

Public Prosecutor v Yap Ah Chuan
[2001] SGHC 217

Case Number : CC 32/2001
Decision Date : 07 August 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Ravneet Kaur and Tan Kiat Pheng (Attorney-General's Chambers) for the prosecution; Goh Aik Leng (Goh Aik Leng & Partners) [assigned] and David Tan Tee Boon (Helen Yeo & Partners) [assigned] for the accused
Parties : Public Prosecutor — Yap Ah Chuan

JUDGMENT:

Grounds of Decision

BACKGROUND

1. The accused Yap Ah Chuan was charged with the offence of trafficking in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Cap 185, on 19 January 2001 at about 1.20pm at Blk 218 Choa Chu Kang Avenue 3 #03-246 by having in his possession two blocks, 54 sachets and one straw containing a total of not less than 55.38g of diamorphine without authorisation under the Act or its regulations which is an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Act.
2. The accused is 37 years of age.
3. Prior to 19 January 2001, the accused had been detained or imprisoned on various occasions.
4. On 19 January 2001, a party comprising various officers from the Central Narcotics Bureau ('CNB') arrived at Blk 351 Choa Chu Kang Central. They then proceeded to Blk 218.
5. Upon covering various floors in Block 218, they discovered the accused at the landing between the 4th and 5th storeys.
6. The accused was arrested and his identity and identity card number were ascertained. He was holding a bunch of keys.
7. The accused then led the officers to his residence and opened the door with the bunch of keys. I should mention that the correct address of the accused's residence is Blk 218 Choa Chu Kang Central #03-246 and not at Blk 218 Choa Chu Kang Avenue 3 as incorrectly stated in the Charge. However the error is not material as the correct address of the accused was not in issue. I will refer to the correct address as 'the Premises'.
8. The accused then led the officers to his bedroom and surrendered the following items.
 - a) On a rack:
 - i) One pouch containing two sachets of yellowish substances believed to be heroin

ii) One separate sachet of yellowish substance believed to be heroin

iii) One straw of yellowish substance believed to be heroin

iv) Two rolled up paper and an aluminium foil believed to be stained with heroin.

b) On a coffee table:

i) One white envelope containing ten sachets of yellowish substance believed to be heroin

ii) Two bundles wrapped in newspaper each containing five sachets of yellowish substance believed to be heroin

c) On the floor:

i) One plastic bag containing two blocks of yellowish substance believed to be heroin

d) On the study table:

i) One 'Hazeline Snow' box containing two sachets of yellowish substance believed to be heroin.

1ST STATEMENT BY ACCUSED - ON 19 JANUARY 2001 AT ABOUT 1415 HRS

9. Senior Narcotics Officer (Inspector) Chan Gin Choong Gary took a statement from the accused at about 1415 hrs. He spoke in Hokkien to the accused. The material part of the statement states:

'Q) What are the yellowish substances you surrendered to us?

A) Peh Hoon (Hokkien)

Q) What is the quantity you surrendered?

A) 2 blocks, 25 sachets and 1 straw.

Q) Who does this drug belong to?

A) I safe keep for my friend.

Q) What is your friend's name?

A) Same as previous Ah Boy.

Q) When did Ah Boy pass you all these substance?

A) This morning at about 7am.

Q) What are all these substances for?

A) He call me to pass to people when he contact me. I do not know who will take from me as I will be instructed by Ah Boy.

Q) How much will you earn from all these?

A) About one thousand dollars.

Q) How long have you been helping your friend?

A) About 2 weeks.

Q) How many times have Ah Boy pass you these substance in this two weeks?

A) 3 times.'

[Emphasis added.]

10. SNO (Inspector) Chan said the statement was recorded in his field diary and it was read back to the accused in Hokkien who confirmed the statement to be correct.

2ND STATEMENT BY ACCUSED - ON 19 JANUARY 2001 AT ABOUT 1535 HRS

11. Subsequently at about 1535 hrs, a biscuit tin containing a Chinese newspaper and some sachets of granular substance believed to be heroin was discovered.

12. SNO (Inspector) Chan then took another statement from the accused on 19 January 2001 at about 1535 hrs. The statement was given in Hokkien. It reads:

'Q) What are these?

A) Peh Hoon (Hokkien)

Q) How many are there?

A) 29 sachets.

Q) Whose are these?

A) Mine.'

13. This statement was also recorded in his field diary and read back to the accused in Hokkien who confirmed it to be correct.

14. Although there was no interpreter present when either of these two statements were given by the accused, SNO (Inspector) Chan asserted that he speaks Hokkien fluently and this was not disputed.

15. Also, Mr Goh Aik Leng for the Defence did not suggest to SNO (Inspector) Chan that he had recorded any part of the accused's statement incorrectly.

THE DRUGS

16. The various sachets and bundles, or packets as they are called in the charge, were found to contain diamorphine or heroin as it is more commonly called. I list out below the details, including the weight of the diamorphine, as determined by Dr Lee Tong Kooi of the Centre for Forensic Science, Health Sciences Authority. The total weight of the drugs without the sachets or packets was 1,290.39g but the total weight of the diamorphine content was 55.38g.

<u>Item</u>	<u>Exhibit No. of Actual item</u>	<u>Weight of Drugs</u>	<u>Diamorphine Weight</u>	<u>Where found</u>
1 sachet	P78	6.26 g	0.27g	On a rack in accused's bedroom
2 sachets	P79	9.92g	0.51g	In a golden pouch/purse on a rack in accused's bedroom
1 straw	P80	0.23g	0.01g	Ditto
10 sachets	P81	73.90g	4.26g	In a white envelope on a coffee table in accused's bedroom
5 sachets	P82	37.49g	2.29g	Wrapped in a newspaper on a coffee table in accused's bedroom

5 sachets	P83	37.28g	2.22g	Ditto
1 packet	P84	447.20g	19.14g	In a white bag which was in a red paper bag in accused's bedroom
1 packet	P85	446.80g	17.88g	Ditto
2 sachets	P86	14.91g	0.92g	In a Hazeline Snow box on a study table in accused's bedroom
29 sachets	P87	216.40g	7.88g	In a butter cookie tin on a table near the kitchen and covered with a newspaper
	Total	1,290.39g	55.38g	

OTHER ITEMS

17. The following items were also recovered from the accused's bedroom or the accused:

(a) (in addition to two paper rolls and one foil) a plastic spoon, a pair of scissors, a lighter and a cigarette box.

