

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

[2025] SGHC 15

Criminal Case No 32 of 2019

Between

Public Prosecutor

And

- (1) Muhammed Izwan bin Borhan
- (2) Ahmad Suhaimi bin Ismail

FINDINGS ON REMITTAL

[Criminal Procedure and Sentencing — Taking additional evidence]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	2
THE ADDITIONAL EVIDENCE	3
SUMARDI’S EVIDENCE	3
EDDIE’S EVIDENCE	5
WANG’S EVIDENCE	6
SUHAIMI’S EVIDENCE	8
EFFECT (IF ANY) THE ADDITIONAL EVIDENCE HAS ON MY EARLIER VERDICT	9

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Muhammed Izwan bin Borhan and another

[2025] SGHC 15

General Division of the High Court — Criminal Case No 32 of 2019
Chua Lee Ming J
26–27, 29 November 2024

23 January 2025

Judgment reserved

Chua Lee Ming J:

Introduction

1 On 25 February 2022, I convicted the first accused, Mr Muhammed Izwan bin Borhan (“Izwan”), for trafficking diamorphine and methamphetamine, and I convicted the second accused, Mr Ahmad Suhaimi bin Ismail (“Suhaimi”), for abetting the trafficking offences committed by Izwan. On 21 March 2022, I passed the mandatory sentence of death on each of them. My reasons are set out in *Public Prosecutor v Muhammed Izwan bin Borhan and another* [2022] SGHC 40 (the “Trial Judgment”).

2 Izwan and Suhaimi appealed against their convictions and sentences in CA/CCA 11/2023 and CA/CCA 12/2023 respectively.

3 On 6 March 2023, Suhaimi filed CA/CM 12/2023 in which he sought an order that additional evidence from Mr Eddie Lee Zhengda (“Eddie”) and Mr Sumardi bin Sjahril Habibie (“Sumardi”) be taken pursuant to s 392(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (“CPC”).

4 On 28 June 2024, the Court of Appeal directed that:

(a) the matter be remitted to the trial judge for the additional evidence of Eddie and Sumardi to be taken pursuant to s 392(1) of the CPC; and

(b) the parties may call any further witnesses as the trial judge may deem necessary.

5 The additional evidence was taken on 26–27 November 2024 and I heard the parties’ submissions on 29 November 2024. This supplemental judgment sets out the additional evidence taken and my findings as to the effect (if any) the additional evidence taken has on my earlier verdict.

Background facts

6 On 29 September 2017, Izwan collected five “*biji*” (*ie*, packets) of heroin, each weighing about 450g, and one packet of “Ice” (*ie*, methamphetamine) weighing about 500g at about 12.46pm.

7 Izwan repacked one “*biji*” of heroin into several smaller packets and placed the balance in an aluminium tray. As instructed by Suhaimi, Izwan repacked the Ice into four packets of about 125g each. At Suhaimi’s request, Izwan placed one of the 125g packets of Ice at the electrical box on the 11th floor of Block 27 New Upper Changi Road (“Block 27”) for one of Suhaimi’s

customers. Izwan repacked one 125g packet of Ice (meant for himself) into several smaller packets.

8 The charges against Izwan and Suhaimi involved the five “*biji*” of heroin and three 125g packets of Ice. The 125g packet of Ice that was placed at the electrical box at Block 27 was not recovered and did not form part of the charges.

9 The Prosecution’s case was that Izwan and Suhaimi made a joint order for five “*biji*” of heroin, two of which were meant for Izwan to sell to Izwan’s customers and three were meant for Suhaimi to sell to Suhaimi’s customers.

10 One of the defences at the trial was that the original order for five “*biji*” of heroin was reduced to one “*biji*” but five “*biji*” were wrongly delivered and arrangements were made to return the excess four “*biji*” to the supplier. The drug supplier was someone in Malaysia; Suhaimi referred to him as “Arun” whilst Izwan referred to him as “Mamak”.

