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

[2023] SGHC 235

Criminal Case No 5 of 2023

Between

Public Prosecutor

And

(1) Tan Yew Kuan
(2) Dineshkumar Sambusivam

JUDGMENT

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

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v
Tan Yew Kuan and another

[2023] SGHC 235

General Division of the High Court — Criminal Case No 5 of 2023
Hoo Sheau Peng J
16–17, 21–23 February, 7–8, 21–24, 27, 29 March, 30 May 2023

25 August 2023 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This is a joint trial involving two accused persons, Mr Tan Yew Kuan ("Mr Tan") and Mr Dineshkumar Sambusivam ("Mr Dineshkumar").

2 The first accused, Mr Tan, faces a charge of having in his possession not less than 37.95g of diamorphine ("the Drugs") for the purpose of trafficking on 25 February 2020. This is an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA").

3 The second accused, Mr Dineshkumar, faces a charge for the trafficking of the Drugs to Mr Tan on 25 February 2020, an offence under s 5(1)(*a*) of the MDA.

The Prosecution's case

4 On 25 February 2020, Mr Tan was arrested shortly after he collected the Drugs from Mr Dineshkumar. As against Mr Tan, the Prosecution's case is that the presumption of possession under s 18(1) of the MDA applies, and Mr Tan was in possession of the *entire* quantity of the Drugs. Further, the presumption of knowledge under s 18(2) of the MDA (*ie*, Mr Tan knew the nature of the drugs) applies. Mr Tan is unable to rebut the presumptions. Further, Mr Tan was in possession of the Drugs for the purpose of trafficking. Notably, in the course of investigations, he admitted in his statements that he intended to deliver the Drugs on the instructions of one "Pal".[1]

5 As regards Mr Dineshkumar, the Prosecution's case is that Mr Dineshkumar had actual possession of the Drugs before he delivered them to Mr Tan. He was arrested shortly after the delivery. Mr Dineshkumar knew the nature of the Drugs (as he, too, is unable to rebut the presumption of knowledge under s 18(2) of the MDA). By delivering them to Mr Tan, Mr Dineshkumar had trafficked the Drugs.[2]

6 I now set out the evidence, which is largely undisputed.

Arrest of the accused persons and seizure of the exhibits

7 On 25 February 2020, between 5.30pm and 7.45pm, a team of Central Narcotics Bureau ("CNB") officers arrived at the vicinity of Block 23 Toa Payoh East ("Block 23") to keep a lookout for Mr Tan.[3]

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1 Prosecution's Closing Submissions ("PCS") at para 13.

2 PCS at para 74.

3 PCS at para 5.

8 At about 10.25pm, Station Inspector Tay Keng Chye ("SI Sunny") saw a Malaysian-registered car bearing the registration number JGE8363 ("the Car") stop along Lorong 7 Toa Payoh ("Lorong 7") near the entrance to the car park of Block 23. The Car was driven by Mr Dineshkumar. Shortly after, SI Sunny saw Mr Tan walking towards the Car and boarding the Car with a black recycle bag ("the Recycle Bag" – later marked as "E1").

9 When Mr Tan was in the Car, Mr Dineshkumar drove along Lorong 7 and Lorong 6 Toa Payoh ("Lorong 6").[4] While Mr Tan was in the Car, a white tied-up plastic bag (marked "E1A") and a black tied-up plastic bag (marked "E1B") were placed into the Recycle Bag.[5]

10 At about 10.27pm, Station Inspector Wong Kah Hung Alwin ("SI Alwin") saw Mr Tan alight from the Car when it stopped at the junction of Lorong 6 and Toa Payoh East. Mr Tan was seen to be carrying the Recycle Bag when he got off from the Car. The Car moved off thereafter.[6]

11 Subsequently, the CNB officers moved in to arrest both Mr Tan and Mr Dineshkumar. At about 10.28pm, Mr Tan was arrested at the sheltered walkway beside Block 23. As for Mr Dineshkumar, at about 10.30pm, he was apprehended after the Car was intercepted along Lorong 6 towards Lorong 2 Toa Payoh.[7]

12 Upon Mr Tan's arrest, the Recycle Bag was seized by SI Alwin. SI Alwin saw that the Recycle Bag contained, among other things, two tied-up

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4 PCS at para 6.

5 PCS at para 7.

6 PCS at para 8.

7 PCS at para 9; AB 117, 163.

plastic bags, E1A and E1B. SI Alwin then placed the Recycle Bag, along with all its contents, into a tamper-proof bag and duly sealed that bag. Afterwards, Mr Tan was escorted back to his residence at Block 23 ("the Unit").[8]

13 In the Unit, and in the presence of Mr Tan, a search was conducted on, among other things, the Recycle Bag. The two plastic bags, E1A and E1B, were taken out of the Recycle Bag and opened. Two black-taped bundles (marked "E1A1" and "E1A2" respectively) were recovered from E1A, while another two black-taped bundles (marked "E1B1" and "E1B2" respectively) were recovered from E1B. I shall refer to these as "the Four Bundles". Out of these, E1A1, E1A2 and E1B1 ("the Three Bundles") contained the Drugs in question, while the remaining bundle, E1B2, contained not less than 163.75g of methamphetamine and some glass utensils.[9]

14 Separately, after Mr Dineshkumar was arrested, he was brought to a multi-storey car park located at Block 171A Lorong 1 Toa Payoh ("the Multi-storey Car Park"). At the Multi-storey Car Park, the Car was searched, and an envelope containing $11,200 of cash ("the Cash") was recovered from the centre compartment of the Car, just behind its handbrake. Mr Dineshkumar had received the Cash from Mr Tan.[10]

Analysis of exhibits by the Health Sciences Authority

15 The Three Bundles containing the Drugs were subsequently sent to the Health Sciences Authority ("HSA") for analysis. HSA's analysis revealed that

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8 PCS at para 10.

9 PCS at para 10.

10 PCS at para 11.

the Drugs contained a total of no less than 37.95g of diamorphine,[11] which form the subject matter of this trial. I set out the results below (which are not disputed):

S/N	Description	Marking	HSA Certificate	Results of analysis
1	One packet containing granular/powdery substance	E1A1A1	Lab No ID-2032-00388-006 (Exh P10)	461.3g of substance found to contain not less than 12.99g of diamorphine
2	One packet containing granular/powdery substance	E1A2A1	Lab No ID-2032-00388-007 (Exh P11)	460.7g of substance found to contain not less than 13.75g of diamorphine
3	One packet containing granular/powdery substance	E1B1A1	Lab No ID-2032-00388-008 (Exh P12)	460.4g of substance found to contain not less than 11.21g of diamorphine

Statements made during investigations

16 As part of its case, the Prosecution tendered a number of statements recorded from both Mr Tan and Mr Dineshkumar in the course of investigations, pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). Neither Mr Tan nor Mr Dineshkumar objected to the admissibility of any of these statements, and they were accordingly admitted into evidence. However, Mr Tan and Mr Dineshkumar contested the accuracy of certain aspects of the statements.

[11] PCS at para 12.

Statements made by Mr Tan

17 Nine statements recorded from Mr Tan were admitted into evidence as follows:

(a) a contemporaneous statement recorded by Inspector Eng Chien Loong Eugene ("Insp Eugene") under s 22 of the CPC on 25 February 2020 at about 10.45pm in the living room of the Unit;[12]

(b) a contemporaneous statement recorded by Insp Eugene under s 22 of the CPC on 25 February 2020 at about 11.08pm in the living room of the Unit;[13]

(c) a contemporaneous statement recorded by Staff Sergeant Goh Jun Xian ("SSgt Eric") under s 22 of the CPC on 26 February 2020 from 12.15am to 1.45am in the living room of the Unit;[14]

(d) the cautioned statement recorded by Assistant Superintendent Fernandez Anthony Leo ("ASP Fernandez") under s 23 of the CPC on 26 February 2020 from 1.58pm to 2.08pm at Police Cantonment Complex ("PCC");[15]

(e) a long statement recorded by ASP Fernandez under s 22 of the CPC on 3 March 2020 from 11.21am to 3.02pm at PCC;[16]

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12 AB 112–113 (Exhibit P35)

13 AB 114 (Exhibit P36).

14 AB 148–153 (Exhibit P38).

15 AB 333–335 (Exhibit P52).

16 AB 336–342 (Exhibit P53).

(f) a long statement recorded by ASP Fernandez under s 22 of the CPC on 3 March 2020 from 6.00pm to 10.46pm at PCC;[17]

(g) a long statement recorded by ASP Fernandez under s 22 of the CPC on 4 March 2020 from 11.30am to 12.05pm at PCC;[18]

(h) a long statement recorded by ASP Fernandez under s 22 of the CPC on 18 August 2020 from 11.05am to 12.15pm at Changi Prison Complex;[19]

(i) a long statement recorded by ASP Fernandez under s 22 of the CPC on 25 August 2020 from 2.10pm to 4.15pm at Changi Prison Complex;[20] and

(j) a long statement recorded by ASP Fernandez under s 22 of the CPC on 24 November 2020 from 10.09am to 10.16am at Changi Prison Complex.[21]

18 Given the importance of the contents of these statements to the case, I shall set out substantial portions of them. In the first contemporaneous statement recorded on 25 February 2020, Mr Tan said that E1A and E1B contained "Heroin *and* Ice" [emphasis added] and that they belonged to one Malaysian man. Mr Tan "was *supposed* to drop [E1A and E1B] off as instructed" [emphasis added] by the Malaysian man.[22] In the third contemporaneous

17 AB 343–373 (Exhibit P54).

18 AB 374–375 (Exhibit P55).

19 AB 376–378 (Exhibit P56).

20 AB 379–393 (Exhibit P57).

21 AB 394 (Exhibit P58).

22 AB 112–113.

statement, Mr Tan identified the Malaysian man as "Sal Poulez". Once again, he stated that the Four Bundles, E1A1, E1A2, E1B1 and E1B2, contained "Heroin *and* Ice, but he do [*sic*] not know which is Heroin, which is Ice" [emphasis added]. The items belonged to Sal Poulez. When asked what he was "*supposed* to do with the Heroin and Ice" [emphasis added], he said he was to wait for Sal Poulez's call with instructions "to drop the Heroin and Ice at specified location". In return for his help, Sal Poulez would "pay [him] SGD$500 for 02 batu heroin, SGD$300 for 01 batu heroin and 125g of Ice for SGD$200".[23] During his ride in the Car, Mr Dineshkumar put E1A and E1B into the Recycle Bag that Mr Tan had brought. Mr Tan also gave Mr Dineshkumar the Cash which he had collected from "previous drops instructed by Sal Poulez". He had been working for Sal Poulez for a couple of weeks. When asked, "[D]o you know how much you supposed to collect today?" Mr Tan answered, "No. I do not know".[24]

19 In the cautioned statement, Mr Tan merely stated, "I did what I did. I am guilty".[25]

20 In the first long statement recorded on 3 March 2020, the following material details are set out:

(a) In the afternoon of 25 February 2020, Mr Tan received a phone call from Pal. Pal told Mr Tan that he had a package to deliver to Mr Tan at night. While on the way home from work, there was another call between them. Pal told him there was a slight delay in the delivery.

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23 AB 149.

24 AB 152 (Q/A 26).

25 AB 335.

According to Mr Tan, Pal did not inform him of the amount of drugs he would be collecting that night. This was the norm. Normally, Mr Tan would collect the drugs, and he would know the amount of drugs he had collected once he reached home. Mr Tan would then confirm with Pal the amount of drugs he had collected was correct. Up to then, there had been no mistakes or discrepancies in the amount of drugs that Mr Tan had collected with the amount he was supposed to collect. For one "batu" of heroin, Mr Tan would receive $300. For 125g of "ice", he would receive $200. To Mr Tan, one "batu" amounts to about 450g of heroin.[26]

(b) After Mr Tan boarded the Car, he placed the Recycle Bag on the floorboard at his feet area at the front passenger side of the Car.[27] While the Car was moving, Mr Tan felt that Mr Dineshkumar was reaching for the Recycle Bag. Mr Tan believed that, at that point, Mr Dineshkumar took the sealed envelope containing the Cash from the Recycle Bag,[28] although he did not physically see Mr Dineshkumar take it.[29] When the Car stopped at the traffic light junction of Lorong 7 and Lorong 6, Mr Tan saw Mr Dineshkumar "bent down and started throwing some things into the [Recycle Bag]".[30]

(c) As per his usual practice, Mr Tan did not check the contents of the Recycle Bag while he was inside the Car or after he had alighted

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26 AB 337–338 at para 5.

27 AB 338 at para 7.

28 AB 339 at para 8.

29 AB 343 at para 17.

30 AB 339 at para 8.

from the Car.[31] After Mr Tan alighted from the Car, he felt that the Recycle Bag was heavy. It was more than double the weight he would normally collect. He would normally collect only "01 pound of 'heroin' and sometimes 01 or 02 packets of 'ice' together." Despite this, Mr Tan did not check the contents of the Recycle Bag as his "only desire was to quickly get home". He did not intend to do any "drop offs" that night.[32]

(d) Immediately after Mr Tan was arrested, the Recycle Bag was opened in his presence. Upon seeing its contents, Mr Tan told the CNB officers that "it was 'heroin' *and* 'ice'" [emphasis added].[33] Mr Tan cursed and said, "[B]astard, why so much". He felt that it was a "dirty deed done to [him] and it was not gentleman of 'Pal'". Mr Tan thought that Pal should at least have given him the option to "choose whether [he] had wanted to do the collection of this amount of drugs".[34] He was then escorted up to the Unit.

(e) At the Unit, Mr Tan's handphone kept ringing, and the CNB officers asked Mr Tan whether he would cooperate with the CNB and answer the phone. Mr Tan agreed. However, as he was feeling very agitated and angry with Pal at that point in time, Mr Tan told the officers that he would "fuck" Pal first before saying what the CNB officers had wanted him to say. However, the officers did not let Mr Tan answer the phone when it rang. When the officers tried calling Pal afterwards, the calls went through, but Pal did not answer.[35]

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31 AB 339–340 at para 9.

32 AB 340 at para 10.

33 AB 340 at para 11.

34 AB 340 at para 11.

35 AB 340 at para 12.

21 In the second long statement, also recorded on 3 March 2020, Mr Tan said the following:

(a) Although the Recycle Bag felt heavier than usual, Mr Tan did not intend to check it in public. He wanted to check it only at home. Even if he had checked the Recycle Bag after leaving the Car, "the contents were already in [his] hands and so [he] cannot drop it or do anything to it".[36]

(b) Mr Tan told the CNB officers that the Recycle Bag contained heroin *and* ice, as he assumed it to be so. Mr Tan held this assumption because he had previously collected drugs from Pal about six to seven times. On those occasions, he would receive "either 'heroin' *and* 'ice' or a mixture of both". Mr Tan knew there must have been ice in the Recycle Bag because Pal told him after lunch on 25 February 2020 that he had packed instruments for Mr Tan to smoke ice together with some ice for that night's collection. He had told Pal that he needed a new "popeye", *ie*, an instrument for consuming "ice", and had asked Pal for a new one. This is how he knew there would be "ice" in the Recycle Bag. Mr Tan had assumed that heroin would also be involved based on his previous experiences.[37]

(c) Normally, Mr Tan would collect only "01 pound of 'heroin' or 125 grams of 'ice', or a mixture of both".[38] From the fourth collection

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36 AB 343 at para 18.

