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

[2023] SGHC 170

Criminal Case No 57 of 2022

Between

Public Prosecutor

And

(1) Yogesswaran C Manogaran
(2) Teo Yiu Kin Tee

JUDGMENT

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

Version No 1: 19 Jun 2023 (17:50 hrs)

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Public Prosecutor
v
Yogesswaran C Manogaran and another

[2023] SGHC 170

General Division of the High Court — Criminal Case No 57 of 2022
Philip Jeyaretnam J
4–7, 11, 18, 25, 26 October, 8–10, 14, 28, 29 November 2022, 30 March 2023

19 June 2023 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 The first accused in this matter is Yogesswaran C Manogaran ("Yogesswaran"), a 29-year-old Malaysian citizen who was working as a warehouse assistant.[1] The second accused is Teo Yiu Kin Tee ("Teo"), a 75-year-old Stateless citizen who was unemployed at the time of his arrest.[2]

2 Yogesswaran claimed trial to the following charge of trafficking in diamorphine under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA") by delivering to Teo two packets containing not less than

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1 AB at page 373 (para 17).

2 AB at page 270.

837g of granular/powdery substance, which was analysed and found to contain not less than 24.81g of diamorphine (the "Relevant Drugs"):

> That you, **1. YOGESSWARAN C MANOGARAN**, on 14 January 2020, at about 6.00am, in the vicinity of the junction of Bendemeer Road and Tripartite Way, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, Rev Ed 2008) ("**MDA**"), *to wit*, by delivering two packets containing not less than 837g of granular/powdery substance, which was analysed and found to contain not less than 24.81g of diamorphine to one Teo Yiu Kin Tee, …, without authorisation under the MDA or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) and punishable under section 33(1) of the MDA, and further upon your conviction, you may be liable to be punished under section 33B of the MDA.

3 Teo claimed trial to the following charge of trafficking in diamorphine under s 5(1)(*a*) of the MDA by having in his possession for the purpose of trafficking the Relevant Drugs:

> That you, **2. TEO YIU KIN TEE**, on 14 January 2020, at about 6.00am, at the junction of Bendemeer Road and Geylang Bahru, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the MDA *to wit*, by having in your possession for the purpose of trafficking, two packets containing not less than 837g of granular/powdery substance, which was analysed and found to contain not less than 24.81g of diamorphine, without authorisation under the MDA or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) of the MDA punishable under section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under section 33B of the MDA.

Facts

The arrests on 14 January 2020

4 On 14 January 2020 at about 5.00am, a team of officers from the Central Narcotics Bureau (the "CNB") arrived in the vicinity of 1500

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Bendemeer Road to keep a lookout for Teo.[3] At about 5.55am, Station Inspector Muhammad Fardlie bin Ramlie ("SI Fardlie") saw Teo alighting from a red taxi at the junction of Bendemeer Road and Geylang Bahru before walking to the bus stop along Bendemeer Road (the "Bus Stop").[4]

5 At about 5.58am, Inspector Eng Chien Loong Eugene ("Insp Eugene") saw Yogesswaran turning into Tripartite Way on a Malaysian-registered motorcycle bearing the registration number JTF5365 (the "Motorcycle") before eventually travelling towards the Bus Stop on the Motorcycle.[5] SI Fardlie subsequently saw Teo boarding the Motorcycle in the vicinity of the Bus Stop and the pair then travelled along the pavement towards the direction of Geylang Bahru. Insp Eugene later saw the Motorcycle stopping at the junction of Bendemeer Road and Geylang Bahru with Yogsswaran and Teo on board. Teo alighted from the Motorcycle and walked towards the direction of Block 53 Geylang Bahru while carrying a blue plastic bag (the "Blue Plastic Bag"). Yogesswaran knew that the Blue Plastic Bag contained two bundles.[6]

6 On Insp Eugene's instructions, Teo was arrested by Insp Eugene and Staff Sergeant Goh Bai Lin ("SSgt Goh") at the junction of Bendemeer Road and Geylang Bahru, and Yogesswaran was arrested by Sergeant Syazwan bin Daud Mohamed ("Sgt Syazwan") and Sgt Mohammad Nasrulhaq bin Mohd Zainuddin ("Sgt Nasrulhaq") at the car park gantry in front of Block 57 Geylang Bahru. Staff Sergeant Muhammad Helmi bin Abdul Jalal ("SSgt Helmi") and Sergeant Nur Farina binte Sidik ("Sgt Farina") also

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

4 ASOF at para 3.

5 ASOF at para 4.

6 ASOF at para 5.

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arrested Hema Mogan ("Hema"), Yogesswaran's wife, who was sitting on a bench in front of Block 57 Geylang Bahru.[7]

Seizure of the drug exhibits and other exhibits on 14 January 2020

7 At about 6.12am, Yogesswaran and Hema were escorted in a CNB operational vehicle to deck 5B of a multi-storey carpark located at Block 60A Geylang Bahru (the "MSCP").[8] SI Fardlie mentioned in his statement dated 23 November 2021 that at about 6.15am, a search was conducted on a haversack (*ie*, the exhibit marked as "D1") that was seized from the bench on which Hema was sitting, in the presence of Yogesswaran and Hema. A bundle (*ie*, the exhibit marked as "D1A") which contained the exhibit marked as "D1A1" was recovered from the main compartment of the haversack.[9]

8 Insp Eugene mentioned in his statement dated 23 November 2021 that upon arresting Teo, he seized the Blue Plastic Bag which Teo was carrying (*ie*, the exhibit marked as "C1") and placed it into a tamper-proof bag. Teo was then escorted in a CNB operational vehicle to deck 5B of the MSCP where the Blue Plastic Bag was searched in Teo's presence at about 6.25am. Two green-taped bundles (*ie*, the exhibits marked as "C1A" and "C1B") were recovered from the Blue Plastic Bag.[10] This was not challenged. It is also not disputed that "C1A" and "C1B" contained the Relevant Drugs (*ie*, the exhibits marked as "C1A1" and "C1B1").[11] I will refer to "C1A" and "C1B" collectively as the

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7 ASOF at para 6; AB at page 151 (paras 3–5).

8 ASOF at para 7.

9 Notes of Evidence ("NE"), 14 November 2022, page 22 lines 8–19; P1-42, P1-43 and P1-44; AB at page 157 (para 7).

10 AB at pages 145–146 (paras 6–7). See also NE, 5 October, page 38 lines 6–10.

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"Relevant Bundles", whereas "C1A1", "C1B1" and "D1A1" will be collectively referred to as the "Three Drug Exhibits".

9 The following exhibits were also seized from Teo's front pants pockets:[12]

(a) one gold coloured packet (marked as "C2") containing four packets of brown granular powdery substances (marked individually as "C2A" to "C2D");

(b) one gold coloured packet (marked as "C3") containing one plastic packet (marked as "C3A") which in turn contained two packets of white crystalline substances (marked as "C3A1" and "C3A2");

(c) one plastic packet (marked as "C3B") containing one packet of white crystalline substances (marked as "C3B1");

(d) one plastic packet (marked as "C4") containing one packet of brown granular powdery substances (marked as "C4A"); and

(e) one straw containing brown granular powdery substances (marked as "C4B1") wrapped with aluminium foil (marked as "C4B").

10 At about 6.45pm, Teo was escorted to his residence at 27 Prome Road ("Teo's Unit") in a CNB operational vehicle, during which time the exhibits that had been seized from Teo and placed in a black duffel bag (the "Duffel

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11 Prosecution's Closing Submissions ("PCS") at para 10; First Accused's Closing Submissions ("1ACS"); AB at page 324 (para 28); P1-35 and P1-37.

12 ASOF at para 10.

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Bag") were placed on Insp Eugene's lap.[13] Following a search by the CNB officers of the bedroom of Teo's Unit in Teo's presence, one yellow plastic bag (marked as "A1") was seized from the wall behind the door of the bedroom. The yellow plastic bag contained one "Darlie" toothpaste box (marked as "A1A") which in turn contained 10 packets of brown granular substances (individually marked as "A1A1" to "A1A10").[14] The following exhibits were also seized from the floor next to the wardrobe by the window in Teo's bedroom:[15]

(a) two improvised utensils consisting of one orange straw with a plastic tube at the end, one red straw attached to an improvised glass bottle, one improvised bottle and one glass pipe (marked as "B1" to "B4" respectively);

(b) two rolled-up papers (individually marked as "B5" and "B6");

(c) one plastic packet (marked as "B7") containing numerous plastic packaging (marked as "B7A"); and

(d) one digital weighing scale (marked as "B8").

These exhibits were packed and sealed in separate tamper-proof bags, before being placed into the Duffel Bag.[16]

11 At about 7.30am, SSgt Goh recovered a stack of S$50 notes from Teo's wallet, which were kept with the rest of Teo's personal belongings and placed into the Duffel Bag. SSgt Goh also recovered a separate stack of S$50

13 ASOF at para 11.

14 ASOF at para 12.

15 ASOF at para 13.

16 ASOF at para 14.

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notes from Teo's rear left pants pocket (marked as "C5"), which was packed and sealed in a tamper-proof bag and placed into the Duffel Bag.[17]

Analysis of the Relevant Drugs

12 The Relevant Drugs were subsequently analysed by the Health Sciences Authority (the "HSA"). "C1A1" was found to contain 413.8g of substance containing not less than 11.47g of diamorphine, whilst "C1B1" was found to contain 423.2g of substance containing not less than 13.34g of diamorphine. In total, the Relevant Drugs consisted of 837g of substance containing not less than 24.81g of diamorphine.[18] Yogesswaran's DNA profile was found on, among others, the non-adhesive side of the tapes on "C1A" and the swabs of "C1A" and "C1B".[19]

The admissibility of the recorded statements

Statements recorded from Yogesswaran

13 A total of 16 statements were recorded from Yogesswaran in the course of the investigations:

(a) A contemporaneous statement was recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "CPC") by Sgt Nasrulhaq on 14 January 2020 at 7.50am ("Yogesswaran's Contemporaneous Statement").

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17 ASOF at paras 15–16.

18 ASOF at para 43.

19 ASOF at para 48.

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(b) 12 long statements were recorded under s 22 of the CPC and two cautioned statements were recorded under s 23 of the CPC by Assistant Superintendent Yang Rongluan ("ASP Yang") between 15 January 2020 and 28 January 2020, which were interpreted by Mdm Vijaya Thamavamary Abraham ("Mdm Vijaya").

(c) A long statement was recorded under s 22 of the CPC by Assistant Superintendent Vinod s/o Pannerchilvam ("ASP Vinod") on 24 September 2021.

14 During the trial, Yogesswaran challenged the admissibility of Yogesswaran's Contemporaneous Statement on the basis that the statement was recorded after Sgt Nasrulhaq had made the following promises to him:[20]

(a) In response to Yogesswaran's query as to the possible length of his sentence, Sgt Nasrulhaq allegedly informed him that if he admitted to everything, and the court believed him, he would be given a sentence of 15 years' imprisonment or less.

(b) In response to Yogesswaran's query as to what would happen to Hema, Sgt Nasrulhaq allegedly informed him that if the investigations were completed and if Hema was not involved, she would be released in two weeks.

