

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

**[2023] SGHC 263**

Criminal Case No 8 of 2023

Between

Public Prosecutor

And

Liang Shoon Yee

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**JUDGMENT**

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

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**Public Prosecutor**

**v**

**Liang Shoon Yee**

**[2023] SGHC 263**

General Division of the High Court — Criminal Case No 8 of 2023

Dedar Singh Gill J

21–24, 28 February, 1, 7 March, 11 July 2023

18 September 2023

Judgment reserved.

**Dedar Singh Gill J:**

**Introduction**

1 The accused, Liang Shoon Yee, is a 35-year-old male Malaysian national.<sup>1</sup> He claimed trial to a single charge of trafficking in a controlled drug under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) read with s 5(2).<sup>2</sup> The charge reads as follows:<sup>3</sup>

**YOU ARE CHARGED** at the instance of the Public Prosecutor and the [charge] against you [is]:

That you, **LIANG SHOON YEE**,

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<sup>1</sup> Agreed Bundle dated 9 January 2023 (“AB”) at p 356.

<sup>2</sup> Notes of Evidence (“NE”) (21 February 2023) at p 2, lines 3 to 20.

<sup>3</sup> Arraigned Charges dated 9 January 2023 (“Arraigned Charges”); see also AB at p 443.

on 15 October 2019, at about 10.10 pm, in room 701 of Equarius Hotel located at Resorts World Sentosa, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), *to wit*, by having in your possession for the purpose of trafficking twenty packets containing not less than 488.56 grams of crystalline substance, which were analysed and found to contain not less than 327.74 grams of methamphetamine, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under section 33B of the MDA.

(the “Charge”)

2 It is useful at this juncture to set out the applicable statutory provisions in the MDA:

**Trafficking in controlled drugs**

**5.—**(1) Except as authorised by [the MDA], 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 [the MDA], a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

**Presumption concerning trafficking**

**17.** Any person who is proved to have had in his possession more than —

...

(h) 25 grammes of methamphetamine;

...

whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

3 Section 2 of the MDA also provides the following definition for the term “traffic”:

“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 [the MDA], and “trafficking” has a corresponding meaning;

**Background facts**

4 At the time of the accused’s arrest, he was working as a project assistant with a company called Gao Ji Food Pte Ltd. He was also receiving a salary from his father’s logistics company for assisting with various administrative tasks.<sup>4</sup> This was in addition to a monthly allowance his father gave him.<sup>5</sup>

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<sup>4</sup> NE (21 February 2023) at p 8, lines 5 to 8.

<sup>5</sup> NE (7 March 2023) at p 5, lines 26 to 32; AB at p 356, para 2.

5 The accused had become acquainted with Lim Wee Lee Tenzin Nyijee (“Tenzin”), also known as “Tai Zi”, through a mutual friend known as “Xiao Hui”.<sup>6</sup> The conversation between the accused and Tenzin on the messaging platform “WhatsApp”, which comprised text messages, audio messages, photographs, screenshots and videos, shows that the accused began supplying various controlled drugs to Tenzin.<sup>7</sup> This included the sale of methamphetamine, or “ice”,<sup>8</sup> and ecstasy.<sup>9</sup>

6 According to Tenzin, he used to obtain his drugs from one Yeo Zi Xiang, who was also referred to as “Damien”.<sup>10</sup> Damien and a man known as “Bob Smiley” were partners in the business of selling drugs.<sup>11</sup> Tenzin claims that Damien and Bob Smiley were interested in developing a close relationship with the accused so as to obtain drugs at a cheaper price.<sup>12</sup> He maintains that his role was merely to act as a translator between Bob Smiley, who was a Malay man, and the accused.<sup>13</sup> This is despite the fact that none of the messages in the WhatsApp conversation make any reference to Damien or Bob Smiley.<sup>14</sup> In any case, regardless of whether Tenzin was acting on Bob Smiley’s behalf, it cannot

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<sup>6</sup> NE (24 February 2023) at p 40, lines 3 to 4.

<sup>7</sup> NE (21 February 2023) at p 8, lines 14 to 22; Exhibit P477 at pp 2-7, 19, 46, 50, 54-55 and 58.

<sup>8</sup> NE (7 March 2023) at p 16, lines 15 to 16.

<sup>9</sup> NE (7 March 2023) at p 51, lines 29 to 30.

<sup>10</sup> NE (24 February 2023) at p 12, lines 20 to 25; p 21, lines 27 to 28.

<sup>11</sup> NE (24 February 2023) at p 14, lines 4 to 11; p 22, lines 14 to 15; p 23, lines 2 to 5.

<sup>12</sup> NE (24 February 2023) at p 20, lines 17 to 18.

<sup>13</sup> NE (24 February 2023) at p 22, lines 24 to 27.

<sup>14</sup> NE (28 February 2023) at p 30, lines 24 to 25; NE (24 February 2023) at p 38, lines 16 to 26; Exhibit P477.

be seriously disputed that Tenzin had placed orders with the accused on multiple occasions for various drugs.<sup>15</sup>

7 On 13 October 2019, Tenzin ordered 250 grams of methamphetamine, or “ice”, from the accused for \$4,900.<sup>16</sup> This was conditioned on the quality of the methamphetamine supplied.<sup>17</sup> In other words, Tenzin wanted to sample the methamphetamine before deciding whether to proceed with the purchase.

8 On the morning of 14 October 2019, the accused agreed to accompany Tenzin to a hotel in Sentosa.<sup>18</sup> The accused picked Tenzin up from Carlton City Hotel at about 2.30pm. They reached the Equarius Hotel in Sentosa about 20 minutes later.<sup>19</sup> The closed-circuit television (“CCTV”) footage from the hotel shows Tenzin carrying a backpack, wearing a pouch and wheeling a piece of luggage. The accused, on the other hand, brought a clutch bag, a black duffel bag and a blue bag.<sup>20</sup> They checked into Room 701, which was booked in Tenzin’s name.

9 According to the CCTV footage, the accused left the hotel with his blue bag and his black duffel bag at around 6.54pm.<sup>21</sup> Tenzin remained in the room.

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<sup>15</sup> See Exhibit P477 dated 24 February 2023 at pp 2 (item 15), 5 (item 57), 14 (item 161), 19 (item 208), 35 (item 429), 37 (item 463) and 50 (items 677, 680, 683).

<sup>16</sup> NE (7 March 2023) at p 11, lines 2 to 3; NE (28 February 2023) at p 61, line 32 and p 62, line 1; Exhibit P477 pp 100, 105.

<sup>17</sup> NE (28 February 2023) at p 62, lines 12 to 20; Exhibit P477 pp 99 (items 1542 and 1543) and 105 (item 1665).

<sup>18</sup> Exhibit P477 at p 117.

<sup>19</sup> NE (28 February 2023) at p 71, lines 8 to 30.

<sup>20</sup> NE (28 February 2023) at p 72, lines 3 to 20.

<sup>21</sup> NE (28 February 2023) at p 74, lines 14 to 29.

At 8.11pm, Tenzin sent the accused a voice message over WhatsApp after smoking a sample of the methamphetamine provided by the accused. This sample was taken from a packet which had a sticker labelled “125”.<sup>22</sup> He stated:<sup>23</sup>

My head is very pain. The---because this thing is not very good stuff, after burning or smoking, my head one side is fucking pain for 1 hour. This stuff very weird. I tell you, you take back. Next shipment, better stuff, then give me. Sorry for the trouble.

10 At 8.24pm, Tenzin informed the accused of his intention to head to Vivocity, a shopping mall nearby.<sup>24</sup> As Tenzin was unable to find a driver on Grab, a ride-hailing mobile application, the accused drove his car (“the Car”) back to the hotel to bring Tenzin to Vivocity. The duo then had their dinner and did some shopping.<sup>25</sup> They returned to the hotel in the early hours of 15 October 2019.

11 On 15 October 2019, two men met Tenzin at the hotel lobby at about 4pm. These men, who were each carrying a pouch and some plastic bags, followed Tenzin to Room 701.<sup>26</sup> One of the men was identified as Bob Smiley, whom the accused described as a bald Malay man who was about 1.75m tall.<sup>27</sup> On Tenzin’s account, Tenzin and the accused smoked methamphetamine with Bob Smiley and the other man in the hotel room for the next four hours.<sup>28</sup> During

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<sup>22</sup> NE (28 February 2023) at p 76, lines 23 to 24; p 77, line 25.

<sup>23</sup> NE (28 February 2023) at p 76, lines 1 to 5.

<sup>24</sup> Exhibit P477 at p 121 (item 1964).

<sup>25</sup> AB at pp 358 and 359, para 6.

<sup>26</sup> NE (28 February 2023) at p 80, line 1 to p 81, line 29.

<sup>27</sup> AB at p 393, para 32.

<sup>28</sup> NE (28 February 2023) at p 82, lines 21 to 27.

this time, Bob Smiley ostensibly told Tenzin that he did not like the methamphetamine provided by the accused.<sup>29</sup> Bob Smiley and his companion left the room at around 8pm.

12 At around 8.45pm, the accused and Tenzin left the hotel for Vivocity. This was because Tenzin had arranged to meet with a man known as “Ah Wai” to sell him drugs, specifically 20 ecstasy tablets and one box of Erimin-5 tablets.<sup>30</sup> “Ah Wai” was in fact Staff Sergeant Lau Chien Meng Allan (“SSG Lau”), an undercover officer from the Central Narcotics Bureau (“the CNB”).<sup>31</sup> The accused parked the Car at the carpark on the third floor. Tenzin proceeded to complete the transaction by passing 20 ecstasy tablets and ten slabs of Erimin-5 tablets<sup>32</sup> to SSG Lau at 9.11pm in return for the sum of \$1,150.<sup>33</sup> The accused was not present for this transaction but remained in the vicinity of the carpark. Both the accused and Tenzin were arrested at or near the lift lobby close to the carpark shortly after the transaction was completed.<sup>34</sup>

13 Following the arrest, the CNB officers conducted a search on Tenzin and the accused. Six Erimin-5 tablets wrapped with silver and red packaging, along with some money, were found on the accused.<sup>35</sup> A sling pouch, an Equarius Hotel room access card and \$1,150 were recovered from Tenzin.<sup>36</sup>

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<sup>29</sup> NE (28 February 2023) at p 82, lines 21 to 27.

<sup>30</sup> NE (28 February 2023) at p 84, lines 1 to 2; p 85, lines 22 to 23.

<sup>31</sup> AB at p 219, para 3.

<sup>32</sup> AB at p 221, para 9.

<sup>33</sup> NE (21 February 2023) at p 10, lines 13 to 17.

<sup>34</sup> AB at p 295.

<sup>35</sup> AB at pp 295 and 318, para 6.

