

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

**[2021] SGHC 16**

Criminal Case No 19 of 2020

Between

Public Prosecutor

And

- (1) Salzawiyah Binte Latib
- (2) Shisham Bin Abdul Rahman
- (3) Jumadi Bin Abdullah

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**JUDGMENT**

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]  
[Criminal Procedure and Sentencing] — [Statements] — [Voluntariness]

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**Public Prosecutor**  
**v**  
**Salzawiyah bte Latib and others**

**[2021] SGHC 16**

General Division of the High Court — Criminal Case No 19 of 2020  
Tan Siong Thye J  
14–17 July, 18, 19, 21, 25–28, 31 August, 22, 23 September, 11,  
12 November 2020

26 January 2021

Judgment reserved.

**Tan Siong Thye J:**

**Introduction**

1 The first accused is Salzawiyah Binte Latib (“Salzawiyah”), a 43-year-old female Singaporean. The second accused is Shisham Bin Abdul Rahman (“Shisham”), a 48-year-old male Singaporean. The third accused is Jumadi Bin Abdullah (“Jumadi”), a 47-year-old male Singaporean. I shall refer to Salzawiyah, Shisham and Jumadi collectively as “the accused persons”.

2 At the material time, Salzawiyah and Jumadi were in a romantic relationship and they stayed together in a rented one-bedroom condominium apartment unit at Leville iSuites, located at 28 Ceylon Road, Singapore (“the Unit”). Shisham was Jumadi’s friend, who stayed at the Unit the few weeks prior to the accused persons’ arrests.

3 This is a joint trial of the accused persons conducted under s 143(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Initially, each of the accused persons faced one charge under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) and s 34 of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”) for trafficking in not less than 42.27g (analysed weight) of diamorphine in furtherance of the common intention of them all.

4 In the midst of the trial, the Prosecution unconditionally reduced the charge against Salzawiyah, based on compassionate grounds, to a non-capital charge of trafficking in diamorphine. But Salzawiyah still faces a charge for the offence of trafficking under s 5(1)(a) read with s 5(2) of the MDA and s 34 of the Penal Code, except that the analysed weight of diamorphine reflected in her charge was amended to “not less than 14.99g” rather than “not less than 42.27g”.<sup>1</sup> However, the gross weight of the diamorphine in her amended charge remains the same as in the charges against the other accused persons, *ie*, 3,307.92g.

5 The charges against the accused persons were amended at the end of the trial to exclude some of the diamorphine that had initially formed part of the subject matter of the accused persons’ charges. The Prosecution has accepted Jumadi’s assertion in his statements that some packets found in the Unit were meant for his consumption. However, in the computation of the diamorphine for the purpose of trafficking in the original charges against the accused persons, the Prosecution had erroneously included three packets of diamorphine seized from the Unit marked B1B, B1C1 and B1D1 which Jumadi said were for his

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<sup>1</sup> Exhibit A1.1; Notes of Evidence (“NEs”), 26 August 2020, at p 2, line 24 to p 5, line 21.

own consumption. Accordingly, the Prosecution amended the charges against the accused persons. The charges against Shisham and Jumadi were amended to reflect a lower gross weight and analysed weight of the diamorphine.<sup>2</sup> The charge against Salzawiyah was also amended to show a lower gross weight of diamorphine but the analysed weight of diamorphine remains unchanged (*ie*, 14.99g).

6 The amended charge against Jumadi was framed as follows:<sup>3</sup>

You, [Jumadi Bin Abdullah]

...

are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Shisham Bin Abdul Rahman, NRIC No S[xxxx]197F, and one Salzawiyah Binte Latib, NRIC No S[xxxx]495J, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (**'MDA'**), *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 41.86g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA, and further, upon your conviction for the said offence, you may alternatively be liable to be punished under s 33B of the MDA.

[emphasis in original]

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<sup>2</sup> Prosecution's Closing Submissions ("PCS"), at para 31.

<sup>3</sup> Exhibit A3.1.

7 The amended charge against Shisham was framed as follows:<sup>4</sup>

You, [Shisham Bin Abdul Rahman]

...

are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Jumadi Bin Abdullah, NRIC No S[xxxx]319J, and one Salzawiyah Binte Latib, NRIC No S[xxxx]495J, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (**'MDA'**), *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 41.86g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA, and further, upon your conviction for the said offence, you may alternatively be liable to be punished under s 33B of the MDA.

[emphasis in original]

8 The further amended charge against Salzawiyah was framed as follows:<sup>5</sup>

You, [Salzawiyah Binte Latib]

...

are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Jumadi Bin Abdullah, NRIC No S[xxxx]319J, and one Shisham Bin Abdul Rahman, NRIC No S[xxxx]197F, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (**'MDA'**), *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 14.99g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of

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<sup>4</sup> Exhibit A2.1.

<sup>5</sup> Exhibit A1.2.

the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA.

[emphasis in original]

9 On 12 November 2020, the above charges against the accused persons were read and explained to them. They indicated that they intended to claim trial to these charges. Their respective counsel confirmed that there was no need to call further witnesses or recall witnesses. The amended charges would not prejudice them, as the amount of diamorphine stated in the charges had in fact been lowered.

10 If convicted, Jumadi and Shisham are still liable to capital punishment under s 33(1) of the MDA read with the Second Schedule to the MDA, unless s 33B of the MDA applies. On the other hand, Salzawiyah, if convicted, faces a minimum custodial sentence of 20 years' imprisonment and a maximum custodial sentence of 30 years' imprisonment or imprisonment for life, pursuant to s 33(1) of the MDA read with the Second Schedule to the MDA.

### **The facts**

#### ***The arrests***

11 On 22 June 2017 at or about 2.13pm, a party of Central Narcotics Bureau (“CNB”) officers raided the Unit. Upon entering the Unit, the CNB officers arrested the accused persons.<sup>6</sup>

12 The CNB officers searched the Unit and seized a variety of drugs besides diamorphine, such as methamphetamine (ice), cannabis, methadone,

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<sup>6</sup> Agreed Statement of Facts (“ASOF”), at paras 6–7.

nimetazepam (Erimin 5), ecstasy, *etc.*<sup>7</sup> There were also many drug trafficking paraphernalia found in the Unit such as digital weighing scales, numerous small empty plastic sachets, an electric plastic sealer, *etc.*<sup>8</sup> The following packets of diamorphine which form the subject matter of the amended charges against the accused persons were recovered from different locations of the Unit.<sup>9</sup>

(a) A red bag (marked A1) was recovered from the floor near the television console in the Unit's living room. Drug trafficking paraphernalia and diamorphine of various quantities were found in the red bag. The diamorphine that constitutes a portion of the gross diamorphine reflected in the charges was found in four taped bundles (marked A1A, A1B, A1C, and A1D) and two black packets (marked A1E and A1F) in the red bag. The taped bundles and black packets contained the following:

- (i) the bundle marked A1A contained one packet of diamorphine (marked A1A1);
- (ii) the bundle marked A1B contained one packet of diamorphine (marked A1B1);
- (iii) the bundle marked A1C contained one packet of diamorphine (marked A1C1);
- (iv) the bundle marked A1D contained one packet of diamorphine (marked A1D1);

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<sup>7</sup> ASOF, at para 40.

<sup>8</sup> Exhibits A1G1, A2C1, A2E1, A2G1, C4, C5, E2.

<sup>9</sup> Prosecution's Opening Statement, para 12.

(v) the black packet marked A1E contained 32 sachets of diamorphine (marked A1E1); and

(vi) the black packet marked A1F contained 30 sachets of diamorphine (marked A1F1).

(b) A camouflage print haversack bag (marked A2) was also recovered from the floor near the television console in the Unit's living room. There was also drug trafficking paraphernalia inside this bag. Diamorphine of various quantities was also found in this bag. The diamorphine that constitutes a portion of the gross diamorphine reflected in the charges was found in a taped bundle (marked A2A) which contained one packet of diamorphine (marked A2A1).

(c) A pink box (marked B1) was recovered from the floor beside the living room sofa at the location marked with the placard "B". Drug trafficking paraphernalia was also found inside the pink box together with other types of drugs. The diamorphine that constitutes a portion of the gross diamorphine reflected in the charges was found in the pink box and this is one transparent re-sealable bag (marked B1A) containing ten sachets of diamorphine (marked B1A1).

(d) The following diamorphine that constitutes a portion of the gross diamorphine reflected in the charges was recovered from the bed located inside the Unit's bedroom together with other drug trafficking paraphernalia:

(i) one silver bag (marked D1), containing five sachets of diamorphine (marked D1A);

- (ii) one transparent re-sealable bag (marked D2), containing ten sachets of diamorphine (marked D2A);
  - (iii) one transparent re-sealable bag (marked D3), containing five sachets of diamorphine (marked D3A);
  - (iv) one transparent re-sealable bag (marked D4), containing five sachets of diamorphine (marked D4A); and
  - (v) one dark-coloured re-sealable bag (marked D5), containing 11 sachets of diamorphine (marked D5A).
- (e) The following diamorphine that constitutes a portion of the gross diamorphine reflected in the charges was recovered from the top right compartment of a wardrobe located in the Unit's bedroom together with other drug trafficking paraphernalia:
- (i) a silver bag (marked E1B) containing one packet of diamorphine (marked E1B1); and
  - (ii) 13 sachets of diamorphine (marked E1E).

***The accused persons' statements***

13 Following the raid, a total of seven statements were recorded from Salzawiyah between 22 June 2017 and 20 April 2018. Salzawiyah's counsel confirmed that all her statements had been given by her voluntarily without any inducement, threat or promise. Therefore, they were admitted as evidence. These statements were taken on the following occasions:

(a) On 22 June 2017, the day of her arrest, at about 4.27pm, Senior Staff Sergeant (“SSSgt”) Norizan Binte Merabzul recorded a contemporaneous statement from Salzawiyah.<sup>10</sup>

(b) On 23 June 2017, from about 7.03am to about 7.45am, SSSgt Asilah Binte Rahman (“SSSgt Asilah”) recorded the cautioned statement from Salzawiyah, pursuant to s 23 of the CPC. SSSgt Asilah also served as the interpreter for Salzawiyah, as Salzawiyah chose to give her statement in Malay.<sup>11</sup>

(c) On subsequent occasions, five long statements were taken from Salzawiyah, pursuant to s 22 of the CPC, as follows:

(i) a statement recorded on 28 June 2017 by SSSgt Asilah, who concurrently served as Salzawiyah’s interpreter, from about 2.48pm to about 5.25pm (“Salzawiyah’s First Long Statement”);<sup>12</sup>

(ii) a statement recorded on 28 June 2017 by SSSgt Asilah, who concurrently served as Salzawiyah’s interpreter, from about 7.25pm to about 9.26pm (“Salzawiyah’s Second Long Statement”);<sup>13</sup>

(iii) a statement recorded on 29 June 2017 by SSSgt Asilah, who concurrently served as Salzawiyah’s interpreter, from about

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<sup>10</sup> 1 AB 837, para 11; 841–848.

<sup>11</sup> 2 AB 968–969, paras 3–6.

<sup>12</sup> 2 AB 970, paras 9–11.

<sup>13</sup> 2 AB 971, paras 13–15.

10.37am to about 12.09pm (“Salzawiyah’s Third Long Statement”);<sup>14</sup>

(iv) a statement recorded on 29 June 2017 by SSSgt Asilah, who concurrently served as Salzawiyah’s interpreter, from about 2.52pm to about 5.10pm (“Salzawiyah’s Fourth Long Statement”);<sup>15</sup> and

(v) a statement recorded on 20 April 2018 by Investigation Officer Station Inspector Yip Lai Peng (“IO Yip”) in English, from about 10.20am to about 10.42am (“Salzawiyah’s Fifth Long Statement”).<sup>16</sup>

14 Shisham gave a total of seven statements between 22 June 2017 and 3 November 2017. Shisham’s counsel confirmed that all his statements had been given by him voluntarily without any inducement, threat or promise.<sup>17</sup> Hence, the statements were also admitted as evidence. These statements were taken on the following occasions:

(a) On 22 June 2017, on the day of his arrest, at about 4.25pm, Sergeant (“Sgt”) Muhammad Hidayat Bin Jasni recorded a contemporaneous statement from Shisham.<sup>18</sup>

(b) On 23 June 2017, from about 7.12am to about 7.34am, IO Yip recorded the cautioned statement from Shisham, pursuant to s 23 of the

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<sup>14</sup> 2 AB 972, paras 17–19.

<sup>15</sup> 2 AB 973–974, paras 23–25.

<sup>16</sup> 2 AB 1069–1070, paras 92–95.

<sup>17</sup> NEs, 15 July 2020, at p 86, lines 1–13.

<sup>18</sup> 1 AB 867, para 11.

CPC (“Shisham’s Cautioned Statement”).<sup>19</sup> Mr Mohammad Faiz Bin Mohammad Isa (“Mr Faiz”) served as the interpreter for Shisham, as Shisham chose to give his statement in Malay.<sup>20</sup>

(c) On subsequent occasions, IO Yip recorded four long statements from Shisham, pursuant to s 22 of the CPC. Mr Faiz served as the interpreter for Shisham on each occasion, as follows:

(i) a statement recorded on 27 June 2017, from about 7.02pm to about 9.31pm (“Shisham’s First Long Statement”);<sup>21</sup>

(ii) a statement recorded on 29 June 2017, from about 3.22pm to about 6.06pm (“Shisham’s Second Long Statement”);<sup>22</sup>

(iii) a statement recorded on 29 June 2017, from about 8.55pm to about 10.17pm;<sup>23</sup> and

(iv) a statement recorded on 3 November 2017, from about 2.34pm to about 3.14pm.<sup>24</sup>

(d) One other long statement was recorded from Shisham by SSSgt Jennifer Lim (“SSSgt Lim”) pursuant to s 22 of the CPC on 1 November 2017 at about 2.23pm.

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<sup>19</sup> 2 AB 1051–1052, paras 25–29.

<sup>20</sup> 2 AB 946, para 2.

<sup>21</sup> 2 AB 949–950, paras 13–15; 2 AB 1055–1056, paras 37–39.

<sup>22</sup> 2 AB 954, paras 28–30; 2 AB 1060, paras 55–57.

<sup>23</sup> 2 AB 955, paras 31–33; 2 AB 1061, paras 58–60.

<sup>24</sup> 2 AB 959–960, paras 44–46; 2 AB 1067–1068, paras 83–85.

15 Jumadi gave a total of eleven statements between 22 June 2017 and 6 March 2018 (“Jumadi’s Statements”). These Statements were taken on the following occasions:

(a) On 22 June 2017, on the day of his arrest, at about 2.25pm, SSSgt Muhammad Fardlie Bin Ramlie (“SSSgt Fardlie”) recorded a contemporaneous statement from Jumadi (“the First Contemporaneous Statement”).<sup>25</sup>

(b) On 22 June 2017, from about 4.25pm to about 5.02pm, SSSgt Fardlie recorded another contemporaneous statement from Jumadi (“the Second Contemporaneous Statement”).<sup>26</sup>

(c) On 23 June 2017, from about 7.41am to about 8.09am, IO Yip recorded the cautioned statement from Jumadi, pursuant to s 23 of the CPC (“Jumadi’s Cautioned Statement”).<sup>27</sup> Mr Faiz served as the interpreter for Jumadi, as Jumadi chose to give his statement in Malay.<sup>28</sup>

(d) On subsequent occasions, IO Yip recorded five long statements from Jumadi, pursuant to s 22 of the CPC. Mr Faiz served as the interpreter for Jumadi on each occasion, as follows:

(i) a statement recorded on 28 June 2017, from about 3.46pm to about 6.11pm (“Jumadi’s First Long Statement”);<sup>29</sup>

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<sup>25</sup> 1 AB 893, para 7.

<sup>26</sup> 1 AB 898, para 21.

<sup>27</sup> 2 AB 1053–1054, paras 30–34.

<sup>28</sup> 2 AB 946, para 2.

<sup>29</sup> 2 AB 950–951, paras 16–18; 2 AB 1056–1057, paras 40–42.

(ii) a statement recorded on 29 June 2017, from about 10.44am to about 1.21pm (“Jumadi’s Second Long Statement”);<sup>30</sup>

(iii) a statement recorded on 3 July 2017, from about 2.14pm to about 6.54pm (“Jumadi’s Third Long Statement”);<sup>31</sup>

(iv) a statement recorded on 4 July 2017, from about 10.14am to about 2.56pm (“Jumadi’s Fourth Long Statement”);<sup>32</sup> and

(v) a statement recorded on 6 July 2017, from about 3.30pm to about 6.21pm (“Jumadi’s Fifth Long Statement”).<sup>33</sup>

(e) On subsequent occasions, SSSgt Hamidah Binte Abdul Samat (“SSSgt Hamidah”) recorded two long statements from Jumadi, pursuant to s 22 of the CPC. SSSgt Hamidah concurrently served as Jumadi’s interpreter:

(i) a statement recorded on 19 October 2017, at about 2.45pm (“Jumadi’s Sixth Long Statement”);<sup>34</sup> and

(ii) a statement recorded on 6 March 2018, at about 3.30pm (“Jumadi’s Seventh Long Statement”).<sup>35</sup>

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<sup>30</sup> 2 AB 951–952, paras 19–21; 2 AB 1057–1058, paras 45–47.

<sup>31</sup> 2 AB 956, paras 34–36; 2 AB 1062, paras 61–63.

<sup>32</sup> 2 AB 957–958, paras 37–40; 2 AB 1063–1064, paras 65–68.

<sup>33</sup> 2 AB 958–959, paras 41–43; 2 AB 1064–1065, paras 70–72.

<sup>34</sup> Exhibit P452; PS48.

<sup>35</sup> Exhibit P453; PS48.

(f) On 15 December 2017, at about 2.10pm, SSSgt Lim recorded one long statement from Jumadi, pursuant to s 22 of the CPC (“Jumadi’s Eighth Long Statement”).

16 At the trial, Jumadi objected to his Statements being admitted into evidence, on the ground that the Statements were made involuntarily as they had been given by reason of a promise that had been made to him by SSSgt Fardlie, which was subsequently reinforced and perpetuated by IO Yip. I shall examine Jumadi’s objection in greater detail below.

### *HSA analysis*

17 Subsequently, the exhibits that were seized by the CNB officers from the Unit were sent for analysis by the Health Sciences Authority (“HSA”). This included the abovementioned 127 packets/sachets of diamorphine that were recovered from the Unit which form the subject matter of the charges against the accused persons. HSA’s analysis revealed that the 127 packets/sachets contained at least 41.86g of diamorphine (“the Drugs”), as follows:<sup>36</sup>

<b>Exhibit No</b>	<b>Description</b>	<b>Raw weight of diamorphine (g)</b>	<b>Analysed weight of diamorphine (g)</b>
A1A1	One packet of diamorphine	436.5	4.87
A1B1	One packet of diamorphine	429.6	4.61
A1C1	One packet of diamorphine	432.1	5.83

<sup>36</sup> ASOF, paras 40–41; Prosecution’s Opening Statement, at para 13.

A1D1	One packet of diamorphine	420.3	3.73
A1E1	32 sachets of diamorphine	241.7	2.77
A1F1	30 sachets of diamorphine	225.4	2.41
A2A1	One packet of diamorphine	427.1	7.83
B1A1	Ten sachets of diamorphine	75.35	0.89
D1A	Five sachets of diamorphine	34.48	0.73
D2A	Ten sachets of diamorphine	75.34	1.30
D3A	Five sachets of diamorphine	37.82	0.72
D4A	Three sachets of diamorphine	22.35	0.29
	Two sachets of diamorphine	15.10	0.31
D5A	Five sachets of diamorphine	34.27	0.55
	Six sachets of diamorphine	45.25	1.08
E1B1	One packet of diamorphine	224.5	2.56
E1E	13 sachets of diamorphine	102.9	1.38
<b>Total</b>		<b>3,280.06</b>	<b>41.86</b>

18 Upon analysis by the HSA, five of the seven digital weighing scales were found to be stained as follows:<sup>37</sup>

<b>Exhibit No</b>	<b>Description</b>	<b>Analysis</b>
C4	One digital weighing scale	Stained with diamorphine and tetrahydrocannabinol
C5	One digital weighing scale	Stained with diamorphine
A1G1	One digital weighing scale	Stained with diamorphine and tetrahydrocannabinol
A2C1	One digital weighing scale	Stained with diamorphine
A2E1	One digital weighing scale	Stained with diamorphine and methamphetamine

19 On the morning of 23 June 2017, urine samples were taken from the accused persons. The analysis of the urine samples by the HSA revealed the following:

- (a) Salzawiyah's urine sample contained methamphetamine and nimetazepam.<sup>38</sup>
- (b) Shisham's urine sample contained methamphetamine and monoacetylmorphine. The presence of the latter is the result of consumption of diamorphine.<sup>39</sup>

<sup>37</sup> 1 AB 691–693, 695–697, 715.

<sup>38</sup> 1 AB 643, 646, 652 and 655.

<sup>39</sup> 1 AB 645, 648, 654 and 657.

(c) Jumadi's urine sample contained methamphetamine and morphine.<sup>40</sup>

### **The parties' cases**

#### ***The Prosecution's case***

20 According to the Prosecution, on 21 June 2017, Shisham called his Malaysian supplier, "Ah Neh" (also known as "Vishu" or "Vishnu"), using his mobile phone. The phone was placed on loudspeaker mode. Jumadi spoke to Vishu, who suggested that Jumadi purchase five *batu* of heroin (a street name for diamorphine) in anticipation of the upcoming Hari Raya holiday. Literally translated, "*batu*" is the Malay word for "stone". However, for people involved in drug trafficking, "*batu*" refers to one bundle of approximately 450g of unwashed diamorphine, or one pound of unwashed diamorphine.<sup>41</sup> Vishu agreed to sell the five *batu* to Jumadi partially on credit, such that Jumadi could obtain the five *batu* by making an upfront payment of \$10,000 in cash.<sup>42</sup> According to the Prosecution, this call occurred at about 4pm.<sup>43</sup>

21 Jumadi then asked Salzawiyah how much cash was available, to which Salzawiyah replied that she had \$10,000. Jumadi asked for the \$10,000 and explained that he needed the money to buy more diamorphine over the Hari Raya holiday. Salzawiyah agreed to give Jumadi the \$10,000. Subsequently, Jumadi instructed Shisham to confirm the order of five *batu* of diamorphine with Vishu. Shisham complied with Jumadi's instructions. According to the

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<sup>40</sup> 1 AB 644, 647, 653 and 656.

<sup>41</sup> Exhibit C.

<sup>42</sup> Prosecution's Opening Statement, at para 8.

<sup>43</sup> Exhibit G, at p 28.

Prosecution, Vishu called Shisham several times at 6.57pm, 7.27pm and 11pm on 21 June 2017 to confirm the order of the five *batu* and inform him of the details for the collection of the five *batu*. When the calls were made, Jumadi and Shisham were outside of the Unit at separate locations. Shisham then informed Jumadi via a text message at about 11.35pm on 21 June 2017 that the diamorphine would be ready for collection at 10am the next day.<sup>44</sup>

22 On the morning of 22 June 2017, at about 7.12am, Shisham was informed by Vishu via a phone call that the diamorphine would be ready for collection in the afternoon that day. At 9.29am, Vishu called Shisham to inform him that the courier had arrived in Singapore so he and Jumadi could collect the five *batu*.<sup>45</sup> At or about 10am that day, Jumadi drove Shisham to the agreed collection point using a vehicle bearing registration number SLF1050A (“the Car”), which Jumadi had rented. Jumadi brought with him \$11,000 in cash. After Shisham made a phone call to inform that they had arrived, an Indian male approached the Car and got into the rear passenger seat. As Jumadi drove off, Shisham handed over \$11,000 in cash to the Indian male and collected a red bag (“the red bag”) containing five bundles wrapped in black tape (“the Bundles”). The Indian male alighted from the Car soon thereafter.<sup>46</sup>

23 Jumadi and Shisham then returned to the Unit, where Salzawiyah was. Jumadi checked the Bundles and partially removed the black tape on one of the Bundles to confirm its contents. According to the Prosecution, this was the taped bundle marked A2A. Thereafter, he placed the taped bundle marked A2A into

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<sup>44</sup> Prosecution’s Opening Statement, at paras 8–9; Exhibit G, at p 30.

<sup>45</sup> Exhibit G, at pp 31 and 32.

<sup>46</sup> Prosecution’s Opening Statement, at para 10.

his camouflage print haversack bag (“the camouflage bag”). The other four Bundles marked A1A, A1B, A1C and A1D remained in the red bag.<sup>47</sup>

24 In respect of the rest of the Drugs found in the Unit, the Prosecution submits that these were from previous drug orders made by the accused persons for the purpose of their drug trafficking activities.<sup>48</sup>

25 For the above reasons, the Prosecution’s cases against the accused persons are as follows:<sup>49</sup>

(a) In relation to Jumadi, the Prosecution’s case is that he had actual possession and actual knowledge of the Drugs, and that he intended to traffic in them, in furtherance of the common intention with Shisham and Salzawiyah. Alternatively, Jumadi had actual possession and actual knowledge of the Drugs, and he is unable to rebut the presumption of trafficking under s 17(c) of the MDA.

(b) In relation to Shisham, the Prosecution’s case is that he is deemed to be in possession of the Drugs by virtue of s 18(4) of the MDA, because he knew and consented to Jumadi’s possession of them. Furthermore, he had actual knowledge of the nature of the Drugs, or alternatively, he is presumed under s 18(2) of the MDA to know the nature of the Drugs, and he is unable to rebut this presumption. Moreover, Shisham intended to traffic in the Drugs, in furtherance of the common intention with Jumadi and Salzawiyah.

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<sup>47</sup> Prosecution’s Opening Statement, at para 11.

<sup>48</sup> Prosecution’s Opening Statement, at para 15.

<sup>49</sup> Prosecution’s Opening Statement, at para 25; PCS, at para 30.

(c) In relation to Salzawiyah, the Prosecution's case is that Salzawiyah is deemed to be in possession of the Drugs by virtue of s 18(4) of the MDA, because she knew and consented to Jumadi's possession of them, or alternatively, she is presumed to be in possession of the Drugs by virtue of s 18(1) of the MDA. Further, Salzawiyah is presumed under s 18(2) of the MDA to know the nature of the Drugs, and she is unable to rebut this presumption. Moreover, Salzawiyah intended to traffic in the Drugs, in furtherance of the common intention with Jumadi and Shisham.

### *Jumadi's case*

26 Jumadi denies that he intended to possess the Drugs for the purpose of trafficking, neither did the accused persons had a common intention to possess the Drugs for the purpose of trafficking.<sup>50</sup> Rather, he only intended to possess 14.67g of diamorphine for the purpose of trafficking. This 14.67g of diamorphine is made up of the packets of diamorphine marked A1A1, A1D1, A1E1, and A1F1 that were found in the red bag and B1A1 which was in the pink box.<sup>51</sup> These drugs were found in the Unit's living room. Jumadi's explanation for the rest of the Drugs found in the Unit is two-fold. First, the three bundles of diamorphine marked A1B, A1C and A2A had been mistakenly delivered by Vishu and he had intended to return them.<sup>52</sup> Second, the packets of

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<sup>50</sup> Opening Statement for the Defence of the 3rd Accused, dated 21 August 2020 ("3DOS"), at paras 2–3.