15 Following an ancillary hearing that was held on 7 October 2022 and 11 October 2022, during which I heard the testimony of Sgt Nasrulhaq and Yogesswaran, I found on 18 October 2022 that the Prosecution had proved

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[20] Yogesswaran's Submissions for the Ancillary Hearing dated 14 October 2022 at para 7.

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beyond a reasonable doubt that Sgt Nasrulhaq had not said anything to Yogesswaran about the sentencing or other consequences that would or might follow from Yogesswaran's admitting to everything, other than what was contained in the Mandatory Death Penalty Notification which Sgt Nasrulhaq had read to him prior to taking the statement. I therefore found that Yogesswaran's Contemporaneous Statement had been made voluntarily. I also found that the prejudicial effect of Yogesswaran's Contemporaneous Statement did not outweigh its probative value. Accordingly, I admitted Yogesswaran's Contemporaneous Statement.[21]

Statements recorded from Teo

16 A total of six statements were recorded from Teo in the course of the investigations:

(a) Two contemporaneous statements were recorded under s 22 of the CPC by Staff Sergeant Goh Jun Xian ("SSgt Eric") on 14 January 2020.

(b) One cautioned statement was recorded under s 23 of the CPC by Senior Staff Sergeant Huang Weilun ("SSS Huang") on 15 January 2020, which was interpreted by Mr Wong Png Leong.

(c) Three long statements were recorded under s 22 of the CPC by SSS Huang between 19 January 2020 and 20 January 2020, which were interpreted by Mr Ee Soon Huat.

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21 NE, 18 October 2022, page 3 line 17 to page 4 line 24.

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17 It is not disputed that all six statements were provided by Teo voluntarily.[22]

Summary of the parties' cases

The Prosecution's case against Yogesswaran

18 The Prosecution submits that it is undisputed that Yogesswaran was in possession of the Relevant Drugs at the material time, and that he delivered the Relevant Drugs to Teo.[23] In this regard, the Prosecution also contends that it has proved beyond a reasonable doubt that the chain of custody of the Relevant Drugs was not broken, and that the results of the analysis of the Relevant Drugs conducted by the HSA are accurate.[24]

19 On the basis of Yogesswaran's possession of the Relevant Drugs, the Prosecution relies on the presumption of knowledge in s 18(2) of the MDA, pursuant to which Yogesswaran is presumed to have known that the Relevant Drugs were diamorphine. In this regard, the Prosecution further argues that Yogesswaran is unable to rebut the presumption of knowledge, having failed to prove on a balance of probabilities his defence that he did not know what the Relevant Bundles contained, but suspected that they could be drugs that attracted a light sentence and/or cigarettes.[25]

Yogesswaran's defence

20 Yogesswaran does not dispute that he possessed the Relevant Bundles containing the Relevant Drugs, nor that he delivered the same to Teo on 14 January 2020.[26] Instead, Yogesswaran makes the following contentions:

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22 Second Accused's Closing Submissions ("2ACS") at para 28.

23 PCS at para 64 and 75.

24 PCS at paras 65–74; Prosecution's Reply Submissions ("PRS") at para 5.

25 PCS at paras 76–80.

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(a) The Prosecution has not proved that there was an unbroken chain of custody in respect of the Relevant Drugs in view of (i) the difference in the weights of the Three Drug Exhibits recorded by ASP Yang and those measured by the HSA and (ii) the possibility of the Three Drug Exhibits having been mixed up when they were being photographed for the purpose of a press release (the "Press Release Photo-taking").[27]

(b) He has rebutted the presumption of knowledge under s 18(2) of the MDA as he has established that he genuinely thought that he was carrying either drugs that would attract a low sentence or uncustomed cigarettes, and there is no direct or circumstantial evidence to show that he knew the Relevant Drugs were diamorphine (the "Knowledge Defence").[28]

The Prosecution's case against Teo

21 The Prosecution submits that it is undisputed that Teo had actual possession of the Relevant Drugs and knew that the Relevant Drugs were diamorphine. Relying on the presumption of trafficking under s 17(*c*) of the MDA, the Prosecution argues that Teo was in possession of the Relevant Drugs for the purpose of trafficking. The Prosecution contends that Teo is unable to rebut the presumption of trafficking, as he cannot establish on a balance of probabilities that the Relevant Drugs were meant for his own consumption.[29]

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[26] 1ACS at para 8.

[27] 1ACS at para 16.

[28] 1ACS at paras 89–94 and 124–125.

[29] PCS at paras 108–111.

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Teo's defence

22 The only defence which Teo raises to rebut the presumption of trafficking under s 17(*c*) of the MDA is that the Relevant Drugs were intended for his own consumption (the "Consumption Defence").[30]

Issues to be determined

23 The elements of an offence under s 5(1)(*a*) of the MDA are well-established (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

(a) First, there must be possession of a controlled drug.

(b) Second, there must be knowledge of the nature of the drug.

(c) Third, there must be proof that possession of the drug was for the purposes of trafficking which was not authorised.

24 As noted above at [20], Yogesswaran does not dispute that he possessed the Relevant Bundles containing the Relevant Drugs at the material time;[31] this was also accepted by Yogesswaran on the stand.[32] Accordingly, pursuant to s 18(2) of the MDA, Yogesswaran would be presumed to have known the nature of the Relevant Drugs, *ie*, diamorphine. Yogesswaran also accepted on the stand that he had delivered the Relevant Bundles containing the Relevant Drugs to Teo by passing to Teo the Blue Plastic Bag,[33] and that

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30 2ACS at para 20.

31 1ACS at para 8; NE, 14 November 2022, page 55 lines 27 to page 56 line 1.

32 NE, 14 November 2022, page 23 lines 21–23.

33 NE, 14 November 2022, page 21 line 31 to page 22 line 1.

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he did so without authorisation.[34] Therefore, the issues arising in relation to Yogesswaran are:

(a) whether there was a break in the chain of custody in relation to the Relevant Drugs (the "Chain of Custody Issue"); and

(b) whether Yogesswaran has rebutted the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities.

25 As for Teo, he accepted on the stand that he knowingly collected two bundles of diamorphine (*ie*, the Relevant Bundles containing the Relevant Drugs) on 14 January 2020.[35] Teo also testified that he knew that the Relevant Drugs were diamorphine.[36] In other words, it is undisputed that Teo was in knowing possession of more than 2g of diamorphine, and is therefore presumed to have had the Relevant Drugs in his possession for the purpose of trafficking pursuant to s 17(*c*) of the MDA. Hence, the issue arising in relation to Teo is whether Teo has rebutted the presumption of trafficking under s 17(*c*) of the MDA on a balance of probabilities. While Teo did not raise the Chain of Custody Issue, if Yogesswaran succeeds on it then Teo would have the benefit of it as well.

The Chain of Custody Issue

26 The Prosecution submits that it has proved beyond a reasonable doubt that the chain of custody of the Relevant Drugs was not broken, for the following reasons:

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34 NE, 14 November 2022, page 55 line 27 to page 56 line 11.

35 NE, 29 November 2022, page 16 lines 21–28.

36 NE, 29 November 2022, page 51 lines 3–4.

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(a) Based on the evidence of various officers from the CNB called by the Prosecution as witnesses, the chain of custody of the Relevant Drugs was intact and fully accounted for from the point of seizure, through the processing of the exhibits, and until they were submitted to the HSA for analysis.[37] Moreover, it is an agreed fact that Yogesswaran's DNA was found on the drugs, which makes it clear that the drug exhibits analysed by the HSA were the Relevant Drugs delivered by Yogesswaran to Teo.[38] It was not put to these witnesses that their evidence on the chain of custody of the Relevant Drugs was untrue, or that the drug exhibits analysed by the HSA were not the same Relevant Drugs that Yogesswaran had delivered to Teo.[39]

(b) Yogesswaran's argument that there is a *theoretical possibility* that the Relevant Drugs were mixed up during the Press Release Photo-taking is speculative and should be rejected.[40] ASP Yang and XT4 Toh Sin Ee Mikale ("XT4 Toh"), who were involved with the Press Release Photo-taking, emphatically stated that there was no mix-up in the drug exhibits because safeguards had been employed.[41] Moreover, as Yogesswaran accepted that it was "fair" that accused persons are not allowed to be present at the Press Release Photo-taking, his argument that ASP Yang should have brought him and Teo back to the Exhibit Management Room ("EMR") to witness the sealing

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37 PCS at paras 65–71; PRS at para 8.

38 PRS at para 7.

39 PRS at para 10.

40 PRS at paras 11–16.

41 PCS at para 68; PRS at paras 19 and 22.

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of the Drug Exhibits after the completion of the Press Release Photo-taking rings hollow.[42]

(c) The results of the analysis of the Relevant Drugs conducted by the HSA are an accurate reflection of the weight of the Relevant Drugs. ASP Yang and Dr Ong Mei Ching ("Dr Ong") of the HSA have provided legitimate explanations for the discrepancies in the weights of the Relevant Drugs recorded by them.[43] Moreover, the minute differences in the weights recorded by ASP Yang and Dr Ong are insufficient to raise a reasonable doubt as to whether the drug exhibits analysed by the HSA were the Relevant Drugs.[44]

27 On the other hand, Yogesswaran submits that the Prosecution has not proved that there was an unbroken chain of custody of the Relevant Drugs based on the following arguments:

(a) There is a reasonable doubt that there was a break in the chain of custody of the Relevant Drugs during the Press Release Photo-taking. In particular, there are photographs showing three bundles of drug exhibits being grouped together, where the bundles were not placed in tamper-proof bags and did not bear any apparent labelling or markings. However, none of the CNB officers could recall the steps taken to prevent a mix-up of the drug exhibits.[45] Although XT4 Toh testified that she *would have* employed certain safeguards to prevent the drug exhibits from getting mixed up, she had no actual memory of

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42 PRS at para 21.

43 PCS at paras 72–74.

44 PRS at paras 23–30.

45 1ACS at paras 57–88.

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what had transpired during the Press Release Photo-taking on 14 January 2020.[46]

(b) There was a procedural lapse in the handling of the Relevant Drugs, as the Relevant Drugs were not sealed in the presence of Yogesswaran and/or Teo after the media photo-taking process. While there may have been a CNB guideline that accused persons were not allowed to be present during the Press Release Photo-taking, there was nothing preventing ASP Yang from bringing Teo and Yogesswaran back to the EMR to witness the sealing of the Relevant Drugs.[47]

(c) There are discrepancies in the weights of the Three Drug Exhibits recorded by ASP Yang in the EMR and those recorded by Dr Ong after analysis at the HSA. It is incumbent on the Prosecution to furnish cogent and reasoned explanations to account for the discrepancies. However, the Prosecution has failed to provide any such explanation, and neither ASP Yang nor Dr Ong could explain the discrepancies.[48]

The evidence pertaining to the Chain of Custody Issue

The evidence surrounding the handling of the Relevant Drugs

28 It is helpful to first set out the evidence surrounding the handling of Relevant Drugs from the point it was seized from Teo up to the point it was sealed and sent to the HSA for analysis.

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46 First Accused's Reply Submissions ("1ARS") at paras 1–3

47 1ACS at paras 17–26.