(b) two handphones

(c) two pagers

URINE SAMPLE

18. The accused was then taken to Ang Mo Kio Police Station where samples of his urine were taken. His urine was found to contain morphine.

CAUTIONED STATEMENT (3RD STATEMENT) FROM ACCUSED - ON 20 JANUARY 2001 AT ABOUT 1501 HRS

19. In his cautioned statement given pursuant to s 122(6) of the Criminal Procedure Code ('CPC'), Cap 68, the accused said 'I have nothing to say'. I should add that an interpreter was present for this statement and the subsequent statements from the accused.

4TH STATEMENT FROM ACCUSED - ON 23 JANUARY 2001 AT ABOUT 1025 HRS

20. A 4th statement from the accused was given to Inspector A. Muruganandam at the Major Investigation Branch #01-44 CNB on 23 January 2001 at about 1025 hrs.

21. The material portion reads:

'2. On 19 Jan 20001 just after 1.00 p.m. I was arrested at the staircase landing between the 4th and 5th storey of Blk 218 Choa Chu Kang Ave 3. I was holding two keys with me in my left hand and one of the officers took the keys from my hand.

3. The two keys was with a key chain which was brown in colour. One was meant for the main door and the other was for the padlock. The keys belong to my parents and I will use them to get in and out of the unit. The officers then led me into my flat, which was at the 3rd storey, and the unit number is #03-246. They used the keys found on me to gain entry to the flat. In the flat I told the officers my stuff were in the 1st room on the right. I told the officers that they need not look for the stuff and I will show them where they are. I then pointed out where the stuff are in the room. There was another red coloured paper bag on the floor of the room beside a dustbin. Inside the paper bag there was another white plastic bag which contained two large packets of heroin. They were in a plastic packet that was wrapped in cellophane sheets. One of the officers took the paper bag and I told the officer that there were two 'balls' of heroin inside. The officer then took them out and placed them back after looking at it. At the same time I told him that it was heroin.

3. The officers also seized more drugs from a coffee table and another black rack, which was in the room. There was a white envelope, which contained 10 sachets of heroin. There were more sachets of heroin found on the black rack. Some of them were exposed and there were some, which were found inside a gold coloured purse. Inside the purse there were about one or two sachets of heroin. The officers also seized some paraphenelias and utensils that were meant for smoking heroin from inside the room.

4. The officers then searched the room after I had surrendered all the drugs. One of the officers later questioned me about the drugs and I told him that all the drugs found belonged to me. I remember signing inside a small black (*sic*) after this. I admit that all the drugs that were seized from me both outside the flat and inside the 1st room belongs to me. I was made to sit on the bed after all this and I was also watching the officers when they searched the room. In fact I sat on a mattress which was laid on the floor. I waited for a while in the room. I was told by one of the officers to wait for the I.O. to come. I knew that we were waiting for the Investigation Officer.

5. Upon the arrival of the Investigation Officer I was brought out of the room to a dining table where I was shown a blue coloured biscuit tin on the table. The Investigation Officer opened the tin and showed me more drugs. There were more than 20 sachets of heroin inside the biscuit tin. Later a Chinese Officer questioned me about the drugs and I admitted to him that they were mine. I admit now that the drugs are mine. At the time of arrest I did not surrender these drugs to them because I was stunned after the arrest and overlooked it.

6.

7. I was then brought to Ang Mo Kio Police Station where my urine test was conducted. I was informed that my urine was found to contain morphine. I am now informed that my urine was also found to contain amphetamine. I admit consuming heroin and 'Ice.'

5TH STATEMENT FROM ACCUSED - ON 26 JANUARY 2001 AT ABOUT 1448 HRS

22. A 5th statement from the accused was given to Insp A Muruganandam at the Major Investigation Branch #01-44 CNB on 26 January 2001 at about 1448 hrs.

23. The material portion reads:

` 15. ... I had got the supply of heroin from him on the morning from 'Ah Boy'. I had bought 3 balls of heroin from 'Ah Boy' and one ball weighs one pound. 'Ah Boy' charges me \$4,000/- for a ball of heroin and the 3 balls of heroin cost me \$12,000/-. I have not paid the money to him, as I will have to sell the heroin and pay it to him later. I normally would sell the heroin and pay 'Ah Boy' later. 'Ah Boy' would call me regularly to check if I could pay him his money. I do not know where 'Ah Boy' stays or have his contact number. He will be the one who will be calling me at my handphone. I noticed that no number appears on my handphone when 'Ah Boy' calls me.

16. After obtaining the 3 balls of heroin in the morning just after 7.00 a.m. I converted one of the balls to 60 sachets of heroin on the morning of my arrest. I did not use any sealing machine to pack the heroin sachets, as the sachets are zipped locked. I did not weigh the sachets of heroin using any scales. I just compared the weight of the sachet of heroin with a folded \$50/- note. I used my palms to estimate the weights of the note and the sachet of heroin A sachet of heroin was to weigh about 7.3 grams excluding the weight of the plastic sachet. This is the standard weight of a sachet of heroin in Singapore amongst the drug

dealers.

