

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

[2023] SGHC 95

Criminal Case No 36 of 2022

Between

Public Prosecutor

And

- (1) Low Sze Song
- (2) Sivaprakash Krishnan

JUDGMENT

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

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Public Prosecutor
v
Low Sze Song and another

[2023] SGHC 95

General Division of the High Court — Criminal Case No 36 of 2022

Dedar Singh Gill J

26–29 July, 2, 3 August, 10, 11 August, 16–18 August, 23–26 August, 18 November 2022

14 April 2023

Judgment reserved.

Dedar Singh Gill J:

Facts

1 The first accused, Low Sze Song (“**Low**”), is a 70-year-old male Singaporean. The second accused, Sivaprakash Krishnan (“**Sivaprakash**”), is a 35-year-old male Malaysian national. The two accused persons each claimed trial to a single charge of trafficking not less than 43.2g of diamorphine under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“**MDA**”) and were jointly tried before me.

2 For ease of reference, s 5(1)(a) and s 5(2) of the MDA provide:

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;
- (b) to offer to traffic in a controlled drug; or
- (c) to do or offer to do any act preparatory to or for the purpose of trafficking 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.

3 The key facts leading to the arrests of Low and Sivaprakash can be stated briefly. On 30 May 2019, at about 5.40am, Low was at the ground floor of Blk 326A Sumang Walk with his personal mobility device (the “**PMD**”). At about 6.18am, Sivaprakash approached Sumang Walk on his motorcycle (the “**Motorcycle**”) and Low and Sivaprakash then travelled together in the same direction on their respective vehicles. At about 6.20am, at a bus stop along Sumang Walk (the “**Sumang Walk Bus Stop**”),¹ Sivaprakash gave Low a white plastic bag containing packets of drugs, and Low gave Sivaprakash a stack of cash totalling S\$9,000. The Prosecution’s case is that the white plastic bag contained four packets of drugs containing not less than 43.26g of diamorphine (the “**Drug Bundles**”) which form the subject matter of the respective charges. Low’s defence, which Sivaprakash aligns himself with, is that there were only three packets of drugs handed over by Sivaprakash to Low and subsequently recovered from the PMD. I deal with this issue later below (at [27]–[86]).

4 Thereafter, Low travelled towards Buangkok Crescent. He was arrested by a party of Central Narcotics Bureau (“**CNB**”) officers at the lift lobby of Blk

¹ Agreed Statement of Facts (“**ASOF**”) at para 7.

986C at about 6.45am. The said CNB officers comprised of Assistant Superintendent Muhammad Aliff bin Abdul Rahman, Inspector Eng Chien Loong Eugene, Inspector Tay Cher Yeen Jason (“**Insp Jason**”), Station Inspector Wong Kah Hung Alwin, Station Inspector Tay Keng Chye Sunny (“**SI Sunny**”), Sergeant Merabel Lee Yi Shan (“**Sgt Merabel**”), Sergeant Yogaraj s/o Rangunathan Pillay, Sergeant Mohammad Nasrulhaq bin Mohd Zainuddin (“**Sgt Nasrulhaq**”), Sergeant Syazwan bin Daud Mohamed, Sergeant Muhammad Fauzi bin Mohamed Said (“**Sgt Fauzi**”) and Senior Staff Sergeant Muhammad Fardlie bin Ramlie.²

5 Sometime between Low’s arrest at 6.45am and 8.01am, Insp Jason performed a thorough search of the PMD (after having first performed a preliminary search of the PMD, see [34] below) and several exhibits were seized and recovered. The following table sets out the markings of the exhibits recovered from the PMD (which was marked as location ‘A’):

Description and Marking of Exhibit		Description and Marking of sub-Exhibit		Description and Marking of sub-sub-Exhibit	
A1	One black “Fiido Electric Scooter” bag	A1A	One black taped packaging with clear plastic	A1A1	One clear plastic
				A1A1A	One packet of brown granular substance which was analysed and found to contain not less than 8.64g of diamorphine

² ASOF at para 3.

		A1B	One white plastic bag	A1B1	One clear plastic packaging with black tape
				A1B1A	One clear plastic
				A1B1A1	One packet of brown granular substance which was analysed and found to contain not less than 14.47g of diamorphine
				A1B2	One clear plastic packaging with black tape
				A1B2A	One clear plastic
				A1B2A1	One packet of brown granular substance which was analysed and found to contain not less than 14.12g of diamorphine
				A1B3	One black taped packaging with clear plastic
				A1B3A	One clear plastic

				A1B3A1	One packet of brown granular substance which was analysed and found to contain not less than 6.03g of diamorphine
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6 As noted above at [3], Low disputes that the exhibit ‘A1A1A’ was among the case exhibits recovered from the PMD and processed in his view at the CNB Exhibit Management Room (“**EMR**”).

7 Meanwhile, Sivaprakash had headed towards his workplace at Sungei Kadut Way. Another party of CNB officers followed him to a canteen along 16A Sungei Kadut Way. They arrested him at about 6.49am.³ The said CNB officers comprised of Assistant Superintendent Muhammad Faizal bin Baharin (“**ASP Faizal**”), Station Inspector Mohamed Fadli bin Mohamed Sayee, Station Inspector Mohammed Nabil bin Shahar (“**SI Nabil**”), Station Inspector Arif Azfar bin A’zman, Senior Staff Sergeant Mohamed Sohail bin Abdul Aleem (“**SSgt Sohail**”), Senior Staff Sergeant Ee Guo Dong Marcus, Staff Sergeant Rajendren Janani (“**SSgt Janani**”), Staff Sergeant Shah Zali bin Mohamed Salleh and Sergeant See Yong Han Sebastian.⁴

8 At about 6.50am, SSgt Sohail conducted a search in Sivaprakash’s presence on the Motorcycle and recovered the stack of cash totalling S\$9,000.⁵

³ Prosecution’s Closing Submissions dated 25 October 2022 (“**PCS**”) at para 4.

⁴ ASOF at para 4.

⁵ PCS at para 4; ASOF at para 22.

The following table sets out the markings of the exhibits recovered from the Motorcycle (which was marked as location ‘E’):

Description and Marking of Exhibit		Description and Marking of sub-Exhibit	
E1	One black haversack	E1A	One stack of cash amounting to S\$9,000, tied with two rubber bands

9 In the course of investigations, six statements were recorded from Low between 30 May 2019 and 23 January 2020:⁶

(a) On the day of the arrest, SI Sunny recorded a contemporaneous statement pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“**CPC**”) at about 8.01am (Low’s “**Contemporaneous Statement**”).⁷ Photos were shown to Low and appended to Low’s Contemporaneous Statement, including photos of Exhibits ‘A1B’, ‘A1B2’ and ‘A1B1’.

(b) On the same day, Deputy Superintendent Yang Weili (“**IO Weili**”) recorded a cautioned statement pursuant to s 23 of the CPC at about 11.14pm (Low’s “**Cautioned Statement**”). Low spoke in Hokkien and this was translated by the interpreter, Mr Wong Png Leong (“**Mr Wong**”).

(c) IO Weili subsequently recorded four long statements pursuant to s 22 of the CPC (collectively, Low’s “**Long Statements**”), namely, on

⁶ ASOF at para 50.

⁷ Agreed Bundle (“**AB**”) at p 104 – 114.

2 June 2019 at about 1.35pm (Low’s “**First Long Statement**”), on 3 June 2019 at about 10.03am (Low’s “**Second Long Statement**”), on 6 June 2019 at about 2.47pm (Low’s “**Third Long Statement**”) respectively. For all of Low’s Long Statements, he spoke in Hokkien and these were translated by Mr Wong. Photos were shown to Low and appended to his Second Long Statement, including photos of Exhibits ‘A1B’ (the white plastic bag), ‘A1A1A’, ‘A1B1A1’, ‘A1B2A1’ and ‘A1B3A1’ (collectively, the Drug Bundles).

(d) Inspector Vinod s/o Pannerchilvam (“**IO Vinod**”) subsequently recorded one long statement pursuant to s 22 of the CPC on 23 January 2020 at about 10.41am (Low’s “**Fourth Long Statement**”). Low spoke in Hokkien and this was translated by the interpreter, Mr Wong.

10 Low does not dispute that these statements were voluntarily provided by him and accurately recorded by the respective CNB officers.

11 In the course of investigations, six statements were recorded from Sivaprakash between 30 May 2019 and 23 January 2020:⁸

(a) On the day of the arrest, SI Nabil recorded a contemporaneous statement pursuant to s 22 of the CPC at about 8.00am (Sivaprakash’s “**Contemporaneous Statement**”). Both SI Nabil and Sivaprakash spoke in Malay and this was later translated into English by a CNB language officer, Mr Mohammed Syafiq Bin Mohammed Said.

⁸ ASOF at para 52.

(b) On the same day, Senior Staff Sergeant Huang Weilun (whose rank was Station Inspector by the time of the trial) (“**SI Huang**”) recorded a cautioned statement pursuant to s 23 of the CPC at about 10.45pm (Sivaprakash’s “**Cautioned Statement**”). Sivaprakash spoke in Tamil and this was translated by the interpreter, Mdm Vengadasalam Susila (“**Mdm Susila**”).

(c) IO Weili subsequently recorded three long statements pursuant to s 22 of the CPC (collectively, Sivaprakash’s “**Long Statements**”), namely, on 2 June 2019 at about 7.07pm (Sivaprakash’s “**First Long Statement**”), on 3 June 2019 at about 2.35pm (Sivaprakash’s “**Second Long Statement**”), and on 6 June 2019 at about 9.46am (Sivaprakash’s “**Third Long Statement**”) respectively. For all of Sivaprakash’s Long Statements, he spoke in Tamil and these were translated by Mdm Susila. Photos were shown to Sivaprakash and appended to his Long Statements, including photos of Exhibits ‘A1B’ (the white plastic bag), ‘A1A1A’, ‘A1B1A1’, ‘A1B2A1’ and ‘A1B3A1’ (collectively, the Drug Bundles).

(d) IO Vinod subsequently recorded one long statement pursuant to s 22 of the CPC on 15 January 2020 at about 10.44am (Sivaprakash’s “**Fourth Long Statement**”). Sivaprakash spoke in Tamil and this was translated by the interpreter, Mdm Vijaya Thavamary Abraham.

12 Apart from Sivaprakash’s Contemporaneous Statement, the recording of which he disputes (see below at [83]–[84]), Sivaprakash does not dispute that the other statements set out at [11] were voluntarily provided by him and accurately recorded by the respective CNB officers.

13 In *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (at [59]), the Court of Appeal summarised the three elements of an offence under s 5(1)(a) read with s 5(2) of the MDA as follows:

- (a) possession of a controlled drug – which may be proved or presumed pursuant to s 18(1) of the MDA;
- (b) knowledge of the nature of the drug – which may be proved or presumed pursuant to s 18(2) of the MDA; and
- (c) proof that possession of the drug was for the purpose of trafficking which was not authorised.

14 I start by dealing with element (c). Low and Sivaprakash cannot, in my view, dispute⁹ that the Drug Bundles were for the purpose of trafficking. It is undisputed that Low intended to deliver the white plastic bag containing the Drug Bundles to someone who would be waiting for him at Blk 986C Buangkok Crescent.¹⁰ Sivaprakash consistently admitted in his Cautioned Statement, his First Long Statement and at trial that he had handed over the white plastic bag containing the Drug Bundles to Low at the Sumang Way Bus Stop.¹¹ Sivaprakash denies that he had done so for the purposes of trafficking and asserts that he had merely been acting “as requested of him” by someone known to him as “Joe” (“**Joe**”), his Malaysian friend who had requested for his help in

⁹ PCS at para 75; First Accused’s Submissions dated 25 October 2022 (“**D1 CS**”) at para 2 (Low); PCS at para 30; Second Accused’s Reply to Prosecution’s Closing Submissions dated 18 November 2022 (“**D2 Reply**”) at para 10(ii) (Sivaprakash).

¹⁰ PCS at para 75; D1 CS at para 10; NE 16082022 at p 27 ln 8 – p 28 ln 20, p 49 ln 1 – 11; NE 17082022 at p 35 ln 17 – p 36 ln 12.

¹¹ PCS at para 30; AB at p 202; AB at p 227, para 9; NE 2508222 at p 24 ln 8 – 28 and p 31 ln 13 – 28.

collecting and *delivering* the contents of the white plastic bag.¹² However, the definition of “traffic” under s 2 of the MDA is clear and provides:

“traffic” means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning

15 On his own case, Sivaprakash delivered the Drug Bundles to Low within the meaning of s 2 of the MDA.

16 Therefore, the case before me turns on the first two elements listed above (at [13]).

The parties’ cases

Possession of the drugs

17 The Prosecution relies on the presumption of possession under s 18(1)(a) of the MDA in respect of both Low and Sivaprakash and that, in any case, they each had actual possession of the Drug Bundles.¹³ Low disputes the chain of custody of the Drug Bundles. According to Low, there were only three and not four packets of drugs handed over by Sivaprakash to him and

¹² Closing Submissions of the Second Accused dated 25 October 2022 (“D2 CS”) at para 29(e).