48 1ACS at paras 28–56; 1ARS at paras 5–6.

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Date (Time)	Evidence of the CNB officers
14 January 2020 (6.00am)	Upon arresting Teo at about 6.00am, Insp Eugene seized the Blue Plastic Bag that Teo was carrying and placed it into a tamper-proof bag without sealing it.[49] At about 6.10am, Teo was escorted to the MSCP in a CNB operational vehicle, with the tamper-proof bag containing the Blue Plastic Bag placed on Insp Eugene's lap.[50]
14 January 2020 (6.25am)	At about 6.25am, Insp Eugene handed the tamper-proof bag containing the Blue Plastic Bag to Sergeant Dadly bin Osman ("Sgt Dadly") and instructed Sgt Dadly to conduct a search on the Blue Plastic Bag. The Blue Plastic Bag was searched in Teo's presence and the Relevant Bundles were recovered from the Blue Plastic Bag. Thereafter, Sgt Dadly placed each of the Relevant Bundles into separate tamper-proof bags and sealed the bags. The sealed tamper-proof bags were then placed into the Duffel Bag and handed to Insp Eugene for safekeeping at about 6.42am.[51]
14 January 2020 (11.40am)	Insp Eugene had custody of the Duffel Bag containing the Relevant Bundles from the MSCP until he arrived at the headquarters of the CNB (the "CNB HQ") at about 11.40am. Insp Eugene passed the Duffel Bag containing the Relevant Bundles to SI Fardlie at about 1.17pm.[52]
14 January 2020 (1.19pm)	SI Fardlie brought the Duffel Bag containing the Relevant Bundles to the basement 4 carpark of the CNB HQ at about 1.19pm for the search and photo-taking of the Motorcycle, before bringing it to the EMR at about 1.35pm.[53]
14 January	The processing of the exhibits (including the Relevant

49 NE, 5 October 2022, page 36 lines 19–25.

50 AB at pages 145–146 (paras 6–7).

51 AB at pages 146 (para 7); 202–203 (para 7).

52 AB at pages 147–149 (paras 9–17).

53 AB at page 158 (paras 12–14).

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2020 (1.58pm)	Bundles) commenced at about 1.58pm. Teo, Yogesswaran and Hema were present in the EMR to observe the processing of the exhibits through a glass panel. SI Fardlie, Insp Eugene and SSgt Helmi took turns to hand the exhibits to ASP Yang one at a time for processing.[54] SSS Huang assisted ASP Yang by, among other things, marking the case exhibits and sealing some of the exhibits into new tamper-proof bags after XT3 Chindoo d/o Kumar ("XT3 Chindoo") took photographs of each exhibit. ASP Yang also sealed some of the exhibits into tamper-proof bags.[55] XT3 Haifaa binte Mohamed Anwar assisted ASP Yang by laying out the case exhibits and cutting open and swabbing some of the case exhibits, including the Relevant Bundles.[56] At about 4.29pm, XT4 Toh arrived at the EMR to assist with the processing of the exhibits.[57]
14 January 2020 (6.43pm)	The processing of the exhibits concluded at around 6.43pm. SSS Huang and ASP Yang testified that after the exhibits had been processed, the exhibits marked as "C1A1", "C1B1" and "D1A1" (*ie*, the Three Drug Exhibits) were packed in new tamper-proof bags. However, they were not sealed immediately as they needed to be photographed for CNB's press release.[58] XT3 Chindoo similarly testified that when she left the EMR at about 6.47pm, the Three Drug Exhibits were in separate tamper-proof bags.[59] However, XT3 Chindoo also agreed that she "saw the drugs being sealed and marked" in the EMR but could not recall if the Three Drug Exhibits were thereafter taken out again for the Press Release Photo-taking.[60]

54 AB at page 149 (para 18), 158 (para 14) and 322–323 (paras 20–27).

55 AB at page 259 (para 9) and page 322 (para 19).

56 AB at page 4 (para 7) and page 323 (para 25).

57 AB at page 323 (para 21).

58 NE, 25 October 2022, page 34 lines 15–20 and page 45 lines 24 to page 46 line 15; NE 8 November 2022, page 63 line 26 to page 64 line 2.

59 NE, 4 October 2022, page 89 line 24 to page 90 line 19.

60 NE, 4 October 2022, page 86 line 14 to page 87 line 2.

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14 January 2020 (6.50pm)	At about 6.50pm, ASP Yang weighed the Three Drug Exhibits in the presence of Teo, Yogesswaran and Hema. Teo, Yogesswaran and Hema subsequently signed against the weights of the drug exhibits recorded in ASP Yang's investigation diary. The weighing process ended at about 7.08pm.[61]
14 January 2020 (7.14pm)	Page 4 of Exhibit 1D1 depicts one of the three press release photographs taken of "C1A1", "C1B1" and "D1A1" (*ie*, the Three Drug Exhibits), which was taken by XT4 Toh with her mobile phone on ASP Yang's instructions. XT4 Toh testified that she took the photo at around 7.14pm in the EMR, after the processing and weighing of the exhibits.[62] Although XT4 Toh could not recall what in fact occurred on 14 January 2020,[63] she testified that usually, exhibits would be removed from the tamper-proof bags in which they were stored and laid out on "brown paper". Photographs of the exhibits would then be taken before placing the exhibits back into tamper-proof bags.[64] ASP Yang and SSS Huang testified that the Press Release Photo-taking was not witnessed by Yeo, Yogesswaran and/or Hema.[65] According to ASP Yang, a CNB guideline prohibited accused persons from being present at the Press Release Photo-taking.[66] After the Press Release Photo-taking, the tamper-proof bags containing the Three Drug Exhibits were sealed in their respective tamper-proof bags by ASP Yang and SSS Huang.[67] ASP Yang testified that the tamper-proof bags containing the Three Drug Exhibits were not sealed in the presence of

61 AB at pages 326–327 (paras 29 and 31).

62 NE, 10 November 2022, page 39 line 22 to page 40 line 7.

63 NE, 10 November 2022, page 42 lines 3–9.

64 NE, 10 November 2022, page 40 lines 24–31.

65 NE, 25 October 2022, page 25 lines 15–23; 8 November 2022, page 72 lines 2–4.

66 NE, 8 November 2022, page 72 lines 5–8; 9 November 2022, page 82 lines 2–18.

67 NE, 8 November 2022, page 64 lines 9–13 and page 71, line 31 to page 72 line 1.

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	Yogesswaran and/or Teo.[68] However, ASP Yang accepted that there was nothing *physically* preventing her from bringing the accused persons back to the EMR after the conclusion of the photo-taking to witness the sealing of the Three Drug Exhibits in tamper-proof bags.[69]
14 January 2020 (7.19pm)	At about 7.19pm, ASP Yang and SSS Huang carried all the exhibits to ASP Yang's office.[70]
15 January 2022 (2.00pm)	At about 2.00pm, ASP Yang handed the tamper-proof bags containing the Three Drug Exhibits to Staff Sergeant Mohammed Rafi s/o Anwar Badcha ("SSgt Rafi"), who locked them inside a metal cabinet in the Exhibit Management Team's office in the CNB HQ.[71] SSgt Rafi subsequently retrieved the Three Drug Exhibits from the metal cabinet and handed them to Staff Sergeant Kovalan s/o Gopala Krishna ("SSgt Kovalan").[72]
15 January 2020 (4.33pm)	At about 4.33pm, SSgt Kovalan submitted the Three Drug Exhibits to the Illicit Drugs Laboratory of the HSA for analysis.[73]

29 One of the focal points of the Chain of Custody Issue is the handling of the Three Drug Exhibits during the Press Release Photo-taking, and the possibility of the Three Drug Exhibits being mixed up. XT4 Toh testified that to "keep track" of the exhibits during the photography of the exhibits, after removing the exhibits from their respective tamper-proof bags, the respective

68 NE, 9 November 2022, page 87 lines 1–11.

69 NE, 9 November 2022, page 82 line 15 to page 83 line 22.

70 AB at page 259 (para 10) and page 327 (para 33).

71 AB at page 220 (para 2) and page 333 (para 56).

72 NE, 4 October 2022, page 106 lines 18–22 and page 110 lines 3–8.

73 AB at page 222 (para 2).

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tamper-proof bags would be laid out in the same arrangement as their corresponding exhibits on the corner of the table.[74]

30 ASP Yang's evidence in this regard was slightly different. She testified that aside from the method identified by XT4 Toh, the CNB also employed another method to differentiate drug exhibits from one another when they were removed from their marked tamper-proof bags to be photographed:[75]

> [T]here are two ways to go about doing this. So when we are trying to take out the drug bundles to arrange in a nice position for the press release photos, so the first way is when we took it out from the polymer bag, we will first place the drug bundle in the formation, in this case the triangle formation. The corresponding polymer bag [*ie*, the tamper-proof bag] will also be placed in the same triangle formation side by side, but not shown within the photos. That is one method. The other second method is after taking out the drug bundles from the polymer bag, we will fold the polymer bag to make it smaller, and then place it underneath directly the respective drug bundle, so that you also won't be able to see it from the press release photo. That's how we are able to identify the drug bundles go back to which polymer bag.

31 SSS Huang similarly testified that there were two methods to distinguish drug exhibits from one another after they have been removed from their respective tamper-proof bags to be photographed:[76]

> [T]here's two methods to it. So by---the first method is, while the exhibit are being lay according to what is shown in the photos, the marking of the exhibit are also lay accordance to what is shown in the photos, but is at the side, that is not taken by photo. The second way will be, we will place the exhibit marking under the exhibit itself, when the press release photo was---is taken, Your Honour.

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74 NE 10 November 2022, page 40 line 32 to page 41 line 10.

75 NE, 8 November 2022, page 71 lines 13–26.

76 NE, 25 October 2022, page 25 lines 1–11.

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32 I will refer to the first method of differentiating the exhibits (described at [29] above) as the "Same Formation Method", and refer to the other method as described by ASP Yang and SSS Huang (at [30]–[31] above) as the "Under Exhibit Method". None of XT4 Toh, ASP Yang and SSS Huang could recall exactly which of the two possible methods was in fact used on 14 January 2020 to prevent the Three Drug Exhibits from getting mixed up.[77] I note that the photograph-taking process was not described in any of their statements. ASP Yang also did not record details of the Press Release Photo-taking in her investigation diary.[78]

The evidence surrounding the weight of the Relevant Drugs

33 I turn to set out the evidence surrounding the weighing of the Relevant Drugs and the discrepancies in the weights of the Three Drug Exhibits recorded by ASP Yang and Dr Ong.

34 As mentioned at [28] above, ASP Yang had weighed the Three Drug Exhibits in the presence of Teo, Yogesswaran and Hema and had recorded the weights of the drug exhibits in her investigation diary.

