

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 67

Criminal Case No 51 of 2017

Between

Public Prosecutor

And

- (1) Tan Kay Yong
- (2) Mazlan bin Yusoff

FOUNDATIONS OF DECISION

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

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Public Prosecutor
v
Tan Kay Yong and another

[2018] SGHC 67

High Court — Criminal Case No 51 of 2017
Lee Seiu Kin J
19–21, 25–28 July, 12 October, 1 December 2017

26 March 2018

Lee Seiu Kin J:

1 The first accused is Tan Kay Yong (“Kay Yong”), a Singaporean male who was 42 years old at the time of the alleged offence. The second accused is Mazlan bin Yusoff (“Mazlan”), a Singaporean male who was 48 years old at the time of the alleged offence. Kay Yong faced one charge of possession of a Class A controlled drug (diamorphine) for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). Mazlan faced one charge of trafficking in a Class A controlled drug (diamorphine) under s 5(1)(a) of the MDA. The respective charges read as follows:

That you 1. **TAN KAY YONG,**

on 20 July 2015, at about 7.20 pm, at the lift landing of Blk 31 Bendemeer Road, 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), *to wit*, by having in your possession for the purpose of trafficking one (1) packet containing not less than 459.4 grams of granular/powdery substance which was analysed and found to contain not less than 18.71 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under section 33(1) of the said Act.

That you, **2. MAZLAN BIN YUSOFF**,

1st CHARGE

on 20 July 2015, sometime before 7.20 pm, in the vicinity of Blk 31 Bendemeer Road, 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), *to wit*, by delivering to one Tan Kay Yong, NRIC: S[xxx], one (1) packet containing not less than 459.4 grams of granular/powdery substance which was analysed and found to contain not less than 18.71 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under section 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

2 Both Kay Yong and Mazlan claimed trial to the charges. On the first day of the proceedings, the Prosecution applied for a joint trial, which application I granted.

3 At the conclusion of the joint trial, I found that the Prosecution had proven both the charges against Kay Yong and Mazlan beyond a reasonable doubt. I therefore convicted Kay Yong and Mazlan of the respective charges against each of them. Under s 33(1) of the MDA, the punishment prescribed for the charges is death. However, s 33B(1)(a) of the MDA gives the court the discretion to impose the alternative sentence of life imprisonment and a minimum of 15 strokes of the cane if the conditions under ss 33B(2)(a) and 33B(2)(b) of the MDA are met. I found that these conditions were met with

respect to Mazlan, and exercised my discretion to impose life imprisonment. Caning was not imposed as Mazlan was over 50 years of age at the time of sentencing. On the other hand, Kay Yong had not fulfilled either requirement under s 33B(2) of the MDA. Thus, I imposed the mandatory sentence of death. I now provide the grounds of my decision.

Facts

Events prior to the arrests

4 The facts pertaining to Mazlan’s activities prior to his arrest were mostly not in dispute. Kay Yong was, for the most part, not in a position to dispute these facts. Sometime before 20 July 2015, Mazlan became acquainted with a person called Mani through a friend. According to Mazlan, Mani was also known by the name of Ah Boy.¹ The said friend recommended Mani to Mazlan as a drug supplier because Mazlan wanted to obtain drugs for his own consumption.² This friend then gave Mazlan’s phone number to Mani.³ Prior to 20 July 2015, Mazlan never met Mani in person.

5 About three to four weeks before 20 July 2015, Mani called Mazlan several times and asked Mazlan to help him make drug deliveries. Mazlan initially refused these requests.⁴

6 Sometime in the afternoon of 20 July 2015, Mani called Mazlan again and asked him for help with sending drugs to someone called “Botak”. At the

¹ Certified Transcript, 28 July 2017, p 45 (lines 18–19).

² Certified Transcript, 28 July 2017, p 39 (lines 29–31).

³ Certified Transcript, 28 July 2017, p 40 (lines 10–11).

⁴ Certified Transcript, 28 July 2017, p 40 (line 27).

time, Mazlan did not know who Botak was.⁵ At trial, however, he identified Kay Yong as Botak.⁶ Although Mazlan had previously refused Mani, he agreed to assist Mani in delivering the drugs this one time.⁷ Mani then instructed Mazlan to meet him that same day at the end of Tuas Avenue 11 in a red car.

7 At around 4pm that afternoon, Mazlan went to Tuas Avenue 11, where Mani was waiting in a red car which bore a Malaysian registration plate.⁸ When Mazlan approached the car, Mani rolled down the window and handed Mazlan a 7-Eleven plastic bag containing two packets of granular substance.⁹ Mani told Mazlan to deliver one packet to Botak,¹⁰ and added that Botak would give him a sum of money. He did not, however, specify how much money Mazlan should expect.¹¹ Mani also told Mazlan the number of Botak's mobile phone, which the latter wrote on a piece of paper.¹² Mazlan's evidence was that Mani then told him to expect a call from Botak later on.¹³ Kay Yong disagreed that Mani could have told Mazlan to expect a call from him because Mani (known by Kay Yong as Ah Boy) had said that Mazlan would call him first¹⁴. However, little turned on this dispute of fact.

⁵ Certified Transcript, 28 July 2017, p 42 (lines 25–26).

⁶ Certified Transcript, 28 July 2017, p 42 (lines 29–30).

⁷ Certified Transcript, 28 July 2017, p 41 (lines 5–7).

⁸ Certified Transcript, 28 July 2017, pp 42 (lines 18–32) and 43 (lines 1–32).

⁹ Certified Transcript, 28 July 2017, pp 42 (lines 18–32) and 43 (lines 1–32).

¹⁰ Certified Transcript, 28 July 2017, p 44 (lines 21–32) and 45 (line 1).

¹¹ Certified Transcript, 28 July 2017, p 63 (lines 2–6).

¹² Certified Transcript, 28 July 2017, p 45 (lines 6–8).

¹³ Certified Transcript, 28 July 2017, p 45 (lines 4–5).

¹⁴ First accused's closing submissions, para 35 and 38.

8 Mazlan then parted ways with Mani and walked towards a nearby bus stop where he waited for a taxi. At about 5.40pm,¹⁵ while he was still at Tuas Avenue 11, Mazlan received a phone call from Kay Yong, whose number matched that which Mani had given to him as Botak’s number (see [7] above).¹⁶ Mazlan’s testimony in court was that Kay Yong spoke to him in Malay and asked, “*Barang ada pada lu?*”¹⁷ At trial, the interpreter for Mazlan informed the court that this can either mean “Is the stuff with you?” or “Is the thing with you?”.¹⁸ After Mazlan answered in the affirmative, Kay Yong told Mazlan to meet him at Blk 31 Bendemeer Road.¹⁹ Kay Yong’s evidence, which was unchallenged, was that Mazlan also told him to bring a bag with him.²⁰

9 Subsequently, Mazlan received a call from his girlfriend, Suhana binte Noordin (“Suhana”),²¹ who asked to meet up with Mazlan. Mazlan asked Suhana to pick him up from Tuas Avenue 11.²² Sometime later, Suhana and another friend of Mazlan’s, Nur Aida Binte Borhan (“Aida”), fetched Mazlan from Tuas Avenue 11 in a yellow car bearing registration number SJH 1649L (“the Car”). Aida was the driver,²³ while Suhana sat in the front passenger seat. Mazlan boarded the Car and sat in the rear passenger seat behind Suhana.²⁴ He

¹⁵ Certified Transcript, 28 July 2017, p 48 (lines 8–13).

¹⁶ Certified Transcript, 28 July 2017, p 47 (lines 20 – 22).

¹⁷ Certified Transcript, 28 July 2017, p 47 (lines 5–6).

¹⁸ Certified Transcript, 28 July 2017, p 47 (lines 17–18)

¹⁹ ABD, p 283 (para 7) and Certified Transcript, 28 July 2017, p 46 (lines 10–21).

²⁰ ABD, p 341 (para 5).

²¹ Second accused’s closing submissions, para 8(g).

²² Certified Transcript, 28 July 2017, p 46 (lines 7–9).

²³ Certified Transcript, 25 July 2017, pp 3 (lines 28–33) and 4 (lines 1–5 and 9–10).

²⁴ Certified Transcript, 25 July 2017, p 4 (lines 10–14).

told Suhana that he wanted to meet a friend at Bendemeer Road. The three of them proceeded to Bendemeer Road in the Car.²⁵

Kay Yong's arrest

10 At about 6.15pm that same day, 20 July 2015, a party of Central Narcotics Bureau (“CNB”) Special Task Force (“STF”) officers arrived in the vicinity of Blk 31 Bendemeer Road. At about 6.40pm, Senior Staff Sergeant Wong Kah Hung Alwin (“SSS Alwin”) spotted Kay Yong near the fourth floor lift lobby of Blk 31 Bendemeer Road. He reported this through radio set communications. Shortly thereafter, Senior Station Inspector Ng Tze Chiang Tony (“SSI Tony”) reported that he saw Kay Yong at the ground floor of Blk 31 Bendemeer Road, walking in the direction of Blk 30 Bendemeer Road.²⁶

11 At about 7.05pm, SSI Tony observed the Car moving towards the rubbish collection area near Blk 31 Bendemeer Road. SSI Tony also saw Kay Yong walking towards the same rubbish collection area.²⁷

12 At the rubbish collection area where the Car had stopped, Kay Yong approached the passenger side.²⁸ He was carrying a black bag (“the Black Bag”).²⁹ As the Car only had two doors, when Suhana opened her door she had to hunch forward so that the backrest of her seat could be pushed forward, to allow Mazlan to pass what he was conveying to Kay Yong.³⁰

²⁵ Certified Transcript, 28 July 2017, p 47 (lines 29–32) and Certified Transcript 25 July 2017, p 4 (lines 15–16).