¹³ PCS at para 31 (in relation to Sivaprakash), paras 58 and 63 (in relation to Low).

subsequently recovered from the PMD.¹⁴ Low further raises the possibility that exhibits from another case were mistaken for the fourth packet of drugs (*ie*, the exhibit marked ‘A1A1A’) seized in this case.¹⁵

18 After hearing the trial testimonies of Low and what has been referred to as “the CNB officers involved regarding the chain of custody of the drugs”, Sivaprakash aligns himself with Low’s position on this issue.¹⁶ He also argues that he was in possession of “paan parak” and not the Drug Bundles.¹⁷ According to him, he had picked up “paan parak” and not the Drug Bundles from a bus stop near the Tuas checkpoint on the instructions of “Joe”, put them into the white plastic bag and handed them over to Low.

Knowledge of the nature of the Drug Bundles

19 The Prosecution relies on the presumption of knowledge under s 18(2) of the MDA in relation to both Low and Sivaprakash. Low’s defence is that he did not check the contents of the white plastic bag handed to him by Sivaprakash and had no knowledge of the nature of the Drug Bundles.¹⁸ Sivaprakash claims that he did not know that he was delivering the Drug Bundles as he thought that he was delivering what he claimed to be “paan parak”, on “Joe’s” instructions.¹⁹

¹⁴ D1 CS at para 40.

¹⁵ D1 CS at para 63.

¹⁶ D2 CS at para 29(b).

¹⁷ D2 CS at para 29(a).

¹⁸ D1 CS at para 73.

¹⁹ D2 CS at para 29(d).

Issues to be determined

20 In light of the statutory requirements of s 5(1)(a) read with s 5(2) of the MDA and the parties’ cases, the issues (and sub-issue) that arise for my consideration are:

- (a) whether Low and Sivaprakash respectively had possession of the Drug Bundles (the “**Possession Issues**”);
 - (i) in particular, whether there is a reasonable doubt that the exhibit ‘A1A1A’ analysed by the Health Sciences Authority (the “**HSA**”) to contain not less than 8.64g of diamorphine was the same drug exhibit seized from the PMD (the “**Chain of Custody Sub-issue**”); and
- (b) whether Low and Sivaprakash respectively had no knowledge of the nature of the Drug Bundles (the “**Knowledge Issues**”).

21 Additionally, the final issue that arises for my consideration is whether Low and Sivaprakash respectively can be considered a “courier” pursuant to s 33B(2) of the MDA for the purposes of sentencing.

22 The parties’ specific submissions on each issue will be dealt with below in the relevant portions of the grounds dealing with the particular issue or sub-issue.

Whether Low and Sivaprakash respectively had possession of the Drug Bundles***Parties' arguments***

23 The Prosecution relies on the presumption of possession under s 18(1)(a) of the MDA in respect of both Low and Sivaprakash and that, in any case, they each had actual possession of the Drug Bundles.²⁰ The Prosecution argues that, by virtue of s 18(1)(a) of the MDA, Sivaprakash was presumed to have possession of the Drug Bundles as he must have been in possession of the white plastic bag containing the Drug Bundles to be able to give it to Low. In any case, the Prosecution submits that he had actual possession of the Drug Bundles and this is corroborated by Sivaprakash's DNA found on the tape and cling film used to wrap exhibits 'A1A1A', 'A1B1A1', 'A1B2A1' and 'A1B3A1' (*ie*, the Drug Bundles).²¹

24 The Prosecution also argues that, by virtue of s 18(1)(a) of the MDA, Low was presumed to have possession of the Drug Bundles as he had received the white plastic bag from Sivaprakash and knew that it contained items,²² and placed the white plastic bag and its contents in the black "Fiido Electric Scooter" bag in the PMD. Furthermore, Low cannot rebut the presumption of possession under s 18(1)(a) of the MDA by claiming that he had placed the white plastic bag and its contents in a red bag *before* placing these items into the black "Fiido Electric Scooter" bag. In any case, the Prosecution submits that Low had actual possession of the white plastic bag and its contents and this is corroborated by Low's DNA found on the interior and exterior of the white plastic bag, as well

²⁰ PCS at para 31 (in relation to Sivaprakash), paras 58 and 63 (in relation to Low).

²¹ PCS at para 31.

²² PCS at para 58.

as the adhesive sides of the taped packaging marked ‘A1A’ which contained the bundle of drugs marked ‘A1A1A’.²³

25 Sivaprakash disputes possession of the Drug Bundles on the basis that the Drug Bundles were not found in his possession.²⁴ He also argues that he was in possession of “paan parak” and not the Drug Bundles.²⁵ However, it is clear that he cannot rebut the presumption of possession under s 18(1)(a) of the MDA for the reasons stated above (at [23]). His own evidence is that he had collected several packets which later turned out to be the Drug Bundles from a torn black bag at the bus stop near the Tuas checkpoint, transferred them into a white plastic bag and handed them over to Low.²⁶

26 Low disputes possession by challenging the integrity of the chain of custody of the Drug Bundles. As noted above (at [18]), Sivaprakash also adopts Low’s position, namely, that only three and not four packets of drugs were handed over by Sivaprakash to Low and subsequently recovered from the PMD.²⁷ Low and Sivaprakash allege that the exhibit ‘A1A1A’ (the “**Fourth Drug Bundle**”), which is one packet of brown granular substance analysed by the HSA to contain not less than 8.64g of diamorphine, was not in fact recovered from the PMD.

²³ PCS at paras 58 – 63.

²⁴ D2 CS at para 30.

²⁵ D2 CS at para 29(a).

²⁶ D2 CS at para 28.

²⁷ D1 CS at para 40; D2 CS at para 29(b).

Sub-issue: Whether there is a reasonable doubt as to the integrity of the chain of custody of the drug exhibit ‘A1A1A’

27 The principles in relation to establishing the chain of custody are trite. The Prosecution must account for the movement of the exhibits from the point of seizure to analysis, such that there cannot be a single moment that is unaccounted for *if* this gives rise to a reasonable doubt as to the identity of the exhibits or exhibit in question: *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 (“*Mohamed Affandī*”) at [39].

28 Additionally, counsel for Sivaprakash refers me to several authorities for the proposition that the Prosecution bears the burden of proving its case beyond reasonable doubt. The accused is thus entitled to an acquittal *if* there arises a reasonable doubt as to his guilt.²⁸ What is required is a *qualitative* appreciation of whether a reasonable doubt has arisen. A “reasonable doubt”, as opposed to a “merely fanciful” doubt, is “a doubt for which one can give a reason, so long as the reason given *is logically connected to the evidence*” [emphasis added]: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 (“*Jagatheesan*”) at [53], affirmed in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [131]. Reasonable doubt could also arise by virtue of the lack of evidence submitted, where such evidence is necessary to support the Prosecution’s theory of guilt: *Jagatheesan* at [61].

29 I am not satisfied that a reasonable doubt has been raised as to the identity of the Fourth Drug Bundle, after carefully sifting and reasoning through the evidence that was led in this case. I explain.

²⁸ D2 CS at para 5.

Search and recovery of the four drug exhibits from the PMD

30 Low disagrees with the Prosecution that the PMD was searched in his presence and that the Fourth Drug Bundle was recovered from the PMD. There is a dispute regarding the precise sequence of events that occurred on 30 May 2019 between the time of Low’s arrest at about 6.45am and the recording of Low’s Contemporaneous Statement at about 8.01am.

31 The Prosecution’s version of events is that Sgt Merabel had brought the PMD up to Blk 986C Buangkok Crescent #11-88 (the “Unit”). Insp Jason then searched the PMD in Low’s presence and recovered the four drug exhibits including the Fourth Drug Bundle.²⁹

32 Low disputes that the PMD was brought up to the Unit or searched in his view. He alleges that he did not see Insp Jason, or any CNB officer, recover any exhibits (in particular, the Fourth Drug Bundle) from the PMD.³⁰ He relies on the recording by Sgt Merabel in the field diary entry marked ‘P122’ (the “**P122 Field Diary Entry**”) and the first police report (the “**First Police Report**”) that was lodged by Sgt Fauzi to allege that the PMD was not in the Unit when the arresting CNB officers did the search.³¹ He says that the deletion of the words “on the e-scooter” from the P122 Field Diary Entry supports his case. He also says that the P122 Field Diary Entry appears “contrived” and does not accurately reflect the events of the day.³² In the First Police Report, there was no mention of the PMD being brought into or searched in the Unit, unlike

²⁹ PCS at paras 3, 18.

³⁰ D1 CS at para 16.

³¹ D1 CS at paras 16 – 19.

³² D1 CS at paras 34 – 37.

the second police report (the “**Second Police Report**”) that was subsequently lodged by Sgt Fauzi to include particulars of the same. Low argues that the First Police Report supports his case and that the Second Police Report is inaccurate as Sgt Fauzi admitted that he had merely followed instructions to amend the report and did not cross-check with any contemporaneous document to ascertain if the PMD was indeed brought into the Unit.³³ Further, Low points out that there were no photographs taken of the Unit at the time of the raid to show that the PMD was brought into the Unit or indeed searched in his view.³⁴

33 I find that the PMD was searched in Low’s presence at about 7.03am in the Unit and that the Fourth Drug Bundle was recovered from the PMD. Sgt Merabel testified that she had “pushed” the PMD from the location of Low’s arrest to the Unit.³⁵ Insp Jason, who carried out the search of the PMD, similarly testified that the PMD was brought up to the Unit along with Low. Insp Jason testified that he was in the same lift when Sgt Fauzi escorted Low together with Sgt Merabel and the PMD.³⁶ This is corroborated by the testimony of Sgt Fauzi.³⁷ On the other hand, Low asserts that there were more than three officers with him in the lift and that there was “simply no space in the lift to accommodate all the CNB officers, Low and his electric bicycle”.³⁸ I do not find Low’s bare assertion to be sufficient reason for me to disbelieve the testimonies

³³ D1 CS at para 21.

³⁴ D1 CS at para 23.

³⁵ NE 27072022 p 60 ln 9 – 10.

³⁶ NE 26072022 p 92 ln 14 – p 94 ln 6.

³⁷ NE 02082022 p 3 ln 11-13, p 6 ln 4 – p 7 ln 4.

³⁸ D1 CS at para 12.

of these arresting CNB officers on how the PMD was brought up to the Unit along with Low.

34 In any event, that the Fourth Drug Bundle was recovered from the PMD is clear. Insp Jason stated in his conditioned statement that he had already conducted a preliminary search of the PMD in Low's view at about 6.47am, at the lift lobby of Blk 986C Buangkok Crescent.³⁹ From the preliminary search, he saw that there was "a white plastic bag that was not tied up, *and a black bundle which was suspected to contain drugs*" [emphasis added] in the black 'Fiido Electric Scooter' bag that was attached to the PMD.⁴⁰ As the white plastic bag was later found to contain the three drug exhibits 'A1B1A1', 'A1B2A1' and 'A1B3A1', the "*black bundle which was suspected to contain drugs*" can only refer to the Fourth Drug Bundle. This part of Insp Jason's conditioned statement withstood scrutiny on the stand.⁴¹ At trial, he further explained that he did not at that point in time look into the contents of the white plastic bag, as the arresting CNB officers' priority then was to conduct the follow up action to the preliminary search:⁴²

A: At that moment we---we were proceeding to raid another unit at the same block, that's why we did not do a thorough search to recover whatever was inside the---inside the bag at the moment.

Q: Yes, Okay, so when would you then be thorough according to you? By the time you went out to the unit

³⁹ AB at p 94 para 8.

⁴⁰ AB at p 94, para 8; NE 26072022 at p 91 ln 4 – 8.

⁴¹ NE 26072022 p 92 ln 3-7.

⁴² NE 26072022 p 91 ln 9-26.

11-88 you would be thorough in putting all the exi---all the suspected drugs together to be listed?

A: At that moment, our priority was to raid the unit. So we--we would have---we---at that time, we would have - how should I say - I will do the search once everything has settled down and it's conducive for me to do the search. That's when I will do a thorough search to recover all the drugs, Your Honour.

35 This “thorough search” subsequently took place at about 7.03am when the PMD was brought up to the Unit and searched in Low’s view (see [33] above).

36 Low relies on Sgt Fauzi’s statement in court that he could not recall whether the PMD was brought into the Unit.⁴³ He also places weight on the discrepancies between the First Police Report and Second Police Report which were lodged by Sgt Fauzi (see [32] above). According to Low, Sgt Fauzi had merely followed the instructions of his “senior” (*ie*, his superior officer) in amending the Second Police Report, to state that the PMD was brought into the Unit.⁴⁴ When cross-examined, Sgt Fauzi admitted that he could not recall who this “senior” was.⁴⁵ These must, however, be viewed in context. Sgt Fauzi himself testified that his role in the operation did not entail entering the Unit while it was being searched. He only stood a distance away from the Unit, somewhere near the lift lobby.⁴⁶ As such, Sgt Fauzi cannot be faulted for not knowing if the PMD was brought into the Unit. In this context, he relied on the instructions of another officer in making the amendments to the Second Police

⁴³ D1 CS at para 22; NE 02082022 at p 7 ln 17 – 19.