<sup>36</sup> AB at p 220, para 7.

14 They also searched the Car in the presence of Tenzin and the accused. They recovered, among other things, one packet of crystalline substance, one packet containing 25 green tablets and one Erimin-5 tablet.<sup>37</sup>

15 The officers then escorted the accused back to Room 701. When they arrived at about 10.10pm,<sup>38</sup> they conducted a search of the room and seized:<sup>39</sup>

- (a) two packets of green crystalline substance;
- (b) one container containing crystalline substance;
- (c) one packet of powdery substance;
- (d) two packets containing ten green tablets each;
- (e) one packet containing eight green tablets;
- (f) one packet containing five green tablets;
- (g) one packet containing four blue tablets;
- (h) one packet containing two blue tablets;
- (i) nine packets of crystalline substance;
- (j) one silver package containing crystalline substance;
- (k) one packet containing fourteen tablets and one aluminium foil;

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<sup>37</sup> AB at p 282, para 6.

<sup>38</sup> AB at p 316, para 7.

<sup>39</sup> AB at pp 283-286.

- (l) one packet containing five packets of crystalline substance;
- (m) 29 tablets wrapped with silver and red packaging;
- (n) one envelope containing 20 tablets wrapped with silver and red packaging;
- (o) one packet of brown vegetable matter;
- (p) one packet of white powdery substance;
- (q) one packet containing two tablets and one aluminium foil;
- (r) one packet containing two yellow tablets;
- (s) one envelope containing 12 slabs of ten tablets with each slab wrapped with silver and red packaging;
- (t) one blue bag containing four packets of crystalline substance and one packet of green crystalline substance; and
- (u) one white box containing a blue pouch which held two packets of crystalline substance.

The exhibits were packed in separate tamper proof bags.<sup>40</sup> Contemporaneous statements were taken from Tenzin and the accused at about 11.40pm.<sup>41</sup>

16 While the search of Room 701 was ongoing, the Car was towed to Woodlands Checkpoint where a search by the K9 unit was carried out. Nothing

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<sup>40</sup> AB at p 249, paras 10-11.

<sup>41</sup> AB at p 226, para 15.

further was found. The Car was brought back to the CNB headquarters (the “CNB HQ”)<sup>42</sup> where photographs of the Car were taken.<sup>43</sup>

17 After the completion of the search in Room 701 and processing of the scene by the CNB forensics team, the CNB officers commenced photo-taking of the locations where the items were seized. The entire process concluded at about 4.05am on 16 October 2019.<sup>44</sup> The officers then separately escorted Tenzin and the accused to their official residential addresses on Stratton Drive and Balestier Road respectively.<sup>45</sup> Tenzin’s mother informed the officers that Tenzin was no longer staying at the property on Stratton Drive.<sup>46</sup> A search of the accused’s apartment also revealed nothing of relevance.<sup>47</sup> The duo were brought to the CNB HQ, where their urine samples were taken.<sup>48</sup>

18 At about 10.15am, Tenzin and the accused were escorted to a room adjacent to a Exhibit Management Room. The two rooms were separated by a glass panel, such that Tenzin and the accused were able to witness photo-taking of the drug exhibits through the glass panel.<sup>49</sup> Following the photo-taking process, Tenzin and the accused witnessed the weighing of the drug exhibits. The exhibits which were to be sent to the deoxyribonucleic acid (“DNA”)

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<sup>42</sup> AB at p 325, para 7.

<sup>43</sup> AB at p 328, para 4.

<sup>44</sup> AB at p 413, para 6.

<sup>45</sup> AB at p 226, para 17; p 261, para 10.

<sup>46</sup> AB at p 226, para 17; p 235, para 15.

<sup>47</sup> AB at p 309, para 7.

<sup>48</sup> AB at p 365, para 17; p 256, para 7.

<sup>49</sup> AB at p 329, para 5.

Profiling Laboratory were packed into brown paper bags, while the remaining exhibits were packed into tamper-proof polymer evidence bags.<sup>50</sup>

19 Tenzin and the accused were then brought to Alexandra Hospital to undergo pre-statement medical examinations. After the said examinations, they were transported to the CNB HQ for their cautioned statements to be recorded under s 23 of the Criminal Procedure Code 2010 (2012 Rev Ed) (the “Criminal Procedure Code”).<sup>51</sup> This process was carried out from 10.27pm to 11.42pm on 16 October 2019. They then returned to Alexandra Hospital for their post-statement medical examination before they were handed over to lockup officers at the Central Police Division.<sup>52</sup>

20 From 18 to 20 October 2019, the CNB referred the accused to the Cluster Medical Centre in the Changi Prison Complex (the “Complex Medical Centre”) for a drug withdrawal assessment. The doctors who assessed the accused concluded that he tested negative for non-opioid drug withdrawal and that the accused’s rate of drug consumption of opioids was “likely to be NOT APPLICABLE”.<sup>53</sup> The accused also did not complain of any drug withdrawal symptoms during this time.

21 The accused was also examined by a consultant from the Department of Forensic Psychiatry at the Institute of Mental Health on three occasions – 30 October, 4 November and 7 November 2019. The consultant’s report noted that while the accused had a history of problems with drug abuse, his “current

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<sup>50</sup> AB at p 414, para 13.

<sup>51</sup> AB at p 330, paras 11-12; p 338, paras 8-9; p 339, para 3.

<sup>52</sup> AB at p 330, para 12.

<sup>53</sup> AB at p 198, paras 6-7.

clinical presentation [was] otherwise not suggestive of the presence of any mental illness or intellectual disability”. The consultant therefore concluded that the accused was not of unsound mind at the material time of the alleged offence and was fit to plead in a court of law.<sup>54</sup>

22 Further statements were recorded from the accused on 21 October 2019 at 3.49pm,<sup>55</sup> 22 October 2019 at 2.57pm and 7.12pm,<sup>56</sup> 23 October 2019 at 11am<sup>57</sup> and 23 October 2019 at 2pm.<sup>58</sup> A blood specimen was also obtained from the accused on 23 October 2019 for the purposes of obtaining his DNA sample.<sup>59</sup> The accused provided two additional statements in 2020 – once on 3 July 2020 at 10.30am and another on 18 December 2020 at 2.17pm.<sup>60</sup> He gave a final statement on 9 June 2021 at 3.25pm.<sup>61</sup> This final statement was volunteered by the accused to an investigating officer who had arrived at the prison to serve six additional charges on the accused.<sup>62</sup>

23 The exhibits pertaining to the Charge are as follows:<sup>63</sup>

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<sup>54</sup> AB at p 205, para 18.

<sup>55</sup> AB at p 341.

<sup>56</sup> AB at pp 342-343.

<sup>57</sup> AB at p 345.

<sup>58</sup> AB at p 346.

<sup>59</sup> AB at p 352, para 15.

<sup>60</sup> AB at pp 439-440.

<sup>61</sup> AB at p 441.

<sup>62</sup> Prosecution’s Closing Submissions (“PCS”) at para 27(a).

<sup>63</sup> Exhibit P480.

S/N	Exhibit	Type of drug	Quantity of drug (g)
1	D1A1F1	Methamphetamine	83.15
2	D1B1		79.95
3	D1A1E1		21.75
4	D1A1H		14.11
5	D1A1L3 (3 packets)		44.53
6	D1A1L1A		27.91
7	D1A1L2A		0 (negligible)
8	D1A3A (2 packets)		14.39
9	D1C		0.36
10	D1A1D		10.47
11	D1A1G		3.46
12	D1A1R		6.16

13	D1B4		5.17
14	D1A2A (2 packets)		6.44
15	D1B2		9.23
16	D1B3		0.66
<b>Total</b>			<b>327.74</b>

### The parties' cases

24 As evident from the table in the preceding paragraph, the Charge concerns 20 packets of methamphetamine which were found in the accused's black duffel bag in Room 701.

25 The Prosecution argues that the accused trafficked all 20 packets of methamphetamine. The presumption concerning trafficking under s 17(*h*) of the MDA applies as the total weight of methamphetamine in the 20 packets exceeds 25 grams.<sup>64</sup> The Prosecution takes the position that the accused failed to rebut this presumption.

26 First, the accused admitted that he had brought Exhibits D1B1 and D1A1F1 to the Equarius Hotel with the intention of selling them to Tenzin.<sup>65</sup>

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<sup>64</sup> PCS at para 19.

<sup>65</sup> PCS at para 19.

27 Second, the accused conceded that he had previously sold methamphetamine in quantities of 62.5 grams and 25 grams. This contradicts his claim that the packets weighing less than 125 grams could not have been for sale.<sup>66</sup>

28 Third, the accused's claims that he possessed some of the packets of methamphetamine for collection and consumption are without merit. The accused provided inconsistent accounts as to his possession and ownership of the 20 packets.<sup>67</sup> He also lied in his statements about his ownership of Exhibits D1B1 and D1A1F1. The Prosecution argues that these lies constitute *Lucas* lies, *ie*, lies which the court may take into consideration as amounting to corroboration of evidence of the accused's guilt: see *Kamrul Hasan Abdul Quddus v Public Prosecutor* [2011] SGCA 52 ("*Kamrul*") at [18]. The accused also did not possess the financial resources to keep the 18 packets for his own collection or consumption.<sup>68</sup>

29 Fourth, the accused inflated his consumption rates of methamphetamine in an attempt to account for the methamphetamine found in his possession. His explanation that he had reported a lower consumption rate in his earlier statements to qualify for the "low risk programme" for admission to the Drug Rehabilitation Centre (the "DRC") and the long-term ("LT") imprisonment regime was not believable. The subsequent inflated rates which the accused reported were also materially undercut by the medical evidence.<sup>69</sup>

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<sup>66</sup> PCS at paras 23-24.

<sup>67</sup> PCS at para 27.

<sup>68</sup> PCS at paras 50-52.

<sup>69</sup> PCS at paras 43-44.

30 Conversely, the accused’s case is that none of the 20 packets were in his possession for the purpose of trafficking. He raises three main defences to rebut the presumption.

31 First, his intention was to return two of the packets of methamphetamine in his possession (Exhibits D1A1F1 and D1B1) to the person who had entrusted him with them. In his view, this avails him of the defence of bailment as the accused was in possession of these packets for the sole purpose of returning them to the person who had given them to him in the first place (the “Bailment Defence”).<sup>70</sup>

32 Second, some of the packets were in the accused’s possession for his personal consumption (the “Consumption Defence”). To this end, the accused points to his previous history of drug abuse, inconsistent rates of consumption and adequate financial means.<sup>71</sup> He also never asserted that the packets of drugs, save for Exhibits D1A1F1 and D1B1, were for sale and there is no evidence that he intended to traffic in small quantities of drugs.