17. On the day when the heroin was delivered to me by 'Ah Boy' he met me at the void deck. I met him near the lift entrance of the ground floor. I did not notice how 'Ah Boy' arrived there and when I got down he was already there waiting for me. He had handed over to me the 3 balls of heroin which were inside a white plastic bag that was placed in a red paper bag with floral design. This is the same white plastic bag and red paper bag that was seized in my room with the 2 balls of heroin.

18. To the best of my knowledge 'Ah Boy' works for some other people who had arranged for him to deliver the heroin to me. I do not know who these people are and I believe that 'Ah Boy' is a Singaporean. 'Ah Boy' is a male Chinese who is about 5ft 5 ins tall. He is slightly shorter than I am. He is plump and normally dresses casually. He is about 30 yrs old. I have seen him on about 5 occasions and I have known him since December 2000. I have seen him wearing jeans and T-shirt. I did not notice any distinguished marking on his face or other parts of his body.'

[Emphasis added.]

6TH STATEMENT FROM ACCUSED – ON 29 JANUARY 2001 AT ABOUT 1515 HRS

24. A 6th statement from the accused was given to Insp. A. Muruganandam at the Major Investigation Branch #01-44 CNB on 29 January 2001 at about 1515 hrs.

25. The material portion reads:

' 21. At the time of my arrest I had only with me about \$100/- or so and this is my own cash. This is cash is not part of the heroin transaction. My mother would leave some cash in the house for me to use and this is that money. She would leave about \$50/- in the house for my daily expenses. The profits, which I had obtained from the heroin trafficking, had been loaned out to my friends. For each ball of heroin that I purchase from 'Ah Boy' I would make about \$3,000/- profit. I am also a heavy consumer of heroin and 'Ice'.

22. I smoke a sachet of heroin per day using 'Chasing the Dragon' method to smoke. On the day of my arrest there were some rolled up papers and tin foils these were used to smoke the heroin. I have just been released from prison on 11th Sep 2000 after serving sentence of 10 months for failing to report for my urine test. After a week from my release from prison I started smoking heroin. I then started consuming 'Ice' sometime in the 2nd week of Oct 2000. My reason for consuming 'Ice' was to quit smoking heroin. However I was unable to quit smoking heroin and I was consuming heroin until the time of arrest. I have not

completely kicked the heroin addiction. The last time I consumed heroin was on the morning of my day of arrest. The last time I consumed 'Ice' was 2 days prior to my arrest. I smoked the 'Ice' using an improvised plastic bottle. I believe my other had thrown the bottle away.

23. My mother is aware that I am a heroin addict but she is unaware about my other drug activities. This is because I have been to DRC on numerous occasions. My level of heroin consumption averages to about 30 sachets per month. I only consume about half a gram of 'Ice' per day. If I consume 'Ice' on the day I would reduce the consumption of heroin to one fourth of a sachet. That is why I convert some of the heroin into straw forms. I do not sell heroin to my customers in the form of straws. The straws that I have were for me to gauge my level of consumption.

24. I would like to say that on the day of my arrest there were 2 balls of heroin and another 30 over sachets of heroin seized in my flat. All these drugs were actually meant for my own consumption.'

[Emphasis added.]

7TH STATEMENT FROM ACCUSED – ON 30 JANUARY 2001 AT ABOUT 1138 HRS

26. A 7th statement from the accused was given to Insp. A. Muruganandam at the Major Investigation Branch #01-44 CNB on 30 January 2001 at about 1138 hrs.

27. The material portion reads:

' 25. The other reason why I do not have many customers is because I had just started selling drugs about 3 weeks before my arrest. My friends who obtain drugs from me are staying in Ghim Moh area. Most of them are staying in Ghim Moh and some of them are in Teck Whye. I have 5 friends who are living in Teck Whye to whom I sell heroin. To my childhood friends in Ghim Moh I normally give them heroin for free of charge.

28. My supply of 'Ice' which are meant for my consumption are also obtained from 'Ah Boy'. He would deliver the 'Ice' together with the heroin. I normally obtain half sets of 'Ice' from 'Ah Boy'. Half sets mean 5 grams of 'Ice' which comes in 5 small sachets. This would cost me about \$550/-. On the morning of my arrest when I received the heroin supply from 'Ah Boy' there was no supply of 'Ice'. My mother had warned me not to smoke 'Ice' as it would cause 'madness'. That is why I did not take any delivery of 'Ice' on the morning of my arrest. The last supply of 'Ice' was on 29 December 2000 when I received the 2 balls of heroin. At that occasion I took 5 small sachets of 'Ice'.

29. I have not been working since my release from prison in Sept 2000. Occasionally I would assist my mother in her noodle store in a school at Choa Chu Kang. I do not know the name of the school.'

[Emphasis added.]

28. The Defence did not dispute that each of the seven statements from the accused was given voluntarily.

POSSESSION

29. The accused did not dispute that the drugs were in his possession. This gave rise to the presumption under s 17(c) of the Act that the drugs were in his possession for the purpose of trafficking.

30. It was therefore incumbent on the accused to establish on a balance of probabilities that such possession was not for the purpose of trafficking.

31. I would add that the accused admitted that Exhibits P81 to 83 (marked in photos as B1A, B2A and B3A) which total 20 sachets comprising 8.77g of diamorphine were for the purpose of trafficking. He said 'Ah Boy' had asked him to hand these sachets to someone else and he would earn \$1,000 for this (NE 100 line 14 to 17).

EVIDENCE OF THE ACCUSED

32. The accused elected to give evidence.

33. He said that he had been taking drugs since he was 15. Since then he had been in and out of DRC and prison several times.

34. He said that prior to his arrest on 19 January 2001, he was an odd job painter.

Detention or Imprisonment of accused

35. The accused said his period of detention or imprisonment since February 1983 was as follows:

Detention

- (a) Detained in February 1983 for 19 months
- (b) Detained in January 1984 for 20 months
- (c) Detained in 1986 for 6 months
- (d) Detained in 1988 for 23 months
- (e) Detained in 1991 for 35 months
- (f) Detained in 1994 for about 21 months. Released in 1996
- (g) Detained in 1996 and released in 1998 (presumably detained for about 24 months)

Imprisonment

(h) Imprisoned in 1998 for 2 years. Released in September 2000.