⁴⁴ D1 CS at para 21.

⁴⁵ NE 02082022 at p 14 ln 3 – 12.

⁴⁶ NE 02082022 at p 8 ln 19 – 31.

Report. Although it would have been far more satisfactory if Sgt Fauzi was able to recall who this “senior” was, I accept that gaps in a witness’ memory may appear because of the lapse of time, for which adequate allowance is accorded to human fallibility in retention and recollection: *Ng Kwee Leong v Public Prosecutor* [1998] 3 SLR(R) 281 at [17].

37 In my view, the discrepancy was not material because, in any event, there was clear evidence from the CNB officers who were *directly* involved in the search of the PMD as to the same (see [33] and [34] above). This was corroborated by the contemporaneous record in the P122 Field Diary Entry, to which I turn.

38 From the PMD, the Drug Bundles were recovered and seized as case exhibits.⁴⁷ This was recorded by Sgt Merabel in the P122 Field Diary Entry. Low challenges the integrity of the P122 Field Diary Entry in two ways.

39 The first is to allege that there is no record of the PMD being searched as the words “on the e-scooter” were deleted from the entry at 7.05am. However, there is little merit in this allegation. Sgt Merabel testified that she initially wrote “Jetty began search on the e-scooter in the unit” (whereby ‘Jetty’ refers to Insp Jason) as she wanted to record that the search was conducted on the PMD *while* it was in the Unit.⁴⁸ When asked why she subsequently deleted the words “on the e-scooter” from the P122 Field Diary Entry, Sgt Merabel explained that the deletion was to account for Low’s PMD being seized (and labelled “A”) during

⁴⁷ NE 26072022 p 96 ln 1 – 3; AB at p 95, para 10.

⁴⁸ Prosecution’s Reply Submissions dated 18 November 2022 (“**PRS**”) at para 8(a); NE 27072022 at p 54 ln 18 – 31.

the search in the Unit.⁴⁹ I accept Sgt Merabel’s explanation. As the Prosecution rightly points out, the PMD is an exhibit, and not a location *per se*.⁵⁰ Furthermore, Sgt Merabel testified that she had deleted the phrase of her own accord, *ie*, she had not been instructed or directed to make the deletion.⁵¹

40 The second way in which Low challenges the P122 Field Diary Entry is to allege that its contents appeared “contrived” because the words in the sentence “02 clear tape[d] bundles with black tape containing brown granular substance” (the “**Disputed Sentence**”) were written on one line as if there were a limited number of lines available for the entry.⁵² He further points to the caret that was inserted and additional words written in the space above the caret as proof that the P122 Field Diary Entry had been made *subsequent to* the search, as if the diarist had been trying to fit all five exhibits into the limited space meant for only four exhibits.⁵³

⁴⁹ NE 27072022 at p 55 ln 1 – 4.

⁵⁰ PRS at para 8(a); NE 27072022 at p 55 ln 1 – 4.

⁵¹ NE 27072022 at p 55 ln 7 – 9.

⁵² D1 CS at paras 34 – 37.

⁵³ D1 CS at para 35.

41 For clarity, I reproduce a copy of the P122 Field Diary Entry below:

0705	Jetty began search on the e -scooter in the unit. Potter assisted to pack exhibits. Yogi escorting B1.
	A) On the e-scooter ; 945BL
	A1) 01 black 'Fiido' electric scooter bag
	A1A) 01 black ^{tape} bundle
	A1B) 01 white plastic bag
	A1B1) 02 clear tape bundles with black tape (containing brown granular substance)
	A1B2) 01 black tape bundle

Fig 1. Field Diary Entry marked 'P122'

42 These are serious allegations to make. I am unable to agree with Low's characterisation of the matter. On the face of the P122 Field Diary Entry, there is nothing so "strange and suspicious" (*contra* what Low alleges) as to suggest that it has subsequently been tampered with or does not accurately reflect the exhibits recovered in the search. Neither did Sgt Merabel's testimony in court suggest so.⁵⁴

43 In any case, it is unclear how far Low's allegations relating to the Disputed Sentence would support his case that the Fourth Drug Bundle was not in fact recovered from the PMD, as the Disputed Sentence "02 clear tape[d] bundles with black tape containing brown granular substance" does not refer to the Fourth Drug Bundle.

⁵⁴ NE 27072022 at p 56 ln 12 – 20.

44 Lastly, for completeness, I deal with Low’s contention that he had not acknowledged and signed the page of the P122 Field Diary Entry.⁵⁵ It is not required for an arrested person to acknowledge or sign the pages of the field diary, which are *internal* records of the CNB and meant to ensure reliability in the records kept by the officers. An analogous situation is the maintenance of pocket books and field diaries by police officers (see *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [145]). Section 19(2) of the CPC provides, in relation to police investigations under Part 4 of the CPC, that an accused is *not* entitled to call for or inspect the field diary of a police officer “before or during an inquiry, a trial or other proceeding under this Code [*ie*, the CPC]”. I find this to be instructive to the present case, as s 32(1) of the MDA provides that in any case relating to the commission of an offence under the MDA, “an officer of the Bureau [*ie*, the CNB] has all the powers of a police officer under the Criminal Procedure Code 2010 in relation to an investigation into a seizable offence.”

45 In light of the above, I accept that the P122 Field Diary Entry provides an accurate record of the exhibits that were recovered from the PMD. This also corroborates the arresting CNB officers’ accounts (at [33]–[34]) that the Fourth Drug Bundle had been recovered from the search of the PMD in Low’s presence at about 7.03am.

Sivaprakash’s account of the drug exhibits

46 Low also relies on Sivaprakash’s Contemporaneous Statement where he stated that the white plastic bag he had handed to Low contained *three*

⁵⁵ D1 CS at para 36.

packages.⁵⁶ Low says that the Prosecution did not challenge Sivaprakash when cross-examining him on this point, but merely confirmed that the relevant answers in his Contemporaneous Statement were correct.⁵⁷ Furthermore, Low claims that Sivaprakash maintained at trial that he had delivered the white plastic bag containing three packages to Low.⁵⁸

47 I do not find Sivaprakash's account of the drug exhibits to be helpful to Low. As Low himself acknowledges,⁵⁹ Sivaprakash's account of the matter vacillated. While he initially stated in his Contemporaneous Statement that there were three packages, he later took the position that there were four packages in the white plastic bag that he handed to Low. This was consistent across his Cautioned Statement,⁶⁰ his Second Long Statement,⁶¹ his Third Long Statement⁶² and his testimony at trial.⁶³

48 In Low's view, one possible explanation for Sivaprakash's inconsistent positions is that he had indeed transferred three packages of drugs from the black torn plastic bag but thought that he must have been mistaken when he saw four packets in the EMR, and therefore changed his position.⁶⁴ There is, in my view, no merit to this submission as Sivaprakash's Second Long Statement and

⁵⁶ D1 CS at para 29.

⁵⁷ D1 CS at para 31.

⁵⁸ D1 CS at para 31.

⁵⁹ D1 CS at para 30.

⁶⁰ AB at p 227, para 8.

⁶¹ D1 CS at para 30; AB at pp 259 – 260, para 19.

⁶² AB at p 279, para 35.

⁶³ NE 25082022 at p 30 ln 12 – 21.

⁶⁴ D1 CS at para 32.

Third Long Statement were recorded *after* the exhibit processing which took place at around 4.43pm on 30 May 2019. In Sivaprakash's Third Long Statement, he explained that he did not recall clearly at the time his Contemporaneous Statement was recorded whether there had been three or four packages inside the white plastic bag:⁶⁵

35. I am now told that in the statement I gave to the arresting officers on the day of my arrest, 30 May 2019, I told the officers that I gave one bag containing 3 packages to the Chinese man. I am asked if this were correct. *I told them there could have been 3 packages, I did not say that for sure there were 3.* I told the officers that there could have been 3 packages because I was just arrested and out of fear and confusion, I told them there were 3 packages. ***I can now recall clearly that when I opened up the torn black plastic bag at the bus stop after clearing Tuas checkpoint on 30 May 2019, there were 4 packages, 2 big 2 small.*** However, I would like to add now that "Joe" did tell me that there were 3 packages in the black plastic bag.

[emphasis added]

49 It is not Sivaprakash's case that he had taken any of the Drug Bundles out of the white plastic bag before handing it to Low. On the contrary, he confirmed at trial that he had transferred all *four* Drug Bundles from a torn black plastic bag to the white plastic bag, which he subsequently handed over to Low:⁶⁶

Q: Right, so just by looking at the photos, you managed to identify that there were *a total of four items* which you transferred from the torn black plastic bag to the white plastic bag A1B, right?

A: Yes, Your Honour.

[emphasis added]

⁶⁵ AB at p 279 para 35.

⁶⁶ NE 25082022 at p 30 ln 2 – 5.

50 Low did not challenge Sivaprakash's evidence in cross-examination.⁶⁷

51 It is thus clear that Sivaprakash's evidence, which he maintained at trial, is that he had delivered *four* packages in the white plastic bag to Low. The veracity of this is further corroborated by the fact that Sivaprakash's DNA was found on the packaging of all four Drug Bundles.⁶⁸

52 In Sivaprakash's written submissions on this issue, he adopts Low's position (at [46]). I find this to be an afterthought. Sivaprakash took this position after hearing the testimonies of Low and "the CNB officers involved regarding the chain of custody".⁶⁹ His explanation is that he was not present when the drugs were seized and thus could not say anything in respect of the evidence.⁷⁰ However, I do not find this convincing as he had seen the Drug Bundles during exhibit processing at the EMR and had been asked about the white plastic bag and its contents in the course of recording his investigative statements. For instance, Sivaprakash was shown a photograph of the exhibits 'A1A', 'A1A1' and 'A1A1A' in the course of recording his Second Long Statement on 3 June 2019. I reproduce a copy of this photograph below:

⁶⁷ PRS at para 11(c).

⁶⁸ PRS at para 11(c); ASOF at para 47.

⁶⁹ D2 CS at para 29(b).

⁷⁰ D2 CS at para 29(a).



Fig 2. Photograph of exhibits 'A1A', 'A1A1' and 'A1A1A'

53 When asked whether he recognised the exhibit marked 'A1A' in the above photograph, which is the packaging that contained the Fourth Drug Bundle, Sivaprakash replied:⁷¹

... I have seen the item marked as A1A in Photo 10 before my arrest, at the bus stop after clearing Tuas Checkpoint. *It was already like that and it was in a torn black plastic bag when I took it. There should be 2 of this.* I put this in a white plastic bag after I took it out from the torn black plastic bag. ...

[emphasis added]

54 The "2 of this" in the above statement refer to exhibits 'A1A' and 'A1B3', which were identical in their packaging (*ie*, black taped packaging).

⁷¹ AB at p 259 – 260, para 19.

55 Clearly, there was more than ample opportunity for Sivaprakash to raise this objection earlier if he had truly doubted the identity of the Fourth Drug Bundle seized from the PMD. His belated *volte-face* lends no credence to either Low's or his own submissions on the issue.

Photograph of the white plastic bag and its contents

56 Low relies on a photograph of the white plastic bag and its contents photographed at the Unit (the “**Photograph**”)⁷² that depicts only *three* packets of drugs. For clarity, I reproduce a copy of the Photograph below:



Fig 3. Photograph used in the course of recording Low's Contemporaneous Statement

⁷² AB at p 109.

57 The Photograph was used by SI Sunny in the course of recording Low's Contemporaneous Statement at about 8.01am on 30 May 2019. SI Sunny also did not question Low about the Fourth Drug Bundle when he was taking Low's Contemporaneous Statement.⁷³ According to Low, these support his case that the Fourth Drug Bundle was not recovered from the PMD.

58 The omission of the Fourth Drug Bundle from the Photograph *and* from the questions in Low's Contemporaneous Statement does, at first blush, give room to pause. At trial, Insp Jason himself accepted that all the exhibits that were recovered at the Unit should have been laid out and photographed.⁷⁴ In fact, he testified that "I think that would be one more photo which is showing the black tape[d] bundle labelled as A1A *which is not in the photograph*" [emphasis added].⁷⁵ SI Sunny and Insp Jason were both unable to recall which CNB officer in the party (at [4]) took the Photograph.⁷⁶ SI Sunny testified in court that he had used his phone to show Low the Photograph in the course of taking Low's Contemporaneous Statement. However, he had only wanted to show Low the picture of the white plastic bag and had "cover[ed] up A1B2 and A1B1" (*ie*, the bottom half of the Photograph shown at [56] above), when showing Low the Photograph.⁷⁷ He explained his reason for so doing:⁷⁸

Q: Okay. So you would agree that when you ask questions to an accused person in preparing the contemporaneous statements for drug trafficking offences, you will be

⁷³ D1 CS at paras 26 – 28.