<sup>51</sup> 3DOS, at para 5; Jumadi's Closing Submissions ("3DCS"), at para 9(1).

<sup>52</sup> 3DOS, at paras 4(c)–(e).

diamorphine found in the bedroom of the Unit belonged to Salzawiyah for her to sell to her own customers without Jumadi's knowledge.<sup>53</sup>

*Jumadi's account of the drug trafficking operation*

27 Jumadi testified that he was the person in charge of the drug trafficking operation. He was the one who made the "final decision" and "call[ed] the shots". Jumadi explained that he would pass the proceeds of sale of the diamorphine to Salzawiyah, as he had a "habit [of] not being able to save money". Each time Jumadi handed over moneys to Salzawiyah, she would ask Jumadi to write down the sales in a notebook.<sup>54</sup> Salzawiyah also helped Jumadi to pack and sell the diamorphine.<sup>55</sup> When Jumadi needed money to purchase more drugs, he would ask Salzawiyah for a specific amount and would tell her that it was for purchasing drugs, although he would not tell her the exact quantity of drugs.<sup>56</sup>

28 Jumadi testified that between December 2016 and April 2017, he had been buying and selling "half set[s]" of diamorphine.<sup>57</sup> Each half set contained five packets and each packet contained about 7.5g to 8g of diamorphine, totalling about 37.5g to 40g.<sup>58</sup> After moving into the Unit in April 2017, Jumadi continued to buy and sell diamorphine.<sup>59</sup> He began to buy diamorphine in larger quantities, specifically, two to three sets (totalling 150g to 240g) at a time, out

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<sup>53</sup> 3DOS, at para 4(h).

<sup>54</sup> NEs, 26 August 2020, at p 43, lines 11–22; p 49, lines 7–21.

<sup>55</sup> NEs, 26 August 2020, at p 47, line 18.

<sup>56</sup> NEs, 27 August 2020, at p 38, line 14 to p 39, line 3.

<sup>57</sup> 3DCS, at para 16.

<sup>58</sup> NEs, 26 August 2020, at p 43, line 32 to p 44, line 5.

<sup>59</sup> NEs, 26 August 2020, at p 46, lines 15–17; p 48, lines 6–8.

of which he kept a few packets for his consumption.<sup>60</sup> In June 2017, Jumadi began buying half *batu* (containing three sets) to one *batu* (containing six sets) of diamorphine.<sup>61</sup> Subsequently, this increased to one or two *batu*.<sup>62</sup>

29 The drugs that he bought pursuant to the drug trafficking operation would be paid for in cash.<sup>63</sup> Usually, Jumadi would drive Shisham to the relevant location to pick up the diamorphine. At the location, the courier, the person who delivered the drugs, would board the car. Jumadi would pass the courier the cash and either Jumadi or Shisham would take the diamorphine from the courier.<sup>64</sup> Typically, Jumadi would thereafter drive back to the Unit, at which he would weigh the diamorphine to check it. The diamorphine would then be cut out of its wrapping, crushed and packed into smaller packets.<sup>65</sup>

*Events on 21 June 2017 and 22 June 2017*

30 On the evening of 21 June 2017, Jumadi's Malaysian supplier known as Vishu called Shisham's mobile phone on four occasions. During all of these calls, Jumadi spoke to Vishu using Shisham's mobile phone which was placed on loudspeaker mode. The first call took place at 6.57pm, when Vishu asked if Jumadi or Shisham wanted to order diamorphine.<sup>66</sup> Jumadi informed Vishu that he wanted to purchase two *batu* of diamorphine. Vishu suggested that Jumadi

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<sup>60</sup> NEs, 26 August 2020, at p 48, lines 12–27; p 49, lines 25–30; 3DCS, at para 19.

<sup>61</sup> NEs, 26 August 2020, at p 50, lines 2–4.

<sup>62</sup> NEs, 26 August 2020, at p 56, lines 28–30.

<sup>63</sup> NEs, 26 August 2020, at p 57, lines 13–16.

<sup>64</sup> NEs, 26 August 2020, at p 57, line 21 to p 58, line 6; 3DCS, at para 27.

<sup>65</sup> NEs, 26 August 2020, at p 58, line 7 to p 59, line 16,

<sup>66</sup> NEs, 26 August 2020, at p 61, line 21 to p 62, line 1; Prosecution's Supplementary Bundle ("PSB") 757, S/N 34.

buy five *batu* as Hari Raya was approaching and the *barang* would not be available then. “*Barang*” is literally translated to “item”, although it is sometimes used to refer to drugs.<sup>67</sup> Jumadi was shocked and asked Vishu to call him back.<sup>68</sup>

31 The second call was at 7.27pm. When Jumadi told Vishu that he did not have enough money to purchase five *batu*, Vishu offered to allow Jumadi to take the *batu* on credit and repay him after the diamorphine was sold. Jumadi declined as it was “troublesome” and told Vishu to call back at 11pm, as Jumadi was expecting to be paid some money at 10pm.<sup>69</sup>

32 The third call was at 11pm, and lasted for about 19 seconds. When Vishu asked Jumadi to confirm if he was taking the five *batu*, Jumadi asked Vishu to call him back as he could not hear him clearly.<sup>70</sup> The final call was shortly after, still at 11pm, during which Jumadi told Vishu that he could only take two *batu*. Vishu then told Jumadi to collect the two *batu* at 9am. Jumadi confirmed with Vishu that the two *batu* would cost \$6,800.<sup>71</sup> During these calls, Jumadi and Shisham were in the living room of the Unit, smoking diamorphine and methamphetamine.<sup>72</sup>

33 On the morning of 22 June 2017, before 8.30am, Jumadi went to the bedroom of the Unit and saw an “*ang pow*” placed in a black tray. He took the

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<sup>67</sup> Exhibit C.

<sup>68</sup> NEs, 26 August 2020, at p 62, lines 4–17.

<sup>69</sup> NEs, 26 August 2020, at p 61, line 18 to p 62, line 22; PSB 757, S/N 33.

<sup>70</sup> NEs, 27 August 2020, at p 3, lines 1–5; PSB 756, S/N 30.

<sup>71</sup> NEs, 27 August 2020, at p 3, line 6 to p 4, line 2; PSB 756, S/N 29.

<sup>72</sup> NEs, 26 August 2020, at p 63, lines 24–29; 27 August 2020, at p 5, lines 10–13.

*ang pow*, telling Salzawiyah that he was taking the money in order to buy *barang*. At the time, Salzawiyah was lying on the bed with her eyes closed and did not respond to Jumadi.<sup>73</sup> Jumadi then went to the living room of the Unit, where he counted there to be \$7,000 in the *ang pow*. He placed the \$7,000 in a brown envelope, \$6,800 was for the two *batu*, and the remaining \$200 was a tip for the courier. In addition to the \$7,000, he had in his possession another \$2,000 to \$3,000, which he intended to use to top up petrol, pay the car rental and purchase items such as cigarettes, food and groceries.<sup>74</sup>

34 Jumadi and Shisham left the Unit at about 8.30am. Jumadi drove the Car to Changi South Lane, with Shisham seated in the front passenger seat.<sup>75</sup> At 9.02am, Jumadi and Shisham received another call from Vishu, asking them for their whereabouts. After Jumadi replied on the loudspeaker that he had arrived, Vishu hung up the call. A male Indian courier boarded the Car, sitting in the rear passenger seat behind Shisham. The courier passed Jumadi the red bag containing the *barang*, which Jumadi placed near Shisham's feet. Jumadi took out the brown envelope and gave it to the courier. The courier then alighted and Jumadi drove away.<sup>76</sup>

35 About five to ten minutes later, Jumadi instructed Shisham to check the red bag. Shisham did so and informed Jumadi that there were more *barang*. At 9.29am, Jumadi and Shisham received another call from Vishu. Vishu told Jumadi to check if he had received more *barang*, as the courier had made a

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<sup>73</sup> NEs, 27 August 2020, at p 6 lines 3–11; p 7, lines 12–22.

<sup>74</sup> NEs, 27 August 2020, at p 9, line 23 to p 10, line 26.

<sup>75</sup> NEs, 27 August 2020, at p 10, line 27 to p 11, line 3.

<sup>76</sup> NEs, 27 August 2020, at p 11, line 7 to p 12, line 7; PSB 756, S/N 14.

mistake in the delivery. Jumadi told Vishu to call him back as he was driving. Thereafter, Jumadi and Shisham returned to the Unit before 10am.<sup>77</sup>

36 After returning to the Unit, Jumadi took out one of the smaller *batu* from the red bag, unwrapped the side of it, looked at its colour and put it inside the camouflage bag. He took out two packets (marked A1E and A1F) from the camouflage bag and put them in the red bag.<sup>78</sup> He then asked Shisham to call Vishu. Jumadi asked Vishu about the extra *barang*. Vishu told Jumadi to hide the three smaller *batu* at the ground floor of Jumadi's house, so that his courier could take them from around 4pm to 5pm. Jumadi told Vishu that he had already removed both sides of one *batu*, which Vishu assured him was fine.<sup>79</sup>

37 At around 12pm, Jumadi asked Shisham to survey the area and find a suitable place to hide the three *batu*. Shisham did so and returned to the Unit within 15 to 20 minutes.<sup>80</sup>

*Jumadi's knowledge and/or possession of the Drugs*

38 According to Jumadi's account as explained above, as at 21 June 2017, he had one *batu* and ten packets of diamorphine in his possession for the purpose of trafficking. These consisted of the 32 packets of diamorphine marked A1E1, the 30 packets of diamorphine marked A1F1, and the ten packets of diamorphine marked B1A1.<sup>81</sup>

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<sup>77</sup> NEs, 27 August 2020, at p 12, line 20 to p 14, line 14; PSB 756, S/N 13.

<sup>78</sup> NEs, 27 August 2020, at p 18, lines 1–29.

<sup>79</sup> NEs, 27 August 2020, at p 18, line 30 to p 20, line 8.

<sup>80</sup> NEs, 27 August 2020, at p 22, lines 12–21.

<sup>81</sup> 3DOS, at para 4(b); NEs, 26 August 2020, at p 37, lines 19–22; 27 August 2020, at p 25, lines 26–28.

39 On 22 June 2017, after he collected the *barang* from Vishu, Jumadi had an additional five *batu* of diamorphine. Out of the five *batu*, he intended to return three of the bundles (marked A1B, A1C and A2A) (“the Three Bundles”) to Vishu. Jumadi intended to keep the remaining two bundles (marked A1A and A1B) for the purposes of trafficking.<sup>82</sup>

40 As for the packets marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1E found in the bedroom of the Unit, Jumadi testified that he had no knowledge of them.<sup>83</sup> Rather, these belonged to Salzawiyah for sale to her own customers without informing him.<sup>84</sup> Jumadi further testified that, occasionally, Salzawiyah would ask him for the diamorphine that he had bought, and sell this diamorphine to her own customers. He did not know the price at which she sold the diamorphine nor what she did with the proceeds of sale.<sup>85</sup>

#### **Salzawiyah’s case**

41 Salzawiyah admits to being involved in the drug trafficking operation but disputes the quantity of diamorphine that she had intended to traffic. In particular, she claimed that she did not know of the Bundles. Thus, of all the Drugs found in the Unit, she only had knowledge of certain packets containing a total of 9.81g of diamorphine which were found in the pink box (B1A) in the living room and those packets of diamorphine in the bedroom of the Unit.

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<sup>82</sup> NEs, 27 August 2020, at p 24, lines 5–30.

<sup>83</sup> NEs, 27 August 2020, at p 26, lines 15–20; p 27, lines 4–8.

<sup>84</sup> 3DOS, at para 4(h).

<sup>85</sup> NEs, 26 August 2020, at p 44, line 27 to p 45, line 10.

*Salzawiyah's involvement in the drug trafficking operation*

42 Salzawiyah admitted that she was involved in the drug trafficking operation with Jumadi and Shisham, as follows:<sup>86</sup>

(a) She helped to pack the diamorphine into smaller packets of about 8g each. The diamorphine would be packed into the transparent packets, and these packets would be placed in a black plastic bag.<sup>87</sup>

(b) She recorded the transactions relating to the sale of the diamorphine in various notebooks.<sup>88</sup>

(c) She helped to safekeep the proceeds of sale of the diamorphine. The moneys were kept in an envelope, which was placed in a black tray kept under the bed in the bedroom of the Unit. Salzawiyah explained that, if Jumadi needed money to buy drugs, he would typically take the money from the envelope without asking her.<sup>89</sup>

(d) Salzawiyah also helped to deliver the drugs, coordinate deliveries, recruit drug runners for drug deliveries, as well as deal with the complaints from customers.<sup>90</sup>

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<sup>86</sup> Salzawiyah's Closing Submissions ("IDCS"), at para 31; PCS, at para 137.

<sup>87</sup> Exhibit P62; NEs, 21 August 2020, at p 70, lines 18–19; 25 August 2020, at p 27, lines 4–14.

<sup>88</sup> NEs, 21 August 2020, at p 70, lines 20–21.

<sup>89</sup> NEs, 21 August 2020, at p 76, lines 21–22; 25 August 2020, at p 26, lines 14–21; 26 August 2020, at p 25, lines 7–15.

<sup>90</sup> NEs, 25 August 2020, at p 70, line 28 to p 71, line 1; p 72, line 27 to p 73, line 29.

43 However, Salzawiyah testified that she had stopped her involvement in the drug trafficking operation by June 2017.<sup>91</sup> Around 10 June 2017, she had informed Jumadi that she no longer wanted to be involved in the recording of drug transactions. That was why the entries in the notebook marked A2K (“the Notebook”) were mostly made by Jumadi.<sup>92</sup> A few days before 22 June 2017, she stopped helping Jumadi to pack diamorphine.<sup>93</sup>

44 Furthermore, Salzawiyah’s evidence was that, since December 2016, she had discouraged Jumadi from trafficking in drugs. When Jumadi first proposed the idea of selling drugs in or around December 2016, she rejected it as “crazy”. However, she went along with the idea because Jumadi usually had the final say in most matters and she would listen to him.<sup>94</sup> In or around the end of May 2017, when Jumadi first bought a *batu* of diamorphine, Salzawiyah again told him that he was “crazy”. She cried and tried to discourage Jumadi from buying so much diamorphine. She had also told Jumadi several times that she was scared. However, he did not listen to her.<sup>95</sup>

45 When Jumadi introduced Shisham to Salzawiyah, she “nagged” at him and “voiced her disagreement”.<sup>96</sup> In court, Salzawiyah explained that she was concerned that, with Shisham’s involvement, Jumadi would be able to obtain

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<sup>91</sup> NEs, 25 August 2020, at p 73, lines 30–32; 1DCS, at para 31.

<sup>92</sup> NEs, 21 August 2020, at p 75, lines 1–17.

<sup>93</sup> NEs, 21 August 2020, at p 70, line 32 to p 71, line 4.

<sup>94</sup> NEs, 21 August 2020, at p 16–25.

<sup>95</sup> NEs, 21 August 2020, at p 52, line 15 to p 53, line 3 and line 20; 1DCS, at paras 26–27.

<sup>96</sup> NEs, 21 August 2020, at p 53, lines 7–13; p 53, line 28 to p 54, line 2.

diamorphine more easily and “ramp up his business”.<sup>97</sup> This turned out to be the case. Salzawiyah testified that, since it became easier for Jumadi to obtain diamorphine, he was often busy with the *barang*. As a result, he would not return to the Unit about two to three nights a week.<sup>98</sup>

*Events on 21 June 2017 and 22 June 2017*

46 Salzawiyah testified that, on 21 June 2017, the day before the accused persons’ arrests, Salzawiyah and Jumadi quarrelled at about 3pm in the afternoon. The quarrel concerned Jumadi’s failure to return home on the night of 20 June 2017.<sup>99</sup> Following the quarrel, Salzawiyah went to her late father’s house in Hougang and only returned to the Unit later at night on 21 June 2017. When she returned, Jumadi and Shisham were not in the Unit.<sup>100</sup>

47 The next day, 22 June 2017, Salzawiyah woke up at around 10am in the morning. She overheard Jumadi and Shisham talking about collecting more *barang*, as the *barang* would not be available during Hari Raya.<sup>101</sup> Salzawiyah did not hear how many *batu* Jumadi and Shisham were going to collect. She then heard Jumadi and Shisham speaking very loudly, and Jumadi telling Shisham to leave the Unit. Salzawiyah claimed that, before Jumadi and Shisham left the Unit at around 10am, neither of them had asked her for any money, nor did she give either of them any money.<sup>102</sup>

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<sup>97</sup> 1DCS, at paras 33–34.

<sup>98</sup> NEs, 21 August 2020, at p 54, lines 4–30; 25 August 2020, at p 58, lines 21–24.

<sup>99</sup> NEs, 21 August 2020, at p 49, lines 5–10.

<sup>100</sup> NEs, 21 August 2020, at p 47, lines 4–22; 1DCS, at paras 35–37.

<sup>101</sup> NEs, 21 August 2020, at p 47, line 32 to p 48, line 25.

<sup>102</sup> NEs, 21 August 2020, at p 57 line 30 to p 58, line 4; 1DCS, at paras 38–40.

48 At about 1pm that afternoon, Salzawiyah left the Unit to meet her relative in the nearby vicinity. When she was downstairs of the Unit, she saw unfamiliar people whom she thought were CNB officers. At this time, Salzawiyah became afraid that she would be arrested for consumption and possession of drugs. Nevertheless, she did not attempt to leave the vicinity because she felt that it would be tantamount to betraying Jumadi. Instead, she called Shisham to alert Jumadi and Shisham.<sup>103</sup>

49 When she returned to the Unit, Salzawiyah told Jumadi and Shisham that there were people downstairs. Jumadi informed her and Shisham that he had six *batu*, and that if they were scared, they could leave. However, Salzawiyah did not believe Jumadi. She did not think that he had enough money to purchase six *batu*. She thought that he was “tripping”, *ie*, he was under the influence of drugs. Salzawiyah testified that if she had believed him, she would have left the Unit because six *batu* was a large amount and she was afraid of facing a capital trafficking charge.<sup>104</sup>

50 At about 2.20pm that day, Salzawiyah was in the bedroom of the Unit when she heard a commotion. When she left the bedroom to check, she was immediately pinned to the floor in front of the television console in the living room of the Unit. She was then arrested.<sup>105</sup>

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<sup>103</sup> NEs, 21 August 2020, at p 58, line 18 to p 60, line 2; 1 AB 66, S/N 1; 1DCS, at paras 43–46.

<sup>104</sup> NEs, 21 August 2020, at p 60 line 9 to p 61, line 20.

<sup>105</sup> NEs, 21 August 2020, at p 63, lines 20–24.

*Salzawiyah's knowledge and/or possession of the Drugs*

51 Salzawiyah denied knowledge of the Bundles and the packets of diamorphine marked A1E1 and A1F1.<sup>106</sup> According to her, she saw the red bag and the four *batu* therein for the first time during the search conducted by the CNB officers following the accused persons' arrests.<sup>107</sup> Prior to 22 June 2017, as far as she knew, she and Jumadi had only dealt with one *batu* at most.<sup>108</sup> Salzawiyah also denied giving Jumadi and Shisham \$10,000 in cash for the purchase of the Bundles.<sup>109</sup>

52 Salzawiyah's case is that she only had possession of the packets of diamorphine found in the pink box (marked B1A1) and in the bedroom (marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1E) for the purpose of trafficking. These packets were analysed to contain 9.81g of diamorphine in total.<sup>110</sup>

*Shisham's case*

53 At the trial, Shisham had initially indicated that he intended to give evidence at the close of the Prosecution's case. When the court explained the usual allocation under s 230(1)(m) of the CPC in simple layman language asking each accused person whether he or she would like to enter his or her defence, all the three accused persons elected to give evidence on oath. However, Shisham subsequently changed his mind, after Salzawiyah had testified, and elected to remain silent instead of giving evidence on the stand

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<sup>106</sup> NEs, 26 August 2020, at p 13, line 18 to p 14, line 23.

<sup>107</sup> NEs, 21 August 2020, at p 64, lines 17–18; p 67, lines 1–4.

<sup>108</sup> NEs, 26 August 2020, at p 4, lines 25–29.

<sup>109</sup> NEs, 21 August 2020, at p 76, lines 16–20.

<sup>110</sup> 1DCS, at paras 5–6; Salzawiyah's Reply Skeletal Submissions, at para 2.

when he was called upon to enter his defence. As this was a significant decision, I gave him time to reconsider and alerted him to the potential consequences of his decision. Nevertheless, he maintained his election to remain silent.<sup>111</sup> Shisham's case, therefore, has to be gleaned from his counsel's cross-examination of the various witnesses, as well as his written and oral submissions.

54 Based on those, Shisham does not dispute that he was introduced to Jumadi around the end of May 2017. Since then until the date of the accused persons' arrests, he went to the Unit frequently and stayed overnight at the Unit about three times a week. Shisham and Jumadi would smoke diamorphine and methamphetamine together.<sup>112</sup> Shisham's case is based largely on his statements to the CNB, which he did not object to being admitted as evidence in this trial, as he acknowledged that these statements were given by him voluntarily. According to those statements, Shisham's defence is that he only went to the Unit to consume drugs. He had no involvement in the drug trafficking operation except that he had given Jumadi the telephone number of an Indian Malaysian drug supplier known as "Black". Any orders for drugs placed by Jumadi were made directly with the drug supplier, without Shisham's involvement. Although he went out with Jumadi on two occasions to collect drugs, he had no knowledge of any of the Drugs and drug paraphernalia recovered from the Unit, or any drug trafficking activities that were taking place. Neither did he share a common intention with Jumadi and Salzawiyah to traffic in the Drugs.<sup>113</sup>

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<sup>111</sup> NEs, 26 August 2020, at p 26, line 9 to p 27, line 17.

<sup>112</sup> Shisham's Closing Submissions ("2DCS"), at paras 10, 11 and 13.

<sup>113</sup> 2DCS, at paras 26–27.

55 In relation to the events of 21 June 2017 and 22 June 2017, Shisham's case is that he was in the Unit merely to smoke diamorphine and methamphetamine. As for all the calls to and from Vishu, Jumadi had been the one who conversed with Vishu using his mobile phone, without putting the mobile phone on loudspeaker mode. Thus, Shisham was not aware of what Jumadi had discussed with Vishu. Further, although Shisham admits to accompanying Jumadi to Changi South Lane, he left the Car and went to a nearby canteen to purchase some drinks. When he returned to the Car, Jumadi drove back to the Unit. Contrary to Jumadi's account, Shisham did not check the red bag in the Car, nor did he subsequently go to the ground floor of the Unit to find a hiding place for the three *batu*.

#### **Admissibility of Jumadi's statement**

56 The preliminary issue is whether Jumadi's eleven Statements were given to the CNB officers voluntarily without inducement, threat or promise. The Prosecution sought to admit the Statements into evidence (save for the Eighth Long Statement which was not relevant to the Prosecution's case) and submitted that these Statements were recorded voluntarily from Jumadi.

57 In the midst of Jumadi's cross-examination in the main trial and after I had admitted the Statements (except the Eighth Long Statement) on the ground that these Statements had been given voluntarily by Jumadi without inducement, threat or promise, Shisham's counsel sought to admit the Eighth Long Statement into evidence. Jumadi similarly asserted that the Eighth Long Statement recorded by SSSgt Lim was also involuntary.

58 Jumadi, on the other hand, alleged that the Statements, including the Eighth Long Statement, had been made pursuant to a promise given to him by SSSgt Fardlie, which was subsequently reinforced and perpetuated by IO Yip.

This promise was to the effect that, if Jumadi cooperated with the CNB and admitted ownership of the Drugs, he would not receive the death penalty (“the Promise”).<sup>114</sup> As such, Jumadi submitted that the Statements were inadmissible pursuant to s 258(3) of the CPC.

59 For the purpose of determining this issue, two ancillary hearings were convened. First, when the Prosecution sought to admit the Statements (except the Eighth Long Statement), and second, when Shisham’s counsel sought to admit the Eighth Long Statement. At the end of both ancillary hearings, I was satisfied, beyond a reasonable doubt, that all the Statements were given by Jumadi voluntarily without inducement, threat or promise and thus admitted the Statements into evidence. I set out my reasons below.

***The first ancillary hearing***

*Jumadi’s case*

(1) The First Contemporaneous Statement

60 Jumadi claimed that, prior to the recording of the First Contemporaneous Statement, SSSgt Fardlie asked the accused persons whether they had anything to surrender. When the accused persons kept quiet, SSSgt Fardlie searched the Unit and found the red bag, the camouflage bag and the pink box. These items were in the living room of the Unit. He opened and looked inside them. SSSgt Fardlie then stood in the middle of the living room of the Unit and told all the accused persons that he had found a lot of items and asked them who the items belonged to. When the accused persons remained quiet, SSSgt Fardlie turned to

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<sup>114</sup> Skeletal Submissions for the 3rd Accused in relation to the Ancillary Hearing, dated 18 August 2020 (“3DSA”), at para 7.

Salzawiyah and Shisham individually and repeated his question to each of them. Salzawiyah and Shisham both replied that they did not know.<sup>115</sup>

61 SSSgt Fardlie then turned to Jumadi and repeated the question to him, but Jumadi remained silent. SSSgt Fardlie walked towards Jumadi and sat down on the sofa, on Jumadi's left side. SSSgt Fardlie whispered to Jumadi, in Malay, that his friends had both denied ownership of the items. He asked Jumadi again who the items belonged to, telling Jumadi to be a gentleman and take responsibility for his actions. When Jumadi replied that he did not know, SSSgt Fardlie allegedly told Jumadi not to make his work difficult. He allegedly told Jumadi that he knew Jumadi could receive the death penalty and promised to help Jumadi, if Jumadi helped him. As such, Jumadi admitted that only three *batu* belonged to him.<sup>116</sup>

62 SSSgt Fardlie then asked Jumadi whom the rest of the *batu* belonged to. He allegedly promised Jumadi that, if he cooperated and admitted that all the items belonged to him, he would not receive the death penalty. Jumadi asked SSSgt Fardlie if he was sure of his promise, to which SSSgt Fardlie allegedly nodded his head twice in reply. SSSgt Fardlie then took out a notebook and asked Jumadi to make a statement, which he did. This was the First Contemporaneous Statement. Jumadi testified that he made the First Contemporaneous Statement because of the Promise, which he understood to be that, if he admitted to ownership of the Drugs and cooperated with the CNB, he would be spared the death penalty.<sup>117</sup>

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<sup>115</sup> NEs, 17 July 2020, at p 4, line 17 to p 6, line 11; 3DSA, at para 12(b)(i)–(iii).

<sup>116</sup> NEs, 17 July 2020, at p 6, line 12 to p 7, line 20; 3DSA, at para 12(b)(iv).

<sup>117</sup> NEs, 17 July 2020, at p 7, line 21 to p 8, line 10.