36. His evidence on this was not identical with the criminal records which records are rather confusing. However, the difference is not material and I will rely on his evidence on this point.

37. Based on the evidence of the accused, from February 1983 to January 2001, i.e 19 years or 216 months, he was in detention or imprisoned for about 172 months and free for about 44 months. In other words, he was free for about 20% of the time.

Accused's consumption of heroin

38. The accused said he would use the method known as 'Chasing the Dragon' to consume heroin. This was a method where he would scoop some heroin from a sachet onto a tinfoil, use a lighter to heat the tinfoil from the bottom, use a paper roll and inhale the smoke emitted from the heroin while it was burning.

39. He said that he was a heavy smoker of heroin.

40. The accused claimed that before he was detained in February 1983, he was consuming two sachets of heroin a week. After his release then, he was consuming four sachets a week.

41. Prior to his detention in 1991, he was consuming 15 sachets a week. After that detention of 35 months, he said he was consuming 25 sachets, and then changed his evidence to 20 to 21 sachets a week.

42. His reason for this increase in consumption (at NE 122 line 1 to NE 123 line 7) was:

'Q I will repeat my question Mr Yap. From 15 sachets a week, just before you were arrested, you had 35 months of rehabilitation. That would mean 35 months without drugs, and when you come out your intake goes up to 20 to 21 sachets a week. Can you explain to us how this is so?

A For my consumption of heroin after my release from DRC, I would either use the 'chasing the dragon' method or that I will stuff heroin into a cigarette for my consumption. Whenever I go out with friends, I would not be able to consume heroin by using the 'chasing the dragon' method. So, as such, I need to bring out the cigarettes which I had stuffed with heroin for my consumption outside.

Q And how would that explain your consumption level?

A Well, by consuming heroin with the use of the cigarette, I had to rely more on heroin. It's just like a devil. If, for instance, if I were to consume two sachets this week, I would need to consume more the following week.'

43. As at January 2001, he would consume two to three sachets of heroin a day if the purity of the heroin was not so good. He referred to such heroin as Grade 3. If the purity was better, meaning what he called Grade 4, he would consume one sachet a day. The heroin found in the Premises was Grade 3.

44. If he did not consume the amount mentioned, he would not have the mood to do things. He would

also have a running nose, diarrhoea and feel weak.

45. On each day of 17 and 18 January 2001, he had consumed two sachets of Grade 3 heroin and half a gram of Ice.

46. In the morning of 19 January 2001, he had consumed half a sachet of heroin before he was arrested.

47. He was referred to his statement on 29 January 2001, para 23, which states:

'23. My mother is aware that I am a heroin addict My level of heroin consumption averages to about 30 sachets per month. I only consume about half a gram of "Ice" per day'

[Emphasis added.]

48. He said that this was referring to the good grade of heroin i.e Grade 4. However, he also said that the only time he consumed Grade 4 heroin was in 1986. He had also admitted that the heroin in his possession at the time of his arrest was Grade 3 and not Grade 4.

49. His explanation for not telling the CNB that he was consuming two and a half to three sachets of Grade 3 heroin per day was that he was confused.

50. After his arrest on 19 January 2001, the accused was placed under observation and examined by Dr Choo Shiao Hoe. Dr Choo confirmed that the accused did not suffer from abdominal pain, vomiting or diarrhoea or have salivation or a running nose.

The purchases from 'Ah Boy'

51. The accused said that he had met 'Ah Boy' in December 2000 (NE 131 line 7 and NE 137 line 19).

52. In December 2000, he bought a bundle of heroin from 'Ah Boy' for \$4,000. He paid \$3,000 and the remaining \$1,000 from whatever he saved from what he was earning.

53. In the morning of 19 January 2001, he had met 'Ah Boy' at the lift landing on the ground floor of Blk 218 Choa Chu Kang Central. 'Ah Boy' had handed him three bundles of heroin to him in a white paper bag which was in turn inside a red paper bag. This was the second time he had purchased drugs from 'Ah Boy'.

54. The accused's explanation for buying so much heroin was that the Chinese New Year was around the corner on 23 January 2001 and 'Ah Boy' had told him that there would be no supply during the Chinese New Year for two weeks.

55. However, he admitted that he would not be able to consume three bundles of heroin from 19 January 2001 to two weeks after 23 January 2001, say, three weeks (NE 141 line 15).

56. It would take him about two months to consume the three bundles of heroin (NE 141 line 20).

57. He said that the reason why he bought three bundles of heroin at one go was because he could pay 'Ah Boy' at a later date (NE 141 line 15 and NE 140 line 13 and 14). The accused said he would usually purchase 30 sachets or half a bundle at a time.

58. The three bundles of heroin cost \$12,000. The accused said that he had told 'Ah Boy' he would pay for the drugs after Chinese New Year. No date was specified (NE 142 line 24). 'Ah Boy' also told him to pay at his own time (NE 150 line 7, NE 153 line 5/6).

59. The accused also said that he intended to borrow \$10,000 from his brother-in-law 'Ah Hua'. This is Mr Goh Hak Hua, who had married his sister Clara Yap Bee Hoon. I will refer to the brother-in-law as 'Mr H H Goh' to differentiate him from Defence Counsel.

60. The accused said he had borrowed \$2,000 from Mr H H Goh before.

61. Sometime before 19 January 2001, he had asked Mr H H Goh for \$10,000 to pay for the three bundles of heroin. Mr H H Goh was taken aback at the request but said he would consider the request. The accused took this to mean that Mr H H Goh was likely to agree as Mr H H Goh did not reject the request outright.