⁷⁴ NE 26072022 at p 97, ln 14 – 17.

⁷⁵ NE 26072022 at p 97, ln 8 – 9.

⁷⁶ NE 27072022 at p 36, ln 21 – 27 (SI Sunny); NE 26072022 at p 96, ln 21 – 25 (Insp Jason).

⁷⁷ NE 27072022 at p 38 ln 18 – 22.

⁷⁸ NE 27072022 at p 37 ln 7 – 18.

asking questions about all the drugs seized in the accused's possession, yes?

A: Yes, Your Honour. But during this case, when I ask the question, he mentioned that he did not know what is inside the white plastic bag. *So while record---I---when I record the statement, I---I did not think that he is a trafficker. So I did not question about the drugs, Your Honour.*

Q: Okay. So, thank you. In your mind at that time, and based on your investigations---sorry, rephrase. So in your mind at that time, you did not think Mr Low was a trafficker.

A: It's not I---I should not have prejudiced that he's a trafficker, Your Honour.

[emphasis added]

59 This may have been SI Sunny's explanation. I do not find this explanation to be entirely satisfactory. SI Sunny had asked Low about other exhibits recovered from the Unit, such as a cigarette box.⁷⁹ He conceded at trial that if there was "anything else that was suspected of being drugs" which had been recovered from the PMD, he would have questioned Low about it in the latter's Contemporaneous Statement.⁸⁰ The Fourth Drug Bundle should thus have been photographed together with the other drug exhibits recovered from the PMD, or at the very least, asked about in the course of recording Low's Contemporaneous Statement. This follows from my finding (see [34]–[38] above) that the Fourth Drug Bundle was recovered *alongside* the white plastic bag from the search of the PMD in the Unit. Insp Jason testified that it was suspected to contain drugs.⁸¹ Neither he nor SI Sunny was able to provide a satisfactory explanation for its omission from the Photograph.

⁷⁹ D1 CS at para 27; AB at p 107, Q/A 18.

⁸⁰ NE 27072022 at p 37 ln 24 – 26.

⁸¹ AB at p 94, para 8; NE 26072022 at p 91 ln 4 – 8 (Insp Jason).

60 But the important question remains whether this is sufficient to raise a *reasonable doubt* as to the identity of the Fourth Drug Bundle. I find that it is not. In *Mohamed Affandi*, the Court of Appeal affirmed (at [41]) that the need to call witnesses to testify to each step in the chain of custody only arises where a doubt as to the identity of an exhibit has arisen. Whether such a doubt exists must be judged in light of all the surrounding circumstances: *Satli bin Masot v Public Prosecutor* [1999] 1 SLR(R) 931 at [16]. The mere fact that questions may remain unanswered does not necessarily mean that a reasonable doubt in the Prosecution's case has arisen: *Public Prosecutor v Yen May Woen* [2003] SGHC 60 at [60].

61 The testimonies from the arresting CNB officers (at [33]–[38]) relating to the search of the PMD were convincing and corroborated by the P122 Field Diary Entry. In addition, Low's DNA was found on the adhesive sides of the taped packaging of the Fourth Drug Bundle (which I deal with below at [68]–[69]). In light of this, the omission of the Fourth Drug Bundle from the Photograph and from Low's Contemporaneous Statement was perhaps a lapse, but insufficient to raise a *reasonable doubt* that the Fourth Drug Bundle had not been seized from the PMD.

Sealing of the case exhibits in tamper-proof bags for exhibit handling and processing

62 Low contends that the exhibits from another case may have been mistaken for the Fourth Drug Bundle.⁸² He premises this on the assertion that the case exhibits were not properly sealed in tamper-proof bags *prior to* being

⁸² D1 CS at para 63.

brought into the EMR for exhibit processing,⁸³ contrary to what was recalled by the CNB officers. Low claims to have seen that the white plastic bag (*ie*, exhibit ‘A1B’) was brought into the EMR with the Drug Bundles still inside it; the Drug Bundles were then taken out of the plastic bag and laid out on brown paper in the EMR.⁸⁴ Sivaprakash likewise asserts the same⁸⁵ and urges the court to accord little weight to the evidence of the CNB officers involved in the chain of custody. In Sivaprakash’s view, their respective conditioned statements are “almost identical without them having personal knowledge of the fact as required in law for the evidence to be credible”.⁸⁶

63 In my view, however, there is no reason to disbelieve the accounts of the CNB officers involved in the chain of custody, who consistently maintained in their conditioned statements and at trial that the Drug Bundles had been properly sealed in tamper-proof bags.⁸⁷ I set out in chronological order the sequence of events as follows, beginning with the handling of the Drug Bundles from the point of seizure:

- (a) Insp Jason, who carried out the search of the PMD (at [33]), gave evidence in his conditioned statement on the handling of the case exhibits (which included the Drug Bundles) after they had been seized from the PMD. Insp Jason stated that SI Sunny had assisted in putting the case exhibits into individual tamper-proof bags and sealing them. SI

⁸³ D1 CS at para 60.

⁸⁴ D1 CS at para 64; NE 16082022 at p 42 ln 13 – 17.

⁸⁵ D2 Reply at para 36.

⁸⁶ D2 CS at para 29(c).

⁸⁷ See, for example, the evidence of SI Huang: NE 03082022 p 13 ln 26 – 28.

Sunny had worn a fresh pair of gloves to do so.⁸⁸ When cross-examined on this, SI Sunny testified:⁸⁹

Q: ... Can you describe the search process?

A: Jason, myself and---wore a fresh pair of glove. Then I'm the assistant in the---the packing of the exhibit. So I will lay down the brown paper, Jason will retrieve---search and retrieve the exhibit and he will place on the brown paper. Then after that, I would write down the markings based on what Jason told me and another officer would take a photo of the brown paper with the exhibit being on top with the marking, Your Honour. After that, then I will pack the individual exhibit *into tamper-proof bag*, Your Honour.

[emphasis added]

(b) The sealed exhibits were then handed over by SI Sunny to Insp Jason, who testified that he placed them all into a duffel bag.⁹⁰

(c) Thereafter, Insp Jason returned to CNB Headquarters at about 9.50am with the case exhibits stored in the manner described above at [63(b)]. He stated in his conditioned statement that he locked the case exhibits in a cupboard and then attended to his other duties.⁹¹ At trial, he testified that this was a cupboard in his office with a key that was only held by him.⁹²

⁸⁸ AB at p 95.

⁸⁹ NE 27072022 at p 31 ln 31 – p 32 ln 7.

⁹⁰ NE 26072022 at p 102 ln 1 – 2.

⁹¹ AB at p 95.

⁹² NE 26072022 at p 102 ln 19 – 26.

(d) At about 2.05pm, Insp Jason took the case exhibits out of the cupboard in his office and handed them over to Sgt Nasrulhaq.⁹³ Sgt Nasrulhaq confirmed in his conditioned statement that he had “custody” of the case exhibits from about 2.05pm to about 4.43pm, which was when the processing of the exhibits in the EMR commenced. During cross-examination, he clarified that “custody” meant that the case exhibits were kept in a locked metal cabinet in his office, which was meant solely for case exhibits.⁹⁴

(e) Sgt Nasrulhaq gave evidence in his conditioned statement that at or about 4.38pm, he handed over the case exhibits to IO Weili at the EMR.⁹⁵ Under cross-examination, Sgt Nasrulhaq clarified that he had been standing outside the EMR and, whenever IO Weili called for a specific case exhibit, he then handed that exhibit *in the tamper-proof bag* to IO Weili.⁹⁶ In this manner, all the case exhibits were handed over, one by one, to IO Weili for the exhibit processing which took place inside the EMR.⁹⁷ Sgt Nasrulhaq also explained that there had been markings on the exterior of each tamper-proof bag, to identify the respective case exhibits.⁹⁸

(f) IO Weili gave evidence in his conditioned statement that at about 4.43pm, in the view of Low and Sivaprakash, the processing of the case

⁹³ AB at p 95.

⁹⁴ NE 27072022 at pp 25 to 27.

⁹⁵ AB at p 205.

⁹⁶ NE 27072022 at p 23 ln 13 – 20.

⁹⁷ NE 27072022 at p 26 ln 18 – 22.

⁹⁸ NE 27072022 at p 26 ln 23 – 25.

exhibits in the EMR commenced. This included the photography of the case exhibits, the swabbing of 12 exhibits and the weighing of the Drug Bundles (which were recorded in IO Weili’s Investigation Diary and signed by Low and Sivaprakash).⁹⁹ At trial, IO Weili clarified that the Drug Bundles were weighed “with the tamper-proof bag”.¹⁰⁰ Home Team Specialist (“HTS”) Muhamad Nizam Bin Abudol Rahmin (“**HTS Nizam**”), who assisted in the exhibit processing, testified at trial that he had received the case exhibits in the EMR in tamper-proof bags, although he admitted that he could not remember whether it was “a group of exhibits in the bag [*ie*, in one tamper-proof bag] or ... individual exhibits in individual bags”.¹⁰¹ Nonetheless, it is clear from the evidence of Insp Jason, SI Sunny and Sgt Narulhaq (above at [63(a)] and [63(e)] that the case exhibits were *individually* sealed in separate tamper-proof bags.

(g) IO Weili stated in his conditioned statement that after the processing of each case exhibit, they were again sealed in tamper-proof bags and remained in his custody.¹⁰² HTS Nizam and HTS Woong Si Xuan (“**HTS Woong**”) assisted in packing each exhibit into a tamper-proof bag.¹⁰³ During cross-examination, HTS Nizam testified that “the case exhibits after swab or photograph was placed inside the tamper-proof bag ... [a]nd thereafter, the tamper-proof bag will be handed over

⁹⁹ AB at p 207.

¹⁰⁰ NE 11082022 at p 5 ln 19 – 21.

¹⁰¹ NE 27072022 at p 11 ln 10 – 22.

¹⁰² AB at p 207.

¹⁰³ AB at p 5.

to the IO for him to check and seal.¹⁰⁴ This was corroborated by HTS Woong's testimony that the case exhibits had been individually sealed in tamper-proof bags.¹⁰⁵ HTS Woong also clarified that this was based on his recollection of the case, and not from mere conjecture of the CNB's usual practice.¹⁰⁶

(h) On 31 May 2019 at about 10.40am, IO Weili handed over custody of the case exhibits to SSgt Rafi.¹⁰⁷ SSgt Rafi confirmed in his conditioned statement that the case exhibits had been sealed in tamper-proof bags and were then kept in a locked cupboard.¹⁰⁸ Under cross-examination, he explained:¹⁰⁹

Q: What does that mean? How do you take over custody of the case exhibits?

A: Okay. It's a process where there is a list of exhibits form. This form will have all the details, the date, time, report number, the reference number, I---the IP---investigation number, the EMT number, the exhibit marking, the exhibit description, the IO's instruction to where each and every exhibit should go, be it go to the labs, to the store for safe-keep or to the FIT IO or---so the instruction would also be there. And for those that are kept in tamper-proof bags, the serial number will also be there. So this form is quite complete. Using this form, I will tally all the details with the physical exhibits that I take over. *If everything matches and everything is correct and the tamper-proof bag is all sealed, the paper bags are all sealed, I will take custody, I will*

¹⁰⁴ NE 27072022 at p 7 ln 10 – 13.

¹⁰⁵ NE 28072022 at p 13 ln 1 – 6.

¹⁰⁶ NE 28072022 at p 16.

¹⁰⁷ AB at pp 208 – 209.

¹⁰⁸ AB at p 18.

¹⁰⁹ NE 28072022 at p 43.

stamp and sign on this form and the exhibits are in my custody from that point of time.

[emphasis added]

(i) SSgt Rafi further explained that this locked cupboard was located inside the office of the CNB’s Exhibit Management Team (“EMT”)¹¹⁰ and was used by the EMT for storing exhibits. He was the only person with access (by key) to this locked cupboard on 31 May 2019 as he was the Duty Officer for that day.¹¹¹

64 The evidence of the CNB officers was thus clear and not shaken in cross-examination. It accounted for the movement of the case exhibits, in particular the Drug Bundles, and satisfied me that the case exhibits had been properly sealed in tamper-proof bags.

65 Low relies on Assistant Investigation Officer SI Huang’s testimony that not all exhibits would be placed in tamper-proof bags as some could be placed in Ziplock bags, wrapped in brown paper or left as is.¹¹² This must, however, be understood in context. SI Huang explained that “as long as small items are involved, *definitely* they will be in a CNB polymer bag” [emphasis added]¹¹³ and confirmed that the Drug Bundles had been brought into the EMR in such tamper-proof bags (which he alternatively referred to as “CNB polymer bag”).¹¹⁴

¹¹⁰ NE 28072022 at p 43 ln 5.

¹¹¹ NE 28072022 at p 42.