The additional evidence

11 Sumardi, Eddie, Mr Wang Sidao (“Wang”) and Suhaimi (the second accused) gave evidence.

Sumardi’s evidence

12 Sumardi’s evidence is as follows:

- (a) He met Suhaimi (whom he knew as “Hustler”) at the Tanah Merah Prison School in 2014. He was released in 2015 and was subsequently re-arrested sometime around June 2018. He is currently

serving sentence of life imprisonment in Changi Prison for trafficking drugs as a courier.

(b) In 2017, Sumardi’s drug supplier (who is based in Malaysia and whom he knows as “Arvin”) called him and said, “can you help me find this guy to give me back four *batu*?”. Arvin then sent a photograph of Suhaimi to Sumardi’s phone through WhatsApp. Arvin did not tell Sumardi that Suhaimi owed him (Arvin) money. Arvin also did not give him Suhaimi’s address or phone number. Sumardi identified Exhibit 2D-8 as the photograph that he received.

(c) Prior to that, Sumardi had not spoken to Arvin about Suhaimi and Arvin did not know whether Sumardi knew Suhaimi. Sumardi did not know why Arvin thought he might have information regarding Suhaimi.

(d) Arvin’s mobile phone numbers were [+60xxxxx2551] and [+60xxxxxx4740]. Sumardi stored these numbers in his phone but without any names and his phone did not contain any contact by the name of “Arvin”.

(e) After receiving Suhaimi’s photo, Sumardi called Arvin and remarked that Suhaimi had been caught and Arvin asked him to check.

(f) Sumardi then spoke to Suhaimi’s friend, one Mohamed Shukur bin Mohamed Salleh (whom he knew as “Ashuk”) and asked Ashuk if he knew anything about Suhaimi.

(g) A few weeks later, Ashuk sent photographs of two charges against Suhaimi¹ to Sumardi's phone and Sumardi immediately forwarded them to Arvin. He did not ask Ashuk how he obtained the photographs of the charges. Sumardi identified Exhibits 2D-9 and 2D-10 as the photographs of the charges that he received.

(h) One day, sometime between 2018 and 2019, while he was in prison, Sumardi went to the "visit room" and saw, "through a small hole", Suhaimi walk by. He called out to Suhaimi and said "Hustler, Arvin sent me a picture of you". He could not hear Suhaimi's response. The encounter was "very brief" and lasted "less than a minute."

(i) Sumardi could not recognise two phone numbers – [+60xxxxx7917] and [+60xxxxx3821] – which Suhaimi had identified as phone numbers related to Arun. These numbers were not found on Sumardi's phone.

(j) Sometime in 2023, Suhaimi's lawyer told Sumardi that Suhaimi was looking for a witness.

Eddie's evidence

13 Eddie's evidence is as follows:

(a) He was arrested in July 2018 and has been sentenced to death for drug trafficking. He is currently in Changi Prison. He knows Suhaimi as "Hustler" but has never talked to him.

¹ Exhibits 2D-9 and 2D-10.

(b) His supplier goes by various names: “Kelvin”, “Arvin”, “Arun”, “Kevin”, “Mama”. He first knew his supplier as “Kelvin”.

(c) Sometime in 2018 or 2019, Kelvin randomly sent Eddie a photograph of Suhaimi through WhatsApp. Eddie identified Exhibit 2D-8 as the photograph that he received. Kelvin told him “This is Hustler” and asked if Eddie knew him. Eddie said he did not. Kelvin then said, “This guy got four stone with him that he never pass back” and asked Eddie to help find Suhaimi. Eddie said he “will try help find” but did not do anything as he did not know Suhaimi then.

(d) Sometime in 2018 or 2019, he was chit-chatting with one “AP” in prison (whom he met in prison) and learnt that they had the same supplier. Eddie identified his supplier as “Malaysia Kelvin” and AP knew who he was referring to, because AP had the same supplier. AP then randomly told Eddie that “Hustler” also had the same supplier and Eddie realised that AP was referring to the “Hustler” whom his supplier had been looking for. Eddie then asked AP whether the supplier sent him any photo regarding “Hustler”.

(e) Eddie did not know AP’s name.