37 AB 343–344 at para 19.

38 AB 344 at para 20.

onwards, there were occasions where he would collect a combination of "01 batu of heroin and 125 grams of 'ice'".[39]

(d) As regards the receipt of extra drugs on the night when he was arrested, Mr Tan said that he would have told Pal off. If Pal had tried to brush Mr Tan off, Mr Tan would have warned Pal not to "put this amount of drugs without letting [him] know next time". However, Mr Tan would "still have continued to drop off the drugs from this collection on 'Pal's' instructions". That said, whether Mr Tan "would continue to do this [was] not confirmed as [he] felt unhappy that 'Pal' had passed [him] drugs more than the usual amount collected without informing [him] beforehand".[40]

(e) Mr Tan clarified the answers in his contemporaneous statement (at [18] above). First, the sums of "SGD$500 for 02 batu heroin, SGD$300 for 01 batu heroin and 125g of Ice for SGD$200" had been agreed between Sal Poulez and Mr Tan since Mr Tan started helping Sal Poulez. Second, Mr Tan had never taken two "batu" of heroin from Sal Poulez. Third, "Pal" refers to "Sal Poulez".[41]

(f) Initially, Mr Tan started collecting and delivering drugs for Pal to feed his own addiction. Subsequently, Mr Tan realised that, by delivering drugs for Pal, he could afford to smoke heroin and "ice" without tapping into his family's expenses. That is why Mr Tan continued to collect and deliver drugs for Pal. Mr Tan said that he never

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39 AB 346 at para 26.

40 AB 344 at para 20.

41 AB 345 at para 24.

repacked Pal's drugs; he had merely removed the black tapes and wrapped the drugs in newspaper before delivering them.[42]

22 In his third long statement recorded on 4 March 2020, Mr Tan confirmed that he had read back the first and second long statements recorded a day earlier and that he did not wish to make any amendments to them.[43] Mr Tan then went on to say that he did not touch the Four Bundles (marked "E1A1", "E1A2", "E1B1" and "E1B2") that were found in the Recycle Bag at all. He had brought the Recycle Bag into the Car, and it was Mr Dineshkumar who placed the Four Bundles into the Recycle Bag.[44]

23 Finally, Mr Tan reiterated the following in the fourth long statement, recorded some months later on 18 August 2020:

(a) The Drugs were placed into the Recycle Bag by Mr Dineshkumar. While doing so, Mr Dineshkumar did not say anything. Moreover, at no point in time did Mr Tan handle the Drugs. The only conversation Mr Tan had with Mr Dineshkumar was when he asked Mr Dineshkumar where Mr Dineshkumar was heading, to which the latter replied that he was going back to the causeway.[45]

(b) Mr Tan also explained that when he said he would "still have continued to drop off the [D]rugs from this collection despite the larger amount on 'Pal's' instructions" (at [21(d)] above), this was hypothetical. Mr Tan thought that since the Drugs were already in his hands, there

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42 AB 347 at para 30.

43 AB 374 at para 48.

44 AB 374 at para 50.

45 AB 376 at para 57.

> was nothing else he could have done with them. However, while it was probable for Mr Tan to have continued to drop the Drugs off for Pal, Mr Tan was not certain if he would have continued to help Pal as he was really upset at Pal at that point in time for giving him more drugs than what he would typically receive without informing him beforehand.[46]

Statements made by Mr Dineshkumar

24 Eight statements recorded from Mr Dineshkumar were admitted into evidence. These were:

(a) a contemporaneous statement recorded by Sergeant Mohammad Nasrulhaq bin Mohd Zainuddin ("Sgt Nasrulhaq") under s 22 of the CPC from 11.36pm on 25 February 2020 to 1.04am on 26 February 2020 at the Multi-storey Car Park;[47]

(b) a contemporaneous statement recorded by Sgt Nasrulhaq under s 22 of the CPC on 26 February 2020 from 1.05am to 1.08am at the Multi-storey Car Park;[48]

(c) a cautioned statement recorded by Station Inspector Lee Swee Leng ("SI Lee") under s 23 of the CPC on 26 February 2020 from 2.00pm to 2.10pm at PCC;[49]

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46 AB 377 at para 58.

47 AB 189–193 (Exhibit P41); Translated version at AB 251–253 (Exhibit P47).

48 AB 194 (Exhibit P42); Translated version at AB 251–253 (Exhibit P47).

49 AB 268–270 (Exhibit P49).

(d) a long statement recorded by SI Lee under s 22 of the CPC on 3 March 2020 from 9.24am to 12.16pm at Central Police Division;[50]

(e) a long statement recorded by SI Lee under s 22 of the CPC on 3 March 2020 from 2.24pm to 6.25pm at Central Police Division;[51]

(f) a long statement recorded by ASP Fernandez under s 22 of the CPC on 4 March 2020 from 7.10pm to 10.00pm at PCC;[52]

(g) a long statement recorded by ASP Fernandez under s 22 of the CPC on 18 August 2020 from 2.10pm to 4.21pm at Changi Prison Complex;[53] and

(h) a long statement recorded by ASP Fernandez under s 22 of the CPC on 23 October 2020 from 2.48pm to 4.10pm at Changi Prison Complex.[54]

25 While Sgt Nasrulhaq recorded the contemporaneous statements in the Malay language by conversing with Mr Dineshkumar in Malay, SI Lee and ASP Fernandez recorded the other statements in the English language. To do so, they were assisted by a Tamil interpreter, Mdm Vijaya Thavamary Abraham ("Mdm Vijaya"). Mdm Vijaya interpreted what the recording officers said in English to Mr Dineshkumar in Tamil and then interpreted what Mr Dineshkumar said in Tamil to the recording officers in English.

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50 AB 271–275 (Exhibit P50).

51 AB 276–301 (Exhibit P51).

52 AB 395–399 (Exhibit P59).

53 AB 400–411 (Exhibit P60).

54 AB 412–414 (Exhibit P61).

26 Before I set out the contents of these statements, I should state that it is in his third long statement recorded by ASP Fernandez on 4 March 2020 that Mr Dineshkumar admitted that he was delivering drugs at the material time (and that he knew that the Four Bundles contained drugs). He did so as he hoped to receive a lighter sentence for telling the truth.[55] Prior to that, essentially, Mr Dineshkumar denied any involvement with the Drugs.

27 With that in mind, I go to the first contemporaneous statement. In it, Mr Dineshkumar said that Mr Tan had passed the envelope containing the Cash to him. His friend, one "Kelvin", had told him to collect the money from Mr Tan and bring it back to Kelvin in Malaysia. After entering the Car, Mr Tan told him to drive. After that, Mr Tan took out the envelope containing the Cash and handed it to Mr Dineshkumar. Mr Dineshkumar denied giving anything to Mr Tan; nor had Kelvin paid him to take money from Mr Tan.[56] Mr Dineshkumar's account in the cautioned statement dated 26 February 2020 is similar to the account set out above.

28 The first long statement made by Mr Dineshkumar on 3 March 2020 contains, *inter alia*, the following:

> (a) On the evening of 25 February 2020, Mr Dineshkumar received a phone call from Kelvin, who asked Mr Dineshkumar to go to Singapore to collect some money for him. Although Kelvin was his friend, Mr Dineshkumar did not know Kelvin's real name. He was an Indian who was about 25 years old. Mr Dineshkumar got to know Kelvin

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55 AB 399 at paras 67–68.

56 AB 251–252.

from a mutual friend. By 25 February 2020, Mr Dineshkumar had known Kelvin for about three months.[57]

(b) When Kelvin asked Mr Dineshkumar to help him collect money in Singapore, Kelvin told Mr Dineshkumar that his passport was about to expire. However, Kelvin did not tell Mr Dineshkumar how much money he was supposed to collect or what the money was meant for. Mr Dineshkumar thought that the money would amount to S$1,000 to S$2,000. Mr Dineshkumar agreed to help Kelvin collect the money because he wanted to return a favour to Kelvin, as the latter had been sending Mr Dineshkumar to various locations for job interviews.[58]

(c) After Mr Dineshkumar agreed to assist Kelvin, Kelvin arrived at Mr Dineshkumar's residence with his car (*ie*, the Car), and left immediately.[59] Thereafter, Mr Dineshkumar left his residence for Singapore at around 6.05pm. Upon his arrival at the Tuas Checkpoint, Mr Dineshkumar was stopped by immigration officers as they wanted to inspect the Car. The inspection took about an hour. According to Mr Dineshkumar, the entire car was checked, "starting from the bonnet to the boot". Nothing was recovered by the immigration officers from the Car.[60]

(d) Kelvin provided Mr Dineshkumar with three locations consecutively. When Mr Dineshkumar checked with Kelvin, Kelvin told him to proceed to the last location to collect the money. At that location,

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57 AB 271–272 at paras 6–7.

58 AB 272–273 at para 11.

59 AB 273 at paras 12 and 14.

60 AB 273 at paras 14–15.

Mr Tan boarded the Car and asked Mr Dineshkumar to "drive one round". While Mr Dineshkumar was driving, he saw Mr Tan taking the white envelope out of the Recycle Bag and placing it beside the handbrake. Thereafter, Mr Tan alighted at a traffic junction where the Car had stopped. Mr Dineshkumar further added that: (i) he did not pass anything to Mr Tan; (ii) Mr Dineshkumar only received the white envelope from Mr Tan and did not open it; and (iii) Mr Tan did not take anything from the Car.[61]

(e) This was the second occasion that he helped Kelvin to collect monies in Singapore. The first was just a day before, on 24 February 2020.[62]

29 Mr Dineshkumar gave the second long statement about two hours after his first long statement was recorded. Similar to the contents of earlier statements, the gist of this statement is as follows:

(a) On the two occasions (*ie*, on 24 February 2020 and 25 February 2020) that Kelvin handed the Car over to Mr Dineshkumar, Mr Dineshkumar did not check the Car. At all material times, no one else apart from Mr Dineshkumar had access to the Car.[63]

(b) On 25 February 2020, when Mr Dineshkumar put the envelope containing the Cash into the armrest compartment of the Car, he felt that it was heavier than the envelope that he had handled the day before.[64]

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61 AB 274 at paras 16–20.

62 AB 274–275 at paras 22–25; and AB 277 at para 35.

63 AB 276 at para 27.

64 AB 278 at para 46.

(c) When shown a photograph depicting the Recycle Bag and the plastic bags E1A and E1B, Mr Dineshkumar identified the Recycle Bag as the one carried by Mr Tan. However, Mr Dineshkumar had never seen nor touched E1A and E1B prior and did not know who they belonged to.[65] Mr Dineshkumar also disavowed any knowledge of, or connection with, E1A1, E1A2, E1B1 and E1B2.[66]

30 In the third long statement recorded from Mr Dineshkumar on 4 March 2020, he admitted for the first time to delivering drugs for Kelvin and stated the following:

(a) When Mr Dineshkumar first entered Singapore to deliver drugs for Kelvin on 24 February 2020, Kelvin had not told him the type or amount of drugs involved. Neither had Mr Dineshkumar asked Kelvin about these because Mr Dineshkumar knew he had to do the job for money, as he had just lost his job at Permal Logistic and was about RM20,000 in debt.[67]

(b) On 24 February 2020, when Mr Dineshkumar took over the Car from Kelvin, he did not know where the drugs were located in the Car. It was only after Mr Dineshkumar entered Singapore that he called Kelvin and was told by the latter that the drugs were kept in the Car's boot. The 24 February 2020 delivery involved one bundle of drugs. Once Mr Dineshkumar reached the location provided by Kelvin and stopped his car, an Indian man boarded the Car. The Indian man passed Mr Dineshkumar S$2000 in cash (which Mr Dineshkumar did not

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65 AB 281 and 293 (Photograph 15).

66 AB 281 and 294–296 (Photographs 16, 17, 19 and 20).

67 AB 395 at para 57.

expect to collect), and Mr Dineshkumar handed him the bundle of drugs. Upon Mr Dineshkumar's return to Malaysia, Kelvin paid him RM5,000 for the delivery.[68]

(c) The next day, on 25 February 2020, Kelvin called Mr Dineshkumar in the evening to inform him of another delivery task. Mr Dineshkumar took over the Car without inspecting it. Mr Dineshkumar did not bother to check the car boot as he felt that it was a good place to hide drugs. If Kelvin had really hidden the drugs again in the car boot, Mr Dineshkumar was confident that he could "clear [the] checkpoint without the drugs being detected".[69]

(d) After clearing the checkpoint, Mr Dineshkumar proceeded to "Jurong Hospital". While waiting there, Kelvin sent him the address of a location to go to (subsequently established and undisputed at trial to be at Jalan Besar). Mr Dineshkumar realised it would take 30 minutes to get there. Having been subjected to heavy checks at the Tuas checkpoint, he was scared. Reluctant to proceed, he expressed his concerns to Kelvin. Then, Kelvin sent another address which was a location about 15 minutes away (later established and undisputed at trial to be at Fishery Port Road). However, when Mr Dineshkumar reached the location, Kelvin told him that the recipient had already left. As such, Kelvin sent him the address of another location which was about 20 minutes away (established and undisputed at trial to be at Lorong 7 near the entrance to the car park of Block 23). Before leaving Fishery Port Road, Mr Dineshkumar located a black plastic bag containing one

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68 AB 395–396 at paras 58–59.

69 AB 396 at para 60.

bundle of drugs wrapped in black tape in the Car's boot. He also found three more bundles of drugs hidden in the boot.[70]

(e) Mr Dineshkumar decided to place all the drugs on the right rear passenger seat. From within the Car, he then took one of the three bundles and put it inside the black plastic bag (that was already containing a bundle of drugs). Mr Dineshkumar then put the remaining two bundles into a white-coloured plastic bag which was in the Car. Accordingly, the black and white plastic bags each contained two bundles of drugs. Mr Dineshkumar then placed both plastic bags under the driver's seat.[71]

(f) After proceeding to the last location (*ie*, Lorong 7), Mr Dineshkumar waited by the side of the road and called Kelvin to inform him that he had arrived. Kelvin informed Mr Dineshkumar to pass the drugs to the recipient and to collect money from him as well. Then, Mr Tan boarded the Car. While Mr Dineshkumar was driving the Car, Mr Dineshkumar "used one hand to take the black and white plastic bag under [his] seat, each containing 02 bundles wrapped in black tape and passed it to [Mr Tan]". Mr Dineshkumar "passed him one plastic bag after the other". Mr Tan "took the black and white plastic bag each containing 02 bundles wrapped in black tape and put them inside his black bag …". Mr Tan then alighted from the Car at a traffic junction with his black bag.[72]

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70 AB 397 at para 61.