62. The accused said he had told Mr H H Goh that the \$10,000 was needed to pay for the instalments on the Premises where the accused was residing and which was owned by his parents.

63. For the balance of \$2,000, he would get \$1,000 from Exhibits P81, 82 and 83 which he had admitted were for the purpose of trafficking.

64. As for the remaining \$1,000, he would pay it from his earnings after Chinese New Year.

65. If Mr H H Goh did not lend him the \$10,000, the accused expected to be able to pay 'Ah Boy' in seven months time based on his salary of \$2,100 per month without overtime. 'Ah Boy' would have been prepared to wait seven months (NE 152 line 23 to 25).

66. If the accused was unable to pay the \$12,000, the only consequence was that 'Ah Boy' would not trust him anymore (NE 153 line 18 to 20, NE 154 line 2 to 4).

67. The accused also said that if he did not pay the \$12,000 and the three bundles of heroin were consumed in two months, he would look to other suppliers who would give him a fresh supply of heroin without his having to pay these suppliers even though the heroin would cost \$4,000 a month at the rate of about two sachets a day, i.e 60 sachets or a bundle a month (NE 155 line 6 to line 21).

68. When the accused was asked whether it would have been a lot easier to purchase a smaller amount on credit, his response was that he wanted to buy such a large amount so that 'Ah Boy' would trust him if he cleared the amount owing to 'Ah Boy' (NE 162 line 18 to 20).

69. He then agreed that the only reason why he had bought such a large amount of heroin on credit from 'Ah Boy' was to gain his trust for future transactions (NE 163 line 1 to 4).

70. The accused also said that he was aware that he could face a capital charge if he was found with three bundles of heroin (NE 163 line 11 to 13, NE 171 line 2 to 4).

71. The accused said that after he took possession of the three bundles of heroin from 'Ah Boy' on 19 January 2001, he took one bundle of heroin and packed them into 60 sachets. He would use a spoon, scoop the heroin and place it in each sachet. He would use a \$50 note to estimate the weight.

72. The accused identified the 60 sachets he had packed that morning as:

(a) Exhibit P79 (Photo P17) two sachets,

(b) Exhibit P82 (Photo P22) five sachets,

(c) Exhibit P83 (Photo P23) five sachets,

(d) Exhibit P87 (Photo P32) 29 sachets,

(e) The balance were in Photo P35 which referred to other drugs which were not the subject of the charge before me.

73. He said that all of the 60 sachets were not sealed mechanically as they were meant for his own consumption.

74. The accused was referred to para 15 of his statement on 26 January 2001 which states:

'I had got the supply of heroin from him on the morning from Ah Boy. I had bought 3 balls of heroin from Ah Boy and one ball weighs one pound. Ah Boy charges me \$4,000 for a ball of heroin and the 3 balls of heroin cost me \$12,000. I have not paid the money to him, as I will have to sell the heroin and pay it to him later. I normally would sell the heroin and pay 'Ah Boy' later. 'Ah Boy' would call me regularly to check if I could pay him his money. I do not know where 'Ah Boy' stays or have his contact number ...'

[Emphasis added.]

75. When it was pointed out to him that the statement was not consistent with the evidence he had given in court, he said, 'Well, when giving this statement to the IO, I was not in the mood to talk and I was also very confused. I was also feeling very uncomfortable. As such I wanted to end the recording of the statement as soon as possible' (NE 172 line 17 to 19).

76. However, he had confirmed during examination-in-chief that the statement was correct (NE 112 line 19 to NE 113 line 6).

77. When it was pointed out to him that the statement was given seven days after his arrest, after he had been cautioned pursuant to s 122(6) CPC and he knew he was facing a capital charge, he said, 'I was feeling uncomfortable when giving my statement and I just wanted to give the IO an easy job' (NE 173 line 1 to 2).

78. When he was pressed further, he said he felt weak and uncomfortable, his mind was also in a blank, he was confused and he wanted to lie down when he gave the statement (NE 173 line 4 to NE 174 line 6).

Two handphones

79. The accused said that one of the handphones i.e Exhibit P89 belongs to a friend 'Ah Heng'.

80. He had known 'Ah Heng' since childhood. 'Ah Heng' was staying in Block 89 in Redhill then but he did not know the unit number. He knew that 'Ah Heng' had moved to Block 18 in Ghim Moh but he did not know the unit number.

81. 'Ah Heng' had handed the handphone to him because 'Ah Heng' had complained to him that often he could not be contacted because his (the accused's) own handphone was using an SIM card. 'Ah

Heng' wanted to be able to contact him because they always consumed heroin together.

Two pagers

82. As for the two pagers, the accused said that both belonged to him but one did not have a line anymore as he had terminated the line eight to nine years ago. Even then, he decided to keep this pager.

EVIDENCE OF DW2 YAP BEE HOON

83. DW2 is Yap Bee Hoon, one of the sisters of the accused. She is also known as Clara.

84. Her evidence was that she had tried to help the accused kick his drug habit but failed as he is a hard-core addict.

85. She has also undertaken voluntary work with drug addicts.

86. At times she would let the accused stay at her premises and lock him in a room to give him the cold turkey treatment. He would be struggling and kicking his legs. He would vomit, perspire, and his face would be pale. He would suffer from diarrhoea.

87. During cross-examination, she said that the last time she had locked the accused up in a room in her premises was around the end of 2000. She had checked on him. She said he had that kind of appearance, which I understood to mean a pale face, and he would sleep the whole day. He was sleeping most of the time and then he woke up and became his normal self and talked alertly without any symptom.

EVIDENCE OF DW3 GOH HAK HUA

88. DW3 is Mr H H Goh, the husband of Yap Bee Hoon and the accused's brother-in-law.

89. He said he had lent \$2,000 to the accused in late 1999 or early 2000 but the accused did not pay back this sum. He did not pay attention to the reason for the loan because he did not really care for the reason (NE 223 line 8 to 10).