Wang’s evidence

14 Wang’s evidence is as follows:

(a) Wang is a partner at CDiC Digital Investigation LLP, a digital forensic consultancy that provides digital investigation and computer forensics services. He was engaged by Suhaimi to provide digital investigation and computer forensic services in respect of a digital image of a Samsung Galaxy phone (marked “SU-HP1”) belonging to Sumardi.

(b) SU-HP1 contained three image files – one was a photograph of Suhaimi (which was posted on Suhaimi’s Facebook account) and the other two were photographs of Suhaimi’s 3rd and 4th charges.

(c) The image of Suhaimi’s photograph was likely received and downloaded on the WhatsApp application on 30 September 2017. The images of the charges were likely received and downloaded on the WhatsApp application on 30 October 2017.

(d) The identity of the person who sent the three images could not be determined. While the images were extracted from the WhatsApp application on SU-HP1, they did not appear to be linked to any WhatsApp conversation. No text messages accompanying the images were found but it could not be determined whether there were such text messages.

(e) The images were saved in the WhatsApp image folder in the phone when they were received. There was nothing to show that any of the images had been forwarded or sent or shared with someone else, but this could have been due to deletions.

(f) No contacts with the name “Arun” or “Arvin” associated with mobile numbers [+60xxxxxx4740] and [+60xxxxxx2551] (that Sumardi had identified as Arvin’s) were identified in SU-HP1.

(g) SU-HP1 showed records of numerous calls and SMSes involving mobile number [+60xxxxxx4740], and numerous WhatsApp messages/calls involving mobile number [+60xxxxxx2551] in May and June 2018.

(h) No contacts with the name “Achok”, the name initially provided by Sumardi, were found in SU-HP1. However, there were SMSes (in October 2017), WhatsApp messages/calls (in May/June 2018) and Facebook messages (from June to December 2017) between SU-HP1 and mobile number [xxxx8741] (which Sumardi identified as being associated with “Achok”). The number was saved as “Ashuk TMP”, not “Achok”, on SU-HP1. It is possible that WhatsApp conversations prior to May 2018 had been deleted and were not reflected in SU-HP1.

(i) Achok’s mobile number, [xxxx8741], is associated with two Facebook accounts. Facebook communications between SU-HP1 and one of the Facebook accounts were found. It is possible that Sumardi’s communications with the other Facebook account were not captured or reflected in SU-HP1.

Suhaimi’s evidence

15 Suhaimi testified as follows:

(a) He met Sumardi at the Tanah Merah Prison School in 2014. Sumardi left the school in 2015 and he left in 2016.

(b) He did not have Sumardi’s phone number and did not know where Sumardi lived. He had no interactions with Sumardi after he left the Tanah Merah Prison School except between 2018 and 2019 when he spoke to Sumardi in Changi Prison where he was remanded.

(c) On that occasion, he was on the way to a visit by his family when he passed by the cell that Sumardi was in. Sumardi called out through a gap on the door and said “Eh, Hustler, are you okay? I received a photo of you from Arvin.” However, he did not think anything of it then.

(d) After Suhaimi had been sentenced in the present case, he learnt from AP during their yard time in prison that AP heard that Eddie had received a photo of Suhaimi from Arvin. Suhaimi recalled that Sumardi had told him the same thing. Suhaimi then asked his lawyer to meet Eddie and Sumardi to find out if they had received anything else beside the photo. Before that, he had not spoken to Eddie.

(e) On one or two previous occasions, his supplier had also sought his help to look for other persons in Singapore and given him their phone numbers.

Effect (if any) the additional evidence has on my earlier verdict

16 Even if the additional evidence had been available during the trial, I would have arrived at the same verdict. In my judgment, the additional evidence does not raise a reasonable doubt as to whether the order for five “*biji*” of heroin was reduced to one “*biji*”.

17 I find Sumardi’s evidence (that on 30 September 2017, Arvin randomly asked him to help find “find this guy to give [Arvin] back four *batu*”) to be weak. Sumardi admits that Arvin did not know whether he (Sumardi) knew Suhaimi, and he had not talked to Arvin about Suhaimi. Arvin’s request came out of the blue. On top of that, Arvin did not give him Suhaimi’s address or phone number. Arvin would (if he was Arun) have had Suhaimi’s phone number.

18 The additional evidence does show that a photograph of Suhaimi was received by Sumardi’s phone on 30 September 2017 and photographs of two charges against Suhaimi were received by Sumardi’s phone on 30 October 2017. However, these photographs are equivocal at best. There is no objective

evidence as to who sent the photographs or why. If there were messages relating to these photographs, they have been deleted. Even if Arun did send the photograph of Suhaimi to Sumardi and seek Sumardi's help in finding Suhaimi, it is just as likely that Arun was looking for Suhaimi because Suhaimi was supposed to but failed to make payment to Arun on the night of 29 September 2017. Suhaimi admitted that Arun told him in the afternoon of 29 September 2017 that he would send another person to collect money from Suhaimi that night.² Suhaimi was arrested at 4.15pm on the same day and so could not have made any payment to Arun that night.

19 I note in passing that the charges against Suhaimi in the two photographs are similar but not identical to the charges tendered against Suhaimi during the recording of Suhaimi's Second and Fifth Statements.³ There is no evidence as to where the charges in the two photographs came from. Sumardi did not ask Ashuk how he obtained the photographs.

20 I also find Eddie's evidence (that his supplier (Kelvin) randomly sent Suhaimi's photograph to him and asked him to help to find Suhaimi) to be weak. Eddie told Kelvin that he did not know Suhaimi. Yet, Kelvin did not give Suhaimi's phone number to Eddie even though he was purportedly asking Eddie to help to find Suhaimi.

21 Eddie's claim that AP randomly told him that Suhaimi had the same supplier as Eddie is also weak. Eddie did not know Suhaimi, and he met AP only when he was in prison. There was no reason for AP to mention that "Hustler" used the same supplier, out of the blue during a casual chat with

² NE, 27 November 2024, at 23:7–12.

³ AB at pp 326 and 415.

Eddie. Eddie and AP had not previously talked about Hustler/Suhaimi. There is no evidence that AP knew or thought that Eddie knew Suhaimi. AP did not give evidence in this remittal hearing.

22 As for Suhaimi, his additional evidence is that AP told him something along the lines of “I heard that Eddie received a photo of you from Arvin.”⁴ However, that is not supported by Eddie’s testimony. What Eddie said in his testimony was that he only asked AP whether “Kelvin Mama ... got send [AP] any picture regarding to Hustler or not?”⁵

23 There is no direct evidence of collusion among Sumardi, Eddie and Suhaimi. It should be noted, however, that Suhaimi and Eddie have admitted that they had opportunities to speak to each other although both claimed not to have done so.⁶ Likewise, Suhaimi would have had opportunities to speak to Sumardi since Sumardi was in the same prison.

24 There is also no direct evidence as to why Sumardi and Eddie would be prepared to give false evidence in support of Suhaimi’s defence.

25 However, the absence of direct evidence of collusion or motive does not mean that Sumardi’s and Eddie’s evidence must therefore be treated as having raised a reasonable doubt. The absence of direct evidence of collusion or motive are just factors that I must take into consideration when assessing the probative value of, and hence the weight to be given to, Sumardi’s and Eddie’s evidence in the light of all of the evidence that has been adduced.

⁴ NE, 27 November 2024, at 7:14–17.

⁵ NE, 26 November 2024, at 35:6–10.

⁶ NE, 26 November 2024, at 40:13–24; NE, 27 November 2024, at 27:4–10.

26 In this regard, I have dealt with the evidence adduced during the trial in the Trial Judgment at [107]–[121]. The following bear emphasising:

(a) Izwan and Suhaimi had claimed that Izwan told Suhaimi that he wanted to reduce his order of heroin from five “*biji*” to one “*biji*”. Yet not one of the ten statements recorded from Izwan mentioned any such reduction.⁷ On the contrary, Izwan’s First, Third and Sixth Statements referred to him collecting five “*biji*” of heroin.

(b) The order for heroin was purportedly reduced to one “*biji*” in the early hours of 29 September 2017.⁸ At about 10.29am on 29 September 2017, Suhaimi sent to Izwan a photograph showing five packets of heroin from Suhaimi.⁹ Izwan did not ask why it was five instead of one.