¹¹² NE 03082022 at p 11 ln 7 – 9; NE 03082022 at p 12 ln 13 – 14, 20; D1 CS at para 65.

¹¹³ NE 03082022 at p 12 ln 16 – 21.

¹¹⁴ NE 03082022 at p 11 ln 21 – 23.

Only larger items or those with spillage or flammable gas would be placed in a Ziplock bag or wrapped in brown paper.¹¹⁵

66 Another plank of Low’s argument of a mistaken exhibit rested on his understanding of the evidence of SSgt Rafi, who was the Duty Officer in charge of the locked cupboard in the EMT office where the Drug Bundles were kept on 31 May 2019 (see [63(i)] above). SSgt Rafi testified that the exhibits from other cases “might” have been kept in the same cupboard where the Drug Bundles were placed, although he also stated that they would have been “kept in another shelf”.¹¹⁶ In my view, more important was the fact that the case exhibits had been properly sealed in tamper-proof bags for exhibit handling and processing (above at [63]).

67 Furthermore, none of these allegations as to a mistaken exhibit were ever put to any of the CNB officers (above at [63]) involved in the chain of custody of the Drug Bundles, at trial.¹¹⁷ Such allegations are the belated attempt by Low and Sivaprakash to attack the identity of the exhibits seized from the PMD and do not convince me that there exists a *reasonable doubt* as to the possibility that the Fourth Drug Bundle is a mistaken exhibit.

Low’s DNA on the adhesive sides of the taped packaging containing the Fourth Drug Bundle

68 It is undisputed that Low’s DNA was found on the adhesive sides of the taped packaging marked ‘A1A’ which contained the Fourth Drug Bundle. The

¹¹⁵ NE 03082022 at p 11 ln 7 – p 12 ln 3.

¹¹⁶ NE 28072022 at p 43 ln 8.

¹¹⁷ PRS at para 11(a).

Prosecution submits that this is objective evidence suggesting that Low had reached into the white plastic bag containing the Drug Bundles after Sivaprakash had handed the bag to him, and had come into contact with the Fourth Drug Bundle.¹¹⁸ On the other hand, Low says that there is a possibility that his DNA had been transferred onto the surface of ‘A1A’ when the latter exhibit came into contact with *another* item containing his DNA.¹¹⁹ Again, this defence is premised on Low’s assertion that the case exhibits were not properly sealed in tamper-proof bags prior to exhibit processing and thus transference could have happened when the case exhibits were being brought into the EMR.¹²⁰

69 It is trite that speculative arguments about the mere *possibility* of contamination are insufficient to raise a reasonable doubt as to the chain of custody: *Public Prosecutor v Chen Mingjian* [2009] 4 SLR(R) 946 at [4]; *Mohamed Affandi* at [41]. As I have found above (at [63]) that the Drug Bundles were properly sealed in tamper-proof bags prior to being brought into the EMR, it follows that Low’s argument of the possibility of transference is more apparent than real and not grounded in the factual matrix before the court. What is more probable, which I accept, is that Low had reached into the white plastic bag and had come into contact with the adhesive sides of the taped packaging which contained the Fourth Drug Bundle.

70 The presence of Low’s DNA on the adhesive sides of the taped packaging of the Fourth Drug Bundle further corroborates my conclusion

¹¹⁸ PRS at para 11(b).

¹¹⁹ D1 CS at para 72.

¹²⁰ D1 CS at para 72.

(above at [33]–[38]) that the Fourth Drug Bundle was in fact recovered from the PMD.

Other alleged inconsistencies in the record keeping and CNB officers' accounts

71 I address the various other allegations raised by Low and Sivaprakash regarding the record keeping and purportedly inconsistent accounts of the CNB officers involved in the chain of custody. They argue that these alleged discrepancies evince the overall unreliability of the evidence from the CNB officers involved in the arrest and the chain of custody.¹²¹ In my view, however, these allegations do not cast a *reasonable doubt* on the CNB officers' testimonies concerning the integrity of the chain of custody. I elaborate.

(1) The Red Bag labelled 'LSS-PP3'

72 Low argues that he had placed the white plastic bag containing the Drug Bundles *in a red bag* within the black 'Fiido Electric Scooter' bag attached to the PMD.¹²² This red bag was subsequently labelled 'LSS-PP3' (the "**Red Bag**") leading Low to submit that the CNB officers had not followed their own naming convention of the exhibits, since (according to Low) the Red Bag should have been marked exhibit 'A1B' and the white plastic bag containing the Drug Bundles marked exhibit 'A1B1' instead.¹²³

73 The issue of the Red Bag is nothing more than a red herring and an afterthought by Low to obfuscate the real issue in contention, namely, whether

¹²¹ D2 CS at para 13.

¹²² D1 CS at para 44.

¹²³ D1 CS at paras 44–45.

the Fourth Drug Bundle was recovered from the PMD. As the Prosecution submits, it was never put to Insp Jason (who conducted the search of the PMD) that the white plastic bag or any of the four Drug Bundles were retrieved from a red bag instead of the black ‘Fiido Electric Scooter’ bag.¹²⁴ Furthermore, Low’s allegation in respect of the Red Bag only surfaced in his final Fourth Long Statement recorded on 23 January 2020, about seven months after his arrest,¹²⁵ and he had volunteered this allegation without being prompted or asked about it.¹²⁶ In contrast, in his earlier First Long Statement and Second Long Statement, Low maintained that he had put the white plastic bag after receiving it from Sivaprakash “in the storage bag that comes together with my motorized bicycle”,¹²⁷ and identified this storage bag as the black ‘Fiido Electric Scooter’ bag.¹²⁸ In fact, in the course of recording his Second Long Statement, Low was shown a photograph of the Red Bag and when *specifically asked about it*, confirmed that the Red Bag “was used to contain the charger and the allen key”.¹²⁹

74 In any event, *regardless* of whether the white plastic bag containing the Drug Bundles was placed in the Red Bag or placed in the black ‘Fiido Electric Scooter’ bag directly, Low cannot dispute that the Red Bag was also recovered from the PMD and admitted as much that “these items [*ie*, including the Red Bag] were all placed inside the storage bag marked as A1”.¹³⁰

¹²⁴ PCS at para 60.

¹²⁵ PCS at para 62.

¹²⁶ PCS at para 62(a).

¹²⁷ AB at p 220, para 8.

¹²⁸ AB at pp 231 – 232, para 26.

¹²⁹ AB at p 235, para 37; PCS at para 62(b).

¹³⁰ AB at p 235, para 37.

(2) Alleged inconsistencies in the CNB officers' accounts

75 Low points to an alleged inconsistency in the evidence of the CNB officers involved in the chain of custody and submits that it points to a “systemic problem” in how CNB handled the exhibits.¹³¹ The inconsistency was as follows: On one hand, Staff Sergeant Goh Yang Lun (“**SSgt Marc**”) testified that the exhibits ‘A1A’, ‘A1A1’, ‘A1B1’, ‘A1B1A’, ‘A1B2’, ‘A1B2A’, ‘A1B3’ and ‘A1B3A’ (namely, the external wrappings of each of the respective Drug Bundles) were not in the locked cupboard in the EMT office at about 3pm when he retrieved the Drug Bundles.¹³² This was at about 3pm on 31 May 2019. On the other hand, SSgt Rafi maintained in his conditioned statement and at trial that, at about 4pm on the same day, he retrieved, *inter alia*, these exhibits from the same locked cupboard for despatch to the HSA.¹³³

76 I am unable to accept that this alleged inconsistency raised by Low is material. SSgt Rafi was the Duty Officer in charge of the locked cupboard in the EMT office on that day. But counsel for Low did not *put* this alleged inconsistency to SSgt Rafi or afford him any opportunity to address the court on the movement of the case exhibits at about 3pm. This is significant as SSgt Rafi had taken over custody of the case exhibits at about 10.40am and was the only officer with access to the locked cupboard where the case exhibits were kept.¹³⁴ He confirmed that the cupboard was locked with a key and that this key would have been kept with him at all times.¹³⁵ He thus would have knowledge

¹³¹ D1 CS at paras 46 – 51.

¹³² NE 11082022 at p 44 ln 1 – 4; D1 CS at para 49.

¹³³ AB at p 18 para 3; NE 28072022 at p 41 ln 17 – 24.

¹³⁴ NE 28072022 at p 42 ln 6 – 19.

¹³⁵ NE 28072022 at p 44 ln 1 – 2.

of the movement, if any, of the case exhibits before 3pm. Additionally, as the Prosecution points out, it is unsurprising that SSgt Marc did not see the other exhibits (above at [75]) as that did not fall within the scope of his task that day, which was *specifically* to despatch the Drug Bundles to HSA for analysis.¹³⁶

77 Sivaprakash likewise seeks to impugn the reliability of the evidence from several CNB officers, by showing that they were not relying on their own observations of facts but rather on statements made by some other officer and hence they were unable to verify the said fact personally.¹³⁷ First, Insp Jason testified that he witnessed Sivaprakash alighting from the Motorcycle when Sivaprakash and Low met at Sumang Walk. However, the video evidence does not show Sivaprakash alighting from the Motorcycle as such.¹³⁸ Second, Sivaprakash argues that in another instance, ASP Faizal could not satisfactorily account in cross-examination for why he did not know that Sivaprakash had parked the Motorcycle outside 21 Sungei Kadut Way and why he had to rely on the information of another unknown CNB officer's radio message on the same.¹³⁹

78 In my view, these discrepancies raised by Sivaprakash are not sufficiently *material* to the issue at hand, which is the disputed identity of the Fourth Drug Bundle. I also do not accept Sivaprakash's argument that these inconsistencies diminish the credibility of the relevant Prosecution witnesses,¹⁴⁰ taking into account the reality that a period of time has elapsed since the events

¹³⁶ PRS at para 8(c).

¹³⁷ D2 CS at para 13.

¹³⁸ D2 CS at para 14.

¹³⁹ D2 CS at para 15.

¹⁴⁰ D2 Reply at para 9.

of the arrest. What is more important is that the accounts of the CNB officers involved in the search of the PMD and the chain of custody of the drug exhibits have been corroborated by the objective evidence at hand (above at [33]–[45] and [68]–[70]).

79 Sivaprakash also relies on the contents of the Field Diary Entry marked ‘P121’ (the “**P121 Field Diary Entry**”), which records the events of his arrest on 30 May 2019. He says that two events are erroneously recorded to have taken place at the same time: (i) the service of notice of the mandatory death penalty on him (the “**MDP Notice**”) and (ii) the counting of the S\$9,000 cash seized from the Motorcycle.¹⁴¹ SSgt Janani, who was the diarist of the P121 Field Diary Entry, and ASP Faizal both testified that the serving of the MDP Notice would have ended *before* the commencement of the counting of the S\$9,000 cash.¹⁴² In court, SSgt Janani explained that she had obtained the timings of the MDP notice being served on Sivaprakash from SI Nabil and the timings of the counting of the S\$9,000 cash from her own watch.¹⁴³ The explanation of SI Nabil is that he only became aware many months after the day of the arrest that his watch had been running five minutes faster at the time he provided the timings for the P121 Field Diary Entry.¹⁴⁴ Sivaprakash submits that this is an unsatisfactory explanation and casts doubt on the reliability and honesty of SI Nabil’s testimony as a whole. This is also relevant to Sivaprakash’s allegation (below at [83]–[84]) that his Contemporaneous Statement was not recorded in the manner described by SI Nabil, who was the only other person present with

¹⁴¹ D2 CS at para 23.

¹⁴² NE 26072022 at p 54 ln 11 – 18 (ASP Faizal); NE 02082022 at p 36 ln 20 – 23 (SSgt Janani).

¹⁴³ NE 02082022 at p 36 ln 10 – 19.

¹⁴⁴ D2 CS at para 23.

Sivaprakash in the CNB vehicle at the time the Contemporaneous Statement was allegedly recorded.

80 I accept that the explanations given by SI Nabil and SSgt Janani provide a satisfactory account for the erroneous record of the timings on the face of the P121 Field Diary Entry. The serving of the MDP Notice on Sivaprakash was recorded to have been concluded at 7.50am, but since this timing was taken from SI Nabil's watch that had been running five minutes faster at the material time, it would in fact have concluded at 7.45am. This is prior to the commencement of the counting of the S\$9,000 cash, which was recorded to have commenced at about 7.47am (with the timing taken from SSgt Janani's own watch and hence unaffected by the error in SI Nabil's watch). There was thus no real inconsistency between the events recorded in the P121 Field Diary Entry and the testimony of ASP Faizal and SSgt Janani that the serving of the MDP Notice would have ended *before* the commencement of the counting of the S\$9,000 cash (at [79]).

(3) Lack of contemporaneous records at each point of movement of the case exhibits

81 Low alleges that there is a lack of contemporaneous records detailing the exact exhibits seized at each and every point of movement of the case exhibits.¹⁴⁵ He further submits that I should draw an adverse inference that there was a lapse in CNB's procedure, from this lack of documentary evidence.¹⁴⁶ According to Low, it is unsatisfactory that there was no record or inventory of all the case exhibits at the time when they were first brought back to CNB and

¹⁴⁵ D1 CS at paras 52 – 56.