63 In support of this claim, Jumadi pointed to the fact that, although it was recorded in the field diary that the First Contemporaneous Statement had been taken at “1425”, referring to 2.25pm, there was another number written below “1425” that had been cancelled out, with *only* SSSgt Fardlie’s signature below the cancellation. This was despite the fact that, in subsequent statements, any amendments made were countersigned by both Jumadi and SSSgt Fardlie.<sup>118</sup> In the course of cross-examination, it was put to SSSgt Fardlie that the original timing of the statement which was cancelled out was “1455”, referring to 2.55pm. It was further put to SSSgt Fardlie that he made this cancellation in order to remove any evidence of the conversation he had with Jumadi in which the Promise was allegedly made.<sup>119</sup>

(2) The Second Contemporaneous Statement

64 Jumadi testified that he also gave the Second Contemporaneous Statement because of the Promise.<sup>120</sup> Further, Jumadi claimed that SSSgt Fardlie reaffirmed the Promise during and after the recording of the Second Contemporaneous Statement.

65 First, during the recording of the Second Contemporaneous Statement, Jumadi had initially refused to admit ownership of the drugs found in the bedroom of the Unit. SSSgt Fardlie then allegedly reminded Jumadi that he had promised to spare Jumadi the death penalty if Jumadi admitted that all the Drugs

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<sup>118</sup> NEs, 16 July 2020, at p 19, lines 15–28.

<sup>119</sup> NEs, 16 July 2020, at p 31, lines 13–15.

<sup>120</sup> NEs, 17 July 2020, at p 8, lines 21–25.

belonged to him. Jumadi thus admitted to ownership of the drugs found in the bedroom.<sup>121</sup>

66 Second, after the Second Contemporaneous Statement was recorded, SSSgt Fardlie showed Jumadi a document and asked him if he knew about a “new law” that would allow him to escape the death penalty if he cooperated with the CNB.<sup>122</sup> Jumadi replied that he had heard about this law. SSSgt Fardlie then asked Jumadi if he wanted to admit that all the items belonged to him and cooperate with the CNB. When Jumadi replied in the affirmative, SSSgt Fardlie told Jumadi to sign the document. Jumadi complied. He testified that, when SSSgt Fardlie asked him about the “new law” and when he signed the document, he was under the impression that these related to the Promise made earlier by SSSgt Fardlie.<sup>123</sup>

67 During the ancillary hearing, Jumadi identified the document he signed as a document entitled “Notice of requirements that would satisfy s 33B(2) of the Misuse of Drugs Act” (“the MDP Notice”).<sup>124</sup> It was recorded on the MDP Notice that it had been read to Jumadi at 4.15pm. It was put to SSSgt Fardlie that this could not have been so, as SSSgt Fardlie had testified to searching the Car at 4.10pm.<sup>125</sup> SSSgt Fardlie could not have finished searching the Car and returned to the Unit in just five minutes, given that it had taken him ten minutes to walk from the Unit to the carpark and locate the Car.<sup>126</sup>

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<sup>121</sup> NEs, 17 July 2020, at p 8, line 29 to p 9, line 25; D3SA, at para 9(a).

<sup>122</sup> 3DSA, at para 9(b).

<sup>123</sup> NEs, 17 July 2020, at p 9, line 26 to p 10, line 28; p 11, lines 5–8.

<sup>124</sup> NEs, 17 July 2020, at p 11, lines 1–4; Exhibit P459.

<sup>125</sup> 1 AB 898, para 20.

<sup>126</sup> NEs, 16 July 2020, at p 54, line 28 to p 55, line 15.

(3) Events following the Second Contemporaneous Statement

68 Jumadi testified that, on 22 June 2017, after IO Yip arrived at the Unit, she allegedly told Jumadi in English that SSSgt Fardlie had informed her that Jumadi was willing to cooperate with the CNB. She allegedly encouraged Jumadi to continue cooperating so that he could be spared the death penalty. Jumadi replied that he had admitted to ownership of the Drugs and wanted to cooperate so that he could avoid the death penalty. This was allegedly acknowledged by IO Yip.<sup>127</sup>

69 Jumadi further testified that, after he was arrested and brought to the Police Cantonment Complex, he told Shisham about the Promise that had been made to him by SSSgt Fardlie.<sup>128</sup> He also informed the psychiatrist at the Institute of Mental Health, Dr Derrick Yeo Chen Kuan (“Dr Yeo”), about the Promise.<sup>129</sup>

(4) The Cautioned Statement and the five long statements

70 Jumadi testified that, when he gave his Cautioned Statement and his subsequent long statements, he continued to think about and was influenced by the Promise.<sup>130</sup> He also claimed that IO Yip reinforced and perpetuated the Promise when she recorded Jumadi’s Cautioned Statement and the first five of his long statements.

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<sup>127</sup> NEs, 17 July 2020, at p 11, line 21 to p 12, line 6; 3DSA, at para 9(c).

<sup>128</sup> NEs, 17 July 2020, at p 12, lines 11–23.

<sup>129</sup> NEs, 17 July 2020, at p 16, lines 12–22.

<sup>130</sup> NEs, 17 July 2020, at p 13, lines 13–16; lines 22–25; p 14, lines 2–6; lines 10–13; lines 16–19; lines 22–25; p 15, line 29 to p 16, line 3; p 16, lines 7–10.

71 In relation to Jumadi’s Cautioned Statement, Jumadi claimed that, prior to the recording of Jumadi’s Cautioned Statement, IO Yip told him in English that, if he continued cooperating and admitted that all the Drugs belonged to him, he would be spared the death penalty. Jumadi then replied in English that he wanted to continue cooperating and would give his statement.<sup>131</sup>

72 Jumadi further claimed that, during the recording of his Fifth Long Statement, IO Yip showed him the first page of the MDP Notice and asked him in English if he remembered signing the MDP Notice. When Jumadi replied in the affirmative, IO Yip asked in English whether Jumadi still wanted to cooperate. Jumadi replied in English that he had already admitted everything and cooperated with the CNB throughout the investigations. IO Yip told Jumadi that if he wanted to cooperate, he had to give her the names of ten drug traffickers. Jumadi agreed to do so.<sup>132</sup>

(5) The Sixth and Seventh Long Statements

73 The Sixth Long Statement and the Seventh Long Statement were recorded from Jumadi by SSSgt Hamidah. Jumadi also alleged that he was still influenced by SSSgt Fardlie’s Promise when he gave the Sixth Long Statement and the Seventh Long Statement to SSSgt Hamidah.<sup>133</sup>

*The Prosecution’s case*

74 Jumadi’s version of events was firmly rejected by SSSgt Fardlie. He denied that he had stood in the middle of the living room and asked the accused

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<sup>131</sup> NEs, 17 July 2020, at p 12, line 28 to p 13, line 9; 3DSA, at para 9(d).

<sup>132</sup> NEs, 17 July 2020, at p 14, line 26 to p 15, line 24.

<sup>133</sup> NEs, 17 July 2020, at p 15, line 25 to p 16, line 10.

persons questions as alleged by Jumadi.<sup>134</sup> In this respect, SSSgt Fardlie’s testimony was corroborated by the evidence of the other arresting officers.<sup>135</sup> At the main trial, they testified that they did not recall SSSgt Fardlie standing in the middle of the living room and asking the accused persons a question in Malay.<sup>136</sup> In particular, SSgt Ee Guo Dong Marcus positively testified that SSSgt Fardlie had not done such a thing and, if he had, this would have been recorded in the field diary.

75 Further, SSSgt Fardlie maintained that the First Contemporaneous Statement was recorded *before* he began his search of the Unit.<sup>137</sup> SSSgt Fardlie testified that the reason why he searched the red bag in the first place was because Jumadi had mentioned that the drugs were in the red bag in the First Contemporaneous Statement.<sup>138</sup> SSSgt Fardlie explained that the “1425” in the field diary represented the actual time that the First Contemporaneous Statement was recorded and the cancellation arose because he had initially written the time wrongly. While he first attempted to write over the incorrect time, he eventually decided to cancel it, countersigned against the cancellation and wrote the correct timing above.<sup>139</sup> SSSgt Fardlie further explained that he did not ask Jumadi to

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<sup>134</sup> NEs, 17 July 2020, at p 24, line 25 to p 26, line 22.

<sup>135</sup> Prosecution’s Submissions for the Ancillary Hearing, dated 18 August 2020 (“PSA”), at para 26.

<sup>136</sup> NEs, 14 July 2020, at p 105, lines 1–3; 15 July 2020, at p 14, lines 18–21; p 28, lines 16–20; p 59, lines 18–21; p 71, lines 15–18;

<sup>137</sup> NEs, 16 July 2020, at p 23, lines 28–30; p 28, lines 14–15; p 29, lines 10–11; p 30, lines 2–3.

<sup>138</sup> NEs, 16 July 2020, at p 45, lines 1–6; PSA, at para 27.

<sup>139</sup> NEs, 16 July 2020, at p 27, lines 16–22; line 30; p 28, lines 3–6.

countersign against the amendment in timing because there had been no reason to do so, given that the statement had already been read back to Jumadi.<sup>140</sup>

76 As regards the Second Contemporaneous Statement, SSSgt Fardlie similarly denied Jumadi's account of what had occurred during and after the recording of the Second Contemporaneous Statement. SSSgt Fardlie testified that he had read the MDP Notice to Jumadi at 4.15pm, *before* the Second Contemporaneous Statement was recorded.<sup>141</sup> He explained that he had read the entirety of the MDP Notice to Jumadi in Malay, following which Jumadi signed the MDP Notice to acknowledge that he understood its contents.<sup>142</sup> Further, SSSgt Fardlie explained that his search of the Car took less than five minutes because nothing incriminating was recovered from the Car.<sup>143</sup>

77 IO Yip similarly denied Jumadi's allegations. In relation to Jumadi's claim that she spoke to him on 22 June 2017 after she arrived at the Unit, IO Yip testified that it was not her usual practice to speak to accused persons when she arrived at the scene of the crime.<sup>144</sup> She also testified that, when taking statements from accused persons, her usual practice was only to ask the accused person how they were feeling, what language they wished to speak in, and, if they chose to speak in a language other than English, whether they were comfortable with having an interpreter.<sup>145</sup> Finally, although IO Yip could not

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<sup>140</sup> NEs, 16 July 2020, at p 30, lines 11–13.

<sup>141</sup> NEs, 16 July 2020, at p 39, lines 2–11; p 51, lines 23–31.

<sup>142</sup> NEs, 16 July 2020, at p 51, lines 10–22; p 56, line 7.

<sup>143</sup> NEs, 16 July 2020, at p 55, line 16.

<sup>144</sup> NEs, 16 July 2020, at p 79, lines 19–21.

<sup>145</sup> NEs, 16 July 2020, at p 81, lines 5–9.

recall whether she had shown Jumadi the MDP Notice,<sup>146</sup> she firmly denied asking him if he still wanted to cooperate and be spared the death penalty, as well as asking him to give her the names of ten people involved in drug trafficking if he really wanted to cooperate with the CNB.<sup>147</sup>

78 IO Yip's evidence was supported by the evidence of Mr Faiz, the Malay interpreter, who assisted in the interpretation when Jumadi's Cautioned Statement and Jumadi's Fifth Long Statement were recorded by IO Yip. Mr Faiz testified that he had not seen IO Yip speaking to Jumadi before she recorded Jumadi's Cautioned Statement. He explained that he and IO Yip had entered the interview room together, so he would have known if she had spoken to Jumadi.<sup>148</sup> Further, although Mr Faiz could not recall whether IO Yip showed Jumadi the MDP Notice and asked him further questions in English, he testified that, if IO Yip had done so, he would have noted it down. He confirmed that he did not take down any such notes.<sup>149</sup>

79 The Prosecution's case was supported by Dr Yeo's evidence. Dr Yeo testified that, although Jumadi had been forthcoming and cooperative in the interviews, he did not mention the Promise allegedly made by SSSgt Fardlie. Rather, Dr Yeo explained that Jumadi had been hopeful of leniency from the court if he were to cooperate. This was referred to by Dr Yeo in his report at para 11, which reads:<sup>150</sup>

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<sup>146</sup> NEs, 16 July 2020, at p 81, lines 21–31.

<sup>147</sup> NEs, 16 July 2020, at p 82, lines 5–13.

<sup>148</sup> NEs, 16 July 2020, at p 97, lines 7–15.

<sup>149</sup> NEs, 16 July 2020, at p 101, lines 11–16.

<sup>150</sup> 1 AB 822; PSA, at para 62.

The accused reported being aware of the severe penalties for drug trafficking. With regards to the current charge, the accused hoped that in admitting his guilt and cooperating with the Central Narcotics Bureau, he would be given a lighter sentence.

Dr Yeo testified that, if he had been told of the Promise allegedly made by SSSgt Fardlie, he would have written this down, especially if Jumadi had mentioned SSSgt Fardlie's name in particular.<sup>151</sup> Indeed, Jumadi had mentioned Salzawiyah and Shisham by name, and Dr Yeo included their names in his report.<sup>152</sup>

80 Dr Yeo's testimony was corroborated by his clinical notes of his third interview with Jumadi.<sup>153</sup> There was no mention of any promise or SSSgt Fardlie anywhere in his clinical notes.<sup>154</sup> Rather, his clinical notes refer to "plans to cooperate cos [*sic*] hopeful of leniency" and "contract of cooperation with CNB". Dr Yeo clarified that these were "his own words" which he had inferred from his interaction with Jumadi. The phrase "contract of cooperation" was based on his understanding that accused persons who cooperated would be given a document certifying their cooperation, which could then allow them to obtain leniency in court. He did not know the exact name of this document, therefore, he referred to it as a "contract of cooperation".<sup>155</sup>

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<sup>151</sup> PSA, at para 60.

<sup>152</sup> 1 AB 822, paras 9–10; PSA, at para 61.

<sup>153</sup> Exhibit P211-A.

<sup>154</sup> PSA, at para 61.

<sup>155</sup> PSA, at para 63.

81 SSSgt Hamidah testified that Jumadi gave the Sixth Long Statement and the Seventh Long Statement to her voluntarily without inducement, threat or promise.<sup>156</sup>

***My decision***

82 Section 258(3) of the CPC states that:

The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

83 As the Court of Appeal observed in *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 (“*Kelvin Chai*”) at [53]:<sup>157</sup>

... The test of voluntariness is applied in a manner which is *partly objective and partly subjective*. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge ... It is also established that where voluntariness is challenged, the *burden is on the Prosecution to prove beyond a reasonable doubt that the confession was made voluntarily* and not for the Defence to prove on a balance of probabilities that the confession was not made voluntarily ... [emphasis added]

84 I emphasise that the burden is on the Prosecution, and not the Defence, to prove that the Statements were made voluntarily. The applicable standard is

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<sup>156</sup> NEs, 16 July 2020, at p 104, lines 3–8; p 105, lines 18–23; lines 27–29.

<sup>157</sup> PSA, at para 22; 3DSA, at para 5.

that of beyond a reasonable doubt. This was recently reiterated by the High Court in *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz and another* [2019] SGHC 268 (“*Mohamed Ansari*”) at [9] as follows:

The burden is on the prosecution to prove beyond reasonable doubt that the statement had been made voluntarily, and not on the defence to prove on a balance of probabilities that the confession was not made voluntarily: *Koh Aik Siew v PP* [1993] 1 SLR(R) 885 at [23], *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 (*‘Chai Chien Wei Kelvin’*) at [53]. It is only necessary for the prosecution to remove a reasonable doubt of the existence of threat, inducement or promise held out to the accused and not every lurking shadow of influence or remnants of fear: *Panya Martmontree v PP* [1995] 2 SLR(R) 806 [at] [28] and *Chai Chien Wei Kelvin* at [53].

85 Bearing these principles in mind, I shall now consider the objective limb and the subjective limb of voluntariness in turn, in relation to the Promise and the MDP Notice.

#### *The objective limb*

(1) General observations

86 I found that the Prosecution had proven beyond a reasonable doubt that Jumadi had given his Statements to the various CNB officers voluntarily and that the Promise had not in fact been made. SSSgt Fardlie, IO Yip, Mr Faiz and SSSgt Hamidah were clear and consistent in their accounts of what transpired during the recording of the relevant Statements and that the Promise had not in fact been made. Similarly, Dr Yeo was clear that Jumadi had not mentioned the Promise that was allegedly given to him by SSSgt Fardlie. Dr Yeo said that Jumadi was hopeful of obtaining leniency by his cooperation. I accepted the Prosecution’s submissions that there was no reason for any of these witnesses

to lie.<sup>158</sup> This was especially the case for Mr Faiz and Dr Yeo. They were not directly involved in the investigations of the drug trafficking charge against Jumadi. Mr Faiz was an interpreter during the recording of Jumadi's statements while Dr Yeo assessed Jumadi's mental state. I, therefore, found their evidence to be credible and accepted their evidence. Their evidence was also supported by the contemporaneous documents such as Dr Yeo's clinical notes, the field diary and the MDP Notice.

87 In contrast, Jumadi was the only witness who testified in support of his case. As such, Jumadi's claim of involuntariness rested solely upon his own uncorroborated testimony of what had transpired during the statement-recording process. However, in contrast to the Prosecution's evidence, Jumadi's evidence was inconsistent with what was actually recorded in the statements. It was also inconsistent with the evidence of the Prosecution's witnesses and the contemporaneous evidence.

88 Before I delve further into the issues, I would like to make an observation that the Prosecution in its submissions attempted to discredit Jumadi's case and asserted that Jumadi's counsel failed to put material parts of his case to the other arresting officers who testified at the main trial.<sup>159</sup> However, SSSgt Fardlie and SSgt Phang Yee Leong James ("SSgt Phang") were the only two arresting officers who testified at the ancillary hearing. The evidence of the other arresting officers was given *at the main trial*, whereas the issue of voluntariness was to be determined *at the ancillary hearing*. Therefore, it was unreasonable to expect Jumadi's counsel to raise the ancillary issue of

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<sup>158</sup> PSA, at paras 41, 42, 50 and 51.

<sup>159</sup> PSA, at para 65.

voluntariness at the main trial. Thus, I did not hold it against Jumadi that his counsel omitted to put his case in relation to the Statements to the other arresting officers who only testified at the main trial.

(2) The First Contemporaneous Statement

89 I turn now to the First Contemporaneous Statement. I found that SSSgt Fardlie had not made the Promise before recording the First Contemporaneous Statement. Further, I also accepted that the First Contemporaneous Statement was recorded *before* SSSgt Fardlie commenced his search of the Unit. In addition to my general observations above, I shall now furnish other reasons.

90 Firstly, SSSgt Fardlie’s explanation for the cancellation was eminently reasonable.<sup>160</sup> He admitted that he made a mistake when writing down the time and he corrected it. There was no need for Jumadi to countersign against the cancellation as it pertained to *timing*, rather than the *contents* of the statement.

91 Secondly, the court is entitled to examine the contents of an impugned statement in its determination of whether it should be excluded or not (see *Sulaiman bin Jumari v Public Prosecutor* [2020] SGCA 116 at [85]). Jumadi’s claim that the First Contemporaneous Statement had been recorded *after* SSSgt Fardlie searched the Unit was inconsistent with the very first question posed by SSSgt Fardlie in the First Contemporaneous Statement. SSSgt Fardlie had asked, “*Before* I search this place, do you have anything to surrender?” [emphasis added].<sup>161</sup> This directly contradicted and demolished Jumadi’s claim

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<sup>160</sup> PSA, at para 29.

<sup>161</sup> Exhibit P217T.

about the Promise. This further supported SSSgt Fardlie's evidence that the First Contemporaneous Statement was merely a recording of a quick conversation he had with Jumadi to ask Jumadi whether he had anything to surrender *before* he commenced his search of the Unit.<sup>162</sup> In my view, this was a crucial point which significantly undermined Jumadi's case. According to Jumadi, the Promise was first given by SSSgt Fardlie in order to get Jumadi to admit to ownership of the items that had been found in the Unit. This is premised on the fact that the search *had already taken place*. However, it is clear that the First Contemporaneous Statement was recorded *before* the search was conducted. At this time, the items had not yet been seized and there was nothing that SSSgt Fardlie could have asked Jumadi to admit to owning. Therefore, my finding that the First Contemporaneous Statement was recorded prior to the search of the Unit significantly undermined the fundamental foundation of the Promise.

92 Thirdly, SSgt Phang's evidence supported SSSgt Fardlie's evidence that the First Contemporaneous Statement had been recorded at 2.25pm, rather than at 2.55pm, as was put to SSSgt Fardlie during cross-examination by Jumadi's counsel.<sup>163</sup> The field diary contained an entry for which the time stated was "1435", referring to 2.35pm. SSgt Phang confirmed that he made this entry at 2.35pm,<sup>164</sup> just after he received the field diary from SSSgt Fardlie.<sup>165</sup> When he recorded the entry at 2.35pm, the entry for which the time stated was "1425" (*ie*, the First Contemporaneous Statement) was already there.<sup>166</sup> Therefore, the

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<sup>162</sup> NEs, 16 July 2020, at p 29, line 29 to p 30, line 4.

<sup>163</sup> PSA, at para 31.

<sup>164</sup> NEs, 16 July 2020, at p 86, lines 4–13; 28–31.

<sup>165</sup> NEs, 16 July 2020, at p 87, lines 19–20.

<sup>166</sup> NEs, 16 July 2020, at p 88, lines 2–6.

First Contemporaneous Statement must have been recorded before 2.35pm. This accords with SSSgt Fardlie’s evidence that the First Contemporaneous Statement was recorded at 2.25pm.

93 Finally, in relation to SSSgt Fardlie’s evidence that he searched the red bag because Jumadi informed him of the red bag in the First Contemporaneous Statement, Jumadi’s counsel submitted that this could not have been so as there was no reference to a red bag in the First Contemporaneous Statement.<sup>167</sup> With respect, I do not agree with the submission of Jumadi’s counsel. In the First Contemporaneous Statement, Jumadi said that “everything here in this house are [*sic*] mine” which he said was “about 6 stones” meaning six bundles of diamorphine. This caused SSSgt Fardlie to search the living room including the red bag in which, *inter alia*, four bundles of diamorphine were found.

(3) The Second Contemporaneous Statement and the MDP Notice

94 Jumadi claimed that the MDP Notice had been given to him *after* the recording of the Second Contemporaneous Statement, while SSSgt Fardlie testified that it had been given to Jumadi *before* the recording of the Second Contemporaneous Statement. Jumadi also claimed that the Promise had been repeated to him during the recording of the Second Contemporaneous Statement and when the MDP Notice was administered to him. SSSgt Fardlie denied these claims.

95 I found SSSgt Fardlie’s account more credible. SSSgt Fardlie’s evidence that the MDP Notice had been administered before the recording of the Second Contemporaneous Statement was supported by the timings written

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<sup>167</sup> 3DSA, at para 12(a).

in the field diary and the MDP Notice. The timings written in the MDP Notice reflected that the reading of the MDP Notice to Jumadi began at 4.15pm and ended at 4.21pm.<sup>168</sup> As stated in the field diary, the Second Contemporaneous Statement was recorded at 4.25pm, *after* the MDP Notice was read to Jumadi.<sup>169</sup>

(4) Jumadi's failure to call any witnesses

96 I found it dubious that Jumadi decided not to call any witnesses in support of his case, although he could have done so. According to Jumadi, Shisham and Salzawiyah were present when SSSgt Fardlie allegedly searched the Unit and asked the accused persons whom the *batu* belonged to.<sup>170</sup> Although Shisham and Salzawiyah might not have been privy to the alleged conversation between Jumadi and SSSgt Fardlie in which SSSgt Fardlie made the Promise, they could have corroborated the earlier portion of Jumadi's account regarding the search and SSSgt Fardlie's actions before the recording of the First Contemporaneous Statement. This would have gone some way towards supporting Jumadi's evidence. Similarly, Jumadi claimed that he had told Shisham and Dr Yeo about the Promise but he did not call them as his witnesses. If his allegations were true, Shisham and Dr Yeo would have corroborated his testimony.<sup>171</sup>

97 This failure to call the abovementioned persons as witnesses was telling. Shisham and Salzawiyah were present in court throughout the entire ancillary hearing and could have readily given evidence in support of Jumadi's case.

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<sup>168</sup> PSA, at para 38.

<sup>169</sup> NEs, 16 July 2020, at p 51, lines 23–31; p 52, line 29 to p 53, line 4; NEs, 17 July 2020, at p 33, lines 1–21; Exhibit P459.

<sup>170</sup> PSA, at para 68.

<sup>171</sup> PSA, at para 70.

Dr Yeo was in the Prosecution's list of witnesses for the main trial and could have been contacted to give evidence. In fact, Dr Yeo was eventually called by the Prosecution as a rebuttal witness at the ancillary hearing after Jumadi's allegations about telling Dr Yeo about the Promise given by SSSgt Fardlie were revealed for the first time in court. This was admitted by Jumadi's counsel who did not object to the Prosecution calling Dr Yeo as a rebuttal witness. In these circumstances, Jumadi's allegations about the Promise made by SSSgt Fardlie appeared highly questionable. By not calling Salzawiyah, Shisham and Dr Yeo, it seemed that Jumadi knew that they would not be able to corroborate his testimony. Indeed, this was what happened when the Prosecution called Dr Yeo to the stand and Dr Yeo gave evidence refuting Jumadi's claims. When Salzawiyah subsequently gave evidence in the main trial, she refuted Jumadi's account of what had occurred in the living room of the Unit before Jumadi's First Contemporaneous Statement was recorded.<sup>172</sup> This fortified my earlier decision at the ancillary hearing. Therefore, Jumadi's failure to call witnesses who could have corroborated his testimony served to further weaken his credibility and made me seriously doubt the veracity of his evidence about the alleged Promise made by SSSgt Fardlie.

(5) Conclusion on the alleged Promise

98 For the above reasons, I found that the Prosecution had proved beyond a reasonable doubt that the Promise had not in fact been made at any point in time. I also found that the First Contemporaneous Statement had been recorded before SSSgt Fardlie commenced his search of the Unit, and the MDP Notice had been administered to Jumadi by SSSgt Fardlie before he recorded the Second Contemporaneous Statement. The contemporaneous evidence supports

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<sup>172</sup> NEs, 25 August 2020, at p 23, line 17 to p 24, line 20; PCS, at para 52.

the Prosecution's case. Furthermore, in light of the abovementioned inconsistencies, Jumadi's lack of credibility and my doubts regarding the veracity of his evidence, I concluded that Jumadi had not raised a reasonable doubt in the Prosecution's case that the Promise had not been made to Jumadi.

(6) The MDP Notice

99 It was not disputed that the MDP Notice was administered to Jumadi.<sup>173</sup> The relevant provisions of the MDA to which the MDP Notice relates are ss 33B(1)(a) and 33B(2), which read as follows:

**Discretion of court not to impose sentence of death in certain circumstances**

**33B.**—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court –

(a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; ...

...

(2) The requirements referred to in subsection (1)(a) are as follows:

(a) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted –

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

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<sup>173</sup> D3SA, at para 20.

(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in subparagraphs (i), (ii) and (iii); and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

100 Accordingly, the MDP Notice informed Jumadi of the possibility of being sentenced by the court to life imprisonment instead of the death penalty under certain special circumstances, as follows:

Your attention is hereby brought to section 33B(2) of the Misuse of Drugs Act.