71 AB 397–398 at para 62.

72 AB 398 at para 63.

(g) Mr Dineshkumar did not touch the Recycle Bag but had touched the two plastic bags, E1A and E1B, as these were "where the 04 bundles … were kept in".[73] Mr Dineshkumar identified E1A1, E1A2, E1B1 and E1B2 as the Four Bundles of drugs which he had passed to Mr Tan on 25 February 2020. Mr Dineshkumar knew that the bundles were drugs as "Kelvin had told [him] that the bundles contained drugs".[74]

(h) Mr Dineshkumar said that he did not tell the truth in his earlier statements as he was afraid of the fact that he was facing a death sentence. Mr Dineshkumar hoped that by being honest, he would receive a lighter sentence. Mr Dineshkumar wished to cooperate with the CNB but did not have any other information to give.[75]

31 Finally, the fourth and fifth long statements recorded on 18 August 2020 and 23 October 2020, respectively, provide, *inter alia*, the following:

(a) Kelvin told Mr Dineshkumar that the Four Bundles of drugs (*ie*, E1A1, E1A2, E1B1 and E1B2) contained "ice". Mr Dineshkumar initially told CNB that he did not know what drugs were in the bundles because he had just been arrested and could not think properly. Mr Dineshkumar did not know the quantity of "ice" in the bundles.[76]

(b) Mr Dineshkumar's prior delivery on 24 February 2020 involved just one bundle of drugs wrapped in white tape. As the Four Bundles of drugs on 25 February 2020 were instead wrapped in black tape,

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73 AB 398 at para 66.

74 AB 399 at para 67.

75 AB 399 at para 68.

76 AB 402 at para 76.

Mr Dineshkumar asked Kelvin what the bundles contained, and Kelvin told him they contained "ice".[77]

Close of the Prosecution's case

32 At the close of the Prosecution's case, I found that there was sufficient evidence against each of the accused persons to call for their defence. Mr Tan and Mr Dineshkumar each gave evidence. They did not call any witnesses.

Mr Tan's defence

33 Mr Tan, a 65-year-old Singaporean, has a Bachelor of Arts degree from an Australian university. At the material time, he was working as a technical support officer, earning $1,600 per month. He lived with his wife in the Unit. Mr Tan began abusing drugs in his teens. Since then, he has not been able to overcome his drug addiction.[78] Apart from drug addiction, he had also been previously diagnosed with depression and anxiety.[79]

34 Given the rather nuanced defence Mr Tan raises, I shall now set out his evidence concerning drug deliveries in some detail. According to Mr Tan, a Malaysian called "Boy Tanjong" used to supply him with drugs for his consumption. Then, Boy Tanjong gave Mr Tan's contact to another Malaysian, one "Segar".[80] Around end-December 2019, he began delivering drugs for Segar to support his drug consumption.[81] Segar told Mr Tan that at times, he would want Mr Tan to collect heroin, and at other times, he would want Mr Tan to

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77 AB 412 at paras 81–82.

78 Closing Submissions of Mr Tan Yew Kuan ("Tan CS") at paras 4–5.

79 NE, 22 March 2023, p 41 ln 16 to ln 19.

80 NE, 22 March 2023, p 45 ln 5 to ln 7; ln 19 to ln 23, p 46 ln 20 to ln 21.

81 NE, 22 March 2023, p 46 ln 17 to ln 18, p 47 ln 21 to 23, p 51 ln 24 to ln 25.

collect "ice". He told Mr Tan that he would "give [Mr Tan] $300 for each pound of heroin [he] collected. And then [$]200 for each 125 gram of Ice that [he] collected." Mr Tan said, "Okay, … but [he] wouldn't want to be taking anything more than that."[82] This was because as a drug addict, he knew the "threshold for … capital offence".[83]

35 The arrangement was that Segar would call him the night before to inform him of an intended delivery of drugs which would be left at one of two agreed drop-off points – either at the recycling bin or the ATM machine near Block 23. Mr Tan would collect the drugs, bring them home, clean the packaging, take off the black duct tape, and re-wrap them in some newspaper. Then, he would wait for Segar's call again, which he would usually receive on the same day. Thereafter, Mr Tan would be instructed to drop the drugs off at one of two specified locations – again either at the recycling bin or the ATM machine near Block 23.[84] Later, Mr Tan started collecting cash left by those who picked up the drugs, with the cash to be passed to Segar thereafter.[85]

36 However, on one occasion around 9 January 2020, Mr Tan discovered that Segar delivered more than one pound of heroin to him.[86] Unlike the previous occasions where he would pick up and drop off without meeting anyone directly, he met an Indian couple for this pick up.[87] When Mr Tan called Segar to confront the latter about the large amount of drugs, saying that "[they] never

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82 NE, 22 March 2023, p 47 ln 27 to ln 32.

83 NE, 22 March 2023, p 48 ln 3 to ln 5.

84 NE, 22 March 2023, p 48 ln 7 to p 49 ln 31.

85 NE, 22 March 2023, p 51 ln 31 to ln 32.

86 NE, 22 March 2023, p 53 ln 5 to ln 15.

87 NE, 22 March 2023, p 52 ln 7 to ln 8.

agreed that [he] would … take more than one---one pound. This was [their] prior agreement", Segar repeatedly dismissed Mr Tan's concerns and told Mr Tan that he would be remunerated accordingly. As such, Mr Tan was "quite fed up" with Segar and said that "the Ice and heroin and all, [he would] reject it." He also said that he did not "want to have anything to do with this one and they should come pick it up".[88]

37 During a subsequent call, when Mr Tan argued with Segar regarding the amount of heroin to be delivered, Segar told Mr Tan that he would call Mr Tan back. It was Pal, another Malaysian, who returned the call and told Mr Tan that Mr Tan would deal with Pal from then on and "won't be dealing with Segar anymore".[89] Pal made contact with Mr Tan through the same Malaysian number used by Segar, which Mr Tan saved on his handphone under the contact "Sal Poulez".[90] Pal arranged to "take it back", and assured him that he would personally deal with Mr Tan, and that "he will make sure that [Mr Tan] don't get anything more than one and one".[91] After Pal arranged to "take the thing back", Mr Tan dealt with him for five to seven times before his arrest.[92] The same arrangement reached with Segar carried on in relation to the pick-up and drop-off of the drugs, as well as the collection and delivery of cash.[93] These collections and deliveries usually took place in the morning.[94]

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88 NE, 22 March 2023, p 54 ln 12 to ln 30.

89 NE, 22 March 2023, p 54 ln 6 to p 55 ln 10.

90 NE, 22 March 2023, p 55 ln 29 to p 56 ln 2.

91 NE, 22 March 2023, p 55 ln 7 to ln 17.

92 NE, 22 March 2023, p 56 ln 4 to ln 6.

93 NE, 22 March 2023, p 56 ln 21 to ln 22.

94 NE, 22 March 2023, p 48 ln 32 to p 49 ln 1.

38 On 23 February 2020, Pal said that he wanted cash that Mr Tan had collected previously. Mr Tan told him that he needed some "ice" for consumption, as well as three "popeyes" for consuming "ice". Pal was meant to arrange for a drop-off and pick-up on 24 February 2020.[95] Mr Tan testified that he did not need to pay for the small sachet of "ice" (about three to five grams) for his consumption.[96] After Pal failed to make the arrangements for 24 February 2020, there was a series of calls between them on 25 February 2020, beginning from 11.38am, to arrange for a drop-off and pick-up on the night of 25 February 2020.[97] In particular, between 7.19pm and 10.17pm, there were nine calls of varying durations between the parties.[98] Mr Tan explained that he had to work late that night, and kept Pal updated as to what time he could be expected to be back home, and when he would be available for the transaction. In the meantime, Pal told him that the "conveyor" had also been delayed.[99]

39 When Mr Tan entered the Car, Mr Dineshkumar was talking on his handphone and rummaging under his seat. Mr Tan put the Recycle Bag on the floorboard of the front passenger seat.[100] Mr Tan does not remember if he told Mr Dineshkumar the Cash was in the Recycle Bag and Mr Dineshkumar took it out or if he handed the Cash to Mr Dineshkumar.[101] The car ride from Lorong 7 back to Lorong 6 lasted about one minute. When Mr Tan carried the Recycle

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95 NE, 22 March 2023, p 58 ln 25 to p 59 ln 2; p 61 ln 4 to ln 10.

96 NE, 22 March 2023, p 61 ln 15 to ln 18.

97 NE, 22 March 2023, p 59 ln 17 to ln 21.

98 Exhibit P44A, Annex G, Sal Poulez Call Logs, Items 9 to 17.

99 NE, 22 March 2023, p 61 ln 19 to p 62 ln 18.

100 NE, 22 March 2023, p 65 ln 23 to ln 25.

101 NE, 22 March 2023, p 66 ln 3 to ln 5.

Bag to get out of the Car, he felt that it was quite heavy.[102] Mr Tan was vaguely aware of hearing a "thudding sound" on the floorboard while he was in the Car although he did not exactly see Mr Dineshkumar putting anything into the Recycle Bag.[103]

40 After Mr Tan's arrest, he was brought back to the Unit. When Mr Tan saw that there were four black bundles in the Recycle Bag, he knew he had been played out by Pal.[104] When Insp Eugene was recording his first contemporaneous statement, there was a call from Pal. Insp Eugene asked if Mr Tan wanted to answer the call, and Mr Tan said he wanted to and that he was going to "fuck him … [he] was going to scold [Pal] actually." He said, "[B]astard, you know, why so much drugs, you know, why all the drugs." Mr Tan said this was because he "never agreed to take more than one pound of heroin at the time or 125 gram of Ice or a combination of both [he] agreed to that." He did not want to "take more than a pound of heroin and more than that amount of Ice because [he] thought that would be the gallows for [him]".[105]

41 To sum up, in relation to the night of 25 February 2020, Mr Tan's defence is that he did not know about the Drugs, much less their nature, until after he was arrested by the CNB.[106] Mr Tan was expecting to deliver money to Pal's "conveyor" (who turned out to be Mr Dineshkumar). He was not expecting to collect the Drugs at all. Instead, as arranged with Pal, he was to collect some

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102 NE, 22 March 2023, p 66 ln 26 to ln 29.

103 NE, 22 March 2023, p 78 ln 18 to ln 24.

104 NE, 22 March 2023, p 68 ln 20 to ln 22.

105 NE, 22 March 2023, p 69 ln 7 to ln 29.

106 Tan CS at para 17.

"ice" and three "popeyes" for himself.[107] I shall refer to this as "the Nature of Transaction Defence". Connected to the above, since Mr Tan did not know that he was to receive the Drugs that night, he could not have formed an intention as to what he would do with the Drugs. For this reason, Mr Tan was not in possession of the Drugs for the purposes of trafficking.[108]

42 Further, as argued by his counsel, Mr Andre Jumabhoy ("Mr Jumabhoy"), Mr Tan is "well-versed in the drug laws to know that a certain amount would carry a death sentence and therefore agreed with the supplier that he would only collect one pound of heroin (around 450g) and/or 125g of ice". There was never any agreement for him to traffic more than one pound of heroin ("the Alleged Agreement").[109] Intertwined with all the above is the contention that on that night, Mr Tan was not the intended recipient of the Drugs. The Drugs were meant to be delivered to persons other than Mr Tan.[110] Such surrounding circumstances bolster Mr Tan's claim that he had no knowledge of the nature of the Drugs and fortify his denial of an intention to traffic the Drugs.

43 To explain the contents of the statements made during investigations, including certain admissions, Mr Tan claims, *inter alia,* that he was depressed, despondent and suicidal, and his intention was to end it all. There are also other allegations concerning the accuracy of some aspects of the statements (which I shall set out in due course).

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107 Tan CS paras 7 and 17.

108 Tan CS paras 17 and 19.

109 Tan CS at paras 17, 18, 19 and 79.

110 Tan CS paras 21–31.

Mr Dineshkumar's defence

44 Turning to Mr Dineshkumar, he is a 31-year-old Malaysian living in Johor Bahru. At the material time, he was unemployed. Before that, he worked as a lorry driver, transferring goods for his company between Malaysia and Singapore. Mr Dineshkumar was a drug addict, and Kelvin used to sell him "ice" for his consumption. Another drug supplier introduced Kelvin to him. Prior to his arrest, he had known Kelvin for about three months.[111]

45 Mr Dineshkumar's fairly straightforward defence is that he did not have any knowledge that he was delivering diamorphine at the material time. Instead, Mr Dineshkumar was under the impression that he was only delivering "ice". Mr Dineshkumar was made to believe that he would be (and was) carrying only "ice" by the words and assurances of Kelvin,[112] who directed Mr Dineshkumar to bring drugs into Singapore. Separately, Mr Dineshkumar also agreed to collect cash for Kelvin.

46 Turning to the statements made during investigations, Mr Dineshkumar seeks to undermine the accuracy of those recorded with the assistance of Mdm Vijaya by alleging that Mdm Vijaya fell short in carrying out her role as interpreter.[113]

The law

47 I now turn to the law. The relevant provisions within the MDA read:

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111 NE, 27 March 2023, p 11 ln 1 to p 13 ln 3.

112 Closing Submissions of Mr Dineshkumar Sambusivam ("DK CS") at paras 12–14.

113 DK CS at paras 55–60.

> **Trafficking in controlled drugs**
>
> 5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —
>
> (a) to traffic in a controlled drug;
>
> …
>
> (2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

By s 2 of the MDA, "traffic" is defined to include "give", "transport", "send" and "deliver".

48 In respect of a charge of trafficking under s 5(1) read with s 5(2) of the MDA (as faced by Mr Tan), the elements to be established are: (a) possession of the drugs; (b) knowledge of the nature of the drugs; and (c) proof that possession of the drugs was for the purpose of trafficking which was not authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]). For a charge of trafficking under s 5(1) of the MDA (as faced by Mr Dineshkumar), the elements which need to be established are: (a) the act of trafficking in the controlled drug which was not authorised; and (b) knowledge of the nature of the drugs.

49 In relation to possession and knowledge, s 18 of the MDA contains these rebuttable presumptions:

> **Presumption of possession and knowledge of controlled drugs**
>
> 18.—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (a) anything containing a controlled drug;
>
> …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

50 When dealing with the element of possession, the Prosecution may rely on the presumption in s 18(1) of the MDA or seek to prove that the accused person had actual knowledge that the thing which turns out to be a controlled drug was within his possession, custody or control. If the Prosecution relies on the s 18(1) presumption, the accused person may rebut this presumption by either establishing, on a balance of probabilities, that (i) he was never in possession of or never had custody of or control over the container, keys or document referred to in s 18(1), or (ii) that he was never aware that the thing which was later found to be a drug was in his custody: *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [40].

51 As regards s 18(2) of the MDA, the presumption will be rebutted where an accused person establishes, on a balance of probabilities, that he did not know the nature of the drugs in his possession. This would be the case where the accused person was able to prove that he believed he was carrying something innocuous (even if he is unable to specify exactly what that was) or where the accused person was able to prove that he believed he was carrying some other illegal item or drug other than the specific drug in his possession: *Gobi a/l*

Avedian v Public Prosecutor ("*Gobi*") [2021] 1 SLR 180 at [57] and [59]. That said, an accused person who was merely indifferent to or ignorant of what he was carrying would not be able to rebut the presumption in s 18(2): *Gobi* at [64].