33 Third, the accused possessed some of the packets as part of his own personal collection (the “Collector’s Defence”). This was because of his “passion for collecting methamphetamine”, in particular larger, intact, and/or unique pieces.<sup>72</sup> The methamphetamine in those packets therefore was neither for trafficking nor for the accused’s own consumption.

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<sup>70</sup> Defence’s Closing Submissions dated 1 June 2023 (“DCS”) at para 15.

<sup>71</sup> DCS at paras 21-26.

<sup>72</sup> DCS at para 33.

34 Finally, the accused argues that Exhibit D1B3, which contained 0.66 grams of methamphetamine, was not in his possession for the purpose of trafficking as it was only intended to be provided as a sample to Bob Smiley.<sup>73</sup>

### **Issues to be determined**

35 Three elements must be proved beyond a reasonable doubt to establish an offence under s 5(1)(a) read with s 5(2) of the MDA: *Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 (“*Chong Hoon Cheong*”) at [4]; *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 (“*Zainal*”) at [49]:

- (a) possession of a controlled drug (the “Possession Element”) – which may be proved or presumed under s 18(1) of the MDA or deemed under s 18(4) of the MDA;
- (b) knowledge of the nature of the drug (the “Knowledge Element”) – which may be proved or presumed under s 18(2) of the MDA; and
- (c) the said possession of the drug was for the purpose of trafficking which was not authorised (the “Purpose Element”). This element must be proved if either or both of the Possession and Knowledge Elements have been presumed, or this may be presumed under s 17 of the MDA if both the Purpose and Knowledge Elements are proved.

36 The accused accepts that he was aware that he was in possession of the 20 packets containing 327.74 grams of methamphetamine at the time of his

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<sup>73</sup> DCS at para 36.

arrest.<sup>74</sup> In other words, the Possession and Knowledge Elements are proved beyond a reasonable doubt. This also means that the fulfilment of the Purpose Element may be presumed under s 17(h) of the MDA. The onus is on the accused to rebut this presumption on a balance of probabilities: see, *eg*, *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 (“*Muhammad*”) at [26].

37 Therefore, in deciding whether the Prosecution has proven its case against the accused beyond a reasonable doubt, the following issues arise for determination:

- (a) whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1F1 and D1B1 by way of the Bailment Defence;
- (b) whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1E1, D1A1H, D1A1L3, D1A1L1A, D1A1L2A, D1A3A and D1C by way of the Consumption Defence;
- (c) whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1D, D1A1G, D1A1R, D1B4, D1A2A and D1B2 by way of the Collector’s Defence; and
- (d) whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibit D1B3.

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<sup>74</sup> DCS at para 2.

**Issue 1: Whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1F1 and D1B1 by way of the Bailment Defence**

38 The accused raises the Bailment Defence in relation to Exhibits D1A1F1 and D1B1. These two exhibits, which have a total gross weight of close to 250 grams, refer to two packets of crystalline substance containing 83.15 grams<sup>75</sup> and 79.95 grams<sup>76</sup> of methamphetamine respectively. In his statement on 9 June 2021, the accused admitted that he was supposed to pass 250 grams of crystalline substance containing “ice”, *ie*, methamphetamine, to Tenzin on the day of his arrest.<sup>77</sup> He identified Exhibits D1A1F1 and D1B1 as the two packets comprising the 250 grams.<sup>78</sup>

39 Despite this admission, the accused submits that the presumption of trafficking should not apply as the accused held the drugs for the sole purpose of returning them to the person who deposited the drugs with him.<sup>79</sup> He cites the case of *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh*”). In that case, the Court of Appeal held at [114] that:

... In the vast majority of cases, it can reasonably be assumed that the movement of drugs from one person to another, anywhere along the supply or distribution chain, was done to facilitate the movement of drugs towards their ultimate consumers. It is clear, however, that this assumption does not hold true in the case of a person who merely holds the drugs as “bailee” with a view to returning them to the “bailor” who entrusted him with the drugs in the first place. Such a person cannot, *without more*, be liable for trafficking because the act of

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<sup>75</sup> AB at p 73.

<sup>76</sup> AB at p 82.

<sup>77</sup> AB at p 465; Defence’s Reply Submissions dated 3 July 2023 (“DRS”) at para 5.

<sup>78</sup> AB at pp 466-467.

<sup>79</sup> DCS at para 10.

returning the drugs is not *part of* the process of supply or distribution of drugs.

[emphasis in original in italics]

40 This does not mean that any “bailee” who receives drugs intending to return them to the “bailor” will never be liable for trafficking. As the accused accepts,<sup>80</sup> the key inquiry is whether the “bailee” knew or intended that the “bailment” was in some way part of the process of supply or distribution of the drugs: *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 (“*Roshdi*”) at [115].

41 On the facts, Tenzin rejected Exhibits D1A1F1 and D1B1 on the basis that the methamphetamine in these packets looked too “powdery” and that the sample he smoked had caused him to have a headache.<sup>81</sup> The accused had then informed his supplier that he wanted to return the two packets of methamphetamine. His supplier agreed.<sup>82</sup> As such, the accused argues that *at the time of his arrest*, he was in possession of Exhibits D1A1F1 and D1B1 for the sole purpose of returning them to his supplier.<sup>83</sup> His sole intention at that point in time was to facilitate the movement of the drugs *away* from the end-consumer and back to his supplier. The Bailment Defence should, as a result, be available to him.

42 I do not accept the accused’s Bailment Defence. I begin with the context in *Ramesh* where the Court of Appeal discussed the bailment defence. The facts of *Ramesh* were as follows. The first appellant, Ramesh, and the second

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<sup>80</sup> DCS at para 14.

<sup>81</sup> DCS at paras 17(b)-17(d).

<sup>82</sup> Exhibit P481 at p 105 (item 1791).

<sup>83</sup> DCS at paras 15 and 18.

appellant, Chander, were drivers working in a Malaysian company which made deliveries to various places in Singapore. On one occasion, Chander drove Ramesh into Singapore in a lorry. After clearing the checkpoint, Ramesh received a bag containing bundles of diamorphine from Chander and drove off in another lorry which was parked at a carpark along Woodlands Road. Ramesh was subsequently arrested in possession of the bag of drugs and charged with possession of the drugs for the purpose of trafficking.

43 The Prosecution argued that Ramesh had agreed to deliver the drugs to a third party at Chander's behest. However, it was unclear who Ramesh was supposed to deliver the drugs to or how much he would gain for delivering the drugs. Chander also testified that Ramesh had been extremely reluctant to deliver the drugs. The Court of Appeal thus concluded at [87] that there was a reasonable possibility that Ramesh had merely been *safekeeping* the drugs for Chander and had intended to return them to him later that day. The Prosecution then argued that, even if Ramesh had intended to return the drugs to Chander, that act of delivery would have constituted "trafficking" under s 2 of the MDA (*Ramesh* at [87]). This argument triggered the discussion in *Ramesh* on the bailment defence.

44 The Court of Appeal noted that the parliamentary intention behind the provisions pertaining to drug trafficking was to target those involved in the supply and distribution of drugs. Therefore, it stated at [110] that:

... a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". **It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking". There is a fundamental difference**

**in character between this type of possession and possession with a view to *passing the drugs onwards to a third party*.**

In the former situation, the returning of the drugs to a person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.

[emphasis in original in italics; emphasis added in bold]

45 The crux of the bailment defence as expressed in *Ramesh* is therefore that a “bailee” who comes into the possession of drugs for the *sole purpose* of safeguarding these drugs for a “bailor”, the person from whom the “bailee” received the drugs, and not to facilitate the movement of the drugs toward third parties should not be considered to have “trafficked” these drugs under the MDA. It was also on this basis that the Court of Appeal in *Roshdi* held at [115] that the key inquiry is whether the “bailee” in question knew or intended that the “bailment” was in some way part of the process of the supply or distribution of the drugs.

46 It is clear, however, that the accused was not merely safeguarding Exhibits D1A1F1 and D1B1 for his supplier, with no intention to part with them other than to return them to his supplier. Instead, the accused clearly collected the packets of methamphetamine from his supplier and brought them to the Equarius Hotel with the intention of *fulfilling the order* which Tenzin had placed with him on 13 October 2019. This was confirmed by the accused not only in

his statement on 9 June 2021<sup>84</sup> but also in cross-examination.<sup>85</sup> In other words, the accused came into the possession of the drugs with the intention of selling them to Tenzin. It was only upon Tenzin’s rejection of the methamphetamine that the accused was forced to arrange for the return of the drugs to his supplier.<sup>86</sup>

47 Applying the test expressed in *Roshdi*, the accused clearly knew or intended that his possession of the two packets of methamphetamine was in some way part of the process of supply or distribution of the drugs. In fact, his possession of the drugs was intended to *directly facilitate* the supply of the drugs to Tenzin, the end-user. To allow the accused to avail himself of this defence simply because his attempt to sell the drugs was frustrated by Tenzin’s rejection of the drugs would be to defeat Parliament’s intention for the provisions in the MDA to effectively target individuals involved in the supply and distribution of drugs. It would also unduly extend the scope of the bailment defence beyond ensuring that individuals who are merely safekeeping the drugs in their possession with no intention of passing them onward to a third party *at any point in time* are not caught under the definition of “trafficking” under s 2 of the MDA.

48 For these reasons, I reject the Bailment Defence and find that the accused failed to rebut the presumption concerning trafficking under s 17(h) of the MDA. Therefore, I accept that Exhibits D1A1F1 and D1B1, which contain

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<sup>84</sup> AB at p 465, para 3.

<sup>85</sup> NE (7 March 2023) at p 27, lines 23 to 30; p 46, lines 1 to 2.

<sup>86</sup> NE (7 March 2023) at p 27, lines 6 to 8.

a total of 163.1 grams of methamphetamine, were in the accused's possession for the purpose of trafficking.

**Issue 2: Whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1E1, D1A1H, D1A1L3, D1A1L1A, D1A1L2A, D1A3A and D1C by way of the Consumption Defence**

49 The accused also raises the Consumption Defence with respect to Exhibits D1A1E1, D1A1H, D1A1L3, D1A1L1A, D1A1L2A, D1A3A and D1C.<sup>87</sup> These exhibits refer to ten packets of crystalline substance containing a total of 123.05 grams of methamphetamine:

S/N	Exhibit	Description	Weight (g)	Amount of methamphetamine (g)
1	D1A1E1 <sup>88</sup>	A packet containing crushed crystals of methamphetamine tied up with a rubber band	32.45	21.75
2	D1A1H <sup>89</sup>	A small Ziploc bag containing white crystalline substance	20.98	14.11
3	D1A1L3 <sup>90</sup>	Three small Ziploc bags containing white crystalline substance	66.08	44.53

<sup>87</sup> DCS at para 21.