This provision, read with section 33B(1)(a) Misuse of Drugs Act, gives the courts the discretion to sentence an accused person convicted of trafficking, importing and exporting of controlled drugs to life imprisonment (and caning, for males under 50), instead of death, if both the following conditions are met.

First, the accused person's involvement in the offence is restricted to:

- (a) transporting, sending or delivering a controlled drug;
- (b) offering to transport, send or deliver a controlled drug;
- (c) doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
- (d) Any combination of the activities listed in (a), (b) and (c).

AND

Second, the Public Prosecutor certifies to the court that, in his determination, the accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

You are hereby invited to provide information to the Central Narcotics Bureau for the purposes of disrupting drug trafficking activities within or outside Singapore. A delay in providing such information would usually affect its effectiveness in

substantively assisting the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. The mere fact that you provide information, however, does not mean that you will eventually be certified as having provided substantive assistance.

This notification is purely for your information, and should not be construed as a threat, inducement or promise for you to give evidence about the involvement of you and any other person in the commission of an offence.

101 Did the reading of the MDP Notice by SSSgt Fardlie to Jumadi amount to an inducement, threat or promise within the meaning of s 258(3) of the CPC? In my view, it did not.

102 Explanation 2(aa) to s 258(3) of the CPC explicitly states as follows:<sup>174</sup>

*Explanation 2* – If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:

...

(aa) where the accused is informed in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap. 185) under which life imprisonment may be imposed in lieu of death ...

103 Explanation 2(aa) was considered by the High Court in *Public Prosecutor v Sibeko Lindiwe Mary-Jane* [2016] SGHC 199 (“*Sibeko*”). In that case, the accused had been charged with the importation of a controlled drug pursuant to s 7 of the MDA. A notification regarding s 33B of the MDA was read to and signed by the accused, which the court referred to as the “MDA Notification”. The MDA Notification was similar to the MDP Notice in this case save that the wording of the MDA Notification was slightly different, and

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<sup>174</sup> PSA, at para 39.

the MDA Notification did not contain the penultimate paragraph of the MDP Notice cited at [100] above. Lee Seiu Kin J observed at [12]–[13] that:

12 There is no doubt that the MDA notification falls within Explanation 2(aa) to s 258(3) of the CPC as the provisions of s 33B of the MDA are reproduced in it. ...

13 ... Indeed, the MDA Notification is an inducement or promise, in that it holds out a possibility to an accused person that if he, being a mere courier, provides useful information to the CNB, he would escape the death penalty and be sentenced instead to life imprisonment with caning. To the extent that the MDA Notification is an inducement or promise, Explanation 2(aa) to s 258(3) of the CPC has taken it outside the scope of that subsection so that statements recorded subsequent to the MDA Notification are not inadmissible on this ground alone.

104 The same reasoning applies to this case. Here, the MDP Notice sets out the circumstances under which life imprisonment may be imposed by the court in lieu of the death penalty. I note that Explanation 2(aa) refers to the accused being informed “in writing”, whereas the MDP Notice here was printed out, read to Jumadi and signed by him. In my view, this did not bring the administration of the MDP Notice out of the ambit of Explanation 2(aa). The fact that the MDP Notice was read to and signed by Jumadi did not make it any more a threat, inducement or promise than if the MDP Notice had simply been given to him. No legitimate distinction can be made between these two situations. Similarly, in *Sibeko*, the MDA Notification had also been read to and signed by the accused person. Yet, the court did not raise this as a reason to bring the MDA Notification out of the ambit of Explanation 2(aa).

105 One distinction between the MDP Notice and the MDA Notification in *Sibeko* is that the MDP Notice here contains an additional paragraph, beginning with the line stating “You are hereby invited to provide information”.<sup>175</sup>

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<sup>175</sup> D3SA, at para 20.

However, this too did not bring it outside the scope of Explanation 2(aa). It was, as the words suggest, simply a neutral invitation to provide information. It did not contain any substantive reason which could potentially operate as an inducement, threat or promise. This is especially so in light of the entire context of the MDP Notice. In particular, the last portion of the MDP Notice reads:<sup>176</sup>

... The mere fact that you provide information, however, does not mean that you will eventually be certified as having provided substantive assistance.

This notification is purely for your information and should not be construed as a threat, inducement or promise for you to give evidence about the involvement of you or any other person in the commission of an offence.

106 For the above reasons, the administration of the MDP Notice falls squarely within Explanation 2(aa) to s 258(3) of the CPC. The MDP Notice was purely informative and even contained a disclaimer that it was not to be construed as an inducement, threat or promise. As such, it did not amount to a promise within the meaning of s 258(3) of the CPC.

(7) Jumadi's hope of avoiding the death penalty

107 Based on the above, it was clear that the Promise had not been made to Jumadi, either by SSSgt Fardlie, IO Yip or SSSgt Hamidah. Furthermore, the administration of the MDP Notice did not amount to an inducement, threat or promise within the scope of s 258(3) of the CPC. As Dr Yeo testified, Jumadi had only been *hopeful* that he would be given a certificate of substantive assistance which would enable him to obtain a more lenient sentence. In my view, however, such a hope did not amount to an inducement, threat or promise within s 258(3) of the CPC.

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<sup>176</sup> PSA, at para 40.

108 It is trite that a self-perceived promise or inducement does not render a statement involuntary. This was established by the Court of Appeal in *Lu Lai Heng v Public Prosecutor* [1994] 1 SLR(R) 1037 (“*Lu Lai Heng*”) at [19], reiterated in *Kelvin Chai* ([83] *supra*) at [55], and subsequently followed in numerous cases (see most recently *eg, Mohamed Ansari* ([84] *supra*) at [31]; *Public Prosecutor v Imran bin Mohd Arip and others* [2019] SGHC 155 at [33]).

109 In *Lu Lai Heng*, the accused claimed that he only admitted ownership of the drugs in a written statement as he was “under the impression that his mother could be in trouble because the drugs were found in her room” and that the officer would “let his mother go free in a day or two if he admitted that he owned the drugs” (*Lu Lai Heng* at [8]). On that basis, the trial judge excluded the written statement. However, the Court of Appeal observed that the written statement should have been admitted, explaining at [19] as follows:

... The evidence was quite clear that ASP Lim or any other person in authority did not hold out to the appellant that his mother, Mdm Teng, would not be arrested or would be set free in a day or two if the appellant admitted that the drugs found in the cupboard in Mdm Teng’s room were in fact his. *This was the appellant’s own perceived impression.* That was what he said in evidence. *Such a self-perceived inducement, in our judgment, could not in law amount to an inducement or promise within the meaning of s 24 of the Evidence Act ...* On the evidence, no such inducement or promise proceeded from ASP Lim or any other person in authority. ... this hope was self-generated; it certainly was not excited by anything said or done by ASP Lim or anyone else. ... [emphasis added]

110 Similarly, in this case, I have found that no inducement, threat or promise was made by SSSgt Fardlie, IO Yip or SSSgt Hamidah. Jumadi’s hope of obtaining a certificate of substantive assistance was based on his own understanding of the situation. In light of this, it was understandable that Jumadi

volunteered information regarding his customers<sup>177</sup> and that he was cooperative and forthcoming with the CNB officers and Dr Yeo.<sup>178</sup> All of this could be explained by his *hope* that he would be given a certificate of substantive assistance. However, this hope did not originate from a person in authority; instead, it was purely self-perceived. It was entirely different from a promise advanced by the CNB officers to spare Jumadi the death penalty if he were to cooperate.<sup>179</sup> Therefore, Jumadi's hope of obtaining a certificate of substantive assistance was not an inducement, threat or promise falling within s 258(3) of the CPC.

*The subjective limb*

111 I have concluded that on the evidence there was no Promise made to Jumadi and the administration of the MDP Notice did not amount to a promise within the meaning of s 258(3) of the CPC. Thus, it was not necessary to look at Jumadi's subjective state of mind when he gave his Statements. Nevertheless, I shall make some observations on this issue.

112 Jumadi is a 47-year-old man. In the course of the ancillary hearing, he came across as a shrewd and intelligent person who could give his evidence in a clear and reasoned manner. He took pains to emphasize that he had been *promised* certain things, even correcting the interpreter when she used the word "told" instead of "promised" when translating his answer.<sup>180</sup> As Jumadi testified, he was initially unwilling to admit to ownership of the Drugs. I find that Jumadi

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<sup>177</sup> D3SA, at para 29.

<sup>178</sup> D3SA, at para 21.

<sup>179</sup> PSA, at para 64.

<sup>180</sup> NEs, 17 July 2020, at p 12, lines 15–21.

would not have simply believed the Promise allegedly made by SSSgt Fardlie and/or IO Yip, and/or misconstrued the MDP Notice as he was also aware of the new drug law at the time of the raid. I also find it incredible that the Promise and/or the MDP Notice would have caused him to immediately change his mind as to whether to admit to ownership of the Drugs.

113 Jumadi knew that he was facing the death penalty as he was a drug trafficker with a large quantity of diamorphine in his possession, besides other drugs. He fully cooperated with the CNB officers hoping that they would be lenient to him and not punish him with the death penalty. This was what he told Dr Yeo.

*Conclusion on the admissibility of Jumadi's Statements*

114 In conclusion, after the first ancillary hearing, I was convinced that SSSgt Fardlie, IO Yip and SSSgt Hamidah did not offer any inducement, threat or promise to Jumadi. Thus, I found that the Prosecution had proven beyond a reasonable doubt that Jumadi's Statements (except for the Eighth Long Statement) were made voluntarily without inducement, threat or promise. No Promise was made to Jumadi and neither did the MDP Notice constitute a promise within the meaning of s 258(3) of the CPC. For these reasons, I admitted the Statements (except the Eighth Long Statement) into evidence.

*The second ancillary hearing*

115 When Shisham's counsel sought to adduce Jumadi's Eighth Long Statement, Jumadi similarly claimed that, before taking his statement, SSSgt Lim had informed him that she was from the CNB. This caused him to think of the Promise made by SSSgt Fardlie, since both SSSgt Lim and

SSSgt Fardlie were from the CNB.<sup>181</sup> Thus, Jumadi contended that the Eighth Long Statement had been influenced by the Promise and was not voluntary.

116 On the other hand, Shisham’s counsel called SSSgt Lim as a witness to testify regarding the recording of Jumadi’s Eighth Long Statement. SSSgt Lim testified that the purpose of the Eighth Long Statement was to investigate Shisham’s claim that some moneys seized from him had been borrowed from Jumadi.<sup>182</sup> SSSgt Lim denied that any inducement or promise had been offered to Jumadi during the recording of the Eighth Long Statement.<sup>183</sup> Jumadi did not mention the Promise to her.<sup>184</sup> Rather, she had read over and explained the statement to Jumadi in English. Jumadi had confirmed that he understood the contents of the statement and had even made amendments to it.<sup>185</sup>

117 Shisham’s counsel submitted that, given my decision in the first ancillary hearing that the other Statements had been made voluntarily, the same outcome must be had in the second ancillary hearing. Shisham’s counsel also noted that the Eighth Long Statement was recorded in December, several months after Jumadi was arrested and the Promise was allegedly made. As such, even if the Promise had been made, it could not have operated on Jumadi’s mind at the time of the recording of the Eighth Long Statement.

118 At the end of the second ancillary hearing, I held that Jumadi’s Eighth Long Statement had been made voluntarily. Jumadi’s case in respect of the

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<sup>181</sup> NEs, 28 August 2020, at p 14, lines 16–23.

<sup>182</sup> NEs, 28 August 2020, at p 6, line 29 to p 7, line 5.

<sup>183</sup> NEs, 28 August 2020, at p 8, lines 8–11.

<sup>184</sup> NEs, 28 August 2020, at p 10, lines 12–16.

<sup>185</sup> NEs, 28 August 2020, at p 8, line 19 to p 9, line 25.

Eighth Long Statement remained fundamentally the same as in the first ancillary hearing – that SSSgt Fardlie had made him the Promise, which influenced all his subsequent Statements. However, I had already rejected Jumadi’s claims regarding the Promise. Accordingly, the Eighth Long Statement was also not affected by any alleged Promise and was made voluntarily without inducement, threat or promise. I, therefore, admitted the Eighth Long Statement into evidence.

***Whether the court should reverse its decision to admit the Statements***

119 At the end of the main trial, Jumadi’s counsel submitted that, based on evidence that arose in the main trial, the court should reverse its earlier decision to admit the Statements.<sup>186</sup> This submission is based on ss 279(7) and 279(8) of the CPC, which read:

(7) If the court, after hearing evidence in the main trial, is doubtful about the correctness of its earlier decision whether or not to admit the evidence at the ancillary hearing, it may call on the prosecution and the defence to make further submissions.

(8) If the court, after hearing any submissions, decides to reverse its earlier decision in admitting the evidence, it shall disregard such evidence when determining whether or not to call for the defence or when determining the guilt or otherwise of the accused.

120 It should be noted that, according to s 279(7), it is the court who should “call on the prosecution and the defence to make further submissions”. No such request was made by the court in this case, as there was no doubt about the correctness of the court’s earlier decision to admit the Statements. In any case,

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<sup>186</sup> 3DCS, at para 108.

I am not persuaded by the arguments raised by Jumadi in support of this submission. I shall address these arguments in turn.

121 First, Jumadi submits that the account of the arrest in Shisham’s Second Long Statement supports Jumadi’s testimony that the search of the Unit was conducted *before* the recording of the First Contemporaneous Statement.<sup>187</sup> Jumadi relies on the following parts of Shisham’s Second Long Statement:<sup>188</sup>

13 ... I saw an Indian man entered the toilet and identified himself as CNB officer. He stood next to me and held onto my arm. I then wore a short pant and the officer arrested me and brought me to the living room. ...

14 At the living room, I saw a lot of CNB officers standing around and that Jumadi and ‘Sis’ were also arrested. I was sitting near the fridge at the living room while *the CNB officers were going about collecting some stuff in the unit*. I did not see what the officers were doing. The officer told me not to look. ...

[emphasis added]

122 In my view, these portions of Shisham’s Second Long Statement do little to support Jumadi’s testimony, much less corroborate it. It is not clear from Shisham’s Second Long Statement whether SSSgt Fardlie had already recorded the First Contemporaneous Statement from Jumadi prior to Shisham allegedly seeing the CNB officers “going about collecting some stuff” in the Unit. It bears repeating that the First Contemporaneous Statement was taken as a “very fast ... quick, statement”,<sup>189</sup> with only four questions and four answers. As such, this portion of Shisham’s Second Long Statement does not raise any doubts as to the correctness of the court’s findings regarding the Promise and its decision to admit Jumadi’s Statements.

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<sup>187</sup> 3DCS, at paras 105–106, 109.

<sup>188</sup> 2 AB 1210–1211.

<sup>189</sup> NEs, 16 July 2020, at p 29, line 29.

123 Second, Jumadi submits that Salzawiyah’s testimony regarding the MDP Notice supports his testimony that the MDP Notice had been read to him *after* the recording of his Second Contemporaneous Statement.<sup>190</sup> In court, Salzawiyah testified that she had never seen the MDP Notice, not even before the recording of her statements by the CNB.<sup>191</sup> Jumadi submits that this is contrary to SSSgt Fardlie’s evidence that it “is an instruction ... by the [CNB] to serve the MDP before recording the contemporaneous statement of the ... accused person”.<sup>192</sup> In my view, this portion of Salzawiyah’s testimony does not create any doubts as to whether SSSgt Fardlie had read the MDP Notice to Jumadi *prior* to the recording of the Second Contemporaneous Statement. The fact that the CNB served the MDP Notice on Jumadi but not on Salzawiyah does not, in itself, raise doubts in the Prosecution’s case. The service of the MDP Notice is not a statutory requirement and there could have been a legitimate reason for the CNB to decide not to do so. Since Salzawiyah’s testimony is that she had not been served the MDP Notice, it is of little assistance in so far as *when* the MDP Notice might have been served. Therefore, it also does not raise any doubts as to the correctness of the court’s decision to admit Jumadi’s Statements.

### My decision

#### ***The amendment of Salzawiyah’s capital charge to a non-capital charge***

124 I shall first deal with the amendment of the original capital charge against Salzawiyah to a non-capital charge. The only change in the amended

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<sup>190</sup> 3DCS, at para 110.

<sup>191</sup> NEs, 25 August 2020, at p 2, lines 20–25.

<sup>192</sup> NEs, 16 July 2020, at p 56, lines 27–29.

charge is the analysed weight of diamorphine stated in the charge – Salzawiyah is charged for trafficking in “not less than 14.99g” of diamorphine, rather than “not less than 41.86g” of diamorphine (as reflected in Jumadi’s and Shisham’s amended charges).<sup>193</sup> The gross weight of the diamorphine specified in Salzawiyah’s present amended charge (*ie*, 127 packets containing not less than 3,280.06g of granular/powdery substance found to contain diamorphine) remain the same as in the amended charges against Shisham and Jumadi. Further, the common intention element of the charge remains the same – the alleged trafficking was in furtherance of the common intention of the accused persons. At first glance, this may appear to contradict Jumadi’s and Shisham’s charges, which state that they each trafficked in not less than 41.86g (analysed weight) of diamorphine in furtherance of the common intention of the accused persons.

125 However, the Court of Appeal in *Public Prosecutor v Aishamudin bin Jamaludin* [2020] 2 SLR 769 (“*Aishamudin*”) clarified that under the circumstances there was nothing inherently problematic about the Prosecution bringing such common intention charges in respect of the same criminal act. Nonetheless, the Prosecution must still meet its legal and evidential burden of “proving every element of each charge against *all* the co-offenders said to share in the common intention that is reflected in the charge in question” [emphasis in original]. Further, the Prosecution’s case against all the accused persons must be consistent, in order to avoid prejudice to the accused persons in the form of procedural unfairness and prejudicial outcomes (*Aishamudin* at [53] and [55]). In assessing whether the Prosecution’s cases are consistent, the approach is as follows (*Aishamudin* at [68]):

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<sup>193</sup> Exhibit A1.2; NEs, 26 August 2020, at p 2, line 24 to p 5, line 21.

In our view, the following approach may determine whether the Prosecution is running inconsistent cases in respect of any series of charges: when all the facts and arguments which are material to establishing the Prosecution's case against each of the accused persons are spelled out, would it be possible for all of these facts and arguments to be cumulatively true? Where the answer to this is in the negative, it would seem to point to the existence of a material inconsistency. ... In short, the analysis is concerned with whether the Prosecution's cases are capable of constituting part of a single coherent world of facts.

On this approach, the common intention element in the charges may appear to be inconsistent if, on the face of the charges, "there is some inconsistency in holding that all the elements of all the charges are cumulatively established" (*Aishamudin* at [69]).

126 In *Aishamudin*, the Court of Appeal was concerned with facts which are very similar to this case. In that case, the prosecution had charged one accused person, Suhaizam, with trafficking in not less than 32.54g of diamorphine, whereas the other accused person, Aishamudin, had been charged with trafficking in not less than 14.99g of diamorphine (*Aishamudin* at [10]–[11]). Thus, the analysed weights of diamorphine reflected in the charges were different. However, the items that formed the subject matter of the charges remained the same, specifically, two packets containing not less than 921.5g of granular/powdery substance found to contain diamorphine. Both charges also stated that such trafficking had been carried out in furtherance of the common intention of both Suhaizam and Aishamudin. The Court of Appeal found at [74] that these charges were "capable of constituting part of a single coherent world of facts, namely, one in which Suhaizam and Aishamudin both shared the common intention to traffic in 32.54g (or more) of diamorphine". In contrast, if the evidence showed that Suhaizam intended to traffic in *only* 14.99g of diamorphine, that would be inconsistent with Aishamudin's charge. This was

because Aishamudin's charge required a finding that *both* Suhaizam and Aishamudin intended to traffic in 32.54g of diamorphine (*Aishamudin* at [75]).

127 Similarly, in this case, Salzawiyah's, Jumadi's and Shisham's charges are consistent with each other in so far as they shared the common intention to traffic in 127 packets containing not less than 3,280.06g of granular/powdery substance found to contain diamorphine. In this case, there is no inconsistency in the Prosecution's cases against the accused persons as the subject matter of the amended charge against Salzawiyah (*ie*, 3,280.06g of granular/powdery substance found to contain diamorphine) remains the same as that reflected in the charges against the other two accused persons. Despite the amendment of Salzawiyah's charge, the Prosecution's case remains that Salzawiyah, Jumadi and Shisham shared the common intention to traffic in not less than 127 packets containing not less than 3,280.06g of granular/powdery substance found to contain not less than 41.86g of diamorphine.<sup>194</sup> The only difference between the amended charge of Salzawiyah and the amended charges of Jumadi and Shisham is in terms of punishment for the same crime. Salzawiyah's punishment is non-capital while Jumadi and Shisham face the capital punishment.

### ***The applicable law***

128 I shall now consider the amended charges against the accused persons. It is well-established that, in order to make out the offence of trafficking in a controlled drug under s 5(1)(a) of the MDA, the Prosecution must prove (see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28]; *Public Prosecutor v Abdul Haleem bin Abdul Karim and*

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<sup>194</sup> PCS, at para 29.

*another* [2013] 3 SLR 734 at [28]; *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550 at [35]) that:

- (a) the accused had possession of a controlled drug (which may be proved or presumed under s 18(1) of the MDA);
- (b) the accused had knowledge of the nature of the drug (which may be proved or presumed under s 18(2) of the MDA); and
- (c) the accused’s possession of the controlled drug was for the purpose of trafficking which was not authorised.

129 In relation to the first element of possession, s 18(1) provides that:

**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.

130 The presumption in s 18(1) was explained by the Court of Appeal in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng*”) at [34] as being concerned with secondary possession, that is, “whether the thing in issue [*ie*, the container, key or document of title] exists and whether the accused in fact has possession, control or custody of the thing in issue”. To rebut the presumption in s 18(1), the accused must prove, on a balance of probabilities, that he did not have the drug in his possession. For instance, by showing that

“the accused did not know that the thing in issue contained that which is shown to be the drug in question” (*Obeng* at [35]).

131 Furthermore, s 18(4) of the MDA provides that:

Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

132 There are two critical elements of joint possession under s 18(4) of the MDA – knowledge and consent. In relation to knowledge, the Court of Appeal in *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 (“*Mohammad Azli*”) clarified at [55] and [70] that this refers to “knowledge that the object in the actual possessor’s possession is a controlled drug (as opposed to any specific controlled drug)” [emphasis in original]. In relation to consent, the Court of Appeal in *Mohammad Azli* summarised (at [52]) the applicable principles from *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Muhammad Ridzuan*”) as follows:

... [I]n *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Ridzuan*”), this court held that ‘consent’ required a degree of ‘power or authority’ ... over the object in question (at [63]). Mere acquiescence or condonation would not suffice; rather, there had to be ‘some dealing between the parties in relation to the drug, such as an agreement to buy it or help in concealing it’ (*Ridzuan* at [64], citing *Public Prosecutor v Lim Ah Poh* [1991] 2 SLR(R) 307 at [71]). As such, a minimal or distant role in the drug transaction would not amount to ‘consent’ under s 18(4) (see *Moad Fadzir bin Mustaffa v Public Prosecutor and other appeals* [2019] SGCA 73 (“*Moad Fadzir*”) at [97]–[98]).

133 If the first element of possession is proved or presumed, then the presumption in s 18(2) of the MDA that the accused had knowledge of the nature of the drug is invoked. In order to rebut this presumption, the accused must prove, on a balance of probabilities, that he did not have knowledge of the

nature of the controlled drug (see *Obeng* at [36]). For instance, the accused can show that he did not know or could not reasonably be expected to have known the nature of the controlled drug (see *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18]).

134 In relation to the third element of such possession being for the purpose of trafficking, s 2 of the MDA defines trafficking as follows:

“traffic” means –

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning;

135 The element of trafficking was explained by the Court of Appeal in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 at [110] as follows:<sup>195</sup>

... [I]n our judgment, a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of ‘trafficking’. It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs ‘for the purpose of trafficking’. There is a fundamental difference in character between this type of possession and possession with a view to *passing the drugs onwards* to a third party. In the former situation, the returning of the drugs to a person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the

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<sup>195</sup> 3DCS, at para 131.

drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer. [emphasis in original]

136 Further, s 34 of the Penal Code states that:

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

137 The three requirements for liability under s 34 of the Penal Code are: (a) there must have been a criminal act; (b) there must have been a common intention between the parties; and (c) the parties must have participated in the criminal act. This was recently explained by the Court of Appeal in *Aishamudin* ([125] *supra*) at [49], citing *Muhammad Ridzuan* ([132] *supra*) and *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119, as follows:

49 ... [T]hree elements must be present before s 34 may be invoked: (a) a criminal act; (b) a common intention between the persons in question; and (c) participation in the criminal act.

(a) A *criminal act* in this context has been defined as ‘that unity of criminal behaviour, which results in something, for which an individual would be punishable, if it were all done by himself alone’ ... It refers not to the offence that the individuals concerned plan or carry out, but rather, to an act or a continuum of acts – in short, a criminal design ...

(b) A *common intention* refers to a ‘common design’ or plan, which might either have been pre-arranged or formed spontaneously at the scene of the criminal act ... This must be the intention to do ‘the very criminal act done by the actual doer’ ... foresight of the possibility of the criminal act is not enough ... As this formulation shows, the common intention, strictly speaking, refers not to the intention to commit the offence which is the subject of the charge, but to the intention to do the criminal act, although in many cases, the two will overlap ...

(c) The parties to a common intention charge must *participate* in ‘any of the diverse acts which together form the unity of criminal behaviour resulting in the

offence charged' ... It was also recognised in [*Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447] that participation may take many forms and degrees, and it was held that whether an accused person's participation in a criminal act is of a sufficient degree to satisfy the participation element and attract liability under s 34 is a question of fact. In this regard, it was noted too that there is no requirement for an accused person to be physically present at the scene of the criminal act in order for him to be liable under s 34 ...

### ***The amended charge against Jumadi***

138 Given that Jumadi appears to be the leader/boss of the drug trafficking operation, it is apposite to start with the amended charge against him. Jumadi admits that he had in his possession, for the purpose of trafficking, 14.67g (analysed weight) of diamorphine, and not 41.86g (analysed weight), as stated in the amended charge framed by the Prosecution. Specifically, this 14.67g of diamorphine consisted of the bundles and packets of diamorphine marked A1A1, A1D1, A1E1, A1F1 and B1A1. His defences in relation to the remainder of the Drugs found in the Unit can be divided into two main categories:

- (a) The bundles marked A1B, A1C and A2A containing a total of 18.27g of diamorphine were the Three Bundles that Jumadi claims were mistakenly delivered to him and which he intended to return to Vishu ("the Mistake Defence"). Therefore, Jumadi does not dispute that he had possession of the drugs and knowledge of the nature of the drugs contained in the Three Bundles. The crux of the dispute is whether he intended to traffic in these Three Bundles of diamorphine.
- (b) Jumadi alleges that the packets marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1E containing a total of 8.92g of diamorphine, which were found on Salzawiyah's bed and inside the closet in the bedroom of the Unit, belonged to Salzawiyah ("the Ownership Defence"). The crux

of the dispute here is whether Jumadi had these packets of diamorphine in his possession and intended to traffic in them.