(c) In a WhatsApp message at 12:59:36pm on 29 September 2017, Arun sent to Suhaimi an image of a calculator with the computation “9,150 + 14,250 + 11,500” and the result “34,900”.¹⁰ Suhaimi admitted that the figure “11,500” referred to the price of the packet of 500g of Ice that he had ordered, but claimed that he did not know what the numbers “9,150” and “14,250” referred to. I rejected Suhaimi’s claim that he did not know what the numbers “9,150” and “14,250” referred to. Suhaimi confirmed that the price of one “*biji*” of heroin was \$2,850.¹¹ The figure “14,250” is the exact total of five multiplied by 2,850. As for the figure of “9,150”, it was Suhaimi’s own case that he had a running account

⁷ Trial Judgment at [111].

⁸ Trial Judgment at [107(a)].

⁹ Trial Judgment at [112].

¹⁰ Trial Judgment at [114].

¹¹ Trial Judgment at [116(c)].

with Arun; that number likely related to some previous orders and was in any event not relevant to the present case.¹² .

27 At 1:03:17pm on 29 September 2017, Arun asked Suhaimi how much Suhaimi could pay that night and Suhaimi replied 30 seconds later at 1:03:47pm that he would provide an update in the evening.¹³ Arun’s immediate response was to resend the image of the calculator with the computation “9,150 + 14,250 + 11,500” and the result “34,900” to Suhaimi.¹⁴

28 The evidence referred to in [26] and [27] above, in particular the contemporaneous WhatsApp messages, show irrefutably that Arun was expecting payment for *five “biji”* of heroin. Suhaimi could not have reduced his order to one “*biji*” as he claimed.

29 In my view, the evidence against Suhaimi clearly far outweighs the evidence given by Sumardi and Eddie. I find that the additional evidence does not raise a reasonable doubt with respect to the Prosecution’s case that Suhaimi and Izwan had made a joint order for five “*biji*” of heroin and there was no reduction in the quantity to one “*biji*”. Accordingly, I find that the additional evidence has no effect on my previous verdict, which I re-affirm.

30 I would add an observation. During re-examination of Suhaimi in this remittal hearing, his counsel suggested that one of Arun’s messages which stated “11500 cold 2850 hot”¹⁵ was not a quote for the per unit price of Ice or heroin; instead, it was a quote for the total number of packets of Ice and heroin

¹² Trial Judgment at [117].

¹³ Exhibit P293, at p 6.

¹⁴ Exhibit P293, at p 6.

¹⁵ Exhibit P293, at p 8 (s/n 76).

that Suhaimi had ordered.¹⁶ The implication was that the message shows that the order for heroin had been reduced to one “*biji*”. However, that is evidence from the Bar. There is no evidence from Suhaimi that that was how he understood Arun’s message. More importantly, counsel’s suggestion that “11500” was a quote for the total price of four packets of Ice is inconsistent with the undisputed evidence. Suhaimi did not order four packets of Ice. He ordered *one* packet of 500g of Ice. The quote was therefore for *one* packet of Ice. It was only after taking delivery that Izwan repacked the Ice into four packets of 125g each.¹⁷ In this remittal hearing, Suhaimi also agreed that his order was for one packet of 500g of Ice; it was delivered in one packet and subsequently repacked into smaller packets.¹⁸

Chua Lee Ming
Judge of the High Court

Kumaresan Gohulabalan and Stephanie Koh (Attorney-General’s Chambers) for the Prosecution;
Cheong Jun Ming Mervyn and Lim Yi Zheng (Advocatus Law LLP) and Chooi Jing Yen (Chooi Jing Yen LLC) for the first accused;
Vergis S Abraham SC and Loo Yinglin Bestlyn (Providence Law Asia LLC), Suang Wijaya and Jordan Kow (Eugene Thuraisingam LLP) for the second accused.

¹⁶ NE, 27 November 2024, at 33:23–25.

¹⁷ Trial Judgment at [15]–[16].

¹⁸ NE, 27 November 2024, at 36:30–37:3 and 37:13–21.