¹⁴⁶ D1 CS at paras 57 – 59.

locked in the cupboard in Insp Jason's office,¹⁴⁷ and equally unsatisfactory that there was no record of the case exhibits stored in or removed from the locked cupboard in the EMT office after the exhibits were processed.¹⁴⁸ Low also submits that the information provided in the First and Second Police Reports cannot be relied on as an accurate record of the case exhibits as Sgt Fauzi (who prepared the First and Second Police Reports) had not personally witnessed the search of the Unit and admitted to amending the Second Police Report after instructions from his senior officer.¹⁴⁹

82 I do not accept that there has been a lack of records as asserted by Low as to establish a break in the chain of custody or even justify the drawing of an adverse inference pursuant to illustration (g) of s 116 of the Evidence Act 1893 (2020 Rev Ed). In *Mohamed Affandi*, the Court of Appeal stated that “the fact is that the keeping of proper records will obviate the need to adduce evidence or to prove this [*ie*, to prove each step in the chain of custody] in most cases and it is incumbent on the CNB officers to keep such records” (at [42]). In this case, I find that there was proper keeping of records from the point of seizure, namely, the P122 Field Diary Entry (above at [38]–[45]) and the respective conditioned statements of the CNB officers involved in the chain of custody (above at [63]). These were supplemented by the oral testimony of the CNB officers of how the case exhibits were seized and sealed in tamper-proof bags; and how the case exhibits were passed in this manner from one CNB officer to another until they ended up with IO Weili for exhibit processing at the EMR at about 4.43pm on

¹⁴⁷ D1 CS at paras 52 – 53.

¹⁴⁸ D1 CS at para 55.

¹⁴⁹ D1 CS at para 54.

30 May 2019 (above at [63]).¹⁵⁰ In the final analysis, Low’s challenge relating to the handling and processing of the case exhibits is without merit.

(4) Sivaprakash’s Contemporaneous Statement

83 Sivaprakash disputes that his Contemporaneous Statement was recorded in the manner described by SI Nabil. SI Nabil testified that he had recorded Sivaprakash’s Contemporaneous Statement at about 8.00am to 8.45am on 30 May 2019, inside a CNB operational vehicle (the “**CNB Vehicle**”).¹⁵¹ Only SI Nabil and Sivaprakash were present inside the CNB Vehicle.¹⁵² According to Sivaprakash, SI Nabil did not have any writing material with him inside the CNB Vehicle and thus could not have recorded the statement.¹⁵³ He also says that he had been handcuffed from his back at the relevant time and could not have signed anything in that position,¹⁵⁴ and that he had at best signed the Contemporaneous Statement very much later and not in the CNB Vehicle.¹⁵⁵ Furthermore, he alleges that there had been no explanation or interpretation of the contents of the said statement at any point in time.¹⁵⁶

84 Sivaprakash disputes the recording of his Contemporaneous Statement but does not dispute that the remaining five statements were voluntarily provided by him,¹⁵⁷ which I rely on in the course of my judgment (see [47]–[54],

¹⁵⁰ PCS at paras 13(c) – (j), 18.

¹⁵¹ AB at p 154, para 12.

¹⁵² NE 26072022 at p 52 ln 14 – 15.

¹⁵³ D2 CS at para 18.

¹⁵⁴ D2 CS at para 19.

¹⁵⁵ D2 CS at para 21.

¹⁵⁶ D2 CS at para 21.

¹⁵⁷ PCS at para 23.

[112]–[114] and [117]–[123]). Although I do not rely on the contents of Sivaprakash’s Contemporaneous Statement, nonetheless, I deal with the allegations raised by him (above at [83]) and reject them. SI Nabil testified that he had brought a pen and the field diary (which contained the P121 Field Diary Entry) into the CNB Vehicle to record Sivaprakash’s Contemporaneous Statement.¹⁵⁸ This account is corroborated by SSgt Janani, who testified that she had “passed the field diary to Nabil [*ie*, SI Nabil] for the recording of the oral statement”.¹⁵⁹ SI Nabil testified that at the end of the recording, he had read the Contemporaneous Statement to Sivaprakash “word by word”, and Sivaprakash “understood it and ... said that it is correct and ... confirmed that it is correct”.¹⁶⁰ He testified that while Sivaprakash had originally been handcuffed to his back, he then handcuffed Sivaprakash to the front so that Sivaprakash could sign the Contemporaneous Statement.¹⁶¹

85 SI Nabil’s account of the manner in which Sivaprakash’s Contemporaneous statement was recorded is broadly corroborated by the evidence of ASP Faizal, who confirmed that he had directed SI Nabil to commence the recording of Sivaprakash’s Contemporaneous Statement, as recorded in the P121 Field Diary Entry. ASP Faizal also testified that he had seen Sivaprakash’s Contemporaneous Statement “immediately” after SI Nabil had finished recording the statement and left the vehicle.¹⁶² Accordingly, I reject Sivaprakash’s allegation that he could not have recorded or signed his

¹⁵⁸ NE 03082022 at p 78 ln 12 – 17.

¹⁵⁹ NE 02082022 at p 57 ln 11 – 14.

¹⁶⁰ NE 03082022 at p 69 ln 9 – 13.

¹⁶¹ NE 03082022 at p 84 ln 23 – 31.

¹⁶² NE 26072022 at p 71 ln 18 – 23.

Contemporaneous Statement inside the CNB vehicle, or that there had been no explanation or interpretation of the contents of the said statement.

Conclusion on the Chain of Custody Sub-issue

86 In light of the above, I find that the integrity of the chain of custody of the drug exhibits seized from the PMD, in particular, the Fourth Drug Bundle, has not been compromised. Low and Sivaprakash have not raised a *reasonable doubt* that the Fourth Drug Bundle was not the same drug exhibit seized from the PMD on 30 May 2019. Low’s contention of the possibility that exhibits from another case were mistaken for the exhibits seized in this case is speculative and not borne out by the objective evidence at hand (above at [62]–[70]).

Conclusion on the Possession Issues

87 As I have found that the Drug Bundles were the *same* drug exhibits which were seized and recovered from the white plastic bag in the PMD on 30 May 2019, by virtue of s 18(1)(a) of the MDA, it follows that the presumption of possession applies to both Sivaprakash and Low for the reasons set out above at [23] and [24] and has *not* been rebutted.

88 For completeness, I also address Sivaprakash’s alternative argument that he was in possession of “paan parak” and not the Drug Bundles. It follows from my conclusion (at [86]) that there is no reasonable doubt on the chain of custody of the Drug Bundles, that there is little merit in Sivaprakash’s submission that he was in possession of “paan parak”. Even *if* Sivaprakash believed that he was delivering “paan parak” and not the controlled drugs (a contention which I reject, for the reasons set out below at [106]–[124]), that does not change the *fact* of his possession of the Drug Bundles.

Whether Low has successfully rebutted the presumption of knowledge in s 18(2) of the MDA

89 I turn now to discuss the respective defences of Low and Sivaprakash that they had no knowledge of the nature of the drugs.

The applicable law

90 To be clear, the Prosecution relies on the presumption of knowledge under s 18(2) of the MDA and the burden is on the accused *to rebut* this presumption by proving, on a balance of probabilities, that he did not know or could not reasonably be expected to have known the nature of the controlled drug referred to in the charge: *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 (“**Dinesh Pillai**”) at [18]. Counsel for Low erroneously submits that “[t]he Prosecution must show that Low knew of the existence of the drugs at the time he received it, *ie*, actual knowledge *simpliciter*, or he must have been willfully blind to the drugs”.¹⁶³ This is not the applicable law when the presumption of knowledge under s 18(2) of the MDA is relied upon.

91 In *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 (“**Zainal**”), the Court of Appeal summarised the proper analytical approach to be adopted when considering whether the accused has rebutted the presumption of knowledge under s 18(2) of the MDA (at [23]):

We turn briefly to the second argument that Mr Fernando raised, namely, that on the facts Zainal had rebutted the presumption under s 18(2) of the MDA that he knew the nature of the drugs. The proper analytical approach to be adopted when considering this was laid down by us in *Obeng Comfort v PP* [2017] 1 SLR 633 at [39]–[40] as supplemented by our

¹⁶³ D1 CS at para 80.

observations in *Harven* ([13] *supra*) at [2] and can be summarised as follows:

- (a) The presumption of knowledge under s 18(2) of the MDA applies where the accused is “proved or presumed to have had a controlled drug in his possession”, that is to say, by proving the fact of possession or by relying on the presumption of possession under s 18(1) of the MDA, assuming this has not been rebutted. Where the presumption of knowledge applies, the accused is presumed to know the nature of the drug.
- (b) The accused bears the burden of rebutting the presumption of knowledge on a balance of probabilities. As a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, and a claim that he simply did not know what he was carrying would not usually suffice.
- (c) Once the accused has stated what he thought he was carrying, the court would then assess the veracity of the accused’s assertion against the objective facts to determine whether the accused’s account should be believed.
- (d) However, because of the inherent difficulties of proving a negative, the burden on the accused should not be made so onerous that it becomes virtually impossible to discharge.

92 For the reasons set out below, I am satisfied that Low has *not* rebutted the presumption of knowledge in s 18(2) of the MDA on a balance of probabilities, keeping in mind the Court of Appeal’s statement that the burden on the accused should not be made so onerous that it becomes virtually impossible to discharge (*Zainal* at [23(d)]).

Low’s claim that he had no knowledge of the contents of the white plastic bag

93 I start by dealing with Low’s claim that he had no knowledge of what the white plastic bag contained. A key plank of this defence is based on Low’s repeated assertions, at trial and in his statements, that he *did not check the*

contents of the white plastic bag. In addition, he claims that it was dark at the time he collected the bag from Sivaprakash and that the bag was tied up.¹⁶⁴

94 The objective evidence before me, however, gives reason to doubt Low's claim. The assertion that Low did not check the contents of the white plastic bag is at odds with the undisputed evidence that Low's DNA was found on the *interior* of the white plastic bag containing the Drug Bundles.¹⁶⁵ While I accept the testimony of the HSA analyst, Wong Hang Yee, that the DNA analysis "[would not] be able to tell the exact position on where it [*ie*, the interior of the white plastic bag] has been touched", it nonetheless gives me reason to doubt Low's repeated assertions that he had not checked the contents of the white plastic bag and had no knowledge of what it contained.

95 I also find that the white plastic bag was *untied* at the time Low received it from Sivaprakash. Sivaprakash consistently maintained in his statements and at trial that the white plastic bag was untied when he handed it to Low.¹⁶⁶ Insp Jason, who carried out the search of the PMD at about 7.03am in the Unit (above at [33]), maintained in both his conditioned statement and his testimony at trial¹⁶⁷ that the white plastic bag was untied at the time it was recovered from the PMD. Thus, even assuming (which I do not) that the bag was tied at the time Sivaprakash handed it to Low, it would have been the case that Low had untied the white plastic bag at some point in time when it was in his possession, and

¹⁶⁴ D1 CS at paras 73, 84 – 85.

¹⁶⁵ PCS at para 66; AB at p 41.

¹⁶⁶ NE 25082022 at p 33 ln 4 – 9.

¹⁶⁷ AB at p 94, para 8; NE 26072022 at p 80 ln 5 – 11 (Insp Jason).

this is corroborated by the evidence of Low’s DNA found on the interior of the white plastic bag (as above at [94]).¹⁶⁸

Low’s claim that he could not reasonably be expected to have known the nature of the drugs

96 Low also argues that the circumstances were not so highly suspicious that he should have enquired into the contents of the white plastic bag.¹⁶⁹ He relies on this to rebut the presumption of knowledge under s 18(2) of the MDA. For the reasons set out below (at [97]–[102]), I do not accept Low’s assertions that he *could not reasonably be expected to have known* the nature of the drugs in the white plastic bag he received from Sivaprakash (*Dinesh Pillai* at [18]). Accordingly, I find that Low has failed to rebut the presumption in s 18(2) of the MDA on a balance of probabilities.

97 The sum of S\$9,000 involved as well as the clandestine nature of the ‘job’ that Low was asked to perform, taken together with the payment of S\$500 that he received, would have put Low on notice. Low claims to have met his friend, one “Liu Lian Kia” (“**Liu**”), at a coffeeshop near his home and asked Liu whether there was any job he could recommend to Low. The following day, Liu telephoned Low and asked to meet. At the meeting, Liu told Low to pay attention to the telephone number which he had used, because someone would be contacting Low on the same number and Low was to follow the instructions of the person who called.¹⁷⁰ Liu also passed Low a bag containing S\$9,000 in cash. Subsequently, on 30 May 2019, a Malaysian who identified himself as

¹⁶⁸ AB at p 41.

¹⁶⁹ D1 CS at para 91.