Decision: Mr Tan

52 I turn to consider the case against Mr Tan.

Knowing possession

53 As set out above at [48], the first element to be established is the possession of the Drugs. However, for the purposes of the MDA, possession has been interpreted to mean not just the fact of physical possession or custody but also to incorporate an element of knowledge. As regards the sort of knowledge required, all that is needed is that the accused person must know of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug. To be clear, it is not necessary that the accused person also knows that the thing was, in fact, a prohibited drug, much less its specific nature: *Adili* at [31].

Whether the Prosecution ran a different case at trial

54 Mr Tan does not dispute that he was in physical possession of the Recycle Bag, which contained, *inter alia*, the Drugs when he alighted from the Car. Accordingly, the Prosecution invokes s 18(1)(*a*) of the MDA for the presumption that Mr Tan had the Drugs in his knowing possession. However, in his closing submissions, Mr Jumabhoy argues that a line of questioning taken by the Prosecution in the cross-examination of Mr Tan shows that the Prosecution's case against Mr Tan is one of wilful blindness. Accordingly, it is impermissible for the Prosecution to rely on s 18(1) of the MDA to presume that

Mr Tan was wilfully blind to the presence of the Drugs in his possession. In fact, Mr Jumabhoy proceeded on the basis that the Prosecution was running its case based on wilful blindness and focused on how the Prosecution had failed to establish the elements of wilful blindness.[114]

55 In my view, the questions posed to Mr Tan during cross-examination by the Prosecution must be considered in totality and in their context. This requires an examination of the Prosecution's opening statement, its cross-examination of Mr Tan, and closing submissions. So viewed, it is clear to me that the Prosecution's case against Mr Tan is not one of wilful blindness, despite that particular line of questioning by the Prosecution, as relied on by Mr Jumabhoy.[115] Nowhere in the Prosecution's opening statement and closing submissions did it refer to the doctrine of wilful blindness. In fact, the opening statement clearly states:[116]

> The Prosecution will rely on the presumptions under ss 18(1)(*a*) and (2) of the MDA. The Prosecution will show that Tan is unable to rebut, on a balance of probabilities, the presumptions under s 18(1)(*a*) and (2) of the MDA that he was in possession of the Drugs (at the stated quantity) and that he knew that the Drugs contained diamorphine, in view of, among other things, his admission that he had collected several bundles, including the Three Bundles, from Dineshkumar and that the bundles contained 'heroin' and 'ice'.

56 As such, when Mr Tan gave his evidence-in-chief, he was well aware of the Prosecution's case against him, which relies on the ss 18(1)(*a*) and (2) presumptions of the MDA. On that premise, he provided his defence to address the allegations against him, setting out his account of the facts and

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114 Tan CS at paras 44–49.

115 NE, 24 March 2023, p 36 ln 15 to p 37 ln 17.

116 Prosecution's Opening Statement at para 21(a).

circumstances of the relevant events. Moreover, it is clear that, when read in context, the Prosecution's questions (as shown in the notes of evidence extracted by Mr Jumabhoy)[117] were targeted at showing that Mr Tan was indifferent to the nature of the drugs he was collecting from Pal through Mr Dineshkumar. To elaborate, these questions concerned whether Mr Tan took any steps to open the plastic bags so as to "verify" their contents. In my view, this line of questioning was primarily aimed at demonstrating that Mr Tan is unable to rebut the presumption of knowledge under s 18(2) of the MDA. For the avoidance of doubt, the element of knowledge is distinct from that of knowing possession. This coheres with established law that an accused person who was merely indifferent to or ignorant of what he was carrying would not be able to rebut the presumption in s 18(2): *Gobi* at [64].

57 In any event, the Prosecution is only precluded from invoking the presumption under s 18(1) of the MDA if its case proceeds *solely* on the basis that the accused person had been wilfully blind: *Adili* at [100]. This is certainly not the case here. Insofar as Mr Jumabhoy has chosen to focus on the issue of wilful blindness in the closing submissions, Mr Tan is in no way prejudiced. The closing submissions deal fully with the evidence at the trial and the *substance* of Mr Tan's defence (as outlined above from [33] onwards). Further, Mr Tan filed reply closing submissions and had the opportunity to respond to the Prosecution's closing submissions which clearly also relied on the presumption under s 18(1) of the MDA.

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117 Tan CS at para 43.

Whether Mr Tan has rebutted the presumption

58 Returning to the s 18(1)(*a*) presumption, as mentioned (at [54] above), Mr Tan accepts that, when he alighted from the Car, he was in physical possession of the plastic bags, E1A and E1B, which contained the Drugs.[118] The issue for my determination is whether Mr Tan has successfully rebutted the presumption under s 18(1)(*a*) of the MDA by proving, on a balance of probabilities, that he was never aware that the Drugs were in his custody.

59 In my judgment, Mr Tan has failed to establish that he was not aware that the Drugs were in his custody. During cross-examination, Mr Tan admitted that he knew that certain things were placed in the Recycle Bag by Mr Dineshkumar while Mr Tan was in the Car.[119] When he exited the Car, Mr Tan felt that the bag was heavy.[120] In his contemporaneous statements, Mr Tan said that E1A and E1B contained "heroin *and* 'ice'" [emphasis added] belonging to Sal Poulez (*ie*, Pal) and that Mr Tan was supposed to drop them off at a specified location as instructed by Sal Poulez. I note that Mr Tan alleges that he did not use the conjunctive "and" (but that he used the conjunctive "or"). As explained later at [92]–[96], I reject this allegation.

60 For present purposes, what is important is that Mr Tan does not dispute that he knew he was carrying drugs at the material time. In fact, this was Mr Tan's consistent position during investigations and at trial. By the Nature of Transaction Defence, raised only at trial, Mr Tan claims that he was expecting small quantities of "ice" and three "popeyes" to be delivered to him (albeit for

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118 NE, 23 March 2023, p 88 ln 1 to ln 5.

119 NE, 23 March 2023, p 76 ln 7 to ln 22; p 77 ln 13 to ln 20; and p 79 ln 28 to ln 31.

120 NE, 22 March 2023, p 66 ln 24 to p 67 ln 6; and NE, 24 March 2023, p 38 ln 28 to ln 30 and p 39 ln 13 to ln 16.

his personal use). I shall deal with the Nature of Transaction Defence from [67] below. In any event, by the time Mr Tan exited the Car with the Recycle Bag, however, he knew it was heavy and must have contained things other than some "ice" and three "popeyes". Therefore, I am not satisfied that Mr Tan has established that he was not aware that the Drugs were in his possession so as to rebut the s 18(1)(*a*) presumption.

Whether Mr Tan or Mr Dineshkumar placed the Drugs into the Recycle Bag

61 For completeness, in relation to this issue, I should mention that Mr Tan takes objection to the fact that the contradictory positions taken by Mr Tan and Mr Dineshkumar during investigations as to who placed the Drugs into the Recycle Bag were never clarified by the investigation officers.[121] As such, a factual ambiguity has arisen and, so says Mr Tan, the court must resolve the ambiguity in his favour.

62 In his long statement recorded on 18 August 2020, Mr Tan said that he did not handle the Drugs at all; they were placed into the Recycle Bag by Mr Dineshkumar. In contrast, in Mr Dineshkumar's long statement recorded on 4 March 2020, he stated that he passed the two plastic bags, E1A and E1B, to Mr Tan during the car ride. It was Mr Tan who then placed the plastic bags into the Recycle Bag. Notwithstanding this, during cross-examination, Mr Dineshkumar disavowed his earlier narrative and admitted that Mr Tan had no role in placing E1A and E1B into the Recycle Bag.[122]

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121 Tan CS at para 41.

122 Tan CS at paras 38–39; NE, 27 March 2023, p 61 ln 4 to ln 7; and NE, 27 March 2023, p 60 ln 12 to ln 18.

63 According to Mr Tan, as Mr Dineshkumar would gain nothing by lying about this, he must have been telling the truth while he was on the stand. In any event, if there is any doubt as to who is telling the truth, the benefit must be given to Mr Tan. Moreover, this apparent contradiction in the statements was never clarified by the CNB officers during investigations, despite it being a material aspect in the Prosecution's case (the Prosecution had put to Mr Tan during cross-examination that he was the one who placed E1A and E1B into the Recycle Bag).[123]

64 In finding that Mr Tan has failed to rebut the presumption under s 18(1)(*a*) of the MDA, I have proceeded on the basis that Mr Tan knew that Mr Dineshkumar placed certain things into the Recycle Bag (see [59] above). Effectively, I have resolved any ambiguity or discrepancy in favour of Mr Tan. For clarity, I state that I accept that Mr Dineshkumar placed the plastic bags, E1A and E1B, into the Recycle Bag.

Knowledge

65 With that, I turn to the element of knowledge. As Mr Tan is presumed to have had the Drugs in his possession pursuant to s 18(1)(*a*) of the MDA, the presumption of knowledge (that Mr Tan knew the nature of the Drugs) under s 18(2) of the MDA applies. The main issue I have to consider is whether Mr Tan has successfully rebutted this presumption.

Whether the Prosecution ran a different case at trial

66 Similar to the element of knowing possession above, Mr Tan takes issue with the Prosecution for purportedly running a different case at trial. While the

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123 Tan CS at para 42; see NE, 23 March 2023, p 78 ln 21 to ln 23.

Prosecution suggested in its opening that it was relying on the presumption under section 18(2) of the MDA, the questions put by the Prosecution to Mr Tan during cross-examination suggest that its case is based on actual knowledge or wilful blindness.[124] As such, Mr Jumabhoy urges me to decide Mr Tan's state of mind on the basis of wilful blindness.[125] For the same reasons which I stated (at [55]–[57] above), there is no merit in this argument. Accordingly, I decline to decide Mr Tan's state of mind on the basis of wilful blindness. Instead, I shall direct my mind to the question of whether Mr Tan has successfully rebutted the presumption of knowledge.

The Nature of Transaction Defence

67 As set out at [38] above, Mr Tan's main defence is that he was only expecting to deliver money to Pal's "conveyor" and collect some "ice" and three "popeyes" for himself on the night of 25 February 2020 *ie*, the Nature of Transaction Defence. On the other hand, the Prosecution argues that the Nature of Transaction Defence is a fabricated afterthought that ought to be rejected. In my judgment, Mr Tan's Nature of Transaction Defence should be rejected for the following reasons.

(1) Mr Tan's purported reactions after the arrest

68 In support of the defence, Mr Tan highlights his reactions after the Recycle Bag was opened in his presence in the Unit to reveal the Four Bundles.[126]

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124 Tan CS at para 50.

125 Tan CS at para 55.

126 Tan CS at paras 83–84; and Reply Closing Submissions of Mr Tan Yew Kuan ("Tan RCS") at para 15.

69 As set out above at [20(d)], in his first long statement, Mr Tan said that upon his arrest while on the way home, the Recycle Bag was opened, and he was shown the contents of the Recycle Bag by the CNB officers. He cursed Pal for doing "a dirty deed" to him.[127] Thereafter, he was brought up to the Unit.

70 However, in his evidence at trial, consistent with the evidence of the CNB officers, Mr Tan testified that the Recycle Bag was opened and its contents revealed to him *in the Unit*. Mr Tan said that he felt "played out".[128] However, he did not mention that he cursed aloud (see [40] above). I shall refer to the opening of the Recycle Bag in the Unit as "the first point in time".

71 A little later, as set out in his first long statement (see [20(e)] above), Mr Tan said that when his handphone rang while he was in the Unit, he felt very agitated and told the officers that he wanted to "fuck" Pal for delivering the amount of drugs in question without informing Mr Tan beforehand. He would do so before saying what the CNB had wanted him to say. In his evidence (as set out at [40] above), he said this happened while Insp Eugene was recording his first contemporaneous statement. I shall refer to this as "the second point in time".

72 For context, in the living room of the Unit, SI Alwin handed a tamper-proof bag containing the Recycle Bag to Staff Sergeant Phang Yee Leong James ("SSgt James"). At about 10.41pm, SSgt James cut open the tamper-proof bag and conducted a search of the Recycle Bag. This was when its contents were revealed.[129] Staff Sergeant Low Yi Xun ("SSgt Low") was there to assist. In the

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127 AB 340 at para 11.

128 NE, 22 March 2023, p 68 ln 11 to ln 22.

129 AB 117 at para 11, AB 125 at para 11, AB 131 at para 10.

conditioned statements of SSgt James, SI Alwin and SSgt Low, nothing was mentioned of Mr Tan's reaction. In cross-examining these officers, Mr Tan did not ask about this purported reaction of his. For completeness, I should add that SI Alwin and SSgt Low were the arresting officers. They said that Mr Tan was arrested standing and was not pushed to the ground, contrary to Mr Tan's assertion (that he was tackled onto the ground).[130] According to SI Alwin, it was a normal arrest. Neither was asked about a reaction by Mr Tan to the contents of the Recycle Bag at the point of arrest.

73 Turning to the second point in time, Insp Eugene testified that from 10.45pm onwards, he instructed SSgt James to pause the search of the Recycle Bag, after which Insp Eugene commenced the recording of the contemporaneous statements in the living room.[131] When Mr Tan's handphone rang, and during his discussion with Mr Tan about answering the calls, Mr Tan did not express his frustration regarding Pal's actions, contradicting Mr Tan's evidence.[132] It was put to Insp Eugene that when Mr Tan was asked if he would like to answer a call from Pal's number, Mr Tan said yes, but that "first, [he wants] to fuck him for sending [him] so much drugs". Insp Eugene disagreed.[133] When cross-examined, SSgt James, SI Alwin and SSgt Low were unable to shed light on the conversation between Insp Eugene and Mr Tan. They were not paying attention to the statement recording process as they were occupied with other matters in the Unit.[134]

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130 AB 340 at para 11.

131 AB 109 at para 12; AB 131 at para 11; NE, 7 March 2023, p 30 ln 10 to ln 26.

132 NE, 7 March 2023, p 93 ln 19 to ln 20.

133 NE, 7 March 2023, p 32 ln 15 to ln 19.

134 NE, 7 March 2023, p 76 ln 31 to p 77 ln 2; NE, 21 March 2023, p 17 ln 30 to ln 32; NE, 7 March 2023, p 17 ln 21 to ln 27.

74 To sum up, the three officers, *ie*, SSgt James, SI Alwin James and SSgt Low, were not asked about the purported reaction at the first point in time – when the contents of the Recycle Bag were revealed. They were only asked about what happened at the second point in time. Furthermore, Mr Tan did not mention this aspect in his testimony. Nor did he raise this in his closing submissions. It would seem that Mr Tan no longer relies on this aspect raised in the first long statement. For the avoidance of doubt, I find that there was *no* such reaction upon seeing the contents of the Recycle Bag.