139 Having considered the parties' submissions and the evidence, I find that the Prosecution has proved the charge against Jumadi beyond a reasonable doubt and I am not persuaded by any of Jumadi's defences which do not raise any reasonable doubt in relation to the Prosecution's case. I shall now elaborate on the reasons for my decision.

*Contradictions between Jumadi's Statements and his testimony in court*

140 The Prosecution's case relies largely on Jumadi's Statements, in which he consistently admitted that the Drugs found in the Unit were in his possession for the purpose of trafficking. This can be seen from the following:

(a) In his First Contemporaneous Statement, Jumadi admitted that "everything in this house are [*sic*] mine". This was a clear statement admitting possession of all the Drugs in the Unit.

(b) This was similarly the case for Jumadi's Second Contemporaneous Statement. When asked about the Bundles and packets of diamorphine in the red bag and camouflage bag, Jumadi clearly admitted that they were "for sale". He further admitted that the packets of diamorphine found in the bedroom of the Unit belonged to him, some of which were for sale.

(c) Again, in the MDP Notice, Jumadi admitted that "[a]ll the things in this house are mine".

(d) In his Fourth Long Statement, Jumadi stated that the packets of diamorphine marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1A came from the two *batu* of heroin which he and Shisham ordered on 16 June 2017 and received on 17 June 2017. He explained that these were for sale and belonged to him, although he surmised that E1B1 had probably been packed by Salzawiyah.<sup>196</sup> At the end of his Fourth Long Statement, he again reiterated that “the drugs inside the house belong[ed] to [him]”.<sup>197</sup>

(e) In his Fourth Long Statement, Jumadi also explained in significant detail how he had obtained the five Bundles of diamorphine. In particular, he stated that he had initially only intended to order two *batu* of diamorphine. However, Vishu suggested that he purchase five *batu* on credit, such that he only needed to pay \$10,000. Jumadi then obtained \$10,000 from Salzawiyah, explaining that he needed to “stock up heroin for Hari Raya”. That night, he told Shisham to call Vishu to confirm the purchase of five *batu* of heroin. Shisham did so, and informed Jumadi that the diamorphine would be delivered on 22 June 2017. On 22 June 2017, Shisham and Jumadi duly paid for and collected the five *batu*, which were all intended for sale.<sup>198</sup>

141 In court, however, Jumadi’s evidence differed significantly from his Statements. He sought to disclaim certain portions of his Statements, explaining that this was due to the Promise, as follows:<sup>199</sup>

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<sup>196</sup> Exhibit P233, at paras 51 and 52.

<sup>197</sup> Exhibit P233, at para 68.

<sup>198</sup> Exhibit P233, at paras 53–55.

<sup>199</sup> NEs, 27 August 2020, at p 30, lines 1–9.

A: Before I gave the long statement, in my mind, I was thinking of Officer Fardlie's promises to me. 'If I admit that all the *barang* is [*sic*] mine and cooperate with CNB, I will be let off the gallows.' So when I gave this long statement, there are some parts in which I tell the truth, there are some parts which I lied – I fabricate, and there are certain facts which I did not say here because, in my mind, I was thinking of Officer Fardlie's promises – since my life is in danger.

Q: And what you have explained applied on your mind throughout all the long statements?

A: Yes. [Y]es.

142 This alleged Promise applied to his contemporaneous statements as well,<sup>200</sup> in particular, his failure to explain that the Three Bundles had been mistakenly given by Vishu.<sup>201</sup> He also explained that, when he stated in his First Contemporaneous Statement that all of the drugs “in this house” belonged to him, he was referring only to the drugs found in the living room of the Unit.<sup>202</sup>

143 Since these contradictions pertain to critical elements of the amended charge against Jumadi, it is necessary to determine the extent to which Jumadi's account in court should be believed, as compared to the account set out in his Statements. I shall now explain why Jumadi's account as set out in his Statements is generally more credible than his testimony in court.

(1) Jumadi's explanation regarding the Promise

144 Fundamentally, Jumadi's explanation for the above contradictions is that he had been influenced or misled by the Promise when giving his Statements. However, I have already found (see [98] above) that the Prosecution

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<sup>200</sup> NEs, 27 August 2020, at p 29, lines 13–20.

<sup>201</sup> NEs, 27 August 2020, at p 43, line 18 to p 44, line 17.

<sup>202</sup> NEs, 27 August 2020, at p 28, lines 21–22.

had proven beyond a reasonable doubt that no Promise had been given to Jumadi at any point in time, either by SSSgt Fardlie, IO Yip, or any other CNB officer.<sup>203</sup> Furthermore, as I shall elaborate further below, some parts of the Statements that Jumadi sought to disclaim are inconsistent with his allegation about the Promise. Therefore, I reject Jumadi's assertions that certain portions of his Statements had been given because of the Promise. That being the case, there was no reasonable explanation as to why he would admit that he possessed the Drugs for the purpose of trafficking if this was not actually true.

145 In so far as Jumadi had hoped to be given a certificate of substantive assistance and was therefore cooperative and forthcoming with the CNB (see [110] above), this would only have encouraged him to tell the truth in his Statements rather than fabricate or omit significant facts as he alleged in court. If he had fabricated his confessions in an attempt to appear cooperative, it is unlikely he would have differentiated between the packets/bundles of diamorphine intended for sale and those intended for his own consumption.<sup>204</sup>

146 One of the implications of my decision that the Promise had not been made is that it significantly affected Jumadi's credibility as a witness. Despite the overwhelming evidence, he was adamant that the Promise had been made and he continued to maintain this position in the main trial even after I had admitted the Statements into evidence after the ancillary hearings. This indicated that Jumadi was prepared to fabricate evidence in order to support his case and avert the capital punishment. In my view, it is essential that Jumadi's evidence be viewed with extreme caution, especially his testimony in court.

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<sup>203</sup> PCS, at para 50.

<sup>204</sup> Exhibit P233, at paras 50–53.

Generally, his Statements are more truthful than his testimony in court. The court has to carefully go through Jumadi's evidence with a fine-tooth comb and discern the truth from the falsehoods.

(2) Inconsistencies in Jumadi's testimony in court

147 Another reason why I place less weight on Jumadi's testimony in court is because there are serious and material inconsistencies in Jumadi's testimony in court. This refers to both the internal inconsistencies in Jumadi's testimony, as well as the inconsistencies between Jumadi's testimony and the other evidence before the court. This requires the court to discern the grain from the chaff in analysing the truth of Jumadi's evidence. I shall give several examples of the serious and material inconsistencies and my findings thereon.

(A) EXPLANATION OF THE FIRST CONTEMPORANEOUS STATEMENT

148 One such material inconsistency pertained to Jumadi's explanation of the admission contained in his First Contemporaneous Statement. Jumadi sought to explain that when he admitted to owning the drugs "in this house" in his First Contemporaneous Statement, he meant the drugs found in the living room of the Unit and not all the drugs found in the Unit.<sup>205</sup> However, this does not cohere with his assertion that he was influenced by the Promise and SSSgt Fardlie telling him to cooperate and to admit to owning *all* the drugs in the Unit.

(B) EVIDENCE ON QUANTITIES OF DIAMORPHINE PURCHASED

149 Another inconsistency pertained to Jumadi's evidence on the quantities of diamorphine that he typically bought. In examination-in-chief, Jumadi

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<sup>205</sup> NEs, 27 August 2020, at p 28, lines 21–22.

testified that, between December 2016 and April 2017, he was buying and selling “half set[s]” of diamorphine.<sup>206</sup> It was only after moving into the Unit in April 2017 that he began to buy two to three sets of diamorphine at a time.<sup>207</sup> Further, it was only in June 2017 that he began buying half *batu* (containing three sets) to one *batu* (containing six sets) of diamorphine.<sup>208</sup> However, in cross-examination, Jumadi affirmed his Second Long Statement where he had stated that, towards the end of January 2017, he had begun to order one set of diamorphine at a time.<sup>209</sup> Jumadi also affirmed his First Long Statement where he had stated that, by February 2017, he could be ordering three sets (or half *batu*) of diamorphine daily if business was good.<sup>210</sup>

150 Jumadi’s testimony in court is contradictory. His evidence-in-chief is also inconsistent with the other evidence, specifically, the entries in the Notebook, Salzawiyah’s mobile phone records, and Jumadi’s Statements. I start with the objective evidence, specifically, the entries in the Notebook.<sup>211</sup> Three entries in particular are pertinent. First, an entry on the left page of the Notebook dated 15 June 2017 stating: “3 x BAT = \$9400” (“the 15 June Entry”).<sup>212</sup> Second, an entry also on the left page of the Notebook dated 17 June 2017 stating: “2800 x 2 = \$5600 2 BATU”.<sup>213</sup> Third, an entry on the left page of the

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<sup>206</sup> NEs, 26 August 2020, at p 43, line 32 to p 44, line 5.

<sup>207</sup> NEs, 26 August 2020, at p 48, lines 12–27; p 49, lines 25–30.

<sup>208</sup> NEs, 26 August 2020, at p 50, lines 2–4.

<sup>209</sup> NEs, 28 August 2020, at p 56, lines 3–4.

<sup>210</sup> NEs, 28 August 2020, at p 54, lines 29–30.

<sup>211</sup> PCS, at paras 87–89.

<sup>212</sup> Exhibit 1D1, at p 41.

<sup>213</sup> Exhibit 1D1, at p 43.

Notebook dated 20 June 2017 stating: “2 BATT – 2800 x 2 = 5600”.<sup>214</sup> With regards to the entry dated 17 June 2017, Jumadi explained that this entry meant that he had purchased two *batu* for the price of \$2,800 per *batu*.<sup>215</sup> This corresponds to Jumadi’s Fourth Long Statement, where he stated that he received two *batu* on 17 June 2017.<sup>216</sup> It is reasonable to infer that the same explanation also applies to the entry on 20 June 2017 (*ie*, the entry meant that Jumadi had purchased two *batu* for the price of \$2,800 per *batu*, amounting to \$5,600 in total). With regard to the 15 June Entry, Jumadi initially explained that the 15 June Entry referred to three *batu* of diamorphine costing \$9,400. It is notable that, when asked by the court whether the notation meant that he “bought three *batu* for \$9,400”, Jumadi clearly replied “Yes”.<sup>217</sup> However, moments later, when the Prosecution asked him the same question that the court had asked him, he backtracked on his reply, as follows:<sup>218</sup>

Q: Okay. So that means that you bought three *batu* for \$9,400?

A: That is the price. *I cannot remember whether I collect or not.*

Q: Then what’s the point of writing this down?

A: Maybe at that time, *I wanted to write down the price of three batu or one batu.*

[emphasis added]

151 This subsequent reply contradicts his initial, clear answer that he had bought the three *batu* of diamorphine. It is also at odds with his earlier

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<sup>214</sup> Exhibit 1D1, at p 46.

<sup>215</sup> NEs, 23 September 2020, at p 13, lines 22–32.

<sup>216</sup> Exhibit P233, at para 49.

<sup>217</sup> NEs, 23 September 2020, at p 7, lines 4–8.

<sup>218</sup> NEs, 23 September 2020, at p 8, lines 13–16.

explanation that the entries made on the left page of the Notebook referred to his “*batu* collection”.<sup>219</sup> Therefore, I am not inclined to accept Jumadi’s explanation that he simply wrote down the 15 June Entry in order to record the prices of three *batu* which he did not eventually collect. That was a convenient explanation proffered by him once he realised that his earlier evidence contradicted his testimony regarding the quantities of diamorphine he had bought at the relevant time.

152 Similarly, Salzawiyah’s mobile phone records show that the increase in the amount of diamorphine bought and sold by Jumadi occurred much earlier than Jumadi sought to suggest in his testimony in evidence-in-chief. Two examples are pertinent. The first is a series of messages exchanged between Salzawiyah and “Ah Cat” on 13 April 2017, in which Salzawiyah and Ah Cat discussed the purchase by Salzawiyah and Jumadi of one *batu* from Ah Cat. The relevant messages read as follows:<sup>220</sup>

Time	Sender	Recipient	Message (translated)
12.59pm	Ah Cat	Salzawiyah	P <u>already come in.</u>
12.59pm	Salzawiyah	Ah Cat	<b>‘Hehe’</b>
1.00pm	Salzawiyah	Ah Cat	I am not sure babe whether Ady <u>know</u> or not.
1.00pm	Salzawiyah	Ah Cat	I wanna check money
1.00pm	Salzawiyah	Ah Cat	Whetehr [ <i>sic</i> ] I have enough to take or not?
1.00pm	Ah Cat	Salzawiyah	OK babe

<sup>219</sup> NEs, 23 September 2020, at p 6, lines 7–9.

<sup>220</sup> Exhibit G, at pp 45–48.

...			
1.04pm	Salzawiyah	Ah Cat	<u>If me and Ady take 1</u>
1.05pm	Salzawiyah	Ah Cat	Is it enough?
1.05pm	Ah Cat	Salzawiyah	<u>Enough.</u>
...			
1.06pm	Salzawiyah	Ah Cat	<u>I order that 1 of it.</u>
1.06pm	Salzawiyah	Ah Cat	<u>You break into 2.</u>
1.06pm	Salzawiyah	Ah Cat	<u>I will feedback the quality.</u>
1.08pm	Ah Cat	Salzawiyah	<u>OK babe</u>
1.09pm	Salzawiyah	Ah Cat	<u>So for 1 [batu] is?</u>
1.09pm	Salzawiyah	Ah Cat	<u>Broker offer us 35 that day.</u>
1.10pm	Salzawiyah	Ah Cat	<u>But we still come to you.</u>

153 Similarly, on 22 April 2017, Salzawiyah exchanged another series of messages with “Ayong Hubby”, in which Salzawiyah and Ayong Hubby discuss the purchase by Ayong Hubby’s friend of half or one *batu*. The relevant messages read as follows:<sup>221</sup>

<b>Time</b>	<b>Sender</b>	<b>Recipient</b>	<b>Message (translated)</b>
12.05am	Salzawiyah	Ayong Hubby	P <u>already have.</u>
...			

<sup>221</sup> Exhibit G, at pp 56–57.

12.27am	Ayong Hubby	Salzawiyah	Sorry, <u>brother. If half stone or 1 stone how much? 'Haiz' really difficult.</u>
12.28am	Salzawiyah	Ayong Hubby	<u>Now, there's a lot already 'kena'.</u>
12.29am	Salzawiyah	Ayong Hubby	<u>So, the most good is 1900 half.</u>
12.31am	Salzawiyah	Ayong Hubby	<u>3700, for 1.</u>
...			
12.36am	Ayong Hubby	Salzawiyah	My friend say \$1700 cannot. If can, now he want to take.
12.36am	Salzawiyah	Ayong Hubby	<u>Don't understand.</u>
12.38am	Ayong Hubby	Salzawiyah	If \$1700, my friend say can or not?
1.35am	Ayong Hubby	Salzawiyah	If got anything, just come here. Our house is always open to both of you.
1.36am	Ayong Hubby	Salzawiyah	Just update if you are coming OK?
1.37am	Ayong Hubby	Salzawiyah	But you just stay only, selling outside.

154 In this regard, I do not believe Salzawiyah's explanation of the messages on 13 April 2017 that she was only asking for the price of one *batu* because

Jumadi had asked her to find out.<sup>222</sup> Similarly, I do not believe Salzawiyah's explanation that, in the messages on 22 April 2017, she was not offering to sell *batu* but was simply telling Ayong Hubby the relevant prices.<sup>223</sup> These explanations are not borne out by the messages themselves. It is clear from the messages that the parties were discussing the sale and purchase of diamorphine. Thus, these show that, even in April 2017, Jumadi was dealing in quantities of at least one *batu*.

155 I shall turn now to Jumadi's Statements, which also show that Jumadi purchased relatively large quantities of diamorphine at an extremely high frequency in the period leading up to his arrest. In his Fourth Long Statement, Jumadi stated as follows:<sup>224</sup>

I finished selling the [one *batu* of] heroin in another 2 days [on 17 June 2017]. I then ordered another 2 more 'batu' which I finished selling within 2 days [on 19 June 2017]. After that I ordered another one 'batu' which I finished selling on that day itself [on 20 June 2017]. On Friday 16 June 2017, I ordered 2 'batu' of heroin which I received the order on Saturday.

156 Based on the above, Jumadi had dealt with approximately four consignments amounting to six *batu* of diamorphine in total in the span of four to five days. This was confirmed by him in cross-examination and he did not seek to challenge the accuracy of this part of his Fourth Long Statement.<sup>225</sup>

157 Therefore, Jumadi's Statements, the Notebook, Salzawiyah's mobile phone records and certain parts of Jumadi's testimony in cross-examination all

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<sup>222</sup> NEs, 26 August 2020, at p 6, lines 1–3; PCS, at para 125.

<sup>223</sup> NEs, 26 August 2020, at p 8, line 26; PCS, at para 126.

<sup>224</sup> Exhibit P233, at para 48.

<sup>225</sup> NEs, 31 August 2020, at p 11, lines 23–26; 22 September 2020, at p 70, line 10 to p 72, line 28.

point toward the conclusion that he had dealt with much larger quantities of diamorphine than he claimed in his evidence-in-chief. Specifically, by June 2017, he was purchasing one to three *batu* at a time, with purchases of diamorphine made at frequent intervals. This clearly refutes his testimony in evidence-in-chief. In light of this, it is not surprising or out of place that he would order five *batu* from Vishu to “stock up” for the Hari Raya period, especially since Vishu was prepared to sell the *batu* on partial credit.

(C) THE THREE BUNDLES

158 Numerous material and irreconcilable inconsistencies also arise in relation to Jumadi’s explanation regarding the Three Bundles. Jumadi’s defence is that he had received the additional Three Bundles from Vishu by mistake. He explained that, when the courier passed the red bag containing the Bundles to him, he did not notice the extra weight of the Three Bundles. According to Jumadi, “[i]t happened so fast because it was in a public area”, therefore, he “took [the red bag] quickly and put it at Shisham’s legs”.<sup>226</sup> I find this explanation unconvincing. This was not Jumadi’s first time collecting an order of diamorphine, neither was this his first time dealing in *batu*. He knew that the weight of one *batu* was approximately 450g.<sup>227</sup> The difference between two *batu* (approximately 900g) and five *batu* (approximately 2.25kg) is far from insignificant. As pointed out in cross-examination, five *batu* weigh more than twice as much as two *batu*.<sup>228</sup> I find it implausible that Jumadi could have failed to notice this substantial difference in weight simply because he wished to avoid lingering at the collection location. Furthermore, he admitted that he received

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<sup>226</sup> NEs, 22 September 2020, at p 60, lines 16–28.

<sup>227</sup> NEs, 23 September 2020, at p 64, line 5–28.

<sup>228</sup> NEs, 22 September 2020, at p 60, lines 24–26.

the red bag from the courier. Thus, he should have noticed immediately the substantial weight difference.<sup>229</sup> However, he alleged that he took the red bag and placed it near Shisham who was seated at the front passenger seat. This is inconsistent with Jumadi's Statements detailing his previous collections (which he confirmed in court were true), which show that he was careful and observant when it came to collecting drugs. I give two examples:

(a) On 12 June 2017, Jumadi and Shisham went to Marsiling to collect an order of methamphetamine. Shisham left the car and returned with the methamphetamine, which was wrapped in aluminium foil. In that case, Jumadi was concerned that "there [were] many people walking around". Therefore, he did not open the item immediately. Instead, he took it and pressed it with his fingers to determine if the texture was similar to that of methamphetamine. He then "drove to somewhere quiet" to weigh the item and confirm that it was methamphetamine.<sup>230</sup>

(b) On 15 June 2017, Jumadi and Shisham went to collect an order of diamorphine and cannabis. As in the present case, the couriers boarded Jumadi's car and gave Shisham three "bundles wrapped in black tape" in exchange for the money. After the couriers left the car, Jumadi did not drive back to the Unit because he "felt something amiss". He noticed that two of the bundles were "packed nicely" while the other was "strangely packed". He then drove to a car park to open the bundles and weigh them, upon which he realised that he had probably been given

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<sup>229</sup> PCS, at para 84.

<sup>230</sup> Exhibit P232, at para 34.

less cannabis than he had ordered. He then “nagged at [Shisham] for not weighing the items upon receiving [them] in front of the [couriers]”.<sup>231</sup>

159 It is clear from the above that Jumadi was very careful when he collected drugs. Even where the collection took place in a public location (see [158(a)] above), he still did a cursory check of the drugs before driving to a more secluded location to weigh them properly. As evident from [158(b)] above, even though he was not the one who physically collected the drugs, he still paid attention and was observant enough to notice that one of the bundles was wrapped differently from the other two. In these circumstances, it is hard to believe that Jumadi failed to notice that the red bag was more than twice as heavy than what he would have expected and that he was not suspicious about the significant weight difference.

160 Furthermore, Jumadi’s defence is that he had intended to return the Three Bundles to Vishu. However, on his own evidence, he placed one of the Three Bundles (the bundle marked A2A, containing the packet of diamorphine marked A2A1) in the camouflage bag,<sup>232</sup> while the other two of the Three Bundles remained in the red bag. The red bag, therefore, contained (a) the two Bundles intended for sale; (b) the remainder of the two *batu* of diamorphine (the packets marked A1E1 and A1F1) which were also for sale;<sup>233</sup> (c) the two Bundles allegedly intended to be returned to Vishu; and (d) a host of drug trafficking paraphernalia including a digital weighing scale, empty packets, straws and lighters.<sup>234</sup> The separation of the Three Bundles was odd – he

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<sup>231</sup> Exhibit P233, at paras 45–46.

<sup>232</sup> NEs, 27 August 2020, at p 18, lines 1–18.

<sup>233</sup> NEs, 31 August 2020, at p 13, lines 16–18.

<sup>234</sup> Exhibits P50–P52

combined two of the Three Bundles with the rest of the drugs in the red bag, which he admits were all intended for sale. If what Jumadi said is true and he indeed intended to return all Three Bundles to Vishu, it would have made more logical sense for him to take out the Three Bundles and separate them from the rest of the drugs which were intended for sale.<sup>235</sup> Why did Jumadi take one bundle out of the Three Bundles and place it in the camouflage bag when the Three Bundles were all intended to be returned to Vishu?

161 When asked about this in cross-examination, Jumadi's explanation was as follows:<sup>236</sup>

Q: Now if you intended to return these bundles, my next question, why didn't you put them together?

A: Because the red bag is full. Because I've already taken out A1F and A1E from the camou[flage] bag and put it inside the red bag. As such, that red bag is already full.

...

Q: That's not my point, Mr Jumadi. Why didn't you take out A1 Bravo and A1 Charlie and A2 Alpha and put them together? In a bag, any bag.

...

A: At that point of time, I do not have the time to take it out and put it in another bag.

Q: Why not? ... [A]ccording to you in your EIC, you had already arrived at – back at the unit at 10 o'clock. You had time to repack by placing A1 Echo and A1 Foxtrot into the red bag. And A1A – and A2 Alpha in the camou[flage] bag. The raid on your unit happened at 2.13pm in the afternoon. So if – even if you are telling the truth about coming back to the unit at 10.00am, you had about 4 hours to do all these and you had already ... transfer[red] A1 Echo and A1 Foxtrot to the red bag

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<sup>235</sup> PCS, at paras 61 and 85.

<sup>236</sup> NEs, 22 September 2020, at p 54, line 13 to p 56, line 3.

and A2 Alpha to the camou[flage] bag. How come you're saying you didn't have time?

A: One reason is I do not have the time. The second reason would be these two bags [the red bag and the camouflage bag] I will bring it down together with me downstairs when I want to stash the three *batus*.

...

Q: So you are going to bring two bags filled with heroin into a public place, where you are going to take these bundles already in bags outside and leave them in the open. And then leave them there in the hopes that *Ah Neh's* courier – jockey will come soon and pick them up. Three *batus* worth.

A: ... I have this practice every time when I leave the house, I will bring the drugs together with me.

Q: You will bring the entire drugstore that you have together with you when you leave the house?

A: Correct.

162 In the above exchange, it is apparent that Jumadi provided at least three different explanations as to why he did not pack the Three Bundles separately from the other drugs. First, he claimed that this was because the red bag was full. Second, when it was pointed out to him that he could have used any other bag, he then said that it was because he did not have time. Third, when it was again pointed out to him that he had almost four hours between the time he allegedly returned back to the Unit and the time the CNB officers arrested the accused persons, he then added that it was also because he had a practice of bringing *all* of his drugs with him wherever he went. As such, he had intended to bring the red bag and the camouflage bag (and presumably all the other drugs in his possession) with him to the ground floor of the Unit, just to stash the Three Bundles. His explanation becomes absurd and gibberish.

163 In relation to the last explanation, Jumadi further explained that:<sup>237</sup>

... [E]ver since I've broken my partnership with Salzawiyah, I do not want anything to happen to my home with the – when I'm not around. As such, first I've already informed that I brought the drugs together with me because I do not want anything to happen at home. Secondly, it's whenever a customer needs the drug, they can order straight from me.

164 In my view, this explanation is also extremely dubious and unconvincing. This practice was not mentioned anywhere else in Jumadi's Statements or in his testimony in court. It is also not borne out by any of the evidence before the court. To the contrary, in Shisham's Second Long Statement he stated that, when he and Jumadi left the Unit at 10am in the morning of 22 June 2017, "Jumadi was not carrying anything or any bags".<sup>238</sup> Although Jumadi sought to explain this on the basis that Shisham could possibly have wished to distance himself from the drug transaction, I do not see how a statement that Jumadi was carrying bags could incriminate Shisham. Furthermore, it almost beggars belief that Jumadi would bring all of his drugs and drug paraphernalia with him whenever he left the Unit.<sup>239</sup> Even if he wanted to be prepared for contingencies and unexpected orders from customers, this did not necessitate bringing *all* of his drugs with him. Finally, even if he did have such a practice, his assertion in the present case was that he would bring all of his drugs to the ground floor of the Unit, just so that he could hide the Three Bundles. I consider such a suggestion to be extremely unrealistic and uncharacteristic of an experienced drug trafficker like Jumadi. Instead, it only demonstrates the extent to which Jumadi was prepared to fabricate evidence in order to support his case.

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<sup>237</sup> NEs, 22 September 2020, at p 57, lines 22–26.

<sup>238</sup> 2 AB 1205; NEs, 22 September 2020, at p 59, line 24 to p 60, line 6.

<sup>239</sup> PCS, at para 86.

165 Finally, in deciding which of the Bundles to return, Jumadi claimed that he selected the Three Bundles as they were smaller bundles. However, all the Bundles were about the same weight and looked similar.<sup>240</sup> All of these illogical behaviours indicate that his story about returning the Three Bundles to Vishu could not be true and he fabricated it for his defence when he was on the witness stand.