<sup>88</sup> AB at p 72.

<sup>89</sup> AB at p 75.

<sup>90</sup> AB at p 77.

4	D1A1L1A <sup>91</sup>	A transparent plastic packet with a sticker placed on it labelled “42.3g” containing white crystalline substance	41.66	27.91
5	D1A1L2A <sup>92</sup>	A small Ziploc bag containing crystalline substance	0.13	0 (negligible)
6	D1A3A <sup>93</sup>	Two transparent plastic packets containing white crystalline substance	21.37	14.39
7	D1C <sup>94</sup>	A small Ziploc bag containing white crystalline substance	0.55	0.36
<b>Total weight (g)</b>			183.22	123.05

50 When an accused person relies on the defence of consumption to rebut the presumption under s 17 of the MDA, the court will consider the overall circumstances of the case. The relevant circumstances include (see *Muhammad* at [31]; *Chong Hoon Cheong* at [45]):

- (a) the rate of drug consumption;
- (b) the frequency of supply;

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<sup>91</sup> AB at p 76.

<sup>92</sup> AB at p 60.

<sup>93</sup> AB at p 81.

<sup>94</sup> AB at p 84.

- (c) whether the accused had the financial ability to afford the drugs;
- (d) whether the accused made a contrary admission in any of his statements (*ie*, that the whole quantity of the drugs was for sale);
- (e) how the accused came to be in possession of the drugs; and
- (f) the accused's possession of drug trafficking paraphernalia.

51 The Court of Appeal also held in *Chong Hoon Cheong* at [46] that the “key pillar and essential foundation” of a consumption defence is the “rate of consumption”. The other factors listed above are secondary factors which flow from the accused person’s rate of consumption. It is therefore for the accused person alleging such rate of consumption to show this rate by credible evidence: *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [117]. The court will not find that a consumption defence is made out simply on the “mere say-so” of the accused: *Muhammad* at [30], citing *Jusri bin Mohamed Hussain v PP* [1996] 2 SLR(R) 706 at [63].

***The accused’s rate of consumption***

52 Having examined the statements of the accused as well as his testimony at trial, it is clear that he has been inconsistent in his claims pertaining to his rate of consumption. The following is a list of the accused’s claims pertaining to his rate of methamphetamine consumption, in chronological order:

(a) on 18 October 2019, the accused was examined by Dr Edmond Phua at the Complex Medical Centre and he claimed that he had smoked 0.5 grams of “ice” daily in the preceding six months;<sup>95</sup>

(b) on 22 October 2019, the accused admitted in his statement recorded at about 2.57pm that he would have smoked less than 0.5 grams of “meth” daily and he would spread this amount throughout the day;<sup>96</sup>

(c) on 23 October 2019, the accused stated in his statement recorded at about 2pm that he would have smoked about 3.5 to 5 grams of “meth” weekly;<sup>97</sup>

(d) on 30 October, 4 November and 7 November 2019, the accused was examined by Dr Lee Kim Huat Jason at the Complex Medical Centre and claimed that he had been using methamphetamine on a daily basis for “not more than 0.5gram a day on average”;<sup>98</sup>

(e) on 3 July 2020, the accused claimed in his further statement recorded at about 10.30am that he could have smoked about 3 to 5 grams of “ice” per day on average. He also added that he could have smoked about 5 to 7 grams of methamphetamine when he had friends around;<sup>99</sup>

(f) on 18 December 2020 at about 2.17pm, the accused recounted the events on 15 October 2019 in a further statement recorded. He

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<sup>95</sup> AB at p 197.

<sup>96</sup> AB at p 365, para 18.

<sup>97</sup> AB at p 402, para 48.

<sup>98</sup> AB at p 204, para 13.

<sup>99</sup> AB at p 452.

estimated that he had smoked about 1 gram of “meth” in a 20-minute smoking session and another 1.5 grams in a subsequent period lasting between 30 to 45 minutes;<sup>100</sup>

(g) on 7 March 2023, in the course of his evidence-in-chief, the accused stated that he had smoked 0.5 grams of methamphetamine on each occasion he had smoked and suggested that he had smoked three to four times a day;<sup>101</sup>

(h) on 7 March 2023, in the course of cross-examination, the accused reverted to his claim on 3 July 2020 that he would have smoked 3 to 5 grams of methamphetamine a day on average;<sup>102</sup> and

(i) on 1 June 2023, the accused stated in his closing submissions that he had consumed less than 0.5 grams of methamphetamine per day on average, although he would sometimes consume up to 4 grams of methamphetamine in a day. In the same paragraph, however, the accused repeated his claim that he would have smoked 3 to 5 grams of methamphetamine a day on average and about 5 to 7 grams when he had friends around.<sup>103</sup>

53 The accused’s reported consumption rate of methamphetamine increased about ten-fold between his accounts in October and November 2019 and his subsequent accounts in and after 2020. The Prosecution argues that these

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<sup>100</sup> AB at pp 461–462, paras 62 and 65.

<sup>101</sup> NE (7 March 2023) at p 6, lines 25 to 27.

<sup>102</sup> NE (7 March 2023) at p 84, lines 7 to 9.

<sup>103</sup> DCS at para 25.

inflated rates from 3 July 2020 onwards were “an afterthought” intended to justify the amounts of methamphetamine in the accused’s possession.<sup>104</sup>

54 The accused’s explanation as to why he intentionally depressed his consumption rates upon his arrest is that he had done so to qualify for the “low-risk programme” for admission to the DRC. According to the accused’s oral testimony, this programme involves a shorter period of incarceration:<sup>105</sup>

A Because I’ve been to DRC, I’ve been to---I mean, my previous two sentence was on consumption. So in---in this, yah, when---when I was in there, there’s this programme. They will categorise us as low-risk, medium-risk or high-risk. So in order to get a---there’s a few---few category that you have to hit in order to get, like, *maybe you can get a 9-month programme because **if let’s say I was in DRC for 18 month and I--I only sit 9 month, and the other 9 month I will go out on programme.*** So the first criteria is you have to be very---your risk must be low and ***your consumption rate must be--must cannot be too hardcore.*** So from there I---I get---I mean I---I know that I have to, like try to lower my---my---my risk of---of my consumption that’s why I give this---this amount. But actually I’m taking more.

[emphasis added in italics and bold italics]

This “low-risk programme” appears to be a broad reference to the Community-based Programmes at the DRC, which allow suitable inmates to serve their remaining sentences outside prison premises.

55 In addition, the accused claims that this “low-risk programme” is also available for the LT imprisonment regime. This regime imposes heavier penalties for drug consumption offences, with a mandatory minimum of five years’ imprisonment for drug abusers who are arrested for, or admitted to an

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<sup>104</sup> PCS at para 42.

<sup>105</sup> NE (7 March 2023) at p 75, lines 13 to 23.

approved institution for, at least the third time.<sup>106</sup> Despite this mandatory minimum sentence, the accused states that individuals sentenced to LT imprisonment may nonetheless “get up to 1 year of early release” by being “out on [electronic] tagging” if their risk levels are assessed to be low. The accused therefore decided to report a lower rate of consumption so as to “have a better chance of going out early”.<sup>107</sup>

56 As such, the accused only began accurately reporting his rate of consumption in 2020. He emphasises that any confusion arising from the differing reported rates stems from the fact that he did not have a “fixed rate of consumption of methamphetamine”.<sup>108</sup>

57 The Prosecution disputes the accused’s assertions. This is because the accused admitted that he was, at all times, unaware of the exact rate of consumption which would allow him to qualify for the programme.<sup>109</sup> The accused would have also known, at the time of his accounts in October and November 2019, that he would be facing a charge for drug trafficking.<sup>110</sup> This charge would have rendered him ineligible for the programme at the DRC.

58 In addition, the Prosecution points out that the inflated rate of consumption claimed by the accused does not cohere with the medical evidence. The evidence of Dr Edmond Phua, who had examined the accused at the Complex Medical Centre on 18 October 2019 (three days after the accused’s

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<sup>106</sup> NE (7 March 2023) at p 77, lines 22 to 29.

<sup>107</sup> NE (7 March 2023) at p 80, lines 4 to 5.

<sup>108</sup> DCS at para 25; NE (7 March 2023) at p 80, lines 21 to 24.

<sup>109</sup> NE (7 March 2023) at p 78, lines 1 to 5.

<sup>110</sup> AB at pp 443-444; PCS at para 43.

arrest), was that the accused had been physically well and exhibited no withdrawal symptoms.<sup>111</sup> The accused remained in this favourable state from 18 to 20 October 2019.<sup>112</sup> Dr Phua stated that this lack of withdrawal symptoms was consistent with the accused’s account that he had smoked less than 0.5 gram of methamphetamine per day for the preceding six months.<sup>113</sup> On the contrary, it was “highly unlikely” for an individual who had been consuming 3 to 5 grams of methamphetamine daily for six months to have exhibited no withdrawal symptoms in the six days following his arrest.<sup>114</sup> Such an individual would “manifest at least a few symptoms or signs”.<sup>115</sup>

59 On the evidence before me, I find that the accused was consuming methamphetamine at an average rate of less than 0.5 gram a day, even if he had in fact smoked more than this amount on occasion.

60 I address the parties’ arguments in turn.

61 First, it is undisputed that the accused was unaware of the exact consumption rate required for entry into the “low-risk programme” at the DRC. That being said, this fact is inconclusive in itself given that the accused could very well have depressed his consumption rate to *bolster* his chances of qualifying for the programme. As such, I place no weight on this fact for the

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<sup>111</sup> NE (23 February 2023) at p 28, lines 9 to 14; p 28, line 28 to p 29, line 8; p 29, line 29 to p 30 line 5.

<sup>112</sup> AB at pp 197-198; NE (23 February 2023) at p 31, lines 1 to 3.

<sup>113</sup> NE (23 February 2023) at p 31, lines 4 to 9.

<sup>114</sup> NE (23 February 2023) at p 31, lines 17 to 26.

<sup>115</sup> NE (23 February 2023) at p 32, lines 9 to 11.

purpose of determining the accused's actual rate of methamphetamine consumption.

62 Second, the Community-based Programmes at the DRC and any “low-risk programme” pertaining to the LT-regime under s 33A of the MDA are only available to individuals facing *drug consumption* charges. The accused was aware of this fact: his testimony at trial reveals that he knew the Community-based Programmes at the DRC were reserved for such individuals<sup>116</sup> and that the LT-regime applied to his case because he had already been arrested for drug consumption offences twice before.<sup>117</sup> The accused was therefore aware that reporting a low rate of drug consumption would only be beneficial to him if he was charged with a drug consumption offence.