75 SSgt James, SI Alwin James and SSgt Low did not know what was said between Insp Eugene and Mr Tan when Insp Eugene was interviewing Mr Tan. As these officers had other duties at the time, I do not treat their failure to notice any strong reaction by Mr Tan against Mr Tan's defence. To me, this would have been a neutral point. However, Insp Eugene's evidence clearly contradicts that of Mr Tan. I see no reason to doubt Insp Eugene's account. At the material time, Insp Eugene's focus would have been on Mr Tan. It is unlikely that he would have missed the strong reaction (if any). I pause to observe that the sentiment underlying the purported reaction *ie*, that Mr Tan had been deceived, was not reflected in either the first or the second contemporaneous statement. In these statements, Insp Eugene had duly recorded Mr Tan's other responses, which included those that implicated Pal in the transaction. If Mr Tan said to Insp Eugene that he had been deceived by Pal, I do not see any reason for Insp Eugene to deliberately leave out this important detail, contrary to what Mr Tan seems to suggest.[135] This is because even if Pal had deceived Mr Tan concerning the quantity of drugs involved, it does not necessarily mean that Mr Tan would be exculpated. In light of the discussion above, as well as what I

[135] NE, 7 March 2023, p 32 ln 20 to ln 23.

shall discuss below, I do not accept Mr Tan's account of his purported reaction at the second point in time.

76 Presumably, Mr Tan claims to have reacted as such because he was to collect only some "íce" and three "popeyes" that night *ie*, the Nature of Transaction Defence, and that, in any case, the agreement was that he would not take more than one pound of heroin and 125g of "ice", *ie*, the Alleged Agreement. Taking his account of the purported reaction at the second point in time at the highest, they do not go far to support the Nature of Transaction Defence. Essentially, Mr Tan's concern seemed to be that he was deceived into taking delivery of a large quantity of drugs *per se*. His reaction was not in relation to being deceived into taking delivery of *any* drugs at all, other than some "ice" for his own consumption. In fact, Mr Tan's account seriously detracts from the Nature of Transaction Defence. The fact that I disbelieve his account of the purported reaction at the second point in time also undermines, albeit perhaps to a lesser extent, his claim in relation to the Alleged Agreement.

(2) Mr Tan's failure to mention the Nature of Transaction Defence in the investigation statements

77 Next, while the Nature of Transaction Defence forms the core of Mr Tan's defence, it is conspicuously absent in all the investigation statements.

(A) THE CONTEMPORANEOUS STATEMENTS

78 As discussed above, the Nature of Transaction Defence is absent from the first and second contemporaneous statements recorded by Insp Eugene after Mr Tan's arrest. In particular, there is no mention at all about how Mr Tan was deceived by Pal. As discussed above at [75], I accept that Insp Eugene had no reason not to record such an important detail in the contemporaneous

statements, especially the second one, if Mr Tan had told him about his predicament.

79 The third contemporaneous statement was recorded by SSgt Eric from about 12.15am, about two hours after Mr Tan's arrest. When Mr Tan was asked specifically whether he knew how much drugs he was supposed to collect *ie*, Question 26, Mr Tan answered, "No. I do not know".[136] At trial, Mr Tan explained that he did not raise the Nature of Transaction Defence in response to Question 26 because he wanted to implicate himself so that he could receive the death penalty.[137] Mr Tan was feeling despondent at the time and wanted to "get it done with".[138] However, in my view, it is difficult to see how Mr Tan's answer of "No. I do not know" bears out his alleged state of mind when the answer is essentially a denial. If Mr Tan had truly wanted to implicate himself to receive the death penalty, he would have provided an inculpatory answer to Question 26 rather than claiming that he was ignorant of how much drugs he was supposed to collect that night.

80 Further, at trial, Mr Tan also provided inconsistent accounts as to what he told SSgt Eric in response to Question 26. During the cross-examination of SSgt Eric, Mr Tan's case was that the answer was a shortened form of what he was telling SSgt Eric. In fact, Mr Tan had meant to say that he had no expectation of collecting *anything* on that day.[139] However, this account, as put to SSgt Eric, is at odds with Mr Tan's alleged state of mind, *ie*, that he wanted

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136 AB 152 (Q/A 26).

137 NE, 24 March 2023, p 17 ln 18 to ln 21.

138 NE, 24 March 2023, p 15 ln 22 to ln 26.

139 NE, 7 March 2023, p 53 ln 17 to ln 22.

to implicate himself, as well as the Nature of Transaction Defence, *ie*, that he was expecting only some "ice" and "popeyes".

81 Immediately after his answer to Question 26, Mr Tan was asked if he had anything else to tell or if he wanted to help CNB, *ie*, Question 27. Mr Tan answered that he wished to cooperate but did not know who to incriminate. It is incongruous for Mr Tan to offer to cooperate with the CNB if he had wanted to implicate himself and be sentenced to suffer death at that time. Mr Tan also did not provide any satisfactory explanation for the inconsistency of the answer with his alleged state of mind. When asked about the inconsistency, Mr Tan could only say that he did not know why, and his mind was muddled at that point in time.[140]

82 In my view, the absence of the Nature of Transaction Defence in all three contemporaneous statements, and its absence from the third contemporaneous statement, despite Mr Tan expressing a wish to cooperate with the CNB and his preparedness to implicate someone else, suggest that the Nature of Transaction Defence is an afterthought. For completeness, I note that there is medical evidence regarding Mr Tan's state of mind at the relevant time, which I shall deal with from [84] below.

(B) THE CAUTIONED STATEMENT

83 Similarly, Mr Tan also failed to raise the Nature of Transaction Defence in his cautioned statement that was recorded a day following his arrest. The cautioned statement is brief as Mr Tan merely stated, "I did what I did. I am guilty". The key issue for me to decide is what exactly Mr Tan's state of mind was at the material time. In this regard, Mr Jumabhoy argues that there is "a real

[140] NE, 24 March 2023, p 17 ln 25 to ln 28.

risk of taking things too literally"[141] as Mr Tan was "really resigned and despondent" and was trying to kill himself. As such, Mr Tan wanted to implicate himself at that point in time.[142] Unsurprisingly, the Prosecution's position is that Mr Tan did not labour suicidal thoughts at the material time, and his expression of a desire to implicate himself is a mere afterthought.

84 I reject Mr Tan's claim that he was suicidal mainly because it is discredited by the evidence of the psychiatrist from the Institute of Mental Health ("IMH"), Dr Christopher Cheok ("Dr Cheok"). Dr Cheok examined Mr Tan on three occasions on 6, 9 and 11 March 2020 after Mr Tan's arrest on 25 February 2020. In his psychiatric report dated 17 March 2020, Dr Cheok observed that Mr Tan's "mood was euthymic", and there were "no psychotic symptoms and no thought disorder". There were no "feelings of passivity", and "there were no thoughts of suicide or violence".[143] Dr Cheok concluded that Mr Tan suffered from "severe substance use disorder". He also had "a past history of depression (which was in remission)".[144] In his testimony, Dr Cheok was clear that Mr Tan was not suicidal prior to the offence.[145] This opinion was based on Mr Tan's narrative when interviewed by Dr Cheok and Dr Cheok's professional assessment.

85 Mr Tan also says that on 9 March 2020, he had remarked to Dr Cheok that (i) prior to the offence, he made no attempt at suicide but "did think of it" and (ii) Mr Tan knew it would "be the gallows" for him and wanted a "quick

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141 Tan CS at para 78.

142 Tan CS at para 76.

143 Exhibit P33 at para 12.

144 Exhibit P33 at para 15.

145 NE, 22 February 2023, p 20 ln 8 to ln 29; p 21 ln 3 to ln 10; p 34 ln 16 to ln 20 and p 35 ln 13.

way to go". These were recorded in Dr Cheok's medical notes. I agree with the Prosecution that Mr Tan's purported claim on 9 March 2020 that he had suicidal ideations must be viewed with circumspection considering Mr Tan's indication to Dr Cheok just three days before *ie*, 6 March 2020, that he was not suicidal prior to the offence.[146] In any event, Dr Cheok's considered opinion, based on a holistic psychiatric assessment of Mr Tan, is that he was not suicidal prior to the offence. For completeness, as regards Mr Tan's remark that he wanted a "quick way to go", Dr Cheok testified that it did not necessarily point to "a certain darkness in terms of [Mr Tan's] mindset" at the material time because it could simply be a "very logical, straightforward" response.[147]

86 During his examination-in-chief, Mr Tan stated that during Dr Cheok's medical examination, Mr Tan asked Dr Cheok if the latter was familiar with the terms "suicide by cops" or "suicide by police". He told Dr Cheok that he had wanted to commit "suicide by cops",[148] but Dr Cheok failed to record this material fact in his notes and consider it in assessing Mr Tan's state of mind.[149] In my view, apart from Mr Tan's bare assertion, which was categorically denied by Dr Cheok, there is no credible reason why Dr Cheok would deliberately lie and omit this crucial piece of evidence if it existed. Nothing suggests that Dr Cheok is not an independent and objective witness.

87 By the above, I reject Mr Tan's claim regarding his suicidal ideations. For completeness, I note that Mr Tan argues that, in any event, his cautioned statement is no more than an expression of despondency in the situation he had

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146 Exhibit D-1 at p 4; and NE, 22 February 2023, p 34 ln 16 to ln 20 and p 35 ln 13.

147 NE, 22 February 2023, p 21 ln 16 to ln 23.

148 NE, 22 March 2023, p 76 ln 15 to ln 21.

149 NE, 22 February 2023, p 23 ln 23 to ln 24; Tan CS at para 77.

found himself in rather than an admission of guilt. As he was not thinking rationally, no weight should be attached to the cautioned statement.[150] I first observe that Mr Tan has conceded during cross-examination that he had failed to furnish any credible reason for failing to raise his Nature of Transaction Defence in his cautioned statement.[151] Even if I give Mr Tan the benefit of the doubt, by giving no weight to the cautioned statement, the fact remains that Mr Tan's Nature of Transaction Defence is absent in his contemporaneous statements (see [78]–[82] above) and long statements (see below).

(C) THE LONG STATEMENTS

88 Lastly, the Prosecution also contends that Mr Tan's Nature of Transaction Defence does not feature in any of his long statements. In contrast, Mr Tan points to paragraph 19 of his second long statement, as recorded on 3 March 2020 by ASP Fernandez, to argue that he had raised the Nature of Transaction Defence during investigations.[152] The material sentence reads:[153]

> I wish to say that during the time 'Pal' had called me after lunch on 25/02/2020, 'Pal' had told me that he had pack [*sic*] instrument for me to smoke 'ice' together with some 'ice' for the night's collection.

89 In my view, the sentence does not assist Mr Tan very much. All it states is that the collection for the night would *include* some "ice" and an instrument to smoke the "ice". It does not state that the package would *only* contain three "popeyes" and a small amount of "ice" (*ie*, the Nature of Transaction Defence).

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150 Tan CS at para 78.

151 NE, 24 March 2023, p 47 ln 23 to ln 26.

152 NE, 23 March 2023, p 54 ln 10 to ln 21.

153 AB 343 at para 19.

Indeed, the sentence must be read in context. Right before that sentence, Mr Tan said the following in paragraph 19:

> I told the officers that the contents in the black recyclable shopping bag were 'heroin' and 'ice'. I had assumed that it was 'heroin' and 'ice'. I had this assumption because I had done collections for the past 06 to 07 times and it was either 'heroin' and 'ice' or a mixture of both. …

90 Therefore, I fail to see how the sentence in paragraph 19 is supposed to assist Mr Tan because that very paragraph reveals Mr Tan's expectation of what he would be carrying as it says Mr Tan had assumed that there would heroin *and* "ice". At best, Mr Tan could be said to be merely indifferent to the presence of heroin, in addition to "ice". However, an accused person who was merely indifferent to what he was carrying would not be able to rebut the presumption of knowledge in s 18(2): *Gobi* at [64].

91 By the above, I reject Mr Tan's explanations for his failure to state the Nature of Transaction Defence in the investigation statements. This hampers his attempt to rebut the presumption in s 18(2) of the MDA.

(3) The contemporaneous statements contradict the Nature of Transaction Defence

92 Apart from the fact that the Nature of Transaction Defence is absent in the investigation statements, in my view, it is also contradicted by the contents of Mr Tan's contemporaneous statements. The plain words of the first contemporaneous statements are that the Four Bundles *ie*, E1A1, E1A2, E1B1 and E1B2 contained heroin and "ice".

93 At trial, when confronted with the first contemporaneous statement recorded by Insp Eugene, Mr Tan initially accepted that he had probably told

Insp Eugene that E1A and E1B contained heroin and "ice"[154] but later asserted that what he said was "heroin *or* ice" as he had no idea what the contents of the bundles were and was just speculating.[155] According to Mr Tan, he could have overlooked the mistake and just signed.[156] However, this was flatly denied by Insp Eugene who firmly testified that Mr Tan had said that the bundles contained "heroin *and* ice".[157]

94 In my view, Mr Tan's position is unbelievable. In the first place, this claim that he said "heroin *or* ice" was not raised in Mr Tan's examination-in-chief. Mr Tan appended his signature at the bottom of the two pages of the first contemporaneous statement. It is also incredible that Mr Tan would have "overlooked" the mistake on *two* occasions because, in the third contemporaneous statement, recorded by *another* officer, *ie*, SSgt Eric, it was also stated that the four bundles contained "heroin *and* ice" [emphasis added].[158] There is no reason why two different officers would have recorded the same conjunctive "and" if Mr Tan had indeed verbalised the word "or" to them. I shall deal with the allegations against SSgt Eric shortly. More detrimental to Mr Tan's position is the fact that in the third contemporaneous statement, Mr Tan was recorded as saying that he "[did] not know which is Heroin, which is Ice" *immediately* after identifying the Four Bundles as "Heroin *and* Ice".[159] This clearly indicates that Mr Tan knew that he was carrying *both* heroin and "ice".

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154 NE, 24 March 2023, p 4 ln 6 to ln 10.

155 NE, 24 March 2023, p 5 ln 1 to ln 5.

156 NE, 24 March 2023, p 4 ln 20 to ln 24.

157 NE, 7 March 2023, p 33 ln 9 to ln 10.

158 AB 148 (Q/A3).

159 AB 148 (Q/A3).

95 At trial, Mr Tan sought to cast doubt on the veracity of the third contemporaneous statement by claiming that he did not bother to read it and had simply signed where SSgt Eric had told him to sign because he was very resigned and despondent and had wanted to "just get it done with". Mr Tan had an altercation with SSgt Eric and was not "in a very good frame of mind at that time". According to Mr Tan, he had an altercation with SSgt Eric because the latter was insisting that Mr Tan was guilty and hurrying the recording process.[160]

96 I am unable to accept the allegations made by Mr Tan. For a start, I note that SSgt Eric denied that he failed to record what Mr Tan said, *ie*, "heroin *or* ice", but recorded "heroin *and* ice" instead.[161] SSgt Eric also denied that he refused to reflect what Mr Tan was telling him. SSgt Eric explained that the recording process took quite long because he had to clarify Mr Tan's answers.[162] More importantly, as explained above at [94], taken in context, it was clear that Mr Tan meant "heroin *and* ice". As for the allegation of the altercation, pertinently, Mr Tan made no complaints against SSgt Eric despite the improper conduct alleged against SSgt Eric. While Mr Tan allegedly complained about SSgt Eric's unreasonable behaviour to ASP Fernandez,[163] this is contradicted by ASP Fernandez's unchallenged account that Mr Tan did not make any complaints regarding the statement recorded by SSgt Eric.[164]

97 Even if I were to assume in Mr Tan's favour that the first and third contemporaneous statements should read "heroin *or* ice", there is no reason for

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160 NE, 24 March 2023, p 14 ln 30 to p 15 ln 9 and p 15 ln 20 to ln 31.