²⁶ ABD, p 195.

²⁷ ABD, pp 171–172.

²⁸ Certified Transcript, 25 July 2017, p 5 (lines 19–20).

²⁹ Certified Transcript, 25 July 2017, p 5 (line 24).

13 What occurred next was a matter of contention. Suhana testified that there was no conversation between Mazlan and Kay Yong, and that the only thing she heard was Kay Yong saying to Mazlan, “Just put inside here,” in English.³¹ She also did not see anything being exchanged between Mazlan and Kay Yong, because she was hunched forward and her head was down.³² Mazlan’s evidence was that Kay Yong did not say anything apart from “*Masukkan dalam beg*”, which in Malay means “Put it in the bag”.³³ Kay Yong’s evidence was that he could not remember if he had said anything to the effect of “Just put inside here”.³⁴ Defence counsel for Kay Yong, Mr Low Cheong Yeow and Mr Loo Khee Sheng, took the position that Suhana and Mazlan’s evidence was unreliable, and that Kay Yong never said “just put inside here” either in English or in Malay.³⁵

14 Whatever Kay Yong and Mazlan may have said to each other, it was not in dispute that some words were spoken after which Kay Yong opened the Black Bag.³⁶ Mazlan placed one of the packets of granular substance he had received from Mani in a reddish-orange plastic bag (“the Plastic Bag”),³⁷ which he identified in court to be the item marked as Exhibit A1A,³⁸ and placed the Plastic Bag inside Kay Yong’s Black Bag.³⁹ Kay Yong then handed Mazlan a stack of

³⁰ Certified Transcript, 25 July 2017, p 5 (lines 13–17).

³¹ Certified Transcript, 25 July 2017, pp 4 (lines 30–32); 5 (lines 7–8) and 14 (line 12).

³² Certified Transcript, 25 July 2017, p 5 (lines 9–13)

³³ Certified Transcript, 28 July 2017, p 51 (lines 5–18).

³⁴ Certified Transcript, 27 July 2017, p 78 (lines 22–32).

³⁵ First accused’s closing submissions, paras 60–69.

³⁶ Certified Transcript, 28 July 2017, p 50 (lines 30–31).

³⁷ Certified Transcript, 28 July 2017, p 52 (lines 3–26).

³⁸ Certified Transcript, 28 July 2017, p 52 (lines 23–25).

money, and walked away.⁴⁰

15 A short while after Kay Yong and Mazlan had met at the rubbish collection area, SSI Tony saw Kay Yong walking away from the Car towards Blk 31 Bendemeer Road, while the Car drove off. Kay Yong then proceeded to the fourth floor of Blk 31 Bendemeer Road. When Kay Yong was near the ‘lift lobby A’ area on the fourth floor, SSI Tony, Senior Staff Sergeant Chew Thye Kwang @ Jordi (“SSS Jordi”), Staff Sergeant Norizan Binte Merabzul (“SS Norizan”) and Staff Sergeant Muhammad Helmi Bin Abdul Jalal (“SS Helmi”) moved in to arrest him.⁴¹ SSS Jordi remained on the ground floor, while SSI Tony, SS Norizan and SS Helmi proceeded to the fourth floor.⁴² The officers were in plain clothes.⁴³ When they reached the fourth floor, SSI Tony testified that they saw Kay Yong “face to face”.⁴⁴ It was undisputed that when Kay Yong noticed SSI Tony, SS Norizan and SS Helmi approaching him, he fled and ran in the opposite direction.⁴⁵ SSI Tony, SS Norizan and SS Helmi gave chase.⁴⁶ Kay Yong then ran down the staircase located near lift lobby C. When Kay Yong was at the landing immediately preceding the ground floor, he jumped from the landing,⁴⁷ landing on the ground floor in a fall which fractured his leg.⁴⁸

³⁹ Certified Transcript, 28 July 2017, p 52 (lines 5–7).

⁴⁰ Certified Transcript, 28 July 2017, pp 50 (lines 31–32) and 51 (lines 1–2).

⁴¹ ABD, p 172, para 6.

⁴² Certified Transcript, 20 July 2017, pp 3 (line 32) and 4 (lines 1–2) and 5 (lines 27–28).

⁴³ Certified Transcript, 20 July 2017, p 8 (lines 15–17).

⁴⁴ Certified Transcript, 20 July 2017, p 8 (line 18)

⁴⁵ Certified Transcript, 20 July 2017, p 8 (lines 29–32)

⁴⁶ Certified Transcript, 20 July 2017, p 9 (line 1).

⁴⁷ Certified Transcript, 20 July 2017, p 9 (lines 14–16).

⁴⁸ Certified Transcript, 20 July 2017, p 30 (lines 12–13); ABD, p 344, para 16.

As Kay Yong fell, the Black Bag was released from his hand and landed a short distance away from him.⁴⁹

16 SSI Tony, SSS Jordi, SS Helmi and SS Norizan arrested Kay Yong while he was prone on the ground. At about 7.25pm, SSS Jordi recovered the Black Bag. Inside the Black Bag was a reddish-orange plastic bag, Exhibit A1A, which contained one clear plastic packet, Exhibit A1A1, which contained one packet of grey granular substance, Exhibit A1A1A.

17 The packet of grey granular substance, Exhibit A1A1A, forms the subject matter of both the charges against Kay Yong and Mazlan. It was eventually sent to the Health Sciences Authority (“HSA”). HSA Analyst Koh Hui Boon analysed the exhibit and found that the packet contained not less than 459.4g of granular substance, containing not less than 18.71g of diamorphine.⁵⁰

Mazlan’s arrest

18 After SSI Tony reported that the Car had moved off from the rubbish collection area near Blk 31 Bendemeer Road (see [15] above), another party of CNB STF officers boarded several CNB operational cars and trailed the Car.

19 According to Mazlan, after he had left Blk 31 Bendemeer Road, and while he was in the Car, he received a call from Mani, who asked him whether he had counted the money he had received from Kay Yong. Mazlan answered

⁴⁹ Certified Transcript, 20 July 2017, p 32 (line 29)

⁵⁰ AB, p 96.

that he had yet to count the money, in response to which Mani said that he would call Mazlan later.⁵¹

20 Eventually, at about 7.30pm, the Car stopped in front of Mufiz Eating House along Kitchener Road.⁵² After Mazlan, Suhana and Aida alighted from the car, they were arrested by CNB officers. The police report filed in respect of the arrests noted that when Mazlan was searched, a stack of money amounting to \$3,000 which was tied with a rubber band was seized from the pocket of his jeans.⁵³

Events subsequent to Kay Yong's arrest

Recording of the contemporaneous statement

21 Shortly after his arrest, the CNB officers escorted Kay Yong into a CNB operational car. Inside the car, SSI Tony recorded a contemporaneous statement from Kay Yong, who spoke in Mandarin.⁵⁴ SSI Tony recorded both the questions and answers in Mandarin which he also translated into English.⁵⁵ The material portions of Kay Yong's translated contemporaneous statements are as follows:

Q Who do these two packets belong to?

A The person in the car passed it to me

Q Which person, which car

⁵¹ Certified Transcript, 28 July 2017, p 54 (lines 25–28).

⁵² ABD, p 226, para 5.

⁵³ ABD, p 200.

⁵⁴ ABD, p 172, para 8.

⁵⁵ ABD, p 178.

- A Yellow car, I do not know the license plate number, the person at the back of the car handed it to me
- Q What is inside
- A I do not know, I handed money to him and he threw the things into my bag
- Q What money did you give him
- A Gambling money
- Q Do you know what he threw for you?
- A I don't know

Search of the Bendemeer Flat

22 At about 8.10pm, the CNB officers escorted Kay Yong to his mother's flat, where he was living at the time, at Blk 31 Bendemeer Road, #04-865 ("the Bendemeer Flat").⁵⁶ SSI Tony's evidence was that they searched the Bendemeer Flat for drug paraphernalia as well as items relating to gambling, since Kay Yong had mentioned gambling in his contemporaneous statement.⁵⁷ However, neither any drug paraphernalia nor any gambling-related items were found.⁵⁸

Visit to the Ang Mo Kio Flat

23 At about 8.50pm, the CNB officers left the Bendemeer Flat with Kay Yong and proceeded to Blk 123 Ang Mo Kio Avenue 6, #12-4023 ("the Ang Mo Kio Flat"). According to SSI Tony, this was Kay Yong's "official address", presumably referring to the address stated in his NRIC. SSI Tony and Kay Yong gave differing accounts of what transpired at the Ang Mo Kio Flat. SSI Tony's evidence was that Kay Yong had informed the CNB officers that he was no

⁵⁶ ABD, p 172, para 10; Certified Transcript, 20 July 2017, p 81 (lines 17–19).