90. He lent the money because the accused might resort to illegal means to get the money or borrow from others and if anything happened to the accused, his (Mr H H Goh's) wife would be upset.

91. Mr H H Goh said that two or three days before the accused's arrest on 19 January 2001, the accused had asked to borrow \$10,000 from him. The reason the accused gave for borrowing the money was:

'He said that he owed someone money and he also wanted to make payment. I am not very sure about what payment he wanted to make, but it was regarding household expenses. Could be conservancy charges.'

(NE 225 line 10 to 12)

92. Mr H H Goh said he told the accused that he would consider the request. He subsequently decided to lend the accused some money but did not tell the accused this as he was waiting for the accused to approach him again. However, two or three days later, the accused was arrested.

93. Mr H H Goh was earning \$2,000 a month and his wife was earning \$2,000 or \$2,000 plus a month in 2001.

94. In cross-examination, Mr H H Goh said that he had not asked how much of the \$10,000 was to repay a loan and how much was for household purposes.

95. He was prepared to lend \$5,000 and if the accused needed the other \$5,000, he might even lend the full \$10,000.

96. Mr H H Goh said he was aware of his wife's efforts to help the accused kick his heroin addiction.

97. However, he claimed that it did not cross his mind that the \$10,000 would or could be used by the accused to buy heroin to feed his addiction (NE 237 line 1 to 3). He maintained this evidence even though he knew that the accused is a heroin addict for many years (NE 237 line 4 to 6).

98. He also said that it was not a question of whether he believed the accused's reasons for wanting to borrow \$10,000. So long as the accused needed the money, he was prepared to lend it (NE 239 line 7 and 8).

99. In answer to my questions, Mr H H Goh said that he was 40 years old. As at the beginning of January 2001, he had saved over \$10,000. Eventually, he elaborated that it was below \$15,000. He did not have any children.

100. He maintained that he was prepared to lend \$5,000 and if the accused needed the other \$5,000, he would consider lending that as well.

REBUTTAL EVIDENCE BY PW22 DR CHOO SHIAO HOE

101. The Prosecution called Dr Choo Shiao Hoe as PW22 to rebut the evidence of the accused about his heroin addiction.

102. Dr Choo is a physician attached to the Raffles Medical Group.

103. Since September 2000, he also attends to drug inmates in Sembawang Drug Rehabilitation Centre, Selarang Park Drug Centre and Khalsa Rehabilitation Centre. He said that he sees an average 300 to 400 addicts a month and since September 2000, he has seen probably over 1,000 drug addicts. His job is to certify the drug withdrawal symptoms of the inmates i.e whether they are mild, moderate or severe.

104. The degree of withdrawal symptoms would correlate with the amount of heroin used.

105. He elaborated:

'Q Can you tell us what are the signs and symptoms displayed by heroin addicts while they are suffering from withdrawal and how they vary from one category to another?

A Signs and symptoms include ---

Tearing of eyes, running nose, yawning, sleepiness. For more severe cases, nausea, vomiting, diarrhoea, abdominal pains, change in mental state. That

means they become more drowsy. Sometimes their pupils become very big. They can get goose pimples as well. The second part of the question, in mild case, you get the running nose and all the symptoms that I described. In moderate and severe cases, the intensity of these symptoms increases. However, for our purposes, mild cases, generally we treat them with cold turkey. Basically, that means lock them up and do not treat them. Usually their symptoms will go off within two to three days or even less. In moderate cases, there's usually symptoms of nausea and vomiting, diarrhoea or abdominal cramps which usually requires treatment either by oral medication or very often, injections. This is to stop their symptoms. In severe cases, we may even have to resort to what we call replacement therapy with methadone. Because their symptoms are so severe, we give them the so-called artificial replacement for heroin. That is methadone. Methadone doesn't cause the euphoric effects but it makes the withdrawal symptoms less. It's a similar chemical compound to heroin.

Q Now, you say that for moderate and severe cases, there is some treatment of the patient. What happens if these patients are treated by cold turkey and are not given any treatment?

A You are referring to moderate and severe?

Q Moderate and severe cases.

...

A If no treatment is instituted, the patient's condition may deteriorate or even death can occur.'

(NE 249 line 9 to NE 250 line 19)

106. Dr Choo also said that in a mild case, the addict would smoke about 0.1g or less of pure heroin. In street talk, one sachet would mean about 20 straws and one straw would contain about 0.01g to 0.02g of pure heroin. So in a mild case, the addict would smoke about half a sachet a day.

107. In a moderate case, the addict would smoke from 0.1g to 0.6g or half to one sachet a day.

108. In a severe case, the consumption rate would be above the moderate case.

109. The accused was admitted to Changi Prison Hospital in the evening of 19 January 2001 and discharged in the afternoon of 20 January 2001.

110. The observation notes of 19 January 2001 relating to the accused were made by Staff Nurse Allan Guilas.

111. It states:

'O/E (meaning - appears sleepy, yawning"on examination") - both pupils reactive to light

- parameters normal

- no complaint of abdominal pain, vomiting, diarrhoea

- negative salivation, running nose

A fresh burn wound was noted'

112. Observation notes of the accused on 20 January 2001 were recorded by Dr Choo. The notes state:

'Well, lucid. No running nose. No tearing of eyes. Yawning slightly. Heart/Lungs were clear. Blood pressure was 120/80. Burn wounds: both forearms. For management plan, dermasone was to be applied to a wound which would be dressed. Discharge to CNB.'

113. Dr Choo said the burn wounds were not part of the withdrawal symptoms and the cream was not used to treat withdrawal symptoms. No medication was administered or prescribed to treat the withdrawal symptoms.