161 NE, 7 March 2023, p 65 ln 25 to p 66 ln 1.

162 NE, 7 March 2023, p 52 ln 17 to ln 26.

163 NE, 24 March 2023, p 20 ln 25 to ln 28 and p 21 ln 1 to ln 2.

164 NE, 21 March 2023, p 49 ln 29 to ln 31.

Mr Tan to have identified the Four Bundles (which were wrapped in black tape) as "heroin or ice" if he had only been expecting some "ice" and "popeyes" as per the Nature of Transaction Defence. Even taking Mr Tan's case at the highest and proceeding on the basis that he was expecting some "ice" and "popeyes", it is hard to believe that he had no inkling what could be within the Four Bundles. Further, assuming there was the Alleged Agreement between Mr Tan and Pal, it would have been perfectly in accord with the agreement for Mr Tan to handle one pound of heroin *and* 125g of "ice". Thus, by the foregoing, I accept the contents of the first and third contemporaneous statements that Mr Tan said that the Four Bundles contained heroin and "ice", and that this contradicts the Nature of Transaction Defence.

(4) Whether the Nature of Transaction Defence is believable

98 In and of itself, I am of the view that the Nature of Transaction Defence is unbelievable, and I do not accept Mr Tan's belated bare assertions of the same. I explain. Before 25 February 2020, there were prior transactions with Pal which first involved heroin *or* ice, and then heroin *and* ice. This was stated in paragraph 19 of the second long statement (see [89] above). Sometimes, some "ice" for Mr Tan's personal consumption would also be delivered. I accept these aspects concerning the prior transactions as recorded in the long statements, which were not disputed by Mr Tan.

99 Given the history of the dealings, it is conceivable that Pal would have agreed to deliver the items for Mr Tan's use (along with other drugs for trafficking and to collect cash from Mr Tan); this would have followed the pattern of earlier transactions. However, it is unbelievable that Pal would go out of his way to help Mr Tan by making such a special arrangement (by delivering small quantities of "ice" and three "popeyes" for Mr Tan's personal

consumption and use), even if Pal also wanted to collect the money from Mr Tan. I note that on that night alone, the transaction required nine calls between the parties. In the day, there were also calls between them. Furthermore, Pal would be putting his "conveyor" at some risk – purportedly for a small amount of "ice" and three "popeyes".

100 There is, moreover, no reason whatsoever for Mr Tan to believe that Pal would only deliver the items meant for his personal use. According to Mr Tan, Pal was essentially a drug dealer who he had never met in person.[165] Moreover, Pal was associated with Segar, another drug dealer who had previously betrayed Mr Tan by causing Mr Tan to collect a large amount of heroin. There was no special relationship between them for Pal to agree to help Mr Tan, and certainly, there was no basis for Mr Tan to believe the delivery would only be of the items he required. Instead, the contents of paragraph 19 of the second long statement – that Mr Tan was expecting a delivery of drugs, along with items for his own use – rang more of the truth.

101 For all the foregoing reasons, as well as my views on the Alleged Agreement below, I reject the Nature of Transaction Defence.

The Alleged Agreement

102 As part of his defence, Mr Tan also raises the Alleged Agreement. As explained in [42] above, this serves as the backdrop not only in relation to the question of Mr Tan's knowledge of the Drugs but also the issue of whether Mr Tan had the intention to traffic the Drugs. In this regard, as the Prosecution acknowledges, if this agreement exists, one *may argue* that Mr Tan would not

165 AB 349 at para 36.

have known that the Three Bundles all contained heroin since he did not expect to receive more than one pound of heroin.[166]

103 According to the Prosecution, there is no Alleged Agreement. Like the Nature of Transaction Defence, the Alleged Agreement is nowhere to be found in any of Mr Tan's investigation statements. The Prosecution contends that during the cross-examination of ASP Fernandez, Mr Tan failed to put to him that during the recording of the second long statement on 3 March 2020, he told ASP Fernandez about the Alleged Agreement.[167]

104 Mr Tan contends that ASP Fernandez himself admitted that Mr Tan had raised the Alleged Agreement during the statement recording process. ASP Fernandez understood what was to be conveyed in the wording of paragraph 24 of the second long statement, which accorded with what Mr Tan intended to convey.[168] Paragraph 24 reads:

> I am now read back my contemporaneous statement in English language. I am now asked about Question 10, in which I was asked what I get in return to help 'Sal Poulez'. I had answered that 'Sal Poulez' pay me SGD$500 for 02 batu 'heroin', SGD$300 for 01 batu 'heroin' and 125g of 'ice' for SGD$200. However, I wish to say now that the price was what 'Sal Poulez' and I had agreed on since I started helping him. However, I wish to say that *I have never taken 02 batu of 'heroin' from him before.* 'Pal' is also referring to 'Sal Poulez'.
>
> [emphasis added]

105 I set out what was put to ASP Fernandez during cross-examination:[169]

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166 PCS at para 61.

167 PCS at paras 62–63.

168 Tan CS at paras 80–81.

169 NE, 21 March 2023, p 85 ln 27 to ln 28.

> Q: And his position to you is that he never agreed to take two bags of heroin.
>
> A: Yes, Your Honour. But if I may add to the answer?
>
> Q: I'm quite content with that answer, officer.
>
> A: Okay.

In my view, unfortunately, the question to ASP Fernandez was not altogether clear, and Mr Jumabhoy did not allow ASP Fernandez to clarify his answer. For completeness, ASP Fernandez's answer during re-examination is that he "agreed that throughout the statements, Mr Tan had never said that he was to collect two bags of heroin".[170] Specifically, ASP Fernandez was not cross-examined about a prior existing agreement with Pal *not* to take more than a certain quantity of drugs (*ie*, the Alleged Agreement). Instead, the rather *equivocal* question asked was whether Mr Tan said he had "never agreed to take two bags of heroin". This question envisages the scenario where there was *no* prior agreement. Yet, Mr Tan's position at trial is that there was an Alleged Agreement that Mr Tan would not take more than a certain quantity of drugs. Nonetheless, to give Mr Tan the benefit of the doubt, I do not hold this ambiguity in questioning ASP Fernandez against him. To be clear, I do not fault Mr Tan on the basis that he failed to put to ASP Fernandez in cross-examination that during the recording of the second long statement, he had told ASP Fernandez about the Alleged Agreement.

106 That said, I do not agree with Mr Jumabhoy that paragraph 24 of the second long statement (especially the italicised words at [104] above) supports the existence of the Alleged Agreement. All it says is that Mr Tan never took two "batu" (*ie*, pounds)[171] of heroin from Sal Poulez/Pal in any of the prior

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170 NE, 22 March 2023, p 29 ln 1 to ln 6.

171 AB 345 at para 24.

deliveries. As borne out by the context of the statement, this is essentially a narration of Mr Tan's history of drug delivery with Pal. Simply put, Mr Tan indicated that the situation had not arisen before. I agree with Mr Jumbhoy that there is no ambiguity in the meaning of these italicised words. Unfortunately, I am not persuaded by the meaning Mr Jumabhoy puts forth. To find that these italicised words mean that there was a standing agreement with Pal that Mr Tan would only collect one pound of heroin and/or 125g of ice would be to accord to them more than their plain meaning.

107 What is more telling is that in paragraph 20 of the same long statement, Mr Tan said that:[172]

> [Pal] should not have assumed that I would be ok to collect this amount of drugs. If 'Pal' try to brush me off, I would have warned him not to put this amount of drugs without letting me know next time. Normally, I would only collect 01 pound of 'heroin' or 125 grams of 'ice', or a mixture of both, from 'Pal's' conveyors.

This was another one of many opportunities to mention the Alleged Agreement, but Mr Tan did not positively assert it.

108 Further, I note that according to Mr Tan, the terms of the agreement were first reached with Segar and then re-established with Pal (see [37] above). These are key aspects of the defence. However, Mr Tan did not mention Segar and how the botched transaction with Segar on or around 9 January 2020 led to the Alleged Agreement in any of the statements. This was not for want of an opportunity to do so. In Mr Tan's second long statement, he dealt at some length with his dealings with Boy Tanjong before he started dealing with Pal.[173] Then,

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172 AB 344 at para 20.

173 AB 348 at para 33.

contrary to his evidence at trial (that Boy Tanjong introduced Mr Tan to Segar before Pal came into the picture (see [34] above)), in the fifth long statement recorded on 25 August 2020, Mr Tan said that it was Boy Tanjong who introduced him to Pal.[174] There was no mention of Segar, his understanding with Segar and how he came to reach the same agreement with Pal. To my mind, it is inexplicable why Mr Tan did not raise these matters.

109 As I have discussed above, Mr Tan said in his second long statement that he had never taken two "batu" of heroin before *ie,* the situation had not arisen before. Even if true, this does not take Mr Tan's defence very far. The fact that Mr Tan had never taken two "batu" of heroin in his previous collections is insufficient to support the existence of a standing agreement to only collect one pound of heroin and/or 125g of ice (which is at the heart of the Alleged Agreement). The Alleged Agreement was raised belatedly at the trial and not in Mr Tan's investigation statements. Accordingly, I am unable to accept Mr Tan's account that the Alleged Agreement exists. That said, Mr Tan's claim that he did not deal with more than one pound of heroin in previous transactions will be considered again in relation to the question of whether he intended to traffic the Drugs.

Whether Mr Tan was the intended recipient of the Drugs

110 Mr Tan relies on Mr Dineshkumar's evidence to provide the surrounding circumstances of the transaction on 25 February 2020. I set out more of Mr Dineshkumar's account. According to Mr Dineshkumar, at 8.50pm, Kelvin sent him a location at Jalan Besar and asked him to go there.[175] Mr Dineshkumar

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174 AB 380 at para 70.

175 NE, 27 March 2023, p 55 ln 16 to ln 18.

refused to do so, as the journey would take too long. Then, at 9.01pm, he was given a second location at Fishery Port Road by Kelvin. Mr Dineshkumar arrived there at about 9.15pm to 9.20pm.[176]

111 Initially, Kelvin told Mr Dineshkumar that someone would collect all the bundles from him at Fishery Port Road.[177] However, when he arrived and called Kelvin, Kelvin told him that because he was late, the recipient had left.[178] Mr Dineshkumar wanted to leave all the drugs at Fishery Port Road for the person to collect, but Kelvin begged him to go to Lorong 7.[179] Mr Dineshkumar then packed the items, and proceeded to Lorong 7.

112 Based on the above, Mr Tan argues that the Jalan Besar and Fishery Port Road locations were pre-planned locations. Therefore, it is likely that at least two deliveries to two different persons were planned.[180] Further, the way the bundles were hidden in the boot of the Car lend support to this. Mr Dineshkumar's evidence is that originally there was one bundle in the black plastic bag (*ie*, E1B), while the other three bundles were simply in the boot. Mr Dineshkumar placed one more bundle in the black plastic bag and the other two bundles in the white plastic bag.[181] Mr Dineshkumar had to sort out the bundles for ease of delivery. Mr Tan argues that as the Three Bundles, E1A1, E1A2 and E1B1 contained heroin, it must have been E1B2 (which contained "ice") which was separately placed into the black plastic bag for easy

176 NE, 27 March 2023, p 56 ln 20 to p 57 ln 15.

177 NE, 27 March 2023, p 24 ln 17 to ln 19.

178 NE, 27 March 2023, p 24 ln 20 to ln 26.

179 NE, 27 March 2023, p 25 ln 1 to ln 10.

180 Tan CS at para 26; AB 397 at para 61.

181 AB 397 at para 62.

identification. In any case, from the fact that the Three Bundles were left in the car boot and not in a plastic bag, they could have been meant for different deliveries. If Mr Tan only became the recipient of the Drugs because Mr Dineshkumar did not go to the first location at Jalan Besar, and no one turned up at the second location at Fishery Port Road, whether Mr Tan knew about the delivery of the Drugs becomes highly questionable.[182]

113 Having carefully considered Mr Jumabhoy's arguments, I am unable to accept them. While Mr Tan was not the original intended recipient, there was little to suggest that he was not meant to receive all Four Bundles. I agree with the Prosecution that at no time did Mr Dineshkumar say that there were any instructions for him to split up the Four Bundles across several recipients. In fact, at Fishery Port Road, Mr Dineshkumar was specifically informed that the Four Bundles were meant to be collected by one recipient. It was the same for the delivery to the third location *ie*, Lorong 7, where Mr Tan turned up and received the Four Bundles.[183] That said, even if Mr Tan might not have expected to collect so many bundles of drugs, based on my discussion above, it seems clear enough that he was meant to collect heroin and "ice". Therefore, such surrounding context does not, in my view, assist Mr Tan in rebutting the presumption of knowledge of the Drugs.

Whether Mr Tan has successfully rebutted the presumption of knowledge

114 In evaluating Mr Tan's evidence concerning the issues above, I bore in mind that he is highly educated, intelligent and articulate. A long-term drug addict, he knew the severe repercussions of carrying certain quantities of drugs.

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182 Tan CS at paras 21–23, 26 and 29.

183 AB 397–398, at paras 61 and 63; AB 401 at para 73.

Mr Tan would have appreciated that his claims *ie*, that he was only expecting some "ice" and three "popeyes" for his own use and that he had only agreed to deal with one pound of heroin and no more, are important matters which should have been raised during investigations. While Mr Tan might not have been in the best frame of mind during the recording of the various statements, I do not think he would have had any problems clearly communicating these claims to the recording officers. When Mr Tan read the statements, he should also have been able to clarify any factual ambiguities. Strangely, he failed to state the material aspects which now ground his defence at the trial. The main portion which he points to in support of the Alleged Agreement is vague. In sharp contrast, in the long statements, he provided a lot of details about his drug deals, including previous dealings with Boy Tanjong. Therefore, I reject these belated claims. Accordingly, I also find that on a balance of probabilities, Mr Tan has failed to rebut the presumption of knowledge under s 18(2) of the MDA.

Intention to traffic

115 I now proceed to address the final element of the offence, which pertains to the intention to traffic the Drugs. The Prosecution bears the burden of proving, beyond a reasonable doubt, that Mr Tan intended to deliver the Drugs to a third party as per Pal's instructions. On this score, the Prosecution relies on Mr Tan's admissions in his investigation statements. The Prosecution asserts that Mr Tan's attempt to discredit these admissions during the trial should be dismissed.[184]

116 On the other hand, Mr Jumabhoy presents two main lines of arguments to support Mr Tan's claim that he did not have the intention to traffic the Drugs.

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184 PCS at paras 66–73.

First, Mr Jumabhoy relies on the following key aspects of the defence. Specifically, there was never an agreement for Mr Tan to traffic more than one pound of heroin. Effectively, this concerns the Alleged Agreement and Mr Tan's evidence regarding the previous transactions with Pal (which did not involve more than one pound of heroin). Further, Mr Tan was not the intended recipient of the Drugs.[185] These aspects raise doubts about his intention to deliver them according to Pal's instructions. Second, Mr Jumabhoy argues that the investigation statements relied upon by the Prosecution do not provide conclusive evidence that Mr Tan intended to deliver the Drugs. In the statements themselves, Mr Tan expressed the possibility that he would not have continued with the delivery of the Drugs.[186] I deal with each in turn.