⁵⁷ Certified Transcript, 20 July 2017, p 12 (lines 16–31).

⁵⁸ Certified Transcript, 20 July 2017, p 13 (lines 1–3).

longer staying at this address. SSI Tony thus went to the Ang Mo Kio Flat in order to “verify Kay Yong’s claim”⁵⁹. He knocked on the door several times and left as there was no response⁶⁰. SSI Tony’s conditioned statement did not mention that Kay Yong had handed over the keys to the Ang Mo Kio Flat at any point and indeed, the tenor of SSI Tony’s evidence was that he did not have those keys because if he had them he would not need to knock on the door. SSI Tony was not challenged on this version of the events when he gave evidence at the trial.

24 Kay Yong’s evidence was that he gave SSI Tony the keys to the Ang Mo Kio Flat, and that upon reaching Blk 123 Ang Mo Kio Avenue 6, the CNB officers “went up to check [Kay Yong’s] flat” while he remained in the CNB operational car. Kay Yong claimed that when the CNB officers returned, they “said that nothing was found in [Kay Yong’s] flat.”⁶¹

Kay Yong’s admission to Changi General Hospital

25 After leaving the Ang Mo Kio Flat, the CNB officers escorted Kay Yong to the CNB office at Police Cantonment Complex, where SSI Tony lodged a police report concerning Kay Yong’s arrest, and also procured a urine sample from Kay Yong.⁶² Later that night, the CNB officers escorted Kay Yong to Changi General Hospital (“CGH”) to be examined by a doctor, as he had complained of pain in his leg.⁶³ Kay Yong was found to have suffered a fracture, and was admitted and warded until 27 July 2015.⁶⁴

⁵⁹ ABD, p 173, para 13.

⁶⁰ ABD, p 173, paras 13–14.

⁶¹ ABD, p 344, para 14.

⁶² ABD, p 173, paras 16–18.

Kay Yong's statements

26 Apart from the contemporaneous statement recorded by SSI Tony on the day of his arrest, Kay Yong also provided the following statements to CNB:

(a) A cautioned statement recorded by the investigating officer, Woman Inspector Elizabeth Zachariah (“IO Elizabeth”) on 27 July 2015 pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”).⁶⁵

(b) Three long statements recorded by IO Elizabeth between 27 July 2015 and 31 July 2015 pursuant to s 22 of the CPC.⁶⁶

(c) A fourth long statement recorded by Inspector Huang Yixia (“IO Huang”) on 3 March 2016 pursuant to s 22 of the CPC.⁶⁷

27 In Kay Yong’s cautioned statement, he stated the following:⁶⁸

Actually I was there to repay a debt. I saw a Malay who I did not know and told him to pass the \$3600 to ‘Boy’. The Malay told me, ‘Boy’ ask me to open my handbag. I asked him why and he said just open it. I opened my handbag and he threw a packet into my handbag and told me ‘Boy’ asked me to do it. I left with my handbag and felt something was wrong when I was near the staircase. I started running and this was the reason why I jumped. When they held me down and told me about a packet of powder, I then realized what happened and that ‘Boy’ had set me up. That is all.

⁶³ ABD, p 174, para 20.

⁶⁴ ABD, p 162.

⁶⁵ ABD, pp 334–335.

⁶⁶ ABD, pp 340–343, 344–346 and 347–361 respectively.

⁶⁷ ABD, pp 398–404.

⁶⁸ ABD, p 335.

28 In Kay Yong’s first long statement, he gave the following account: On the day of his arrest, he received a call from “Ah Boy” at around noon. Ah Boy was a Malaysian man who had first contacted him over the phone about two years earlier. Ah Boy said that he was a friend of “Ah San”, whom Kay Yong had met in prison five or six years earlier. Over those two years, Ah Boy had gotten Kay Yong involved in online gambling activities, including betting on horses and on football. Ah Boy and Ah San also recruited him to help them run their online betting activities by collecting bets from others in return for a commission. Kay Yong said that when Ah Boy called him at noon on the day of his arrest, he instructed Kay Yong to prepare \$3,800, which was what he owed Ah Boy for bets placed during the 2014 World Cup. However, Kay Yong only managed to gather \$3,600 from his own salary and by borrowing money from other people. At about 5pm, Kay Yong received a call from a Malay man (*ie*, Mazlan), and arranged to meet him at Blk 31 Bendemeer Road. When he met up with Mazlan, Kay Yong handed him the money and told him to pass it to Ah Boy. Kay Yong said that Mazlan then asked him to open his bag. He asked why, but Mazlan told him to “just open [his] bag”. Mazlan then threw something inside the bag. Feeling that “something was wrong”, Kay Yong quickly turned away and walked towards his block. While he was at his block, he had started running when he heard “running sounds” because he “felt something wrong”.⁶⁹

29 It should be noted that it was in this first long statement that Kay Yong mentioned for the first time that he thought that the Malay guy “had passed [him] either a debt book or ‘pei hoon’”.⁷⁰ *Pei hoon* is a street name for heroin.

⁶⁹ ABD, p 342, paras 6–7.

⁷⁰ ABD, p 342, para 6.

When questioned about why he thought someone might have passed him heroin, Kay Yong stated the following:

I heard a plastic sound when the Malay guy threw the item in my bag. I suspected it could also be ‘pei hoon’ because ‘Ah Boy’ had asked me to help him with his drug business many times before. I had never agreed to it so he might have decided to just push it to me directly and make me do it.

...

About a year ago, ‘Ah Boy’ has ever talked to me about starting a drug syndicate here. He wants me to push a variety of drugs. ... ‘Ah Boy’ kept calling me on this issue because I have a gambling debt with him. I always reject ‘Ah Boy’ whenever he calls me to start a drug syndicate because my mum is old and I am not interested in doing this.

30 The pertinent aspect of Kay Yong’s second long statement is that this is where he mentioned for the first time that he himself smoked *pei hoon*. Kay Yong stated that he had smoked *pei hoon* at about noon on the day of his arrest, and had been regularly smoking about two straws a day since May 2015. He would purchase a packet of *pei hoon* about once a week from different suppliers at Toa Payoh Lorong 5. Each packet of *pei hoon* weighed about 8g and cost him about \$180. Kay Yong also said in this statement that he had “relapsed” into smoking *pei hoon* because of the pressure and stress he felt as a result of owing money to Ah Boy. He claimed he still owed Ah Boy \$30,000 out of an original debt of \$50,000 accumulated from horse and soccer betting, and from other people who had failed to pay him after placing bets.⁷¹

31 Kay Yong’s third long statement elaborated on his interactions with Ah Boy. In particular, he claimed that after the 2014 World Cup ended, Ah Boy had repeatedly asked him to repay \$58,000 which he owed for soccer bets. Kay

⁷¹ ABD, pp 345–346.

Yong further asserted that, in response to these repeated requests, he had repaid Ah Boy as and when he was able to do so.⁷² He said that he had never met Ah Boy personally. Rather, Ah Boy would call him two to three times a week to chase him for payment. If Kay Yong had some money, he would agree to pay. When this happened, on the following day, he would receive a call from a stranger, who would arrange to meet him at the void deck of Blk 31 Bendemeer Road to collect the money. Each time a different person would call him and meet him to collect the payment from him. After payment was made, Ah Boy would call him and acknowledge receipt of the payment.⁷³

32 Kay Yong surmised that Ah Boy may have gotten Mazlan to send him drugs to push him into dealing in drugs because he had failed to make any debt repayment since the start of the year.⁷⁴ He further alleged that there had been six to seven occasions in which Ah Boy had previously sent people to knock on the door of the Bendemeer Flat at 3am in the morning. On one of these occasions, he had opened the door to find three strangers, one of whom handed him a mobile phone. Ah Boy was on the line and told Kay Yong “not to run away if not [Ah Boy] will burn [Kay Yong’s] house down”.⁷⁵

33 In his third long statement, Kay Yong was asked what he would have done with the packet of drugs (Exhibit A1A1A) if he had not been caught by the CNB. He gave the following answer:

“I would have smoked a bit and flush the rest down the toilet. I may contact ‘Ah Boy’ and ask him about this but I will not take

⁷² ABD, p 348, para 29.

⁷³ ABD, pp 348–349, paras 31–32.

⁷⁴ ABD, p 349, paras 34–35.

⁷⁵ ABD, p 349, para 32.

the risk to return it to him because he was the one who forced it upon me. If he wants to play rough, I will just stop paying him the rest of the debt. I will not keep the packet with me as my mother may find out and it is never safe to have drugs at home.”⁷⁶

34 The material aspects of Kay Yong’s fourth long statement were as follows: Kay Yong stated “the Malay man” (*ie*, Mazlan) had asked him to bring a bag, and had told him that Ah Boy had “something to give [him]”. He alleged that he “did not know what the thing [was]”, and thought that it was a debt book for online bets”. He reiterated that he had run when he heard CNB officers approaching “because [he] thought [he] was carrying a debt book which is also illegal”. Again, he stated that he had thought that the “thing” Mazlan had passed him might be *pei hoon* because Ah Boy had previously offered him *pei hoon* and asked him to help him sell it.⁷⁷

35 It was clear from Kay Yong’s oral testimony that the statements which he gave to the CNB were recorded in a question and answer format.⁷⁸ As we shall see, Kay Yong has emphasised this point several times to explain why he did not mention certain facts which were key to his defence.

36 For completeness, I note that Mazlan provided a contemporaneous statement,⁷⁹ a cautioned statement,⁸⁰ and six long statements to various CNB Officers.⁸¹ However, for present purposes it was unnecessary to delve into the

⁷⁶ ABD, p 350, para 36.

⁷⁷ ABD, pp 399–400.

⁷⁸ Certified Transcript, 27 July 2017, pp 59 (lines 23, 29–30) and 65 (lines 18–19, 31); Certified Transcript, 12 October 2017, p 52 (lines 12–15).

⁷⁹ ABD, p 243–245.

⁸⁰ ABD, pp 305–307.

contents of these statements because, as I explain below, Mazlan did not challenge the Prosecution’s version of events, nor did he challenge the position he had taken in the long statements which he provided to CNB.⁸²

The Prosecution’s case

The case against Kay Yong

37 Bearing in mind that the presumptions in ss 17 and 18 of the MDA could not be applied conjunctively (*Tang Hai Liang v Public Prosecutor* [2011] SGCA 38 at [18]–[19]), the Prosecution advanced two alternative cases for making out the offence of possession for the purpose of trafficking against Kay Yong.

The primary case

38 The Prosecution’s primary case was that it had proven beyond reasonable doubt that Kay Yong was in possession of the drugs and knew their nature, without any need to rely on the presumptions in s 18 of the MDA. The Prosecution then sought to rely on the presumption in s 17(c) of the MDA – *ie*, that Kay Yong was in possession of the drugs for the purpose of trafficking, since he was in possession of more than 2g of diamorphine.

39 With regard to the element of possession, the Prosecution argued that Kay Yong had physical custody of the Plastic Bag. It cited the case of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 (“*Warner*”) for the proposition that “[a person] who receives physical custody of a package or

⁸¹ ABD, pp 371–378, 282–285, 286–300, 379–387, 411–416 and 417–420 respectively.

⁸² Certified Transcript, 19 July 2017, p 4 (lines 15–17).

container has possession of its contents if he does not dispose of the contents after having had a reasonable opportunity to examine them.”⁸³ Kay Yong had a “reasonable opportunity” to examine the contents of the Plastic Bag, and did not dispose of them. Therefore, he was in possession of the Plastic Bag and its contents.⁸⁴

40 The Prosecution further argued that Kay Yong had knowledge of the contents of the Plastic Bag, and knew that Exhibit A1A1A contained diamorphine. In this regard, the Prosecution argued that Kay Yong knew that the Plastic Bag contained “the packet of heroin that *he had ordered from Ah Boy,*” [emphasis added] in light of the following facts:⁸⁵

- (a) Kay Yong expected to receive “stuff” from Mazlan.
- (b) There was no reason for Ah Boy to send the drugs to Kay Yong if he had not ordered them.
- (c) The circumstances in which Kay Yong received the Plastic Bag were highly suspicious.
- (d) Kay Yong had ample time to check the contents of the Plastic Bag.
- (e) Kay Yong had attempted to flee when he saw the CNB officers.

⁸³ Prosecution’s closing submissions, paras 25–26.

⁸⁴ Prosecution’s closing submissions, para 29.

⁸⁵ Prosecution’s closing submissions, paras 34–35.

41 The Prosecution also contended that Kay Yong's exculpatory claims relating to his gambling debts and debt collection activities were not credible. Thus his explanation as to why he had met Mazlan, paid Mazlan a sum of money, and received the drugs should be disbelieved.⁸⁶

42 As for the element of possession for the purpose of trafficking, the Prosecution relied on the presumption in s 17(c) of the MDA and averred that Kay Yong had adduced no evidence to rebut the presumption. That is, there was no evidence that the drugs were intended for Kay Yong's own consumption or for any purpose other than trafficking. It was further argued that the presumption was reinforced by two facts:⁸⁷

(a) First, Kay Yong had received 459.4g of heroin, which was a large quantity of drugs far in excess of the 8g of heroin he claimed to have been consuming on a weekly basis at the time.

(b) Secondly, the drugs were very costly relative to Kay Yong's legitimate sources of income. He had spent at least \$3,000 to purchase the drugs, which was 2.4 times his monthly take-home pay. It was implausible that Kay Yong would have spent such a large sum of money on the drugs if he did not intend to sell them. Further, based on the retail value of the drugs, he stood to gain a profit in excess of \$7,000 if he sold the drugs.

⁸⁶ Prosecution's closing submissions, paras 54–67.

⁸⁷ Prosecution's closing submissions, para 72.

The alternative case

43 The Prosecution’s alternative case was that it could rely on the presumptions in ss 18(1) and 18(2) of the MDA to establish Kay Yong’s possession of the drugs and his knowledge of their nature. On this case, the Prosecution could not rely on the presumption in s 17(c) of the MDA. The Prosecution contended that the evidence was sufficient to prove beyond reasonable doubt that Kay Yong was in possession of the drugs for the purpose of trafficking.⁸⁸ This was based on the same two facts said to “reinforce” the presumption of trafficking (see [42(a)] and [42(b)] above).⁸⁹

The case against Mazlan

44 The Prosecution’s case against Mazlan was straightforward. Mazlan had admitted that he was in possession of the drugs from the time that he collected them from Mani at Tuas Avenue 11 until he delivered them to Kay Yong at Blk 31 Bendemeer Road. He had also admitted that he knew that the drugs were heroin, and that he delivered the drugs to Kay Yong. There was no evidence to show that he was authorised under the MDA to deliver the drugs to Kay Yong. Thus, the Prosecution argued that the elements of the offence of trafficking under s 5(1)(a) of the MDA – possession, knowledge of the nature of the drugs, trafficking and the absence of authorisation – were all made out.

Kay Yong’s defence

45 Broadly speaking, Kay Yong’s defence was in line with the narrative he had given in his various statements to the CNB. He claimed that he had met

⁸⁸ Prosecution’s closing submissions, para 22.

⁸⁹ Prosecution’s closing submissions, para 83 read with paras 71–72.

Mazlan on 20 July 2015 to repay a debt to Ah Boy.⁹⁰ Ah Boy had called him on 17 July 2015 to chase him for an instalment of \$3,800,⁹¹ which was meant to be a partial payment of the \$38,000 that Kay Yong still owed to Ah Boy from bets he had placed during the 2014 World Cup.⁹² By 20 July 2015, Kay Yong had only managed to raise \$3,000 to repay Ah Boy.⁹³ In the morning of 20 July 2015, Ah Boy asked Kay Yong to raise an additional “\$500 plus \$100 as transport expenses” for the person who would be coming to collect the debt.⁹⁴ At 5pm that day, Kay Yong called Ah Boy and informed him that he had raised the money, and told him to send someone to collect the money.⁹⁵

46 During this phone call, Ah Boy told Kay Yong that he “[needed] [Kay Yong] to do something” and that “a guy [would] tell [him] what to do”.⁹⁶ He also told Kay Yong to call a Malay man (*ie*, Mazlan) to pass him the money and for the “Malay man” to “give [Kay Yong] the job”.⁹⁷ At trial, Kay Yong stated that based on his previous debt collection activities for Ah Boy,⁹⁸ he understood what Ah Boy had said to mean that Ah Boy wanted him to collect debts,⁹⁹ and that he should expect to receive a debt book.¹⁰⁰

⁹⁰ First accused’s closing submissions, paras 3 and 24; Certified Transcript for 12 October 2017, p 82 (lines 14–15).

⁹¹ Certified Transcript, 27 July 2017, pp 22 (line 32) and 23 (lines 2–4).

⁹² Certified Transcript, 27 July 2017, pp 19 (lines 5–7) and 20 (lines 6–7) and 24 (lines 1–5).

⁹³ Certified Transcript, 27 July 2017, p 23 (lines 8–12).

⁹⁴ Certified Transcript, 27 July 2017, p 23 (lines 14–15).

⁹⁵ Certified Transcript, 27 July 2017, p 24 (lines 4–5).

⁹⁶ Certified Transcript, 27 July 2017, p 24 (lines 20–21)

⁹⁷ Certified Transcript, 27 July 2017, p 25 (lines 15–20).

⁹⁸ Certified Transcript, 27 July 2017, p 50 (lines 29–31).

⁹⁹ Certified Transcript, 27 July 2017, p 24 (lines 20–30).

47 Based on Kay Yong’s version of events, the Defence contended that Kay Yong was not liable for the offence of possession for the purpose of trafficking.

48 In response to the Prosecution’s primary case, the Defence argued that, without relying on the presumption in s 18(1) of the MDA, the Prosecution could not establish that Kay Yong was in possession of the drugs.¹⁰¹ In this regard, the Defence cited *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1 (“*Tan Kiam Peng*”) for the proposition that a person is not in possession of a thing if he or she believes it “to be something of a wholly different nature” (at [50]). The Defence submitted that, since Kay Yong had met with Mazlan expecting to repay a debt and to receive a debt book, Kay Yong believed that the Plastic Bag contained a debt book. The most that could be said was that he may have suspected that the Plastic Bag contained drugs, but suspicion was insufficient to establish the mental element of possession.¹⁰² For similar reasons, the Defence argued that Kay Yong also did not have the requisite knowledge of the nature of the drugs. It was further submitted that even on the Prosecution’s *alternative* case – which relied on the presumptions in ss 18(1) and 18(2) of the MDA, Kay Yong had raised sufficient evidence to rebut the presumptions of possession and knowledge on a balance of probabilities.

49 The Defence further argued that Kay Yong was not in possession of the drugs for the purpose of trafficking. It was emphasised that no drug trafficking paraphernalia was found, whether in the Bendemeer Flat or the Ang Mo Kio Flat, and that the only evidence going towards whether Kay Yong intended to

¹⁰⁰ Certified Transcript, 27 July 2017, p 25 (lines 3–5).

¹⁰¹ First accused’s closing submissions, para 97.

¹⁰² First accused’s closing submissions, paras 101–103.

traffic the drugs was the sheer quantity of heroin found in his possession.¹⁰³ Responding to the Prosecution’s alternative case (which required the Prosecution to prove that the accused possessed the drugs for the purposes of trafficking without relying on the presumption concerning trafficking in s 17 of the MDA), the Defence took the position that, in the absence of other evidence, the sheer quantity of the drugs can never be sufficient to establish beyond a reasonable doubt that an accused possessed the drugs for the purpose of trafficking.¹⁰⁴

50 The Defence argued that even if I were to accept the Prosecution’s primary case and find that possession and knowledge of the drugs were established beyond a reasonable doubt, and therefore the Prosecution could avail itself of the presumption in s 17 of the MDA, Kay Yong had rebutted that presumption. To that end, the Defence highlighted the evidence concerning Kay Yong’s own consumption of heroin at the time of his arrest, and his diagnosis of “severe opioid disorder”.¹⁰⁵ Based on this evidence, the Defence urged me to believe Kay Yong’s oral evidence that he would have kept about a third of the drugs for his own consumption, and discarded the rest.¹⁰⁶

51 In the alternative, the Defence submitted that even if I did not believe that Kay Yong would have discarded the bulk of the drugs, Kay Yong should be given “the benefit of the doubt” that he would have smoked about one third and sold the remainder of the drugs. The Defence thus argued that I should

¹⁰³ Certified Transcript, 12 October 2017, p 21 (lines 13–16).

¹⁰⁴ Certified Transcript, 12 October 2017, pp 21 (lines 26–31) and 25 (lines 9–13).

¹⁰⁵ First accused’s closing submissions, para 122.

¹⁰⁶ First accused’s closing submissions, para 122.

convict Kay Yong on the basis that he possessed for the purpose of trafficking only *two thirds* of the 18.71g of diamorphine found in his possession.

Mazlan’s defence

52 Mazlan’s evidence was comparatively straightforward. His version of events was that, after Mani had “pestered” him to assist in making drug deliveries several times, he eventually agreed to help Mani deliver two pounds of heroin to Mani’s customers in return for a reward.¹⁰⁷ He told Mani that this would be the first and last time that he would assist Mani. Mazlan collected two pounds of heroin from Mani, one of which he delivered to Kay Yong. He kept the other pound of heroin with him and was awaiting Mani’s instructions in relation to this second pound of heroin at the point when he was arrested.¹⁰⁸

53 Mazlan did not dispute that his transporting and delivering the drugs to Kay Yong were acts constituting “trafficking” within the definition in s 2 of the MDA.¹⁰⁹ His defence was essentially that he was a mere courier and was, at all times, acting under Mani’s instructions. In this regard, the Defence emphasised the following points:

- (a) Mazlan’s activities were restricted to acts “preparatory to or for the purpose of transporting, sending or delivering” the drugs.¹¹⁰ There was no evidence that Mazlan had been involved in any repacking of the

¹⁰⁷ Second accused’s closing submissions, para 8(j).

¹⁰⁸ Second accused’s closing submissions, para 8(b).

¹⁰⁹ Second accused’s closing submissions, para 20.

¹¹⁰ Second accused’s closing submissions, para 19.

drugs, or any activities other than moving the drugs from point A to point B.¹¹¹

(b) Although Mazlan had been involved in collecting money from Kay Yong, this did not take him outside of the role of a “courier”, because the collection of such money was merely incidental to the delivery of the drugs.¹¹²

Decision with respect to Kay Yong

The law on possession of a controlled drug for the purpose of trafficking

54 In *Masoud Rahimi bin Mehrzad v PP and another appeal* [2017] 1 SLR 257 at [28], the Court of Appeal noted that the elements of the offence of possession of a controlled drug for the purpose of trafficking are as follows:

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

55 The final element of the offence – *ie*, that the accused must have possessed the drugs for the purpose of trafficking – may also be established pursuant to the presumption concerning trafficking in s 17 of the MDA (“the

¹¹¹ Second accused’s closing submissions, para 13.

¹¹² Second accused’s closing submissions, para 15.

presumption concerning trafficking”). I note that the quantity of diamorphine in issue was 18.71g, which is clearly in excess of the 2g of diamorphine required to raise the presumption concerning trafficking in s 17(c) of the MDA. However, as the Prosecution readily acknowledged (see [37] above), whether the Prosecution could avail itself of the presumption concerning trafficking was subject to the rule that the Prosecution may not rely on both the presumptions in ss 17 and 18 of the MDA conjunctively (*Tang Hai Liang v PP* [2011] SGCA 38 at [18]–[19]).

Was Kay Yong in possession of the drugs?

Actual possession

56 I first address the Prosecution’s primary case, which was that the evidence was sufficient to prove that Kay Yong was in possession of the drugs without relying on the presumption in s 18 of the MDA.

57 As noted by the Court of Appeal in *Hishamrudin bin Mohd v PP* [2017] SGCA 41 (“*Hishamrudin*”) at [18], two elements must be satisfied in order to prove actual possession: (a) that the accused person had physical control over the controlled drugs; and (b) that the accused person knew of the nature of the controlled drugs. Knowledge of “the nature of the controlled drugs” in this context refers to knowledge that the items *were controlled drugs*, and not knowledge of the *specific nature* of the drug in question (*Hishamrudin* at [18], citing *Fun Seong Cheng v PP* [1997] 2 SLR 796 at [53]–[56] and *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1 at [87]). It is trite that if the Prosecution does not avail itself of the presumption of possession in s 18(1) of the MDA, it must prove the elements of possession beyond reasonable doubt (see for instance *Hishamrudin* at [16]).

58 The Defence did not dispute, and I was satisfied, that Kay Yong was in physical control of the drugs.¹¹³ Mazlan had delivered the Plastic Bag to Kay Yong. From the point where he had met Mazlan, Kay Yong had carried the Black Bag containing the Plastic Bag as he walked to the fourth floor of Blk 31 Bendemeer Road.¹¹⁴ He also continued to carry the Black Bag containing the Plastic Bag as he fled from the CNB officers,¹¹⁵ releasing it only after he landed in a fall (see [16] above). Thus, the first element of physical control was made out.

59 The key question concerned the second element of possession – *ie*, whether the Prosecution had proven beyond a reasonable doubt that Kay Yong knew that the contents of the Plastic Bag consisted of controlled drugs. Having weighed the evidence, I was of the view that this question should be answered in the affirmative.

60 The Court of Appeal recently made the following observations in *Harven a/l Segar v PP* [2017] 1 SLR 771 (“*Harven*”) at [17]:

In every instance where an accused claims that he did not know that what he was carrying contained drugs, the court will have to carefully scrutinise all the pertinent facts – this being a highly fact-sensitive inquiry – in determining whether he has discharged the burden of rebutting the presumption of knowledge, including (*inter alia*) his background, how he received the drugs, how they were packed and how he handled or dealt with them. Ultimately, what the court is concerned with is the credibility and veracity of the accused’s account and how believable that account is.

¹¹³ Certified Transcript, 12 October 2017, p 30 (lines 30–31).

¹¹⁴ Certified Transcript, 20 July 2017, p 9 (lines 2–8).

¹¹⁵ Certified Transcript, 20 July 2017, pp 9 (lines 2) to 11 (line 25).

61 The above remarks were clearly made in a different context where the Court of Appeal was concerned with whether or not the accused had managed to rebut the *presumption of knowledge* under s 18(2) of the MDA. Nevertheless, I consider that the same principles are applicable where the Prosecution seeks to prove that the accused had *actual* knowledge that an item in his physical control was a controlled drug, and the accused claims that he did not know that what he was carrying contained a controlled drug. That is, the court must “scrutinise all the pertinent facts”, including the accused’s background and how he received the drugs, to assess “the credibility and veracity of the accused’s account”. These principles are applicable to my assessment of whether the evidence was sufficient to prove beyond reasonable doubt that Kay Yong knew that the Plastic Bag he was carrying contained a controlled drug.

62 Proof beyond reasonable doubt does not require the Prosecution to meet a standard of absolute certainty (*Mohammed Ali bin Johari v PP* [2008] 5 SLR(R) 1058 (“*Mohammed Ali Bin Johari*”) at [84], citing *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45). However, the evidence must be such that it excludes “material” or “real” doubts. “Merely fanciful” doubts or “fanciful or remote possibilities” may be disregarded (*Mohammed Ali Bin Johari* at [82] and [83]).

63 I was essentially faced with two different narratives. The first narrative was the Prosecution’s case that Kay Yong had *ordered* the drugs from Ah Boy (see [40] above). On this version of events, Kay Yong knew that the Plastic Bag contained drugs because that was exactly what he had expected to receive upon meeting Mazlan. The second, competing narrative was Kay Yong’s case that he had met with Mazlan expecting to pay a gambling debt and to receive a debt book for the purpose of carrying out debt collection activities for Ah Boy (see

[45]–[46] above). The question was whether, on the evidence, I was satisfied beyond reasonable doubt that the Prosecution’s narrative represented the truth.

64 I was of the view that the evidence overwhelmingly supported the Prosecution’s narrative, while Kay Yong’s competing narrative was unsubstantiated and insufficient to ground a “reasonable” doubt. This was based on the following factors.

65 The first factor was this. There was no credible reason why Mani (or Ah Boy) would have instructed Mazlan to deliver to Kay Yong a packet of drugs worth thousands of dollars if Kay Yong had not ordered them. The Prosecution highlighted Kay Yong’s statement that he was regularly purchasing, for his own consumption, 8g packets of heroin for about \$180 (see [30] above). Based on these figures, the 459.4g of heroin found in Kay Yong’s possession would have yielded about 57 of such 8g packets, which would have had a value in excess of \$10,000.¹¹⁶

66 The Defence took issue with the Prosecution’s reliance on this extrapolation, arguing that Kay Yong’s evidence concerning the value of heroin he was purchasing applied to “different suppliers figure and a different context”, and could form no basis for determining the value of the drugs which were the subject of the charge.¹¹⁷ It was suggested that the drugs found in Kay Yong’s possession may have been of a very different market value because they were of a “low purity”, given that over 400g of granular substance only yielded 18.71g of diamorphine.¹¹⁸ I was not persuaded by this. No evidence was led

¹¹⁶ Prosecution’s closing submissions, para 40.

¹¹⁷ Certified Transcript, 12 October 2017, p 59 (lines 5–14).

concerning the purity of the heroin concerned relative to what is normally available in Singapore. I took judicial notice of the fact that heroin is normally sold as a mixture of diamorphine and other substances. The purity of the heroin found in Kay Yong's possession was about 4.07%. From the table below of reported recent cases involving heroin, such a level of purity is not at all incongruous with the norm:

	Case Name	Weight of drug mixture	Weight of pure diamorphine	Purity
1	<i>PP v Pandian a/l Subramaniam</i> [2017] SGHC 55	1,152.10g	40.53g	3.52%
2	<i>PP v Abdul Wahid bin Ismail</i> [2017] SGHC 87	1343.40g	46.64g	3.47%
3	<i>PP v Suhaimi bin Said</i> [2017] SGHC 86	1747.04g	45.58g	2.61%
4	<i>PP v Ng Peng Chong and another</i> [2017] SGHC 99	902.80g	21.58g	2.39%
5	<i>PP v Zamri Bin Mohd Tahir</i> [2017] SGHC 79	1835.50g	40.37g	2.20%
6	<i>PP v Abd Helmi bin Ab Halim</i> [2017] SGHC 134	452.00g	16.56g	3.66%
7	<i>PP v Pannir Selvam Pranthaman</i> [2017] SGHC 144	1833.20g	51.84g	2.83%
8	<i>PP v Dominic Martin Fernandez and another</i> [2017] SGHC 226	906.40g	35.41g	3.91%

¹¹⁸ Certified Transcript, 12 October 2017, p 59 (lines 15–17).

67 There was, of course, no evidence before me concerning the purity of the diamorphine *Kay Yong* had been purchasing for his own consumption. I accept that there was *some* doubt over the precise market value of the drugs in this case. Nevertheless, even though it was not possible to ascertain the value of the drugs with mathematical precision, Kay Yong's statement concerning the price at which he was purchasing *pei hoon* offered ample evidence to support a finding that the drugs found in his possession were highly valuable. They would have been worth thousands of dollars. The inference that the drugs were very valuable was buttressed by the fact that Mani had offered Mazlan \$200 simply to transport and deliver one pound of the drugs.¹¹⁹

68 Given that the drugs were highly valuable, I agreed with the Prosecution that it was extremely unlikely that Mani would have handed them to Kay Yong if the latter had not ordered them. As against that, Kay Yong's version of events would require me to accept that, notwithstanding the fact that he owed Ah Boy some \$38,000 in gambling debts and Ah Boy had not only refused to extend credit to him,¹²⁰ but was hounding him for repayment, Ah Boy would be willing to foist upon him thousands of dollars' worth of drugs on credit, in the hope that Kay Yong would sell them to raise cash to repay Ah Boy.¹²¹ Indeed, according to Kay Yong, the purpose of meeting up with Mazlan was to repay part his debt to Mani. In those circumstances, I find it highly unlikely that Mani would further extend credit to Kay Yong as he claimed.

¹¹⁹ Certified Transcript, 28 July 2017, p 41 (lines 10–14).

¹²⁰ ABD, p348, para 29 to 31

¹²¹ First accused's closing submissions, para 78.

69 The second factor concerned the inconsistencies between Kay Yong's statements to the CNB and his oral evidence.

70 Kay Yong did not dispute that he spoke to Mazlan over the phone prior to their meeting.¹²² Kay Yong's own evidence was that during this phone call, he had asked Mazlan if the latter had anything to pass to him.¹²³ In his second long statement, recorded on 25 July 2015, Mazlan said that Kay Yong had "asked if I got the stuff and if I am sending it to him".¹²⁴ On the other hand, in cross-examination, Kay Yong was adamant that he had not used the word "stuff".¹²⁵ Yet whatever the exact words spoken may have been, the evidence demonstrated that Kay Yong met Mazlan with the Black Bag expecting to receive *an item*. I saw no reason to disbelieve the evidence of Suhana and Mazlan that Kay Yong had said "Just put inside here" when he met up with Mazlan (see [13] above). Such evidence was consistent with *either* the Prosecution's narrative that Kay Yong was expecting to receive drugs, *or* the Defence's narrative that he was expecting a debt book. The question was what Kay Yong actually expected to receive.

71 Kay Yong's position in oral evidence was clearly that, after speaking to Ah Boy at about 5pm on 20 July 2015, he was expecting to receive a debt book. Indeed, his evidence was that even though Ah Boy did not actually *say* that he should expect a debt book, he simply understood, based on his previous experiences collecting debts for Ah Boy, that this was what Ah Boy was

¹²² First accused's closing submissions, para 41.

¹²³ Certified Transcript, 27 July 2017, p 79 (line 11).

¹²⁴ ABD, p 283, para 7.

¹²⁵ Certified Transcript, 27 July 2017, p 79 (lines 15–17).

referring to by saying things such as “a guy will tell you what to do” and Ah Boy’s instruction that he should call a Malay man “for him to give [Kay Yong] the job”.¹²⁶ Having regard to Kay Yong’s statements, however, I concluded that his claim that he was expecting to receive a debt book was a mere afterthought. The relevant parts of Kay Yong’s statements are as follows:

(a) In his contemporaneous statement, when Kay Yong was asked what was inside “these two packets”, his answer was: “*I don’t know*. I handed money to him and he threw things inside my bag.” [emphasis added] (see [21] above). There was no mention of any debt book, or indeed, of expecting to receive anything at all.

(b) In his cautioned statement, Kay Yong stated that when “the Malay” had asked him to open his handbag, he had “asked...why”. Again, the impression given by this statement was that Kay Yong was not expecting to receive anything at all (see [27] above).

(c) In his first long statement, Kay Yong again asserted that when Mazlan asked him to bring a bag down, he had “asked him why”. Notably it was in this statement, recorded some ten days after his arrest, that Kay Yong mentioned a “debt book” for the first time, and said, “*I think* the Malay guy had passed me either a debt book or ‘*pei hoon*’” (see [29] above).¹²⁷

(d) In his fourth long statement, Kay Yong mentioned that the “Malay man” had told him that “Ah Boy had something to give [him]”,

¹²⁶ Certified transcript, 27 July 2017, p 25 (lines 3–5, 16–18).

¹²⁷ ABD, p 342, para 6.

but he went on to say that he “*did not know what the thing [was]* and thought it was a debt book for online bets” [emphasis added] (see [34] above).

72 The impression given by Kay Yong’s first and fourth long statements is that he was not expecting to receive anything, but he *suspected* that Mazlan may have passed him a debt book. This differed from the position he had taken in oral evidence, which was that he had understood, even without explicit mention from Ah Boy, that he should expect to receive a debt book for the purpose of carrying out debt collection activities.

73 In view of Kay Yong’s shifting positions between his statements and his oral evidence, I was unable to accept Kay Yong’s claim that he was expecting to receive a debt book when he met with Mazlan. Crucially, the following passage from Kay Yong’s cautioned statement showed that he knew, at the point of his arrest, that he had been found in possession of “a packet of powder”: “When they held me down and told me *about a packet of powder*, I then realized what happened and that ‘Boy’ had set me up.” [emphasis added].¹²⁸

74 Seen in this context, Kay Yong’s explanation that he may not have mentioned the debt book to SSI Tony because when he was arrested he had been shown the white powder and he was “not thinking about the debt books”¹²⁹ begged belief. On the contrary, one would have thought that if Kay Yong had expected to receive a debt book but had realised upon his arrest that what he was carrying was actually a “packet of powder”, he would have taken the first

¹²⁸ ABD, p 633.

¹²⁹ Certified Transcript, 27 July 2017 p62 (lines 9–10).

opportunity to offer this exculpatory explanation in his contemporaneous statement. That is all the more so given that Kay Yong was a person who has had dealings with drugs (see [30] above) and, based on his statements, obviously understood the gravity and possible implications of being found in possession of the drugs. For example, in his third long statement, Kay Yong stated the following:

Qns: If CNB had not arrested you that day, what would you have done with the packet of drug?

Ans: I would have smoked a bit and flush the rest down the toilet. I may contact 'Ah Boy' and ask him about this but *I will not take the risk to return it to him* because he was the one who forced it upon me. ... I will not keep the packet with me as my mother may find out *and it is never safe to have drugs at home.*

[emphasis added]

75 Yet instead of explaining that he had expected to receive a debt book, in his contemporaneous statement, Kay Yong simply stated that he “[did not] know” what was inside the packet. Similarly, in his cautioned statement, which was recorded some seven days after his arrest, Kay Yong did not state that he was expecting to receive a debt book.

76 Even when Kay Yong eventually mentioned a “debt book” in his first and fourth long statements, he did *not* say that this was what he had been expecting to receive from Mazlan based on Ah Boy’s instructions. These statements suggested instead that Kay Yong was either not expecting to receive anything at all, or that he was at least unclear about what he should expect to receive.

77 I therefore found that Kay Yong’s claim that he had met with Mazlan expecting to receive a debt book from Ah Boy was not credible.

78 The third reason that I was unable to accept Kay Yong’s version of events had to do with his lack of credibility as a witness. I found that his evidence was fraught with significant inconsistencies. A key plank of Kay Yong’s defence was that he had a laptop in the Bendemeer Flat which he used for online gambling. Kay Yong claimed that this laptop would have supported his claim that he had met Mazlan in the evening of 20 July 2015 for the purpose of repaying a gambling debt owed to Ah Boy.¹³⁰ However, this laptop was not mentioned in any of the statements which Kay Yong had provided to the CNB, despite the fact that IO Huang had specifically questioned Kay Yong about his online gambling activities when he recorded Kay Yong’s fourth long statement on 3 March 2016.¹³¹ This was another factor which led me to disbelieve Kay Yong’s exculpatory claims.

79 To support the claim that Kay Yong knew that he was carrying drugs at the point of his arrest, the Prosecution has cited two other factors:¹³²

- (a) The fact that Kay Yong had desperately attempted to flee upon noticing the CNB officers.
- (b) The fact that, despite having received the Plastic Bag under suspicious circumstances, Kay Yong had “ample time” to check the contents of the Plastic Bag but did not do so.

80 With regard to Kay Yong’s attempt to flee, I agreed with the Defence that this was arguably consistent with Kay Yong’s claim that he believed that

¹³⁰ First accused’s closing submissions, para 4; Certified Transcript, 27 July 2017, pp 47 (line 9)–48 (line 11).

¹³¹ Certified Transcript, 21 July 2017, p 79 (lines 26–27)

¹³² Prosecution’s closing submissions, para 35.

he was carrying a debt book, which was also an illegal item.¹³³ Nevertheless, I noted that Kay Yong had fled immediately upon noticing the CNB officers despite the fact that they were in plain clothes, and that he also went as far as to leap from the staircase landing immediately preceding the ground floor in his attempt to escape the CNB officers (see [15] above). Taken alongside the other evidence, I agreed that the desperate manner in which Kay Yong fled did support the inference that he knew that he was carrying a controlled drug rather than a mere debt book.

81 As for the argument that Kay Yong had “ample time” to check the contents of the Plastic Bag but did not do so, I did not agree with the Prosecution that this supported a finding that Kay Yong had knowledge that he was carrying controlled drugs. To begin with, by the Prosecution’s own evidence, it would have taken Kay Yong at most three to four minutes to walk from the point where he had met Mazlan to the fourth floor of Blk 31 Bendemeer Road.¹³⁴ This was an extremely short period of time, and I failed to see what could be made of the fact that Kay Yong did not check the contents of the Plastic Bag during those several minutes.

82 Nevertheless, based on the other factors I have mentioned at [65]–[80] above, I was satisfied that the evidence proved beyond a reasonable doubt that Kay Yong had met with Mazlan expecting to receive the drugs because he had ordered them from Ah Boy. I therefore found that the second element of possession, *viz*, knowledge that the item contained a controlled drug, was made out.

¹³³ First accused’s closing submissions, para 81.

¹³⁴ Prosecution’s closing submissions, para 29.

Presumed possession and knowledge

83 Although it was not necessary, in light of my findings on actual possession, to consider the question of the presumption in s 18(1)(a) of the MDA on the Prosecution’s alternative case, for completeness, I should state that the presumption of possession clearly did arise in the present case, and was not successfully rebutted.

84 Under s 18(1)(a) of the MDA, a person who is proved to have had in his possession, custody or control “anything containing a controlled drug” is presumed to have had that drug in his possession until the contrary is proved. As noted by the Court of Appeal in *Obeng Comfort v PP* [2017] 1 SLR 633 (“*Obeng Comfort*”) at [34], in order to raise the presumption of possession under s 18(1) of the MDA, two elements must be satisfied: (a) the “container containing a controlled drug” must exist; and (b) the accused must have had possession, control or custody of such container. The accused need not know that the item is a controlled drug (*Obeng Comfort* at [34]). Once the accused is proved or presumed to have had a controlled drug in his possession, he is then presumed to know the *nature* of that drug under s 18(2) of the MDA – which refers to the nature of the specific controlled drug found in his possession (*Obeng Comfort* at [35], citing *Nagaenthran a/l K Dharmalingam v PP* [2011] 4 SLR 1156 (“*Nagaenthran*”) at [23]–[24]).

85 There was no doubt that the Plastic Bag was a “container containing a controlled drug” and that it was within Kay Yong’s possession, custody and control (for the reasons stated at [58] above, concerning Kay Yong’s physical control of the Plastic Bag). For the same reasons stated at [65]–[80] above, the presumption of possession was not rebutted. Thus, on the Prosecution’s

alternative case, Kay Yong would be presumed to be in possession of the drugs and to have knowledge of their specific nature.

Did Kay Yong have actual knowledge of the nature of the drugs?

86 As the Prosecution had accepted,¹³⁵ without the presumptions in s 18(2) of the MDA, the element of knowledge of the nature of the drug requires proof that the accused knew of the nature of the actual drug in his possession – for instance, that it was diamorphine or methamphetamine (*Nagaenthran* at [24] and *Obeng Comfort* at [35]). In this case, the question was whether Kay Yong knew that the packet which he received in the Plastic Bag contained diamorphine.

87 I found that the same evidence which established Kay Yong’s knowledge that he was carrying controlled drugs (for the purpose of establishing possession) also led to the conclusion that Kay Yong knew that he was in possession of diamorphine specifically. Apart from the evidence discussed at [65]–[80] above, the finding that Kay Yong specifically knew that he was receiving heroin which he had ordered from Ah Boy through Mazlan was buttressed by the following factors:

- (a) Kay Yong was familiar with, and had many previous dealings with heroin. He admitted that he had about five to ten *pei hoon* clients in the past.¹³⁶ He was also regularly purchasing and consuming *pei hoon* on a weekly basis at the time of his arrest (see [30] above).

¹³⁵ Prosecution’s closing submissions, para 31

¹³⁶ ABD, p 342, para 10.

(b) Kay Yong had stated in his first and fourth long statements that he suspected that the item he received from Mazlan may have been *pei hoon* (see [28] and [34] above). When questioned about why he thought Mazlan may have passed him *pei hoon*, Kay Yong stated the following in his first long statement:

I suspected it could be '*pei hoon*' because 'Ah Boy' had asked me to help him with his drug business many times before. I had never agreed to it so he might have decided to just push it to me directly and make me do it.

88 The above factors supported the conclusion that Kay Yong knew that Ah Boy dealt in *pei hoon*, and that, having ordered the drugs from Ah Boy, he knew and expected that he would be receiving *pei hoon* when he met with Mazlan on 20 July 2015.

Was Kay Yong in possession of the drugs for the purpose of trafficking?

89 I turn now to address the final element of the offence – *ie*, that the accused must have been in possession of the controlled drug for the purpose of trafficking. Since I have found that the Prosecution had proven the elements of possession and knowledge beyond a reasonable doubt, the Prosecution was able to rely on the presumption concerning trafficking. As mentioned above, the quantity of 18.71g in question was far in excess of the 2g of diamorphine required to raise the presumption in s 17(c) of the MDA. The question was whether or not Kay Yong had managed to rebut the presumption concerning trafficking on a balance of probabilities.

90 The Defence argued that Kay Yong would have consumed a third of the drugs and discarded the rest – *ie*, that *none* of the drugs were intended for the

purpose of trafficking. In the alternative, the Defence argued that Kay Yong would have consumed a third of the drugs and *trafficked* the rest, and should be convicted on the basis that he only possessed two-thirds of the total 18.71g quantity for the purpose of trafficking.¹³⁷ Having found that Kay Yong had *ordered* the drugs from Ah Boy (see [82] above), I was not persuaded that Kay Yong would have smoked a third and simply flushed the remainder down the toilet, as he had claimed in his third long statement. The only issue was whether he had proven on a balance of probabilities that he would have consumed one third and only possessed two thirds of the drugs for the purpose of trafficking.

91 For the reasons that follow, I was of the view that Kay Yong had failed to rebut the presumption concerning trafficking.

92 As noted by the Court of Appeal in *Muhammad bin Abdullah v PP and another appeal* [2017] 1 SLR 427 (“*Muhammad bin Abdullah*”) at [29], where an accused relies on the defence of own consumption to rebut the presumption of possession for the purpose of trafficking, the court considers the overall circumstances of the case. The factors which the courts have taken into account include:

(a) Evidence concerning the accused’s rate of consumption and the number of days the supply is meant for (*Jusri bin Mohamed Hussain v PP* [1996] 2 SLR(R) 706 at [62]–[63]).

(b) The frequency of supply available to the accused (*PP v Muhammad bin Abdullah* [2015] SGHC 231 (“*Muhammad bin Abdullah HC*”) at [19]).

¹³⁷ Certified Transcript, 12 October 2017, p 139 (lines 25–32).

(c) Whether the accused had the financial means to purchase the drugs for himself (*Muhammad bin Abdullah* at [31] citing *PP v Kwek Seow Hock* [2009] SGHC 202 at [73]).

93 It was clear that Kay Yong *was* consuming heroin at the time of the offence. The IMH psychiatrist who examined Kay Yong, Dr Ng Lin Chieh, diagnosed him as suffering from Severe Opioid Use Disorder.¹³⁸ Kay Yong's urine tested positive for morphine shortly after his arrest,¹³⁹ and the Prosecution did not dispute his claim that he had smoked *pei hoon* on the day of his arrest (see [30] above).¹⁴⁰ The Prosecution also did not dispute Kay Yong's evidence that he was consuming about 8g of heroin a week,¹⁴¹ and was paying about \$180 for each 8g packet.

94 At trial, Kay Yong testified that he would have taken one-third of the drugs found in his possession "because it would save [him] a lot of money."¹⁴² At first blush, this was not inconceivable. The evidence showed that Kay Yong paid \$3,000 to Mazlan for 459.4g of heroin (see [20] above). If Kay Yong had kept a third of the drugs for his own consumption, he would have 153g of heroin – which would have yielded about 19 8g packets – for about \$1,000. If Kay Yong had bought 19 8g packets of heroin from his usual suppliers for \$180 each, this would have cost him \$3,420. Thus, Kay Yong stood to save a substantial sum of \$2,420 from keeping a third of the drugs for his own consumption. Further, it was not implausible that a person of Kay Yong's financial means

¹³⁸ ABD, p 143.

¹³⁹ ABD, p 130.

¹⁴⁰ ABD, p 345.

¹⁴¹ Prosecution's closing submissions, para 72(a).

¹⁴² Certified Transcript, 27 July 2017, p 45 (line 5).

would have spent a sum of \$1,000 on this quantity of drugs. He was earning a gross pay of \$1,500 a month, with a take-home salary of \$1,231.50.¹⁴³ This was not a situation where the value of the drugs was so out of proportion to the accused's limited financial means as to make it unlikely that he would have held, for his own consumption, the amount of drugs which he claimed that he would.

95 However, taking the evidence in the round, I found that Kay Yong had not proven that it was more likely than not that he would have kept a third of the drugs for his own consumption. This was in view of the fact that Kay Yong's *own evidence* suggested that he was not in the habit of stockpiling large quantities of drugs. In fact, in his long statement Kay Yong stated that he would not have kept the packet of drugs with him "as [his] mother may find out *and it is never safe to have drugs at home*" [emphasis added] (see [74] above). Unlike in *Muhammad bin Abdullah HC*, this was not a situation where the accused had adduced any evidence to suggest that he was usually in the habit of keeping and storing a certain quantity of drugs. Indeed, despite the fact that Kay Yong had smoked *pei hoon* on the day of his arrest, no drugs were found inside of the Bendemeer Flat.¹⁴⁴ I further noted that Kay Yong had given inconsistent evidence concerning the amount of drugs that he would have retained for his own consumption. While in oral evidence he said that he would have kept a third of the drugs, in his third long statement he said that he would have smoked only "a bit" and discarded the remainder.

¹⁴³ Certified Transcript, 27 July 2017, p 67 (lines 2–3).

¹⁴⁴ ABD, p 175.

96 Thus, I found that on the evidence, Kay Yong had failed to rebut the presumption concerning trafficking in respect of the full quantity of drugs found in his possession.

97 For completeness, I should add that with regard to the Prosecution’s *alternative* case, I would not have found that this element had been proven beyond a reasonable doubt. Given that no drug paraphernalia was found in either the Bendemeer Flat or the Ang Mo Kio Flat, and having regard to Kay Yong’s pattern of consumption and financial means, there was a “reasonable doubt” as to whether Kay Yong had intended to traffic the entire 459.4g of heroin found in his possession. However, that point is academic, since I had found that the Prosecution’s primary case was made out.

98 As the elements of the charge against Kay Yong had been made out, I convicted him of the charge and imposed the mandatory sentence of death.

Decision with respect to Mazlan

99 The elements of the offence of trafficking under s 5(1)(a) of the MDA are as follows:

- (a) Possession of the drugs;
- (b) Knowledge of the nature of the drugs;
- (c) Trafficking; and
- (d) The absence of authorisation.

100 As I have mentioned, Mazlan did not dispute the Prosecution’s version of events, and I was satisfied that each of the elements was made out. Mazlan

had admitted that he knowingly collected heroin from Mani at Tuas Avenue 11. He clearly had physical custody of the drugs from the time that he collected the drugs from Mani to the time he delivered them to Kay Yong. He also delivered the drugs to Kay Yong, which came within the definition of trafficking in s 2 of the MDA.

101 Accordingly, I convicted Mazlan on the charge. The only issue was whether or not Mazlan was eligible to be sentenced under s 33B(1)(a) of the MDA, which affords the court the discretion to impose the sentence of life imprisonment and caning in lieu of the death penalty.

102 Both the requirements in s 33B(2)(a) and s 33B(2)(b) must be satisfied in order for an accused to be eligible to be sentenced under s 33B(1)(a) of the MDA (*PP v Christeen d/o Jayamany and another* [2015] SGHC 126 (“*Christeen*”) at [46]).

103 Under s 33B(2)(a) of the MDA, Mazlan would have to prove on a balance of probabilities that his involvement in the offence under s 5(1) of the MDA was restricted to transporting, sending or delivering a controlled drug – in other words, that he was a mere courier. The factors relevant to the analysis of whether an accused is a mere courier were summarised by Tay Yong Kwang J in *Christeen* at [68]:

- (a) Whether the accused’s role is a common and ordinary incident of transporting, sending, or delivering a drug.
- (b) Whether such involvement is necessary to deliver the drugs, including (i) the degree of alteration to the drugs and (ii) the extent to

which such involvement looks beyond his immediate recipient of the drugs.

(c) The extent in scope and time of the functions which the offender performs.

(d) The degree of executive decision-making powers which the accused has.

(e) Whether the offender receives a distinct form of benefit for performing his extra functions.

104 Having regard to these factors, I was satisfied that Mazlan was a mere courier. Mazlan's unchallenged evidence was that he did not even count the money he received from Kay Yong,¹⁴⁵ and the Prosecution did not dispute the Defence's position that Mazlan was intending to hand over the money he received from Kay Yong to Mani.¹⁴⁶ It was clear that Mazlan was not *selling* the drugs to Kay Yong. His role in the transaction between Mani (or Ah Boy) and Kay Yong was simply to deliver the drugs from Mani to Kay Yong. His involvement did not involve "any other type of activity associated with drug supply and distribution" (see *Christeen* at [69]) apart from transporting the drugs from one party to another. It was undisputed that Mazlan also was not entrusted with any decision-making powers and was acting, at all times, under Mani's instructions. Finally, Mazlan's unchallenged evidence was that he had agreed to deliver the drugs for Mani "once and for all".¹⁴⁷ Thus his involvement

¹⁴⁵ Certified Transcript, 28 July 2017, p 54 (line 25–26).

¹⁴⁶ Second accused's closing submissions, para 14.

¹⁴⁷ Certified Transcript, 28 July 2017, p 40 (line 29).

was of a short duration, and was limited in time and scope (*Christeen* at [68(c)] and [71]).

105 The Prosecution had issued a Certificate of Substantive Assistance under s 33B(2)(b) of the MDA. As s 33B(2)(a) was also fulfilled, I imposed the mandatory sentence of life imprisonment. As mentioned, Mazlan was more than 50 years old at the time of sentencing and could not be caned pursuant to s 325(1)(b) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

Lee Seiu Kin
Judge

Lau Wing Yum, Tan Zhongshan and Michelle Lu (Attorney
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