63 Although the accused acknowledged on 16 October 2019 that he was facing a *drug trafficking* charge,<sup>118</sup> he argues that he nevertheless under-reported his rate of methamphetamine consumption as he retained the *subjective* belief that it would accord him some advantage at the DRC or in terms of the LT-regime.<sup>119</sup> This subjective belief was engendered by the alleged agreement between him and Tenzin to blame Bob Smiley for the drugs in Room 701. In the light of this agreement, the accused had ostensibly been hopeful that the ownership of most of the drugs would be solely attributed to Bob Smiley and that, as a result, the accused would *eventually* only be charged with drug consumption or, at the very most, drug possession.<sup>120</sup> If so, depressing his rate

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<sup>116</sup> NE (7 March 2023) at p 77, lines 14 to 18.

<sup>117</sup> NE (7 March 2023) at p 75, lines 13 to 14; p 77, lines 22 to 23.

<sup>118</sup> AB at p 443.

<sup>119</sup> DRS at para 20.

<sup>120</sup> NE (7 March 2023) at p 76, lines 23 to 25.

of methamphetamine consumption might have been “helpful” in ameliorating a potential sentence.<sup>121</sup>

64 I do not believe that the accused possessed this subjective view. In the accused’s statement on 21 October 2019, which was recorded *after* he had told Dr Edmond Phua at the Complex Medical Centre that he had smoked 0.5 grams of “ice” per day, the accused did not state that the drugs in Room 701 had belonged to Bob Smiley. Instead, he claimed possession of four packets of methamphetamine and said that he did not know who the rest of the drugs belonged to.<sup>122</sup> Had the accused been under the subjective belief that under-reporting his rate of drug consumption would be beneficial to him, he would have sought to maximise his chances of being charged with only drug consumption offences. He could have easily done so by adhering closely to his alleged agreement with Tenzin to attribute the ownership of the drugs to Bob Smiley. The accused, however, made no such efforts. This contradicts his claim that he subjectively believed he would be charged with a drug consumption offence and therefore that the depression of his methamphetamine consumption rate would be advantageous to him.

65 Third, I accept that the medical evidence supports the accused’s initially-reported consumption rate of less than 0.5 gram of methamphetamine per day. While Dr Edmond Phua is not an “expert on withdrawal symptoms”,<sup>123</sup> his evidence was founded upon his numerous first-hand interactions with drug abusers during his nine-year stint at Complex Medical Centre. I therefore find

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<sup>121</sup> DRS at para 20.

<sup>122</sup> AB at p 360, para 9.

<sup>123</sup> NE (23 February 2023) at p 33, lines 7 to 8.

his observation, that individuals who consume 3 to 5 grams of methamphetamine daily for a period of six months will exhibit *some* signs or symptoms of withdrawal, to be credible. Here, the accused exhibited no such signs or symptoms *at all* in the days following his arrest.<sup>124</sup> I do not find his account that he managed to “get better” in the intervening two days between his arrest and his examination by the doctors at Complex Medical Centre convincing.<sup>125</sup> It therefore follows that his subsequent inflated rate of consumption is not true.

66 Fourth, the accused was unable to explain the change in his reported rate of methamphetamine consumption. Apart from stating that he smoked more on some days and less on others,<sup>126</sup> the accused could not provide any reason as to why he had reported the different rates:<sup>127</sup>

Q It says: [Reads] “One day on average, I can smoke about 3 grams to 5 grams.”

A Yes.

Q In October 2019, you say on average, you smoke 0.5 grams per day.

A Yes.

Q So you agree with me, firstly, this is a difference?

A Yes.

Q Now explain to me why.

A *I can't explain it.*

Q Which is the truth, Mr Liang?

A Both are the truth.

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<sup>124</sup> NE (23 February 2023) at p 28, lines 9 to 14; p 28, line 28 to p 30, line 20.

<sup>125</sup> NE (7 March 2023) at p 79, lines 11 to 23.

<sup>126</sup> NE (7 March 2023) at p 83, line 27.

<sup>127</sup> NE (7 March 2023) at p 83, lines 13 to 22.

[emphasis in italics]

67 The accused also added to the confusion surrounding his rate of methamphetamine consumption by asserting that his initial accounts were “partly true”.<sup>128</sup> This was despite his claim that he had intentionally depressed his consumption rate in his earlier accounts in October and November 2019.<sup>129</sup> Specifically, when the accused was asked whether his initial account that he smoked 0.5 grams per day or his subsequent reported rate of 3 to 5 grams per day represented his true rate of consumption, he replied, “[b]oth are the truth”. The accused’s insistence on holding on to the two contradictory positions renders his account inconsistent and diminishes the plausibility of his subsequent position being true.

***The accused’s financial means to afford the drugs***

68 The accused submits that he possessed the financial means to purchase methamphetamine and other drugs “as and when he needed and at varied quantities for his own consumption”.<sup>130</sup> His father would give him a monthly allowance of about \$5,000 on top of his salary of \$3,000. He also claimed, at trial, that he could have asked his father for more money at any point in time.<sup>131</sup> This meant that the accused did not have any financial incentive to profit from the trafficking of drugs and was not hindered by the cost of drugs. He was therefore able to purchase a new batch of drugs for his own consumption after he depleted around half of his supply of drugs.<sup>132</sup> Having a constant supply of

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<sup>128</sup> NE (7 March 2023) at p 82, line 20.

<sup>129</sup> NE (7 March 2023) at p 81, lines 13 to 21.

<sup>130</sup> DCS at para 26(b).

<sup>131</sup> NE (7 March 2023) at p 5, lines 1 to 3.

<sup>132</sup> DCS at para 27.

drugs served to assuage his fears of suffering withdrawal symptoms should his access to drugs be suddenly disrupted.<sup>133</sup>

69 On the other hand, the Prosecution argues that the accused did not have sufficient financial means to afford the drugs.<sup>134</sup> Even taking the allowance from the accused's father into account, the accused would still need to pay for his household expenses, car rental costs and drug purchases from his supplier. The Prosecution also points to text messages between the accused and his supplier which suggest that the accused needed to wait for Tenzin to pay him before he could pay his supplier.<sup>135</sup>

70 Based on the evidence before me, I am prepared to accept that the accused possessed the financial ability to afford the methamphetamine in the ten packets of crystalline substance. According to the accused, his supplier charged him \$2,300 per 125 grams of crystalline substance containing methamphetamine.<sup>136</sup> This amounts to \$18.40 per gram of crystalline substance. The ten packets of crystalline substance, which possessed a gross weight of 183.22 grams, would have cost approximately \$3,400. Moreover, the 61.15 grams of crystalline substance which the accused claims comprised his personal collection would have cost him an additional \$1,125 (see [85]).

71 The accused testified that he had a monthly cash inflow of \$8,000.<sup>137</sup> Although the accused was saddled with various expenses and was the sole

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<sup>133</sup> DCS at para 27.

<sup>134</sup> Prosecution's Reply Submissions dated 3 July 2023 at para 23.

<sup>135</sup> PCS at para 52.

<sup>136</sup> NE (7 March 2023) at p 65, line 29 to p 66, line 3.

<sup>137</sup> NE(7 March 2023) at p 86, lines 9 to 14.

breadwinner of his family, which included his pregnant wife and their two children,<sup>138</sup> the accused was able to ask his father for more money whenever he wished and his father would give him the money without question.<sup>139</sup> This fact was not seriously contested by the Prosecution. In addition, given the accused's testimony that he purchased the drugs in different batches,<sup>140</sup> the financial cost of the drugs would have been borne by the accused over an extended period of time. I also do not consider the single text message sent by the accused to his supplier stating that his "bank inside no money"<sup>141</sup> to be demonstrative of the accused's financial situation at the time. I therefore find that, on balance, the accused possessed sufficient financial resources to afford the drugs.

***Frequency and quantity of supply***

72 The accused states that he would order his drugs in quantities of 25 or 50 grams and that he would place another order when he was left with half of the amount he ordered or when he thought the drugs were of a high quality.<sup>142</sup> The accused states that he had batches of methamphetamine being delivered to him at least once every "few days".<sup>143</sup> He also reveals that he had multiple suppliers providing him with drugs.<sup>144</sup>

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<sup>138</sup> NE (7 March 2023) at p 40, lines 3 to 20; Exhibit P479 at p 10.

<sup>139</sup> NE (7 March 2023) at p 5, lines 1 to 7.

<sup>140</sup> NE (7 March 2023) at p 14, lines 23 to p 15, line 5.

<sup>141</sup> Exhibit P481 at p 102 (item 1745).

<sup>142</sup> NE (7 March 2023) at p 15, lines 18 to 28.

<sup>143</sup> NE (7 March 2023) at p 72, lines 19 to 20.

<sup>144</sup> AB at p 401, paras 46-47; NE (7 March 2023) at p 13, line 27; p 15, line 5; p 90, line 15; p 72, lines 12 to 13.

73 The fact that the accused had easy and frequent access to relatively large quantities of methamphetamine indicates that the ten packets in dispute here were not entirely intended for his consumption. I consider which packets were in his possession for his own consumption below at [78]–[83]. For present purposes, I find that there was simply no need for him to stockpile such a large amount of methamphetamine. Instead, he could have placed new orders at fixed intervals. This is buttressed by the accused’s testimony that he preferred consuming methamphetamine from newer batches of drugs.<sup>145</sup>

***The overall circumstances of the case***

74 Following my finding that the accused was consuming methamphetamine at a rate of less than 0.5 gram per day at the time of his arrest, the amount of methamphetamine contained in all ten packets of crystalline substance (123.05 grams) would have been enough to last the accused over 246 days. In the light of the accused’s ready and frequent access to drugs, I do not accept that the accused intended to stockpile 123.05 grams of methamphetamine for his own consumption over such a long period. There was simply no need to. This is so even if the accused was able to garner sufficient financial resources to purchase this amount of methamphetamine for himself.

75 Moreover, the accused states that he obtained his methamphetamine through 25-grams or 50-grams packets of crystalline substance purchased from his suppliers. He would purchase a new batch whenever he depleted around half of his present supply.<sup>146</sup> Assuming he dealt exclusively in terms of 50-grams packets, this means that he would have only had a *maximum* of about 75 grams

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<sup>145</sup> NE (7 March 2023) at p 15, lines 23 to 25.

<sup>146</sup> DCS at para 27.

worth of crystalline substance at any point in time. This amount is, however, less than half the amount of crystalline substance which the accused now claims was for his own consumption (183.22 grams). The shortfall cannot be explained even if one accepts the accused's explanation at trial that he would make additional orders of batches of methamphetamine which he deemed of particularly high quality.<sup>147</sup> To this end, the accused only expressly indicated that Exhibit D1A3A, which had a gross weight of 21.37 grams, was obtained as a result of such additional orders.<sup>148</sup> There is therefore no credible evidence to support the accused's defence that he possessed all ten packets of methamphetamine for the purpose of his own consumption.