(D) EVIDENCE REGARDING THE MONEY USED TO PURCHASE THE BUNDLES

166 Another area of inconsistency pertains to Jumadi's evidence on how he obtained the \$10,000 which he used to purchase the Bundles. On this issue, the only consistency between Jumadi's Statements and his testimony in court is that he took the money from Salzawiyah to pay Vishu for the purchase of the five *batu* of diamorphine on 22 June 2017. The inconsistencies are with regard to the details. Specifically, Jumadi stated in his Fourth Long Statement that Salzawiyah had given him the money that he used to purchase the five Bundles. In court, however, he claimed that he had taken the money from an *ang pow* in a black tray in the bedroom of the Unit. Before leaving the bedroom, he told Salzawiyah, who was lying on the bed and whose eyes were closed at that time, that he had taken the money to buy *barang*. Salzawiyah did not respond.<sup>241</sup>

167 Jumadi prevaricated in his explanations for why he allegedly lied regarding how he had obtained the money used to purchase the Bundles. Upon further cross-examination, some of these explanations also could not withstand scrutiny. Jumadi's first explanation was that he lied because the Promise

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<sup>240</sup> NEs, 22 September 2020, at p 48, line 26 to p 49, line 8; p 52, line 2 to p 53, line 26.

<sup>241</sup> NEs, 27 August 2020, at p 6 lines 3–11; p 7, lines 12–22; Exhibit C1.

required him to claim ownership of all the Drugs and cooperate with the CNB.<sup>242</sup> However, it was pointed out to him that how he obtained the money to purchase the Drugs was unrelated to claiming ownership of the Drugs and there was therefore no need to lie regarding this matter. Jumadi then changed his explanation to say that he had lied in order to make his statement conform with his previous statements in which he had informed the CNB that the money he used to purchase drugs had been obtained from Salzawiyah.<sup>243</sup> He admitted, nevertheless, that it was true that “every time [he] wanted money to buy drugs, [he] got [the money] from Salzawiyah”.<sup>244</sup> When pressed further, he then changed his explanation a third time, claiming that his memory had not been clear at the time he gave the Fourth Long Statement. Therefore, he simply stuck to his *modus operandi* as set out in his previous statements, namely, that he would obtain money from Salzawiyah to purchase drugs.<sup>245</sup>

168 However, Jumadi’s first and second explanations are, in fact, mutually inconsistent with his third explanation. His first and second explanations were that he had deliberately lied because he thought that the “truth” would disentitle him to the fulfilment of the Promise or contradict his previous statements. His third explanation, however, was that, at the time he gave his Fourth Long Statement, he could not remember how he had gotten the money so he repeated the *modus operandi* set out in his previous statements. The third explanation is predicated on a fundamentally different state of mind than the first and second explanations. Moreover, the third explanation is in itself difficult to believe. The

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<sup>242</sup> NEs, 22 September 2020, at p 9, lines 9–17.

<sup>243</sup> NEs, 22 September 2020, at p 9, lines 18–28.

<sup>244</sup> NEs, 22 September 2020, at p 10, lines 1–3.

<sup>245</sup> NEs, 22 September 2020, at p 10, lines 4–15.

Fourth Long Statement was recorded on 4 July 2017, less than two weeks after the events of 21 June and 22 June 2017. By that time, Jumadi would have had some time to collect his thoughts while the relevant facts remained fresh in his mind. In contrast, the trial took place more than three years after the said events. It is incredible that, at the time the Fourth Long Statement was recorded, he could not remember how he had obtained the money used to purchase the Bundles, but his memory was suddenly refreshed when it came to his testimony in court.

169 These vacillating and inconsistent explanations indicate that Jumadi was simply not telling the truth in his testimony in court regarding how he had obtained the money to purchase the five Bundles. Instead, his Fourth Long Statement was much more credible.

170 On a related note, I shall address Jumadi's claim that, out of the \$10,000 he brought with him to the collection point, only \$7,000 was for the purchase of diamorphine and the remaining \$2,000 to \$3,000 was for other expenses such as petrol, payment of the car rental and purchase of cigarettes, food and groceries (see [33] above). I am not inclined to accept Jumadi's evidence in this regard. Instead, the amount that he had with him – \$10,000 – coheres with Vishu's offer to him regarding the five *batu*, as described in his Statements. This is because the sum of \$10,000 would have been sufficient for Jumadi to purchase approximately three and a half *batu*. This is based on the price of two *batu* being approximately \$5,600, *ie*, \$2,800 per *batu*, as recorded in an entry in the Notebook dated 20 June 2017.<sup>246</sup> This accords with Jumadi's Fourth Long

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<sup>246</sup> Exhibit 1D1, at p 46; NEs, 25 August 2020, at p 62, lines 22–28.

Statement wherein he stated that Vishu had agreed to “give [him] credit for the price of [two *batu*]”.<sup>247</sup>

(E) TIMING OF THE CALLS WITH VISHU ON 21 JUNE 2017

171 The next area of inconsistency pertained to the timing of the calls made with Vishu on 21 June 2017 regarding the Bundles. It is not disputed that various calls were made between Shisham’s and Vishu’s mobile numbers on 21 June 2017. Rather, the disagreement is regarding the contents of those phone calls and who had been present when the phone calls were made. According to the Prosecution, the possibility of purchasing five *batu* of diamorphine on credit was first raised in a phone call made between Shisham’s and Vishu’s mobile phone numbers at 4pm. At this time, all three accused persons were in the Unit. After the phone call at 4pm, Jumadi asked Salzawiyah for \$10,000, which she gave to him. Later that evening, while Shisham and Jumadi were in separate locations outside of the Unit, Jumadi instructed Shisham to confirm the order of the five *batu* with Vishu, which Shisham did.<sup>248</sup> In contrast, according to Jumadi’s testimony in court, the calls with Vishu arranging for the purchase of the two *batu* of diamorphine was made at 6.57pm, 7.27pm and 11pm. The initial agreement was for the diamorphine to be collected at 9am the next day. Between about 4pm that afternoon and about 11pm after the call with Vishu, both Jumadi and Shisham were in the Unit.<sup>249</sup>

172 As between these two versions of events, the version set out by the Prosecution is more convincing. This is because Jumadi’s testimony regarding

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<sup>247</sup> PCS, at para 62; Exhibit P233, at para 53.

<sup>248</sup> PCS, at para 57; pp 31–32.

<sup>249</sup> NEs, 22 September 2020, at p 11, line 25 to p 12, line 8; p 17, lines 13–15.

the timing of the calls with Vishu on 21 June 2017 is at odds with the other evidence before the court. This includes Salzawiyah’s evidence, as well as independent contemporaneous evidence, specifically, the phone call records from Shisham’s mobile phone and text messages exchanged between Shisham and Jumadi.

173 I shall turn first to Salzawiyah’s evidence. Jumadi’s testimony is inconsistent with Salzawiyah’s testimony that, when she returned to the Unit in the evening of 21 June 2017, both Jumadi and Shisham were not in the Unit.<sup>250</sup> It is also inconsistent with the phone call records and text messages, which suggest that, at these times, Shisham and Jumadi were not together in the Unit. Shisham called Jumadi at 6.26pm. A call was made by Jumadi to Shisham at 6.33pm, which was not picked up. Jumadi made another call to Shisham at 6.34pm, which lasted for five seconds.<sup>251</sup> Furthermore, from 10.27pm onwards, the following messages were exchanged between Jumadi and Shisham:<sup>252</sup>

<b>Time</b>	<b>Sender</b>	<b>Recipient</b>	<b>Message (translated)</b>
10.27pm	Shisham	Jumadi	May peace be upon you “ <i>BOSS</i> is it still long?”
10.35pm	Jumadi	Shisham	<i>Bro</i> wait
10.37pm	Shisham	Jumadi	<i>Ok bro</i>
11.13pm	Jumadi	Shisham	<i>Soery bro</i> . Make sure you go back
11.17pm	Shisham	Jumadi	<i>Bro</i> where are you? Come to <i>ang mo kio</i> ?

<sup>250</sup> NEs, 21 August 2020, at p 47, lines 11–15.

<sup>251</sup> Exhibit G, at p 29.

<sup>252</sup> Exhibit G, at pp 29–30.

11.18pm	Jumadi	Shisham	<i>Bro, sorry bro. I've got something on. Ahh ... you go back, go back first now bro. I'm at Bedok ah, got something on. This... you go back first take Grab sorry I'm unable to take/(pick you up) ah bro. Very very sorry. Ahh... you take Grab first can?</i>
11.18pm	Jumadi	Shisham	<i>Make sure you go back bro, because tomorrow want to load. Don't know now. Tomorrow load what time bro?</i>
11.30pm	Shisham	Jumadi	<i>It ok bro no problem don't worry about me, a I can heading home by my own, one important matter that what (specific) Time</i>
11.31pm	Jumadi	Shisham	<i>I otw back home</i>
11.33pm	Jumadi	Shisham	<i>Go back quickly.. Sleep.. Tomorrow wat time</i>
11.35pm	Shisham	Jumadi	<i>Ten in the morning!</i>
11.36pm	Jumadi	Shisham	<i>Ok.. Fire brigade</i>

These calls and messages suggest that, by about 6.30pm, Jumadi and Shisham were already at separate locations outside of the Unit. Therefore, Jumadi could not have spoken to Vishu using Shisham's mobile phone on speaker mode at the times he claimed in his testimony in court.

174 In relation to the calls at 6.33pm and 6.34pm, Jumadi explained that, at the time, he might have left the Unit to go to the shop or make deliveries, in

which case Shisham would not follow him. It may be a plausible explanation. However, the same cannot be said for Jumadi's explanation in relation to the text messages. According to Jumadi, the messages between 10.27pm and 10.37pm were "about when [he] was in the toilet" and Shisham had asked him "how long [did he] need to finish [his] business in the toilet".<sup>253</sup> If they were indeed in the Unit, which is very small, they would have spoken to each other instead of sending text messages to each other. The messages at 11.13pm onwards were merely to remind Shisham to return to the Unit and check if he remembered what they had previously discussed with Vishu regarding the collection of the diamorphine the next day.<sup>254</sup>

175 Having considered the evidence, I find that Jumadi's explanation in court is false and cannot be believed. Read in totality, the series of messages clearly show that, between 10.30pm and 11.30pm, Shisham had been waiting for Jumadi to pick him up. When Jumadi was eventually unable to pick Shisham up, he apologised to Shisham and asked Shisham to return to the Unit on his own.<sup>255</sup> Furthermore, in asking Shisham "[t]omorrow what time?", Jumadi was not checking to see if Shisham remembered the details of the collection which they had previously discussed with Vishu. Rather, he was asking Shisham for the time of collection of the diamorphine because *he did not know what time had been arranged*. This is clear from the fact that, when Shisham replied "Ten in the morning", Jumadi simply replied "Ok... Fire brigade." This was an acknowledgment by Jumadi, accompanied by the location of the collection. There was no attempt to correct Shisham despite Jumadi's claim that the

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<sup>253</sup> NEs, 22 September 2020, at p 18, lines 10–18.

<sup>254</sup> NEs, 22 September 2020, at p 18, lines 28–30; p 20, line 21 to p 21, line 2.

<sup>255</sup> PCS, at para 81(a).

collection had been set for 9am the next day. Jumadi sought to explain this on the basis that he did “not want to entertain [Shisham’s] messages” and wanted to scold Shisham in person. However, this directly contradicted his earlier evidence that, if Shisham had gotten the timing of the collection wrong, Jumadi would “inform him the time and ... will maybe scold him”.<sup>256</sup>

176 Two conclusions can be drawn from the above. First, Shisham and Jumadi were not together in the Unit between 10.27pm and 12.30am on 21 June 2017. Therefore, they could not have made the call with Vishu at 11pm as Jumadi alleges. The evidence further suggests that, at around 6.30pm, Jumadi and Shisham were also not together in the Unit. Second, Jumadi did not know the time at which the diamorphine was supposed to be collected until Shisham informed him at about 11.35pm.<sup>257</sup> These two conclusions significantly undermine Jumadi’s testimony that he had spoken to Vishu using Shisham’s phone at 6.57pm, 7.27pm and 11pm on 21 June 2017, during which the details of the collection of the two *batu* had been agreed.

177 Instead, the account of the relevant events set out in Jumadi’s Fourth Long Statement and relied upon by the Prosecution is the truth. Specifically, Jumadi first discussed the purchase of the five *batu* with Vishu at 4pm on 21 June 2017. After this call, while Salzawiyah was still in the Unit, Jumadi asked Salzawiyah for \$10,000 in order to purchase the five *batu*. That evening, by way of a phone call at 6.34pm, Jumadi asked Shisham to call Vishu to confirm the purchase of the five *batu*. Shisham did so, by way of several phone calls with Vishu between 6.57pm and 11pm. Jumadi’s instruction to Shisham

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<sup>256</sup> NEs, 22 September 2020, at p 21, line 6 to p 22, line 12; PCS, at para 81(b).

<sup>257</sup> PCS, at para 82.

as well as Shisham’s calls with Vishu in this regard were made while Jumadi and Shisham were in separate locations outside of the Unit.

178 I should add that, in the course of the closing submissions, Jumadi submitted that the call between Vishu and Shisham at 4pm had not actually connected.<sup>258</sup> This was on the basis that, in a tabulation of Shisham’s phone call records collated by IO Yip and produced by the Prosecution, the box indicating the “Duration” of the 4pm call was left blank.<sup>259</sup> The Prosecution’s explanation for this was that the tabulation was derived from a series of screenshots from Shisham’s mobile phone. There were two types of screenshots – first, screenshots simply showing a list of the calls to and/or from the mobile phone number, which did not show the duration of each call; second, screenshots showing the calls made with a specific contact, which showed the duration of each call. As only some of the screenshots fell into the second category (*ie*, showed the duration of the calls), only the durations for those calls were indicated in the tabulation.<sup>260</sup> In relation to the 4pm call in particular, there was no screenshot showing the duration of the call. Therefore, on the face of the tabulation and the screenshots alone, it was not clear whether the 4pm call had in fact connected. In other words, the court could not conclude either way whether the call had connected or whether it had not connected.

179 During the closing submissions, the Prosecution applied under s 283 of the CPC to adduce further evidence to determine conclusively whether the 4pm

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<sup>258</sup> NEs, 11 November 2020, at p 111, line 22 to p 112, line 8; p 114, line 12.

<sup>259</sup> PSB, at p 809.

<sup>260</sup> NEs, 11 November 2020, at p 117, line 24 to p 118, line 3.

call was connected. However, Jumadi’s counsel objected to this.<sup>261</sup> In my view, it was not necessary to invoke s 283. Section 283 deals with cases where a court decides to “summon a *person* as a witness or examine a *person* in attendance as a witness ... or recall and re-examine a *person* already examined” [emphasis added]. In this case, however, the mobile phone had already been adduced and admitted as a court exhibit *ie*, P463. It was thus entirely within the court’s power to open the court exhibit, P463, and any party could have applied to the court to examine P463 and look at its contents, without the need to examine or recall any further witnesses. In fact, this was precisely what the court did at the beginning of the trial, where some of the physical exhibits were opened and shown to the court and all the parties.<sup>262</sup> Jumadi’s counsel objected to this on the basis that only the “physical exhibit of the phone” had been adduced as evidence, whereas the contents of the phone had been adduced separately by the Prosecution in the form of a supplementary bundle and it would be adducing fresh evidence.<sup>263</sup>

180 With respect, I do not agree with Jumadi’s counsel’s submissions on this. The phone in its entirety had been admitted into evidence. There was no reason why the court and the parties could not look at the contents of the phone, as long as such information was clear from the face of the exhibit itself. This is to be distinguished from information from the phone that requires *additional* processing by a technician or an expert, such as the reports produced by the Forensic Response Team after a digital forensic examination had been conducted on the phone. In this case, the information regarding whether the 4pm

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<sup>261</sup> NEs, 11 November 2020, at p 143, line 28 to p 144, line 1; 12 November 2020, at p 13, lines 2–9.

<sup>262</sup> NEs, 14 July 2020, at p 62, line 28.

<sup>263</sup> NEs, 12 November 2020, at p 28, line 27 to p 29, line 1.

call had connected fell into the former category of information that was apparent from the face of the exhibit. Such information could simply be obtained by turning on the phone, going to the relevant messaging application, clicking on the relevant contact, and seeing from the screen whether the call had connected and its duration.

181 For completeness, I am also of the opinion that no prejudice would thereby occasion to Jumadi. The Prosecution's case regarding the 4pm call was made clear to Jumadi in the course of the trial, on the basis that the 4pm call had in fact connected. Thus, Jumadi had been given sufficient opportunity to address the Prosecution's case on that basis. In any case, Jumadi was the one who first raised the specific issue of whether the 4pm call had connected. Given my earlier observation that the tabulation and screenshots did not point either way (*ie*, could not show whether the call had or had not connected), turning on Shisham's mobile phone and looking at its contents could potentially have *assisted* Jumadi in his case that the 4pm call had not connected.

182 Therefore, I authorised the Prosecution to break open the sealed envelope containing Shisham's mobile phone in the presence of the accused persons' respective counsel, so that the parties could confirm whether the 4pm call had connected and its duration.<sup>264</sup> After this was done, the Prosecution informed the court, and Jumadi's counsel confirmed, that the 4pm call had connected and had lasted one minute and 36 seconds.<sup>265</sup> This confirms Jumadi's Fourth Long Statement that he and Shisham spoke to Vishu using Shisham's phone at 4pm.

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<sup>264</sup> NEs, 12 November 2020, at p 28, lines 11–23.

<sup>265</sup> NEs, 12 November 2020, at p 30, lines 6–19.

(F) TIMING OF THE COLLECTION OF THE DIAMORPHINE ON 22 JUNE 2017

183 Further inconsistencies arise in relation to Jumadi's account in court about the time that he and Shisham went to collect the Bundles on 22 June 2017. According to Jumadi's testimony, it was initially agreed that the diamorphine would be collected at 9am. On 22 June 2017, he and Shisham left the Unit at 8.30am and arrived at Changi South Lane at around 9.02am. They received a call from Vishu at 9.29am asking them to check if they had received more diamorphine than ordered. They returned to the Unit before 10am and, at 9.58am, Jumadi allegedly called Vishu to discuss what to do with the extra Bundles. However, these timings directly contradict those given by Jumadi in his Fourth Long Statement. In his Fourth Long Statement, Jumadi said that they had originally expected to collect the Bundles in the afternoon. At around 9am on the morning of 22 June 2017, Shisham received a call that the Bundles were ready for collection. Jumadi and Shisham left the Unit at about 10am and reached Changi South Lane before 11am. The collection of the Bundles took approximately ten minutes or more, after which Jumadi and Shisham returned to the Unit.<sup>266</sup>

184 When asked why he would lie about the above timings, Jumadi's explanation was as follows:<sup>267</sup>

Q: Okay. Why did you lie?

A: Well, because of the promise made by Officer Fardlie and this is – this acts as a follow-up from paragraph 53. Yes. I created all these stories just to show that there's a flow and there's a follow-up from paragraph ... 53.

Q: But the truth would have served just as well. You could have simply said ... 'At – we left the unit at 8.30 to do

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<sup>266</sup> Exhibit P233, at paras 53–54.

<sup>267</sup> NEs, 22 September 2020, at p 27, line 5 to p 28, line 12.

the pickup. We did it at 9.00am.’ ... if the paragraph is a lie, why shift it later?

...

A: Again, when I was giving this statement at that point of time, I can’t remember clearly. I was just mentioning random timings. ... As such, I’m trying to say here that I have created all this story here that you see in paragraph 54. Because to me, if I were to tell the officer then, as what I’ve told the Court during my EIC, I will not be able to claim my promise from Officer Fardlie then.

...

Q: My point is, Mr Jumadi ... you didn’t have to make up the timing. You made the order in paragraph 53. ... But you saw fit to, as you say, lie about the timing and shift it later. Why?

A: Because, for example, there was a call at about 9.30am when Vishnu ... informed me that there was additional *barang*. If I were to mention this in this paragraph, it would mean that I am not cooperating with CNB and I will not be able to claim the promise made by Officer Fardlie.

Q: You didn’t have the [phone] records at that time. ...

...

Q: ... And, in any case, Mr Jumadi, even if this is correct, what has the time of the pickup got to do with cooperation to CNB? Either way, you’ve implicated yourself by saying you did do the pickup. It doesn’t matter what time. Please answer the question first.

A: Because as I mentioned, when I was giving this statement, I can’t remember clearly about the timing. But I did remember that there was a phone call received from Sham. As such, I just put the timing at 9.00am.

185 The explanation, therefore, appears to be that Jumadi made up “random timings” in his Fourth Long Statement so that he would be able to claim the benefit of the Promise. Although Jumadi could not “remember clearly”, he recalled that there was a phone call received by Shisham at around 9am or 9.30am. If he had informed the CNB of the “true” timings, he would have had

to explain that the call received by Shisham pertained to Vishu asking him to check if there were additional *batu*.

186 In my view, this explanation does not make any sense. It does not follow that, if Jumadi had informed the CNB that he collected the drugs at 9am, he would have to explain the contents and purpose of the call from Vishu at 9.30am. Those are two separate matters. There was, therefore, no reason to lie about the *timing* of the collection of the diamorphine. Furthermore, Jumadi's claim that he made up "random timings" belies the fact that the timings of the relevant events given by Jumadi in his Fourth Long Statement are supported by Salzawiyah's evidence and the contemporaneous phone records, as follows.<sup>268</sup>

(a) In the Fourth Long Statement, Jumadi stated that, at about 9am, Shisham received a phone call that the courier had arrived in Singapore and that the diamorphine was ready for collection. This corresponds with Shisham's mobile phone records, which show that at 9.02am and 9.29am, Shisham received two calls from Vishu.

(b) According to Jumadi's Fourth Long Statement, he and Shisham left the Unit at about 10am. This corresponds with Shisham's First Long Statement in which he stated that he and Jumadi left the Unit at around 10am, as well as Salzawiyah's evidence that she heard Shisham and Jumadi leave the Unit at around 10am.<sup>269</sup> Jumadi acknowledged that he had no explanation for why Shisham's First Long Statement

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<sup>268</sup> NEs, 22 September 2020, at p 36, line 23 to p 38, line 7; PCS, at pp 33–35; paras 58–59.

<sup>269</sup> PCS, at para 75.

corresponded to Salzawiyah's evidence, both of which contradicted his testimony in court.<sup>270</sup>

(c) In his Fourth Long Statement, Jumadi stated that he and Shisham reached Changi South Lane before 11am. After they reached, Shisham made a phone call telling someone that they had arrived. This timeframe corresponds with the calls made and received by Shisham between 10am and 11am. At 10.15am, there was a call from Shisham to Vishu. Between 10.26am and 10.29am, there was a series of missed calls from Vishu to Shisham. These calls took place around the time that Jumadi and Shisham would have arrived at Changi South Lane, according to Shisham's First Long Statement.<sup>271</sup> At 10.52am, there was a call from Vishu to Shisham, after which there were no further calls between them. This suggests that the diamorphine had been successfully collected by that time. This corresponds to the time that Shisham stated he and Jumadi returned to the Unit, which was "about 11am".<sup>272</sup> Similarly, this aligns with Salzawiyah's estimate that Jumadi and Shisham returned to the Unit around noon.

187 Jumadi submits that his Fourth Long Statement is not credible because, although he stated in the Fourth Long Statement that he told Shisham to call Vishu on the night of 21 June 2017, there were no phone calls *from* Shisham to Vishu on the night of 21 June 2017. Furthermore, the Fourth Long Statement only mentioned two calls between Vishu and Shisham, although more than two

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<sup>270</sup> NEs, 22 September 2020, at p 32, line 20 to p 33, line 5; p 59, lines 5–23; 2 AB 1205, at para 9.

<sup>271</sup> 2 AB 1205, at para 9.

<sup>272</sup> 2 AB 1206, at para 10.

calls were made between Vishu and Shisham on 22 June 2017.<sup>273</sup> I do not find these points to be of great significance. Although he told Shisham to call Vishu to confirm, it was perfectly plausible that Shisham had not made the call to Vishu if Vishu had called him first. As Jumadi was not present during Shisham's phone calls with Vishu in the evening of 21 June 2017, he would not have known whether it was Shisham who called Vishu or Vishu who called Shisham.<sup>274</sup> Moreover, at the time Jumadi gave his Fourth Long Statement, he would not have had Shisham's mobile phone records before him. It is understandable, therefore, why he did not recount *all* the calls that were made, and only mentioned those that he could recall at the time.

188 In my view, the only discrepancy in Jumadi's Statements is that, in his Fourth Long Statement, he stated that Shisham had received a call at 4am in the morning of 22 June 2017.<sup>275</sup> In this regard, I accept the Prosecution's submission that Jumadi may have been mistaken about the timing of the call and was actually referring to the call between Shisham and Vishu at 7.12am on 22 June 2017.<sup>276</sup> This is reasonable – Jumadi was not privy to this call as it was between Shisham and Vishu. Furthermore, as I have mentioned, Jumadi did not have the call records for reference when he gave his Fourth Long Statement. Thus, this mistake as to the timing of the call (*ie*, stating that it was 4am although it was probably at 7.12am) is not significant and does not diminish the weight to be given to Jumadi's account in his Statements regarding the timings of the events

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<sup>273</sup> 3DCS, at para 128(b).

<sup>274</sup> NEs, 11 November 2020, at p 77, lines 25–31.

<sup>275</sup> Exhibit P233, at para 54.

<sup>276</sup> PCS, at p 44, footnote 76; Exhibit G, at p 31.

of 22 June 2017. Overall, I find that Jumadi’s account in his Statements is not only internally consistent, but also consistent with the other evidence.

189 In contrast, Jumadi’s testimony in court regarding the relevant events would not account for the several calls (missed or otherwise) between Vishu and Shisham from 10.15am to 10.52am on 22 June 2017.<sup>277</sup> If Jumadi had already discussed the necessary arrangements with Vishu in relation to the purported extra Three Bundles by 9.58am, there would not have been a need for any more calls to be exchanged between them. Jumadi could not provide an explanation for these calls – his evidence was that he was not involved in these phone calls. Therefore, he did not know the contents or purpose of such calls.<sup>278</sup>

190 Therefore, Jumadi’s testimony in court directly contradicts his Fourth Long Statement, as regards the timing of the relevant events on 22 June 2017. However, Jumadi was unable to satisfactorily explain why he would lie about the timings of these events in his Fourth Long Statement. His explanation was convoluted and led to further inconsistencies. Moreover, Salzawiyah’s evidence and the contemporaneous phone records contradict Jumadi’s testimony in court. Instead, they support the timings given by Jumadi in his Fourth Long Statement. Taken in totality, these diminish the credibility of Jumadi’s testimony in court *vis-à-vis* his Statements.

(G) EVIDENCE REGARDING BABA

191 Finally, Jumadi’s testimony in court also contradicts his Statements in relation to his dealings with “Baba” on 22 June 2017. In his Fourth Long

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<sup>277</sup> PCS, at para 83.

<sup>278</sup> NEs, 22 September 2020, at p 35, lines 15–22; NEs, 27 August 2020, at p 20, line 28 to p 22, line 9.