35 However, the weights of the Relevant Drugs and "D1A1" recorded by ASP Yang (after deducting the weight of the tamper-proof bags) differed from the weights recorded by Dr Ong of the HSA:

Exhibit	**Weight recorded**	**Weight recorded**	**Weight**

77 NE, 10 November 2022, page 42 lines 3–9; 8 November 2022, page 71 lines 27–30; 25 October 2022, page 25 lines 9–14.

78 NE, 9 November 2022, page 84 lines 18–26.

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	by ASP Yang[79]	**by Dr Ong**[80]	**difference**
"C1A1"	418.24g	Not less than 413.8g	-4.44g
"C1B1"	426.6g	Not less than 423.2g	-3.4g
"D1A1"	422.27g	Not less than 426.8g	+4.53g

36 In relation to "C1A1" and "C1B1", Dr Ong explained that the weights reflected in her reports were lower than the weights obtained from the weighing process (*ie*, 414.21g for "C1A1" and 423.62g for "C1B1") as reflected in her case notes, to "take into account the variation of the measurement process which is the weighing process". The value to be deducted was determined to be 0.33g at a 99.9999% level of confidence. Accordingly, 0.33g was deducted from the weights of "C1A1" and "C1B1" obtained from the weighing process to arrive at the weights reflected in Dr Ong's reports.[81]

37 In relation to the discrepancies in the weights of the Three Drug Exhibits measured by Dr Ong compared to those recorded by ASP Yang, Dr Ong's evidence was as follows:

(a) Dr Ong testified that diamorphine is hygroscopic, *ie*, it tends to absorb moisture from the air. In relation to "D1A1", Dr Ong accepted on the stand that the hygroscopic nature of diamorphine could be *one*

79 NE, 9 November 2022, page 88 lines 19–26 and page 90 line 16 to page 91 line 16.

80 AB at pages 36, 38 and 48.

81 NE, 4 October 2022, page 68 line 25 to page 69 line 30.

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of the reasons why the weight recorded by her at the HSA was higher than that recorded in the EMR by ASP Yang.[82]

(b) Dr Ong also testified that the weights of drug exhibits measured may differ based on: (i) the placement of the exhibit on the weighing scale; (ii) whether the exhibit was being weighed with or without the exhibit label and/or the tamper-proof bag; (iii) whether the weighing scale was on a level platform; (iv) the maintenance of the weighing scale; (v) whether the weighing scale was calibrated accurately; and (vi) whether zeroing was performed before the exhibit was placed on the weighing scale.[83]

However, Dr Ong cautioned that she could not confirm or pinpoint the exact reason(s) why the weights of "C1A1" and "C1B1" recorded at the HSA were lower,[84] nor why the weight of "D1A1" recorded at the HSA was higher,[85] as she was not present in the EMR.[86]

38 ASP Yang accepted that the discrepancies in the weights of the Three Drug Exhibits recorded by herself and Dr Ong may be attributed to the following factors:

(a) The weights recorded by ASP Yang included the weight of the packaging that the drugs came in (*ie*, the exhibits marked as

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82 NE, 4 October 2022, page 47 line 27 to page 48 line 4 and page 49 line 28 to page 50 line 1.

83 NE, 4 October 2022, page 49 lines 22–24, page 50 lines 4–11, page 59 lines 15–23, page 66 lines 26–30 and page 68 lines 3–13.

84 NE, 4 October 2022, page 59 lines 15–23.

85 NE, 4 October 2022, page 52 lines 15–26.

86 NE, 4 October 2022, page 60 lines 21–28.

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"C1A1(Packaging)" and "C1B1(Packaging)"), whereas the weights recorded by Dr Ong *only* included the weight of the granular/powdery substance in the drug exhibits without the packaging.[87]

(b) The weighing scale that ASP Yang used was different from the weighing scale used at the HSA.[88]

(c) ASP Yang testified that she did not ensure equal distribution of the drug exhibits on the weighing scale when she was weighing them.[89]

Analysis

39 As noted by the Court of Appeal in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [40], the importance of ensuring a complete chain of custody of the drugs used to secure a conviction is paramount.

40 The Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA were the very ones initially seized from the offender. It is incumbent on the Prosecution to establish an *unbroken* chain of custody 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. However, speculative arguments about the *possibility* of contamination are insufficient to raise a reasonable doubt as to the identity of the exhibits: see *Parthiban a/l Kanapathy v Public*

87 NE, 4 October 2022, page 51 lines 1–6.

88 NE, 9 November 2022, page 89, lines 20–21.

89 NE, 9 November 2022, page 107, lines 24–31.

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Prosecutor [2021] 2 SLR 847 ("*Parthiban*") at [14], referring to *Affandi* at [39] and [118].

41 In *Affandi*, one of the offenders argued that the chain of custody was broken because: (a) there were differing accounts as to who in the arresting party had possession of the relevant drug exhibits from the time they were seized until they were handed over to the investigating officer (the "IO"); and (b) after the IO took possession of the exhibits, she did not lock them in her safe but left them on the floor of her office instead. The majority of the Court of Appeal found that the Prosecution failed to establish beyond a reasonable doubt the actual chain of custody in the first place, as there were "two complete and mutually exclusive chains of custody of exhibits, neither of which was disproved" (*Affandi* at [43]–[51]). However, the Court of Appeal rejected the argument that the leaving of drug exhibits in tamper-proof bags on the floor of the IO's office, unsealed and unsigned, for approximately 34 hours gave rise to a possibility that the exhibits were tampered with. The argument was found to be "speculative and … founded purely on the *theoretical* possibility of the exhibits being tampered with" [emphasis in original], as there was no other evidence suggesting that there was unauthorised entry into the IO's office (*Affandi* at [54]–[56]).

42 Where there is a discrepancy between the weights of the drug exhibits recorded by the officers from the CNB and those obtained after analysis at the HSA, the Prosecution must explain the discrepancy in proving its case beyond a reasonable doubt (*Lim Swee Seng v Public Prosecutor* [1995] 1 SLR(R) 32 ("*Lim Swee Seng*") at [70]). However, where the discrepancy in weight is minute, it may not suffice to raise a reasonable doubt that there has been a break in the chain of custody. In this regard, a consistent weight difference across multiple exhibits would lead to an inference that whatever the reason

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for the discrepancy, it would not have been caused by a break in the chain of custody (*Parthiban* at [18]). In *Lim Swee Seng*, the Court of Appeal found that a reasonable doubt existed as to whether the exhibits sent to the HSA for analysis were the same exhibits seized from the offender, as there was a weight discrepancy of 78.13g between the scientific officer's measurements and the investigating officer's measurements (*ie*, 16.49% of the weight measured by the investigating officer) (at [71] and [76]). Conversely, in *Parthiban*, the court considered that a weight discrepancy of about 1% was insufficient to raise a reasonable doubt as to the identity of the drug exhibits in question (at [18]).

43 I now analyse the facts. First, when I heard counsel in oral closing, the Prosecution accepted that the presence of Yogesswaran's DNA on the Relevant Bundles only assisted the Prosecution in proving the chain of custody of the Relevant Drugs up to the point where the Relevant Bundles were processed in the EMR.[90] As Yogesswaran's DNA was present only on the outer packaging of the Relevant Bundles (see [12] above) and the Relevant Drugs were removed from the outer packaging before being sent to the HSA for analysis,[91] the fact that Yogesswaran's DNA was on the outer packaging of the bundles did not assist the Prosecution in showing that there was no mix up among the Three Drug Exhibits themselves. Secondly, at the same hearing, counsel accepted that any mix up (if it had occurred) would at most mean that "D1A1" had been mistakenly swapped with one of either "C1A1" or "C1B1". Moreover, counsel for Yogesswaran confirmed that the submission that there could have been a mix-up among the Three Drug Exhibits was effectively

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90 NE, 30 March 2023, page 19 line 22 to page 20 line 23; page 29 line 1 to page 31 line 5.

91 AB at page 323–324 (paras 25–28).

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limited to a careless mix-up, rather than extending to deliberate tampering or substitution.

44 In essence, the submission by Yogesswaran is that when (a) the discrepancies in the weights of the Three Drug Exhibits recorded by ASP Yang and Dr Ong (and in particular the fact that the weight of "D1A1" recorded at the HSA was higher while those of "C1A1" and "C1B1" were lower) (see [35] above) and (b) the lack of opportunity for either Yogesswaran or Teo to observe what took place at the Press Release Photo-taking are taken together, the court should find that there is a reasonable doubt as to whether the chain of custody of the Relevant Drugs remained unbroken.

45 I begin by observing that the reason why a drug exhibit is ordinarily kept within sight of an arrested person until it has been sealed is to eliminate or reduce the possibility of that arrested person asserting that there has been a break in the chain of custody. This minimises disputes and hence facilitates proof at the trial of the chain of custody. However, this does not mean that the inability of an accused person to observe the processing and/or sealing of a drug exhibit automatically breaks the chain of custody during that period of non-observation. What ultimately matters is the *actual* chain of custody of the material drug exhibit(s) by the police, as opposed to the accused person's observation of that chain of custody. A period during which the accused did not have the opportunity to observe the exhibit merely raises a question that must be answered by the evidence of someone who in fact had custody of the material drug exhibit(s) during that period. If credible evidence is given in that regard, then the necessary link in the chain of custody would be established.

46 Here, the Prosecution chiefly relies on the evidence of ASP Yang and SSS Huang. They were both present throughout the Press Release Photo-

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taking. Taken together with the evidence of XT4 Toh, their evidence shows that either the Same Formation Method or the Under Exhibit Method was used to prevent a mix-up of the Three Drug Exhibits. The adoption of either method would be sufficient to ensure that the Three Drug Exhibits were not mixed up. In light of the passage of time between the Press Release Photo-taking and the present proceedings, it is not surprising that they could not remember specifically which method was used. I am satisfied that there was no break in the chain of custody. The Three Drug Exhibits were placed on the table in the EMR under the observation and control of ASP Yang. That she could not remember if the exhibit markings were placed beneath them or to match their formation does not matter. This is merely an incidental detail. What transpired in the present case is quite different from the situation in *Affandi* where there were differing accounts as to who in the arresting party had possession of the relevant drug exhibits from the time they were seized until they were handed over to the investigating officer. Here, there is no question of where and under whose control the Three Drug Exhibits were.

47 I would further observe that it is legitimate for the police to issue a press release about a seizure of drugs as part of the goal of reasonable transparency concerning their activities. Including photographs of the drugs in such a press release is also legitimate. Having a policy that the accused persons not be present during such photo-taking is defensible, so long as the police take appropriate measures both to ensure the chain of custody is not broken and to facilitate proof of the unbroken chain of custody. While I accept the evidence of ASP Yang, SSS Huang and XT4 Toh and accordingly find that there was no break in the chain of custody, it would facilitate proof of the chain of custody if the fact and duration of photo-taking for a press release is

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recorded in the investigation diary and mentioned in the relevant conditioned statements. It should not be left to be uncovered by defence detective work.

48 I now turn to the discrepancies in weight. I accept the evidence of Dr Ong that the recorded weight of a drug exhibit may differ depending on the placement of the exhibit on the weighing scale. This is because the drugs take the form of granular blocks or clumps. This could explain why she recorded a lower weight for "C1A1" and "C1B1" (*ie*, the Relevant Drugs) while recording a higher weight for "D1A1". Further, the percentage differences in weight were small. Those differences could not give rise to any doubt at all concerning whether the exhibits Dr Ong weighed were the same exhibits that had been weighed in the EMR.