76 The question, then, is whether *any* of the ten packets were for the accused's consumption. Tenzin's testimony confirms that the accused possessed his own stash of methamphetamine which was meant only for his own consumption.<sup>149</sup> This stash is distinct from the drugs which the accused intended to sell to his customers.<sup>150</sup> Tenzin also corroborates the accused's account that the two of them smoked methamphetamine in Room 701 on 15 October 2019.<sup>151</sup> I therefore accept that the accused had brought his supply of methamphetamine which was intended for his own consumption to Room 701.

77 I turn now to examine each of the exhibits which the accused avers form part of his "consumption" stash.

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<sup>147</sup> NE (7 March 2023) at p 15, lines 19 to 23; DCS at para 27(b).

<sup>148</sup> NE (7 March 2023) at p 19, lines 12 to 19.

<sup>149</sup> NE (1 March 2023) at p 17, lines 20 to 21.

<sup>150</sup> NE (1 March 2023) at p 18, lines 6 to 8.

<sup>151</sup> NE (28 February 2023) at p 82, lines 26 to 27; AB at pp 461-462, paras 61-62.

*Exhibits D1A1L3 and D1A1H*

78 I find that Exhibits D1A1L3 and D1A1H were intended only for consumption. The accused states that he had obtained these exhibits from a supplier named “WuYa” on three separate occasions:

- (a) 25 grams of methamphetamine about one and a half months before the accused’s arrest;
- (b) 25 grams of methamphetamine about two weeks before the purchase in (a); and
- (c) 50 grams of methamphetamine some time before the purchase in (b).<sup>152</sup>

The accused describes these exhibits as comprising his “rainy day stock”, which would tide him through delays in his supply of drugs without suffering withdrawal symptoms.<sup>153</sup>

79 I accept the accused’s explanation pertaining to these two exhibits. According to the accused’s contemporaneous statements in October 2019, he identified Exhibits D1A1L3 and D1A1H as packets of methamphetamine belonging to him.<sup>154</sup> These exhibits were left on the hotel room table by the accused.<sup>155</sup> Given that Tenzin smoked from Exhibits D1A1F1 and D1B1 (which

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<sup>152</sup> AB at p 401, para 46.

<sup>153</sup> NE (7 March 2023) at p 15, lines 9 to 32; p 18, lines 11 to 14.

<sup>154</sup> AB at p 366, para 21.

<sup>155</sup> AB at p 360, para 9.

were intended for sale to him),<sup>156</sup> and the two Malay men smoked from either Exhibits D1A1F1 and D1B1 or their own packets of methamphetamine,<sup>157</sup> there was no reason for the accused to take out Exhibits D1A1L3 and D1A1H from his black duffel bag unless they were intended for his own consumption in the hotel room.

80 I note that the combined gross weight of Exhibits D1A1L3 and D1A1H (87.06 grams) is inconsistent with the accused’s evidence that he would place orders for drugs in quantities of 25 or 50 grams and place another order when he was left with half of these amounts. As observed earlier at [75], this would result in him possessing an inventory of roughly 75 grams of crystalline substance containing methamphetamine, assuming he dealt in quantities of 50 grams. Nevertheless, although Exhibits D1A1L3 and D1A1H weighed slightly more than 75 grams, I find that there is a reasonable possibility that the drugs in these exhibits comprise the accused’s “consumption” stash of methamphetamine.

*Exhibit D1A1L2A*

81 I also agree that Exhibit D1A1L2A, a small Ziploc bag containing white crystalline substance, was for the accused’s own consumption. The accused postulated that Exhibit D1A1L2A was the leftover of a “sample” provided to him by a supplier which he never got around to finishing.<sup>158</sup> Given that the small Ziploc bag was almost completely empty, I accept the accused’s explanation that the miniscule amount of methamphetamine found in the Ziploc bag

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<sup>156</sup> NE (28 February 2023) at p 76, lines 21 to 28; p 78, lines 14 to 15.

<sup>157</sup> AB at p 393, para 33; NE (1 March 2023) at p 16, lines 4 to 14.

<sup>158</sup> NE (7 March 2023) at p 17, lines 6 to 28.

reflected the remains of a “sample” which a supplier had provided him with. This sample would have necessarily been for the accused’s own consumption.

*Exhibit D1A1L1A*

82 I do not accept that Exhibit D1A1L1A was intended for the accused’s own consumption. Exhibit D1A1L1A is a transparent plastic packet containing white crystalline substance. There is a sticker on the packet with “42.3g” written on it.<sup>159</sup> The accused confirms that he was the one who affixed the sticker onto the packet.<sup>160</sup> In my view, there was no need for the accused to have indicated the weight of the packet on the sticker unless the packet was intended for sale or for onward movement along the supply chain. Indeed, if the packet was intended solely for the accused’s own consumption, he would not be concerned with the precise weight of the packet as this weight would change along with his consumption of the drug. The accused could have weighed this fluctuating weight at any point in time as he owned two digital weighing scales – one was retrieved from the Car by the CNB officers<sup>161</sup> while the other was found in Room 701.<sup>162</sup> Moreover, the accused did not identify Exhibit D1A1L1A as belonging to him both in his contemporaneous statements as well as his statement recorded on 3 July 2020.<sup>163</sup>

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<sup>159</sup> AB at p 378.

<sup>160</sup> NE (7 March 2023) at p 95, lines 13 to 15.

<sup>161</sup> AB at p 282.

<sup>162</sup> AB at p 366, para 21.

<sup>163</sup> AB at p 450, A17.

*Exhibits D1A1E1, D1A3A and D1C*

83 I take the view that Exhibits D1A1E1, D1A3A and D1C did not constitute part of the accused’s “consumption” stash of methamphetamine. These exhibits were not specifically identified by the accused in his contemporaneous statements in October 2019 as drugs belonging to him.<sup>164</sup> The accused only claimed that these exhibits belonged to him in his statement on 3 July 2020.<sup>165</sup> Besides this inconsistency, there is also no credible evidence before me to show that these exhibits formed part of the accused’s “consumption” stash. With respect to Exhibit D1C, in particular, the accused was unable to remember why the exhibit was in his possession at all.<sup>166</sup> I therefore find that the accused failed to discharge his burden to rebut the presumption of trafficking vis-à-vis Exhibits D1A1E1, D1A3A and D1C on a balance of probabilities.

*Summary*

84 In sum, I find that the accused has proven, on a balance of probabilities, that Exhibits D1A1L3, D1A1H and D1A1L2A were in his possession for the purpose of consumption. That being said, the accused failed to establish his Consumption Defence vis-à-vis Exhibits D1A1E1, D1A3A, D1A1L1A and D1C, which contain a total of 64.41 grams of methamphetamine. These drugs were thus in the accused’s possession for the purpose of trafficking.

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<sup>164</sup> AB at pp 364-366.

<sup>165</sup> AB at p 450, A17.

<sup>166</sup> NE (7 March 2023) at p 21, lines 17 to 28.

**Issue 3: Whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibits D1A1D, D1A1G, D1A1R, D1B4, D1A2A and D1B2 by way of the Collector's Defence**

85 The accused submits that the following exhibits were part of his personal collection of methamphetamine, which were neither for sale nor for his own consumption:

S/N	Exhibit	Description	Weight (g)	Amount of methamphetamine (g)
1	D1A1D <sup>167</sup>	A Ziploc bag with blue stripes containing white crystalline substance	15.71	10.47
2	D1A1G <sup>168</sup>	A Ziploc bag containing white crystalline substance	5.19	3.46
3	D1A1R <sup>169</sup>	A Ziploc bag containing white crystalline substance	9.14	6.16
4	D1B4 <sup>170</sup>	A Ziploc bag containing green crystalline substance	7.72	5.17
5	D1A2A <sup>171</sup>	Two small Ziploc bags containing green crystalline substance	9.66	6.44

<sup>167</sup> AB at p 71.

<sup>168</sup> AB at p 74.

<sup>169</sup> AB at p 78.

<sup>170</sup> AB at p 63.

<sup>171</sup> AB at p 61.

6	D1B2 <sup>172</sup>	A Ziploc bag containing white crystalline substance	13.73	9.23
<b>Total</b>			61.15	40.93

86 The accused described himself as a “self-professed connoisseur” who developed a “passion for collecting methamphetamine”.<sup>173</sup> He would collect larger pieces or crystals of methamphetamine which were intact and/or unique. Such pieces were rarer than the powdery forms of methamphetamine and were therefore more valuable.<sup>174</sup> The accused stresses that these pieces formed his personal collection and were never intended for consumption.

87 The Prosecution, on the other hand, argues that this explanation should be disbelieved. It points out that the accused failed to mention that any of these exhibits were in his possession for the purpose of collection. Instead, the accused denied ownership of several packets of methamphetamine listed at [85] above.<sup>175</sup> Even when he finally admitted to owning these packets in 2021, he omitted to make a distinction between his “collection” stash of methamphetamine and his “consumption” stash.<sup>176</sup> Specifically, the accused said that “the other ‘ice’ in [his] bag [were] his collection” *and* that this “collection of ‘ice’ [was] all for [his] own consumption”.<sup>177</sup> It was only at trial

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<sup>172</sup> AB at p 83.

<sup>173</sup> DCS at para 33.

<sup>174</sup> NE (7 March 2023) at p 53, lines 11 to 15.

<sup>175</sup> AB at pp 365-366.

<sup>176</sup> PCS at paras 26-27.

<sup>177</sup> AB at p 466, para 3.

that the accused mentioned that he kept his stash of methamphetamine intended for collection separate from his “consumption” stash, and that he did not consume any of the methamphetamine meant for his collection.<sup>178</sup> The Prosecution submits that these inconsistencies are fatal to the Collector’s Defence.<sup>179</sup>

88 On the evidence before me, I find that the accused has failed to rebut the presumption of trafficking by way of the Collector’s Defence.

89 First, for a “self-professed connoisseur” of methamphetamine, the accused provides scant details with regard to his collection. One would expect an avid collector to not only offer the context in which each item in his or her collection was acquired, but also to elaborate on the various points which make each item unique. Yet, the accused does not provide any specific information on each packet of methamphetamine which allegedly form part of his collection. He does not even indicate when he started collecting methamphetamine crystals or how he came into the habit of collecting such crystals. In my view, the accused’s taciturnity on these points is inconsistent with his professed “passion for collecting methamphetamine” and calls into question the plausibility of the Collector’s Defence.