Key aspects of the defence

117 I return to the Alleged Agreement, *ie*, that Mr Tan agreed with Pal that he would only collect one pound of heroin and/or 125g of ice, and there was never an agreement to traffic more than one pound/bundle of heroin (see [42] above). If the Alleged Agreement exists, then it may well cast doubt as to Mr Tan's intention to traffic all the Drugs. However, as set out above (at [109]), I reject the existence of the Alleged Agreement. I should add that I have also rejected the Nature of the Transaction Defence. That said, when I consider the contents of the investigation statements in a moment, I shall refer to these matters, as well as Mr Tan's claim that, in any event, he had not dealt with more than one pound of heroin in any of his previous dealings (see [109] above).

185 Tan CS at para 79.

186 Tan CS at paras 63 and 85.

118 Mr Tan also says that the fact that he was not the intended recipient of the Drugs is indicative of the lack of intention to traffic the Drugs on his part.[187] However, as I stated at [110]–[113] above, although Mr Tan *might* not have been the original intended recipient of the Drugs, there is nothing to suggest that he was not meant to receive the Drugs. Indeed, he was the eventual recipient, and I have rejected his explanation that only expected to receive "ice" and "popeyes" that night. The fact that Mr Tan was not the original intended recipient of the Drugs is not altogether helpful in ascertaining his intention in relation to the Drugs. That said, in considering the contents of the investigation statements, I shall discuss Mr Tan's contention that he was not expecting such large quantities of drugs.

Contents of the investigation statements

119 Turning to the contents of the investigation statements, the relevant portion of the first contemporaneous statement is as follows:[188]

> Q1: What is this? (Accused shown 01 white plastic bag containing 02 Black bundles and 01 black plastic by containing 02 black bundles)
>
> A1: Heroin and Ice
>
> Q2: Whose [*sic*] does it belongs to?
>
> A2: It belongs to a Malaysian guy. *I am supposed to drop it off as instructed.* I do not know yet. The Malaysian guy will tell me. Not so soon.
>
> [emphasis added]

120 Similarly, in the third contemporaneous statement, when asked what he was *supposed* to do with the bundles, Mr Tan answered that he would "[w]ait

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187 Tan CS at para 21.

188 AB 112–113.

for Sal Poulez [*sic*] instruction to drop the Heroin and Ice at specified location". Mr Tan also added that he did not know when Sal Poulez (*ie*, Pal) would call him and would have just waited for the call.[189]

121 In the cautioned statement, Mr Tan admitted that he was guilty of the offence. According to the Prosecution, the contents of such statements clearly show that Mr Tan's intention was to deliver the Drugs.

122 To reiterate, Mr Tan attempted to cast doubt on the accuracy of these statements by stating that he was suicidal and wanted to implicate himself. In respect of the third contemporaneous statement, he said that SSgt Eric had conducted the interview improperly. However, I have rejected Mr Tan's claim of his intention to commit suicide (at [87] above) and allegations of improper conduct on the part of SSgt Eric (at [96] above). In other words, I accepted the accuracy of these statements. However, as stated at [87] above, I am prepared to accord little to no weight to the cautioned statement.

123 I should also reiterate that Mr Tan claims that he reacted strongly after the Drugs were revealed to him after his arrest (see [68]–[71] above). The purported reactions, argues Mr Tan, show that his first reaction was to scold Pal for giving him such large quantities of drugs, and his first reaction was not to deliver the Drugs for Pal. Therefore, this points against him having the intention to traffic the Drugs.[190] However, as I explained above, I do not believe Mr Tan's account of the purported reactions (which were not recorded in the first and second contemporaneous statements) (see [74]–[76] above).

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189 AB 149 (Q/A 7 and Q/A 8).

190 Tan CS at para 83.

124 Next, Mr Jumabhoy argues that the fact that Mr Tan was *supposed* to do something is not the same as what he *intended* to do.[191] This was an ambiguity in the first and third contemporaneous statements, which should be resolved in favour of Mr Tan. Further, the ambiguity carried on to paragraph 20 of Mr Tan's second long statement recorded on 3 March 2020. The material portion of that paragraph reads:[192]

> I wish to say that I would had [sic] still continued to drop off the drugs from this collection on 'Pal's' instruction. However, whether I would continue to do this is not confirmed as I felt unhappy that 'Pal' had passed me drugs more than the usual collected without informing me beforehand.

125 Mr Tan's position is that the above admissions, taken at their highest, do not prove an intention to traffic the Drugs because continuing to drop off the Drugs as directed by Pal is just one possibility. He could have refused to do so and returned them to Pal.[193] In this connection, Mr Jumabhoy relies on the proposition in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh Perumal*") at [110] that a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking".

126 I have carefully considered Mr Jumabhoy's arguments. But based on the evidence before me, I am unable to accept them. By the time the first and third contemporaneous statements were recorded, Mr Tan was well aware that there were Four Bundles in the Recycle Bag. He does not dispute this. In the first contemporaneous statement, Mr Tan said he was "*supposed* to drop it off as instructed" [emphasis added]. He reiterated this in the third contemporaneous

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191 Tan CS at para 63.

192 AB 344 at para 20.

193 Tan CS at para 85.

statement. I can accept that "*supposed* to" (what he was required to do) is not the same as "*intended* to" (what Mr Tan would do). However, intention is a subjective state of mind to be objectively inferred from the surrounding facts and circumstances: *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [72]. From the statements, it is evident that Mr Tan knew what he was required to do, as per his arrangement with Pal. There was no indication that Mr Tan would depart from his arrangement with Pal *ie,* to drop off the Drugs as instructed by Pal. From these clear and unequivocal admissions, the only inference to be drawn is that it was his intention to deliver the Drugs. Indeed, even in paragraph 20 of Mr Tan's second long statement, recorded a week after his arrest, he said that he "would had [*sic*] still continued to drop off the drugs from this collection on 'Pal's' instruction". This confirms the inference to be drawn with regard to his intention. Accordingly, the difference between what Mr Tan was *supposed* to do and what he *intended* to do is more apparent than real.

127 In my view, although there was apparently a shift in position reflected in paragraph 20, whereby Mr Tan expressed that "whether [he] would continue to [deliver the Drugs] is not confirmed as [he] felt unhappy that 'Pal' had passed [him] drugs more than the usual collected", this shift came belatedly. The *actus reus* and *mens rea* of the offence had already coincided on 25 February 2020 – when Mr Tan took possession of the Drugs. Moreover, Mr Tan's position merely became equivocal. Mr Tan only expressed a *possibility* that he would not have delivered the Drugs, and this shift does not seriously undermine Mr Tan's original intention to deliver the Drugs. I should add that even in the fourth long statement, recorded some months later on 18 August 2020, this equivocal stance remained (see [23(b)] above).

128 Weighed against Mr Tan's evidence of the Alleged Agreement, or even of his prior experience of not delivering more than one pound of drugs for Pal, I find Mr Tan's equivocal stance puzzling. By way of reminder, according to Mr Tan, when Segar delivered more than one pound of heroin on or around 9 January 2020, Mr Tan felt betrayed. He had no qualms about confronting Segar about it over the phone, going as far as to say that he did not "want to have anything to do with this one and they should come pick it up" (see [36] above). Indeed, eventually, Pal picked up the drugs in question. That is why there was the Alleged Agreement with Pal. In any event, he had never dealt with more than one pound of heroin. In contrast, the statements do not show Mr Tan exhibiting such a strong reaction in relation to the present collection. If Mr Tan indeed had no intention to deliver more than one pound of heroin, and especially given his alleged prior dealing with Segar and Pal on or around 9 January 2020, I would expect him to have rejected outright any further involvement with the Four Bundles and to require Pal to collect the Drugs. But nothing is said along these lines.

129 In fact, in paragraph 20 of the second long statement, Mr Tan merely said, "[Pal] should not have assumed that [Mr Tan] would be ok to collect this amount of drugs. If 'Pal' try to brush [Mr Tan] off, [Mr Tan] would have warned him not to put this amount of drugs without letting [Mr Tan] know next time…." (see [20(d)] and [107] above). Following this portion of paragraph 20, Mr Tan then expressed uncertainty about whether he would proceed to deliver the Drugs. His equivocal stance continued in the fourth long statement.

130 At the highest, the tenor of the second and fourth statements suggests that Mr Tan had second thoughts about what to do with the Drugs and that he developed some doubts about whether he should proceed with the intended plan. This was completely contradictory to his professed firm and uncompromising

stance with Segar and Pal concerning the January 2020 transaction. I agree with the Prosecution that by this shift to an equivocal position, Mr Tan was merely seeking to disassociate himself from the prior consistent admissions.

131 Lastly, in my judgment, *Ramesh Perumal* does not greatly assist Mr Tan. In *Ramesh Perumal*, two accused persons, Ramesh and Chander, drove into Singapore together from Malaysia. At some point during the journey, Ramesh received a bag containing four bundles of diamorphine from Chander. Ramesh argued that he did not know about the contents of the bag. He claimed that Chander had told him that the bag contained some documents and had passed them to him for safekeeping. Chander also told Ramesh that he would take the bag back from Ramesh later that day and bring the items in that bag back to Malaysia. However, Chander gave evidence that Ramesh was supposed to deliver the four bundles to a recipient in Singapore. On the facts, the court found that there was a reasonable possibility that Ramesh was safekeeping the drugs with the intention of returning them to Chander. Accordingly, the trafficking charge against Ramesh was amended to a charge of possession simpliciter under s 8(*a*) of the MDA, as an accused who was in possession of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking".

132 The present case is readily distinguishable from *Ramesh Perumal.* Mr Tan was not entrusted to safe keep the Drugs and return them to Pal. As is clearly stated in the statements, the arrangement was for Mr Tan to deliver the Drugs to others in Singapore. While Mr Tan expressed the possibility that he would not proceed to deliver the Drugs, this was belated. To my mind, this was an attempt to distance himself from the earlier admissions. By the above, I am of the view that the contents of the statements reveal that Mr Tan accepted that

he was required to drop off all Four Bundles within the Recycle Bag and that the inference to be drawn is that it was his intention to do so.

Mr Tan's conduct

133 I wish to discuss Mr Tan's behaviour during the collection (including his failure to check the contents of the Recycle Bag). To recapitulate, while he was in the Car, Mr Tan claimed that he did not know that Mr Dineshkumar was placing things into the Recycle Bag, as Mr Tan's attention was on the road.[194] He "presumed" some things were thrown into the Recycle Bag upon hearing thudding on the floorboard of the Car.[195] That said, he denied that he knew what the thudding sounds were about, and assumed that Mr Dineshkumar had put things into the Recycle Bag after he had lifted the Recycle Bag up and alighted from the Car.[196]

134 While I appreciate that it was a car ride of only about one minute, in my view, it is still troubling that Mr Tan did not care to even look into the Recycle Bag while in the Car, even after hearing the thudding sounds. It would not have taken more than a moment for him to roughly ascertain what had been placed into the Recycle Bag (which was on the floorboard in front of him). By the time he exited the Car, Mr Tan had sensed that the weight of the Recycle Bag was heavier than usual upon lifting the Recycle Bag from the floorboard.[197] I appreciate that the Unit was nearby, but again, I am of the view that if Mr Tan truly did not expect to receive the Drugs, then he ought reasonably to have at least looked into the Recycle Bag to have a quick glance at its contents.

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194 NE, 23 March 2023, p 76 ln 13 to ln 17.

195 NE, 23 March 2023, p 76 ln 19 to ln 22.

196 NE, 23 March 2023, p 77 ln 18 to ln 20.

197 NE, 23 March 2023, p 82 ln 12 to ln 14.

135 If the Nature of Transaction Defence were to be believed, and if the Alleged Agreement were in place, I would have considered Mr Tan's behaviour incomprehensible. Setting aside these defences, which I have rejected, as I said at [109] above, there remains Mr Tan's claim that he had never dealt with more than one pound of heroin in the previous transactions. Mr Tan said that he would not traffic in more than one bundle of heroin as it would carry a death sentence. Given these circumstances relied on by Mr Tan, it is unbelievable that Mr Tan did not bother to check on the contents of the Recycle Bag while in the Car or exhibit any reaction or concern at all after he felt that the Recycle Bag was heavier than usual as he left the Car. Mr Tan's nonchalance buttresses the inference that he intended to deliver the amount of drugs which he collected.

Whether Mr Tan had the intention to traffic

136 In conclusion, I am satisfied that the Prosecution has proved Mr Tan's intention to traffic the Drugs beyond a reasonable doubt. In the final analysis, the investigation statements and surrounding circumstances strongly evince Mr Tan's intention that he would have gone on to deliver the Drugs. Contrary to Mr Tan's contention in the closing submissions, his purported reactions of shock and surprise when the Drugs were first revealed to him are not supported by CNB officers who observed him, and neither were those reactions reflected in the contemporaneous statements. Moreover, Mr Tan's shift in position as regards his intention came too late, and even then, it suffered from ambiguity. The irresistible inference to be drawn is that he intended to traffic the Drugs which he collected. For completeness, I should state that in arriving at this conclusion, I have considered Mr Tan's background and experience, as set out in [114] above.

Decision: Mr Dineshkumar

137 I now turn to consider the case against Mr Dineshkumar.

Act of trafficking

138 The first element to be established for a charge of trafficking under s 5(1) of the MDA, as faced by Mr Dineshkumar, is the act of trafficking in the Drugs. Mr Dineshkumar does not seriously dispute that he delivered the Drugs to Mr Tan.

139 Nevertheless, Mr Dineshkumar has provided two different accounts as to how he had delivered them to Mr Tan. These were either: (a) that while the parties were in the Car, Mr Dineshkumar handed the plastic bags, E1A and E1B, to Mr Tan, who then placed them into the Recycle Bag; or (b) that Mr Dineshkumar dropped E1A and E1B directly into the Recycle Bag. Mr Dineshkumar gave the former account in his third long statement,[198] while the latter account was given at trial. At trial, Mr Dineshkumar also testified that the former account was inaccurately recorded in his third long statement.[199]

140 In my view, it is immaterial whether Mr Dineshkumar had passed E1A and E1B to Mr Tan or placed them directly into the Recycle Bag. On either account, it is clear that Mr Dineshkumar delivered the Drugs to Mr Tan. That said, as I stated above at [64], I accept that it was Mr Dineshkumar who placed E1A and E1B into the Recycle Bag. For completeness, I should add that Mr Dineshkumar's claim (which was only raised at trial) that he had intended

198 AB 398 at para 63.

199 NE, 27 March 2023, p 32 ln 26 to ln 27; and NE, 29 March 2023, p 29 ln 4 to ln 11, p 30 ln 1 to ln 18.

to leave the bundles at a nearby tree at Fishery Port Road,[200] even if true, is irrelevant as that did not materialise.

Knowledge

141 With that, I turn to the element of knowledge. Here, it must be proved that Mr Dineshkumar knew the nature of the Drugs *ie*, that they were diamorphine.

142 Like its case against Mr Tan, the Prosecution is relying on the presumption of knowledge under s 18(2) of the MDA.[201] I have already set out the applicable law as to how an accused person may rebut the s 18(2) presumption (at [51] above) and need not repeat it here.