49 Accordingly, I hold that the Prosecution has proved the chain of custody of the Relevant Drugs beyond a reasonable doubt.

Whether Yogesswaran has rebutted the presumption of knowledge

50 Yogesswaran submits that he has successfully rebutted the presumption of knowledge under s 18(2) of the MDA by proving on a balance of probabilities that he did not know the Relevant Drugs were diamorphine.[92] In this regard, Yogesswaran testified that he believed the representations made by one "Nithiya" (the person who had instructed him to deliver the Relevant Bundles to Teo on 14 January 2020) to the effect that the Relevant Bundles contained drugs that would attract a "light sentence" or cigarettes.[93] Yogesswaran claims that he did not know what was in the Relevant Bundles,[94]

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92 1ACS at paras 89–94 and 115–125.

93 NE, 14 November 2022, page 10 lines 25–31; 1ACS at para 116.

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and did not ask "Nithiya" about it because "[he] would still be receiving the same amount of money regardless whether it was cigarettes or drugs".[95] Yogesswaran also testified that "Nithiya", whose full name Yogesswaran could not recall, was Yogesswaran's cousin whom Yogesswaran had known for over 20 years.[96] Yogesswaran claims that he shared a close relationship with "Nithiya" who was "like an elder brother" to Yogesswaran, and Yogesswaran thus trusted him wholly.[97]

51 Yogesswaran also contends that his accounts of what he believed the Relevant Bundles contained: (a) in his statements; (b) during the psychiatric evaluation by Dr Jason Lee Kim Huat ("Dr Lee"); and (c) during the trial, were largely consistent.[98] Among other things, Yogesswaran had never admitted to knowing that the Relevant Bundles contained diamorphine. Yogesswaran had also informed Dr Lee that both "Nithiya" and one "Gajenderan" (another cousin of Yogesswaran's)[99] had told him that if he was caught, he would only get punished with a "light sentence".[100] Finally, Yogesswaran argues that his failure to mention the Knowledge Defence in any of his statements is attributable to his lack of familiarity with the criminal process and his inability to appreciate the level of detail he was required to

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94 NE, 14 November 2022, page 22 lines 22–27.

95 NE, 14 November 2022, page 41 lines 11–17.

96 NE, 14 November 2022, page 5 lines 22–27.

97 NE, 14 November 2022, page 6 lines 8–20; 1ACS at para 93.

98 1ACS at paras 123.

99 NE, 14 November 2022, page 25 lines 21–22.

100 1ACS at paras 94 and 116–123; 1ARS at paras 8–12.

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provide in his statements.[101] In any event, the Prosecution's case that the Knowledge Defence was an afterthought was not put to Yogesswaran.[102]

52 On the other hand, the Prosecution makes the following arguments in contending that Yogesswaran has not rebutted the presumption of knowledge:

(a) Yogesswaran is not a credible witness in view of the inconsistent accounts he provided of his knowledge of the Relevant Bundles during his cross-examination and in his statements.[103] Furthermore, Yogesswaran has not satisfactorily explained why he did not mention the Knowledge Defence in any of his statements, and the Knowledge Defence is more likely to be an afterthought.[104]

(b) Yogesswaran's alleged belief that the Relevant Bundles contained either drugs that carried a light sentence or cigarettes was based entirely on what "Nithiya" had allegedly told him. However, the evidence suggests that Yogesswaran did not trust "Nithiya".[105]

(c) The Knowledge Defence cannot rebut the presumption of knowledge on a balance of probabilities as it is internally incoherent and is contradicted by Yogesswaran's statements and his evidence on the stand.

(i) First, it would not make economic sense for Yogesswaran to be paid RM300 per bundle for delivering two

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101 1ACS at para 103; 1ARS at para 15.

102 1ARS at para 10.

103 PCS at paras 81–86.

104 PCS at paras 86–97.

105 PCS at paras 98–99.

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bundles containing eight to ten packets of cigarettes each, with each packet of cigarettes being worth about RM30 to RM60 each.[106]

(ii) Second, during a separate delivery for "Nithiya", Yogesswaran had allegedly collected from customers around S$6,000 to S$7,000 for two bundles, and around $2,500 to $2,600 in either Malaysian Ringgit or Singapore Dollars for one bundle. It is unbelievable that bundles of cigarettes would cost that much.

(iii) Third, Yogesswaran claimed in his long statements that he was asked to step on one of the three bundles he brought into Singapore on 14 January 2020, so that it could fit into the right-side panel of the Motorcycle. However, if the bundle contained pills or cigarettes (as Yogesswaran claimed to believe), they would be damaged if they were stepped on.[107]

(iv) Fourth, although Yogesswaran claimed that he was unwillingly badgered into helping "Nithiya", he stated in his long statements that he was happy to help "Nithiya" with the deliveries to alleviate his dire financial situation.[108]

Analysis

53 As stated by the Court of Appeal in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") at [57], to rebut the presumption of

106 PCS at paras 100–101.

107 PCS at para 102.

108 PCS at para 103.

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knowledge under s 18(2) of the MDA, an accused person must prove, on a balance of probabilities, that he did not know the nature of the drug in his possession. The Court of Appeal distilled the following principles from the established case law (at [57]):

> (a) As a matter of common sense and practical application, an accused person who seeks to rebut the presumption of knowledge under s 18(2) of the MDA should be able to say what he thought or believed he was carrying, and a claim that he simply did not know what he was carrying would not usually suffice.
>
> (b) While the inquiry into the accused person's state of mind or knowledge is a subjective inquiry, the court will assess the veracity of the accused person's assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the transported item in question in that light in assessing the credibility of his assertion. Relevant considerations might include: (i) the physical nature, value and quantity of the item; (ii) any reward that was to be paid for transporting it; and (iii) any amount that was to be collected upon delivering it.
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> (c) Where an accused person's defence is patently and inherently incredible, no evidential burden will be imposed on the Prosecution to rebut. That being said, in assessing the evidence, the court should bear in mind the inherent difficulties of proving a negative, and the burden on the accused person should not be so onerous that it becomes virtually impossible to discharge.

54 The two broad categories of cases in which accused persons have successfully rebutted the presumption of knowledge in s 18(2) of the MDA

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are: (a) where the accused person is able to prove that he believed he was carrying something innocuous, even if he is unable to specify exactly what that was; and (b) where the accused person is able to prove that he believed he was in possession of some contraband item or drug other than the specific drug in his possession (*Gobi* at [59]). Ultimately, the presumption of knowledge will be rebutted where the court accepts that the accused person formed a *positive belief that was incompatible* with knowledge that the thing he was carrying was the specific drug in his possession (*Gobi* at [60]).

55 Furthermore, an accused person who is indifferent to what he is carrying 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, because an indifferent accused person is simply nonchalant about what the thing in his possession is, and therefore cannot be said to have formed any view as to what it is or is not (*Gobi* at [65] and [69]). An accused person who is in a position to verify or ascertain the nature of what he is carrying may be described as being indifferent to the nature of what he is carrying if he knows that the thing he is carrying is a contraband item, but does not care to find out what that contraband item is or is not (*Gobi* at [67(b)]).

56 The essence of Yogesswaran's Knowledge Defence is that he thought the Relevant Bundles contained either drugs that attracted a "light sentence" or cigarettes as that was what "Nithiya" told him. However, it would rarely, if ever, be sufficient for an accused person to rebut the presumption of knowledge by stating simply that he believed whatever he was told in relation to what was in his possession. Where such a claim is made, the court must consider whether it believes that bare claim, having regard to the entire factual matrix and context, including the relationship between the parties and all the

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surrounding circumstances (*Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [32]). In this regard, Yogesswaran's testimony at the trial – that he in fact believed that the Relevant Bundles contained drugs carrying a lighter penalty (such as "disco pills") or cigarettes[109] – does not cohere with various aspects of his evidence. It is also inconsistent with what was recorded in Yogesswaran's Contemporaneous Statement and his long statements.

The amount Yogesswaran was paid for delivering the Relevant Bundles

57 According to Yogesswaran, the delivery of the Relevant Bundles on 14 January 2020 was the third delivery he was making for "Nithiya".[110] On the stand, Yogesswaran testified that "Nithiya" had informed him that he would be paid RM400 to RM500 for each bundle he brought into Singapore (regardless of the contents of the bundle), but he was only paid RM300 per bundle for the first two deliveries he made for "Nithiya". He therefore estimated that he would be paid around RM1000 for delivering three bundles on his third delivery on the basis that he would be paid between RM300 and RM400 per bundle.[111]

58 Yogesswaran also testified that on the second delivery he made for "Nithiya", there could have been about eight to ten packets of cigarettes in each bundle.[112] In other words, on Yogesswaran's evidence, he would have been paid between RM300 and RM400 to deliver eight to ten packets of

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109 NE, 14 November 2022, page 7 line 22 to page 8 lines 2 and page 44 lines 22–25. See also AB at pages 444–445 (para 278).

110 NE, 14 November 2022, page 10 lines 27–31; AB at pages 444–445 (paras 277–278).

111 NE, 14 November 2022, page 36 lines 4–22.

112 NE, 14 November 2022, page 37 lines 9–27.

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cigarettes. It should have been obvious to Yogesswaran that what "Nithiya" had asked him to deliver could not have been cigarettes – it would not have made economic sense for "Nithiya" to pay Yogesswaran up to RM400 to deliver mere cigarettes, an amount that would most likely exceed any profit "Nithya" could have earned from selling eight to ten packets of cigarettes.

59 In short, the amount Yogesswaran was paid to deliver each of the Relevant Bundles, whether it was RM300, RM400 or RM500, would not support a positive belief that he was carrying lower value items such as cigarettes, or even "disco pills", as opposed to diamorphine.

The amount Yogesswaran collected from third parties

60 Yogesswaran's evidence is that during his second delivery for "Nithiya", he had collected between S$6,000 and S$7,000 from a Chinese male to whom he delivered two bundles. A Malay male to whom he delivered another bundle had also passed him an envelope telling him that there was either 2,500 or 2,600 dollars inside (without specifying the currency).[113]

61 In *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003, the accused person claimed to have believed he was delivering betel nuts (when he was in fact delivering diamorphine). The Court of Appeal observed at [43] that having collected a sum of S$2,300 for a previous delivery, the accused person should have known that what he had previously delivered and was again delivering could not have been betel nuts given the large sum of money involved. In a similar vein, the amount that Yogesswaran collected for each bundle he had delivered previously (*ie*, up to S$3,500 per

[113] AB at pages 416–417 (paras 159–165); NE, 14 November 2022, page 39 line 23 to page 40 line 4.

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bundle) should have alerted him to the seriousness of what he was being asked to deliver. That diminishes the credibility of his assertion that he believed that the Relevant Bundles contained cigarettes or drugs attracting a lower sentence as distinct from drugs generally.