90 Second, I agree with the Prosecution that there was no good reason for the accused to have only brought up the Collector’s Defence in his statement recorded on 9 June 2021. In fact, the accused did not allude to the Collector’s

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<sup>178</sup> NE (7 March 2023) at p 22, lines 8 to 16.

<sup>179</sup> PCS at paras 54-55.

Defence at all in his statements taken on 15,<sup>180</sup> 16,<sup>181</sup> 21,<sup>182</sup> 22<sup>183</sup> and 23 October 2019.<sup>184</sup> Even in his statement recorded on 3 July 2020, more than half a year after his arrest in October 2019, the accused maintained that all the methamphetamine which belonged to him had been for his consumption.<sup>185</sup> Also, no mention of the Collector's Defence was made in the accused's statement on 18 December 2020.<sup>186</sup> In addition, even when the accused mentioned the Collector's Defence on 9 June 2021 for the first time, he expressly stated that the entirety of his methamphetamine collection was for his own consumption.<sup>187</sup> It was only at trial that the accused alleged that some of the packets of methamphetamine in his possession were *only* for collection and not for consumption.<sup>188</sup>

91 In my view, the fact that the Collector's Defence was only raised belatedly by the accused more than one and a half years after his arrest indicates that this account was simply an afterthought. This is also evident from the fact that the accused had multiple opportunities to mention the Collector's Defence, or at least allude to it, in his contemporaneous statements as well as his statements taken in July and December 2020 but had nonetheless failed to do so at each juncture.

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<sup>180</sup> AB at pp 289-291.

<sup>181</sup> AB at pp 446-448.

<sup>182</sup> AB at pp 356-361.

<sup>183</sup> AB at pp 364-367.

<sup>184</sup> AB at pp 397-404.

<sup>185</sup> AB at p 452, A29.

<sup>186</sup> AB at pp 460-462.

<sup>187</sup> AB at p 466, para 3.

<sup>188</sup> NE (7 March 2023) at p 22, lines 24 to 32.

92 Third, the accused's evidence is that most drug addicts prefer to purchase packets of methamphetamine containing larger-sized crystals.<sup>189</sup> In fact, this was, according to the accused, one of the reasons provided by Tenzin for *rejecting* the batch of methamphetamine on 14 October 2019.<sup>190</sup> Therefore, there were clearly potential purchasers for these larger-sized crystals. This bolsters the Prosecution's position that the methamphetamine that allegedly formed part of the accused's "collection" stash was in fact intended for sale.

93 Fourth, the accused was unable to pinpoint the exact types of methamphetamine crystals which would warrant collection. The accused's initial account was that he had collected "big crystal[s]".<sup>191</sup> However, when questioned on whether the crystals in Exhibit D1A1D (which allegedly formed part of his "collection" stash) and Exhibit D1A1E1 (which did not) differed greatly in size, the accused only stated that the crystals in Exhibit D1A1D were "in a better size".<sup>192</sup> He could not provide a conclusive answer as to whether this simply meant that the crystals in Exhibit D1A1D were larger:

Q But looking at the---what's in D1A1D on P74 as well as the rocks in D1A1E1 on page 75, it appears that they are similar size. Would you agree?

A No, I disagree.

Q You disagree. Are they very different in size?

A Those inside, those I took out in D1A1D will be in better--better form, I mean, in a better size. Maybe not as big as D1A1G, but it will be in a better size.

Q Sorry, I'm trying to understand what "better size" means. Is it bigger?

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<sup>189</sup> NE (7 March 2023) at p 52, lines 25 to 28.

<sup>190</sup> AB at p 467; NE (7 March 2023) at p 52, lines 7 to 28.

<sup>191</sup> AB at p 466; NE (7 March 2023) at p 14, lines 1 to 3.

<sup>192</sup> NE (7 March 2023) at p 71, line 16.

A Maybe looks like---a bit like, page 79, D1B2.

Q D1B2 on page 79?

A Yes.

94 Even if, contrary to the Prosecution’s contentions, the crystals in Exhibit D1A1D were in fact larger than those in Exhibit D1A1E1, the accused was unable to (a) show why such a size difference was significant enough to justify collection and/or (b) point to additional features of the crystals in Exhibit D1A1D which rendered them in “better form”.<sup>193</sup> The accused’s inability to clearly articulate the difference(s) between the crystals in Exhibits D1A1D and D1A1E1, which caused only the former to be included in his “collection” stash, indicates that the accused did not possess a “collection” stash at all. Otherwise, the accused would have been clear on the criteria used to assess the methamphetamine crystals for entry into his “collection” stash.

95 Based on the four reasons above, I am satisfied that the accused did not possess Exhibits D1A1D, D1A1G, D1A1R, D1B4, D1A2A and D1B2 as part of his personal collection. He therefore failed to rebut the presumption of trafficking vis-à-vis these exhibits on a balance of probabilities.

***Further contentions raised by the accused***

96 I now deal with two contentions raised by the accused in support of the Consumption Defence and the Collector’s Defence, namely, that the 18 packets of drugs could not have been for sale as (a) they were not offered to Tenzin in replacement of Exhibits D1A1F1 and D1B1 and (b) they were not of a standard weight in factors of 250 grams.

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<sup>193</sup> NE (7 March 2023) at p 71, line 15.

97 First, the accused argues that the remaining 18 packets of methamphetamine were clearly not for sale because the accused would have otherwise offered them to Tenzin in substitution of the 250 grams of methamphetamine which Tenzin rejected.<sup>194</sup> I do not accept this argument. For one, this contention was only raised by the accused in his reply submissions on 3 July 2023. It was not canvassed in the course of his evidence-in-chief or in his closing submissions. The fact that this “powerful and contemporaneous corroboration” of the accused’s arguments was only advanced at the eleventh-hour points to it being an afterthought. I am particularly mindful that the raising of this argument at such a late stage of the proceedings denies the Prosecution the opportunity to cross-examine the accused as well as to question Tenzin on this point.

98 In addition, the remaining 18 packets of methamphetamine only had a total gross weight of 245.36 grams and were therefore insufficient to fulfil Tenzin’s order for 250 grams. This shortfall is particularly pronounced in the light of my finding that, of the 18 packets, Exhibits D1A1L3, D1A1H and D1A1L2A, which possessed a gross weight of 87.19 grams, were in the accused’s possession for the purpose of his own consumption. More importantly, given that Tenzin (and Bob Smiley) wanted to sample the drugs in Exhibits D1A1F1 and D1B1 before accepting them, it is unlikely that they would have accepted any drugs in replacement of those packets without sampling them too. As such, offering Tenzin the drugs from the remaining 18 packets might not have been practical as Tenzin would have required time to sample the methamphetamine originating from so many different batches of drugs. I am also cognisant of the fact that two of the 18 packets, Exhibits D1B4

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<sup>194</sup> DRS at paras 6-8.

and D1A2A, comprised green crystalline substance containing methamphetamine.<sup>195</sup> Given that the initial packets of crystalline substance intended for sale to Tenzin comprised *white* crystalline substance, it is unclear, on the evidence before me, whether Exhibits D1B4 and D1A2A would have been readily accepted as an adequate substitution for Tenzin's original order.

99 Second, the accused submits that the fact that the gross quantities of the remaining 18 packets were "irregular, random, and [did] not appear to conform to a factorial pattern based on 250 grams" meant that these packets could not have been intended for sale.<sup>196</sup> In his evidence-in-chief, the accused asserted that he had only sold crystalline substance containing methamphetamine in denominations of 125 grams or 250 grams.<sup>197</sup> However, the accused later conceded in the course of cross-examination that he had also dealt in quantities of 125 grams, 62.5 grams and 25 grams.<sup>198</sup> In his reply submissions, the accused attempted to justify these differing accounts by stating that he sold drugs in "regular, commonsensical factors of 250 grams", which include quantities of 25 grams, 62.5 grams, 125 grams and 250 grams, as these may be expressed as fractions of 250 grams.<sup>199</sup> He argues that this is consistent with Tenzin's testimony that the accused was "not the kind of dealer who [sold] 2 grams, 3 grams".<sup>200</sup>

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<sup>195</sup> NE (7 March 2023) at p 18, lines 27 to 30; p 21, lines 2 to 8.

<sup>196</sup> DRS at para 9.

<sup>197</sup> NE (7 March 2023) at p 28, lines 6 to 8.

<sup>198</sup> NE (7 March 2023) at p 94, lines 11 to 26.

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

<sup>200</sup> NE (1 March 2023) at p 14, lines 28 to 29; DRS at para 10.

100 I do not find this argument believable. Following my analysis regarding Exhibit D1A1L1A at [82] above, I am satisfied that the accused was no stranger to dealing in irregular quantities of methamphetamine. I therefore do not place any weight on the fact that the quantities in the remaining 18 packets of methamphetamine in the accused’s possession were “random” or “irregular”.

101 These contentions therefore do not assist the accused in rebutting the presumption concerning trafficking by way of the Consumption Defence or the Collector’s Defence.

***The accused’s lies regarding his ownership of the drugs***

102 I also find that the accused’s lies in relation to his ownership of the exhibits damage his creditworthiness and the reliability of his evidence pertaining to the Consumption Defence and the Collector’s Defence.

103 In his statement on 15 October 2019, the accused denied ownership of several packets of methamphetamine which had been found in Room 701.<sup>201</sup> On 21 October 2019, the accused claimed ownership of four packets of methamphetamine but stated that he did not know who the remaining packets of methamphetamine had belonged to.<sup>202</sup> On 22 October 2019, the accused repeated his claim that he had owned four packets of methamphetamine as well as another blue-striped Ziploc bag containing methamphetamine.<sup>203</sup> On 23 October 2019, the accused identified other packets of methamphetamine as

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<sup>201</sup> AB at pp 289-292 (A6, A8, A10 and A16).

<sup>202</sup> AB at p 360, para 9.

<sup>203</sup> AB at p 365, para 20.

drugs which he had purchased from his suppliers.<sup>204</sup> It was only on 9 June 2021 that the accused admitted that all 20 packets of methamphetamine had belonged to him.<sup>205</sup>

104 The accused contends that he initially denied ownership of the drugs because Tenzin had instructed him to push the blame to Bob Smiley. These instructions were apparently conveyed at various points after their arrest, including when the Car was being searched by the CNB officers,<sup>206</sup> when they were observing the exhibits being photographed in the Exhibit Management Room,<sup>207</sup> when Tenzin and the accused were being transported to the State Courts in the same police car,<sup>208</sup> and when they were in lockup.<sup>209</sup> The accused also testified that when he and Tenzin were brought to Room 701 by the CNB officers, he overheard Tenzin telling the officers that the drugs belonged to “a Malay person called ‘Bob Smiley’”.<sup>210</sup> Therefore, upon learning that Tenzin had subsequently stated that the accused had sold 250 grams of methamphetamine to Bob Smiley, the accused felt betrayed. This compelled the accused to tell the truth regarding the ownership of the drugs on 9 June 2021 during a visit by an investigating officer to the prison to serve additional charges on the accused.<sup>211</sup>

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<sup>204</sup> AB at p 401.