¹⁷⁰ D1 CS at para 5.

“Ah Boy” (“**Ah Boy**”) contacted Low using that telephone number and instructed him to hand over the S\$9,000 to a man wearing a red helmet (who later turned out to be Sivaprakash) at the bus stop near Low’s block,¹⁷¹ in exchange for the plastic bag and its contents.

98 Low says that the sum of S\$9,000 was not such a large sum of money in light of his “checkered past with crimes” and the history of odd jobs he had previously taken on, as to put him on notice.¹⁷² He has had a history with crimes involving armed robbery, association with secret societies, gambling, jumping bail and credit card fraud.¹⁷³ To his mind, he claims, the S\$9,000 “could have been for a variety of purposes” and he had never dealt in or been involved with drugs despite his long association with the criminal world.¹⁷⁴ Furthermore, he had been warned by the chief of the mafia group to which he belonged, that if any member was involved in drug consumption, they would be kicked out.¹⁷⁵ However, the fact remains that S\$9,000 is a substantial sum of money and would naturally have raised questions in the mind of any reasonable person of the nature of the ‘job’ that Low was undertaking and, more importantly, the contents of the white plastic bag.

99 Low asserted at trial that the payment of S\$500 that he received from Liu for performing the ‘job’ was merely a loan and not payment.¹⁷⁶ I do not accept this assertion as Low had consistently referred to the S\$500 as payment

¹⁷¹ D1 CS at para 6.

¹⁷² D1 CS at para 91.

¹⁷³ D1 CS at para 91.

¹⁷⁴ D1 CS at paras 92–93.

¹⁷⁵ D1 CS at para 82; NE 16082022 at p 23 ln 19 – 23.

¹⁷⁶ PCS at para 74(a); NE 16082022 at p 27 ln 1 – 2.

for making the delivery in his investigative statements, namely, in his Cautioned Statement and his First Long Statement.¹⁷⁷ He also conceded under cross-examination that Liu never told him that the money was a loan or that he had to return the money.¹⁷⁸ I find that the sum of S\$500 would have been significant to Low at that point in time as, by his own admission, he was unemployed and was in financial need two days before his arrest – he only had S\$600 on hand, which was insufficient to pay both his rent and gamble.¹⁷⁹ Furthermore, this sum of S\$500 was offered to Low as payment for a relatively simple task, namely, to deliver a single item on a specific day.

100 By Low’s own admission, he claims not to have asked “Ah Boy” about what items he was supposed to receive *because he did not apply his mind to it*.¹⁸⁰ This is insufficient because an accused person who simply does not bother or does not want to know what drugs or even what goods he is going to carry will not be able to rebut the presumption of knowledge under s 18(2) of the MDA: *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 at [35]; *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi (2021)*”) at [67] and [68]. In *Gobi (2021)*, the Court of Appeal affirmed that this is because of the need to give full purposive effect to the policy underlying the MDA, which is to stem the threat that drug trafficking poses (citing *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR 1 at [23]–[28]).

¹⁷⁷ PCS at para 74(a); AB at p 218, p 223, para 19 and pp 235 – 236.

¹⁷⁸ PCS at para 74(b); NE 17082022 at p 22 ln 13 – 17.

¹⁷⁹ PCS at para 68; D1 CS at para 3; NE 16082022 at p 26 ln 17 – 24.

¹⁸⁰ PCS at para 69(a); NE 17082022 at p 28 ln 11 – 15.

101 Further, Low expects the court *to believe* that he had complied with odd instructions *from a stranger* without knowing what exactly the job entailed. On the contrary, there is evidence that suggests that Low would have been keenly aware of the cost-benefit analysis involved before accepting any instructions that could implicate him in a crime. Low himself testified that in the previous robberies he committed, he would ascertain what the intended spoils of and his role in the robbery would be *before* committing it, even when the partner-in-crime was his friend.¹⁸¹

102 My conclusion is further buttressed by the fact that Low received the white plastic bag from Sivaprakash without asking him what it contained. I find this to be indicative of the furtive nature of the exchange between Low and Sivaprakash.¹⁸² Yet, Low was able to confirm with “Ah Boy” that he had received the items that he was meant to collect. Low recalled that “Ah Boy” had called him right after the transaction to ask if Low had received “the things”, and Low replied that he had.¹⁸³ By the reference to “the things”, Low claimed to have known that “Ah Boy” was referring to the contents of the white plastic bag, although he did not know what it contained.¹⁸⁴ In my view, there is reason for doubt as there is no evidence that “Ah Boy” had mentioned a white plastic bag in his instructions to Low over the telephone call.

103 In light of the above, I do not accept Low’s assertions that he *could not reasonably be expected to have known* the nature of the drugs in the white plastic

¹⁸¹ PCS at para 69; NE 16082022 at p 12 ln 26 – p 14 ln 5.

¹⁸² PCS at para 69(b); NE 17082022 at p 33 ln 9 – 10.

¹⁸³ PCS at para 70; NE 16082022 at p 28 ln 17 – 19; NE 17082022 at p 35 ln 13 – 23.

¹⁸⁴ PCS at para 70; NE 17082022 at p 35 ln 24 – 29.

bag he received from Sivaprakash (*Dinesh Pillai* at [18]). Low has therefore not successfully rebutted the presumption of knowledge under s 18(2) of the MDA. I reiterate that the authorities cited by Low’s counsel on wilful blindness are not helpful since, as I have explained above at [90], the Prosecution is relying on the presumption of knowledge under s 18(2) of the MDA and *not* that it will prove wilful blindness beyond a reasonable doubt. Additionally, regardless of SI Sunny’s statement that he did not think Low to be a drug trafficker *at the point in time of recording the latter’s Contemporaneous Statement*,¹⁸⁵ the question before me is whether the evidence discloses that the elements of a charge under s 5(1)(a) read with s 5(2) of the MDA are satisfied, and not whether the arresting CNB officer thought so at the point of arrest.

Whether Sivaprakash has successfully rebutted the presumption of knowledge in s 18(2) of the MDA

104 The Prosecution similarly relies on the presumption of knowledge under s 18(2) of the MDA in relation to Sivaprakash. Sivaprakash’s defence rests on his claim that he did not know the nature of the drugs as he believed that he was delivering “paan parak”,¹⁸⁶ which he also equated to be a form of betel nuts,¹⁸⁷ to rebut the presumption under s 18(2) of the MDA.

105 The abovementioned principles at [91] are apposite. The burden is on Sivaprakash *to rebut* the presumption under s 18(2) of the MDA by proving, on a balance of probabilities, that he did not know or could not reasonably be expected to have known the nature of the controlled drug referred to in the

¹⁸⁵ D1 CS at para 94.

¹⁸⁶ D2 CS at para 29(d).

¹⁸⁷ NE 23082022 at p 55 ln 19 – 24.

charge: *Dinesh Pillai* at [18]. I find Sivaprakash's claim to have believed that he was delivering "paan parak" to be more fanciful than real and contradicted by the objective evidence before the court. I explain.

The nature of Sivaprakash's relationship with "Joe"

106 Sivaprakash says that "Joe" requested for help from him in collecting and delivering "paan parak". Sivaprakash was, however, unable to provide a credible account of the nature of his relationship with "Joe" such as to explain why he would willingly agree to perform a delivery of "paan parak" for "Joe".¹⁸⁸ Throughout his investigative statements, Sivaprakash consistently maintained that "Joe" was merely a clubbing acquaintance whom he had gotten to know about two months prior to his arrest.¹⁸⁹ He elaborated that he did not spend time with "Joe" outside of drinking sessions on Saturday nights, that he had not saved "Joe's" name in his telephone contacts and that he did not even know "Joe's" real name.¹⁹⁰ However, at trial, he made two conflicting claims. On the one hand, he could not say that he and "Joe" were not close as "Joe" would call him and they would speak on the phone daily.¹⁹¹ The call logs also show that Sivaprakash and "Joe" had exchanged 113 calls between 4 April 2019 and 30 May 2019.¹⁹² Yet on the other hand, he also maintained that he and "Joe" were not close as, according to him, the two of them had "just started to get to know each other".¹⁹³ Lastly, in his written submissions, Sivaprakash takes the position that he and

¹⁸⁸ PCS at para 34.

¹⁸⁹ AB at p 229, para 15;

¹⁹⁰ AB at pp 262 – 263, para 30.

¹⁹¹ PCS at para 36; NE 24082022 at p 29 ln 2 – 4.

¹⁹² PCS at para 36.

¹⁹³ NE 24082022 at p 30 ln 10 – 14.

“Joe” were friends and it could not be said that they would not do favours for each other, such as to collect and deliver the alleged “paan parak”.¹⁹⁴

107 In my view, Sivaprakash’s shifting accounts cast doubt on the *real* nature of his relationship with “Joe”. More importantly, it begs the question of why he would agree to help deliver “paan parak” for someone he initially claimed to not be close to, much less in as clandestine a manner as that which took place (to which I now turn to discuss).

Sivaprakash’s claim to have believed that he was delivering “paan parak”

108 Sivaprakash claims to have believed that he was delivering “paan parak” as “Joe” had told him that it was so.¹⁹⁵ Sivaprakash says that “Joe” had asked him for help in delivering an item and when Sivaprakash asked what the item was, he was told by “Joe” that it would be three packets of “paan parak”. He then asked “Joe” if the “paan parak” looks like betel nuts and which Indian nationals consume, to which “Joe” replied that it was so.¹⁹⁶ Sivaprakash further claims that, upon collecting the packets from the black bag at the specified location, he had *opened* the packets, checked and found that their contents “did look like paan parak and smelled like betel nuts”.¹⁹⁷ He then transferred the packets into a white plastic bag as the original black bag in which they had been found was torn.¹⁹⁸

¹⁹⁴ D2 Reply at para 43.

¹⁹⁵ D2 CS at para 28(c)-(d); D2 Reply at para 12(b).

¹⁹⁶ D2 CS at para 28(b)-(d).

¹⁹⁷ D2 CS at para 29(d).

¹⁹⁸ D2 CS at para 28(f).

109 In support of his case, Sivaprakash asked his wife to buy betel nuts, which he equated with “paan parak”, from a shop in Singapore. These exhibits are before me as exhibits ‘2DW3’ and ‘2DW4’. He claims that by comparing 2DW3 and 2DW4 with the Drug Bundles, it “cannot be said that they look so very completely different from each other”.¹⁹⁹ Nonetheless, regardless of whether “paan parak” *in fact* looks similar to the controlled drugs found in Sivaprakash’s possession, I find it implausible that Sivaprakash could *reasonably* have believed that he was delivering “paan parak” as this is squarely contradicted by the evidence before the court.

110 Sivaprakash was unable to explain why, if he *really* believed that the Drug Bundles were “paan parak”, there was a need to pack and deliver them in such a clandestine manner as that which took place, why he was paid RM1,000 to make a delivery of “paan parak” and why he received S\$9,000 in cash from Low in the course of the delivery.

111 The clandestine nature of the delivery is evident. “Joe’s” instructions, according to Sivaprakash, were to collect an item from a black bag behind a dustbin near the vicinity of the bus stop after the roundabout after Tuas Checkpoint (the “**Tuas Bus Stop**”),²⁰⁰ and deliver it to “someone with a cap” at 326 Sumang Walk.²⁰¹ When Sivaprakash enquired what the item was, “Joe” told him that it was “paan parak” and that there would be three such packets inside the black bag at the Tuas Bus Stop.²⁰² Sivaprakash himself knew that “paan

¹⁹⁹ D2 CS at para 27.

²⁰⁰ D2 CS at para 28(c); D2 Reply at para 13.

²⁰¹ D2 CS at para 28(b); D2 Reply at para 13.

²⁰² D2 CS at para 28(c).

parak” was not high-value, as he testified that he knew, prior to his arrest, that “paan parak” was sold in sundry shops or drink stalls as a snack to be consumed while drinking alcohol,²⁰³ although he was evasive when asked if he thought that “paan parak” was legal or illegal in Singapore.²⁰⁴ Despite the odd nature of these instructions, Sivaprakash did not ask “Joe” why he had to collect and deliver the “paan parak” in this manner.²⁰⁵

112 In return, Sivaprakash received S\$9,000 in cash from Low and was promised a payment of RM1,000 for performing this delivery. These are relatively substantial sums of money and would have put Sivaprakash on notice that the items he was delivering could not have been innocuous or low in value.²⁰⁶ I reject Sivaprakash’s claim that the RM1,000 was merely *a loan* that he had requested from “Joe” the day before, for help in paying his elder brother’s medical fees. This was an assertion that first surfaced only in the course of his forensic psychiatric evaluation on 14 June 2019, 20 June 2019 and 26 June 2019 at the Changi Prison Complex Medical Centre²⁰⁷ and, later, at trial.²⁰⁸ In Sivaprakash’s investigative statements, he had consistently referred to the RM1,000 as a payment for the delivery, that “Joe” would (in his words) “give” to him *after* the delivery was completed.²⁰⁹

²⁰³ PCS at para 49; AB at p 279, para 22; NE 23082022 at p 51 ln 6 – 8.