Yogesswaran being asked to step on the Relevant Bundles

62 Yogesswaran's evidence concerning how the Relevant Bundles were stored in the Motorcycle also contradicts the Knowledge Defence. In one of his long statements, Yogesswaran stated that in order to fit the Relevant Bundles into a compartment in the right-side panel of the Motorcycle, "Nithiya" had instructed Yogesswaran to "step on" one of the three bundles Yogesswaran was asked to bring into Singapore. Stepping on a bundle containing packets of cigarettes or pills (whether packed in strips or otherwise) would, even if they were wrapped in some form of protective cover, risk damaging the contents. "Nithiya's" instructions for Yogesswaran to step on the Relevant Bundles would have made it abundantly clear to Yogesswaran that the Relevant Bundles did not contain cigarettes or pills, contrary to what "Nithiya" had allegedly told Yogesswaran.

The statements recorded from Yogesswaran

63 Yogesswaran's account of what he believed the Relevant Bundles contained in the various statements recorded from him during the investigations by the CNB is also inconsistent with the Knowledge Defence.

64 Yogesswaran's Contemporaneous Statement recorded that when asked to explain what he had retrieved from the Motorcycle's side panels, Yogesswaran stated in Malay: "Aku pon tak tahu, cume aku tahu tu barang salah." This has been translated as: "I also don't know. I only know those are

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illegal stuffs."[114] Yogesswaran was subsequently asked again whether he knew what the Relevant Bundles were, to which he replied in Malay: "Tak tahu, tapi tu semua barang salah". This has been translated as "I don't know, but all those are illegal stuffs."[115]

65 Yogesswaran did not say that he believed that the Relevant Bundles contained a particular sub-set of illegal things, such as drugs carrying a light sentence or cigarettes, as he now alleges. At the time Yogesswaran's Contemporaneous Statement was recorded, the Mandatory Death Penalty Notification (the "MDP Notification") had been read to him.[116] Yogesswaran accepted on the stand that based on the MDP Notification, he would have known that he was being accused of an offence that carried the death penalty or a sentence of life imprisonment.[117] If the Knowledge Defence were true and he had truly believed that he was carrying cigarettes or some different kind of drugs that would attract a lighter penalty, one would expect him to have said so immediately. It would have been natural for Yogesswaran to express surprise or shock that the contents of the Relevant Bundles were something different from what he believed them to be, especially upon being informed that he could potentially face the death penalty.

66 It is also significant that Yogesswaran failed to mention the Knowledge Defence in his cautioned statements and/or his long statements.

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114 P47 at Q6 and A6. See also P187.

115 P47 at Q21 and A21. See also P187.

116 NE, 14 November 2022, page 46 lines 14–17. See also P47 (para 9).

117 NE, 14 Noember 2022, page 46 lines 18–21.

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(a) Yogesswaran had been warned pursuant to s 23(1) of the CPC that the court may be less likely to believe any fact or matter in his defence raised at the trial which was not disclosed in his cautioned statement(s). Yet, in both of his cautioned statements recorded on 15 January 2020,[118] Yogesswaran simply admitted to committing the offence without mentioning that he did not know the Relevant Bundles contained diamorphine, or that he believed they contained cigarettes or drugs that attracted a light sentence.

(b) In his third long statement recorded on 18 January 2020, Yogesswaran only said that prior to the first delivery Yogesswaran performed for "Nithiya", "Nithiya" had asked him to bring "drugs" into Singapore in return for RM400 to RM500 per bundle,[119] and that "Nithiya" did not tell him what kind of drugs.[120] He did not, however, say that "Nithiya" had mentioned anything about cigarettes.

(c) In his ninth long statement recorded on 20 January 2020, in relation to the Relevant Bundles, Yogesswaran said that "Nithiya" did not tell him what was inside the bundles and he did not ask "Nithiya" about it as he "would still be receiving the same amount of money regardless [of] whether it was cigarettes or drugs".[121] In his tenth long statement recorded on 27 January 2020, Yogesswaran further stated: "Even though I do not know if the bundles for the third delivery contained drugs or cigarettes, I know that it was still an illegal item

118 AB at pages 364 and 368.

119 AB at page 389 (para 67).

120 AB at page 389 (para 68).

121 AB at page 429 (para 216).

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because it could only either be drugs or cigarettes".[122] In his thirteenth long statement recorded on 24 September 2021, Yogesswaran similarly stated that "Nithiya" had instructed him to "bring in the items that were either drugs or cigarettes" but he did not know which it was.[123] Again, Yogesswaran conspicuously failed to mention his stated defence at the trial that he believed the Relevant Bundles contained either cigarettes or drugs that attracted a light sentence.

67 Yogesswaran claims that he did not mention the Knowledge Defence in Yogesswaran's Contemporaneous Statement as he was not explicitly asked what the Relevant Bundles contained.[124] I reject this explanation. During the recording of Yogesswaran's Contemporaneous Statement, he was asked twice what was inside the Relevant Bundles to which his response was simply that he did not know, save that it was "illegal stuffs" (see above at [64]). He was also asked at the end if there was anything else he wanted to tell the CNB,[125] but chose not to disclose the Knowledge Defence.

68 Yogesswaran's excuse for not disclosing the Knowledge Defence in his cautioned statements was that he was instructed by ASP Yang to "say what [he] wanted to tell the Judge", and that more details could be provided in his long statements.[126] Leaving aside whether ASP Yang had in fact given such instructions to Yogesswaran, Yogesswaran also failed to raise the Knowledge Defence in his long statements. In this regard, Yogesswaran testified that he

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122 AB at page 445 (para 278).

123 AB at page 511 (A6).

124 1ACS at paras 106; NE, 14 November 2022, page 47 lines 5–26.

125 P47 at Q27 and A27.

126 NE, 14 November 2022, page 48 lines 28–31.

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had used the words "light sentence" and "party drugs" during the recording of his long statements, which were not recorded. However, Yogesswaran accepted that the long statements were read back to him. He claims that he did not raise any objections to either ASP Yang or the interpreter, Mdm Vijaya, because he was not concentrating.[127]

69 I find Yogesswaran's explanation difficult to accept. Having been warned that the court may be less likely to believe any fact or matter that he does not disclose in his cautioned statements, it is unbelievable that Yogesswaran would have been so distracted that he did not realise something as important as the Knowledge Defence was not recorded in his long statements. Instead, if the Knowledge Defence were true, one would reasonably expect Yogesswaran to have insisted on it being recorded in his long statements, especially after allegedly being informed by ASP Yang that he could provide more details in his long statements that were not captured in his cautioned statement. In the circumstances, the inference to be drawn is that the Knowledge Defence is an afterthought and untrue.

What Yogesswaran said during his medical examination

70 Yogesswaran was examined by Dr Lee of the Institute of Mental Health ("IMH") for the purposes of a psychiatric evaluation on 3, 5 and 6 February 2020. In Dr Lee's report dated 17 February 2020, he recorded that Yogesswaran "was not told what was in the [Relevant Bundles]" and "did not ask ["Nithiya"] about it" as Yogesswaran "never think want to ask anything". Dr Lee's personal notes also reflected that during the interview conducted on 5 February 2020,[128] Yogesswaran informed Dr Lee that in relation to

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127 NE, 14 November 2022, page 16 lines 10–30.

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Yogesswaran's first delivery for "Nithiya", both "Nithiya" and "Gajenderan" had reassured Yogesswaran that if Yogesswaran were caught, the drugs that Yogesswaran was tasked with bringing into Singapore would only warrant a light sentence.[129]

71 It should be noted that this interview which took place on 5 February 2020 occurred after Yogesswaran's Contemporaneous Statement and his cautioned statements were recorded. The inference drawn from Yogesswaran's failure to mention the Knowledge Defence in Yogesswaran's Contemporaneous Statement and his cautioned statements – that the Knowledge Defence is an afterthought – would apply equally to whatever Yogesswaran had said to Dr Lee during the interview (see above at [69]). In any event, this does not resolve the other major inconsistencies between the Knowledge Defence and the rest of Yogesswaran's evidence, such as Yogesswaran being asked to step on one of the three bundles and the amount Yogesswaran was paid to deliver the bundles.

Relationship between Yogesswaran and "Nithiya"

72 Finally, I deal briefly with Yogesswaran's evidence on his relationship with "Nithiya". Yogesswaran testified that he trusted "Nithiya" wholly as if "Nithiya" were his elder brother.[130] Yogesswaran claims that he believed "Nithiya" when the latter told him that the Relevant Bundles contained drugs that would attract a low sentence if he was caught.[131]

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128 Exhibit 1D-2B.

129 NE, 5 October 2022, page 17 lines 9–11.

130 NE, 14 November 2022, page 6 lines 18–20.

131 NE, 14 November 2022, page 11 line 28 to page 12 line 3; 1ACS at para 93.

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73 Yogesswaran's evidence in this regard is contradicted by his evidence in his statements and at the trial. In his fourth long statement recorded on 18 January 2020, Yogesswaran stated that while he "felt that ["Nithiya"] would tell [him] the truth" about whether "Gajenderan" was arrested after performing a delivery for "Nithiya", he "also did not believe ["Nithiya"] totally".[132] Yogesswaran elaborated on this during his cross-examination:[133]

> Q I put it to you that you knew that it was diamorphine and that is why you have consistently stated that you were always afraid that you would get caught.
>
> A I disagree.
>
> Q And turn to page 392 of the agreed bundle, paragraph 80. I suggest it is because of this significant risk that you wanted to make sure that Gajendran was not arrested after his first job because you wanted to weigh the likelihood of yourself getting arrested.
>
> A I'm---I understood there was a risk and that is why I called Gajendran. I had a slight doubt on Nithiya.

74 It is clear from the portion quoted in the preceding paragraph that Yogesswaran did not repose absolute trust in "Nithiya". On the contrary, Yogesswaran harboured some doubts as to "Nithiya's" representations about the risks involved in bringing the Relevant Bundles into Singapore. Seen in this light, I am unable to accept Yogesswaran's claim that he wholly believed "Nithiya" if and when the latter told him the Relevant Bundles contained cigarettes or drugs that attracted a light sentence.

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[132] AB at page 394 (para 83).

[133] NE, 14 November 2022, page 53 lines 15–23.

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Conclusion on the Knowledge Defence

75 For the foregoing reasons, I find that Yogesswaran has not established on a balance of probabilities the Knowledge Defence – he has not proved that he had a positive belief that was incompatible with knowledge that the Relevant Bundles contained diamorphine. Accordingly, he has failed to rebut the presumption of knowledge in s 18(2) of the MDA.

76 I should add that even if I accept Yogesswaran's expression in Yogesswaran's Contemporaneous Statement of what he believed the Relevant Bundles contained (*ie*, that he did not know what was in the Relevant Bundles save that it was something illegal (see [64] above)), that would match squarely the indifference described in *Gobi* at [67(b)], namely, that he knew he was carrying contraband items but did not care to find out what specifically they were. That Yogesswaran was indifferent as to the contents of the Relevant Bundles is reinforced by his explanation in his ninth long statement that he did not ask "Nithiya" what was in the Relevant Bundles since he would be paid the same amount to deliver the bundles regardless of what the bundles contained (see [66(c)] above). For the reasons stated at [55] above, such indifference would not rebut the presumption of knowledge.