<sup>205</sup> AB at pp 465-467 (paras 3 and 6).

<sup>206</sup> NE (21 February 2023) at p 35, lines 23 to 25.

<sup>207</sup> NE (7 March 2023) at p 32, line 31 to p 33, line 7.

<sup>208</sup> AB at p 465.

<sup>209</sup> NE (7 March 2023) at p 98, lines 22 to 25; p 99, lines 7 to 25.

<sup>210</sup> NE (7 March 2023) at p 29, lines 3 to 12.

<sup>211</sup> AB at p 466, para 5; PCS at para 27(a).

105 I do not find this explanation to be credible. I accept that Tenzin and the accused had communicated at certain points in time after they were arrested. Tenzin’s testimony confirms that the two men exchanged whispers when they first entered the room adjacent to the Exhibit Management Room.<sup>212</sup> Tenzin also did not dispute the possibility that the two men had engaged in conversation when they had been transported to the State Courts.<sup>213</sup> Nonetheless, I am not satisfied that the two men had agreed, in the course of these conversations, to push the blame to Bob Smiley. In the accused’s statement recorded on 21 October 2019, he stated:<sup>214</sup>

Before I went to the toilet, I remember I only had one packet containing four packets of ‘meth’ on the table. I cannot exactly remember the exact amount but I know there were only ‘meth’ on the table and it belongs to me. But **when I came out from the toilet, I realized there were more ‘meth’ and some erimin. I do not know who it belongs to but I did not asked [Tenzin] about it.**

[emphasis in bold]

The accused submits that it was clear that he was pushing the blame to Bob Smiley, even though he did not point him out by name.<sup>215</sup> However, in the extract above, it would have been equally plausible for the drugs to have belonged to Tenzin, instead of Bob Smiley. I therefore do not see how the extract in the accused’s statement above supports his account that he was following Tenzin’s instructions to push all blame to Bob Smiley. On the contrary, this directly contradicts the accused’s account that Tenzin had *specifically* instructed him in the lockup to “[j]ust say the thing [belongs] to the

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<sup>212</sup> NE (1 March 2023) at p 29, line 26 to p 30, line 13.

<sup>213</sup> NE (1 March 2023) at p 31, lines 5 to 11.

<sup>214</sup> AB at p 360, para 9.

<sup>215</sup> DRS at para 15.

Malay”.<sup>216</sup> I also note that Tenzin disputed the accused’s account that he had told the accused on multiple occasions to push the blame to Bob Smiley.<sup>217</sup> Instead, Tenzin testified that he told the accused to bear the liability for the drugs which belonged to him.<sup>218</sup> I therefore reject the accused’s explanation as to why he initially denied ownership of the drugs.

106 Despite this finding, I do not go so far as to agree with the Prosecution that the accused’s differing accounts of his ownership of the drugs amount to *Lucas* lies. A *Lucas* lie is a lie which satisfies four conditions (*Kamrul* at [18], citing *Regina v Lucas (Ruth)* [1981] QB 720):

- (a) the lie is deliberate;
- (b) the lie relates to a material issue;
- (c) the motive for the lie is a realisation of guilt and a fear of the truth; and
- (d) the statement is clearly shown to be a lie by evidence other than that of an accomplice who is to be corroborated, such as an admission or by evidence from an independent witness.

Such lies may serve to corroborate evidence of the accused’s guilt: *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 (“*Ilechukwu*”) at [60].

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<sup>216</sup> NE (7 March 2023) at p 99, line 10.

<sup>217</sup> NE (1 March 2023) at p 30, line 19 to p 31, line 15.

<sup>218</sup> NE (1 March 2023) at p 29, lines 9 to 14.

107 Here, the accused admits to deliberately lying about his ownership of the drugs.<sup>219</sup> The ownership of the drugs is a material issue in the present case. His earlier statements, which assert that the accused did not own all 20 packets of methamphetamine, are also proven false by admission.<sup>220</sup> However, it is unclear whether the motive for the accused's lies was a realisation of guilt.

108 The accused submits that his lies do not amount to *Lucas* lies as there existed a reasonable explanation for these lies, which was the accused's desire to distance himself from the drugs altogether.<sup>221</sup> In doing so, the accused hoped that he would "not be charged with anything, not even possession".<sup>222</sup> The accused then proceeds to argue that his lies were motivated by "two shades of guilt":<sup>223</sup> one relating to drug possession *simpliciter* and the other for drug possession for the purposes of trafficking.

109 I accept that there was a reasonable possibility that the accused was motivated to lie about his ownership of the drugs so as to distance himself from the drugs altogether. If so, these lies would shed no light on the intent with which possession was held. Logically, lies disassociating the accused from the possession of the drugs cannot assist by themselves on the question whether, if he was in possession, he had an intention to consume them himself, save them for his own collection or supply them to others: see *R v Stanislas* [2004] EWCA Crim 2266 at [10]–[11]. These lies therefore cannot constitute *Lucas* lies for the

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<sup>219</sup> NE (7 March 2023) at p 102, lines 12 to 21.

<sup>220</sup> See AB at p 360, para 9; p 364, para 15; p 397, para 36.

<sup>221</sup> DRS at para 12.

<sup>222</sup> NE (11 July 2023) at p 9, lines 17 to 19.

<sup>223</sup> NE (11 July 2023) at p 9, lines 25 to 28.

purpose of corroborating the evidence disproving the Consumption Defence or the Collector's Defence.

110 On this basis, I see no need to consider whether a “dual-purpose lie” motivated by an accused's guilt for two separate offences may constitute a *Lucas* lie for the purpose of corroborating evidence establishing criminal liability for only one of these offences. As this point was not fully argued before me, I leave it open for determination in a future case where the court will have the benefit of thorough submissions on this issue.

111 Although the accused's lies in this case may not amount to *Lucas* lies, they may still be relied upon by the court to make a finding that the accused is not creditworthy. The court may make such a finding even if the accused has a valid reason for lying: *Ilechukwu* at [62]. Given my rejection of the accused's explanation for his lies at [105] above and the fact that the accused had maintained these lies for a significant period of time following his arrest (see [103]), I am satisfied that these lies serve to erode the accused's credibility and diminish the probative value of his testimony.

#### **Issue 4: Whether the accused succeeds in rebutting the presumption concerning trafficking for Exhibit D1B3**

112 Exhibit D1B3 is a small Ziploc bag containing 0.66 gram of methamphetamine.<sup>224</sup> The accused states that this exhibit represents the remainder of the methamphetamine which Tenzin removed from Exhibit D1B1 for Bob Smiley to sample.<sup>225</sup> He submits that D1B3 was not in his possession

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<sup>224</sup> AB at p 62.

<sup>225</sup> DCS at para 36.

for the purpose of trafficking because he did not sell such small quantities of methamphetamine.<sup>226</sup>

113 I find the accused's argument pertaining to Exhibit D1B3 insufficient in rebutting the presumption concerning trafficking. The accused admits that the methamphetamine in Exhibit D1B3 had been taken from Exhibit D1B1 and provided to Bob Smiley as a sample. In my view, this demonstrates that the accused *delivered* Exhibit D1B3 to Bob Smiley. Pursuant to s 2 of the MDA, his possession of Exhibit D1B3 would therefore have clearly been for the purpose of trafficking. The fact that Bob Smiley did not consume all the methamphetamine in Exhibit D1B3 does not change the fact that this exhibit was in the accused's possession for trafficking. Indeed, to conclude that Exhibit D1B3 was in the accused's possession for any other reason would be to ignore the wider context in which the exhibit was passed between the accused and Bob Smiley to facilitate the sale of drugs.

### **Conclusion**

114 Save for Exhibits D1A1L3, D1A1H and D1A1L2A, I find that the accused failed to rebut the presumption of trafficking for the remaining methamphetamine in his possession by way of the Bailment Defence, the Consumption Defence, the Collector's Defence and the accused's argument pertaining to Exhibit D1B3. As such, I find that 269.1 grams of methamphetamine were in the accused's possession for the purpose of trafficking pursuant to the presumption in s 17(h) of the MDA. The Purpose Element with respect to these 269.1 grams of methamphetamine is therefore proved beyond a reasonable doubt.

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<sup>226</sup> DCS at para 36.

115 Accordingly, I exercise my power under s 128 of the Criminal Procedure Code to alter the Charge as follows (the “Altered Charge”):

**YOU ARE CHARGED** and the charge against you is:

That you, LIANG SHOON YEE,

on 15 October 2019, at about 10.10 pm, in room 701 of Equarius Hotel located at Resorts World Sentosa, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), to wit, by having in your possession for the purpose of trafficking fifteen packets containing not less than 401.37 grams of crystalline substance, which were analysed and found to contain not less than 269.1 grams of methamphetamine, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under section 33B of the MDA.

116 For completeness, I also frame the further charge of drug possession under s 8(a) of the MDA with respect to the 58.64 grams of methamphetamine contained in Exhibits D1A1L3, D1A1H and D1A1L2A which I found were in the accused’s possession for his own consumption (the “New Charge”):

**YOU ARE CHARGED** and the charge against you is:

That you, LIANG SHOON YEE,

on 15 October 2019, at about 10.10pm, in room 701 of Equarius Hotel located at Resorts World Sentosa, Singapore, did have in your possession a Class A controlled drug listed in the First Schedule to the MDA, *to wit*, five packets containing not less than 87.19 grams of crystalline substance, which was analysed and found to contain not less than 58.64 grams of methamphetamine, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 8(a) under the MDA, and further, that you, before the commission of the said offence, were on 26 August 2013, in the then Subordinate Court No. 18, vide DAC 15899/2013, convicted of an offence of possession of a controlled drug, *to wit*, methamphetamine, under section 8(a) of the MDA and sentenced to 6 months' imprisonment, which conviction has not been set aside to date, and you shall now be punished under section 33(1) of the MDA.

117 In the light of my conclusions above, I will hear the Prosecution and the accused on their positions pertaining to the Altered Charge, the New Charge, as well as the other charges which were initially brought against the accused.<sup>227</sup>

Dedar Singh Gill  
Judge of the High Court

Yang Ziliang and Phoebe Tan (Attorney-General's Chambers) for the  
Prosecution;  
Eugene Thuraisingam, Johannes Hadi and Hilary Low (Eugene  
Thuraisingam LLP) for the accused.

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<sup>227</sup> See Arraigned Charges.