114. Dr Choo subsequently prepared a report dated 2 July 2001, Exhibit P94. It was based on the notes of the Staff Nurse and Dr Choo's own notes of 19 and 20 January 2001 respectively. Paragraph 3 of the report stated 'Clinically he showed signs of mild drug withdrawal'.

115. Dr Choo also said that the accused was discharged on 20 January 2001 because the accused did not require further treatment.

116. The Prosecution also tendered the following medical reports on the accused, which the Prosecution was able to retrieve, without objection from the Defence:

(a) Exhibit P97A dated 29 June 1994 from Dr Abdul Malik, Medical Officer, Sembawang Centre. Paragraphs 2 and 3 state:

'2 In three clinical examinations on him on three different days, I detected sufficient clinical evidence of drug withdrawal syndrome consistent with addiction to opiate.

3 In my opinion he is presently mildly addicted to Heroin.'

(b) Exhibit P97B dated 1 July 1994 from Dr Richard Wee, Medical Officer, Sembawang Centre. Paragraph 2 states:

'In three clinical examinations of him on three different days, I did not detect sufficient clinical evidence of drug withdrawal syndrome consistent with addiction to opiates.'

(c) Exhibit P97C dated 26 October 1996 from Dr Ong Koon Leong, Medical Officer, Sembawang DRC. Paragraphs 2 and 3 states:

'2. In three clinical examinations of him on three different days, I detected sufficient evidence of drug withdrawal syndrome consistent with addiction to opiates.

3. In my opinion, he is at present mildly addicted to Heroin.'

(d) Exhibit P97D. This is dated 26 October 1996 also. This is from Dr James Gerard Leong Kwek Choy, Medical Officer, Sembawang DRC. Paragraphs 2 and 3 were in the same terms as Exhibit P97C.

117. In cross-examination, Mr Goh Aik Leng pointed out to Dr Choo that his report dated 2 July 2001 Exhibit P94 did not actually conclude that the accused had a mild heroin addiction. He suggested that this was because Dr Choo could not safely come to that conclusion.

118. Dr Choo disagreed.

119. I have no doubt that if Dr Choo could not safely come to that conclusion, he would not have stated this conclusion in oral evidence before me. He knew that the accused was facing a capital charge and would not state his conclusion lightly or without basis.

120. Besides, Dr Choo's report that the accused had showed signs of mild drug withdrawal, from the observations on 19 and 20 January 2001, was tantamount to saying that the accused had a mild drug addiction.

121. As for the accused's evidence that he had taken two and a half to three sachets a day in January 2001, before his arrest, Dr Choo said, at NE 308 line 18 to 19:

'He may or may not, I do not know the fact, but from my examination of him, I find that a little bit excessive.'

122. Dr Choo also said that the history of detention and imprisonment of the accused was consistent with his opinion that the accused has a mild drug addiction because while in detention/prison, the accused would not have access to drugs. While in detention, he would have been rehabilitated so that upon his release he would start from a small dose of heroin first and not go straight to a heavier consumption.

123. Dr Choo also said that from the evidence of DW2 Yap Bee Hoon as to how the accused woke up after a long sleep being his normal self and alert, the accused's drug withdrawal symptom was mild in nature.

124. If the accused was shivering, vomiting, perspiring and had a pale appearance, as allegedly observed by Ms Yap on other occasions, but he nevertheless recovered within a few days without any form of treatment, Dr Choo was of the opinion that his drug withdrawal was mild.

125. I noted that Ms Yap did not indicate any form of treatment beyond shutting the accused in a room.

126. Mr Goh spent some time in cross-examining Dr Choo on the medical text 'Diagnostic and Statistical Manual of Mental Disorders (Third Edition-Revised)', or DSM-III-R for short, published by the American Psychiatric Association.

127. I found this exercise to be unhelpful and distracting.

128. The text was written more from a psychological perspective. It was general. It did not contradict Dr Choo's evidence. Also, it was not the case for the Defence that the accused was in

possession of such a large quantity of drugs because of some psychological disorder.

129. Basically this line of questioning was used to try and establish that the accused's tolerance to drugs was very high and that therefore he could have taken a larger quantity of drugs. However the point was not what the accused's tolerance level was but the quantity he was in fact consuming. The withdrawal symptoms of the accused on 19 and 20 January 2001 and the absence of any treatment for the accused for drug withdrawal then speak for themselves.

MY CONCLUSION

130. I did not accept the accused's evidence that he had bought such a large quantity of drugs on credit because of the Chinese New Year period.

131. In fact, he changed his evidence during cross-examination to accept that the sole reason why he purchased such a large quantity of drugs was so that he could show 'Ah Boy' that he could be trusted if he paid up.

132. The accused could not even be certain that he could pay the \$12,000.

133. The allegation that he had sought to borrow \$10,000 from his brother-in-law Mr H H Goh was a fabrication. It was never mentioned in any of his statements, and was concocted to explain how he would pay for the drugs.

134. I also did not believe Mr H H Goh's evidence about the alleged request to borrow \$10,000 from him.

135. It was incredulous that he would lend money or be prepared to lend money to the accused, knowing full well that the accused is a drug addict and not even suspect that the accused would be using the monies to buy drugs.

136. Mr H H Goh's savings were more than \$10,000 but less than \$15,000 or so he said. When I asked him whether he was saying that he was prepared to lend or consider lending \$10,000 in the light of his savings, he became evasive (see NE 241 line 16 to NE 243 line 5).

137. I also did not believe that he was prepared to lend or consider lending \$10,000 so long as the accused needed the money, given that the \$10,000 would be more than half his own savings.

138. I was of the view that the accused had never requested Mr H H Goh to lend him \$10,000.

139. It was clear to me that Mr H H Goh was trying to help the accused by fabricating his own evidence.

140. The accused's evidence that 'Ah Boy' did not chase him for payment and that there would be no consequence if he failed to pay 'Ah Boy' and that the accused could get free drugs costing about \$4,000 a month from other suppliers was also incredulous. The supply of such drugs is not a charitable undertaking.

