contemporaneous Statement was recorded at the CNB B3 office at the Woodlands Checkpoint, and the interview was carried out in Malay.<sup>200</sup> SSSgt Khairul wrote the accused’s answers down in English and read back the recorded statement in Malay to the accused.<sup>201</sup> SSSgt Khairul referred the accused to two clear zip-lock bags, each containing Exhibits retrieved from locations later marked “A” and “B” respectively.<sup>202</sup>

108 The accused identified the Exhibits recovered from locations later marked “A” and “B” as “panas” and “sejuk”, which he knew were drugs<sup>203</sup> and admitted to ownership of the said “panas” and “sejuk” in the First Contemporaneous Statement.<sup>204</sup> However, the Defence claims that the accused was silent when SSSgt Khairul asked him what the Exhibits were.<sup>205</sup> SSSgt Khairul was unwavering in his response during cross-examination that the accused was shown the Exhibits and he answered that they were “panas” and “sejuk”.<sup>206</sup> SSSgt Khairul also testified to an earlier interaction with the accused

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<sup>200</sup> PS26 (conditioned statement of SSSgt Khairul) at para 9: ABOD at p 161.

<sup>201</sup> PS26 (conditioned statement of SSSgt Khairul) at para 9: ABOD at p 161.

<sup>202</sup> NE: 2 March 2021, p 78:4–27.

<sup>203</sup> P55 at Q1/A1 and Q2/A2: ABOD at p 162.

<sup>204</sup> P55 at Q3/A3: ABOD at p 162.

<sup>205</sup> NE: 2 March 2021, pp 78:30–31 and 79:1, 4–8; NE: 27 July 2021, p 6:20.

<sup>206</sup> NE: 2 March 2021, pp 79:1–19, 27–29 and p 80:15–18.

where he had asked him similar questions in Room B-318 and the accused had provided similar answers.<sup>207</sup>

109 I do not accept the Defence’s submission that the First Contemporaneous Statement was inaccurately recorded. The accused claims that he was silent because he was feeling unwell and experiencing drug withdrawals. However, this justification only made its appearance in the accused’s EIC.

110 In support of the contention that the accused had been silent due to drug withdrawal symptoms, the Defence relies on the evidence led from the doctors who assessed the accused around the material time of the First Contemporaneous Statement. In particular, the Defence seizes on the conclusion that the accused was “positive for mild opioid drug withdrawal” in the medical report dated 18 January 2019 (P61) prepared by Dr Tan Zi Feng of the Cluster Medical Centre located at the Changi Prison Complex (“CMC”).<sup>208</sup> The medical report P61 was written based on the assessments of the accused conducted by Dr Tan Chong Han (“Dr Tan”), Dr Sahaya Nathan (“Dr Nathan”) and Dr Ong Rong Hua, Jason (“Dr Ong”) separately over the period of 1–3 November 2018.<sup>209</sup>

111 Despite the Defence’s contentions about the robustness of the assessment by the doctors,<sup>210</sup> I find the evidence of the doctors satisfactory and

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<sup>207</sup> NE: 2 March 2021, pp 62:28–32 and 63:15–19.

<sup>208</sup> ABOD at pp 147–148.

<sup>209</sup> PS35 at paras 4–5 (conditioned statement of Dr Tan): ABOD at p 150; PS36 at para 3 (conditioned statement of Dr Nathan): ABOD at p 151; PS37 at para 3 (conditioned statement of Dr Ong): ABOD at p 152.

<sup>210</sup> DCS at para 59(l)–(q).

accept that the accused was found positive for “mild opiate withdrawal”. The common criteria for the Clinical Opiate Withdrawal (“COW”) Scale assessment adopted by all three doctors were found in the checklist of clinical “observations” and “symptoms” or “complaints” in the Case Summary of Drug Withdrawal Assessment P174.<sup>211</sup> The assessing doctors had all found that the accused exhibited *very few* of the observations or symptoms (the presence of the observation or symptom is denoted by “1”). Given the evidence of the doctors, I do not find that the accused had been experiencing drug withdrawals at a level of severity which would affect the reliability of the First Contemporaneous Statement. Regardless, Dr Tan’s evidence, that the duration of positive mild opioid withdrawals may vary from individual to individual<sup>212</sup> and that symptoms exhibited would differ,<sup>213</sup> requires a closer examination of the First Contemporaneous Statement.

112 The weakness of the accused’s claim is made apparent in the manner in which he contests the accuracy of the First Contemporaneous Statement. In relation to Q1, where the accused was asked an open-ended question on what the Exhibits retrieved from locations later marked “A” and “B” were, the accused claims that he was silent due to his withdrawals and had only responded with “panas and sejuk” recorded in A1 when he was asked if he took drugs. More inconceivably, the accused testified that Q3 and Q9 were never posed to him but confirmed the main substance of the First Contemporaneous Statement where it was favourable to his case – that the accused was supposed to send the

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<sup>211</sup> P174 at p 3.

<sup>212</sup> NE: 4 March 2021, p 58:13–22.

<sup>213</sup> NE: 4 March 2021, p 56:14–18.

“panas” and “sejuk” to “postal code ... 730011” but “did not know there were other drugs hidden inside”.<sup>214</sup>

113 The claim that the accused was experiencing withdrawals and feeling unwell at the point of the recording of the First Contemporaneous Statement was never put to the statement recorder, SSSgt Khairul, at cross-examination. Instead, SSSgt Khairul’s evidence was that the accused comprehended every question posed to him and responded “logically and to the question that was asked”.<sup>215</sup>

114 Taking the First Contemporaneous Statement in its entirety, it does not appear plausible to me that the accused slipped in and out of the alleged drug-induced silence to proffer coherent explanations about matters which related only to his personal knowledge, such as where he was supposed to deliver the drugs and the expected remuneration, yet conveniently operated under the influence of drug withdrawals in his answers on the nature of the specific drugs he carried.

115 On the contrary, the accused has been inconsistent on his alleged account of the statement recording – while it was put to SSSgt Khairul that A9 was inaccurate,<sup>216</sup> the accused in his EIC testified that Q9 was never asked.<sup>217</sup> The accused then shifted to agreeing with the Prosecution in his cross-examination that the First Contemporaneous Statement was accurately

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<sup>214</sup> P55 at Q4/A4 to Q8/A8: ABOD at pp 162–163.

<sup>215</sup> NE: 2 March 2021, p 58:27–31.

<sup>216</sup> NE: 2 March 2021, p 83:12–24.

<sup>217</sup> NE: 27 July 2021, p 10:21–26.



recorded<sup>218</sup> before reverting to his original claim that the said Statement was an inaccurate record,<sup>219</sup> but only in respect of the first page.<sup>220</sup> However, Q9 was on the second page of the First Contemporaneous Statement, and not the first page.

116 Given the medical evidence and the inconsistencies in the accused’s alleged account of the recording of the First Contemporaneous Statement, I disbelieve the accused when he says that he had remained silent. Due weight must be placed on the First Contemporaneous Statement.

117 In this regard, the Defence has not raised any allegation that the accused was unwell or experiencing withdrawals in respect of the Second Contemporaneous Statement even though it was recorded shortly after the First Contemporaneous Statement and prior to the COW Scale assessments conducted by the doctors. In fact, it was recorded that “B1 was feeling okay and ready to give his statement in the Malay language” at the beginning of the Second Contemporaneous Statement. This undermines the Defence’s position that the accused had been suffering from drug withdrawals at the point of the recording of the First Contemporaneous Statement.

118 Further, the Defence asserts that it is highly unlikely that the First Contemporaneous Statement was accurately recorded because of the relative length of time it took to record it compared against the prior conversation between SSSgt Khairul and the accused in Room B-318.<sup>221</sup> It is not clear how

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<sup>218</sup> NE: 27 July 2021, pp 47:29–31 and 48:4–6.

<sup>219</sup> NE: 29 July 2021, p 5:20–21.

<sup>220</sup> NE: 29 July 2021, p 5:22–24.

<sup>221</sup> DCS at para 58.

this undermines the accuracy of the First Contemporaneous Statement: SSSgt Khairul’s evidence was not that the First Contemporaneous Statement was a record of the conversation he had with the accused in Room B-318 prior to its recording; instead, SSSgt Khairul testified that the accused had already identified the Exhibits recovered from locations later marked “A” and “B” as “panas” (heroin) and “sejuk” (methamphetamine) during their conversation in Room B-318 before he identified the Exhibits in his answers recorded in the First Contemporaneous Statement. I reject the Defence’s suggestion that the First Contemporaneous Statement was inaccurately recorded because its recording took a relatively shorter amount of time compared to the time SSSgt Khairul spent with the accused in Room B-318.

119 In accepting that the First Contemporaneous Statement was accurately recorded, I conclude that the accused knew that the Exhibits retrieved from locations later marked “A” and “B” were “panas” (heroin) and “sejuk” (methamphetamine) and admitted that they belonged to him. The inescapable conclusion is that the accused knowingly possessed the Exhibits recovered from locations later marked “A” and “B”.

*Second Contemporaneous Statement*

120 I now address the Second Contemporaneous Statement. While it mainly deals with the accused’s knowledge of the nature of the drugs retrieved from locations later marked “C”, “D”, “E” and “F”, the Defence relies on A18 to demonstrate the credibility of the Ignorance Defence.<sup>222</sup> The relevant section of the Second Contemporaneous Statement is reproduced below:<sup>223</sup>

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<sup>222</sup> DCS at para 487–488.

<sup>223</sup> P60 at A18 (Second Contemporaneous Statement): ABOD at p 175.

Q18) Who does all these belong to?

A18) I do not know. I am only aware of the 4 bundles that they 'Din' gave me. I do not know of any other drugs hidden in the car.

121 Although A18 appears to provide support for the Ignorance Defence, the answer must be seen in the context of the rest of the Statement and the other admissions made by the accused. The accused's answers to the rest of the questions in the Second Contemporaneous Statement show that he knew that the Exhibits retrieved from locations later marked "C" to "F" were heroin and cannabis. However, the Defence contends that the accused's answers to Q13 to Q16 were merely the accused identifying the type of drug by visual examination of the Exhibits shown to him.<sup>224</sup>

122 Despite the accused's response at A18 and his explanation on why he was able to identify the Exhibits seized from locations later marked "C" to "F", the presence of the accused's DNA on Exhibit "E3" is incontrovertible evidence that he must have handled the Exhibit. Taken together with his admissions in the Third Long Statement (which I have found both admissible and accurate above at [60]) when he was confronted with this finding, it must be that the accused identified the Exhibits referred to in A13 to A16 because he knew that the Exhibits contained heroin and cannabis at the material time. I cannot consider A18 in isolation. I have to take into account the accused's answers to the rest of the questions in the Second Contemporaneous Statement, his DNA on Exhibit "E3" and his admissions in the Third Long Statement. When viewed in this light, I find that A18 was not a credible answer. Thus, A18 of the Second Contemporaneous Statement does not support the accused's Ignorance Defence.

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<sup>224</sup> DCS at paras 477–485.

*First Long Statement*

123 I move to the First Long Statement.

124 The First Long Statement was recorded by IO Neo with the assistance of a Malay interpreter, Mr Farhan, at an interview room at the Police Cantonment Complex.<sup>225</sup> The Prosecution submits that the First Long Statement was accurately recorded and ought to be given due weight.<sup>226</sup> On the other hand, the Defence submits that the First Long Statement was inaccurately recorded and not read back to the accused.<sup>227</sup> I deal with the key arguments put forth by the Defence in support of its contention.

125 The Defence’s first basis for its objection is that the accused did not provide certain information recorded in the First Long Statement at paragraphs 5, 11 and 13. For instance, it is the Defence’s case that the accused had not said that he helped “Din” to deliver drugs on one other occasion,<sup>228</sup> nor did he say that he did not know there were drugs inside the car during the first time.<sup>229</sup> The Defence contrasts paragraphs 11 and 12 of the First Long Statement:<sup>230</sup> paragraph 11 states that the accused brought drugs into Singapore on one other occasion and paragraph 12 states that “Din” did not pass the accused any drugs on the first occasion. In emphasising this apparent contradiction, the Defence posits that part of paragraph 13 which states that the accused “did not know there was drugs inside the car during the first time” was not said by the

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<sup>225</sup> PS41 (conditioned statement of IO Neo) at paras 46–49; ABOD at p 250–251.

<sup>226</sup> PRS at para 56.

<sup>227</sup> DCS at para 124.

<sup>228</sup> P67 at para 11; NE: 27 July 2021, p 25:17–23.

<sup>229</sup> P67 at para 13.

<sup>230</sup> DCS at para 342.

accused.<sup>231</sup> The Defence prefers the version of events in paragraph 12 of the First Long Statement, *ie*, the accused did not bring drugs into Singapore on the first occasion.

126 However, no reasonable explanation has been proffered for the source of the detailed information in paragraphs 11 and 13 in the First Long Statement which the accused claims did not come from him. As a matter of logic, it would appear that the objectionable portions would have to come from either IO Neo or Mr Farhan. Therein lies a fundamental difficulty with the Defence's position: had IO Neo or Mr Farhan fabricated any part of the objectionable portions, why would the consecutive paragraphs read inconsistently? In fact, the apparent inconsistencies only serve to strengthen the conclusion that the accused himself gave the information recorded in the First Long Statement.

127 The second basis for the Defence's rejection of the First Long Statement relates to the credibility of IO Neo and Mr Farhan. In this connection, the Defence alleges that the amendment of the commencement time was only made to serve as an illusion that the First Long Statement was read back to the accused.<sup>232</sup> Further, IO Neo and Mr Farhan's unclear evidence on *when* the amendment was made indicates that they are not reliable witnesses. However, the evidence of IO Neo and Mr Farhan does not support these allegations. IO Neo gave evidence that the amendment was made either when the First Long Statement was being read back to the accused or after the said Statement had been read back to the accused, while Mr Farhan testified that he could not recall whether it was made after the First Long Statement was read back to the accused but confirmed that it was made during the recording process. Given that some

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<sup>231</sup> DCS at para 343.

<sup>232</sup> DCS at para 337.

time has passed since the event, some allowances must be made for the fallibility of human memory. I do not perceive that IO Neo was “trying to wriggle”<sup>233</sup> out of a situation; similarly, there is nothing extraordinary about Mr Farhan being unable to recall precisely when during the statement recording process the amendment was made.

128 Correspondingly, I do not accept the Defence’s proposition that the accused told IO Neo and Mr Farhan that he kept “three black *packets*” [emphasis added] rather than that he “kept the 3 *bags* inside a compartment near to the boot of the car” [emphasis added], as recorded at paragraph 5 of the First Long Statement.<sup>234</sup> While this was put to IO Neo and Mr Farhan (to which they disagreed) during cross-examination,<sup>235</sup> the accused later agreed in his EIC that he had referred to the three bags shown in photograph 48, which were Exhibits “B1”, “B2” and “B3”, and that he put these three bags into the compartment shown in photograph 29, which was location later marked “B”.<sup>236</sup> Therefore, there is no material contention about paragraph 5 because the accused ultimately accepts that he kept the Exhibits found at location later marked “B”.

129 Having dispensed with the Defence’s objections above, the First Long Statement remains evidence that the accused knowingly possessed Exhibits “B1”, “B2” and “B3”.<sup>237</sup>

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<sup>233</sup> DCS at para 336.

<sup>234</sup> DCS at para 338.

<sup>235</sup> NE: 26 July 2021, p 32:30–32 (Mr Farhan); NE: 26 July 2021, p 66: 30–32 (IO Neo).

<sup>236</sup> NE: 27 July 2021, p 24:8–17.

<sup>237</sup> P67 at para 5: ABOD at p 271; NE: 27 July 2021, p 24:8–17.

*Second Long Statement*

130 The Second Long Statement recorded by IO Neo at an interview room at the Police Cantonment Complex was similarly assisted by the interpreter, Mr Farhan. The Defence argues that paragraphs 18 and 33 (specifically the line, “I know they are heroin because I mentioned it earlier that I had wrapped the heroin and placed them into the black plastic bag.”) did not contain information furnished by the accused.<sup>238</sup>

131 In this respect, the Prosecution surmises that the Defence’s contentions amount to a vain attempt to resile from parts of the Second Long Statement which are detrimental to the accused’s case. The challenges to the Second Long Statement relate to general allegations of poor recording or fabrication by IO Neo and Mr Farhan. Again, there is no evidence that there was in fact any foul play by the statement recorder and the translator. Aside from the lack of specific and substantive opposition, the inherent plausibility of the Defence’s position is negated by IO Neo and Mr Farhan’s evidence that the information in the contested paragraphs of the Second Long Statement was given by the accused.

132 Although the Defence has not canvassed this in its submissions, portions of the Second Long Statement which have not been disavowed are coherent with the Ignorance Defence. The accused in the Second Long Statement denied keeping the Exhibits found at locations later marked “C”, “D”, “E” and “F”, and claimed not having seen them prior to his arrest.<sup>239</sup> However, these denials must be weighed against the strength of the other evidence, including, the accused’s

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<sup>238</sup> DCS at paras 346–349 and 439–442; NE: 27 July 2021, pp 26:9–15 and 27:2–6.

<sup>239</sup> P68 at paras 28–31, 35–37 and 39 (Second Long Statement); ABOD at pp 275–276.

admissions to Dr Goh, the accused's DNA on Exhibit "E3", and his confession that he had knowingly kept all of the Exhibits in the Car in the Third Long Statement (where he was confronted with the finding that his DNA had been found on Exhibit "E3"). Considering the totality of the evidence, the accused's denial in the Second Long Statement does not assist the Ignorance Defence.

133 At paragraphs 4 to 5 of the First Long Statement, the accused stated that "Din" handed him three bags. However, in the Second Long Statement at paragraph 18, the accused claimed that "Din" handed him one bag. There is no material inconsistency between the two versions, as the accused stated within paragraph 18 of the Second Long Statement that the one bag contained "3 big packets of heroin". Further, even if the accounts on what "Din" had handed the accused in paragraphs 4–5 of the First Long Statement and paragraph 18 of the Second Long Statement differ slightly, both versions belie the accused's account in his EIC on *how* he handled the bag(s) upon receipt. At the trial, the accused maintained that he kept Exhibits "B1", "B2" and "B3" without opening them. In both the First and Second Long Statements, however, the accused said that he knew that heroin was inside the bags handed to him. In my view, his position at the trial is untenable; it is inexplicable that he had not checked the bag(s) upon receiving them because he had no prior relationship of trust with "Din" and the delivery was undoubtedly a business transaction. Further, the accused's volte-face on whether he knew the contents of Exhibits "B1", "B2" and "B3" at the trial evinces his lack of credibility; it seems that the accused had done so in order to reconcile his prior Statements with his case that he only knowingly possessed three packets of heroin, *viz*, Exhibits "B1A", "B1B" and "B1C". I therefore reject the accused's contention that he did not check (and did not know) the contents of Exhibits "B1", "B2" and "B3".



134 Thus, in respect of the possession element, the Second Long Statement serves to fortify the finding that the accused had been in knowing possession of the Exhibits found at location later marked “B”.<sup>240</sup>

*Third Long Statement*

135 The Third Long Statement was admitted into evidence after the ancillary hearing. In addition to the inaccuracies raised in the accused’s submissions for the ancillary hearing dealt with above at [57] to [59], the Defence contends that paragraph 51 of the Third Long Statement was inaccurately recorded.

136 In its closing submissions, the Defence challenges the accused’s admission in paragraph 51 that he had kept Exhibits “A1”, “A2”, “A3”, “A4” and “A5” in the Car. The Defence submits that the accused’s response does not square with the question asked by IO Neo, which was to explain why the packaging of the “A” and “B” Exhibits was similar.<sup>241</sup> I do not accept the Defence’s argument that the accused’s answer does not align with the question posed by IO Neo. It is abundantly clear that the accused’s response that he did in fact keep Exhibits “A1”, “A2”, “A3”, “A4” and “A5” in the Car (but did not know of the contents of the Exhibits prior to keeping them in the Car) was a reasonable answer to IO Neo confronting the accused about the similarity of the packaging of the “A” and “B” Exhibits.

137 I turn now to consider the bearing of the Third Long Statement on the possession element. In the Third Long Statement, the accused was informed that his DNA was found on the cling wraps on Exhibit “E3”. The accused explained that he could have inadvertently touched the Exhibit when he kept it in the Car,

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<sup>240</sup> P68 at paras 26 and 28: ABOD at p 275.

<sup>241</sup> DCS at para 387.

and admitted to keeping the Exhibits retrieved from location later marked “E” in the Car.<sup>242</sup> It follows that the accused was in possession of the Exhibits recovered from location later marked “E” and was aware of his possession of the Exhibits.

138 Within the same statement, the accused confessed to keeping Exhibits marked “A1” to “A5”,<sup>243</sup> “B2A” to “B3B”,<sup>244</sup> “C1”,<sup>245</sup> “D1”<sup>246</sup> and “F1” to “F5”<sup>247</sup> in the Car as well. It follows that the accused was in possession of all the Exhibits and knew that he was in possession of them.

139 The accused was confronted with the fact that his DNA was found on Exhibit “E3” for the first time in the Third Long Statement. Therefore, this was the turning point where the accused admitted to keeping all the Exhibits in the Car, and the Third Long Statement establishes that the accused had knowingly possessed the Exhibits, which were later found to contain the drugs.

140 For the reasons above, I find that the Prosecution has established beyond reasonable doubt that the accused was in physical possession of all the Exhibits and knew that the Exhibits were in his possession.

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<sup>242</sup> P69 at paras 50: PBOD at p 32.

<sup>243</sup> P69 at paras 51: PBOD at p 32.

<sup>244</sup> P69 at paras 57: PBOD at p 34.

<sup>245</sup> P69 at paras 53: PBOD at p 33.

<sup>246</sup> P69 at paras 54: PBOD at p 33.

<sup>247</sup> P69 at paras 61: PBOD at p 35.

***Prosecution's alternative case on possession***

141 I find that the Prosecution's alternative case on possession is also satisfied. The accused failed to rebut the presumption of possession under s 21 of the MDA for the same reasons at [62] to [91].

**Whether the Prosecution has established the knowledge element of the charges**

***The First Charge***

142 Having considered the evidence, I am satisfied that the knowledge element of the First Charge has been established.

143 In order to fulfil the knowledge element of the First Charge, the Prosecution must show that the accused knew that Exhibits "A1A", "A1B", "A1C", "A2A1A", "A3A", "A3B", "A4A", "A4B", "B1A", "B1B", "B1C", "C1A1", "C1B", "C1C1", "D1A", "D1B" and "D1C" contained heroin. The Defence does not dispute that the accused knew of the nature of the drug contained in Exhibits "B1", "B2" and "B3", *viz*, the accused knew that the Exhibits retrieved from location later marked "B" contained heroin. In this regard, the accused does not challenge his knowledge that Exhibits "B1A", "B1B" and "B1C" contained heroin at the material time.

144 I set out the evidence in respect of the accused's knowledge of the nature of the drug (heroin) contained in Exhibits aside from "B1A", "B1B" and "B1C".

***First Contemporaneous Statement***

145 I give due weight to the First Contemporaneous Statement after assessing its accuracy above at [116]. The accused identified the Exhibits retrieved from locations later marked "A" and "B" (*ie*, seven black bundles and

one block of vegetable matter) as “panas” and “sejuk” in the First Contemporaneous Statement. At location later marked “A”, four black bundles (Exhibits “A1” to “A4”) and one block of vegetable matter (Exhibit “A5”) were recovered. Exhibit “A1” contained individual sub-packets, *viz*, Exhibits “A1A”, “A1B” and “A1C”.<sup>248</sup> The naming convention is similar for the other Exhibits retrieved from location later marked “A” which were recovered and marked by IO Neo (see [3]), *eg*, individual packets found in Exhibit “A2” would be named “A2X”, where “X” is a unique letter or number. Therefore, the accused admitted that he knew that Exhibits “A1A”, “A1B”, “A1C”, “A2A1A”, “A3A”, “A3B”, “A4A” and “A4B” contained heroin.

#### *Second Contemporaneous Statement*

146 The accused recognised the two wrapped bundles (later marked Exhibits “C1” and “D1”) as “panas” (*ie*, heroin) in the Second Contemporaneous Statement.

147 I consider briefly the accused’s one-off contention in cross-examination that he was unsure if the entire Second Contemporaneous Statement was read back to him.<sup>249</sup> While SSgt Khairul did not read back the description of the Exhibit and the corresponding location it was found in (*ie*, the phrases within the parentheses) within his questions, it was made clear that the Exhibits were retrieved from the Car and he attested to pointing out each Exhibit to the accused when he read back the statement to the accused.<sup>250</sup> Consequently, the Second Contemporaneous Statement serves as evidence that the accused knew of the nature of Exhibits “C1” and “D1” at the material time of the offence. IO Neo

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<sup>248</sup> Photo bundle P5 at photograph 43.

<sup>249</sup> NE: 27 July 2021, p 16:10–12.

<sup>250</sup> NE: 3 March 2021, pp 87:11–29, 88:1–7 and 98:22.

adopted the naming convention described in [145] for these Exhibits. The accused therefore knew that Exhibits “C1A1”, “C1B”, “C1C1”, “D1A”, “D1B” and “D1C” contained heroin.

*Third Long Statement and confessions in Dr Goh’s clinical notes P63*

148 Finally, the accused’s confessions recorded in Dr Goh’s notes and the admissions in the Third Long Statement serve more generally as evidence that the accused knew of the nature of the drugs contained in the Exhibits he brought into Singapore. In the Third Long Statement, the accused again reiterated that Exhibits “C1” and “D1” were heroin and answered in the affirmative when asked if he had known of the nature of the Exhibits at the point at which he kept them in the Car.<sup>251</sup> In Dr Goh’s clinical notes P63, he documented the accused’s admissions on three separate occasions that he had knowingly brought “panas”, “ice” and “ganja” into Singapore. I set out above that due weight would be given to the admissions in the Third Long Statement (see [41]–[60]) and the confessions in Dr Goh’s clinical notes P63 (see [104]).

149 For the above reasons, the knowledge element is established for the First Charge.

***The Second Charge***

150 To satisfy the knowledge element of the Second Charge, the Prosecution must show that the accused knew that Exhibits “B2A”, “B2B”, “B3A” and “B3B” contained methamphetamine.

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<sup>251</sup> P69 at paras 53–54; PBOD at p 33–34.

151 The Prosecution relies principally on the accused's admission to SSSgt Khairul in Room B-318, his admission in the First Contemporaneous Statement that the Exhibits retrieved from locations later marked "A" and "B" were "panas and sejuk" (the latter being the street name for methamphetamine), and the accused's confessions to Dr Goh that he had brought in the "items" or "things" which contained, *inter alia*, "ice".<sup>252</sup> I consider the First Contemporaneous Statement accurately recorded for the reasons set out at [109]–[115].

152 SSSgt Khairul's account of what the accused had told him in Malay in Room B-318 prior to the recording of the First Contemporaneous Statement materially corroborated it. Although the accused claims that he had remained silent when SSSgt Khairul asked him what the Exhibits retrieved from locations later marked "A" and "B" were, I accept SSSgt Khairul's evidence that the accused had in fact responded to identify the Exhibits as "panas and sejuk". From the Prosecution's arguments at [21], I observe, in particular, that SSgt Saifuddin testified that SSSgt Khairul contemporaneously informed him of the accused's admission at Room B-318.

153 Crucially, SSSgt Khairul had shown the accused the seized Exhibits from locations later marked "A" and "B" while they were in their original opaque black bags (save for Exhibit "A5", which was wrapped in cling wrap) when he asked the accused what the Exhibits were. The accused had responded that they were "panas" and "sejuk" even prior to having had the opportunity to visually examine the sub-packets within the Exhibits (as the accused had the opportunity to examine the Exhibits during the recording of the First Contemporaneous Statement). In other words, the accused was able to identify that "sejuk" (*ie*, methamphetamine) was contained in the Exhibits recovered

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<sup>252</sup> PCS at paras 39 and 54–59.

from locations later marked “A” and “B” independent of the subsequent inspection during the recording of the First Contemporaneous Statement. Further, the accused maintained that the Exhibits retrieved from locations later marked “A” and “B” were “panas and sejuk” in the recording of the First Contemporaneous Statement.

154 In relation to the accused’s statements to Dr Goh that he knowingly brought “heroin”, “ice” and “ganja” into Singapore over three separate interviews, Dr Goh testified that his clinical notes were the accused’s verbatim account of the incident through the certified Malay interpreter, Mr Shaffiq.<sup>253</sup> I accept that the notes were an accurate record of what the accused had told Dr Goh.

155 Notwithstanding the accused’s identification of Exhibits “B2A”, “B2B”, “B3A” and “B3B” as “heroin” in the Third Long Statement,<sup>254</sup> I nonetheless find that the accused had actual knowledge that he was bringing methamphetamine into Singapore. I set out my reasons below.

(a) First, the accused told SSSgt Khairul that the Exhibits retrieved from locations later marked “A” and “B”, which contained Exhibits “B2A”, “B2B”, “B3A” and “B3B”, were “panas” and “sejuk”. I consider this a significant admission as the accused identified the nature of the drugs prior to having seen the sub-packets within the Exhibits later marked “B2” and “B3” (which were black, opaque packets).

(b) Second, the accused maintained that the Exhibits recovered from locations later marked “A” and “B”, which contained Exhibits “B2A”,

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<sup>253</sup> NE: 9 March 2021, pp 19:14–30, 20–21 and p 22:1–20.

<sup>254</sup> P69 at para 57, Q2/A2–Q4/A4 (Third Long Statement): PBOD at pp 34–35.

“B2B”, “B3A” and “B3B”, were “panas and sejuk” in the First Contemporaneous Statement.

(c) Third, the accused’s confessions to Dr Goh on three separate occasions on 21 November 2018, 27 November 2018 and 4 December 2018 were that he had knowingly brought “ice”, “heroin” and “ganja” into Singapore.

(d) Taken together, I find that the accused knew that he brought, *inter alia*, methamphetamine into Singapore, specifically within Exhibits retrieved from locations later marked “A” and “B” (including the sub-packets, Exhibits later marked “B2A”, “B2B”, “B3A” and “B3B”, which contained methamphetamine). The accused had either not been forthcoming or made a mistake in his misidentification of Exhibits later marked “B2A”, “B2B”, “B3A” and “B3B” as “heroin”.

156 The totality of the evidence shows that the accused knew the nature of the Exhibits found at location later marked “B”, *ie*, that they contained methamphetamine, and the knowledge element of the Second Charge is established.

### ***The Third Charge***

157 In order to satisfy the knowledge element of the Third Charge, the Prosecution must show that the accused knew that Exhibits “A5A”, “E1A”, “E2A”, “E3A”, “E4A”, “E5A”, “F1A”, “F2A”, “F3A”, “F4A” and “F5A” contained vegetable matter which was found to be cannabis.



158 I find that the accused had actual knowledge that Exhibits “A5A”, “E1A” to “E5A” and “F1A” to “F5A” contained cannabis on the following evidence:

(a) First, while the accused identified the Exhibits from locations later marked “A” and “B” (including Exhibit “A5”) collectively as “panas and sejuk” in the First Contemporaneous Statement,<sup>255</sup> the accused’s later confessions in the Second Contemporaneous Statement and the Third Long Statement evince his knowledge that Exhibit “A5” was cannabis.

(b) Second, the accused recognised Exhibits “E” and “F” as “ganja”, which he conveyed was “cannabis” in the Second Contemporaneous Statement.<sup>256</sup>

(c) Third, the accused divulged that he had intentionally brought into Singapore, *inter alia*, “ganja”, in his confessions to Dr Goh.

(d) Finally, he admitted to bringing the Exhibits into Singapore in the Third Long Statement.

159 For the above reasons, the knowledge element is established on the Third Charge.

160 I find that the Prosecution has established beyond reasonable doubt that the accused had actual knowledge of the nature of the Exhibits.

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<sup>255</sup> P55 at Q1/A1 to Q2/A2: ABOD at p 162.

<sup>256</sup> P60 at Q15/A15 to Q17/A17: ABOD at p 175.

***Prosecution’s alternative case on knowledge***

161 On the Prosecution’s alternative case on knowledge, the Prosecution succeeds in relying on the presumption of knowledge under s 18(2) of the MDA for each of the Charges.

162 I consider next whether the Defence successfully rebuts the presumption under s 18(2) of the MDA.

**Whether the Ignorance Defence is established on the balance of probabilities?**

163 The accused has failed to rebut the presumption under s 18(2) of the MDA by proving, on a balance of probabilities, that he did not know the nature of the drugs found in his possession. I set out my reasons for rejecting the Ignorance Defence below.

164 The law on rebutting the presumption under s 18(2) of the MDA is settled. In order to displace the presumption, the accused must be able to say what he thought or believed he was carrying instead of the drug (*Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng*”) at [39]). The next step is to assess the credibility and the veracity of the accused’s account (*Obeng* at [40]). In the situation where an accused person is indifferent to what he is carrying, he cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of (*Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi*”) at [65]). The Court of Appeal in *Gobi* held as follows (at [65]):

... In this connection, we consider that in the context of rebutting the s 18(2) presumption, an accused person may be said to be indifferent to the nature of the thing in his possession if he had the ready means and opportunity to verify what he was carrying, but failed to take the steps that an ordinary

reasonable person would have taken to establish the nature of the thing, and also fails to provide any plausible explanation for that failure. ...

165 The accused’s main defence lies in his claim that he believed that the Exhibits retrieved from location later marked “B” only contained heroin. He held this conviction solely based on the word of “Din”, and did not check the contents of the Exhibits. A substantial part of the accused’s defence is that he did not examine the contents of the Exhibits retrieved from location later marked “B” prior to keeping them in the Car. The accused first raised this defence at the trial.

166 It is uncontroversial that defences which are mounted at a later stage will invite more scrutiny. If an exculpatory fact is withheld, the court may justifiably infer that that fact is an afterthought and untrue, unless there are good reasons for the accused person’s omission to mention it earlier (*Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [152]).

167 This principle applies to the accused’s defence specifically in relation to the Exhibits found at location later marked “B”. A key portion of the accused’s defence, *ie*, that the accused knew about three packets of heroin at location later marked “B” *only because* “Din” told him so, was never raised in any of the nine statements recorded from the accused. That poses significant difficulty in the Defence’s discharge of the burden of proof of this defence. Apart from the lack of a good reason for the absence of the accused’s claim that he had not ascertained the contents of the Exhibits found at location later marked “B” from his statements, this defence does not square with common sense.

168 Under cross-examination, the accused agreed that his denial of paragraph 33 of the Second Long Statement, specifically that he knew that

Exhibits “B1”, “B2” and “B3” were heroin as he had wrapped the Exhibits, placed them into the black plastic bags and kept them in the Car, was because it contradicted the Ignorance Defence in so far as the accused claims that he had not checked Exhibits “B1”, “B2” and “B3” himself.<sup>257</sup> Furthermore, the accused agreed that he elected not to check Exhibits “B1”, “B2” and “B3” despite having no reason to take “Din’s” word for it.<sup>258</sup> The accused did not have any relationship of trust with “Din” and the delivery was a business transaction. The cumulative effect of the accused’s concessions and his counter-intuitive behaviour is to render the accused’s claims unbelievable.

169 The implication of the accused’s unusual behaviour, in my view, amounts to indifference. Taken in its entire context, the accused’s claim in wholly trusting “Din’s” word that the Exhibits found at location later marked “B” contained heroin does not cohere with their business arrangement, particularly where the accused was tasked to deliver the said Exhibits. The accused’s claim parallels the facts in *Gobi* where it was held that an accused who was indifferent to what he was carrying cannot be said to believe that the nature of the thing in his possession was something other than or incompatible with the specific drug he was in possession of.

170 I now address the Ignorance Defence in respect of the Exhibits recovered from locations later marked as “A”, “C”, “D”, “E” and “F”. The Defence’s case is that the accused did not know about the nature of the drugs contained in the Exhibits. In other words, the accused is unable to say what he thought or believed he was carrying instead of the drugs – he simply did not know.

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<sup>257</sup> NE: 28 July 2021, p 24:14–21.

<sup>258</sup> NE: 28 July 2021, pp 24:26–32 and 25:4–10.

171 Taken together with the evidence in the Third Long Statement, the accused's account becomes a contrived one: if, as I have found, the accused kept the Exhibits in the Car, it would not be logical that he had no knowledge as to the nature of the drugs contained in the Exhibits. It is not reasonable that the accused had kept the Exhibits in the Car but did not form any thought or belief on what he was carrying into Singapore.

172 For the reasons above at [163]–[171], the accused has failed to rebut the presumption under s 18(2) of the MDA and the Prosecution's alternative case on knowledge succeeds as well.

173 I found admissible the Third Long Statement in which the accused admitted that he had knowing possession of the Exhibits because he kept them in the Car. I have also considered the accuracy of the other relevant statements given by the accused in the course of investigations. Consequently, full weight must be given to the admissions in the accused's statements, and the challenges to the accuracy of the statements lack credibility.

### **Conviction**

174 Given the totality of the evidence, I find that the Prosecution has proven beyond reasonable doubt that the accused had knowingly imported the Exhibits. Alternatively, for the reasons I set out at [141] and [161]–[172] above, the Prosecution's alternative case relying on the presumptions succeeds as well. For both the Prosecution's main case and its alternative case, the Defence has failed to establish the Ignorance Defence on a balance of probabilities.

175 I therefore find the accused guilty of the First, Second and Third Charges.

**Concluding remarks**

176 In the course of the proceedings, considerable resources were expended to clarify how the Exhibits were marked and re-marked during investigations. To avoid any confusion or substantial re-tracing of steps, it would be prudent for CNB to standardise the exhibit marking format such that, wherever possible, there would only be a single marking associated with an exhibit.

Dedar Singh Gill  
Judge of the High Court

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