143 The Prosecution argues that Mr Dineshkumar has failed to discharge his burden of rebutting the presumption on the basis that: (i) Mr Dineshkumar is not a credible witness; (ii) Mr Dineshkumar's claim that he lacks the requisite knowledge is unbelievable; and (iii) Mr Dineshkumar was, in any event, indifferent to the contents of the Three Bundles.

144 Conversely, as stated (at [45] above), Mr Dineshkumar's defence is that he was always under the impression that he was delivering "ice". This is mainly because Mr Dineshkumar was made to believe that he was to deliver only one bundle of "ice" by Kelvin. Even when Mr Dineshkumar discovered that the Car contained four bundles of drugs, he was made to believe, and believed, that they all contained "ice".[202] I shall abbreviate this as "the Knowledge Defence".

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200 NE, 27 March 2023, p 20 ln 29 to ln 30.

201 PCS at para 76.

202 DK CS at para 62; and Mr Dineshkumar's Reply Submissions ("DK RCS") at para 6.

Accuracy of Mr Dineshkumar's statements

145 At trial, Mr Dineshkumar sought to cast doubt on the accuracy of the statements (including the third long statement, Exh P59), which were recorded with the assistance of the Tamil interpreter, Mdm Vijaya. Mr Dineshkumar stated that he had difficulties understanding some of the Tamil words used by Mdm Vijaya.[203] Also, he saw Mdm Vijaya closing her eyes during the interpretation process.[204] In the closing submissions, counsel for Mr Dineshkumar, Mr Mahadevan Lukshumayeh ("Mr Lukshumayeh"), further submits that it is obvious that Mdm Vijaya had severe difficulty reading the documents presented to her while on the witness stand despite the fact that she was using a large magnifying glass.[205] Mr Lukshumayeh also pointed out that Mdm Vijaya would carry out her translation orally only, without viewing the relevant documents.[206]

146 It is clear that Mdm Vijaya has poor eyesight. In court, she had difficulty reading the documents, and when being questioned, for expediency, portions of Mr Dineshkumar's statements were read out to her.[207] However, in my view, even if I were to assume in Mr Dineshkumar's favour that there were deficiencies in the interpretation process, it is not Mr Dineshkumar's case (and there is no evidence) that Mdm Vijaya failed to translate the Knowledge Defence to the recording officer of the third long statement, ASP Fernandez, thereby leading to the omission of material details in it. I accept that Mdm

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203 NE, 27 March 2023, p 50 ln 14 to p 51 ln 8.

204 NE, 27 March 2023, p 51 ln 16 to ln 19.

205 DK CS at para 59.

206 DK CS at para 60.

207 See *eg*, NE, 22 February 2023, p 64 ln 11 to ln 12; p 67 ln 13; p 70 ln 15; and p 73 ln 14.

Vijaya had conducted the translation by way of hearing only, without viewing the documents.[208] I also accept that Mdm Vijaya probably did not bring any pen and paper with her during the recording sessions.[209] ASP Fernandez candidly testified to these during cross-examination. However, what ASP Fernandez also said is that because of Mdm Vijaya's poor eyesight,[210] ASP Fernandez proceeded line by line (and not paragraph by paragraph) when reading back Mr Dineshkumar's statement (which ASP Fernandez had typed into his computer).[211]

147 Accordingly, I am unable to see how an entire part of Mr Dineshkumar's alleged statement could be omitted. Indeed, Mr Dineshkumar has failed to point out exactly which parts of his statements were inaccurately recorded because of Mdm Vijaya's alleged deficiencies.

148 As regards the allegation that Mdm Viyaja had closed her eyes at various moments during the interview sessions, I appreciate that the recording of one of the long statements extended to almost three hours.[212] However, as Mr Lukshumayeh conceded, it is not Mr Dineshkumar's case that Mdm Viyaja was "sleeping throughout" but there were moments when Mdm Vijaya "closed her eyes that gave the impression that she was either sleeping or … not paying attention".[213] In my view, if Mdm Vijaya had lost her focus at all, it was only momentarily, as the translation was done line by line (in light of Mdm Vijaya's

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208 NE, 22 March 2023, p 17 ln 30 to ln 32.

209 NE, 22 March 2023, p 18 ln 14 to ln 15.

210 NE, 22 March 2023, p 18 ln 9 to ln 10.

211 NE, 22 March 2023, p 17 ln 22 to ln 32.

212 AB 395–399 (Exhibit P59).

213 NE, 22 March 2023, p 20 ln 7 to ln 13.

poor eyesight). If Mdm Vijaya was severely fatigued such that she had trouble keeping awake, it would have been impossible for the recording process to have been completed. Further, if this was indeed the case, I find it surprising that Mr Dineshkumar did not raise any complaints at all during the investigation process. Instead, he was content to have Mdm Vijaya act as the interpreter for several statements made over the course of about half a year to the CNB.

149 In the result, I do not accept that the statements were inaccurately recorded in any material way on the ground of Mdm Vijaya's alleged deficiencies.

Whether the Knowledge Defence is proved

150 With the above in mind, I shall return to the central question of whether Mr Dineshkumar has successfully rebutted the presumption of knowledge on a balance of probabilities. In my judgment, Mr Dineshkumar has failed to do so.

(1) Mr Dineshkumar's credibility

151 To begin, Mr Dineshkumar initially disputed the entire charge against him by stating in his investigation statements that he had only collected cash from Mr Tan and that he did not give Mr Tan anything on the night of 25 February 2020.[214] It is in his third long statement, Exh P59, recorded about a week after his arrest, that Mr Dineshkumar first admitted that he was delivering drugs at the material time (and knew the Four Bundles contained drugs) as he hoped to receive a lighter sentence for telling the truth.[215] However, even then, Mr Dineshkumar did not raise his defence that he thought he was delivering

214 AB 252–253 (Q/A 24, Q/A 27); AB 270; and AB 274 at para 18.

215 AB 399 at paras 67–68.

"ice". Instead, he stated that he did not know the type nor quantity of drugs involved.[216] Mr Dineshkumar only raised his defence (*ie*, that he believed the Four Bundles specifically contained "ice") in his fourth long statement recorded five months after.[217]

152 In my view, Mr Dineshkumar's credibility is questionable. Despite the Knowledge Defence being a key aspect of Mr Dineshkumar's defence, he failed to raise it in his third long statement even after he had decided to be "honest and tell the truth", and professed to cooperate with the CNB. It was only five months later that the Knowledge Defence was raised. When asked by the recording officer why he failed to raise the Knowledge Defence earlier, Mr Dineshkumar explained that he "couldn't remember [at the time as he] was just arrested and … was thinking about a lot of things. Now that [he has] the time, [he is] able to think properly and recall this."[218]

153 I am not convinced by this explanation. One would expect Mr Dineshkumar to ensure that all the relevant facts concerning his defence be recorded in the third long statement, as that was when Mr Dineshkumar decided to come clean to obtain a lighter sentence. Moreover, it is also peculiar that Mr Dineshkumar managed to provide many details about the transaction on 25 February 2020 in the third long statement but failed to raise the Knowledge Defence. By the above, I have doubts as to Mr Dineshkumar's credibility as regards the Knowledge Defence.

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216 AB 396 at para 60.

217 AB 402 at para 76.

218 AB 402 at para 76.

(2) The Knowledge Defence is inherently unbelievable

154 Essentially, the Knowledge Defence is based on Mr Dineshkumar's claim that Kelvin told him that the Four Bundles all contained only "ice", and he believed Kelvin. In my view, the Knowledge Defence is inherently unbelievable in light of the surrounding facts and circumstances.

155 First, there is no real basis for Mr Dineshkumar to have trusted Kelvin without question and to have believed Kelvin's claim that the bundles contained only "ice". By Mr Dineshkumar's evidence, at the material time, he had only known Kelvin for about three months and he did not even know Kelvin's real name (see [28(a)] above). Moreover, Kelvin was essentially a drug dealer and nothing else, as far as Mr Dineshkumar was concerned.[219] Mr Dineshkumar's purported trust in Kelvin is contradicted by his consistent testimony that he felt angry when he saw the Four Bundles in the boot of the Car at Fishery Port Road.[220] Mr Dineshkumar even called Kelvin and scolded him with profanities, and threatened to leave the drugs at a nearby tree.[221] Accordingly, it is unbelievable that Mr Dineshkumar would still trust Kelvin's assurance, over the phone when Mr Dineshkumar was at Fishery Port Road,[222] that the Four Bundles only contained "ice".

156 Second, I am unable to accept Mr Dineshkumar's bare assertion that he had brought only one bundle of "ice" into Singapore the day prior to his present

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219 NE, 27 March 2023, p 67 ln 27 to ln 29.

220 NE, 27 March 2023, p 16 ln 26 to ln 30; NE, 29 March 2023, p 4 ln 1 to ln 7 and p 19 ln 23 to ln 24; and DK RCS at para 17.

221 NE, 27 March 2023, p 16 ln 26 to ln 30; NE, 29 March 2023, p 19 ln 23 to ln 29.

222 NE, 29 March 2023, p 11 ln 29 to p 12 ln 2.

offence (*ie*, on 24 February 2020).[223] Presumably, by stating this, Mr Dineshkumar sought to give credence to the Knowledge Defence. However, this claim is not made in any of Mr Dineshkumar's statements. Crucially, Mr Dineshkumar stated in his third long statement that he did not know the type or quantity of drugs he was delivering on 24 February 2020 and did not ask Kelvin about it. There was no mention of the delivery of "ice" in the statement.[224] Mr Dineshkumar maintained this position in his fifth long statement and even added that Kelvin did not inform him that the bundle had contained "ice".[225] Mr Dineshkumar's explanation for the preceding inconsistency is that he had told informed recording officer of his third long statement, through Mdm Vijaya, that Kelvin had in fact told Mr Dineshkumar that he would be delivering one bundle of "ice" on 24 February 2020, but Mdm Vijaya, "may not have heard him right".[226] As I have stated (at [145]–[149] above), even if Mdm Vijaya's performance as an interpreter had fallen short, that in itself is insufficient to cast a doubt on the overall accuracy of the statements, especially when the position that Mr Dineshkumar now advances is contradicted by more than one of his recorded statements. Accordingly, I reject Mr Dineshkumar's assertion to have brought only one bundle of "ice" into Singapore the day prior to his present offence.

157 Third, I am unable to accept Mr Dineshkumar's contention at trial that when Kelvin passed the Car to Mr Dineshkumar on 25 February 2020, Kelvin told Mr Dineshkumar, "It is like yesterday", which Mr Dineshkumar understood

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223 NE, 27 March 2023, p 45 ln 3 to ln 5.

224 AB 395 at para 57.

225 AB 412 at para 81.

226 NE, 27 March 2023, p 77 ln 29 to p 78 ln 8.

to mean that he would have to deliver one bundle of "ice".[227] Apart from the fact that this assumption was not recorded in any of the investigation statements, it is also at odds with by Mr Dineshkumar's voice message to Kelvin which he sent on the night of 25 February 2020, asking Kelvin "what is the thing [he] need to send".[228] If Mr Dineshkumar formed the impression from what Kelvin had said that he would be delivering one bundle of "ice", he would not have needed to ask Kelvin the question. When confronted with this during cross-examination, Mr Dineshkumar conceded that he "did not know at that point what drugs he was supposed to be carrying".[229]

158 Finally, I am of the view that Mr Dineshkumar was indifferent to the contents of the Three Bundles. As mentioned, an accused person who was merely indifferent to or ignorant of what he was carrying would not be able to rebut the presumption in s 18(2): *Gobi* at [64]. It was Mr Dineshkumar's own admission at trial that he had the opportunity to unwrap the bundles to check their contents but he did not do so. Mr Dineshkumar also accepted that it would have been reasonable for him to do so as he was bringing in more bundles than expected and the bundles were wrapped differently from those he had delivered a day prior (*ie*, on 24 February 2020).[230] While Mr Dineshkumar went on to say that he would have had to answer to Kelvin if he opened the bundles without Kelvin's permission,[231] it is not as if Mr Dineshkumar was under some form of duress to not open the bundles. Indeed, to reiterate, it is Mr Dineshkumar's evidence that he was angry when he first learned that there was more than one

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227 NE, 29 March 2023, p 12 ln 3 to ln 12.

228 AB 258 at row 8.

229 NE, 29 March 2023, p 18 ln 5 to ln 8.

230 NE, 29 March 2023, p 26 ln 27 to p 27 ln 13.

231 NE, 29 March 2023, p 27 ln 11 to ln 13.

bundle in the Car at Fishery Port Road[232], and that he even scolded Kelvin with profanities and threatened to leave the drugs at a nearby tree.[233]

159 Despite the above, Mr Dineshkumar was totally indifferent as to the nature of the contents of the Three Bundles and was content to trust Kelvin's assurance that the bundles only contained "ice". In this connection, the following observation by the Court of Appeal in *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [32] is instructive:

> It would rarely, if ever, be sufficient for an accused person to rebut the s 18(2) presumption by stating simply that he believed what he was told in relation to what was in his possession. Where such a claim is made, the court will, of course, have to consider whether it believes that bare claim and in that regard, it will be necessary to consider the entire factual matrix and context, including the relationship between the parties and all surrounding circumstances.

Having considered the facts and circumstances, I reject the Knowledge Defence as unbelievable.

Whether Mr Dineshkumar has rebutted the presumption of knowledge

160 For the foregoing reasons, I am unable to accept that Mr Dineshkumar has established the Knowledge Defence on a balance of probabilities. As the Knowledge Defence is rejected, it follows that Mr Dineshkumar has failed to prove that he believed he was carrying some other drug other than the specific drug (*ie*, diamorphine) in his possession: *Gobi* at [59]. Accordingly, I find that Mr Dineshkumar has failed to rebut the presumption of knowledge under s 18(2) of the MDA.

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232 NE, 27 March 2023, p 16 ln 26 to ln 30; NE, 29 March 2023, p 4 ln 1 to ln 7 and p 19 ln 23 to ln 24; and DK RCS at para 17.

233 NE, 27 March 2023, p 16 ln 26 to ln 30; NE, 29 March 2023, p 19 ln 23 to ln 29.

Conclusion

161 In conclusion, the Prosecution has proved the charge against Mr Tan beyond a reasonable doubt. Therefore, I convict Mr Tan of the charge against him of having in his possession the Drugs for the purpose of trafficking.

162 In relation to Mr Dineshkumar, I also find that the Prosecution has proved the charge of trafficking the Drugs beyond a reasonable doubt. I find Mr Dineshkumar guilty and convict him of the charge.

163 I will now hear the parties on the sentences to be imposed on Mr Tan and Mr Dineshkumar.

Hoo Sheau Peng
Judge of the High Court

Ng Yiwen, Lim Woon Yee, Joelle Loy and Ronnie Ang (Attorney-General's Chambers) for the Prosecution;
Andre Darius Jumabhoy (Andre Jumabhoy LLC) and Sankar s/o Kailasa Thevar Saminathan (Sterling Law Corporation) for the first accused;
Mahadevan Lukshumayeh (Lukshumayeh Law Corporation) and Elengovan s/o V Krishnan (Elengovan Chambers) for the second accused.