141. The accused had also explained that the 60 sachets from one bundle were for his own consumption because these sachets were not sealed by a machine. The accused had identified Exhibit P82 (photo in P22) and Exhibit P83 (photo in P23) i.e five sachets and five sachets, as being part of the 60 sachets. However, he had already admitted that these two exhibits, as well as Exhibit P81 (photo in P21) were not for his own consumption. I did not accept his explanation that because

the 60 sachets were not sealed by a machine, they were meant for his own consumption.

142. Furthermore, I was of the view that the accused had admitted during the trial that Exhibits P81 to P83 were not for his own consumption because he was trying to limit the scope of his admissions in his 1st statement, 5th statement and 6th statement.

143. In his closing submission, Mr Goh submitted that as there was no weighing scale in the accused's bedroom, this was evidence that all the drugs found therein were for his own consumption. I did not accept this submission. There was no evidence before me that purchasers of such drugs would only buy them if they were accurately weighed by a weighing machine or that every drug supplier would weigh the drugs with a weighing machine.

144. As to whether the accused's drug addiction was mild, moderate or severe, the frequency with which he had been detained or imprisoned and the length of his detention/imprisonment was such that he was spending more time in detention/imprisonment than outside. He did not dispute that he had no access to drugs during the detention/imprisonment.

145. In my view, while the accused could not or would not kick the drug habit, his addiction was mild and did not become more severe.

146. In addition, the withdrawal symptoms of the accused observed by Dr Choo on 20 January 2001 after the accused was arrested were consistent with that of a mild addiction.

147. Furthermore, the evidence shows that aside from cold turkey treatment while the accused was free, he did not have any other medication or treatment which, as Dr Choo had explained, would have been required if the accused's addiction was moderate or severe.

148. I also accepted Dr Choo's evidence that a mild addiction would mean a consumption of 0.1g or less of heroin a day or at most half a sachet a day for the accused and not two and a half or three sachets a day.

149. Although Dr Choo did say that two and a half or three sachets a day in relation to the accused was a bit excessive, I was of the view that this statement should not be considered in isolation. Seen in the context of his entire evidence, he was speaking euphemistically when he made that statement.

150. Although Mr Goh had raised the argument that Dr Choo was relatively inexperienced, since his involvement with drug addicts was only from September 2000, he did not dispute that Dr Choo was an expert. Furthermore, the Defence did not call any witness to provide expert evidence different from Dr Choo.

151. As regards the handphone which was supposed to belong to 'Ah Heng', I did not accept the accused's evidence thereon.

152. I did not believe that 'Ah Heng' was so concerned about contacting the accused to the extent of letting the accused have a handphone just so that they could consume heroin together.

153. There was no evidence to corroborate the accused's evidence that his own handphone was not working well or had a poor connection.

154. There was also no evidence to corroborate the accused's evidence that the handphone belonged to someone else. No attempt was made to identify the service provider and to get the service

provider to confirm that the subscriber or owner of 'Ah Heng's' handphone was truly someone else.

155. As for the second pager of the accused, I also did not accept his evidence that he had kept it even though the line was terminated eight or nine years ago.

156. Again no attempt was made to adduce evidence which would corroborate this piece of evidence.

157. It seemed to be clear that the accused was in possession of two handphones and two pagers and a large quantity of drugs because he was trafficking in drugs.

158. I was also of the view that the accused was not required to pay 'Ah Boy' first for the drugs received by him on 19 January 2001 because either he was selling the drugs for 'Ah Boy' or 'Ah Boy's' boss or, in any event, 'Ah Boy' knew that he would be paid only after the accused had sold the drugs.

159. On the other hand, I accepted that some of the drugs found in the accused's possession was for his own consumption. He is a drug addict and some paraphernalia for consuming heroin was found in his bedroom.

160. However, in my view, the following would probably be for his own consumption:

<u>Item</u>	<u>Exhibit No. of Actual item</u>	<u>Diamorphine Weight</u>	<u>Where found</u>
1 sachet	P78	0.27g	On a rack in accused's bedroom
2 sachets	P79	0.51g	In a golden pouch/purse on a rack in accused's bedroom
1 straw	P80	0.01g	Ditto
2 sachets	P86	0.92g	In a Hazeline Snow box on a study table in accused's bedroom

	Total	1.71g	
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161. These sachets/straw were loose i.e not combined with other sachets and were not in an envelope or covered with a newspaper. The 1.71g of diamorphine would last the accused at least 17 days based on a mild addiction of 0.1g or less a day. However this would mean that 53.67g would still be for trafficking.

162. If I am wrong on this point, then at the very least, the two packets, i.e Exhibits P84 and P85, and the 20 sachets he had admitted to, i.e Exhibits P81 to P83, were for trafficking. The diamorphine weight of these would be 45.79g.

163. For the record, I amended the charge to read 'more than 15g but less than 55.38g of diamorphine'.

164. The Amended Charge was read to the accused who claimed trial but did not seek to adduce any further evidence.

165. Lastly, although the accused gave reasons like confusion and tiredness when he gave his statements, none of the officers who took his statements or the interpreter was questioned by Mr Goh to establish the alleged confusion or tiredness of the accused.

166. I found that the accused had admitted to trafficking in the drugs found in his possession. As I have mentioned, he then sought to confine his admission to Exhibits P81 to P83 to limit the scope of his admissions. The diamorphine weight of these three exhibits was 8.77g, below the threshold of 15g for a capital offence.

167. Also, it was only during the taking of his 6th statement on 29 January 2001, that he said for the first time that all the drugs were for his own consumption.

168. Ultimately, the accused had failed to rebut the presumption under s 17(c) of the Act and I had no reasonable doubt that he had committed the offence as charged.

169. Accordingly, I sentenced him according to the law.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER