

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

[2021] SGHC 150

Criminal Case No 25 of 2019

Between

Public Prosecutor

And

Muhammad Shafiq Bin Shariff

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Charge] — [Alternative charges]

TABLE OF CONTENTS

INTRODUCTION.....	1
CIRCUMSTANCES LEADING TO THE ARREST AND CHARGE	1
THE PROSECUTION’S CASE.....	7
THE DEFENCE’S CASE	7
THE APPLICABLE LAW AND ISSUES.....	8
SHAFIQ’S EVIDENCE.....	10
THE FIRST TRIP TO JOHOR.....	12
THE SECOND TRIP TO JOHOR.....	16
THE THIRD TRIP TO JOHOR.....	18
SHAFIQ’S STATEMENTS TO THE CNB	23
<i>Contemporaneous statements on 14 November 2017</i>	<i>24</i>
<i>The first seven long statements from 15 November 2017 to 28 May 2018.....</i>	<i>24</i>
<i>First cautioned statement on 15 November 2017.....</i>	<i>27</i>
<i>Second cautioned statement on 1 June 2018.....</i>	<i>27</i>
<i>Eighth long statement on 2 June 2018</i>	<i>28</i>
HAS THE S 18(1)(A) PRESUMPTION BEEN REBUTTED?	29
REQUIREMENTS OF S 18(1)(A).....	29
SHAFIQ’S CREDIBILITY AS A WITNESS.....	31
<i>Shafiq’s belated admission in his second cautioned statement of 1 June 2018</i>	<i>35</i>

<i>Shafiq’s inconsistencies regarding the ecstasy pills and small packet of ice.....</i>	<i>38</i>
<i>Recipient of blue milk powder box</i>	<i>43</i>
<i>Who handed Shafiq the blue milk powder box</i>	<i>51</i>
<i>Packing of the blue milk powder box</i>	<i>52</i>
<i>The need to call Aidil as a witness?</i>	<i>57</i>
<i>Rahilme’s luggage bag.....</i>	<i>60</i>
<i>Moneys Shafiq had handed to Husir</i>	<i>62</i>
<i>The SCR888 application and Shafiq’s “winnings”</i>	<i>64</i>
PERIPHERAL ARGUMENTS.....	69
<i>Alleged time needed to pack methamphetamine</i>	<i>69</i>
<i>Shafiq’s behaviour at Woodlands Checkpoint</i>	<i>70</i>
UNIQUE FEATURES IN THIS CASE	71
WAS SHAFIQ WILFULLY BLIND AS TO THE EXISTENCE OF THE DRUGS?	76
HAS THE S 18(2) PRESUMPTION BEEN REBUTTED?	78
AN UNACCOUNTED BREAK IN THE CHAIN OF CUSTODY?	78
ANALYSIS	85
DID THE PROSECUTION BREACH THEIR <i>KADAR</i> OBLIGATION?	89
CONCLUSION.....	93

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
Muhammad Shafiq bin Shariff

[2021] SGHC 150

General Division of the High Court — Criminal Case No 25 of 2019
Ang Cheng Hock J
4–7, 11–14, 17 August, 19, 20 October 2020, 15 February 2021

22 June 2021

Judgment reserved.

Ang Cheng Hock J:

Introduction

1 The accused person is Muhammad Shafiq bin Shariff (“Shafiq”), who was tried before me on one capital charge of importing five packets of 497.57g of crystalline substance containing not less than 334.67g of methamphetamine, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”) (“Capital Charge”).

Circumstances leading to the arrest and charge

2 The following facts are either undisputed or agreed pursuant to an Agreed Statement of Facts. Shafiq is a 29-year-old male Singapore citizen who was 25 years old at the time of the alleged offence. At the time he was arrested on 14 November 2017, he was working as a freelance tattoo artist and part time

barber.¹ He stated in his investigative statements that he started consuming methamphetamine, popularly known as “ice”, in early 2017, and he would consume up to 0.2g of methamphetamine a month.² However, he explained in his evidence that he was not a regular consumer of methamphetamine. He only consumed it so that he could keep his concentration when doing large tattoo designs, and his consumption depended on whether he had any tattoo customers.³ He bought methamphetamine from a friend he referred to as “Darul”, and would pay S\$80 for a small packet, containing about 1g of the drug.⁴

3 At around noon of 14 November 2017, which is the day of Shafiq’s arrest, Shafiq was returning to Singapore from Malaysia via the Woodlands Checkpoint. He was a passenger in a Malaysian registered car being driven by one Chan Chun Nee (“Chan”), who was a private taxi driver. Shafiq was sitting in the front passenger seat. There was another passenger in the car, who was Muhammad Aidil Nizam bin Muhamad Noh (“Aidil”), a friend of Shafiq’s. At about 12.05pm, the car was randomly stopped for a routine check by Staff Sergeant Hamdan Shah bin Abu Baker (“SSgt Hamdan”), an officer from the Immigration and Checkpoints Authority (“ICA”), who was stationed at the Woodlands Checkpoint.⁵

4 SSgt Hamdan asked Shafiq where he had come from, and what he had been doing in Malaysia. To this, Shafiq replied that he had come from his aunt’s

¹ Transcript, 12 August 2020, p 3 line 17; Agreed Bundle (“AB”) p 201.

² AB p 206 at [24].

³ Transcript, 13 August 2020, p 15 line 25–p 16 line 1.

⁴ AB p 206 at [24]; Transcript, 13 August 2020, p 17 line 17–p 18 line 7.

⁵ Agreed Statement of Facts dated 4 August 2020 (“ASOF”) at [2]–[3]; Transcript, 4 August 2020, p 38 lines 17–18.

place, but he also said that he had been “hang[ing] out with his friend”. Finding his answers contradictory, SSgt Hamdan decided to carry out a full check on the car and the belongings of the occupants.⁶ Thus, SSgt Hamdan directed the car to the “Green Channel” new inspection pit. Once there, Chan, Shafiq and Aidil were instructed to alight from the car. They complied.⁷

5 The ICA Officers then began checking the belongings of Chan, Shafiq and Aidil. Shafiq’s belongings – one luggage bag, one small red plastic bag, and one big red plastic bag – were kept in the boot of the car. The big red plastic bag (exhibit marked “A1”) contained a blue Nestle “Lactogen” baby milk powder box (the “blue milk powder box”) and an orange “Julie’s” packet of biscuits (the “orange biscuit packet”).⁸ SSgt Hamdan asked Shafiq who the blue milk powder box belonged to. Shafiq replied that it belonged to his aunt, who he claimed had asked him to bring it home for his nephew or niece.⁹

6 SSgt Hamdan noticed that there were glue stains on the top of the blue milk powder box. Finding this suspicious, he pressed on the box and heard a “crunchy” sound. He asked Shafiq for permission to open the blue milk powder box. Shafiq agreed.¹⁰ The undisputed evidence is that Shafiq did not appear nervous at that time.¹¹ SSgt Hamdan then cut open the blue milk powder box with a knife and there were two sealed silver foil packets inside (the “silver foil packets”). SSgt Hamdan felt one of the packets and found it to be lumpy, granular and hard, and not powdery like milk powder. He asked for Shafiq’s

⁶ Transcript, 4 August 2020, p 39 lines 3–18.

⁷ ASOF at [3]–[4].

⁸ ASOF at [6].

⁹ Transcript, 4 August 2020, p 42 lines 5–15; AB p 111 at [4].

¹⁰ AB p 111 at [5].

¹¹ Transcript, 4 August 2020, p 49 lines 2–5.

permission to open one of the silver foil packets.¹² Again, Shafiq did not appear nervous and he agreed to the silver foil packet being opened.¹³ SSgt Hamdan cut open the silver foil packet, exhibit “A1B1”, and found crystalline substance within. He asked Shafiq what that substance was. Shafiq appeared surprised and said that he did not know what the substance was. SSgt Hamdan then placed Shafiq under arrest.¹⁴

7 In total, four plastic packets of methamphetamine were later found in the two silver foil packets. These four plastic packets were eventually marked as exhibits “A1B1A”, “A1B1B”, “A1B1C”, and “A1B2A1”, three in one silver foil packet and one in the other. Later that same day, in the course of investigations, when the various seized exhibits were being photographed, the orange biscuit packet was opened and there were ten smaller individual packets inside. These smaller packets were then opened and, in one of them (exhibit marked “A1A1-A”), there were two packets – a plastic packet (exhibit marked “A1A1-A2”) containing another packet with 105 grey “ecstasy” tablets (exhibit marked “A1A1-A2A”), and a small plastic packet of methamphetamine (exhibit marked “A1A1-A1”) (“small packet of ice”). Ecstasy is a street name for the controlled drug MDMA. Analysis by the Health Sciences Authority (“HSA”) later revealed that Shafiq’s DNA was found in the interior surface of the plastic packet, exhibit “A1A1-A2”, containing the packet with the ecstasy tablets.

8 The subject of the Capital Charge before me is the four plastic packets of methamphetamine in the blue milk powder box and the small packet of ice

¹² AB p 112 at [5]; Transcript, 4 August 2020, p 50 lines 16–22.

¹³ Transcript, 4 August 2020, p 50 lines 7–15.

¹⁴ Transcript, 4 August 2020, p 52 lines 14–32; AB p 112 at [5]–[6].

in one of the ten individual packets of biscuits that were in the orange biscuit packet. The five plastic packets contained not less than 497.57g of crystalline substance found to contain a total of not less than 334.67g of methamphetamine, which is a Class A controlled drug listed in the First Schedule to the MDA. The specific breakdown of the drug exhibits, as analysed and found by the Health Sciences Authority (“HSA”), is as follows.¹⁵

Exhibit	HSA analysis
Blue milk powder box (exhibit “A1B”) containing, <i>inter alia</i> :	
First silver packet (exhibit “A1B1”) containing, <i>inter alia</i> :	
A1B1A	One packet of 62.82g of crystalline substance found to contain not less than 42.44g of methamphetamine
A1B1B	One packet of 62.60g of crystalline substance found to contain not less than 42.18g of methamphetamine
A1B1C	One packet of 122.7g of crystalline substance found to contain not less than 82.58g of methamphetamine
Second silver packet (exhibit “A1B2”) containing, <i>inter alia</i> :	
A1B2A1	One packet of 248.0g of crystalline substance found to contain not less than 166.5g of methamphetamine
A1B2B	One packet of 0.64g of powdery substance in which no controlled drug was detected
Orange biscuit packet (exhibit “A1A”) containing, <i>inter alia</i> :	

¹⁵ ASOF at [34]; AB pp 83–89, 226–227.

A1A1-A1	One packet of 1.45g of crystalline substance found to contain not less than 0.97g of methamphetamine
One packet (exhibit “A1A1-A2”) containing:	
A1A1-A2A	105 grey tablets weighing a total of 29.21g and found to contain not less than 10.88g of MDMA, a Class A controlled drug

9 At this stage, I should, for completeness, highlight that, initially, the investigating officer, ASP Parthiban s/o Mathevanan (“IO Parthiban”), had counted that only 100 ecstasy tablets were in the orange biscuit packet, and this number was lodged in the police report (filed by SSSgt Ritar).¹⁶ In his oral evidence, Shafiq also said that he was told by “Baba”, as explained later in this judgment, that he was delivering 100 ecstasy tablets.¹⁷ However, as is clear from the table above, HSA analysed exhibit “A1A1-A2A” to be 105 tablets. IO Parthiban explained in his testimony that he had miscounted the ecstasy tablets at the Central Narcotics Bureau (“CNB”) Woodlands Office because, when he counted the tablets, he had divided the tablets into batches of five, and then counted the batches, but missed out one batch when adding up the numbers (thus arriving at the figure of 100 instead of 105 tablets).¹⁸ Therefore, Shafiq’s account in his investigative statements and in his testimony that he had only intended to deliver 100 ecstasy tablets must be seen in this light.

¹⁶ AB pp 124–125 and pp 130–132.

¹⁷ Transcript, 12 August 2020, p 6 lines 7–12 and p 28 lines 18–32.

¹⁸ Transcript, 6 August 2020, pp 30 and 39.

The Prosecution's case

10 The Prosecution's case, as stated in its opening statement and closing submissions, is that the elements of the offence of importation under s 7 of the MDA have been made out. First, Shafiq knowingly possessed the drugs. Second, he knew the nature of the drugs in his possession, *ie*, that the drugs in question were methamphetamine. Third, and this element is not in dispute, the methamphetamine has been brought into Singapore without prior authorisation.

11 For the first element of the offence, the Prosecution's primary case is that the presumption of possession in s 18(1)(a) of the MDA is satisfied in this case, as it is undisputed that Shafiq was in possession of the blue milk powder box and the orange biscuit packet that contain the methamphetamine, and that Shafiq is unable to rebut the presumption. Alternatively, the Prosecution argues that Shafiq was wilfully blind to the existence of the methamphetamine in the blue milk powder box and the orange biscuit packet.

12 For the second element of the offence under s 7 of the MDA, the Prosecution's case is that Shafiq knew the nature of the drugs in his possession, *ie*, that the drugs were methamphetamine. The Prosecution relies on the presumption in s 18(2) of the MDA to establish such knowledge because they say that it has been proven or presumed that Shafiq knowingly possessed the four packets of methamphetamine in the blue milk powder box and the packet of methamphetamine in the orange biscuit packet.

The Defence's case

13 Shafiq admits to having knowingly possessed and imported the small plastic packet of methamphetamine in the orange biscuit packet. However, he denies knowing the existence of the four plastic packets of methamphetamine

in the blue milk powder box. His counsel contends that he has rebutted the presumption under s 18(1)(a) of the MDA that he was in possession of the methamphetamine in the blue milk powder box because, for the reasons elaborated below, he has shown that he had no knowledge that those drugs were in the blue milk powder box.

14 As for the Prosecution’s alternative case that he was wilfully blind to the existence of the drugs in the blue milk powder box, Shafiq’s counsel contends that he had no basis to suspect that the blue milk powder box would contain the four plastic packets of methamphetamine.

The applicable law and issues

15 The elements of a charge under s 7 of the MDA for the offence of drug importation are well established: the legal burden is on the Prosecution to prove that (a) the accused person was in possession of the drugs; (b) the accused person had knowledge of the nature of the drugs; and (c) the drugs were intentionally brought into Singapore without prior authorisation. The element of possession requires both the act of physical possession and the knowledge that one is in possession of the item or “thing” in question that turns out to be a drug: *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 (“*Beh Chew Boo*”) at [54], reaffirming *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 (“*Adili*”) at [27] and [32]. It is *not* necessary to show that the accused knew that the thing was in fact a controlled drug in order to establish the element of possession: see *Adili* at [31]. Knowledge of the “nature of the drug” refers to knowledge of the actual controlled drug referred to in the charge: see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [24].

16 It is equally trite that the Prosecution may either prove the elements of possession and knowledge of the nature of the drugs beyond a reasonable doubt or rely on the statutory presumptions under ss 18(1) and 18(2) of the MDA respectively to presume these two elements, so that the burden of proof shifts to the accused to rebut the statutory presumption on a balance of probabilities: see, eg, *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 (“*Ilechukwu*”) at [171]; *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi*”) at [57] and [98(b)]; *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng Comfort*”) at [35]–[37].

17 Sections 18(1) and 18(2) of the MDA provide as follows:

Presumption of possession and knowledge of controlled drugs

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

- (a) anything containing a controlled drug;
- (b) the keys of anything containing a controlled drug;
- (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or
- (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

18 The element of knowledge – whether for the element of possession or the element of knowledge of the nature of the drug – can be satisfied by either actual knowledge or wilful blindness. An accused person is wilfully blind when he did not in fact know the true position but sufficiently suspected it and deliberately refused to investigate, even though he could have done so, in order

to avoid confirmation of his own suspicions. Wilful blindness is thus a mental state that, factually, falls short of actual knowledge, but which is treated as its legal equivalent: see *Adili* at [41]–[50]; *Gobi* at [98(c)].

19 The main contest between the Prosecution and the Defence is whether the element of possession is satisfied in this case. In particular, the parties dispute whether Shafiq has successfully rebutted the s 18(1)(a) presumption that he knowingly possessed the methamphetamine in the blue milk powder box and whether he was wilfully blind as to the existence of the methamphetamine in the blue milk powder box. If the element of possession is satisfied, the other issue is whether Shafiq has successfully rebutted the s 18(2) presumption that he knew the nature of the drug, *ie* whether he knew that the “things” in the blue milk powder box were methamphetamine.

20 I should also add that Shafiq accepts that he knowingly imported the ecstasy tablets into Singapore. But that is the subject of a separate charge of importation under s 7 of the MDA, which has been stood down, pending the trial of the present charge. Shafiq also accepts that he knowingly imported the 0.97g of methamphetamine in exhibit “A1A1-A1” (the small packet of ice) in the orange biscuit packet into Singapore.

Shafiq’s evidence

21 Shafiq elected to give evidence in his own defence. He explained in his evidence that the blue milk powder box, which contained the four packets of methamphetamine, belonged to one Husir Khan bin Fidah Hussein (“Husir”), whom he referred to as “Baba”, someone with whom he had been acquainted

for about six months. He had met Husir for the first time sometime in mid-2017 at a mutual friend's flat.¹⁹

22 One of Shafiq's hobbies is playing online jackpot games on his mobile phone. He started with a gaming application called "ACE333", but then moved on to another one called "SCR888". It was Husir who introduced Shafiq to "SCR888" and taught him how to use it. Husir told him that SCR888 was easy to "hack", and that one could win large sums of money from SCR888 regularly.²⁰

23 In his evidence, Shafiq described how SCR888 worked. Husir had put Shafiq in contact with a person, described as an "agent", who then sent Shafiq a link. With that link, Shafiq could download the SCR888 application to his mobile phone. Shafiq then created an account on the SCR888 application, and obtained a user ID and password to log on to the application.²¹

24 The "agent" also added Shafiq to a WhatsApp chat group. To start gambling using SCR888, Shafiq needed credits in his account. He would inform the "agent" via WhatsApp that he wanted to deposit money to obtain credits. Shafiq would then transfer money to a bank account, the details of which had been provided by the "agent" via WhatsApp. Following this, his SCR888 account would be topped up with credits. If he won on his gambling on SCR888, his credits in his account would increase. But, if he lost, his credits would be depleted.²²

¹⁹ Transcript, 12 August 2020, p 5 lines 1–3 and p 6 lines 15–26.

²⁰ Transcript, 12 August 2020, p 6 line 32–p 7 line 3.

²¹ Transcript, 12 August 2020, p 7 line 9–p 8 line 13.

²² Transcript, 12 August 2020, p 8 line 14–p 10 line 6.

25 To withdraw his winnings from his SCR888 account, Shafiq gave evidence that he would have to inform the “agent” via WhatsApp that he wished to withdraw a specified sum, and he would also provide the “agent” with the receiving bank account details. The credits in his account would be deducted, and correspondingly, the money would then be deposited into his bank account.²³

26 Shafiq’s evidence is that he played jackpot games on the SCR888 application. This was consistent with his statements to the CNB. But, in his oral evidence, Shafiq claims that it was also possible to play “live casino” games on the application.²⁴ The significance of this evidence will be elaborated upon later.

27 It is not disputed that Husir had left Singapore on 26 October 2017 and has not returned since then. Husir had informed Shafiq that he was wanted by the CNB, and that was why he decided to live in Malaysia instead. In November 2017, Husir was living with his family in a rented condominium unit in Danga Bay, Johor, Malaysia.²⁵

The first trip to Johor

28 On 11 November 2017, Shafiq had travelled to Johor to meet up with Husir. He gave evidence that he had met up with Husir to gamble with him using the SCR888 application, and he wanted to learn from Husir how to win

²³ Transcript, 12 August 2020, p 9 line 30–p 10 line 6.

²⁴ Transcript, 12 August 2020, p 10 lines 17–20.

²⁵ Prosecution’s Supplemental Bundle of Documents (“PSB”) Vol 1 p 15; Transcript, 7 August 2020, pp 45–46, p 91 line 23–p 92 line 3; Transcript, 12 August 2020 p 12 lines 23–24.

regularly on SCR888. He left Singapore at about 1.08am by car, and met Husir at a coffee shop in Johor.²⁶

29 After chatting and eating at the coffee shop for about 2 hours, they then went to Husir's condominium unit.²⁷ Husir's unit was a one-bedroom apartment. It was open-concept in the sense that there was no physical wall between the living room, dining area and the kitchen, but there was a door leading to the bedroom and the toilet.²⁸ There, Shafiq met Rahilme Khan bin Husir Khan ("Rahilme"), Husir's oldest son, for the first time.²⁹ Rahilme was 18 years old at the time of the trial.³⁰

30 Husir and Shafiq played the jackpot game on SCR888 until about 10.41am.³¹ Shafiq then took his leave to return to Singapore. Before he left, Husir passed him several items – a "Coco Crunch" box, two to three milk tins, a tin of sardines and a packet of "Maggi" instant noodles. Husir asked Shafiq to bring these items back to Singapore and hand them to Husir's friend. Shafiq agreed to do this.³²

31 Rahilme also accompanied Shafiq on the return trip back to Singapore because he wanted to meet up with his friends to skateboard. Rahilme would stay with Shafiq at his flat in Bukit Batok while he was in Singapore. As such,

²⁶ Transcript, 12 August 2020, p 12 lines 26–27; Transcript, 13 August 2020, p 66 line 10–p 67 line 11.

²⁷ Transcript, 14 August 2020, p 6 lines 5–15.

²⁸ Transcript, 14 August 2020, p 66.

²⁹ Transcript, 7 August 2020, p 54 lines 1 – 6; Transcript, 19 October 2020, p 40 lines 25–28.

³⁰ Transcript, 7 August 2020, p 45 line 10.

³¹ Transcript, 13 August 2020, p 70 lines 15–19.

³² AB p 251; Transcript, 14 August 2020, p 10 lines 16–32.

Rahilme brought along a luggage bag, which contained, amongst other things, his clothes.³³

32 Shafiq and Rahilme entered Singapore via the Woodlands Checkpoint in a taxi at about 1.14pm.³⁴ Rahilme stayed with Shafiq on the nights of 11 and 12 November 2017. That was a weekend. He spent most of his days meeting up with his friends in Singapore and skateboarding.³⁵

33 At about 7.50pm of 11 November 2017, Shafiq handed the food items Husir had entrusted with him to one “Roymeo”. This was on the instructions of Husir, with whom Shafiq had been constantly communicating in the afternoon of 11 November 2017. He had exchanged 11 calls with Husir in the space of four hours that afternoon. After handing the items to Roymeo, Shafiq had three further phone calls with Husir that night.³⁶

34 Between 11.34pm of 11 November 2017 and 3.04am of 12 November 2017, a total amount of S\$14,200 was deposited into the bank account of Mohamad Haikal bin Mohamad Faizal (“Haikal”), who was a friend of Shafiq’s, in five separate transactions.³⁷ At that time, Haikal was in a reformatory training centre. According to Shafiq, Haikal had passed his POSB ATM card and iBanking token to him so that he could use his bank account.³⁸

³³ Transcript, 7 August 2020, p 60 line 9– p 61 line 8, p 62 lines 14–19.

³⁴ PSB Vol 1 p 14.

³⁵ Transcript, 7 August 2020, p 61 line 9–p 64 line 19.

³⁶ P133 p 6; Transcript, 14 August 2020, p 12 line 15–p 13 line 15.

³⁷ P133 p 8.

³⁸ Transcript, 12 August 2020, p 11 line 22–p 12 line 5.

35 From these deposits, Shafiq transferred a total of S\$5,200 to the bank accounts of two of his brothers.³⁹ On his instructions, his two brothers – Akmal and Danial – withdrew the sum in cash from ATMs and handed the cash to Shafiq. This was in the early hours of 12 November 2017. Shafiq took a photo of the cash amount of S\$5,200 at about 2.58am and sent it to Husir via WhatsApp on 12 November 2017. He then deleted the WhatsApp message, like all his other WhatsApp messages exchanged with Husir from 11 to 14 November.⁴⁰

36 Later in the day on 12 November 2017, Shafiq took another photo of some cash and an open book with the numbers 5,900, 800, 2,450 and 14,200.⁴¹ He sent this photo to Husir via WhatsApp at about 5.35pm, and then deleted the message.⁴² Shafiq then created a note, which was saved on his mobile phone. That note was last modified at 8.56pm at 12 November 2017. It stated:⁴³

Transaction receive.

\$5,900

\$2,600

\$2,450 } \$14,200 / hermi allowance

\$2,450 \$20/first day

\$800 \$20/today

Scr888\$50

Amount to be pass to you.

\$16,010

³⁹ P133 p 8.

⁴⁰ Transcript, 13 August 2020, pp 25–26; Transcript, 14 August 2020, p 25 line 9–p 27 line 1; P134 p 4.

⁴¹ P134 p 3.

⁴² Transcript, 14 August 2020, p 29 lines 9–27.

⁴³ PSB Vol 2 p 1054.

37 Shafiq also gave evidence that, between 7.07pm and 9.52pm on 12 November 2017, he exchanged calls and messages with one “Alan”, who was a friend of Husir’s. In his messages, Shafiq gave Alan the details of Haikal’s bank account. Alan replies that he has cash and he “confirm take”.⁴⁴

38 From 6.12pm on 12 November to 2.38am on 13 November 2017, there were four further deposits totalling the amount of S\$7,190 into Haikal’s bank account.⁴⁵ Thus, a total amount of S\$21,390 was remitted or deposited into Haikal’s account on 12 and 13 November 2017, if one includes the earlier transfers totalling S\$14,200. Shafiq’s evidence was that this total sum of S\$21,390 were winnings from gambling on SCR888, and that Husir and him were going to share these winnings equally.⁴⁶

The second trip to Johor

39 On 13 November 2017 at 3.04am, Shafiq left Singapore via the Woodland Checkpoint. This time Shafiq was accompanied by his cousin, and they both travelled on a motorcycle, which belonged to this cousin.⁴⁷

40 Once he arrived in Johor, Shafiq called Husir to arrange to meet him. The purpose of this trip was to pass Husir his share of the jackpot winnings.⁴⁸ He was quite vague in his evidence as to exactly how much money he handed over to Husir when they met, even though he had claimed that they had agreed to split the winnings equally.

⁴⁴ Transcript, 19 October 2020, p 53 lines 22–25; P133 pp 9–10.

⁴⁵ P133 pp 9–12.

⁴⁶ Transcript, 14 August 2020, p 38 lines 1–30.

⁴⁷ P133 p 12; Transcript, 14 August 2020, p 45 lines 8–9.

⁴⁸ Transcript, 14 August 2020, p 45 lines 8–9.

41 Shafiq spent almost 12 hours in Johor for this second trip. His evidence was that he played jackpot on SCR888 from about 4.20am to 10.39am, and then fell asleep at Husir's condominium unit.⁴⁹

42 At 2.30pm, Shafiq returned to Singapore via the Woodlands Checkpoint. Under cross-examination, Shafiq admitted that he had brought 100 pills of ecstasy with him into Singapore on 13 November 2017. During the second trip, Husir had given him these pills and asked him to bring them to Singapore to pass them to Alan. Shafiq agreed to do so. He hid the ecstasy pills in his jacket.⁵⁰

43 At about 5.45pm later that day, Alan contacted Shafiq and arranged to meet with him. When they met, Shafiq handed the 100 ecstasy pills to Alan. Shafiq's evidence is that he was handed cash by Alan, but he could not recall how much. He also could not recall whether the money was for him or whether he had to pass the cash to Husir.⁵¹

44 Shafiq was in possession of Husir's ATM card at this time. His evidence was that Husir had passed him the ATM card during his first trip to Johor,⁵² but the Prosecution contended that it is more likely that Husir had handed Shafiq the ATM card during the second trip.⁵³ I do not find it to be material when the ATM card was actually passed by Husir to Shafiq. What is relevant though is that Shafiq withdrew a total of S\$21,200 from Husir's bank account on 13 and 14 November 2017 after the second trip, using a combination of direct cash

⁴⁹ P133 pp 12–13; Transcript, 14 August 2020, p 48 lines 2–12.

⁵⁰ Transcript, 14 August 2020, p 59 line 4–p 60 line 7.

⁵¹ Transcript, 14 August 2020, p 60 lines 10–16.

⁵² Transcript, 14 August 2020, p 18.

⁵³ Prosecution's Closing Submissions dated 15 January 2021 ("PCS") at [53].

withdrawals using the ATM card, and via transfers to Shafiq's brothers' accounts, from which he then withdrew in cash the amount that had been transferred from Husir's account.⁵⁴

45 After he had withdrawn and obtained S\$18,000 of the S\$21,200 in cash, Shafiq took a photo of the cash of S\$18,000 and sent it to Husir via WhatsApp.⁵⁵ He then deleted that message. Shafiq's evidence is that the entire amount of S\$21,200 were winnings from SCR888, which he would share with Husir.⁵⁶

The third trip to Johor

46 On the night of 13 November 2017, Shafiq was planning to travel to Johor to see Husir so as to pass him his share of the jackpot winnings from SCR888. For this trip, Rahilme was going to accompany Shafiq so that he could return home. Shafiq also asked a friend of his, Aidil, to come along for the trip.⁵⁷

47 Husir arranged for a private taxi to pick Shafiq up from his flat in Singapore.⁵⁸ Chan was the driver and he arrived at about 3.30am (on 14 November 2017) to pick them up. Rahilme brought his luggage bag with him on this return trip. The car left Singapore at about 3.58am via the Woodlands Checkpoint, and entered Johor.⁵⁹

⁵⁴ See PCS at [54].

⁵⁵ P134 p 11.

⁵⁶ Transcript, 14 August 2020, p 57.

⁵⁷ Transcript, 7 August 2020, p 73 lines 14–27; Transcript, 12 August 2020, p 20 lines 7–16; Transcript, 14 August 2020, p 63 lines 12–31.

⁵⁸ Transcript, 12 August 2020, p 20 lines 11–12.

⁵⁹ P133 p 19; Transcript, 14 August 2020, p 63 lines 4–6.

48 At about 5.00am, Chan dropped Shafiq, Rahilme and Aidil off at the condominium where Husir stayed. At the condominium, Shafiq met one Muhammad Rohaizat bin Mohamed Ramzan (“Rohaizat”) for the first time. Rohaizat is a male Singapore citizen who was 29 years old at the time of the trial. Rohaizat is Husir’s cousin and was also referred to as “Mambo”. He lived in another unit at the same condominium.⁶⁰

49 There were four other persons at Husir’s condominium unit that morning – Rahilme’s mother, Rahilme’s two younger brothers and an unknown lady.⁶¹ Shafiq handed Husir S\$9,200 in cash as the latter’s share of the jackpot winnings from SCR888. His evidence was that he kept the remaining S\$12,000, out of the S\$21,200 withdrawn from Husir’s bank account, for himself.⁶²

50 Rahilme stayed at the unit for a while before being brought by Rohaizat to the latter’s condominium unit to sleep.⁶³ Thereafter, Shafiq, Aidil and Husir played jackpot and casino games on SCR888, while seated at the living room sofa.

51 Shafiq, Aidil and Husir also consumed methamphetamine in the living room of Husir’s condominium unit. Shafiq’s evidence is that he saw Husir take out a “bong” from under the coffee table in the living room. This is a device that is used to consume methamphetamine. Shafiq saw that there was already

⁶⁰ Transcript, 20 October 2020, p 58 line 31–p 59 line 20; Transcript, 7 August 2020, p 86 lines 20–22.

⁶¹ Transcript, 7 August 2020, p 79 lines 15–20.

⁶² Transcript, 13 August 2020, p 42 line 4; Transcript, 14 August 2020, p 57 lines 14–30.

⁶³ Transcript, 7 August 2020, p 84 line 1–p 86 line 22.

methamphetamine in the “bong”, but when it ran out, Husir took out a packet of methamphetamine from under the table and refilled the “bong”.⁶⁴

52 Shafiq’s evidence is that he was surprised to find out that morning that Husir consumed methamphetamine.⁶⁵ In his oral testimony, under cross- and re-examination, Shafiq said that he did not think that Husir sold methamphetamine, though he did know by then that Husir sold ecstasy pills.⁶⁶

53 Sometime between 7.00am and 8.00am, Rohaizat came back to Husir’s unit, and both of them wanted to go to the market because Rohaizat wanted to get groceries.⁶⁷ Shafiq and Aidil decided to accompany them. As it turned out, the market was closed. Rohaizat then drove them to a convenience store because he wanted to buy milk for his son. When they arrived at the store’s location, Rohaizat and Aidil alighted and went inside to get the milk. Shafiq and Husir remained in the car. Shafiq then saw Rohaizat and Aidil exiting the store with a red plastic bag. When they got into the car, Shafiq saw a blue Nestle “Lactogen” milk powder box in the red plastic bag, which looked like the one he had in his possession when he was later arrested. However, he cannot be sure that it was the very same milk powder box because he was focused on playing jackpot while he was in the car.⁶⁸

⁶⁴ Transcript, 19 October 2020, p 59 lines 1–25; AB p 259 at [65].

⁶⁵ Transcript, 14 August 2020, p 68 lines 11–14.

⁶⁶ Transcript, 20 October 2020, p 28 line 2–p 29 line 30; Transcript, 14 August 2020, p 68 line 18–p 70 line 12.

⁶⁷ Transcript, 20 October 2020, p 64 lines 20–21.

⁶⁸ AB pp 203–204 at [13]–[14]; Transcript, 12 August 2020, p 23 line 1–p 24 line 30.

54 The four men returned to Husir’s condominium unit at about 9.00am.⁶⁹ Aidil placed the plastic bag containing the milk powder box near the kitchen cabinet. All of them continued to play jackpot and casino on SCR888 in the living room.⁷⁰ They also consumed methamphetamine again.⁷¹

55 Then, Husir called Shafiq to the dining table. He asked Shafiq whether he would bring some ecstasy pills to one of his friends in Singapore. Husir said that they should get in touch with each other after Shafiq arrives in Singapore so that Husir can inform Shafiq of where and how Shafiq should pass the ecstasy pills to Husir’s “friend”. Husir did not mention if Shafiq was supposed to collect any money in exchange for the ecstasy pills. Shafiq agreed. Shafiq saw that the ecstasy pills were packed in a small plastic packet, which was placed in another slightly larger plastic packet. Husir then said that he was giving Shafiq 1g of methamphetamine as his “ration” for bringing his share of the SCR888 winnings to Johor, and for helping him bring the ecstasy pills to Singapore. This was in another small plastic packet, which Husir placed within the slightly larger plastic packet, which held the small packet of ecstasy pills.⁷² It is not in dispute that these drugs were the ones that were eventually found in exhibit “A1A” that Shafiq had in his possession when he was arrested (see [8] above).

56 Shafiq wanted to conceal the slightly larger packet containing the small packet of ice and the packet of ecstasy pills somewhere in his jacket. However, Husir told him that there might be a “spot check”, and said that he would help Shafiq conceal the small packet of ice and the ecstasy pills. He took the drugs

⁶⁹ Transcript, 14 August 2020, p 75 line 32–p 76 line 1.

⁷⁰ Transcript, 12 August 2020, p 25 lines 1–3.

⁷¹ Transcript, 19 October 2020, p 30 lines 1–12; AB p 259 at [65].

⁷² Transcript, 12 August 2020, p 25 lines 19–27 and p 30 line 3–p 31 line 9; AB pp 259–260 at [60]–[65].

back from Shafiq. At this point, Shafiq then left the dining table and went back to the living room sofa to continue consuming ice and playing on SCR888.⁷³

57 According to Shafiq, Rohaizat then left the unit. Shafiq's evidence is that Husir was at the kitchen, but he did not know or pay attention to what Husir was doing there. He was not involved in, and did not see, the packing of the ecstasy pills and the small packet of ice. He also did not see any other drugs in the apartment.⁷⁴

58 At around 10.45am, Chan arrived with his car at the condominium to pick up Shafiq and Aidil.⁷⁵ This had been arranged by Shafiq that morning. When Shafiq was leaving the condominium unit with Aidil, Husir took a big red plastic bag from the top of the kitchen cabinet and passed it to Shafiq. This bag contained the blue milk powder box and the orange biscuit packet. Shafiq asked Husir where the ecstasy pills and methamphetamine were, and Husir replied, "the things are already inside". By this, Shafiq understood that the ecstasy pills and methamphetamine were in the plastic bag.⁷⁶

59 According to Shafiq, he only took a quick look at the contents of the plastic bag. He did not examine or check the blue milk powder box and/or the orange biscuit packet because he was in a rush to get downstairs as Chan was waiting.⁷⁷ In his statements to the CNB and in his oral evidence, Shafiq gave inconsistent versions as to whether he believed that the ecstasy pills and

⁷³ Transcript, 12 August 2020, p 25 lines 29–31.

⁷⁴ Transcript, 12 August 2020, p 26 line 2–p 30 line 8.

⁷⁵ AB p 175 at [7].

⁷⁶ Transcript, 19 October 2020, p 20 lines 4–11; Transcript, 12 August 2020, p 31 line 10–p 32 line 17; AB p 259 at [61].

⁷⁷ Transcript, 12 August 2020, p 5 line 12, p 26 lines 12–30 and p 32 lines 20–23.

methamphetamine were inside or outside the blue milk powder box and/or the orange biscuit packet. The Prosecution describes Shafiq's evidence on this point as a "key inconsistency". I will explore this later in the course of this judgment.

60 When he left the condominium unit, Shafiq also took Rahilme's luggage bag with him. This luggage bag, the red plastic bag handed to him by Husir, and the rest of his and Aidil's belongings were placed in the boot of Chan's car. While on the way, he asked Chan to stop at a mini-mart. There, Shafiq bought a packet of instant noodles and a packet of biscuits. These were in another smaller red plastic bag that was also placed in the boot of the car (see [5] above).

61 As already described (at [6] above), Shafiq was arrested at the Woodlands Checkpoint.

Shafiq's statements to the CNB

62 In the course of investigations, Shafiq gave a total of 14 statements to the CNB. There were three contemporaneous statements, eight long statements and three cautioned statements. The Prosecution relies on these statements to show that Shafiq has changed his version of events along the way, as more and more incriminating evidence was presented to him. As such, the Prosecution says that he has shown himself quite capable of lying to the CNB and is not a person who has credibility.

63 Shafiq does not challenge the voluntariness of all his statements to the CNB, as explicitly stated in the Agreed Statement of Facts. In the Agreed Statement of Facts, Shafiq also agreed that all the statements were recorded

accurately.⁷⁸ However, when he was cross-examined, Shafiq tried to explain away some of the inconsistencies between his statements and his oral evidence on the basis that the recorder of the statements, who was the investigating officer, IO Parthiban, had misunderstood him.

Contemporaneous statements on 14 November 2017

64 In his contemporaneous statements recorded on 14 November 2017,⁷⁹ Shafiq claimed that the blue milk powder box contained “Susu C” (*ie*, milk powder) and that it belonged to “Helmi” (*ie*, Rahilme). Shafiq claimed that Rahilme asked him to bring Rahilme’s clothes and a red plastic bag containing “infant powder” into Singapore to pass to Rahilme. Shafiq took the red plastic bag from “Baba”, Helmi’s father (*ie*, Husir), at Rahilme’s unit in Johor, Malaysia. Husir told Shafiq to bring a luggage (containing Rahilme’s clothes) and the red plastic bag with “baby formula” to Singapore, and that either Rahilme or someone else would collect the red plastic bag. In the contemporaneous statements, Shafiq was not asked about the orange biscuit packet and the ecstasy contained in it.

The first seven long statements from 15 November 2017 to 28 May 2018

65 In gist, the first seven long statements recorded from Shafiq set out the following version of events. Shafiq and Rahilme – who Shafiq referred to as “Abang” in the statements – went to Rahilme’s house in Johor Bahru the night prior to the offence to “slack” and play a jackpot game, and for Shafiq to pass \$9,200 cash to Rahilme’s father, Husir. Shafiq and Rahilme went to Rahilme’s house from Shafiq’s flat in Singapore at about 3am (on 14 November 2017) by

⁷⁸ ASOF at [12]–[13], [16] and [33].

⁷⁹ AB pp 142–146.

a “private taxi” – driven by Chan – arranged by Husir. Aidil also came along with Shafiq and Rahilme. After arriving at Rahilme’s house and having some food, Rahilme left with Rahilme’s uncle, Rohaizat, to the latter’s house.

66 Subsequently, at about 7–8am, Shafiq and Aidil accompanied Husir and Rohaizat to a nearby Indian “mama” shop. There, Husir asked Aidil to help buy ‘Lactogen’ milk, which was for Rohaizat’s son. Shafiq and Husir stayed in the car while Aidil and Rohaizat went to buy milk. They came back in about 10 minutes and Aidil was carrying a small red plastic bag with the milk box inside. After arriving back at Rahilme’s house, Aidil put the milk box in the kitchen cabinet, and they continued to play the jackpot game.

67 At about 9am, Aidil and Shafiq wanted to go back home. While Husir tried calling for a “private taxi” again, “no one picked up”, so Shafiq called the number on the name card which Chan had given him. Chan then called Shafiq back to make the transport arrangements. Shafiq then saw Rahilme’s luggage “of dirty clothes” in Rahilme’s home, so Shafiq asked Husir if he could bring Rahilme’s clothes to his house in Singapore to wash. Husir agreed but also asked Shafiq to bring the red plastic bag containing the blue milk powder box and the orange biscuit packet with him to Singapore. Shafiq could tell that the red plastic bag was different from the red plastic bag that Aidil had before, but Shafiq “was rushing” and so “never think so much”. Shafiq could also see the contents of the red plastic bag. Shafiq opened the boot of the car and put the red plastic bag in the boot.⁸⁰ Shafiq was not paid by Husir to help him.⁸¹

⁸⁰ AB pp 202–205; AB pp 240–242.

⁸¹ AB p 243 at A27.

68 Shafiq stated that he “never touch” the orange biscuit packet and that he thought that exhibit “A1A1-A1” (the small packet of ice) in the orange biscuit packet contained methamphetamine, though he was “not sure”. He did not know what exhibit “A1A1-A2A” (the plastic packet of ecstasy pills) from the orange biscuit packet was.⁸² Shafiq also had “not touched” the blue milk powder box before. He knew that the “white thing” in the packets in the blue milk powder box were methamphetamine, but he claimed they were not his and he did not see them until his arrest.⁸³ He did not suspect that there were drugs in the orange biscuit packet and blue milk powder box.⁸⁴

69 Shafiq did find it suspicious that Husir asked him, and not Rahilme, to bring the blue milk powder box and orange biscuit packet to Singapore, and Shafiq did question Husir about this. Husir explained to Shafiq that Rahilme “will be coming back late to Singapore”.⁸⁵ Shafiq is “not close” to Rahilme and had only known him for “a few months”. Shafiq got to know Rahilme through a mutual friend called “Faris” who plays in the same soccer team as Shafiq. Shafiq does not know if Rahilme is involved in drugs. Shafiq also said he did not know Husir or Rahilme’s family “that well”.⁸⁶

70 Shafiq’s DNA was found inside exhibit “A1A1-A2” (the plastic packet containing the packet of ecstasy pills). Shafiq explained that he thinks it could be because “[he] was holding a[n] empty plastic packet when [he] was smoking ‘Ice’ at Abang’s condo. [He] cannot remember what happened to the plastic

⁸² AB p 218 at [33].

⁸³ AB pp 218–219 at [34].

⁸⁴ AB p 251 at A6.

⁸⁵ AB p 252 at A9.

⁸⁶ AB pp 219–220 at [39]–[41].

packet after that but it looks similar to the ‘A1A1-A2’.”⁸⁷ Shafiq denies having packed any of the drugs in Rahilme’s flat in Johor Bahru.⁸⁸

First cautioned statement on 15 November 2017

71 After his first long statement was recorded on 15 November 2017 from 10.36am to 2.45pm, Shafiq was served a charge of jointly importing 6 packets containing approximately 515g of crystalline substance believed to contain methamphetamine into Singapore with Aidil. Shafiq gave his cautioned statement that same day from 5.17pm to 5.30pm. In that statement, he stated that he wanted to “ask for leniency from the judge if [he] was ‘sabo’ by ‘Baba’” (*ie*, Husir). He is “not the person who will smuggle drugs into Singapore”. He “really thought that it was milk and biscuits in the red plastic bag and did not know there were drugs inside”.⁸⁹

Second cautioned statement on 1 June 2018

72 However, after the first seven long statements were given, in his cautioned statement recorded on 1 June 2018 in response to a charge of importing not less than 10.88g of MDMA, Shafiq admitted that he “kn[e]w about the packet of 105 tablets and the 1 gram of Ice that was inside the orange biscuit packet”. He “was supposed to pass the Ecstasy tablets to someone who will come to [his] house to pick it up ... The 1 gram of Ice is for [his] own ration because [he] help Abang father bring the cash from Singapore to Malaysia and

⁸⁷ AB p 251 at A5.

⁸⁸ AB p 252 at A7.

⁸⁹ AB p 214.

also to bring the Ecstasy tablet from Malaysia.” In that cautioned statement, Shafiq also stated that he is “sorry”, regretful, and pleaded for leniency.⁹⁰

Eighth long statement on 2 June 2018

73 Shafiq’s eighth long statement recorded after his admission regarding the drugs in the orange biscuit packet is critical in that it is largely consistent with his oral evidence in court outlined above. In gist, Shafiq stated the following in this eighth long statement.

(a) Husir was the one who asked him to bring the ecstasy tablets into Singapore to pass to “someone” as a “favour”. Husir said that he would call Shafiq and tell him who to pass them to when Shafiq reached his house in Singapore. This was the same as what Husir told Shafiq when Shafiq brought food items for Husir on 11 November 2017. Shafiq did not admit this in his previous investigative statements as he “was shocked” and “was really scared at that time”.

(b) Husir said that he would pack the ecstasy tablets, and Shafiq did not know or see how Husir packed them. Husir simply passed the red plastic bag to Shafiq and informed Shafiq that “the things are already inside”. From this, Shafiq knew that the ecstasy tablets and the 1g of ice were inside but he did not know whether “it was in the [blue] milk powder box or the [orange] biscuit packet”. Shafiq did not open and check the blue milk powder box and orange biscuit packet since they were already packed by Husir.

(c) Shafiq’s DNA was found in the packet because he “h[e]ld the packets to see what it is”. At the time, he did not know what it was as

⁹⁰ AB p 255.

he had never taken ecstasy tablets before. It was Husir who told Shafiq that they were ecstasy tablets before Shafiq passed the packet back to Husir.

(d) Husir also told Shafiq that he would give him a “gift” of 1g of ice as a reward for bringing the ecstasy tablets into Singapore and for helping him to bring his cash from Singapore to Malaysia.

(e) Shafiq helped Husir to bring the ecstasy tablets into Singapore because he helped Shafiq with the jackpot game and taught him how to play and win money with it.

(f) This was “the only time” Shafiq had helped Husir import drugs into Singapore.

(g) Shafiq knew that drug importation is a “serious offence”, but he did it for Husir “as a favour as [Husir] helped [Shafiq] before”.

74 I will deal with the inconsistencies in Shafiq’s statements and his explanations for these inconsistencies when I deal with the contested issues of fact below.

Has the s 18(1)(a) presumption been rebutted?

Requirements of s 18(1)(a)

75 As mentioned at [16] above, the legal burden is on the accused person to adduce sufficient evidence to rebut the s 18(1) presumption on a balance of probabilities. In this regard, it is well established that an accused person’s bare denial is insufficient to rebut the statutory presumptions in the MDA or cause the evidential burden to shift to the Prosecution: see, *eg*, *Beh Chew Boo* at [64]. However, the “inherent difficulties of proving a negative” must also be borne in

mind so that the burden of rebutting the relevant presumption “should not be made so onerous that it becomes virtually impossible to discharge”: *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 at [2].

76 It is also well established that, while the legal burden remains on one party throughout, the evidential burden on any specific factual issue can shift to the opposing party once it has been discharged by the proponent. The opposing party must then call evidence or take the consequences, which may or may not be adverse. The Prosecution’s failure to call a material witness may mean that it had failed to discharge its evidential burden to rebut an accused person’s defence or may justify the court drawing an adverse inference against it under s 116 illustration (g) of the Evidence Act (Cap 97, 1997 Rev Ed) (“EA”): see *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 (“*Nabill*”) at [67]–[72]. Thus, if I find, on an assessment of Shafiq’s evidence, that his contention that he did not know that the blue milk powder box contained methamphetamine is plausible, then the evidential burden would shift to the Prosecution to rebut Shafiq’s evidence.

77 It was also stressed by the majority of the Court of Appeal in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [25], and then reaffirmed by the majority of the Court of Appeal in *Ilechukwu* at [172], that whether or not an accused person has rebutted the s 18(1) presumption is “a delicate and fact-sensitive inquiry”. The “real significance” of the statutory presumption is that “it reverses the burden of proof”. Thus, although the Prosecution has a statutory presumption operating in its favour, when it comes to assessing the evidence in order to determine whether the presumption has been rebutted, “the starting point should be neutral with no predilection for either conclusion”. A fact that is consistent with both possibilities “is likely to be probatively neutral unlike a fact that is consistent with only one of the two possibilities”.

78 The Prosecution argues that Shafiq's evidence that he did not know that the drugs were in the blue milk powder box is not believable. It submits that Shafiq is not a credible witness and his explanations should thus be rejected. Also, the Prosecution submits that Shafiq's admitted lies in his statements to the CNB are on material issues and, as such, are corroborative of his guilt.

79 I will consider these issues in relation to the alleged actual knowledge of Shafiq of the drugs in the blue milk powder box in turn. I shall first consider the Prosecution's detailed submissions that Shafiq is unable to rebut the ss 18(1) and 18(2) presumptions because he is not a credible and reliable witness.

Shafiq's credibility as a witness

80 The crux of the Prosecution's case against Shafiq is that he is an unreliable witness whose inconsistent, belated, and false claims should be dismissed. The Prosecution submits that Shafiq's denial of his knowledge of the true contents of the blue milk powder box is unbelievable because Shafiq had given materially inconsistent accounts of what he believed the blue milk powder box contained. Shafiq had also lied in his investigative statements and had omitted to tell the truth. The Prosecution submits that these lies and omissions concern material issues and corroborate his guilt. The Prosecution urges me to find that Shafiq's account in his oral evidence that he was not aware of the blue milk powder box's contents is incredible.

81 The Defence argues that Shafiq did not know that the blue milk powder box contained the methamphetamine in question. For all the times that Shafiq had visited Husir's condominium unit, he had never seen large quantities of methamphetamine. It was only in the early hours of the day of his arrest, 14 November 2017, that he discovered that Husir consumed methamphetamine and

saw that he kept a small packet of methamphetamine below his coffee table in the living room.

82 Also, Shafiq’s evidence is that he did not see Husir re-pack the blue milk powder box with methamphetamine that morning after the four men had returned from the mini-mart, as submitted by the Prosecution. He was sitting on the sofa for most of the time, playing the SCR888 game on his mobile phone and consuming methamphetamine. The sofa faces away from the dining table and the kitchen. It was only when he was about to leave that Husir handed him the red plastic bag which contained the blue milk powder box and the orange biscuit packet. Shafiq simply took the plastic bag without examining its contents carefully (see [57] to [59] above).

83 As the Prosecution relies heavily on Shafiq’s purported lies and omissions in his investigative statements, it is first important to outline the relevant principles on this issue. Section 261 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“the CPC”), which applies to cautioned statements, provides:

Inferences from accused’s silence

261. —(1) Where in any criminal proceeding evidence is given that the accused on being charged with an offence, or informed by a police officer or any other person charged with the duty of investigating offences that he may be prosecuted for an offence, failed to mention any fact which he subsequently relies on in his defence, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, the court may in determining —

...

(c) whether the accused is guilty of the offence charged, draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or

as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

84 Therefore, the effect of s 261 of the CPC is that the accused person's omission in stating a material fact for his defence in the cautioned statement allows the court to draw an adverse inference, which in turn can be used to corroborate other evidence. Deliberate untruths or lies may equally invite the drawing of adverse inferences: see *Ilechukwu* at [151]. While there is no equivalent statutory provision in the CPC for long statements, it is trite that a court may also, where appropriate, draw an adverse inference against an accused person for failing to state a fact in his long statement even though this fact will exculpate the accused from an offence: see *Ilechukwu* at [152].

85 It is well-established that the court's power to draw adverse inferences is a discretionary one based on the specific facts at hand. In determining whether lies and/or omissions of an accused person might be used to corroborate evidence of guilt, the following requirements set out in *Regina v Lucas (Ruth)* [1981] QB 720 at 724 must be satisfied: (a) the lie told out of court is deliberate; (b) it relates to a material issue; (c) the motive for the lie is a realisation of guilt and a fear of the truth; and (d) the statement must clearly be shown to be a lie by independent evidence. Whether something is a lie is a question of fact to be determined by the court: see *Ilechukwu* at [153]–[154].

86 Critically, it is important to bear in mind that lies can only be used to corroborate or strengthen *other* pieces of evidence relied on by the Prosecution. Lies alone cannot be the basis of a conviction. Lies can only amount to corroboration of evidence of guilt if they are shown to be *told out of a motive that can only be linked to his guilt*: see *Ilechukwu* at [156]. An accused person may lie because he is guilty. On the other hand, an accused person who might in fact be innocent may also lie for some reason not linked to guilt. For instance,

as observed by V K Rajah J (as he then was) in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR 24 (“*Constance Chee*”) at [92], lies may be told “in a misguided attempt to support or embellish an explanation, to deflect blame, to minimise embarrassment or to conceal some other behaviour”. Therefore, Shafiq’s lies in his investigative statements, if any, have to be carefully scrutinised with the foregoing principles in mind.

87 At this stage, I should also add that the Prosecution also makes extensive reference to the first two trips that Shafiq made to Husir’s condominium unit in Johor, what Shafiq did in Johor, and what he did on his return to Singapore for each of those two trips. The Prosecution has expressly stated that they are *not* relying on Shafiq’s evidence as to the first two trips to argue that Shafiq had a “propensity to import drugs into Singapore and the Court should find, on this basis, that he knowingly imported the Drugs on 14 November 2017”.⁹¹ In other words, the Prosecution is not relying on the first two trips to Johor as similar fact evidence to show propensity, which in any event is not permitted: see *Muhammad Abdul Hadi bin Haron v Public Prosecutor and another appeal* [2021] 1 SLR 537 (“*Muhammad Abdul Hadi bin Haron*”) at [53].

88 Rather, the Prosecution argues that such evidence is relevant to (a) Shafiq’s state of mind on 14 November 2017 when he brought the blue milk powder box into Singapore, and (b) the nature of Shafiq’s relationship with Husir, what Shafiq was doing in November 2017 and why he had made that fateful third trip to Johor, which eventually led to his arrest and charge. This is permissible, as similar fact evidence may be utilised in the limited manner envisaged within a strict application of ss 14 and 15 of the EA. These provisions permit the admission of similar fact evidence if its probative force outweighs its

⁹¹ PCS at [31].

prejudicial value, taking into account, *inter alia*, the three factors of cogency, strength of inference and relevance: see *Muhammad Abdul Hadi bin Haron* at [53] and [55]; *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [48]. Sections 14 and 15 of the EA provide as follows:

Facts showing existence of state of mind or of body or bodily feeling

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

...

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

89 I will thus assess the evidence of the first two trips to Johor with this important caveat in mind.

Shafiq's belated admission in his second cautioned statement of 1 June 2018

90 The Prosecution submits that I should reject Shafiq's denial of knowledge about the methamphetamine in the blue milk powder box because he is not a credible witness as shown by his "shifting" positions in his statements to the CNB and at trial.⁹² Primarily, the Prosecution refers to the fact that Shafiq had denied knowledge of having any drugs in his first 11 statements until 1 June

⁹² PCS at [130].

2018 when he first admitted to having knowledge of the packet of ecstasy pills and the small packet of ice in a cautioned statement.

91 Shafiq’s explanation for lying about knowledge of the ecstasy pills and the small packet of ice is that, if he admitted to such knowledge, he was afraid that he would be charged for importing the four packets of methamphetamine in the blue milk powder box as well.⁹³ The Prosecution argues that such an explanation does not hold water because Shafiq had *already* been charged with importing the methamphetamine in the blue milk powder box on 15 November 2017, the day after he was arrested.

92 In my view, the Prosecution has not fully understood the general thrust of Shafiq’s explanation. His point is that, if he admitted to knowledge of the ecstasy tablets and the small packet of ice, *the CNB would be less likely to believe that he did not also know about the four packets of methamphetamine in the blue milk powder box*. Eventually, after some probing in re-examination, this was indeed how Shafiq explained why he had not admitted to knowledge of the ecstasy pills and the small packet of ice earlier in the investigations.⁹⁴ The Prosecution criticises this explanation as being raised in re-examination for the first time, but I find that unwarranted. Shafiq was merely explaining what he intended to convey all along as his reason for initially denying knowledge of any drugs at all.

93 Furthermore, Shafiq had already stated during his examination-in-chief that he only made the admission in his cautioned statement of 1 June 2018 because he was “afraid that if I had admitted to the ecstasy that I would also be

⁹³ Transcript, 13 August 2020, p 9 lines 6–8; DCS at [104].

⁹⁴ Transcript, 20 October 2020, p 27 lines 1–5.

charged for the Ice”.⁹⁵ This must be understood to mean that he was initially afraid of admitting to knowledge of the ecstasy pills (as explained at [92] above), until he had no real choice but to do so. Thus, it is not accurate that Shafiq only raised this claim belatedly for the first time in re-examination. As explained at [101] below, during the recording of the last long statement (dated 28 May 2018) before the cautioned statement was recorded on 1 June 2018, Shafiq was informed that his DNA had been found *on the inside of exhibit “A1A1-A2”*, which is the plastic packet that contained the packet with the ecstasy pills. Thus, by 28 May 2018, Shafiq was confronted with objective evidence indicating his handling of the packet containing the ecstasy pills. In that same long statement on 28 May 2018, IO Parthiban showed Shafiq the photos of the orange biscuit packet and the items contained within it, *viz*, the ten smaller individual biscuit packets (including exhibit “A1A1-A”), and the small packet of ice and the packet of ecstasy pills contained within exhibit “A1A1-A”.⁹⁶ In these circumstances, it is not surprising that he then felt it futile to deny his knowledge of the drugs in the orange biscuit packet. This explains his belated admission of his knowledge of these drugs in the second cautioned statement on 1 June 2018.

94 The Prosecution also attacks the Defence’s submission that Shafiq had “come clean” in his cautioned statement recorded on 1 June 2018, when he was served the charge of importing the ecstasy pills, by voluntarily admitting knowledge of those pills. The Prosecution points out that Shafiq had in fact been confronted on 1 June 2018 with the evidence that his DNA was found on the inside of exhibit “A1A1-A2”, the plastic packet containing the packet of

⁹⁵ Transcript, 13 August 2020, p 9 lines 6–8.

⁹⁶ AB pp 225–226, 251.

ecstasy pills. As such, he must have then realised that it would be difficult to deny knowledge of the ecstasy pills.

95 I accept the Prosecution's point that, by this point, Shafiq might have felt it futile to deny knowledge of the ecstasy pills any further. However, in my view, the fact that Shafiq felt that there was no point denying knowledge of the ecstasy pills any further only on 1 June 2018, has little bearing on the truth or otherwise of his explanation as to why he did not want to admit earlier to knowledge of the ecstasy pills. To reiterate, Shafiq explained that he was afraid that, if he had admitted to importing the ecstasy pills earlier, the CNB would not believe that he did not *also* know about the presence of the ice in the blue milk powder box. Furthermore, I would add that the fact that Shafiq's DNA appeared on the inside of the plastic packet containing the packet of ecstasy pills has no connection to why he would also admit to knowledge of the small packet of ice.

96 I thus accept as credible Shafiq's explanation that he did not want to admit to knowledge of those drugs (the ecstasy pills and the small packet of ice) earlier because he feared the CNB would be less likely to believe that he did not also know about the four packets of methamphetamine in the blue milk powder box.

Shafiq's inconsistencies regarding the ecstasy pills and small packet of ice

97 The Prosecution relies on the inconsistencies in Shafiq's statements to the CNB. In his first 11 statements, Shafiq had initially denied knowledge of any drugs in the blue milk powder box or the orange biscuit packet. But eventually, in his cautioned statement, recorded on 1 June 2018, in response to a charge for importing the ecstasy pills, Shafiq admitted that he knew that the packet of ecstasy pills and the small packet of ice – exhibits "A1A1-A2A" and

“A1A1-A1” respectively – were in the orange biscuit packet and that he was “supposed to pass the Ecstasy tablets to someone who will come to [his] house to pick [them] up” while the 1g of methamphetamine was given to him as a reward for helping Husir to deliver cash to him in Malaysia and for delivering the ecstasy pills.⁹⁷

98 Then, in his eighth long statement recorded on 2 June 2018, Shafiq reiterated that Husir had asked him to bring the ecstasy pills into Singapore, and had given him the small packet of ice as a reward. The Prosecution points out that Shafiq stated in that long statement that he did *not* know whether those pills and the small packet of ice were in the blue milk powder box *or* the orange biscuit packet. The Prosecution argues that this was inconsistent with Shafiq’s admission in the cautioned statement taken the day before (*ie* on 1 June 2018) that he knew that the ecstasy pills and the 1g of methamphetamine were in the orange biscuit packet.

99 In his oral evidence at trial, as already mentioned, Shafiq said that he did not know whether the ecstasy pills and the small packet of ice were inside the blue milk powder box *or* the orange biscuit packet. He said that he believed that these drugs were hidden in the red plastic bag, either between the box and the packet, or beneath them. He also said that he thought that the blue milk powder box and the orange biscuit packet were “dummies”.

100 Having reviewed the evidence carefully, I am unable to agree with the Prosecution that these inconsistencies show that Shafiq knew the truth about the blue milk powder box’s contents, and that he was lying to the CNB to hide his knowledge of the box’s contents.

⁹⁷ AB p 255.

101 It is not disputed that Shafiq’s second cautioned statement referred to at [97] above was recorded three days after he was told that his DNA was found on the inside of the packet, exhibit “A1A1-A2”, which held the packet of ecstasy pills. It can be seen from his statement recorded on 28 May 2018 that IO Parthiban showed Shafiq the photos of the orange biscuit packet and the items contained within it, viz, the ten smaller individual biscuit packets (including exhibit “A1A1-A”), and the small packet of ice and the packet of ecstasy pills contained within exhibit “A1A1-A”.⁹⁸ Shafiq was informed when that statement was taken that his DNA had been found *on the inside of exhibit “A1A1-A2”*, which is the plastic packet that contained the packet with the ecstasy pills. Thus, by 28 May 2018, if not earlier, Shafiq would have known that the small packet of ice and packet of ecstasy pills were found in the orange biscuit packet.

102 Therefore, I agree with defence counsel’s submission that Shafiq’s admission in the cautioned statement (referred to at [97] above) meant that Shafiq *knew of the existence of the packet of ecstasy pills and the small packet of ice* that were found inside one of the smaller biscuit packets. This is evident from the way his admission was phrased in this cautioned statement: “I want to say that I *know about* the packet of 105 tablets and the 1 gram of Ice that was inside the orange biscuit packet” [emphasis added]. The important phrase to bear in mind is that Shafiq “*kn[e]w about*” the ecstasy pills and small packet of ice, *not* that Shafiq knew that the ecstasy pills and small packet of ice *had been hidden in the orange biscuit packet*. It does not follow from the way the sentence is phrased in the cautioned statement that Shafiq had admitted that he knew that the pills and the small packet of ice had been concealed *in the orange biscuit packet* (instead of the blue milk powder box).

⁹⁸ AB pp 225–226, 251.

103 This reading of Shafiq’s second cautioned statement is also consistent with Shafiq’s evidence at trial that he agreed to import the ecstasy pills into Singapore at the request of Husir, and he had accepted the gift of the small packet of ice, but that he did not know how Husir had concealed them, save that he knew that these drugs were found in the red plastic bag.

104 In Shafiq’s eighth long statement, recorded on 2 June 2018, he elaborated on how it transpired that he agreed to import the ecstasy pills into Singapore. This statement has to be examined carefully. In this statement, he states: “I am now being asked about the orange colour biscuit packet because I said that I know about the 105 Ecstasy tablets and the 1 g of Ice in my charge that was read to my [*sic*] yesterday”.⁹⁹ He then goes on to relate how Husir asked him to bring the ecstasy pills into Singapore to “pass to someone”. Shafiq then explains in the statement: “[a]fter I pass back the packet of 105 Ecstasy tablets, I don’t know how [Husir] packed it and I also never see”. He then also explains how Husir had said he would get “1 gram” of methamphetamine because of his help in bringing the ecstasy pills.

105 In the next paragraph of the statement, it is significant that Shafiq states: “When [Husir] pass me the red plastic bag containing the blue colour milk powder box and orange biscuit packet, he said that the things are already inside. From that, I know that the Ecstasy tablets and 1 gram of ‘Ice’ is inside *but I don’t know whether it was in the milk powder box or the biscuit packet*” [emphasis added]. And later in the statement, Shafiq stated again: “[Husir] also said that the drugs are inside so I never open and check because I thought it was only the Ecstasy tablets and the 1 g of ‘Ice’”.

⁹⁹ AB p 259.

106 This statement, which was taken the day after Shafiq was served the charge for importing the ecstasy pills and his second cautioned statement was recorded, is quite critical because it shows several things. It confirms that *both* Shafiq and the recorder of his statements, IO Parthiban, understood that Shafiq did *not* mean in his cautioned statement of 1 June 2018 that he knew that the ecstasy pills and the small packet of ice were hidden in the orange biscuit packet. All Shafiq meant was that he knew “about” the ecstasy pills and the small packet of ice. IO Parthiban must have also understood this. Otherwise, when he recorded Shafiq’s long statement on 2 June 2018, he would have questioned him as to why he was changing his account from the cautioned statement from just the day before, and Shafiq’s explanation for the change would have been recorded in the long statement.

107 Also, this long statement recorded on 2 June 2018 is significant because it records Shafiq’s admission that, while he claimed not to be involved in, or witnessed, any re-packing of the blue milk powder box or orange biscuit packet by Husir, he knew that the ecstasy pills and the small packet of ice were packed into *either* one of these containers, *or* perhaps even both (see [105] above). In this regard, I reject Shafiq’s explanation in his oral evidence that he believed that the ecstasy pills and small packet of ice were somewhere in the red plastic bag, either beneath or between the blue milk powder box and orange biscuit packet.¹⁰⁰ That evidence is contradicted squarely by his long statement of 2 June 2018.

108 I accept the Prosecution’s submission that this notion that Shafiq would have honestly believed that the ecstasy pills and the small packet of ice were somewhere *inside* the red plastic bag, but *outside* of the blue milk powder box

¹⁰⁰ Transcript, 12 August 2020, p 5 line 10 and p 26 lines 28–30.

and orange biscuit packet, is rather incredible.¹⁰¹ That would be an absurd way for Husir to conceal those drugs. In any event, if that was what Shafiq initially believed when handed the red plastic bag, a cursory glance in the bag would have proven his belief to be wrong.

109 For the foregoing reasons, I do not find that Shafiq had taken an inconsistent position in his statements to the CNB on his knowledge of the contents of the blue milk powder box. I find that his position in his statements, after he admitted to having brought into Singapore the ecstasy pills and the small packet of ice, is that he knew of the existence of these drugs and that they were concealed in *either* the blue milk powder box *or* the orange biscuit packet, *or* perhaps both, but that he did not know in which “food item” the drugs were hidden. Further to this, as I have already mentioned, I do not accept Shafiq’s attempt in his oral evidence to distance himself from this position by claiming that he believed that the drugs were hidden in the red plastic bag, but *outside* of the blue milk powder box and orange biscuit packet.

Recipient of blue milk powder box

110 The Prosecution next submits that there is a set of inconsistencies in relation to Shafiq’s account of the person to whom he should hand the blue milk powder box in Singapore.¹⁰² In this regard, in his statements before he admitted to having agreed to the importation of the ecstasy pills and the small packet of ice, Shafiq gave different answers as to whom the blue milk powder box should be handed to. In different statements, he said it was for Rahilme, Rahilme’s aunt, or some other person.¹⁰³ In his first contemporaneous statement, Shafiq

¹⁰¹ PCS at [108].

¹⁰² PCS at [101].

¹⁰³ AB pp 142, 145, 204 at [16].

also said that the blue milk powder box belonged to Rahilme.¹⁰⁴ Then, in his long statement given on 2 June 2018, after his admission in relation to the importation of the ecstasy pills and the small packet of ice, Shafiq stated that his instructions were to wait for Husir's call after he reached Singapore as to whom the blue milk powder box should be handed.

111 Then, at trial, Shafiq said in his evidence that Husir had not told him, when he handed him the red plastic bag, to do anything specifically in relation to the blue milk powder box. Rather, Husir's instructions were to hand *the ecstasy pills* to a friend, and Husir would tell Shafiq whom to give it to when Shafiq reached Singapore.¹⁰⁵ Shafiq also claimed that the blue milk powder box and orange biscuit packet were "dummies", and that he would probably throw them away after crossing the checkpoint.¹⁰⁶

112 I agree with the Prosecution that Shafiq's evidence in this respect is most unsatisfactory. However, when one examines (a) the explanation proffered by Shafiq for the changes in his account, and (b) the contents of his long statement taken on 2 June 2018 as compared with his evidence in court, I do not think that these inconsistencies necessarily show that Shafiq knew that the blue milk powder box contained the four packets of methamphetamine that are part of the subject of the Capital Charge.

113 First, before he finally admitted to the importation of the ecstasy pills and the small packet of ice, Shafiq gave different versions in his statement as to whether the blue milk powder box was supposed to be passed to Rahilme,

¹⁰⁴ AB p 142.

¹⁰⁵ Transcript, 12 August 2020, p 5 line 27–p 6 line 6.

¹⁰⁶ Transcript, 19 October 2020, p 13 line 14–p 15 line 11; p 17 lines 2–4.

Rahilme's aunt, or someone else (see [110] above). He explained that he was not able to "think properly" when he gave those accounts.¹⁰⁷ In my judgment, when one reads all of Shafiq's statements in their entirety, together with Shafiq's conduct upon arrest, it is clear that his lies in the earlier statements, before his admissions regarding the drugs in the orange biscuit packet in the cautioned statement (see [72] and [97] above), were initially because he believed that the ecstasy pills might have been hidden in the blue milk powder box, and later because of (a) surprise that there were large amounts of methamphetamine in the blue milk powder box, and (b) fear of being implicated for importing this capital-amount of methamphetamine when he had thought that he was only carrying 100 ecstasy pills and the small packet of ice.

(a) When Shafiq was first questioned by SSgt Hamdan at the Woodlands Checkpoint, before Shafiq was arrested, Shafiq lied that he had come from his aunt's place, that the blue milk powder box belonged to his aunt, and that his aunt had asked him to bring it home for his nephew or niece (see [3] to [5] above). It was thus clear that Shafiq was putting up a front and lying at this stage. This, however, does not necessarily show that Shafiq was lying because of an awareness of the capital-amount of methamphetamine in the blue milk powder box. Rather, Shafiq's lie at this stage is equally consistent with his claim that he was lying so that the ecstasy pills and small packet of ice that he was carrying would not be discovered.

(b) After Shafiq was arrested, he was shown the *cut open* silver foil packet, exhibit "A1B1", and the crystalline methamphetamine within it, and even asked what it was (see [6] above). As a consumer of

¹⁰⁷ Transcript, 19 October 2020, p 19 lines 22–25.

methamphetamine, Shafiq must have recognised the methamphetamine in that silver foil packet, and would have known by the time of arrest that the blue milk powder box contained packets of methamphetamine rather than milk powder, or the ecstasy pills and the small packet of ice that he knew he was bringing into Singapore.

(c) By the next day after his arrest, Shafiq was already served with the capital charge of importing methamphetamine (see [71] above). This would have further confirmed his initial fear that he had been sabotaged by Husir with importing a capital-amount of methamphetamine, as he stated in the cautioned statement for that capital charge.

(d) Therefore, as Shafiq testified and as the Defence submits, that was why he initially sought to distance himself from any possible drug activities – including the ecstasy pills, the small packet of ice, and Husir, who is a known drug dealer who had told Shafiq that he could not return to Singapore as he was wanted by CNB (see [27] above) – as he was worried that any association with these would reduce the credibility of his claim that he did not knowingly import the packets of methamphetamine in the blue milk powder box.¹⁰⁸

114 The foregoing is not inherently incredible. Once Shafiq's evidence is seen in this light, it explains why he was initially reluctant to admit that he was supposed to deliver the ecstasy pills to a person at the direction of Husir, who he knew was wanted by the CNB and was a known drug dealer. If he had admitted that, he knew that he would not only face a charge of importing ecstasy pills into Singapore but also, critically, he feared that his claims that he did not know about the capital-amount of methamphetamine would also not be

¹⁰⁸ Transcript, 13 August 2020, p 9 lines 6–8; DCS at [104].

believed. This is not an unbelievable claim. These lies in his earlier statements do *not* necessarily show, as the Prosecution contends, that Shafiq knew that the true contents of the blue milk powder box were *the four packets of methamphetamine*. Applying the considerations outlined at [86] above, the lies are corroborative of his awareness that he was importing ecstasy pills, and his fear of being implicated for the methamphetamine in the blue milk powder box, but not necessarily in relation to any *knowledge* of the four packets of methamphetamine in the blue milk powder box. This is the exact situation alluded to by V K Rajah J in *Constance Chee* (referred to at [86] above). I accept Shafiq's explanation that this is why he initially lied about his knowledge of the ecstasy pills and the small packet of ice, the identity of the person who directed him to deliver the blue milk powder box, and the identity of the person to whom the blue milk powder box was to be delivered. He wanted to "deflect blame" for the four packets of methamphetamine found inside the box and "to conceal some other behaviour" regarding the ecstasy pills and small packet of ice.

115 In the long statement recorded on 2 June 2018, Shafiq came "clean" in admitting to the importation of the ecstasy pills and the small packet of ice.¹⁰⁹ He stated that:

When [Husir] pass me the red plastic bag containing the blue colour milk powder box and orange biscuit packet, he said that the things are already inside. From that, I know that the Ecstasy tablets and 1 gram of 'Ice' is inside but I don't know whether it was in the milk powder box or the biscuit packet. [Husir] said that he will call me and tell me who to pass to when I reach my house in Singapore. This is the same as what he told me when I bring the food items for him on 11/11/2017. [emphasis added]

¹⁰⁹ AB p 259.

116 In my view, it is clear that what Shafiq is saying in this statement is that he believed that the ecstasy pills and the small packet of ice were either in the blue milk powder box *or* the orange biscuit packet, or both, and he would be told by Husir later to whom these “food items” would be delivered. In other words, if Husir had packed the ecstasy pills in the blue milk powder box, then he would have called Shafiq later to direct that the box be delivered to the intended recipient in Singapore. If, on the other hand, Husir had packed the ecstasy pills in the orange biscuit packet, Shafiq would have been asked to deliver the biscuit packet to the intended recipient instead. The other “food item” that remained with Shafiq would probably contain the small packet of ice that Husir had given to him for his own personal consumption. I find that this must have been what was in Shafiq’s mind, given what he was told by Husir.

117 Therefore, the fact that Shafiq had agreed to deliver the “food items” to intended recipients in Singapore can only show that he knew that one of the “food items” contained the ecstasy pills, but it cannot be conflated with showing actual knowledge on the part of Shafiq of the true contents of the blue milk powder box.

118 As for Shafiq’s evidence in court that he thought that the blue milk powder box was a “dummy”, this is explicable by the simple fact that he *now* knew, after the investigations and the statements taken from him, that the orange biscuit packet was the one that contained the ecstasy pills which he was asked to deliver and the small packet of ice he was promised. From that perspective, one can understand why Shafiq would think that the blue milk powder box was a “dummy”. It is clear from the circumstances of his testimony that Shafiq did not use the word “dummy” to mean that he thought that the blue milk powder box was a “fake” milk powder box. Rather, he thought that, while it was a real milk powder box, it was placed there by Husir to make the red plastic bag’s

appearance look innocuous so that it would not raise any suspicion if there was a check by the ICA officers. To him, this was all to facilitate the successful importation of the ecstasy pills and the small packet of ice without detection.

119 Similarly, when Shafiq said in court that he thought that the blue milk powder box and orange biscuit packet were “dummies”, this is because of his evidence that he thought that the ecstasy pills and the small packet of ice were stored outside the “food items”, but within the red plastic bag. As already mentioned, I reject this evidence, and I find that Shafiq knew that the ecstasy pills and the small packet of ice were concealed in the “food items”, although he did not know which one contained the ecstasy and which contained his small packet of ice. A proper understanding of his evidence is that he must have understood that one of the “food items” was a “dummy”, given that he believed that the ecstasy pills and the small packet of ice could be stored *in either one of them*. This is entirely consistent with the pith of his defence. In any event, it was not explored by the Prosecution in their cross-examination of Shafiq what exactly he meant by a “dummy”, and whether, by the use of this term, he meant that the “food item” did not contain any drugs at all, or that it might have contained the small packet of ice that he had been given by Husir which was intended for his own consumption.

120 Critically, while I accept that Shafiq did try to lie in his testimony in court that he thought that the ecstasy pills and the small packet of ice were in the red plastic bag but outside of the blue milk powder box and orange biscuit packet (see [107] above), with the latter two food items being used as “dummies”,¹¹⁰ I find that this was certainly not a lie that could lead to an inference that he knew that the blue milk powder box contained the four packets

¹¹⁰ Transcript, 17 August 2020, p 7 lines 21–27.

of methamphetamine. This is because, as emphasised at [86] above, this lie has no bearing on his knowledge of the contents of the blue milk powder box, and thus cannot support an inference that Shafiq knew that the blue milk powder box contained methamphetamine.

121 Therefore, it is clear to me that the thrust of Shafiq's defence was that:

- (a) he did not know where the ecstasy pills and small packet of ice were in the red plastic bag because it was Husir who packed these drugs;
- (b) thus, Shafiq initially attempted to distance himself from not only the ecstasy pills and small packet of ice but also Husir, a known drug dealer, by asserting that the recipient of the food items was intended to be Rahilme or Rahilme's aunt;
- (c) but, when finally confronted with the DNA evidence on exhibit "A1A1-A2", Shafiq could no longer lie and so came clean regarding the drugs in his second cautioned statement and eighth long statement (see [72] and [73] above);
- (d) because he was unsure whether the ecstasy pills and small packet of ice were in the blue milk powder box or the orange biscuit packet (or both), Shafiq's guess was that those drugs were in one of them, and the remaining food item, whichever it was, was a "dummy", simply to bolster the innocuous appearance of the red plastic bag and its contents. Shafiq's *uncertainty* over where the ecstasy pills and small packet of ice were explains, and is in fact consistent with, Shafiq's loose reference to the blue milk powder box and/or the orange biscuit packet as "dummies".

Who handed Shafiq the blue milk powder box

122 The next set of inconsistencies in the evidence relied upon by the Prosecution is Shafiq’s account as to who had handed him the blue milk powder box. The Prosecution points out, as already mentioned earlier, that Shafiq told SSgt Hamdan at the Woodlands Checkpoint that the box belonged to his aunt in Malaysia. Then, in his first contemporaneous statement recorded later on the day of his arrest, 14 November 2017, he said that the blue milk powder box had been given to him by Rahilme. He only admitted in his subsequent statements that the blue milk powder box had been handed to him by Husir.

123 In my judgment, as alluded to above, the Prosecution has not fully appreciated the significance of the evidence given by Shafiq that he knew that Husir was a person who was living in Johor Bahru because he was wanted by the CNB in Singapore, and that Shafiq had assisted Husir on at least one prior occasion to bring ecstasy pills into Singapore and delivering it to “Alan”. Not only that, by the time of the investigations, Shafiq must have known that his delivery of “food items” on 12 November 2017, after his first trip to Johor, was likely to have also contained drugs.

124 Further, as already explained, given what he was told by Husir before he left the condominium unit on this third trip, Shafiq certainly believed that the blue milk powder box *might* have contained the ecstasy pills or the small packet of ice. Further, by the time of his arrest, Shafiq would have seen that the blue milk powder box did not contain milk powder but had instead contained methamphetamine, contrary to what he thought it contained. Since he had been given the blue milk powder box by someone who was wanted by the CNB, I find that Shafiq told lies to SSgt Hamdan and initially to IO Parthiban to distance himself from Husir. In this regard, I noted the Prosecution’s submission that

Shafiq obviously did not want to be seen as someone associating with a drug dealer.¹¹¹ I also accept that Shafiq gave poor explanations for these lies while being cross-examined. However, I would emphasise that these lies do not necessarily show that Shafiq knew, *before his arrest*, that the blue milk powder box contained the four packets of methamphetamine rather than the ecstasy pills and/or milk powder. I accept his evidence that he had been told by Husir that he would be bringing ecstasy pills into Singapore and the small packet of ice for his own consumption, *not* the four packets of methamphetamine that were eventually found in the blue milk powder box.

Packing of the blue milk powder box

125 The Prosecution has also submitted that I should reject Shafiq's evidence that he was not involved in, or had not witnessed, the packing of the blue milk powder box (and the orange biscuit packet) at Husir's condominium unit. This is because, it is submitted, Shafiq's account as to what transpired in the condominium unit on 14 November 2017 is incredible and implausible. As such, the Prosecution urges me to find that Shafiq knew that the four packets of methamphetamine had been packed in the blue milk powder box.

126 First, the Prosecution submits that the blue milk powder box in the red plastic bag handed over by Husir to Shafiq was the same one which had been purchased at the mini-mart by Rohaizat and Aidil on that morning of 14 November 2017. From my analysis of the evidence, I agree with the Prosecution that it is more likely than not that the blue milk powder box indeed had been purchased that morning. The main reason for this is that, throughout Shafiq's statements, he had never mentioned that the blue milk powder box in

¹¹¹ PCS at [107].

the red plastic bag might *not* have been the one that had been purchased that morning. It was only during his cross-examination that this issue of the box being possibly different was raised by Shafiq.

127 I accept that the task of removing the milk powder from the two silver foil packets in the blue milk powder box, filling these silver foil packets with the four plastic packets of ice, resealing the silver packets, placing them back into the box, and then sealing the box with glue, would have all taken place from the time the four men (Husir, Shafiq, Rohaizat and Aidil) returned from the mini-mart to the time Shafiq left the condominium unit to return to Singapore. This was in an approximately two-hour window between 9.00am and 10.55am.

128 The Prosecution argues that the process above must have taken place in the “plain sight” of Shafiq.¹¹² They point out that Shafiq’s evidence was that he was at the sofa in the living room most of the time, although he did have a conversation with Husir at the dining table about the ecstasy pills and the small packet of ice. Shafiq said Husir was in the kitchen. Given that the condominium was a small, one-floor, “open-concept” unit, the Prosecution invites me to find that Shafiq was involved in, or at least witnessed, the packing of the four packets of methamphetamine in the blue milk powder box by Husir.

129 I am unable to come to such a finding that Shafiq must have witnessed the packing of the drugs into the blue milk powder box. First, it is not clear to me that Shafiq was sitting on the sofa in such a manner that he was facing the kitchen. If his back was to the kitchen most of the time, he might not know exactly what Husir was doing there. Second, from Shafiq’s long statement recorded on 2 June 2018, it is clear to me that he did not know whether, and if

¹¹² PCS at [113(b)].

so, where and how exactly Husir had packed the blue milk powder box with the four packets of methamphetamine. He said he “think[s]” that Husir might have done it in the kitchen. The Prosecution criticises Shafiq for claiming under cross-examination, for the first time, that Husir might have packed the blue milk powder box in the toilet. However, the point here is that Shafiq did not know exactly where the drugs were packed, and he was simply *speculating* as to where that might have happened. This is entirely consistent with his evidence that he *did not know* where Husir packed the drugs in the blue milk powder box because he never saw Husir doing so.

130 Rahilme, who was present at Husir’s condominium unit for a short while before going to Rohaizat’s unit to sleep, did not explicitly see Husir (or anyone else) pack any drugs. Rahilme did say that he saw Husir and Shafiq together in the bedroom doing “hands movement” with a red plastic bag. However, I find this evidence to be unhelpful because he left the condominium unit *before* the trip to the provision shop to purchase the blue milk powder box.¹¹³ Rahilme did not return to the condominium unit until Shafiq and Aidil left for Singapore.

131 I find that there is also an inconsistency in the Prosecution’s submission that the condominium unit was *so* small that the packing of the blue milk powder box *must* have been done in Shafiq’s “plain sight”. If so, then Aidil, who was present with Shafiq in the living room throughout the entire period after the four men returned from the convenience store, would *also* have seen the packing of the blue milk powder box. Yet, Aidil was not called by the Prosecution to give evidence to rebut Shafiq’s denial that he did not see any packing of the drugs from where he was sitting in the living room. While the Prosecution offered Aidil as a witness to the Defence (and the Defence did not call Aidil), the

¹¹³ Transcript, 7 August 2020, p 85 line 10–p 86 line 9.

evidential burden, following the foregoing analysis, shifted to the Prosecution to prove that Shafiq – according to the Prosecution – did see the packing of the blue milk powder box. Thus, it was for the Prosecution to call Aidil if they wished to adduce Aidil’s evidence to support their contention on this issue.

132 The Prosecution also urges me to reject Shafiq’s explanation that he was too engrossed with playing SCR888, while seated at the sofa, that he had not seen or heard the packing of the blue milk powder box.¹¹⁴ They argue that Shafiq could not have been playing SCR888 because there were no transfers from Haikal’s bank account to SCR888’s bank account during this period. This was despite Shafiq’s evidence that he made such transfers when gambling on SCR888 to top up his credits in his SCR888 account.

133 I find the Prosecution’s submissions in this regard somewhat tenuous. Whether or not Shafiq needed to transfer money to the SCR888’s bank account to top up his credits while gambling on the SCR888 application must depend on whether he was winning or losing. Shafiq’s evidence is that he had sufficient credits in his account because he was winning, more often than losing, on that morning.¹¹⁵ This is not an inherently unbelievable claim. Even if one assumes that Shafiq had not won every game, he only had to win more than he lost to be able to carry on playing on SCR888 without the need for any top up of the credits. My point simply is that there is no evidence before me to show that Shafiq’s evidence about his success in playing SCR888 on that morning, such that he did not need to top up his account with credits, is either incredible or implausible. I shall elaborate on the state of the evidence on SCR888 below.

¹¹⁴ PCS at [113(d)].

¹¹⁵ Transcript, 14 August 2020, p 65 line 8–p 66 line 7.

134 In these circumstances, bearing in mind that (a) Shafiq has consistently stated in his investigative statements and at trial that he was not involved in the packing of the blue milk powder box and he gave a reasonable explanation of why he did not see Husir packing the drugs (because he was engrossed in playing the SCR888 game); (b) Shafiq's DNA was not found on the blue milk powder box or any of the exhibits found within it; (c) and even the Prosecution's own witness, Rahilme, did not explicitly see any packing of drugs before he left the condominium unit, I find that the evidential burden shifted to the Prosecution to prove that Shafiq did in fact see Husir pack the blue milk powder box. The Prosecution could have either called Aidil, or adduced some evidence about how SCR888 worked and whether it was possible for Shafiq to have played it for two hours without any top up of the credits on his account (see [132] above), but they did not do so.

135 I should add that there is some inconsistency between the Prosecution's case and the evidence of the Prosecution's witness, Rahilme, on this issue. On one hand, the Prosecution invites me to find that the packing of the blue milk powder box was done *by Husir* in the *kitchen* of the condominium unit in the "plain sight" of Shafiq (see [128] above). On the other hand, the reliance by the Prosecution on Rahilme's evidence seems to suggest that their case is that the packing was done by *both* Husir and Shafiq in the *bedroom* (see [130] above) *before* the blue milk powder box had even been purchased. This inconsistency further bolsters my conclusion that it is not possible to find, on a balance of probabilities, that Shafiq's evidence that he was neither involved in, nor saw the packing of the blue milk powder box, is incredible or implausible.

The need to call Aidil as a witness?

136 There is one other issue that I must deal with in relation to the question of whether Shafiq’s denial that he was involved in, or had witnessed, the packing of the four packets of methamphetamine in the blue milk powder box should be accepted. As already alluded to earlier, that is the question of whether Aidil needed to be called as a witness, and by whom.

137 As explained at [76] above, the Prosecution’s failure to call a material witness may mean that it has failed to discharge its evidential burden to rebut an accused person’s defence or may justify the court drawing an adverse inference against it under s 116 illus (g) of the EA. In deciding whether it is appropriate to draw such an adverse inference, “all the circumstances of the case will be considered” to see whether the failure to call the material witness “left a gap in its case” or whether such failure constituted “withholding of evidence from the court”. The following specific principles must also be borne in mind when considering if an adverse inference should be drawn (*Nabill* at [73]–[74]):

- (a) The court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it. There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference.
- (b) If the reason for the witness’s absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. An adverse inference ought not to be drawn where the failure to produce evidence is reasonably attributable to reasons other than the merits of the case.

(c) In drawing the relevant inference, the court must put its mind to the manner in which the evidence that is not produced is said to be unfavourable to the party who might reasonably have been expected to produce it.

(d) Applying the best evidence rule, an adverse inference should not be drawn unless it can be said that the evidence that is withheld is superior to the evidence already adduced.

138 In the closing submissions for the Defence, it is argued that Aidil was present throughout the entire period of time at Husir’s condominium unit when the alleged repacking of the drugs took place. Hence, if it indeed was the case that such repacking would be in the “plain sight” of Shafiq, then Aidil would surely have witnessed it as well. Not only that, the Defence points out that Aidil was the one who had purchased the Nestle “Lactogen” milk powder box from the mini-mart and placed it on the kitchen cabinet. He is thus a witness to the material events that took place that morning of 14 November 2017 at Husir’s condominium unit. As such, the Defence, relying on *Beh Chew Boo*, submits that, since the Prosecution has not called Aidil as a witness to rebut Shafiq’s evidence that he did not witness any repacking of the drugs, then it must follow that Shafiq’s evidence in this regard stands unrebutted.¹¹⁶

139 On the other hand, the Prosecution’s case is that I should reject Shafiq’s evidence that he was not involved in, or had witnessed, the repacking of the drugs on account of the inconsistencies in Shafiq’s evidence, and because his account of what happened in the condominium unit on 14 November 2017 is incredible. In other words, according to the Prosecution, the testimony from

¹¹⁶ DCS at [121]–[124].

Shafiq himself, when assessed with the objective evidence, is sufficient for the Court to reject his explanations that he had no knowledge of the four packets of methamphetamine in the blue milk powder box. In these circumstances, the Prosecution offered Aidil as a witness to the Defence, and it is for the Defence to call him to support Shafiq's case.

140 The present facts are not exactly analogous to *Beh Chew Boo* as, in that case, the drugs imported by the accused were found in the motorcycle which the accused rode into Singapore, but that motorcycle belonged to someone else, one Lew Shyang Huei ("Lew"), and Lew's DNA was also found on the imported drugs while the accused's DNA was not: see *Beh Chew Boo* at [71]. Therefore, Lew was clearly a *material* witness in *Beh Chew Boo*. I am hesitant to find that Aidil was such a material witness in this case. Regardless, on the application of first principles outlined at [76] and [137] above, I have already found that the evidential burden had shifted to the Prosecution to rebut Shafiq's claim that he did not pack or witness the packing of the blue milk powder box and orange biscuit packet (see [134] above). This is primarily because Shafiq's evidence in this regard is not incredible or implausible. Therefore, I find that the evidential burden shifted to the Prosecution to rebut Shafiq's claim that he did not see or was not involved in the packing of the four packets of methamphetamine in the condominium unit. The Prosecution could have discharged this evidential burden by calling Aidil, but it did not do so. The absence of Aidil's evidence thus strengthens my view that the Prosecution has not rebutted Shafiq's evidence that he did not know the true contents of the blue milk powder box.

Rahilme's luggage bag

141 The Prosecution also places emphasis on the fact that Shafiq took Rahilme's luggage bag (with Rahilme's clothes) with him when he left Husir's condominium flat and returned to Singapore. This was despite the fact that, according to Rahilme, he told Shafiq in Singapore (while waiting for Chan to arrive with his taxi) that he did not want to leave his clothes at Shafiq's Bukit Batok flat. According to Rahilme's evidence, this was because he did not have clothes at home, and he wanted to wash his clothes at home before bringing them back to Singapore.¹¹⁷ In short, Rahilme did not tell Shafiq to bring his luggage back to Singapore, and Shafiq also did not ask Rahilme for permission to do so.¹¹⁸

142 The Prosecution submits that Shafiq told "lie after lie" about why he brought Rahilme's luggage bag back to Singapore.¹¹⁹ In his contemporaneous statements, he said that he had been asked by Rahilme to do so, but this was shown to be untrue by Rahilme's evidence as outlined above. Then, in his first long statement, Shafiq said that Rahilme had told him that the washing machine in the condominium unit was spoilt, and hence he wanted to bring Rahilme's clothes back to his flat at Bukit Batok where they could be laundered. This again was shown to be an untruth by Rahilme's evidence, who testified that the washing machine at his condominium unit was working then.¹²⁰

143 Then, in his evidence at trial, Shafiq claimed that he had brought Rahilme's luggage bag back to Singapore so as to give an excuse for Rahilme

¹¹⁷ Transcript, 7 August 2020, p 75 line 27–p 77 line 13 and p 114 lines 2–4.

¹¹⁸ Transcript, 7 August 2020, p 87 lines 21–26 and p 114 lines 19–26.

¹¹⁹ PCS at [116].

¹²⁰ Transcript, 7 August 2020, p 79 lines 25–27.

to come to Singapore. In this regard, it is not disputed that Rahilme did tell Shafiq to persuade Husir to let Rahilme come back to Singapore. This is because Rahilme enjoyed skateboarding with his friends in Singapore. The Prosecution asks me to reject Shafiq's explanation at trial for taking the luggage bag because it is an afterthought, given that it was not mentioned in his statements to the CNB. Also, Shafiq had already given an excuse to Husir for Rahilme needing to come back to Singapore – that Rahilme had an interview for a job at a restaurant called "Eighteen Chefs".¹²¹ The Prosecution submits that all these lies and inconsistencies show that the real purpose for Shafiq to have taken the luggage bag was because he wanted to create the false impression that he was in Malaysia for a "leisure trip", and to draw attention away from the red plastic bag and its contents.¹²²

144 I am inclined to agree with the Prosecution that Shafiq's evidence as to the reason for having taken Rahilme's luggage bag was a mess of inconsistencies. It is likely that he did take the bag for the purpose as suggested by the Prosecution. Shafiq knew that he was bringing ecstasy pills into Singapore and also the small packet of ice. Hence, it is not unbelievable that he wanted to give a false impression that he was on a genuine holiday trip, instead of a short, hours long visit to Johor where he would be couriering ecstasy pills back to Singapore. Obviously, he did not want to arouse any suspicion because he was carrying with him the packet of ecstasy pills and the small packet of ice. However, while Shafiq's conduct in relation to the luggage bag does show an awareness that he was carrying illicit drugs into Singapore, I am of the view that it still does not show that he *knew* the true contents of the blue milk powder box,

¹²¹ Transcript, 12 August 2020, p 21.

¹²² PCS at [116].

ie, it does not show that Shafiq was aware that the box contained the four packets of methamphetamine.

Moneys Shafiq had handed to Husir

145 The Prosecution also argues that Shafiq was not forthcoming as to the amount of moneys he had withdrawn from various bank accounts and handed to Husir. I accept that the evidence shows that Shafiq had tried to downplay the amounts he withdrew and handed to Husir until he was confronted with the bank statements during cross-examination at trial. Shafiq's explanations that he had forgotten about the precise amounts are not credible because of the large disparity between what he stated in his statements and the amounts reflected in the bank statements. In his statements, Shafiq gave figures ranging from S\$3,000 to S\$9,200 as amounts he had withdrawn for Husir. But the bank statements produced at trial show that he had withdrawn a total of S\$21,390 from Haikal's bank account and S\$21,200 from Husir's bank account after the first and second trips to Johor respectively. I do not accept that Shafiq's memory was so poor that he could come up with a figure so starkly different from the actual figure.

146 What is more likely to be the case is that Shafiq lied in his statements about the amounts that he handed to Husir because he knew that the significantly larger amounts that he actually handed over to Husir would be a clear indicator that he was assisting Husir in selling drugs in Singapore, and collecting the sale proceeds and delivering the sums to Husir in Johor. While I accept that this reflects poorly on Shafiq's credibility as a witness, my duty is to examine the evidence carefully to determine *whether these lies demonstrate an awareness by Shafiq of the true contents of the blue milk powder box*. In my judgment, for the reasons I have elaborated upon above, I do not accept that these lies show

such knowledge on his part. At most, they show that Shafiq was aware that the blue milk powder box might have contained the ecstasy pills and/or the small packet of ice.

147 At this stage, I would emphasise again that Shafiq had explicitly denied knowing how much the 100 ecstasy pills could be sold for. This is because he is not a consumer of ecstasy pills. The Prosecution submits that Shafiq would know that 100 ecstasy pills should only cost around S\$1,500 to S\$3,500, and yet Shafiq withdrew around S\$22,000 from Husir's account when he was in Singapore after the second trip. Thus, it is argued, Shafiq must have been delivering other types of drugs for Husir. I am not able to accept this submission. First of all, there is no evidence *from the witnesses*, such as evidence from an experienced CNB officer, as to how much the ecstasy pills could be sold for in Singapore. The submission that 100 ecstasy pills would cost around S\$1,500 to S\$3,500 was essentially evidence from the bar. Second, the amounts withdrawn after the second trip might have been from the sale of *other* drugs by Husir on *other* occasions and delivered by other couriers. Third, some portion of the S\$22,000 withdrawn by Shafiq might indeed be winnings from SCR888. In short, there is simply insufficient evidence before me to show that Shafiq knew or should have known from the amounts he withdrew that they must relate *only* to the 100 ecstasy tablets he delivered for Husir after the second trip, *and* that the amount received was well in excess of whatever the market price for 100 ecstasy tablets was.

148 In summary, while I accept that Shafiq had deliberately lied in various parts of his investigative statements on various issues, I am unable to agree with the Prosecution that these lies were motivated by a realisation of guilt that he knew the true contents of the blue milk powder box. I find that Shafiq lied in his statements for the purpose of trying to disassociate himself from Husir,

because he knew that Husir was a drug dealer, and he was assisting Husir in what he believed were deliveries of ecstasy pills in Singapore and the collection of the sale proceeds. His motive for lying was because he believed that, if he had confessed to being a courier of ecstasy pills for Husir, he would not be believed if he claimed that he did not know that the true contents of the blue milk powder box were the four packets of methamphetamine.

The SCR888 application and Shafiq's "winnings"

149 As has been mentioned, I find the evidence in relation to the SCR888 application to be quite unsatisfactory. This issue has arisen because Shafiq has tried to explain the amounts of cash he had received in Haikal's bank account – S\$21,390 – from 11 to 13 November 2017 as his and Husir's winnings from gambling on SCR888, and that he had visited Husir in Johor to pass him his share of the winnings. On the other hand, the Prosecution's contention is that it is not possible to win "tens of thousands of dollars" on SCR888 on a regular basis, and these "winnings" were instead the proceeds from Husir's drug dealing, which Shafiq was helping to collect from buyers and pass to Husir in Johor.

150 Shafiq's evidence is that he had won "tens of thousands of dollars" from SCR888 when gambling on the application, together with Husir, during his first and second trip to Johor. Shafiq testified in court that he was able to win such large amounts because of "hack[s]" which Husir had taught him. Also, Shafiq claimed that he also played "live casino" games on SCR888 with Husir, and not just jackpot games. The "live casino" games allowed him to win larger sums of money as compared to jackpot games.¹²³

¹²³ Transcript, 13 August 2020, p 30 line 30–p 34 line 26.

151 The Prosecution urges me to reject Shafiq’s evidence that he won “tens of thousands of dollars” on SCR888 because such a claim was never made in his statements to the CNB. Instead, he stated that the most he had won on SCR888 was S\$3,500, which was a few months before his arrest, and that he would usually win S\$300 to S\$400 every two to three days. The Prosecution points to the bank statements in evidence, which show that the inbound remittances from the SCR888 bank accounts to Haikal’s bank account in November 2017 show that Shafiq did not even win that much money while playing SCR888, let alone “tens of thousands of dollars”.

152 The Prosecution also relies on the evidence of Rohaizat, who testified that he had gambled on SCR888 for a few years, and he had lost more money than he had won. Rohaizat also gave evidence that one could not win big sums of money every day from SCR888. Rohaizat also said that he had not heard of any “hacks”, from Husir or anyone else, which allowed one to win moneys from SCR888 on a guaranteed basis. The Prosecution thus urges me to reject Shafiq’s claims about winning large sums of money on SCR888 on a regular basis.

153 As for playing “live casino” games on SCR888, the Prosecution points to the fact that Shafiq had only ever mentioned in his statements to the CNB that he played jackpot games. They submit that Shafiq fabricated this idea of “live casino” games on SCR888, and that he had learnt “hacks” from Husir to win large sums regularly, in an attempt to explain away the amount of money that he received after the first and second trip to Johor.

154 It is the Prosecution who is raising the moneys in Haikal’s bank account as an issue, and Shafiq has explained that these moneys were a result of his SCR888 winnings. Given that it is undisputed that there exists such a gambling “app”, and that Shafiq plays SCR888 regularly, his claim that he has won large

sums from gambling on SCR888 is not inherently incredible. The evidential burden has thus shifted to the Prosecution to rebut Shafiq's claim. However, I find the state of the evidence in relation to SCR888 to be completely unsatisfactory. Since there is no dispute between the parties that SCR888 is a genuine "app", the question of how SCR888 works surely is a question that can be resolved by objective evidence. For example, the question of whether one can play "live casino" games on SCR888, and whether there are indeed "hacks" to win such games are matters which could have been determined based on objective evidence. What I mean by this is that the Prosecution and/or CNB could have looked into Shafiq's claims by examining the SCR888 "app" and adducing evidence of how it works. Expert evidence could have been called as to whether Shafiq's claims that he won "tens of thousands of dollars" on SCR888 are indeed plausible. Instead, reliance is placed on the anecdotal evidence of Rohaizat that *he* knows of no such "hacks" and that *he* loses more than he wins on the application. Such evidence can hardly be sufficient to show that there are no such "hacks", or that there were no "live casino" games available on the SCR888 "app". I cannot accept that the Court should be made to draw inferences from such inadequate evidence.

155 Having said that, I also find Shafiq's evidence in relation to SCR888 to be wanting in several respects. First, if it is indeed true that Shafiq did win "tens of thousands of dollars" from SCR888, there is no credible reason he would not have mentioned this in his statements to the CNB when he was asked about how much he would win from SCR888. Shafiq's explanation that IO Parthiban, who recorded his statements, might have misunderstood him must be rejected because IO Parthiban was not cross-examined on this point, and it is also contrary to the Agreed Statement of Facts which states that the statements were recorded accurately.

156 Second, the objective evidence in the form of the bank statements of Haikal’s bank accounts, which Shafiq testified was used to top up and withdraw moneys for his SCR888 gambling, do not show large sums being credited from the SCR888 bank accounts. Instead, Haikal’s bank account was credited with large sums of money from other transferors, including cash being deposited at ATMs. Also, Shafiq’s explanation that he received his SCR888’s winnings in his ex-girlfriend’s bank account is unsupported by any objective evidence.¹²⁴

157 Third, while Shafiq explained that the winnings from “live casino” games on SCR888, which he claimed he had been gambling on together with Husir, were deposited into Husir’s bank account after his second trip to Johor, this explanation seems a rather convenient one.¹²⁵ As pointed out by the Prosecution, the relevant bank statements were only disclosed to the Defence after Shafiq’s investigative statements had been recorded. Thus, these were not available during the recording of Shafiq’s investigation statements. These bank statements showed that Shafiq had received thousands of dollars, in bank accounts he had access to, from 11 to 13 November 2017, starting from after his first trip to Johor. I accept the Prosecution’s submission that Shafiq knew that he had to explain why he had withdrawn such large sums of money during this period from Husir’s bank account, and hence he probably came up with the story about joint winnings with Husir from the playing of “live casino” games on SCR888.

158 In my assessment, I find that Shafiq must have known that at least a portion of the moneys that he had withdrawn from Husir’s bank account and Haikal’s bank account from 12 to 14 November 2017 were proceeds from

¹²⁴ Transcript, 13 August 2020, pp 52–53.

¹²⁵ Transcript, 13 August 2020, p 34.

Husir's sale of drugs to persons in Singapore. This must have been clear to Shafiq from certain facts. First, Husir was wanted by the CNB and could not return to Singapore. Second, Husir had asked him to pass some "food items" to Husir's friend during the first trip to Johor. After Shafiq returned to Singapore, and after he delivered the "food items" (which was a "Coco Crunch" box, two to three milk tins, a tin of sardines and a packet of "Maggi" instant noodles) to "Roymeo", S\$14,200 was banked into Haikal's bank account.¹²⁶ Third, during the second trip to Johor, Husir had asked Shafiq to bring 100 ecstasy tablets to Singapore. Shafiq had agreed to do this and, after his return, on the evening of 13 November 2017, he handed the drugs to one "Alan". Shafiq then withdrew the sum of S\$21,200 from Husir's bank account in the evening of 13 November and the early hours of 14 November 2017.

159 In order to distance himself from Husir's drug dealing, and his own involvement, which was to deliver the drugs, withdraw the sales proceeds and hand the sums to Husir, I find that Shafiq did not tell the truth about SCR888 and the so-called winnings from gambling on that application. However, the Prosecution faces the same difficulty as before. While this evidence does indicate that Shafiq was aware that he was helping Husir sell drugs in Singapore, the most the evidence can point to is that he knew that Husir was selling ecstasy pills to customers in Singapore, since the previous sale to "Alan" was only for 100 ecstasy pills, and there is no evidence to suggest what the "food items" for "Roymeo" were. There was no evidence before me that would suggest that Shafiq knew that the drugs he had delivered after the first and second trips to Johor were methamphetamine. In fact, his candid admission about the importation of the ecstasy pills when he returned to Singapore after the second trip and the delivery of such pills to "Alan", only goes to suggest that Shafiq

¹²⁶ AB p 251; P133, p 8.

believed that Husir was only dealing with ecstasy pills. Shafiq’s own evidence is that he does not consume ecstasy and he is not familiar with that drug at all. His evidence in this regard was not challenged in cross-examination. Shafiq also gave unchallenged evidence under cross-examination that he does not know the market value for ecstasy because he has never taken ecstasy before.¹²⁷

160 Therefore, I find that Shafiq’s inconsistent explanations regarding the moneys in Haikal’s bank account is a neutral factor in this case. The highest inference that the evidence can support is that Shafiq knew that the moneys which he received in Haikal’s bank account may be associated with Husir’s dealings with *ecstasy pills*, but not methamphetamine, much less an amount of methamphetamine that attracts the death penalty (“capital amount”).

Peripheral arguments

161 The Prosecution has also put forward several other arguments as to why I should find Shafiq’s account of the events to be unbelievable, but I am unable to agree that I should be driven to that conclusion.

Alleged time needed to pack methamphetamine

162 The Prosecution points out that Shafiq called at 9.13am for the private taxi to arrive at the condominium at 10.30am, and argues that this suggests he knew that time was needed for the methamphetamine to be packed into the blue milk powder box.¹²⁸ I find this argument to be quite a stretch. There are many other possible explanations for Shafiq’s arrangement, including the fact that Shafiq enjoyed spending time playing SCR888 at Husir’s condominium unit.

¹²⁷ Transcript, 17 August 2020, p 10 lines 5–13.

¹²⁸ PCS at [113(f)].

That was a hobby that they had in common. Also, it must not be forgotten that Husir had offered methamphetamine for him and Aidil to consume. Given that they both consumed methamphetamine, I would think that Husir's offer must have been reason for them to stay a bit longer in Johor rather than to return home straight away.

Shafiq's behaviour at Woodlands Checkpoint

163 The Prosecution also relies on Shafiq's behaviour while at the inspection pit at the Woodlands Checkpoint as indicative of the fact that he knew of the four packets of methamphetamine in the blue milk powder box. In particular, the Prosecution points to the evidence that Shafiq did not appear nervous when SSgt Hamdan was checking the red plastic bag's contents until he was shown the contents of one of the silver packets in the blue milk powder box. The Prosecution describes Shafiq's apparent calm as counterintuitive. Second, the Prosecution points to the evidence of Shafiq asking why he was being arrested when he had already been shown the methamphetamine in the blue milk powder box. They argue that Shafiq was merely trying to give the impression that "he was innocent and knew nothing about the drugs" in the blue milk powder box.

164 I do not quite follow the arguments of the Prosecution in this respect. I accept that Shafiq was putting up a front of being calm when the contents of the red plastic bag were first being searched. This is consistent with his defence that he knew that there were ecstasy pills and a small packet of ice in either the blue milk powder box and/or the orange biscuit packet. He must have been putting up a brave front of being unperturbed and calm while SSgt Hamdan was conducting his search. However, his surprise when shown the contents of one of the silver packets in the blue milk powder box, and his questions as to why he was being arrested, are equally consistent with his defence that *he did not*

know that the blue milk powder box contained large amounts of methamphetamine. If anything, I think it is more likely than not that Shafiq was genuinely surprised when he discovered the large amounts of methamphetamine in the blue milk powder box. He was expecting to see milk powder, or perhaps the ecstasy pills and/or the small packet of ice instead. Therefore, I find that Shafiq's surprise at seeing the large amounts of methamphetamine in the blue milk powder box is in fact consistent with his defence.

Unique features in this case

165 To sum up, the mere fact that Shafiq's admission regarding his knowledge of the ecstasy pills and small packet of ice came later and only in his second cautioned statement and eighth long statement rather than in his earlier statements does not *ipso facto* show that Shafiq had completely lied about his knowledge of the contents of the blue milk powder box and orange biscuit packet. When Shafiq's evidence is seen in their full and proper context, it is clear that his defence is not unbelievable, and that his account of some of the inconsistencies in his evidence is also credible, as highlighted at [96] and [121], [124], [148], and [159] above.

166 Bearing in mind the principles outlined at [75] above, I accept the submissions by the Defence that there are unique features in this case which lead me to the conclusion that Shafiq has rebutted the s 18(1)(a) presumption on a balance of probabilities.

- (a) Shafiq consistently denied knowing that the blue milk powder box contained methamphetamine in all of his investigative statements. Shafiq's undisputed contemporaneous conduct during his arrest – that of surprise at the sight of the methamphetamine in the blue milk powder box – is also consistent with his denial of knowledge that the blue milk

powder box contained methamphetamine. While Shafiq did delay his admission regarding his knowledge of the ecstasy pills and small packet of ice in the orange biscuit packet, Shafiq gave an explanation for this that is not inherently incredible, as I have outlined above.

(b) Shafiq was not aware that Husir was selling methamphetamine, and, according to him, there were no large quantities of methamphetamine in Husir's condominium unit.¹²⁹ This is not unbelievable because it is undisputed that Husir's family members, including young children, were also staying in that condominium unit (see [49] above).¹³⁰ This fact would have made it less likely for Shafiq to suspect that the condominium unit contained large amounts of methamphetamine. Further, the mere fact that Husir consumes methamphetamine would not *ipso facto* ground a suspicion in Shafiq that he is a methamphetamine trafficker, much less one that deals with large amounts of methamphetamine.

(c) It is undisputed that Shafiq was only given the small packet of ice (0.97g of methamphetamine) for helping Husir to deliver the red plastic bag into Singapore.¹³¹ Also, it is not the Prosecution's case that Husir paid Shafiq for his previous delivery of drugs to "Alan". This is a factor weighing against a finding that Shafiq knew or even suspected that Husir had just handed him a capital-amount of methamphetamine to deliver in Singapore. Shafiq was delivering the blue milk powder box essentially for barely any reward. The fact that Husir did not once attempt to entice Shafiq with a large reward would not have given Shafiq

¹²⁹ Transcript, 12 August 2020, p 27 lines 16–22.

¹³⁰ Transcript, 12 August 2020, p 28 lines 23–24 and p 30 lines 4–8.

¹³¹ Transcript, 12 August 2020, p 30 lines 20–22.

any basis to infer or suspect that he would be dealing with such a large quantity of methamphetamine, instead of just the 100 ecstasy pills, as he believed.

(d) Shafiq was not involved in, and did not see, the packing of the blue milk powder box.

(e) Shafiq's DNA was also not found on the blue milk powder box, even though the blue milk powder box's exterior and interior surfaces were swabbed by the HSA for DNA. The HSA also swabbed the silver foil packets and the packets of methamphetamine found inside the blue milk powder box, but Shafiq's DNA was also not found on them.¹³² While the absence of DNA is itself a neutral factor (see *Beh Chew Boo* at [65]), the fact that Shafiq's DNA was not found on both the exterior and interior of the blue milk powder box is at least consistent with his claim that he was not involved in the packing of the blue milk powder box and its contents.

(f) While Shafiq had withdrawn about S\$22,000 after his first and second trips to Johor, which the Prosecution submits is too large a sum for it to be winnings from SCR888 and/or sales from ecstasy dealings, the critical point is that there is no objective evidence to show whether it is truly "impossible" to make large winnings from SCR888. As already noted, Shafiq's evidence that he did not know the market value of ecstasy tablets, as he is not himself an ecstasy consumer, was not disputed by the Prosecution.

¹³² AB pp 75–80.

(g) Finally, Shafiq met Husir through a mutual friend (see [21] above). While Shafiq and Husir would not be considered close friends, they are evidently sufficiently well acquainted that Shafiq would allow Husir's son, Rahilme, to sleep in Shafiq's flat in Bukit Batok when Rahilme was in Singapore. This is not a situation whereby Shafiq would have had grounds to believe that Husir might sabotage Shafiq. Husir had explicitly told Shafiq that he would only be delivering ecstasy pills into Singapore, and Husir even showed Shafiq the 100 pills of ecstasy.¹³³

167 On this basis, I find that Shafiq has rebutted the s 18(1)(a) presumption on a balance of probabilities.

168 It is worth highlighting the case of *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16 ("*Farid*"), which I find to be instructive. In that case, the respondent was arrested with two plastic bags containing not less than 386.7g of methamphetamine, which is above the weight of methamphetamine that attracts capital punishment (250g). The respondent's defence was that he had entered into an agreement with his supplier, Bapak, not to deliver more than 250g of methamphetamine. Prior to his arrest, the respondent had allegedly made three other deliveries for Bapak, all of which involved quantities of less than 250g of methamphetamine per delivery. The High Court acquitted the respondent of the capital charge and convicted him of an amended, non-capital charge of possessing 249.99g of methamphetamine for the purpose of trafficking (the "reduced charge").

169 The Court of Appeal dismissed the Prosecution's appeal and upheld the High Court's decision to amend the capital charge to the reduced charge. The

¹³³ Transcript, 12 August 2020, p 27 line 30.

Court of Appeal upheld the High Court’s finding that the respondent had entered into an agreement with Bapak that the weight of methamphetamine for each delivery would not exceed 250g. This was so *even though* the respondent did not have any objective evidence to prove the agreement (*eg*, text messages), and *even though* the respondent did not explicitly mention this alleged agreement in his investigative statements. First, the Court of Appeal found it significant that, while the respondent’s investigative statements were silent on the alleged agreement, the statement recorder conceded that the respondent had given him the “impression” that he would only be delivering less than 250g of methamphetamine. Second, the respondent had, in a number of his investigative statements, mentioned that the weight of the methamphetamine in his possession was 250g. Third, the respondent was being paid a flat rate of \$500 per delivery, and it would have been “odd” for the respondent to agree to be paid a flat rate of \$500 for every single delivery of methamphetamine, regardless of the weight. Again, this claim was not supported by objective evidence (*eg*, text messages): see *Farid* at [25]–[29].

170 While I accept that the facts of *Farid* are not on all fours with the present facts, *Farid* is useful to show that the credibility of an accused person’s claim of his knowledge of what he was carrying can be assessed by reference to the accused person’s past practice (of prior drug runs). In *Farid*, the fact that the respondent always trafficked in less than 250g of methamphetamine lent support to his claim that he had an agreement with his supplier not to traffic in more than 250g of methamphetamine, and that, thus, he did not know that he would be delivering more than 250g of methamphetamine. It was also not fatal to the respondent’s claim that he did not have objective evidence to back up his claim to have had such an agreement. In the present case, Shafiq’s evidence is that his prior drug run for Husir only involved ecstasy pills, and he himself never saw Husir deal with large amounts of methamphetamine. Shafiq also

consistently denied in his investigative statements that he knew that there would be four large packets of methamphetamine in the red plastic bag. This lends support to his claim that he did not know that Husir would have secretly given him a *capital* amount of methamphetamine to import into Singapore in the present occasion. In these circumstances, the evidential burden clearly had shifted to the Prosecution, which, as I have explained, was not adequately rebutted by the Prosecution.

171 As such, I find that Shafiq has rebutted the s 18(1)(a) presumption on a balance of probabilities.

Was Shafiq wilfully blind as to the existence of the drugs?

172 The Prosecution's alternative case on wilful blindness was in relation to the element of possession, and Shafiq's defence was thus targeted at this submission. The Prosecution did not run an alternative case of wilful blindness in relation to the element of knowledge of the nature of the drug.

173 Following the Court of Appeal's pronouncement in *Adili* at [51], it is now well established that there are three requirements to wilful blindness which the Prosecution must prove beyond a reasonable doubt. These three requirements are that:

- (a) the accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind, *ie*, Shafiq must have had a clear, grounded and targeted suspicion of the fact that he was possessing not less than 334.67g of methamphetamine;

- (b) there must have been reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the truth, at least in the context of the fact of possession; and
- (c) the accused person deliberately refused to pursue the reasonable means of inquiry available to him because he wanted to avoid such negative legal consequences as might arise in connection with his knowing that fact.

174 Given the facts at [166(b)] to [166(g)] above, I accept the submission by the Defence that Shafiq did not have a clear and targeted suspicion that the blue milk powder box contained the four packets of methamphetamine, rather than milk powder, the ecstasy pills or the small packet of ice. It bears reiterating that the mere fact that Husir is a known drug dealer does not *ipso facto* ground a suspicion that Shafiq had been handed a *capital* amount of methamphetamine. This is because Shafiq was barely paid anything for the transaction and Husir, an acquaintance that he was familiar with, had explicitly told Shafiq that he was only importing ecstasy pills and 1g of methamphetamine. This also means that, as I have found, he would only have had a suspicion that the blue milk powder box might contain the ecstasy pills and 1g of methamphetamine, *but not a capital amount of methamphetamine*. This also means that, even if Shafiq saw the glue stains on the top of the blue milk powder box, that would just be consistent with his suspicion that the box might contain the ecstasy pills and 1g of methamphetamine, *but not a capital amount of methamphetamine*. There was thus no reason for Shafiq to personally handle the blue milk powder box, or examine it closely, like the way which SSgt Hamdan did. Given my conclusion above, I find that the Prosecution has not shown that Shafiq was wilfully blind to the existence of the 333.7g of methamphetamine that was found in the four silver packets in the blue milk powder box.

Has the s 18(2) presumption been rebutted?

175 Following the foregoing analysis, I find that it has not been proven or presumed that Shafiq possessed the total quantity of 334.67g of methamphetamine that is the subject of the Capital Charge. Thus, s 18(2) of the MDA is not triggered to presume that Shafiq knew the nature of the drug. Shafiq thus cannot be convicted of the Capital Charge.

176 For the above reasons, I find that the Capital Charge has not been made out.

An unaccounted break in the chain of custody?

177 For completeness, I will deal with two remaining issues which were raised by the Defence. The first is whether there was a break in the chain of custody of the drugs. In this regard, it is well established law that the Prosecution bears the burden of proving, beyond a reasonable doubt, that the drug exhibits analysed by the HSA and adduced as evidence at trial are the very drugs that were seized from the accused. This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis: *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 (“*Mohamed Affandi*”) at [39]. On the evidence before me, the Defence argues that the Prosecution has failed to prove an unbroken chain of custody of the methamphetamine which is the subject of the Capital Charge. This is because it is alleged that there was a separate weighing of the drugs that had not been accounted for by the evidence adduced by the Prosecution.

178 The Prosecution’s evidence is that there were two separate times when the drug exhibits were weighed, and no others. The first occurred at the inspection pit at the Woodlands Checkpoint by SSSgt Ritar d/o Diayalah

(“SSSgt Ritar”) at 12.35 pm on 14 November 2017, after Shafiq had been arrested. She weighed the two silver packets in the blue milk powder box, and recorded the approximate weight as 530g (“first weighing”). The second occasion when the drugs were weighed was at about 8.50pm that same day, when the drug exhibits were weighed by IO Parthiban (“second weighing”). This was after SSSgt Ritar had handed custody of the drug exhibits to IO Parthiban for the photography session. In his evidence, IO Parthiban stated that the weights of the drug exhibits were as follows:¹³⁴

Exhibit	A1A1-A1	A1B1A	A1B1B	A1B1C	A1B2B	A1B2A1	Total
Weight	2.0g	66.0g	66.0g	126.5g	2.5g	252.0g	515g

179 The Defence, however, refers to the fact that the station diary records a set of different weights for the drug exhibits:¹³⁵

Details of the weight of the drug exhibits:

- 1) 04 Packets of ice: 540 g
- 2) 01 small packet of ice: 3g
- 3) 01 packet: 100 ecstasy pills.

[emphasis added]

180 The station diary was filled in by Sgt(2) Danial Durham bin Jalil (“Sgt(2) Danial”) on the day of the arrest, as he was the recording officer. At paragraph 5 of his conditioned statement, he references the first weighing by stating that, after SSSgt Ritar weighed the exhibits at about 12.35pm, he “learned that the two [silver] packets of crystalline substance weighed

¹³⁴ AB p 185 at [17].

¹³⁵ P116, p 6.

approximately 530g”.¹³⁶ In his conditioned statement, Sgt(2) Danial does not address the second weighing by IO Parthiban, or the weight of 540g stated in his station diary. During his examination-in-chief, Sgt(2) Danial explained that the weight of 540g as stated in his station diary was not from the first weighing carried out by SSSgt Ritar. Rather, it was from a second weighing carried out by a “special team” from the CNB on the day of the arrest before 9.30 pm.¹³⁷ By this, he is referring to IO Parthiban and his team.¹³⁸

Q: Okay. So can you explain why in paragraph 5 that you say that you learned the two packets of crystalline substance weighed approximately 530 grams, whereas in your station diary you recorded that for four packets of Ice, the weight was 540 grams.

A: The 530 grams was initially weighed *by using our CNB weighing machine*, from my office.

Q: And what about the 540 grams reflected on page 6 of P116?

A: The 540 grams were later weighed *by the CNB forensic team by using their own digital weighings---weighing machine*.

Q: Thank you. ...

...

Court: At page 119, right, para 5, you said that there are two packets of crystalline substance weighing 530 grams, right?

A: Yes, Your Honour.

Court: What two packets are these? You’re talking about the silver packet or you’re talking about the in---what’s inside the silver packet?

A: *The silver packets*, Your Honour.

...

¹³⁶ AB p 119 at [5].

¹³⁷ Transcript, 4 August 2020, p 103 lines 5–7.

¹³⁸ Transcript, 4 August 2020, p 96 line 22–p 97 line 26.

Court: ... at page 6, right, the last page of your station diary, when you say four packets of Ice, weighing 540 grams, what packets are you referring to?

A: This is the packets which was later recovered by the CNB forensic team when they open up the packaging.

Court: That means inside the silver packets.

A: Yes, Your Honour. *And---and they weighed it all together by using their digital weighing scale and in---and the sum together is about 540 grams.*

[emphasis added]

181 As for the figures that Sgt(2) Danial recorded in the station diary, he gave evidence that he was informed about the weights by SSSgt Ritar, after the second weighing by IO Parthiban's team. The figures in the station diary were not from the first weighing. He knows this because he was involved in the first weighing that was carried out by SSSgt Ritar. In other words, Sgt(2) Danial's evidence is that the weight of 540g in the station diary is *from the second weighing*.

182 When cross-examined on these figures in the station diary, SSSgt Ritar gave evidence that she did not give Sgt(2) Danial these figures.¹³⁹ She denies having informed Sgt(2) Danial about the weights of the drug exhibits from the second weighing of the drugs by IO Parthiban. However, she does recall telling Sgt(2) Danial about the weight of the packets of the methamphetamine in the blue milk powder box as 530g after the first weighing.

183 There were two other officers who gave evidence on this issue. SSSgt Lee Swee Leng ("SSSgt Swee Leng"), who was present at the second weighing, gave evidence that she did not give Sgt(2) Danial the figures that were recorded

¹³⁹ Transcript, 7 August 2020, p 126 line 3–p 127 line 15.

in the station diary.¹⁴⁰ IO Parthiban's evidence is that, after he took over custody of the drug exhibits from SSSgt Ritar, he carried out the weighing of the drugs. There was no other weighing of the drugs, other than the weighing he carried out at around 8.50pm on 14 November 2017.¹⁴¹ He did not add up the total weights of the drug exhibits, or communicate the total weight of the drug exhibits to anyone, but he remembers orally communicating the individual drug exhibit weights to the Woodlands Checkpoint team and the Ang Mo Kio Division team, who were present to assist in the escorting of the suspects.¹⁴² He can confirm that he told SSSgt Ritar the figures, but he cannot recall who else he told from the Woodlands Checkpoint team. He remembers that he did not tell SSSgt Ritar that the small packet of methamphetamine weighed 3g.¹⁴³

184 The Defence also points out that the weights recorded in the station diary are so different from the weights obtained by SSSgt Ritar from the first weighing and that obtained by IO Parthiban from the second weighing that it could not have been a mistake by Sgt(2) Danial when he recorded the figures in the station diary. In other words, Sgt(2) Danial must have been given a set of figures by someone in respect of a *separate* weighing of the drug exhibits. Since any such *separate* weighing of the drugs has not been accounted for in the evidence, the Defence submits that there has been a break in the chain of custody of the drug exhibits.

185 The Prosecution rejects the accusation that there has been a break in the chain of custody of the drug exhibits. In their closing submissions, the

¹⁴⁰ Transcript, 5 August 2020, pp 85–86.

¹⁴¹ Transcript, 6 August 2020, pp 27–28.

¹⁴² Transcript, 6 August 2020, pp 30 and 60–61.

¹⁴³ Transcript, 6 August 2020, pp 62–64.

Prosecution lays out in painstaking detail all the evidence from the various law enforcement officers from when the time the drugs were first seized from Shafiq until they were handed over to the HSA for analysis.¹⁴⁴ They point out that every moment where the drugs were handled by the various officers has been accounted for in the evidence, and there is no evidence of any separate weighing of the drugs. In sum, the chain of custody of the drug exhibits was as follows.

(a) On 14 November 2017 (the day of arrest), after the blue milk powder box had been opened by SSgt Hamdan at the inspection pit at Woodlands Checkpoint and methamphetamine was found in one of the silver packets (see [6] above), SSSgt Hamdan called the CNB for assistance at about 12.09pm. Sgt(2) Danial arrived at about 12.17pm and SSSgt Ritar arrived at about 12.35pm. SSSgt Ritar then carried out the first weighing of the two silver packets. This was the only time she weighed the drug exhibits.¹⁴⁵

(b) At about 1.15pm, SSSgt Ritar then took custody of, *inter alia*, the orange biscuit packet and the blue milk powder box (and its contents) and brought them to the CNB Woodlands Office and placed them in a safe (“Safe”) in the presence of Shafiq, Aidil and Chan. SSSgt Ritar was the only person who knew the passcode to the Safe.

(c) Then, from about 2.15pm to 5.00pm, when three contemporaneous statements were recorded from Shafiq by Sgt(2) Muhammad Asadullah bin Mohamed Said (“Sgt(2) Asadullah”), SI Azman, and SSgt Hazwan at 2.15pm, 2.20pm, and 3.30pm respectively, SSSgt Ritar gave the blue milk powder box and orange biscuit packet to

¹⁴⁴ PCS at [160].

¹⁴⁵ Transcript, 7 August 2020, p 129; AB p 122 at [6].

those respective statement recorders before the statements were recorded so that they could show them to Shafiq during the statement recording process. After each statement was recorded, SSSgt Ritar retrieved the exhibits from the respective statement recorder.¹⁴⁶ SSSgt Ritar then put the exhibits back into the Safe.¹⁴⁷

(d) After the contemporaneous statements were recorded, the processing and photography of the drug exhibits began at about 7.25pm at the CNB Woodlands Office. IO Parthiban, SSSgt Swee Leng, and SSSgt Ritar, three CNB Forensic Response Team (“FORT”) officers, and a team of CNB officers from the CNB office at Ang Mo Kio Police Division (who had been activated to assist with escorting the suspects) were present. Before the exhibit-processing began, SSSgt Ritar retrieved all the exhibits from the safe, and gave them to IO Parthiban for the exhibit processing and second weighing.

(e) The weighing concluded at about 8.55pm. Thereafter, at about 9.05pm, IO Parthiban and SSSgt Swee Leng took custody of all the drug exhibits and left for CNB Headquarters (“HQ”). Upon arriving at CNB HQ, IO Parthiban placed the exhibits in a cupboard in his room, locked the cupboard, and locked his room. No one besides IO Parthiban had access to the key to his cupboard and his room.¹⁴⁸

(f) On 16 November 2017, IO Parthiban submitted the drugs to the HSA for analysis.¹⁴⁹

¹⁴⁶ Transcript, 7 August 2020, p 119–120; Transcript, 4 August 2020, p 82.

¹⁴⁷ Transcript, 4 August 2020, p 82.

¹⁴⁸ AB p 186 at [19]; Transcript, 6 August 2020, p 60.

¹⁴⁹ AB p 188 at [34].

186 Therefore, the Prosecution argues that there cannot be any reasonable doubt as to the chain of custody.

Analysis

187 From my assessment of the evidence and the submissions of the parties, I find that there is no reasonable doubt that the chain of custody was intact and remained unbroken. My reasons are as follows.

188 It first bears outlining what is *not* at issue. The Defence does not dispute each link of the chain of custody established by the Prosecution outlined at [185] above. In other words, the movement of the drug exhibits from the point of seizure to the point of HSA analysis has been fully accounted for, and the issue is not that there was a period of time when the drug exhibits were stored at an unknown place or by unknown persons.

189 Furthermore, the issue here is also not that there is an unexplained difference between the gross weights of drug exhibits measured by the CNB (“CNB weights”) – 512.5g (515g minus 2.5g from exhibit A1B2B) – and those measured by the HSA (“HSA weights”) – which is 497.57g. The latter issue would raise the question of whether the integrity or identity of the drug exhibits in question have been compromised: *Lim Swee Seng v Public Prosecutor* [1995] 1 SLR(R) 32 at [26]. In circumstances where the exhibits have been accounted for at every point in time, the existence of weight discrepancies cannot raise any doubt as to their identity. Weight discrepancies are also of lesser concern where there is a uniform discrepancy between the CNB and HSA weights. In such cases, the differences are usually attributed to a weighing scale error or the manner in which the drug exhibits were weighed. These explanations were accepted in *Public Prosecutor v Parthiban Kanapathy* [2019] SGHC 226 at [134], where the High Court noted that the HSA weights were consistently about

1% heavier than the CNB weights. In this case, the CNB weights of the four silver packets in the blue milk powder box are consistently about 3–4g heavier than the HSA weights, and the movement of the drug exhibits from the point of seizure to the point of HSA analysis has also been fully accounted for.

190 The Defence’s main contention is that there was a *separate* weighing of the drugs that was seemingly unaccounted for, since the weight of 540g stated in the station diary is different from the weights from the first weighing (530g) and second weighing (515g) by SSSgt Ritar and IO Parthiban respectively.

191 In this case, Sgt(2) Danial’s evidence is that he received the information as to the weights he recorded in the station diary from SSSgt Ritar. His evidence in this regard was not challenged. That being the case, if the Defence’s contention is accepted, that would mean that SSSgt Ritar must have relinquished custody of the drug exhibits to someone else, who then weighed the drugs. However, the Defence did *not* put or suggest to SSSgt Ritar that she handed the drug exhibits to anyone, while they were in her custody.

192 Critically, it is clear from his evidence that Sgt(2) Danial had recorded down the weight in the station diary from *the second weighing*. Sgt(2) Danial himself testified that the weight in the station diary came from the weighing done by the “CNB forensic team” by IO Parthiban using the CNB digital weighing scale (see [180] above). This is clearly the truth because, as Sgt(2) Danial himself also testified (see [180] above), the figures in the station diary record a figure for the weight of the “04 [smaller] packets of ice” (as 540g), and not the weight of the *two* silver foil packets. The four smaller packets (found within the two silver foil packets), together with the ecstasy pills, were *not* discovered until *after* SSSgt Ritar had completed the first weighing and IO Parthiban had taken over custody of all the exhibits from SSSgt Ritar (before

7.25pm on 14 November 2017 for the processing and photography of the drug exhibits). In other words, before the photography of the drug exhibits, no CNB officer, including SSSgt Ritar, knew that there were drugs in the orange biscuit packet.¹⁵⁰ It was during this processing of the drug exhibits that IO Parthiban had opened up the orange biscuit packet, and the small biscuit packets inside, and counted (wrongly) the ecstasy pills (see [9] above). It was also after IO Parthiban took over the drug exhibits for the photography session that the “04 [smaller] packets of ice” inside the two silver foil packets were extracted. Hence, I find that the figures recorded by Sgt(2) Danial in the station diary must have arisen after IO Parthiban took over the drug exhibits.

193 The next question is then whether IO Parthiban had carried out a separate weighing of the drug exhibits, or whether he had relinquished control of the drug exhibits to someone else who carried out a separate weighing. However, the Defence did *not* put or suggest to IO Parthiban that he had given up custody of the drug exhibits to anyone, or that he himself had carried out a separate weighing of the drug exhibits. IO Parthiban himself does not state this. His evidence was that, after the weighing concluded, he and SSSgt Swee Leng took the drug exhibits to CNB Headquarters, where he then kept them locked in his cupboard (to which only he had access) before he submitted them to HSA for analysis on 16 November 2017.¹⁵¹ There was thus no separate weighing of the drug exhibits in addition to the first and second ones. Indeed, both IO Parthiban and SSSgt Swee Leng testified that there was no separate weighing done by the FORT officers. They knew this because they arrived at the scene

¹⁵⁰ Transcript, 6 August 2020, p 23.

¹⁵¹ AB p 188 at [34]; Transcript, 6 August 2020, p 60.

before the FORT officers, and were with them until they left Woodlands Checkpoint.¹⁵²

194 IO Parthiban also testified that, at the time, he was not handling any other case and did not have any other drug exhibits.¹⁵³ Thus, he could not have mixed up Shafiq's drug exhibits for another set of exhibits.

195 Furthermore, IO Parthiban testified that, after the weighing of the drug exhibits, he orally communicated the *individual weights* of the exhibits to some of the CNB Woodlands Checkpoint officers and CNB Ang Mo Kio officers present. IO Parthiban did not add up the individual weights at the time (to derive 515g), and therefore *did not communicate the total weight* of the exhibits to anyone at the CNB Woodlands office.¹⁵⁴

196 Therefore, the proper inference to be drawn is that Sgt(2) Danial must have been mistaken when he thought that SSSgt Ritar had told him that the weight of the four packets of methamphetamine from the second weighing was 540g. SSSgt Ritar herself said she did not tell Sgt(2) Danial the weight of the drugs from the second weighing (see [182] above), so this itself already indicates that Sgt(2) Danial's memory on this is hazy. The fact that Sgt(2) Danial recorded the *total weight* of the four packets of methamphetamine even though IO Parthiban orally communicated the *individual weights* of each of the four packets of ice methamphetamine leads to the inference that Sgt(2) Danial might have made a mistake when he wrote down the weights, or in adding up

¹⁵² Transcript, 5 August 2020, pp 78 and 87; Transcript, 6 August 2020, pp 22 and 27–28; AB, p 177 at [3].

¹⁵³ Transcript, 6 August 2020, p 60.

¹⁵⁴ Transcript, 6 August 2020, pp 30 and 60–61.

the individual weights of the four packets of methamphetamine to arrive at an erroneous total weight of 540g, which he then recorded in the station diary.

197 Given the above, the only reasonable and logical conclusion is that, after the second weighing, Sgt(2) Danial had been told the wrong individual weights by either SSSgt Ritar or IO Parthiban, or that he heard the numbers wrongly, or that there were errors in his addition of the individual weights told to him.

198 Ultimately, as aforementioned, the Prosecution has adduced, in painstaking detail, the evidence of all the witnesses who were involved in the chain of custody of the drugs, and the totality of this evidence shows beyond a reasonable doubt an unbroken chain of custody which accounts for the movement of the drug exhibits at every point from seizure to analysis.¹⁵⁵ A comparison of the gross weights measured by HSA (see [8] above) and the CNB weights (see [178] above) also shows that the CNB weights were uniformly slightly more than the HSA weights in this case (with the exception of exhibit “A1A1-A1” (which has a difference of 0.55g), the CNB weights of the four packets of methamphetamine are between 3 and 4 grams more than their HSA weights). Applying the considerations at [177] and [189] to this case, I am satisfied that the Prosecution has proven beyond a reasonable doubt that there was an unbroken chain of custody of the drug exhibits in this case.

Did the Prosecution breach their *Kadar* obligation?

199 For completeness, I turn to the final contention raised by the Defence. In *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 (“*Kadar*”) at [113], the Court of Appeal held that the Prosecution has a duty to disclose to the Defence (a) any unused material that is likely to be admissible

¹⁵⁵ PCS at [160].

and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused, and (b) any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused. Critically, on both the foregoing limbs, the *Kadar* obligation “will not include material which is neutral or adverse to the accused – it only includes material that tends to undermine the Prosecution’s case or strengthen the Defence’s case”. The Prosecution’s obligation of disclosure is a continuing one and only ends when the case has been completely disposed of, including any appeal. Since then, this has been referred to almost universally by prosecutors, defence counsel and judges as the *Kadar* obligation.

200 In this case, the Defence argues that the Prosecution was late in disclosing reports by the Technology Crime Forensic Branch (“TCFB”), Technology Crime Division of the Criminal Investigation Department (“TCFB reports”) (exhibits marked as P119, P120 and P121) without any reasonable excuse. The three TCFB Reports are dated 26 March, 4 June and 22 July 2020. They are in respect of (a) records extracted from Shafiq’s, Rahilme’s and Aidil’s handphones (the “Phone Records”) and (b) bank documents relating to Shafiq’s, Haikal’s and Husir’s bank accounts (the “Bank Documents”). The Prosecution extended copies of the three TCFB Reports to the Defence on 23 July 2020. The Defence argues that P119 and P120, which are reports dated 26 March 2020 and 4 June 2020, should have been made available to them much sooner than 23 July 2020. They thus argue that the Prosecution has breached their *Kadar* obligations and that the Defence was prejudiced because of the relatively short

time they had to properly consider the TCFB Reports and “incorporate” their contents into the Defence’s case.¹⁵⁶

201 I am unable to agree with the Defence’s submissions in this regard. As emphasised at [199] above, the *Kadar* obligation deals with *unused material* that may *undermine the Prosecution’s case or strengthen the Defence’s case*. The TCFB Reports *were used* by the Prosecution as part of their case. In other words, the material was not “unused”. Not only that, it is unclear how the content of the TCFB Reports in any way undermined the Prosecution’s case or strengthened the Defence’s case. In many respects (as I have explained in the course of the judgment), the phone and bank records were either neutral or were *adverse* to Shafiq, in that they showed him to have been untruthful in his statements given to the CNB. The *Kadar* duty does not apply to material of such nature. This is distinct from a material witness’s statement, which the Prosecution has a duty to disclose to the Defence, whether or not that statement was favourable, neutral, or adverse to the accused person: *Nabill* at [39] and [41(a)].

202 Furthermore, in *Kadar* at [120]–[121], the Court of Appeal also emphasised that, even where there is a breach of the Prosecution’s *Kadar* obligations, the specific consequences of such a breach depends on the specific facts of each case, including whether the late disclosure of the material amounts to a “material irregularity that occasions a failure of justice” or “renders the conviction unsafe”:

120 In our view, there is no reason why a failure by the Prosecution to discharge its duty of disclosure in a timely manner should not cause a conviction to be overturned if such an irregularity *can be considered to be a material irregularity that occasions a failure of justice*, or, put in another way,

¹⁵⁶ DCS at [147].

renders the conviction unsafe ... The usual rules and procedures for the adducing of fresh evidence in appellate proceedings would be applicable. It should be pointed out that not all non-disclosures will be attributable to fault on the part of the Prosecution (or a lack of *bona fides*); nevertheless, ... where such non-disclosures result in a conviction being unsafe the result will still be the overturning of that conviction. In considering whether to order a retrial, the following passage from *Beh Chai Hock* ... should be noted:

When exercising its discretion whether to order a retrial, *the court must have regard to all the circumstances of the case*. The court must also have regard to two competing principles. One is that persons who are guilty of crimes should be brought to justice and should not be allowed to escape scot-free merely because of some technical blunder by the trial judge in the course of the trial. The countervailing principle is one of fairness to the accused person. The Prosecution has the burden of proving the case against the accused person; if the Prosecution has failed to do so once, it should not ordinarily get a second chance to make good the deficiencies of its case ...

121 Where disclosure, for whatever reason, is made after the beginning of trial, the court may have to grant an adjournment of sufficient duration *to allow defence counsel time to consider the effect of the disclosed material and to incorporate it into their case if necessary*.

[emphasis added]

203 In this case, even assuming *arguendo* that the Prosecution had somehow breached its *Kadar* duty, I was doubtful as to whether there was any possible prejudice to Shafiq arising from the delay in the disclosure of P119 and P120. As I pointed out to defence counsel at the oral closing submissions, the TCFB Reports were disclosed to the Defence 11 days before the trial began, and 19 days before Shafiq took the stand. I also pointed out that defence counsel had not, at any stage, asked for an adjournment of the trial because of the need for more time to deal with the newly disclosed documents. Not only that, whatever time was requested for by defence counsel to take Shafiq's instructions in the course of the trial was not opposed by the Prosecution, and was granted by the Court. As such, I find the submission that the Prosecution had breached their

Kadar obligations, and that this resulted in serious prejudice to the accused, to be one that is unsustainable on the facts of this case.

Conclusion

204 For the foregoing reasons, I find that the present Capital Charge against Shafiq has not been made out. Accordingly, Shafiq cannot be convicted of that charge.

205 However, Shafiq also admitted to knowingly importing the drugs contained in the orange biscuit packet, *viz*, 0.97g of methamphetamine in exhibit A1A1-A1 and 10.88g of MDMA contained in exhibit A1A1-A2A.

206 The importation of the 10.88g of MDMA is the subject of a third charge (“Third Charge”) which was stood down at the commencement of this trial.¹⁵⁷ There is also another charge for drug consumption (of methamphetamine), an offence under s 8(b)(ii) read with s 8A and punishable under s 33(1) of the MDA, which was stood down at the commencement of trial (“Second Charge”). It is thus for the Prosecution to determine if it wishes to proceed with those remaining charges. Shafiq must then decide how he wishes to plead to those remaining charges. In this regard, I have also borne in mind the Court of Appeal’s recent guidance in *Beh Chew Boo v Public Prosecutor* [2021] SGCA 44 on the doctrines of double jeopardy, issue estoppel, and, critically, abuse of process. It is clear that none of these doctrines are at issue in this case, because the stood down charges do not raise identical issues of fact or law as the present Capital Charge. Therefore, it would not be impermissible

¹⁵⁷ Transcript, 4 August 2020, p 6 lines 3–10; see Prosecution’s Opening Statement dated 28 July 2020, Annex A.

for the Prosecution to reinstate and proceed with the stood down Second and Third Charges, should it choose to do so.

207 As for the importation of 0.97g of methamphetamine contained in exhibit A1A1-A1 (the small packet of ice), this 0.97g of methamphetamine is a subset of the 334.67g of methamphetamine that is the subject of the Capital Charge. Therefore, the question arises as to how this Court can amend the Capital Charge to a reduced charge of importation of 0.97g of methamphetamine under s 7 of the MDA. For completeness, I note that s 7 of the MDA does not require the offender to have imported the controlled drug for the purpose of trafficking (*Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 at [67] and [70]), so the fact that Shafiq imported this 0.97g of ice for his own consumption is immaterial for the purpose of an importation charge under s 7 of the MDA.

208 There are two possible bases for this. The first is to amend the Capital Charge via s 139 of the CPC. Sections 138 and 139 of the CPC provide as follows:

If it is doubtful what offence has been committed

138. If a single act or series of acts is such that it is doubtful which of several offences the provable facts will constitute, the accused may be charged with all or any of those offences and any number of the charges may be tried at once, or he may be charged in the alternative with any one of those offences.

Illustrations

(a) A is accused of an act that may amount to theft or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft or receiving stolen property or criminal breach of trust or cheating.

(b) A states on oath before the committing Magistrate that he saw B hit C with a club. Before the General Division of the High

Court, A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

When person charged with one offence can be convicted of another

139. If in the case mentioned in section 138 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under that section, he may be convicted of the offence that he is shown to have committed although he was not charged with it.

Illustration

A is charged with theft. In evidence it appears that he committed the offence of criminal breach of trust or of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods, as the case may be, although he was not charged with that offence.

209 These provisions were analysed and construed by the Court of Appeal in *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 (“*Wee Teong Boo*”) at [89]–[116]. Sections 138 and 139 concern the situation where the court may convict the accused person on a charge that has not been framed. Section 139 of the CPC is an exception to the general rule that there has to be a separate charge and trial for each offence brought against the accused person. To invoke the power under s 139 to convict an accused person of an unframed charge, the court must be satisfied that the case comes within the ambit of s 138 of the CPC. Section 138 applies when there is a factual base consisting of an act or a series of acts and that factual base may or may not be the entirety of the known factual substratum. Whether s 139 is available would necessitate consideration of the following factors: (a) what the relevant factual base was; (b) what the areas of factual uncertainty were; (c) what were the potential offences that could be constituted by the provable facts as a result of the factual uncertainties; and (d) whether the unframed charge fell within those potential offences: *Wee Teong Boo* at [98] and [115].

210 Where s 139 is concerned, the court must be satisfied that there is no prejudice to the accused person and, in particular, that the same issues of fact were in fact raised and ventilated as would have been the case had the unframed charge been framed. The primary consideration is that a conviction on an unframed charge must not cause any injustice, and it must not affect the presentation of the evidence in connection with the defence of the accused person had the unframed charge been framed in the first place: *Wee Teong Boo* at [98].

211 The second possible way is via ss 128–129 of the CPC, which pertain to the court’s power to substitute the charge either by amending it or framing a new charge. These provisions provide as follows:

Court may alter charge or frame new charge

128.—(1) A court may alter a charge or frame a new charge, whether in substitution for or in addition to the existing charge, *at any time before judgment is given.*

(2) A new or altered charge must be read and explained to the accused.

Trial after alteration of charge or framing of new charge

129.—(1) If a charge is altered or a new charge framed under section 128, the court must immediately call on the accused to enter his plea and to state whether he is ready to be tried on this altered or new charge.

(2) If the accused declares that he is not ready, the court must duly consider any reason he gives.

(3) If the court thinks that proceeding immediately with the trial is unlikely to prejudice the accused’s defence or the prosecutor’s conduct of the case, then it may proceed with the trial.

(4) If the court thinks otherwise, then it may direct a new trial or adjourn the trial for as long as necessary.

[emphasis added]

212 As it is clear from the italicised text of s 128(1) above, s 128(1) may only be invoked *prior* to the delivery of judgment. Therefore, I find s 139 to be more appropriate in this case.

213 Section 139 clearly applies in relation to Shafiq’s knowing importation of the 0.97g of methamphetamine in exhibit A1A1-A1. It was always the Prosecution’s case from the outset until its closing submissions that Shafiq knowingly imported *all* the 334.67g of methamphetamine, *including* the 0.97g of methamphetamine, that is found in the blue milk powder box and orange biscuit packet. Shafiq himself admits knowingly importing the 0.97g of methamphetamine in exhibit A1A1-A1 in the orange biscuit packet. Therefore, this is a case whereby s 138 applies because there is a factual base consisting of an act (Shafiq importing the 334.67g of methamphetamine in the blue milk powder box and orange biscuit packet), and it is uncertain or “doubtful” which of several offences the provable facts will constitute (importation of the full 334.67g of methamphetamine, or only of a portion of that full quantum, *eg*, 0.97g). The proposed unframed charge – importation of 0.97g of methamphetamine under s 7 of the MDA – clearly falls within those potential offences. There is certainly no injustice or unfairness to Shafiq in framing and convicting him of this unframed charge of importing 0.97g of methamphetamine, since he himself admits to it, and that was also how the Prosecution ran its case against him and how the evidence was presented.

214 In sum, I convict Shafiq of the following amended charge, pursuant to s 139 of the CPC:

That you, Muhammad Shafiq Bin Shariff, on 14 November 2017 at about 12.05pm, at the Woodlands Checkpoint, Singapore, did import a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), *to wit*, 1 packet containing not less than 1.45g of crystalline substance which was analysed and found to contain not less

than 0.97g of methamphetamine, without authorisation under the MDA or the regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33(1) of the MDA.

215 The Prosecution is to indicate, in writing, to the Court and Defence Counsel its intentions regarding the remaining stood down Second and Third Charges (as highlighted at [206] above) within two weeks from the date of this judgment. I will then deal with sentence afterwards.

Ang Cheng Hock
Judge of the High Court

April Phang Suet Fern, Wuan Kin Lek Nicholas and Tan Ee Kuan
(Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Syazana Binte Yahya and Koh
Wen Rui Genghis (Eugene Thuraisingam LLP) for the accused.