Statement, Jumadi stated that, after he returned from South Changi Lane to the Unit, he “received a call from an Indian guy [named] Baba who asked to buy [two] packets of heroin”. Jumadi told Baba to “meet near the laksa place”. When Baba reached that location, Jumadi told Shisham “to meet one very old Indian guy to pass the [two] packets of heroin to him” and collect payment of \$200, and Shisham did so.<sup>279</sup> In court, however, he claimed that, while he had received a call from Baba asking to buy two packets of diamorphine, Baba eventually cancelled his order as Jumadi did not agree to lower the price of the diamorphine. According to Jumadi, this discussion took place “[i]n the same conversation, in the first call”. As such, the real reason why Shisham left the Unit was not to deliver diamorphine to Baba, but to survey the location and find a place to hide the Three Bundles.<sup>280</sup>

192 However, Jumadi’s testimony in court is refuted by the contemporaneous phone records and Shisham’s statements to the CNB.<sup>281</sup> According to the phone call records of Jumadi’s mobile phone, a total of *five* calls were made between Baba’s mobile phone and Jumadi’s mobile phone, as follows: a call at 9.59am lasting nine seconds, a call at 11.18am lasting 18 seconds, a call at 1pm lasting 14 seconds, a call at 1.01pm lasting nine seconds, and a call at 1.11pm lasting 13 seconds.<sup>282</sup> This contradicts Jumadi’s testimony in court that he only had one conversation with Baba. When confronted with this contradiction, Jumadi claimed that he could not remember, insisting that, “[a]s far as [he] can remember, there was one phone call which [he] picked up

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<sup>279</sup> Exhibit P233, at para 56.

<sup>280</sup> NEs, 31 August 2020, at p 15, line 27 to p 17, line 32.

<sup>281</sup> PCS, at p 35; para 60.

<sup>282</sup> 1 AB 531; NEs, 22 September 2020, at p 41, line 31 to p 44, line 7.

and spoke to him and that was the one that [he] stated in [his] statement”. He also suggested that, even though the calls had been picked up, it was possible that they did not speak during those calls.<sup>283</sup> In my view, this does not appear to have been the case. The frequency and duration of the calls, as well as the fact that they spanned from around 10am to 1pm, suggest otherwise.

193 Furthermore, this is not the only issue with Jumadi’s testimony regarding Baba. According to Jumadi, he did not mention Baba when he instructed Shisham to look for a place to hide the Three Bundles.<sup>284</sup> In other words, Jumadi did not tell Shisham about the call or calls which he had with Baba, in which Baba had allegedly ordered diamorphine and then cancelled his order. However, in Shisham’s Second Long Statement, he stated the following:<sup>285</sup>

12 ... While smoking, Jumadi told me to go downstairs and meet up one Indian man at the main gate of the apartment. I did not notice if Jumadi was on the phone before that. Jumadi told me to collect money from the Indian man. Jumadi did not tell me how much. I did not ask the purpose of collecting the money. I just do what Jumadi told me to.

13 I left the unit and went downstairs. I saw a few people standing at the main gate and one of them is an Indian man. I then approached the Indian man and asked him if he is Jumadi’s friend. The Indian man said yes and he gave me the cash. ...

194 Although Shisham did not identify the Indian man as Baba, this account in Shisham’s Second Long Statement corresponds almost exactly with Jumadi’s account in his Fourth Long Statement and his description of Baba. Jumadi’s explanation for this was that Shisham possibly overheard his conversation with

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<sup>283</sup> NEs, 22 September 2020, at p 44, line 11 to p 45, line 6.

<sup>284</sup> NEs, 22 September 2020, at p 45, lines 7–16.

<sup>285</sup> 2 AB 1210, paras 12–13.

Baba and therefore fabricated this story in order not to implicate himself in the hiding of the Three Bundles. When asked how Shisham could have known Baba's race, Jumadi claimed that Shisham knew Baba because Jumadi had asked him "to deliver some stuff to Baba" on previous occasions.

195 I find this explanation to be extremely far-fetched. First, Jumadi's explanation was inherently contradictory. Initially, Jumadi testified that he never mentioned Baba in his instructions to Shisham, as his instructions concerned surveying the area to find a hiding place rather than asking Shisham to meet Baba. Hence, Shisham "didn't know anything about this Baba person".<sup>286</sup> However, when confronted with Shisham's Second Long Statement, Jumadi then claimed that Shisham knew about Baba because he had asked Shisham to deliver items to Baba in the past.<sup>287</sup> Jumadi thus vacillated on whether Shisham knew Baba, according to which position best served his defence. This indicates that he was not telling the truth regarding his instructions to Shisham. Second, even if Shisham knew Baba from past transactions, it is extremely unlikely that Shisham would have been able to fabricate an account regarding an Indian man which corresponded so closely to Jumadi's account of Baba in his Fourth Long Statement, unless such an account of Baba was in fact true or close to the truth.<sup>288</sup> In other words, given that both Jumadi and Shisham mentioned in Jumadi's Fourth Long Statement and Shisham's Second Long Statement respectively that Shisham left the Unit to pass something to an Indian man (*ie*, Baba), this was most likely true. Of course, there are certain details in Jumadi's Fourth Long Statement that are omitted from Shisham's Second Long

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<sup>286</sup> NEs, 22 September 2020, at p 45, lines 15–16; p 46, line 19 to p 47, line 14.

<sup>287</sup> NEs, 22 September 2020, at p 47, lines 11–14.

<sup>288</sup> PCS, at para 77.

Statement, including the fact that Jumadi had asked Shisham to pass Baba two packets of diamorphine in exchange for money. However, this is not unexpected, given that Shisham would naturally wish to avoid incriminating himself in his statements.

196 Therefore, I find that Jumadi’s testimony in court regarding the allegedly cancelled transaction with Baba is not at all credible. Instead, the account set out in Jumadi’s Fourth Long Statement and in Shisham’s Second Long Statement should be preferred. Specifically, the reason why Shisham had left the Unit was to deliver packets of diamorphine to Baba, and not to find a place to hide the Three Bundles. Jumadi’s insistence in court to the contrary only serves to reinforce my view that his testimony in court should be treated with extreme caution.

(3) Whether Shisham’s silence is corroborative of Jumadi’s testimony

197 Jumadi submits that the court should treat Shisham’s silence as corroborative of Jumadi’s evidence regarding the phone calls with Vishu on 21 June 2017 and 22 June 2017 as well as the contents of those calls. This is because, in the course of his defence in court, Jumadi had given evidence against Shisham, in response to which Shisham had remained silent. This argument is based on ss 261 and 291 of the CPC.<sup>289</sup>

198 I shall start with s 261 of the CPC, which relates to an accused’s silence “on being charged with an offence, or informed by a police officer ... that he may be prosecuted for an offence”. Here, Jumadi is seeking to rely on Shisham’s decision not to give evidence in court, rather than Shisham’s silence on being

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<sup>289</sup> 3DCS, at paras 113–134.

charged and/or informed of his potential prosecution. Therefore, s 261 of the CPC is inapplicable.<sup>290</sup> Furthermore, and more importantly, s 261(1) provides that the proper inferences may be drawn by the court “in determining – (a) whether to commit the accused for trial; (b) whether there is a case to answer; and (c) whether the accused is guilty of the offence charged”. This makes clear that the inferences to be drawn, if any, can only go towards the court’s determination of the three issues mentioned in ss 261(1)(a)–(c). These three issues pertain to *the accused person who has remained silent*, not the co-accused person who has given evidence against the accused person. Thus, s 261 cannot be used in the way contended by Jumadi, that is, to give rise to inferences to be considered by the court in its determination of *a co-accused person’s guilt* or otherwise.

199 I turn now to s 291(3) of the CPC, which reads as follows:

If an accused –

(a) after being called by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or

(b) having been sworn or affirmed, without good cause refuses to answer any question,

the court, in deciding whether the accused is guilty of the offence, may draw such inferences from the refusal as appear proper.

200 Section 291(3) applies to an accused person’s election to remain silent upon being called to give evidence in his defence. Thus, it is applicable in this case. However, this provision does not have the effect contended by Jumadi, for the same reason as above. Section 291(3) states that “the court, *in deciding*

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<sup>290</sup> NEs, 11 November 2020, at p 76, lines 27–29.

*whether the accused is guilty of the offence*, may draw such inferences from the refusal as appear proper” [emphasis added]. Therefore, similar to s 261, any inferences drawn can only go towards the court’s determination of whether *the accused person who has elected to remain silent* is guilty of the offence he has been charged with. The inferences to be drawn cannot go towards the court’s determination of whether *a co-accused person* is guilty.<sup>291</sup>

201 As I have explained above, these provisions are not to be used by the court to draw inferences in determining whether the co-accused person (who has given the evidence) is guilty. Jumadi submits that Shisham’s silence corroborates his evidence. Does this mean that Shisham’s silence corroborates Jumadi’s defence in court or his defence as stated in his Statements? I assume Jumadi meant the former, but I have explained that his account in court is full of untruths. Accordingly, Jumadi’s argument in this respect is completely misconceived and must fail.

(4) Conclusion on Jumadi’s Statements and his testimony in court

202 For the above reasons, I am inclined to place less weight on Jumadi’s testimony in court and accord more weight to his Statements. Jumadi was not able to offer a coherent and reasonable explanation for why he would lie or omit information in his Statements. Further, his testimony in court is fraught with numerous material and serious inconsistencies, both internally and with the other evidence.

203 In contrast, his Statements are relatively consistent, from his First Contemporaneous Statement recorded on 22 June 2017 to his Seventh Long

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<sup>291</sup> NEs, 11 November 2020, at p 76, lines 1–5.

Statement recorded on 6 March 2018. Compared to his testimony in court, which was given almost three years after his arrest, his Statements were recorded much closer in time to the critical events of 21 June 2017 and 22 June 2017. In fact, his First Contemporaneous Statement and Second Contemporaneous Statement were recorded on 22 June 2017, the very day of his arrest and the collection of the five *batu* from Vishu. Jumadi's Cautioned Statement was recorded the very next day (23 June 2017) and most of his long statements were recorded in late June and early July 2017, within two weeks of his arrest. The first three statements, especially the First Contemporaneous Statement and the Second Contemporaneous Statement, are most likely true as the CNB raid was a surprise and unexpected. Jumadi was caught off-guard and unprepared. Thus, he had no time to fabricate or make up a convincing explanation when he was questioned. Furthermore, he was forthcoming and cooperative in making the Statements due to his hope that he would obtain a certificate of substantive assistance. Jumadi's Statements were also supported by Salzawiyah's and Shisham's evidence and/or statements to the CNB, as well as by the contemporaneous evidence.

204 For all of the above reasons, I find that, in respect of the issues relating to Jumadi's knowledge of the Drugs in the Unit and his intentions relating to the Drugs, Jumadi's Statements are more credible and reliable than his testimony in court, and they should be preferred to Jumadi's testimony in court.

#### *The Mistake Defence*

205 My conclusion above disposes of the Mistake Defence. I do not accept Jumadi's testimony in court that Vishu had mistakenly delivered the five *batu* of diamorphine and that he only intended to traffic in two of the five *batu*. Rather, I accept the account of the events given by Jumadi in his Statements

that, while he had initially intended to purchase only two *batu*, Vishu subsequently persuaded him to purchase five *batu* in anticipation of the upcoming Hari Raya holiday and that Vishu was prepared to accept partial payment with the balance on credit terms. Jumadi had thus paid for and collected the five *batu*, intending to traffic in all of them.

206 This scenario is logical and convincing as Jumadi was in the illegal business of buying and selling drugs. Vishu was his supplier of diamorphine and was prepared to grant him partial credit terms. Jumadi, being a businessman peddling in diamorphine, would readily accept it as Vishu gave him some credit terms for the purchase. Jumadi's explanation for rejecting Vishu's offer was simply that he did not dare sell such a large amount and that he preferred making payment in full in cash as he did not want to be indebted to anyone.<sup>292</sup> This explanation is unconvincing and it shows Jumadi's desperate attempt to distance himself from the large quantities of diamorphine found in the Unit in order to avert the capital charge. He is prepared to accept and confess to trafficking in diamorphine of an amount that is less than 14.99g, which is a non-capital charge.

207 For these reasons, I find that the elements of Jumadi's trafficking charge – possession of the drugs, knowledge of the nature of the drugs, and intention to traffic in the drugs – are all satisfied in relation to the five Bundles (marked A1A1, A1B1, A1C1, A1D1 and A2A1) and the three packets of diamorphine marked A1E1, A1F1 and B1A1. These are the packets of diamorphine that were found in the red bag, camouflage bag and the pink box in the living room of the

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<sup>292</sup> NEs, 23 September 2020, at p 66, lines 8–18.

Unit. I shall now deal with the diamorphine found in the bedroom of the Unit, which Jumadi alleges belong to Salzawiyah.

*The Ownership Defence*

208 In relation to the Ownership Defence, I similarly reject Jumadi’s explanation in court that the sachets/packets of diamorphine found in the bedroom of the Unit belonged to Salzawiyah. He clearly stated in his Second Contemporaneous Statement that the diamorphine found in the bedroom belonged to him, describing them as “old stuffs which have been packed”, some of which were for sale. This is consistent with his statement in his Fourth Long Statement that the sachets/packets of diamorphine found in the bedroom of the Unit belonged to him. He was also able to provide details in relation to these packets of diamorphine. For instance, he explained that these packets of diamorphine had originated from the two *batu* he ordered on 16 June 2017 and received on 17 June 2017. He explained that Shisham had made the orders by calling Vishu on his phone, after which Jumadi would drive with Shisham to meet the courier at one of two locations, depending on the time. Further, he and Shisham had repacked the diamorphine that he bought into sachets marked D1A, D2A, D3A, D4A and D5A, which were sealed because his “runners had received complaint[s] from their customers that the packet [was] less than 8 grams”. He also explained that he had not packed the sachets of diamorphine marked E1B1, which was likely packed by Salzawiyah.<sup>293</sup>

209 Furthermore, it was Jumadi’s evidence that he and Salzawiyah shared the bedroom and he would sleep there if he and Salzawiyah were not

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<sup>293</sup> Exhibit P233, at paras 48, 51 and 52; PCS, at paras 95–96.

quarrelling.<sup>294</sup> The packets of diamorphine found in the bedroom of the Unit were out in the open – the packets marked D1A to D5A were found on one of the beds in the bedroom, whereas the packets marked E1B1 and E1E were found in the wardrobe located in the bedroom of the Unit. The Unit was a small one and the accused persons lived in close proximity to one another. I find it difficult to believe that Jumadi would not have known about these packets of diamorphine.

210 In support of his claim that the drugs found in the bedroom of the Unit belonged to Salzawiyah, Jumadi raises several arguments, which I shall address in turn. Firstly, Jumadi submits that, during the recording of the Second Contemporaneous Statement, it was SSSgt Fardlie who had told Jumadi what the CNB officers found in the bedroom of the Unit, prior to which Jumadi did not know that there were drugs in the bedroom. On this basis, Jumadi’s reply in his Second Contemporaneous Statement cannot be relied on to show his knowledge of the drugs in the bedroom prior to his arrest.<sup>295</sup> It should be clarified that, although SSSgt Fardlie wrote down the question, “Just now we search the bedroom. We have recovered heroin, ice, Erimin-5, ganja”, he subsequently cancelled this question and wrote down a new question, “Just now when we searched the room, did you see what was found?”. After writing down the new question, he asked *only* the new question.<sup>296</sup> Thus, it is incorrect to say that SSSgt Fardlie had informed Jumadi of the drugs which had been found in the bedroom. That being said, Jumadi’s knowledge of the nature of the drugs could have been due to the fact that he had witnessed the CNB’s search of the

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<sup>294</sup> NEs, 23 September 2020, at p 68, lines 9–13.

<sup>295</sup> 3DCS, at paras 45–46.

<sup>296</sup> NEs, 18 August 2020, at p 50, lines 5–23.

bedroom.<sup>297</sup> Hence, his *acknowledgement* of the drugs that had been found in the bedroom does not, in itself, show that he knew of the said drugs before his arrest. However, that does not diminish the significance of his subsequent admission that the drugs in the bedroom belonged to him. It is that portion of the Second Contemporaneous Statement regarding ownership which the Prosecution is relying on.<sup>298</sup>

211 Secondly, Jumadi also relies on the fact that, in his First Contemporaneous Statement, when asked “Roughly how much is everything?”, he had replied, “About 6 stones”. Jumadi submits that his reference to six *batu* shows that he knew only of the five *batu* in the red bag and the one *batu* in the camouflage bag. He did not include the diamorphine in the bedroom as he did not know about it.<sup>299</sup> I do not find this persuasive. It is notable that the question posed to Jumadi was *roughly* how much drugs he had to surrender. Similarly, his answer was also phrased in terms of approximation. Furthermore, as SSSgt Fardlie testified, the First Contemporaneous Statement was taken as a “very fast ... quick, statement”.<sup>300</sup> In light of Jumadi’s subsequent statements in the Second Contemporaneous Statement and his Fourth Long Statement that he knew of the diamorphine in the bedroom and that it belonged to him, the logical conclusion is that those statements are accurate and his reply in his First Contemporaneous Statement was intended only to be an estimation.

212 Thirdly, Jumadi points to the fact that the sachet marked E1B1 was packed in a different type of plastic bag from the ones he typically used, which

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<sup>297</sup> NEs, 18 August 2020, at p 50, line 30 to p 41, line 2.

<sup>298</sup> NEs, 11 November 2020, at p 63, lines 21–31.

<sup>299</sup> 3DCS, at para 44.

<sup>300</sup> NEs, 16 July 2020, at p 29, line 29.

were those contained in a green pouch (marked A2G).<sup>301</sup> Further, D1A was found in a wrapping paper (marked D1), which Jumadi also claimed he did not use to pack drugs.<sup>302</sup> I do not attribute much weight to these details in his explanation. Out of all the sachets of diamorphine found in the bedroom, this explanation relates only to E1B1 and D1A. In respect of D1A, I note that, although it was contained in wrapping paper, the individual sachets resembled closely the small transparent sachets which Jumadi admitted he used to repack diamorphine.<sup>303</sup> In respect of E1B1, his explanation in court is contrary to his acknowledgement in his Fourth Long Statement that Salzawiyah had possibly helped him “to pack [the diamorphine] into the ‘love’ design packet”.<sup>304</sup> If Salzawiyah had been the one to pack E1B1, then this would not be inconsistent with Salzawiyah’s testimony in court that she had never seen Jumadi use any other wrappers and plastic bags aside from those contained in the green pouch.<sup>305</sup> Thus, I place little weight on the fact that the packets of diamorphine marked D1A and E1B1 were packed slightly differently from the other packets of diamorphine.

213 Fourthly, Jumadi contends that there are contemporaneous messages showing that Salzawiyah had her own customers who were looking to buy drugs from her, and that this was affirmed by Salzawiyah’s testimony in court.<sup>306</sup> I do not find that the evidence supports such a conclusion. I turn first to the messages contained in Salzawiyah’s mobile phone, which relate to two persons named

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<sup>301</sup> Exhibit P62.

<sup>302</sup> NEs, 26 August 2020, at p 41, line 28 to p 42, line 8. 3DCS, at para 55.

<sup>303</sup> NEs, 26 August 2020, at p 39, lines 11–19; Exhibits P62 and P82.

<sup>304</sup> Exhibit P233.

<sup>305</sup> NEs, 25 August 2020, at p 27, lines 15–17; DCS, at para 56; PCS, at para 104.

<sup>306</sup> 3DCS, at paras 48–50.

“Rasyid” and “Jingjong”. It is not apparent from these messages that Salzawiyah was running her own drug business. Instead, it appears that she was making deals as an extension of Jumadi’s drug trafficking operation.<sup>307</sup> Salzawiyah explained that Jingjong had only contacted her because he was unable to contact Jumadi. This is supported by a message from Jingjong to Salzawiyah, informing her that, “I called your boyfriend but he did not respond”.<sup>308</sup> Salzawiyah further testified that Jumadi knew about Jingjong purchasing diamorphine from Salzawiyah.<sup>309</sup> When asked if she had her own customers, Salzawiyah replied in the negative, explaining as follows:<sup>310</sup>

- Q: Who would you deliver drugs to?  
A: My friend.  
Q: Would your friends pay you for those drugs?  
A: Yes.  
Q: You never told Jumadi about these friends, correct?  
A: Most of them Jumadi knew.  
Q: Yes. But some of them Jumadi didn’t know about, correct?  
A: I don’t think so. He ... knows everyone.  
Q: So you’re saying that Jumadi knows all your friends that you have delivered drugs to and collected payment from?  
A: I seldom deliver. Normally, they will look for Jumadi. If they cannot get through Jumadi then they will call me.  
...

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<sup>307</sup> PCS, at para 110.

<sup>308</sup> NEs, 25 August 2020, at p 45, lines 11–24; 1 AB 165.

<sup>309</sup> NEs, 25 August 2020, at p 47, lines 11–20.

<sup>310</sup> NEs, 25 August 2020, at p 34 lines 1–29; p 47, line 21 to p 48, line 9; PCS, at para 110.

- Q: Okay. So for the people that you have delivered – the friends that you have delivered drugs to, they would contact you directly, correct?
- A: Yes. Yes, if they cannot go through Jumadi.
- Q: You would not tell Jumadi that these people have contacted you, correct?
- A: Usually, he knew.
- Q: No, you did not tell Jumadi about these friends that had contacted you for the drugs, correct?
- A: No, Jumadi knew everything.
- ...
- Q: Now, I put it to you that you actually have your own suppliers of heroin. Do you agree?
- Court: Other than?
- Q: Aside from Jumadi.
- A: I disagree.
- Q: I put it to you that the heroin that you had received from these suppliers are for you to sell to your own customers like Jingjong. Agree, disagree?
- A: I disagree.
- ...
- Q: Now ... I put it to you that you never told Jumadi that you had your own customers to sell heroin to, agree or disagree?
- A: I disagree.
- Q: I put it to you that Jumadi does not know that you have in fact been selling heroin to your own customers like Jingjong, agree, disagree?
- A: I disagree.
- Q: And I put it to you that you never told Jumadi that you in fact stored heroin in the house meant for your own customers, agree, disagree?
- A: I disagree.

214 Thus, it appears that Salzawiyah had her own friends who would occasionally contact her to purchase diamorphine. Jumadi knew about these

orders and she would obtain the diamorphine from Jumadi to sell to these friends. Although Salzawiyah acknowledged in her testimony in court that Rasyid was her “own customer” rather than “Jumadi’s customer”, this must be understood in light of their extensive drug trafficking operation. Thus, Jumadi and Salzawiyah may not know each other’s customers. What is important is to sell the drug rather than to know the identity of the customers. Furthermore, it may be possible that Salzawiyah did not tell Jumadi about Rasyid because she had only recently obtained Rasyid’s contact and she alleged that she had been quarrelling with Jumadi at the time.<sup>311</sup> Therefore, the totality of the evidence does not support the conclusion that Jumadi did not know about the packets of diamorphine in the bedroom. Instead, he was aware that she would occasionally sell diamorphine to her friends or contacts and he supplied her the diamorphine for that purpose. I should add that, for reasons I shall elaborate on below, I reject Salzawiyah’s claim that she had extricated herself from Jumadi’s drug trafficking operation a few days before 22 June 2017. Instead, I find that she continued to be part of the drug trafficking operation, albeit to a lesser extent (see [277] below). In light of this finding, it is even more improbable that Salzawiyah would have her own customers to whom she sold diamorphine.

215 Finally, contrary to Jumadi’s submission,<sup>312</sup> I do not consider it significant that Jumadi’s DNA was not found on the packets of diamorphine found in the bedroom other than exhibits D1 and D5. As Dr Pook Sim Hwee (“Dr Pook”) explained, the fact that a person’s DNA is not found on an exhibit does not necessarily mean that the person did not come into contact with the exhibit. There are several possible reasons for this. For instance, the amount of

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<sup>311</sup> NEs, 25 August 2020, at p 37, line 26 to p 38, line 7; p 38, lines 12–14.

<sup>312</sup> 3DCS, at para 37.

DNA deposited might have been insufficient for it to be detected, or the DNA could have been degraded.<sup>313</sup> Indeed, the Court of Appeal in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [82] recognised that “the absence of a DNA trace does not prove that the [accused] did not in fact touch the relevant materials because there might be other possible explanations for this”. Furthermore, Jumadi’s DNA was found on the interior of the wrapping paper containing the packet of diamorphine marked D1A, as well as the interior of the dark-coloured plastic packet containing the packet of diamorphine marked D5A.<sup>314</sup> This suggests that there may have been some degree of contact by Jumadi. Jumadi has provided several possible reasons for such contact, including that he had bought the wrapping paper for Salzawiyah and that the dark-coloured plastic packet came from ones which Jumadi used to pack drugs.<sup>315</sup> In my view, the presence of Jumadi’s DNA indicates that he had come into contact with these packets of diamorphine, and consequently had knowledge of them. In any case, the other evidence set out above, in particular, Jumadi’s own account in his Fourth Long Statement, is sufficient to prove the Prosecution’s case beyond a reasonable doubt.

216 For these reasons, I also reject Jumadi’s Ownership Defence. Instead, I find that Jumadi knew of the packets of diamorphine found in the bedroom of the Unit and they were in his possession. Jumadi, in his Statements, said these packets of diamorphine originated from the two *batu* of diamorphine which he received from Vishu on 17 June 2017 and were intended for sale.

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<sup>313</sup> NEs, 14 July 2020, at p 46, lines 4–15.

<sup>314</sup> 1 AB 761 and 765.

<sup>315</sup> 3DCS, at paras 39–40.

217 Thus, the elements of Jumadi’s drug trafficking charge – possession of the drugs, knowledge of the nature of the drugs, and intention to traffic in the drugs – are also all satisfied in relation to the packets of diamorphine marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1E found in the bedroom.

*Conclusion on Jumadi’s amended charge*

218 For the above reasons, I am of the view that Jumadi has not raised a reasonable doubt in the Prosecution’s case. In fact I find that the elements of the trafficking charge against Jumadi have been proven beyond a reasonable doubt. Jumadi had actual possession and had actual knowledge of the nature of the Drugs. Given the amount of Drugs that he had in his possession, the presumption of trafficking under s 17(c) of the MDA applies and Jumadi has not successfully rebutted the presumption. Even without relying on the presumption in s 17(c), I find that the Prosecution has proven beyond a reasonable doubt that Jumadi actually intended to traffic in the Drugs, in furtherance of the common intention of the accused persons, which I shall elaborate on below.

*The amended charge against Shisham*

219 Shisham’s defence against the Prosecution’s case is that of a bare denial entirely – all three elements of possession, knowledge of the nature of the drugs and intention to traffic are in dispute. The critical factual issue is the extent of Shisham’s involvement in the drug trafficking operation – whether he knew and participated in the drug trafficking operation or was simply a drug addict who consumed drugs at the Unit as he alleged.