Whether Teo has rebutted the presumption of trafficking

77 In arguing that the Relevant Drugs were meant for his own consumption, Teo seeks to disavow his own evidence in his first long statement recorded on 19 January 2020 ("Teo's First Long Statement")[134] – that he would repack a bundle of 450g of "Bai fen" (a street name for diamorphine) into 60 small packets, retain ten packets for his own

134 AB at page 272 (para 6).

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consumption and sell 50 packets.[135] Instead, Teo highlights his oral testimony that he would typically divide a bundle of "Bai fen" with a "customary weight" of 450g into 60 packets weighing about 7.5g each and consume about one to two packets a day (*ie*, an average of 1.5 packets of "Bai fen" per day). On this basis, Teo contends that he would consume at least 21 packets of "Bai fen" in two weeks, and that the evidence in Teo's First Long Statement – that he only intended to retain 10 packets of "Bai fen" for his own consumption – cannot be correct.[136] In this regard, Teo further argues that the court should not embark on an exercise of apportionment in relation to the Relevant Drugs on the basis of the evidence in Teo's First Long Statement, as it would be superficial and conjectural to do so.[137]

78 Teo submits that if the respective weights of the Relevant Drugs were taken into account, "C1A1" which weighed 413.8g would have been repacked into 60 small packets weighing 6.8g each, whereas "C1B1" which weighed 423.3g would have been repacked into 60 packets weighing 7.05g each.[138] In this respect, Teo highlights his oral evidence that: (a) he consumed an average of two packets per day; (b) he was prone to consuming more than 10g of heroin per day; and (c) he would consume more if he did not feel the "effect" or "kick" of the drugs.[139] Presumably on the basis that he consumed two small packets per day, Teo contends that his consumption rate would be 12–14g of "Bai fen" per day.[140] Teo also contends that he ordered diamorphine once

135 2ACS at paras 32 and 34.

136 2ACS at para 33.

137 2ACS at paras 67–69.

138 2ACS at para 34.

139 NE, 28 November 2022, page 9 lines 10–13.

140 2ACS at paras 38–40.

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every two weeks.[141] However, Teo did not provide any calculations demonstrating the amount of the Relevant Drugs that he intended to retain for his own consumption and correspondingly, the amount of the Relevant Drugs which he intended to sell.

79 Teo also points to the absence of any evidence of his intended customers and the failure of the CNB officers to question Teo on his customers. Teo submits that the absence of such evidence renders his admissions in his statements that he intended to sell the Relevant Drugs unreliable.[142]

80 The Prosecution makes the following submissions in relation to Teo's Consumption Defence:

(a) The Consumption Defence is an afterthought and is untrue. The Consumption Defence was raised for the first time at the trial and is conspicuously absent from all of the statements recorded from Teo by the CNB officers.[143]

(b) Teo has not provided credible and reliable evidence of his rate of consumption which is necessary to establish the Consumption Defence. Prior to the trial, Teo provided various inconsistent rates of heroin ranging between 2.66g and 6g of heroin per day. However, during the trial, Teo's alleged rate of consumption was significantly inflated to 14g to 16g of heroin per day. Moreover, the inflated consumption rate which Teo advanced at the trial is contradicted by

141 2ACS at para 45.

142 2ACS at paras 57–65.

143 PCS at paras 112–116.

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external evidence, such as his lack of withdrawal symptoms when he was being observed at the Complex Medical Centre ("CMC").[144]

(c) The amount of diamorphine in Teo's possession contradicts the Consumption Defence. Teo had a reliable and consistent supply of drugs and did not have any reason to order such a large quantity of diamorphine if the sole purpose of the drugs was for his own consumption. Moreover, it is inconceivable that Teo intended to consume such a large quantity of diamorphine.[145]

(d) Teo did not have the financial means to purchase the Relevant Drugs solely for his own consumption.[146]

(e) Teo repeatedly admitted to intending to traffic in the Relevant Drugs.[147]

Analysis

81 Where the presumption of trafficking in s 17(*c*) of the MDA is engaged, the burden lies on the accused person to prove on a balance of probabilities that the diamorphine in his possession was not for the purpose of trafficking (*Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 2 SLR(R) 706 ("*Jusri*") at [31]). Where an accused person relies on the defence of consumption to rebut the presumption of trafficking, and the drugs have not been re-packed or apportioned in any particular manner to differentiate those

144 PCS at paras 119–125.

145 PCS at paras 126–132.

146 PCS at paras 133–139.

147 PCS at paras 140–149.

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intended to be sold from those intended to be consumed, the court has to look at the totality of the circumstances to determine whether the accused has rebutted the presumption in s 17(*c*) of the MDA (*Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [29]).

82 Relevant factors in this inquiry include: (a) whether there is credible evidence of the accused person's rate of drug consumption and the number of days the supply is meant for; (b) the frequency of supply of the drugs; (c) whether the accused person had the financial means to purchase the drugs for himself; and (d) whether the accused person had made a contrary admission in any of his statements that the whole quantity of the drugs in his possession was for sale (*A Steven s/o Paul Raj v Public Prosecutor* [2022] 2 SLR 538 ("*A Steven*") at [24], referring to *Muhammad bin Abdullah* at [30]–[31]). However, the key pillar and essential foundation of the consumption defence remains the accused person's rate of consumption of the relevant drug, and the accused person bears the burden of establishing the extent of his personal consumption through credible evidence (*A Steven* at [25]).

83 Notably, Teo's case appears to be that both "C1A1" and "C1B1" (*ie*, the entirety of the Relevant Drugs) were meant for his own consumption.[148] The Court of Appeal in *A Steven* noted at [1] that where an accused person's only defence was that the drugs in his possession were meant *solely* for his own consumption (as opposed to being partly for sale and partly for self-consumption), it is essential for the accused person to establish that the *entire* amount of the drugs was intended for his own consumption.

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148 2ACS at para 24; NE, 28 November 2022, page 10 lines 11–13.

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84 At the same time, Teo claims that he only intended to order one bundle of "Bai fen" from one "Jaka" but received two bundles instead.[149] Teo submits that this is corroborated by: (a) the amount of money Teo had on him (S$5,350) which was purportedly insufficient to pay for two bundles (which would have cost S$5,600); as well as (b) Teo's evidence in Teo's First Long Statement that he usually only ordered one bundle of "Bai fen" at a time.[150] Counsel for Teo submitted in oral closing that accordingly, Teo's rate of consumption should be measured against one bundle instead of two.[151]

85 Teo's testimony that he only ordered one bundle is directly contradicted by: (a) Teo's First Long Statement in which he stated that he had ordered two bundles of diamorphine upon being informed by "Jaka" that the festive season was approaching, and that "Jaka" would stop collecting orders and making deliveries during the festive season;[152] and (b) Teo's first contemporaneous statement recorded on 14 January 2020 in which he stated that he was supposed to collect two bundles of diamorphine.[153] Nevertheless, I do note that if Teo's evidence is believed, in assessing whether Teo in fact intended to retain the Relevant Drugs for his own consumption, the period of time over which his consumption would take place would be, roughly speaking, doubled.

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149 NE, 28 November 2022, page 13 lines 18–20 and page 14 lines 21–27.

150 2ACS at paras 51–54; AB at pages 272–273 (paras 6–8).

151 NE, 30 March 2023, page 46 line 2 to page 47 line 10.

152 AB at page 272 (para 7).

153 AB at page 177 (Q5 and A5).

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Teo's consumption rate

86 The central difficulty with Teo's Consumption Defence is that he has not provided credible or consistent evidence of his rate of consumption of diamorphine, which as noted above at [81], is the key pillar and essential foundation of the consumption defence.

87 Teo's evidence at the trial itself was internally inconsistent. He begun by testifying that he smoked heroin twice a day which was portioned into sachets weighing 7g to 8g each (*ie*, 14g to 16g of heroin per day). He claimed that the amount of heroin he consumed per day varied depending on whether he had work to attend to. When asked to provide an average daily consumption rate, he said that he consumed "[a]t most" two sachets per day.[154] Subsequently, when he was asked during his evidence-in-chief whether his consumption rate could be approximated as 15g of heroin per day, he caveated this, testifying that his daily consumption rate of heroin should more accurately be described as "[m]ore than 10 grams" because he might not consume the entire sachet and would stop when he "felt [he] had already enjoyed".[155] It also merits noting that Teo's oral evidence of his consumption rate was vague – he claimed that he would consume heroin until he "felt that [he] enjoyed it" or felt the "effect" or "kick" of the drugs. He submits that as a result, he cannot identify a fixed or definitive amount of heroin that he consumed daily.[156]

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154 NE, 28 November 2022, page 5 line 15 to page 6 line 15.

155 NE, 28 November 2022, page 8 line 24 to page 9 line 6.

156 2ACS at paras 38–39; NE, 28 November 2022, page 5 lines 25–26, page 6 lines 8–9 and page 8 line 30 to page 9 line 13.

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88 Significantly, Teo was admitted to the CMC from 16 to 18 January 2020 for a drug withdrawal assessment. According to a report signed by Dr Sahaya Nathan dated 5 March 2020 (the "CMC Report"), Teo told the attending doctor on 16 January 2020 that he consumed 5g to 6g of heroin daily over the past six months (*ie*, July 2019 to January 2020).[157] Teo also accepted on the stand that this consumption rate had been accurately recorded based on what he had told the attending doctor.[158] However, this consumption rate of 5g to 6g per day starkly differed from Teo's claimed daily consumption rate at the trial (of either more than 10g or 14g to 16g) which was about double the consumption rate recorded from Teo in the CMC Report.

89 In Teo's First Long Statement, Teo stated that he would typically repack 450g of "Bai fen" into 60 small packets weighing about 7.5g each, reserve ten packets for his own consumption over two weeks and sell the remainder.[159] On this basis, Teo would consume 75g of heroin over two weeks, which would correspond to a daily consumption rate of about 5.36g. Teo likewise confirmed on the stand that Teo's First Long Statement had been accurately recorded in this respect.[160]

90 Teo was also examined by Dr Derrick Yeo ("Dr Yeo") of the IMH on five occasions between 30 January 2019 and 6 February 2020.[161] In Dr Yeo's personal notes for 15 February 2019, Teo was recorded as having informed Dr Yeo that Teo consumed about half a packet of diamorphine weighing about 7g

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157 AB at page 126.

158 NE, 28 November 2022, page 43 line 27 to page 44 line 9.

159 AB at page 272 (para 6).

160 NE, 28 November 2022, page 46 lines 26–28.

161 AB at page 130 (para 2).

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to 8g per day (*ie*, 3.5g to 4g per day) or one packet of diamorphine weighing about 7g to 8g over three days (*ie*, 2.33g to 2.66g per day).[162]

91 Teo's claimed daily consumption rate of diamorphine at the trial (whether it was more than 10g or 14g to 16g) was significantly higher than all of the daily consumption rates he had previously provided during his interviews at the CMC and the IMH, as well as that recorded in Teo's First Long Statement. Teo acknowledged that he had informed different individuals of different consumption rates and that his claimed consumption rate at the trial was significantly higher,[163] but he could not offer any explanation for the discrepancies in his evidence.

92 In this regard, Teo submits that the court should prefer his evidence at the trial instead of what he had said in Teo's First Long Statement because if he consumed one to two 7.5g packets of diamorphine per day (as he testified at the trial), he would require around 21 packets every two weeks to sustain his rate of consumption (and not merely ten packets as recorded in Teo's First Long Statement).[164] Counsel for Teo submitted in oral closing that it is uncontroversial that Teo was addicted to diamorphine, and that the consumption rate recorded in Teo's First Long Statement was insufficient to sustain Teo's addiction.[165] This argument is devoid of merit.

93 In the first place, Teo has not provided any other evidence, let alone established on a balance of probabilities, that he consumed more than 10g of

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162 NE, 26 October 2022, page 15 lines 5–20.

163 NE, 28 November 2022, page 47 lines 13–21.

164 2ACS at para 33.

165 NE, 30 March 2023, page 43 lines 17 to 28.

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diamorphine per day (as he stated at the trial) or that he consumed 12g to 14g of diamorphine per day (as he contended in written closing submissions). It would be circular for him to rely on his own unsubstantiated testimony to disprove what he said in Teo's First Long Statement.

94 Furthermore, in a report prepared by Dr Yeo dated 26 February 2020, what was recorded from Teo essentially echoes what Teo mentioned in Teo's First Long Statement:[166]

> [Teo] reported that he could repackage a large bag of heroin into 60 smaller packets of heroin using small plastic bags purchased from shops. He also reported using an electronic weighing scale to ensure each small packet was about 7.5g in weight consistently. He reported that by using a small proportion of the heroin and selling the remainder to fellow addicts, he could earn about $10,000 to $15,000 a month since being released on bail. …

This suggests that Teo's contradiction at the trial of what he had said in Teo's First Long Statement concerning his rate of consumption was simply an afterthought.

95 In any event, the CMC Report reflected that from 16 to 18 January 2020, Teo did not complain of any drug withdrawal symptoms apart from his pupils being "possibly larger than normal for room light" on the first day of his drug withdrawal assessment.[167] Teo was also assessed as being negative for opioid drug withdrawal and the conclusion reached in the CMC Report was that Teo's rate of consumption of opioid was likely to be low.[168] All of this

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166 AB at page 133 (para 12).

167 AB at pages 126 and 127.

168 AB at page 127.

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undermines Teo's claim at the trial that he consumed over 10g of diamorphine per day.

96 I find that Teo's inflation of his claimed rate of consumption at the trial was an attempt to make good his claim that the Relevant Drugs were solely for his own consumption. That inflated consumption rate is unsupported by any other evidence and implausible.

Teo's financial means and contrary admissions

97 The evidence assessed as a whole also suggests that Teo lacked the financial means to purchase the entirety of the Relevant Drugs for his own consumption.

98 Teo testified that he purchased one bundle of diamorphine every month for S$2,800.[169] Coupled with his monthly rental expenditure of S$1,000,[170] Teo would require at least S$3,800 per month to sustain his claimed consumption rate on top of other living expenses. Teo testified that he was engaged in illegal gambling activities as a "supervisor" to finance his diamorphine consumption. Teo claimed that the amount he derived from this activity was not fixed but he earned at least S$3,000 and as much as S$10,000 per month.[171] It bears noting that this aspect of Teo's evidence was raised for the first time at the trial.

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169 NE, 28 November 2022, page 22, lines 6–17.

170 NE, 29 November 2022, page 7 line 29 to page 9 line 5.

171 NE, 28 November 2022, page 56 line 8 to page 57 line 25; NE, 29 November 2022, page 58 lines 17–24.

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99 Even if it were accepted that Teo earned S$3,000 per month from these alleged gambling activities, that would not be sufficient to cover his purported monthly expenditure of at least S$3,800. Teo has also not provided any evidence to substantiate his assertion that he earned as much as S$10,000 per month from his illegal gambling activities. Although Teo did mention in Teo's First Long Statement that he had been involved in gambling activities after shutting down his gambling den in 1985,[172] he did not mention anything about being engaged in illegal gambling activities at the time of his arrest.

100 I find that Teo has not shown how he could afford his claimed rate of drug consumption in addition to his living expenses, other than through the sale of drugs. In fact, in Teo's First Long Statement, Teo had explained that he paid the rental for his accommodation "using the proceeds from selling drug", and had described in some detail how he makes these sales and how much profit he earns.[173] He even described in his second long statement recorded on 20 January 2020 how certain small packets found at his accommodation had been repacked from a previous delivery of "Bai Fen", with each packet containing about 7.5g and being for sale at S$100 each.[174] Although Teo subsequently testified that he did not use the proceeds from selling drugs to pay for his rental, he could not explain why he had said so in Teo's First Long Statement other than to say that the CNB officer recording the statement may have misunderstood him and that he did not know that he could make amendments to the statement.[175]

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172 AB at page 271 (para 2).

173 AB at pages 270 (para 1) and 272 (para 6).

174 AB at page 278 (para 28).

175 NE, 29 November 2022, page 8 line 11 to page 9 line 3.

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101 That Teo lacked the financial means to retain the Relevant Drugs solely for his own consumption is reinforced by his multiple admissions that he needed money to support himself and his family, which he intended to obtain by selling the Relevant Drugs. In his cautioned statement recorded on 15 January 2020, Teo stated:

> … I am involved in drug trafficking this time for the same reason as last time. My wife is sick and was operated on for 5 times within 3 years. The medical fee is high and my son is unable to help with the situation. That was why I trafficked drug last time. Now it is the same problem again. I tried not to do this but life is really hard and the Chinese New Year is around the corner. I need the money. I have no other way.

102 When questioned why he continued to sell drugs after being released on bail for a separate offence, Teo stated in his third long statement recorded on 20 January 2020: "… I am already 74 years old. I can't work anymore. However, I still need to survive. I have no other way but [to] continue to sell 'Bai fen'."[176] Similarly, during his examination at the IMH, Teo had informed Dr Yeo that he would earn a profit of about S$10,000 to S$15,000 a month by selling heroin. Teo stated that he had spent the money he earned on himself, his son and his granddaughter and thus had little savings. He also admitted that he could not find any job that could sustain him financially and that he had taken a calculated risk to sell illicit drugs.[177]

103 It is clear from the above that Teo did not have the financial means to purchase the Relevant Drugs entirely for his own consumption. It is more likely, as he mentioned in his statements and his interview with Dr Yeo, that he intended to sell the Relevant Drugs to meet his financial needs.

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176 AB at page 284 (para 47).

177 AB at page 132 (para 12).

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104 Teo's intention to sell the Relevant Drugs is in fact evidenced by what he said in his first contemporaneous statement recorded by SSgt Eric on 14 January 2020:[178]

> Q5. How much 'baifen' you supposed to collect?
>
> A5. 02 bundles
>
> …
>
> Q24. Pertaining to A5, what do you intend to do with it?
>
> A24. To pack into smaller packets and sell at SGD80 to SGD90.
>
> Q25. Who do you intend to sell the 'baifen' to?
>
> A25. I wait for people to call me.

105 In this regard, SSgt Eric explained on the stand that "A5" in Question 24 was a reference to what he had asked Teo at Question 5, which was in turn a reference to the Relevant Drugs in the Relevant Bundles Teo collected.[179] Teo's evidence, on the other hand, is that in Answer 24, he was "referring to the time in 2019 [when] he was selling at that price", and not the Relevant Bundles containing the Relevant Drugs.[180] I reject Teo's argument. When Teo's argument was put to SSgt Eric on the stand, SSgt Eric's evidence was that when he posed Question 24 to Teo, he had brought Teo back to Teo's response at Answer 5.[181] There was also no mention in that statement of any incident occurring in 2019, and Teo has not provided any explanation for believing that SSgt Eric was referring to any other bundle of drugs besides the Relevant Bundles containing the Relevant Drugs. It would have been

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178 AB at pages 177–179 (Q5 and A5, Q24 and A24).

179 NE, 18 October 2022, page 35 line 17 to page 36 line 12.

180 NE, 29 November 2022, page 56 lines 28–32; see also NE, 18 October 2022, page 93 lines 1–18.

181 NE, 18 October 2022, page 93 line 1 to page 94 line 10.

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abundantly clear to Teo that SSgt Eric was questioning him about the Relevant Bundles containing the Relevant Drugs, and not about what Teo intended to do in 2019.

106 Teo stresses that despite the CNB seizing Teo's mobile phone, no evidence was produced of Teo's intended customers. Teo argues the reason why he was not questioned on his list of customers by the CNB officers is that such evidence was completely absent.[182] However, the absence of such evidence does not assist Teo in discharging his burden of rebutting the presumption of trafficking. The burden ultimately lies on Teo to prove that he did not intend to sell the Relevant Drugs; the Prosecution's inability to establish to whom the Relevant Drugs were intended to be sold does not absolve Teo of that burden.

The amount of the Relevant Drugs

107 Teo mentioned in Teo's First Long Statement that he would order 450g of heroin from one "Jaka" every two weeks,[183] and confirmed the same in written submissions.[184] As noted above at [84], if Teo were believed that he only intended to order one bundle but two bundles arrived, the period of time over which his consumption would take place would be doubled (*ie*, 28 days).

108 Taking Teo's case at its highest and assuming that he consumed up to 16g of diamorphine a day, it would still take him about 52 days to consume the Relevant Drugs which comprised a total of 837g. I do not accept that Teo

182 2ACS at para 57–59.

183 AB at page 272 (para 6).

184 2ACS at para 45.

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intended to consume in 28 days an amount of diamorphine that, even using a significantly inflated consumption rate of 16g per day, would take him 52 days to consume.

Possession of drug trafficking paraphernalia

109 The possession of paraphernalia normally used in drug trafficking, whose utility is obviously for the preparation of drugs for sale, is relevant as circumstantial evidence of drug trafficking activities by the accused person (*Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 at [36]). Such drug trafficking paraphernalia includes digital weighing scales and empty plastic sachets (*A Steven* at [38]). Also found at Teo's Unit were a digital weighing scale and numerous zip lock packets used for repacking the diamorphine (see [10] above). Teo admitted in his second long statement that all of those items belonged to him and were used by him.[185] The presence of such paraphernalia in Teo's possession further undermines his Consumption Defence.

Conclusion on Teo's Consumption Defence

110 As noted above at [83], having chosen to pursue a defence of total consumption, Teo bears the burden of proving that the *entirety* of the Relevant Drugs was intended for his own consumption. However, Teo has failed to furnish credible or consistent evidence of his claimed consumption rate which is integral to his Consumption Defence. Teo's Consumption Defence is further undermined by: (a) his lack of financial means to support his claimed rate of consumption; (b) his admissions that he intended to sell the Relevant Drugs;

185 AB at page 278 (para 31).

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(c) the amount of the Relevant Drugs in Teo's possession; and (d) his possession of paraphernalia normally used in drug trafficking. I therefore find that Teo has failed to establish his Consumption Defence.

Conclusion

111 For the reasons stated above, I convict Yogesswaran on the charge against him set out at [2] above, and convict Teo on the charge against him set out at [3] above. I will now hear them on sentencing.

Philip Jeyaretnam
Judge of the High Court

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Nandwani Manoj Prakash (Gabriel Law Corporation) and Krishna Ramakrishna Sharma (Fleet Street Law LLC) for the second accused.

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