²⁰⁴ NE23082022 at p 55 ln 9 – 29.

²⁰⁵ PCS at para 41; NE 24082022 at p 34 ln 16 – p 35 ln 3.

²⁰⁶ PCS at para 48.

²⁰⁷ AB at p 65, para 13.

²⁰⁸ PCS at para 51(a); NE 23082022 at p 29 ln 8 – 23.

²⁰⁹ AB at pp 228 – 229, paras 14 – 15; AB at p 263, para 31.

113 I also reject Sivaprakash’s claim that he initially did not want to take the S\$9,000 in cash that Low handed to him and which was subsequently seized from the Motorcycle. Sivaprakash explained that “Joe” had not informed him to collect any cash for the delivery.²¹⁰ I find this to be Sivaprakash’s belated attempt to distance himself from the sum of S\$9,000. Neither Sivaprakash nor Low, in their investigative statements, had indicated that Sivaprakash was initially unwilling to accept the cash.²¹¹ Only at trial, Sivaprakash testified that he took the money *after* Low told him to “take this money and give it to him” and scolded him using vulgarities.²¹² He stated that he did not ask Low any further questions or ask Low why he was giving him the money because he was afraid that Low might hit him,²¹³ which is at odds with the reason he had previously given in his First Long Statement:²¹⁴

... I was wondering why the man wearing the white cap gave me money. The man wearing the white cap told me “Sembilan ribu”, which means SGD\$9000. The money was bound by rubber bands and I could see that the top of the stack was SGD\$50. I then put the money inside my bag and put my bag in the front basket of my bike. I did not ask the man wearing the white cap why he gave me the money. I did not ask the man wearing the white cap *because it did not occur to me and it was because I was getting late for work*. I did not utter any word to the man wearing the white cap. ...

[emphasis added]

114 To explain why he had not previously mentioned his reluctance to receive the S\$9,000 in his First Long Statement, Sivaprakash claims that this

²¹⁰ D2 CS at para 28(i).

²¹¹ PCS at para 52; AB at p 220, para 8; AB at p 227, para 9.

²¹² NE 25082022 at p 34 ln 17 – 29.

²¹³ NE 25082022 at p 35 ln 19 – 21.

²¹⁴ AB at p 227, para 9.

was because he did not know if he could use a vulgar term in his statements to the police.²¹⁵ I do not find this to be persuasive. In any case, it is incredible that Sivaprakash would not have asked Low what the money was for or who he was meant to deliver it to, if he was genuinely not expecting to receive it.²¹⁶ By Sivaprakash's own account, he did not speak to Low at all during the brief exchange.²¹⁷

115 In light of the above, I reject Sivaprakash's claim to have believed that he was delivering "paan parak" as "Joe" had told him so.

Sivaprakash's claim to have checked the content of the Drug Bundles and found it similar to "paan parak"

116 The next key plank of Sivaprakash's defence is that he had, upon collecting the packets from the black bag at the specified location, *opened* the packets, checked and found that their contents did look like "paan parak" and smelled aromatic as betel nuts would.²¹⁸ In his words, the contents were "aromatic" and "the aroma was akin to betel nuts".²¹⁹ He thus believed that he was delivering "paan parak", as "Joe" had told him.

117 I am unable to accept this claim in light of the inconsistencies in Sivaprakash's evidence as to whether he actually *knew* what "paan parak" would look and smell like. In Sivaprakash's Third Long Statement, he stated that he had only seen the packets in which "paan parak" was sold in Malaysian

²¹⁵ NE 25082022 at p 36 ln 9 – 14.

²¹⁶ PCS at para 52(c).

²¹⁷ NE 25082022 at p 35 ln 19 – 21.

²¹⁸ D2 CS at paras 28(f) and 29(d).

²¹⁹ NE 23082022 at p 9 ln 1 – 19; D2 Reply at para 17.

stores but had “never seen what the things inside looks like”, *ie*, he did not know what “paan parak” looked like.²²⁰ At trial, however, he took a different position, namely, that he knew what “paan parak” looked like,²²¹ on the basis that he had witnessed Indian nationals buying and consuming the contents of these packages of “paan parak” sold in Malaysian stores.²²² However, he also admitted that he had never seen “paan parak” being packed in the same way as how the Drug Bundles were packed.²²³

118 Sivaprakash also claims to have known how “paan parak” would smell like. He says that he had been close by when an Indian national opened a packet of “paan parak” and tried to consume it.²²⁴ However, he was inconsistent in his descriptions of the olfactory check he allegedly conducted on the Drug Bundles. In Sivaprakash’s First Long Statement, he underscored the importance of the olfactory check and described the Drug Bundles as “aromatic”:²²⁵

... I thought the things inside the black plastic bag were "paan parak" because "Joe" told me it was that. *It was also because it was aromatic.* ...

[emphasis added]

119 In Sivaprakash’s Fourth Long Statement, however, he stated instead that “paan parak” smelled like betel nuts and that he “[did] not know *if ‘Paan Parak’ is aromatic or not*” [emphasis added].²²⁶ At trial, he tried to explain that “the

²²⁰ AB at p 279.

²²¹ NE 25082022 at p 57 ln 18 – 20.

²²² NE 23082022 at p 50 ln 21-30 and p 52 ln 20 – 28.

²²³ AB at p 279.

²²⁴ NE23082022 at p 54 ln 16 – 25.

²²⁵ AB at p 227, para 8.

²²⁶ PCS at para 45(a); AB at p 288 Q/A 1.

aroma was alike to betel nuts”²²⁷ and what he had meant by the statement in his Fourth Long Statement.²²⁸

Q: ... I now want to refer you to answer 1 to then Insp Vinod’s question. That’s found on the second page of P79A. Your answer here is:

“All I said was that when I took out the bundles from the torn plastic bag, it was aromatic. I do not know if paan parak is aromatic or not. It smells like betel nut.”

Is this recording of your answer correct or incorrect?

A: I did not know how to explain the aroma of paan parak would be. Therefore, I said that it would smell like betel nut.

120 This is, however, not convincing. It is a belated attempt by Sivaprakash to conflate his description of the Drug Bundles as both “aromatic” and smelling “like betel nuts”. In light of these inconsistencies, I am unable to accept that Sivaprakash knew what “paan parak” would look and smell like.

121 Additionally, Sivaprakash’s account of *how* he had checked the contents of the Drug Bundles is contradicted by the objective evidence before me. For instance, in respect of the two clear plastic bundles with black tape (exhibits ‘A1B1’ and ‘A1B2’), he says that he had unravelled the black tape *in one intact piece* until he could see enough of the contents, before wrapping the bundle back to look exactly as it did when seized and recovered by the arresting CNB officers.²²⁹ A copy of the photograph showing exhibits ‘A1B1’, ‘A1B2’ and ‘A1B3’ is reproduced as follows:

²²⁷ NE 23082022 at p 9 ln 10.

²²⁸ NE 23082022 at p 54 ln 13 – 21.

²²⁹ NE 23082022 at p 11 ln 1 – 20.



Fig 4. Photograph of exhibits ‘A1B1’, ‘A1B2’, ‘A1B3’

122 From the state of the Drug Bundles as photographed during exhibit processing, I find Sivaprakash’s account to be implausible. The Drug Bundles were wrapped so neatly and tightly that they had to be *cut open* during exhibit processing.²³⁰

123 Furthermore, Sivaprakash never mentioned unwrapping the Drug Bundles in any of his investigative statements. When shown a photograph of the black taped packaging containing the Fourth Drug Bundle, he claimed in his Second Long Statement that the packaging was “already like that” when he collected it from the Tuas Bus Stop.²³¹ I thus do not accept that Sivaprakash had opened and checked the contents of the Drug Bundles in the manner that he asserts, or indeed in any manner at all.

²³⁰ PCS at para 42(b).

²³¹ PCS at para 42(a); AB at pp 259 – 260, paras 19 – 20.

124 Having regard to the above, I find that Sivaprakash is unable to successfully rebut the presumption of knowledge under s 18(2) of the MDA. Sivaprakash’s claim that he did not know the nature of the drugs as he believed the Drug Bundles to be “paan parak”, is patently at odds with the evidence before me and thus rejected.

Whether the requirements under s 33B(2)(a) of the MDA are satisfied

125 In the circumstances, I find that the elements of the offence under s 5(1)(a) read with s 5(2) of the MDA are made out in respect of both Low and Sivaprakash.

126 Accordingly, the final issues which lie before me are whether Low and Sivaprakash respectively are “couriers” pursuant to s 33B(2)(a) of the MDA. The answer to this question has a direct impact on Low’s and Sivaprakash’s respective possible eligibility for the alternative sentence under s 33B(2) of the MDA.

Low was a “courier” pursuant to s 33B(2)(a) of the MDA

127 In an oft-cited passage from *Public Prosecutor v Chum Tat Suan* [2015] 1 SLR 834, the Court of Appeal held (at [68]) that someone “who receives the drugs and transmits them in exactly the *same form* in which they were received *without an alteration and adulteration*” [emphasis added] would properly be considered a “courier” under s 33B of the MDA. In this case, the Prosecution does not dispute that Low was a “courier” under s 33B(2)(a) of the MDA in this sense.²³² I agree. His instructions, and indeed the role that he was carrying out

²³² PRS at paras 17 – 18 (Low); 26 – 27 (Sivaprakash).

in the offence under s 5(1)(a) of the MDA, were simply to deliver the contents of the white plastic bag to someone who would be waiting for him at Blk 986C Buangkok Crescent. There was no drug paraphernalia or other packing materials found on him,²³³ and neither does the evidence before me show that he was involved in doing something *more* than just "transporting, sending or delivering a controlled drug". Accordingly, I am satisfied that Low was a "courier" pursuant to s 33B(2)(a) of the MDA.

Sivaprakash was a "courier" pursuant to s 33B(2)(a) of the MDA

128 Similarly, the parties agree that Sivaprakash's involvement in the offence was that of a "courier" under s 33B(2)(a) of the MDA. Sivaprakash says that his role in the offence, per "Joe's" instructions, was restricted to collecting and delivering the contents of the white plastic bag to a man (who later turned out to be Low) at the Sumang Walk Bus Stop.²³⁴

129 The Prosecution acknowledges that it has led evidence suggesting that Sivaprakash had packed the Drug Bundles before bringing them into Singapore. First, Sivaprakash's DNA was found on the tape and the cling film of the two black taped packaging marked 'A1A' and 'A1B3'. His DNA was also found on the tape and cling film of the two clear plastic packaging with black tape marked 'A1B1' and 'A1B2'.²³⁵ Collectively, the exhibits 'A1A', 'A1B1', 'A1B2' and 'A1B3' contained the Drug Bundles. Sivaprakash claims that his DNA was found because he had opened and inspected all of the Drug Bundles after

²³³ D1 CS at para 103.

²³⁴ D2 CS at para [39].

²³⁵ SOF at para 47.

collecting them from the Tuas Bus Stop.²³⁶ Second, photographs extracted from Sivaprakash’s mobile phone depicted brown granular substances packaged in almost identical fashion to the Drug Bundles,²³⁷ despite Sivaprakash claiming that he had never seen what he asserted to be “paan parak” packaged like the Drug Bundles prior to collecting them.²³⁸ Third, Sivaprakash’s wife testified in court that Sivaprakash had informed her that he had brought the items (*ie*, the purported “paan parak”) *into Singapore*,²³⁹ although she later changed her position after a short stand-down in the court proceedings. Sivaprakash was unable to offer a satisfactory explanation for this inconsistency in his wife’s account.

130 It is unnecessary for me to make a finding on whether Sivaprakash had indeed packed the Drug Bundles before bringing them into Singapore. In any case, as the Prosecution accepts, there is no evidence suggesting that the act of packing (if any) was anything more than a *facilitative* act in respect of Sivaprakash’s delivery of the Drug Bundles,²⁴⁰ in that it enabled or assisted Sivaprakash to deliver the Drug Bundles *in Singapore* (and not to accomplish any unrelated aims which he might have had in mind): *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [82].

131 Accordingly, I find that Sivaprakash was also a “courier” pursuant to s 33B(2)(a) of the MDA.

²³⁶ D2 Reply at para 23.

²³⁷ PCS at para 47.

²³⁸ AB at p 279 para [33]; NE 24082022 at p 2 ln 12-16; NE 25082022 at p 62 ln 21-30.

²³⁹ PCS at para 43; NE 26082022 at p 25 ln 27 – p 26 ln 12.

²⁴⁰ PRS at para 27.

Conclusion

132 For the foregoing reasons, I find that the elements of the charge under s 5(1)(a) read with s 5(2) of the MDA are established in respect of both Low and Sivaprakash. As to sentencing, I find that Low and Sivaprakash were both “couriers” pursuant to s 33B(2)(a) of the MDA.

Dedar Singh Gill
Judge of the High Court

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