220 I shall first deal with a preliminary issue raised by the Prosecution that Shisham’s counsel had “no evidential basis” to put to Jumadi certain questions

pertaining to the calls exchanged between Vishu's and Shisham's mobile phone numbers, and Shisham's knowledge of what was communicated between Jumadi and Vishu. This was because Shisham did not give evidence in his defence as he had chosen to remain silent and there was nothing in Shisham's statements that related to what transpired during the calls.<sup>316</sup> With due respect, I do not agree with the Prosecution. It appears that, when the Prosecution refers to "evidential basis", it is referring to there being some evidence to support the case that is being put to the witness. However, taking the Prosecution's argument to its logical conclusion, an accused person who does not give any statements and declines to give evidence in court will not be able to put any part of his or her case to the relevant witnesses. That cannot be the case. This is especially when it comes to the cross-examination of the *Prosecution's* witnesses – at the time of cross-examination, the defence would not have opened its case and no evidence would have been adduced by the defence. Thus, an accused person (or his counsel) must be permitted to put the accused's case to the relevant witnesses even when he decides to remain silent subsequently after he is called to enter his defence. However, the court must be mindful that the case that is being put to the witness is one in relation to which the accused person had chosen to remain silent. In examining the case put forth by the accused person, the court must exercise caution and evaluate the accused person's case in light of all the circumstances, including the extent to which the evidence supports the accused person's case, and the fact that the accused had chosen to remain silent.

221 Bearing the above in mind, I find that Shisham knew and participated in the drug trafficking operation along with Jumadi and Salzawiyah, as compared

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<sup>316</sup> PCS, at para 164.

to merely being a passive consumer of drugs in the Unit. This includes Shisham's participation in the events of 21 June 2017 and 22 June 2017. In coming to this conclusion, I take into consideration the fact that both Jumadi and Salzawiyah, in their statements as well as their testimonies in court, affirmed that Shisham was involved in the drug trafficking operation. This was both in general as well as in relation to the collection of the five *batu* of diamorphine on 22 June 2017. Jumadi's and Salzawiyah's accounts are also supported by the objective evidence, in particular, the messages contained in Shisham's mobile phone. I shall address these points in turn.

*Jumadi's evidence*

222 The Prosecution relies on several of Jumadi's Statements to support its case against Shisham. In response, Shisham submits that Jumadi's Statements must be treated with caution, relying on illustration (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA").<sup>317</sup> Illustration (b) states that the "court may presume ... that an accomplice is unworthy of credit and his evidence needs to be treated with caution".

223 Guidance regarding the application of the presumption in illustration (b) was provided by the Court of Appeal in *Kelvin Chai* ([83] *supra*) at [61], as follows:

... Lastly, illus (b) to s 116 of the Evidence Act provides that the court may presume that an accomplice is unworthy of credit and that his evidence needs to be treated with caution, not that it must. The presumption is not mandatory but permissive or discretionary and depends on all the circumstances ... Whether or not the court should believe the evidence of the accomplice would depend on all the circumstances of the case and the evidence must be tested against the objective facts as well as

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<sup>317</sup> 2DCS, at paras 30–31.

the inherent probabilities and improbabilities; but where the court did not discern any attempt by the accomplice materially to minimise his own involvement or exaggerate that of the accused and his evidence was found to be consistent as a whole and reliable on a review of the whole evidence, there was no reason why the evidence should be treated as unreliable. ...

224 From the above, it is clear that the presumption in illustration (b) is a discretionary one. Furthermore, whether it is appropriate to apply the presumption in illustration (b) is an extremely fact-specific inquiry. The court should consider the internal consistency of the accomplice's evidence, the consistency of the accomplice's evidence with the other evidence before the court and whether the accomplice in his evidence was attempting to minimise his involvement or exaggerate that of the accused person.

225 There is wisdom in this presumption and the court has to exercise caution in considering the evidence of Jumadi and Salzawiyah, even when their evidence is reliable. As far as Shisham's involvement in the drug trafficking operation is concerned, Jumadi's evidence (both in his Statements and his testimony in court) is generally consistent and reliable, and he had no reason to implicate Shisham for no reason. Furthermore, Jumadi's evidence against Shisham is corroborated by Salzawiyah's evidence and the objective contemporaneous evidence. I shall explain the evidence in turn.

226 First, it is clear that, from the outset, Jumadi identified Shisham as the person who provided the contact to the supplier of the drugs, including diamorphine. Not only that, he also detailed the extensive nature of Shisham's involvement in the drug trafficking operation. This was consistently maintained throughout his Statements, as follows.<sup>318</sup>

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<sup>318</sup> PCS, at paras 169–170.

(a) In Jumadi’s Second Contemporaneous Statement, when asked whether he knew who Shisham was, Jumadi identified Shisham as “the one who gave the contact to order the stuff from Malaysia”.<sup>319</sup> Similarly, in the MDP Notice, Jumadi stated that “Sham gave the contact”, “Sham” referring to Shisham.<sup>320</sup>

(b) In Jumadi’s Second Long Statement, he stated that after his initial suppliers were arrested in May 2017, he had asked one of his customers, “Ah Gu”, whether he knew anyone who sold diamorphine. Ah Gu then introduced him to Shisham. He explained in detail his first meeting with Shisham, in which Shisham had given him 530g of diamorphine in exchange for \$3,600. In their second meeting, Shisham had told him that “if [Jumadi] want to order heroin every day ... it [was] possible as long as [Jumadi had] the money” and that Jumadi “would need to go through [Shisham]” if Jumadi wanted to order diamorphine.<sup>321</sup>

(c) In Jumadi’s Third Long Statement, he explained that he “intend[ed] to make [Shisham his] partner in this drug business”, which meant that they would pool their money to purchase diamorphine and divide the proceeds of the sales equally. When Jumadi proposed this to Shisham, Shisham agreed and gave him \$2,000.<sup>322</sup>

(d) Jumadi’s Third Long Statement and his Fourth Long Statement showed that, initially, Shisham would be the one to talk to the supplier

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<sup>319</sup> Exhibit P218T.

<sup>320</sup> Exhibit P459T; NEs, 28 August 2020, at p 30, lines 23–24.

<sup>321</sup> Exhibit P231, at paras 15, 17 and 18.

<sup>322</sup> Exhibit P232, at paras 21 and 30.

over the phone, with the phone sometimes placed on loudspeaker mode. Subsequently, both Shisham and Jumadi would converse directly with Vishu using Shisham's phone, which was still placed on loudspeaker mode.<sup>323</sup> Moreover, Shisham was involved in the collection, packing and distribution of the diamorphine. He also contributed money for the purpose of purchasing more diamorphine and received part of the proceeds of the sale of diamorphine.<sup>324</sup> In Jumadi's words:<sup>325</sup>

... Even though Sham pooled money to buy drugs together, I am the one who take out the most money and so I have control over the drugs. Even when Sham wants drugs to deliver to his customers, he will need to ask me first before I give it to him. And he will pass me the money from the sales. At the end of each day, I will totalled [*sic*] the sale amount and split the profit equally. However Sham is the one that I need to go through everytime [*sic*] I want to order drugs.

(e) In Jumadi's Fourth Long Statement, he also stated that Shisham had helped him to order two *batu* of diamorphine on 16 June 2017, which they received on 17 June 2017. Shisham had also accompanied him to collect the two *batu*. The packets of diamorphine (marked A1E1, A1F1, D1A, D2A, D3A, D4A and D5A) originated from this two *batu* ordered and collected by himself and Shisham.<sup>326</sup>

(f) In relation to the events of 21 June 2017 and 22 June 2017 in particular, Jumadi explained in his Fourth Long Statement that Shisham had called Vishu, and both of them had talked to Vishu while the phone was on loudspeaker mode. Shisham called and received further calls

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<sup>323</sup> Exhibit P232, at paras 21, 33, 26–28, 33, 37.

<sup>324</sup> Exhibit P232, at paras 27–29, 31, 32, 34–36 and 39; Exhibit P233, paras 44–51.

<sup>325</sup> Exhibit P233, at para 68.

<sup>326</sup> Exhibit P233, at paras 48, 49 and 51.

from Vishu relating to the collection of the five *batu* of diamorphine. Shisham also accompanied Jumadi to Changi South Lane, at which Shisham called the supplier to inform him that they had arrived and placed the red bag containing the five *batu* in his sling bag.<sup>327</sup>

(g) In Jumadi’s Sixth Long Statement, which was recorded about four months after the accused persons’ arrests, Jumadi again affirmed that Shisham was his “business partner” who “manage[d] the supplies of drugs” and “has good contact for buying drugs in bulk”. Jumadi reiterated that he would share the proceeds of sale of the diamorphine equally. He also explained that, just prior to their arrest, Shisham and himself “just collected 5 ‘batu’ of heroin”.<sup>328</sup>

227 It is evident from the above that Shisham played a significant role in the drug trafficking operation. He not only provided the contact to the drug supplier, he also assisted Jumadi in the collection, repacking and delivery of the diamorphine. Furthermore, he contributed to and benefitted financially from the sale of the diamorphine. He was also involved in the ordering and collection of the five Bundles on 21 June and 22 June 2017. Although Shisham sought to characterise Jumadi’s first few statements as being “initially exculpatory of Shisham”, and that Jumadi had “changed his story to incriminate Shisham” only in some of his long statements,<sup>329</sup> this is strictly speaking inaccurate. Jumadi’s admissions that all the drugs in the Unit belonged to him are not equivalent to exculpating Shisham. To the contrary, even from Jumadi’s Second Contemporaneous Statement, he had identified Shisham as the one who

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<sup>327</sup> Exhibit P233, at paras 53–55.

<sup>328</sup> Exhibit P452, at para 2.

<sup>329</sup> 2DCS, at paras 32–33; NEs, 11 November 2020, at p 89, lines 5–8.

provided him the contact to the drug supplier. Additional information regarding Shisham provided by Jumadi in his long statements should be seen as supplementing his earlier Statements, rather than contradicting them. The only potentially exculpatory portion of Jumadi’s earlier Statements is his statement in his Cautioned Statement that Shisham “does not know that [he] sell[s] big amount of drugs”.<sup>330</sup> However, I place little weight on this, for the reasons set out below at [233].

228 This account of Shisham’s involvement in the drug trafficking operation was maintained by Jumadi in his testimony in court. Despite the fact that he had sought to renege on certain parts of his Statements, his evidence regarding Shisham remained generally unchanged. For example:

(a) Jumadi affirmed his Second Long Statement that around May 2017, his local diamorphine supplier had been arrested. Following Jumadi’s queries, Ah Gu then introduced Jumadi to Shisham.<sup>331</sup>

(b) Subsequently, Jumadi asked Shisham if he knew anyone from Malaysia from whom they could obtain diamorphine. When Shisham answered in the affirmative, Jumadi asked Shisham to order diamorphine and Shisham agreed. While Shisham was initially the one to place the orders with the supplier via phone calls, Jumadi eventually became the one to talk to the supplier using Shisham’s mobile phone which was put on loudspeaker mode.<sup>332</sup>

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<sup>330</sup> Exhibit P229.

<sup>331</sup> NEs, 26 August 2020, at p 53, line 23 to p 54, line 15.

<sup>332</sup> NEs, 26 August 2020, at p 55, line 20 to p 56, line 27.

(c) Jumadi also testified that usually, Shisham would accompany him to Changi South Lane to collect the diamorphine. This occurred about three to four times. He explained that Shisham was involved in the collection process – occasionally, Shisham would physically collect the diamorphine from the courier and check the bundles of diamorphine that were delivered.<sup>333</sup>

(d) In relation to the calls to and from Vishu’s and Shisham’s mobile phone on 22 June 2017 in which Jumadi spoke to Vishu, Jumadi affirmed that Shisham’s mobile phone had been on loudspeaker mode.<sup>334</sup> On 22 June 2017, Shisham also accompanied Jumadi to Changi South Lane to collect the diamorphine that they had ordered.<sup>335</sup>

229 Based on the above, Jumadi’s Statements and his testimony in court are largely consistent, as far as they concern Shisham’s involvement in the drug trafficking operation and the events of 21 June 2017 and 22 June 2017.<sup>336</sup> Even when cross-examined, Jumadi maintained his account of Shisham’s involvement and knowledge in relation to the drug trafficking operation and the diamorphine collected on 22 June 2017.<sup>337</sup>

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<sup>333</sup> NEs, 26 August 2020, at p 57, line 18 to p 58, line 10; 27 August 2020, at p 47, lines 30–31.

<sup>334</sup> NEs, 27 August 2020, at p 55, line 7 to p 56, line 27.

<sup>335</sup> NEs, 27 August 2020, at p 10, lines 27–31.

<sup>336</sup> PCS, at para 153.

<sup>337</sup> NEs, 27 August 2020, at p 72, lines 23–28; p 73, lines 26–27; p 74, lines 1–3, 14–17.

230 There are only two instances where Jumadi’s Statements contradicted his testimony in court regarding Shisham. The first is in relation to his Eighth Long Statement.<sup>338</sup> In his Eighth Long Statement, Jumadi stated the following:<sup>339</sup>

‘Sham’ is not involved in my drug trafficking activities, he is just a drug addict. It just happens that he is with me when the CNB officers came to visit me.

231 For context, the Eighth Long Statement was given by Jumadi to SSSgt Lim as part of an investigation into Shisham’s claim that some moneys seized from him had been borrowed from Jumadi (see [116] above).<sup>340</sup> When confronted with the Eighth Long Statement in cross-examination, Jumadi explained that he had lied so that Shisham would be able to keep the money seized from him. Jumadi stated as follows:<sup>341</sup>

... I lied about this. If I said that Shisham is my partner or Shisham is involved in my drug activities, he will not be getting \$300.00 because this is drug money.

232 I find that this is a reasonable explanation for the discrepancy between the Eighth Long Statement and the rest of Jumadi’s Statements as well as his evidence in court. Contrary to the submission of Shisham’s counsel, this explanation was not “incredulous”.<sup>342</sup> The context in which the Eighth Long Statement had been given was significantly different from the context of Jumadi’s previous Statements. Whereas the previous Statements pertained generally to Jumadi’s drug trafficking operation and Jumadi’s liability in that respect, the Eighth Long Statement focused on the money which Shisham

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<sup>338</sup> 2DCS, at para 35.

<sup>339</sup> Exhibit 2D1, at para 5.

<sup>340</sup> NEs, 28 August 2020, at p 6, line 29 to p 7, line 5.

<sup>341</sup> NEs, 28 August 2020, at p 28, lines 10–12.

<sup>342</sup> 2DCS, at para 37.

claimed he borrowed from Jumadi. This would have been known to Jumadi. According to SSSgt Lim, she had asked Jumadi whether he knew about the sum of money that had been seized from Shisham. In these circumstances, I accept Jumadi's explanation that he had lied so that Shisham would be able to keep the money seized from him.

233 The second instance where Jumadi's Statements contradict his testimony in court regarding Shisham is in his Cautioned Statement where Jumadi stated that Shisham did not know that he sold a "big amount of drugs".<sup>343</sup> Jumadi's explanation was that he lied in this portion of his Cautioned Statement because he did not want to give the CNB officers the impression that all the *barang* belonged to Shisham. He further explained that this was because, according to the Promise, he was required to admit that all the *barang* belonged to him.<sup>344</sup> I have already rejected Jumadi's assertions as regards the Promise. However, putting aside the Promise, it is possible that Jumadi, being the boss of the drug trafficking operation, admitted that all the *barang* belonged to him so as to mitigate Shisham's role.

234 It is pertinent that, in Jumadi's Statements and testimony in court where he implicated Shisham, this was not in order to downplay his own role and exaggerate Shisham's role in the drug trafficking operation. To the contrary, the general tenor of Jumadi's Statements was that he was the leader of the drug trafficking operation and Shisham usually operated under his instructions. Jumadi's evidence regarding Shisham's involvement therefore incriminated himself as well. In these circumstances, there was no reason for Jumadi to lie as

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<sup>343</sup> Exhibit P229; 2DCS, at para 32(c).

<sup>344</sup> NEs, 28 August 2020, at p 48, lines 8–12.

regards Shisham's involvement in the drug trafficking operation. I also consider it significant that, out of all of Jumadi's eleven Statements, only his Cautioned Statement and the Eighth Long Statement contained these two discrepancies. Weighed against the rest of Jumadi's Statements relating to Shisham's involvement, which are consistent with Jumadi's evidence in court, as well as the objective evidence (which I shall elaborate on below), the two discrepancies in Jumadi's Eighth Long Statement and the Cautioned Statement are not sufficient to undermine the overall reliability of Jumadi's evidence regarding Shisham's involvement in the drug trafficking operation. Thus, I do not place much weight on Jumadi's assertion in his Eighth Long Statement that Shisham was merely a drug addict and not involved in the drug trafficking operation, or the claim in Jumadi's Cautioned Statement that Shisham did not know that he was dealing in large quantities of drugs.

235 In this regard, the facts of the present case can be distinguished from the facts in *Mohammad Azli* ([132] *supra*), a case relied upon by Shisham's counsel.<sup>345</sup> In that case, the Court of Appeal found that the statements given by a co-accused, Roszaidi, could not be used to establish that the other co-accused, Azli, knew about the nature of the drugs. This was because Roszaidi's evidence had "taken two abrupt and inexplicable turns: from absolving Azli of liability to implicating him, and back to absolving him again" (see *Mohammad Azli* at [105]). However, the decision in *Mohammad Azli* can be distinguished from the present case on at least two bases. First, the Court of Appeal had observed that it was "unclear why Roszaidi would have [absolved Azli of criminal liability] if it were not true" and that the discrepancies in Roszaidi's evidence were "inexplicable" (see *Mohammad Azli* at [103] and [105]). This is not the case

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<sup>345</sup> 2DCS, at para 39.

here. As explained above, I accept the explanations given by Jumadi in relation to the two discrepancies in Jumadi’s Cautioned Statement and Eighth Long Statement. Second, the Court of Appeal also observed that there was “scant evidence” to support Roszaidi’s account regarding Azli’s involvement in drug trafficking (see *Mohamad Azli* at [104]). This is also not the case here. As I shall elaborate below, Jumadi’s account of Shisham’s involvement in the drug trafficking operation is supported not only by Salzawiyah’s evidence, but also by objective contemporaneous evidence.

236 Shisham also submits that there is a further contradiction within Jumadi’s Fourth Long Statement – while Jumadi stated therein that Shisham had placed the red bag into his sling bag, no sling bag belonging to Shisham was recovered from the Unit by the CNB.<sup>346</sup> It is correct that no sling bag was *seized* by the CNB during the raid on the Unit on 22 June 2017. However, this does not necessarily mean that no sling bag existed in the Unit at the relevant time.<sup>347</sup> It is notable that the first time any sling bag was mentioned was in Jumadi’s Fourth Long Statement on 4 July 2017. As such, at the time the raid was conducted, the CNB officers could not have known the potential relevance of the sling bag to the charges. This explains why no sling bag was seized from the Unit. In these circumstances, the fact that the sling bag does not form part of the evidence adduced in court does not necessarily mean that there was no sling bag in the Unit. Accordingly, there is no contradiction within Jumadi’s Fourth Long Statement.

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<sup>346</sup> 2DCS, at para 52.

<sup>347</sup> NEs, 11 November 2020, at p 42, lines 10–13.

237 For these reasons, despite my misgivings in respect of Jumadi’s testimony in court regarding the Ownership Defence and the Mistake Defence, I find that Jumadi’s evidence in relation to Shisham is reliable. Unlike his evidence relating to the Ownership Defence and the Mistake Defence, his evidence regarding Shisham’s involvement is consistent as between his Statements and his testimony in court. Further, his evidence regarding Shisham’s involvement would not affect his own personal criminal liability. There is also no reason or motive for Jumadi to falsely incriminate or implicate Shisham. Therefore, he had no ostensible reason to lie in this respect. As I shall elaborate below, Jumadi’s evidence was also supported by Salzawiyah’s evidence, as well the contemporaneous objective evidence.

*Salzawiyah’s evidence*

238 I turn now to Salzawiyah’s evidence, which corroborates Jumadi’s evidence. In her statements, she alluded to Shisham’s involvement in the drug trafficking operation in terms of his role in liaising with the drug supplier, collecting the drugs with Jumadi and helping to repack the drugs collected.<sup>348</sup> She also referred to Shisham selling diamorphine to his own clients. This is evident from the following:

- (a) In Salzawiyah’s Second Long Statement, she stated that, after collecting the drugs, Jumadi and Shisham usually would immediately repack the drugs into smaller packets in the living room of the Unit. She also surmised that the supplier of the drugs was Shisham’s “friend”, as

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<sup>348</sup> PCS, at para 171.

she had, on several occasions, heard Shisham liaising with the drug supplier over the phone.<sup>349</sup>

(b) In Salzawiyah’s Third Long Statement, she stated that Shisham would “always be the one who will liaise [with] the drug supplier” to make the necessary arrangements. Jumadi had told her that Shisham did not give him the number of the drug supplier. She further explained that she had heard Shisham referring to the “checkpoint” while talking on the phone. This was why she believed that Jumadi’s and Shisham’s drug supplier was from Malaysia. Usually, Jumadi and Shisham would collect diamorphine from Shisham’s “friend” together, following which they would repack the diamorphine and sell the diamorphine to their respective clients. Salzawiyah also stated that, on 17 June 2017, Jumadi had asked for her help to pack the diamorphine because Shisham “want[ed] the [diamorphine] fast as he want[ed] to sell the [diamorphine] to his clients”.<sup>350</sup>

(c) In Salzawiyah’s Fourth Long Statement, she stated that, “ever since I knew [Shisham], he had already been liaising with [the] drug supplier and selling drugs”.<sup>351</sup>

239 In relation to the events of 21 June 2017 and 22 June 2017, Salzawiyah also stated in her First Long Statement and Fifth Long Statement that she had heard Jumadi and Shisham discussing the collection of more *barang* on the

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<sup>349</sup> 2 AB 987, at paras 16 and 17.

<sup>350</sup> 2 AB 989–991.

<sup>351</sup> 2 AB 997, at para 35.

morning of 22 June 2017, at around 10am.<sup>352</sup> In her testimony in court, she maintained her account of Shisham's general involvement in the drug trafficking operation, as well as his involvement in collecting the five *batu* on 21 June 2017 and 22 June 2017.<sup>353</sup>

240 Shisham submits that Salzawiyah did not have personal knowledge of several issues including Jumadi's and Shisham's respective roles in the drug trafficking operation, the relationship between Shisham and the drug supplier, as well as the profit made and how it was shared. Instead, she obtained such information from Jumadi or based on her own inferences. Shisham further submits that Salzawiyah's testimony in court in fact supports Shisham's case that he was not a partner in Jumadi's drug trafficking operation and that he had not been involved in the drug trafficking operation.<sup>354</sup>

241 I disagree. To the contrary, I find that Salzawiyah's evidence shows that Shisham was not merely a passive consumer of drugs in the Unit. Rather, he had played an active role in their drug trafficking operation. Although Salzawiyah acknowledged that she did not know exactly how the drug trafficking operation worked between Jumadi and Shisham,<sup>355</sup> her involvement in the drug trafficking operation (which I shall elaborate on below) and her interactions with Jumadi and Shisham meant that she was aware of enough to know that Shisham was not merely consuming drugs at the Unit. In her oral

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<sup>352</sup> 2 AB 983, at para 9; PCS, at para 156.

<sup>353</sup> NEs, 21 August 2020, at p 48, lines 1–15; p 85, lines 15–18; p 85, line 32 to p 86, line 2; p 86, lines 3–411.

<sup>354</sup> 2DCS, at paras 55–58.

<sup>355</sup> 2 AB 987, at para 17; 2 AB 990, at para 25; NEs, 21 August 2020, at p 82, line 22 to p 84, line 2.

testimony, she maintained that she had seen Shisham help Jumadi to pack the diamorphine into smaller packets, and that on 22 June 2017 she had heard Jumadi and Shisham discuss the collection of more *barang*.<sup>356</sup> She also clarified that she had heard Shisham talk about “people stuck at checkpoints and clearing checkpoints”, which was why she suspected that the drug supplier was Shisham’s Malaysian acquaintance.<sup>357</sup> In my view, Salzawiyah did not have to know the details of Shisham’s involvement in the drug trafficking operation in order to attest to the fact that, in general, he had helped with liaising with suppliers, as well as collecting and packing the drugs.

*The messages on Shisham’s mobile phone and the entries in the Notebook*

242 Jumadi’s and Salzawiyah’s accounts of Shisham’s involvement in the drug trafficking operation are also supported by the contemporaneous evidence, specifically, the messages found in Shisham’s mobile phone and entries made by Jumadi in the Notebook used by Jumadi and Salzawiyah to record drug-related transactions.

243 First, there are numerous messages to and from Shisham’s mobile phone number which appear to relate to drug transactions and/or drug suppliers. For instance, there are some messages sent from Shisham’s mobile phone to “VISHU 2549”, whom Jumadi confirmed was Vishu.<sup>358</sup> One outgoing message was sent on 21 May 2017 and it reads, “*Bro sham here can call me*” [emphasis in original].<sup>359</sup> This explicitly identifies Shisham as the one who authored and

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<sup>356</sup> NEs, 21 August 2020, at p 83, lines 15–18; p 85, line 32 to p 86, line 11.

<sup>357</sup> NEs, 26 August 2020, at p 12, lines 2–6.

<sup>358</sup> NEs, 28 August 2020, at p 61, lines 17–20.

<sup>359</sup> PSB, at p 153.

sent the message. These mobile phone messages show that Shisham was not simply a passive consumer of drugs. Instead, he personally communicated with Vishu. This supports Jumadi's account that Shisham provided him the contact to Vishu and Shisham liaised with Vishu regarding the purchase of diamorphine.

244 There are also calls and incoming messages to Shisham's mobile phone from a person called "Black", which appear to relate to drug transactions. Shisham's mobile phone received several calls from a number labelled "V789" at 4.12pm on 13 June 2017, as well as at 4.45pm and 8.53pm on 14 June 2017. Only the call at 4.45pm on 14 June 2017 was picked up. The rest were missed calls. On 16 June 2017 at 11.25pm, Shisham's mobile phone received a message from the same number, as follows:<sup>360</sup>

*Brother Im black here. I want to tell brother that we can do business together. Panas price I can nego which is ... 2700 per pound. So if brother want to take from us brother is always welcome [emphasis in original]*

245 The word "*panas*" literally translated means "hot" in the Malay language. However, it is also a street name or lingo for diamorphine in the illegal drug business.<sup>361</sup> It is apparent from the above message that Black was offering to sell diamorphine to Shisham, and this same Black had contacted Shisham on 14 June 2017. This supports Jumadi's account in his Fourth Long Statement that on 14 June 2017, Shisham informed him that Vishu had asked someone named Black to call Shisham in relation to Jumadi's and Shisham's order for 1kg of cannabis.<sup>362</sup> This also shows that Shisham was liaising with the relevant drug

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<sup>360</sup> PSB, at p 158.

<sup>361</sup> Exhibit C.

<sup>362</sup> Exhibit P233, at para 41.

suppliers and was not simply a consumer of drugs at the Unit. In fact, in Shisham’s First Long Statement, he admitted giving Jumadi the contact details of Black, the Malaysian Indian drug supplier.<sup>363</sup>

246 There are also numerous messages between Jumadi and Shisham which support Jumadi’s account of Shisham’s involvement in liaising with Vishu and delivering drugs. In relation to liaising with Vishu, I give two examples. On 14 June 2017, at 1.20am, Shisham sent a message to Jumadi stating, “I haven’t *communicate* with *aneh* yet *BOSS* I will give *BOSS RESULT* in a while *K*” [emphasis in original].<sup>364</sup> Similarly, on 18 June 2017, at 7.12pm, Shisham sent Jumadi a message stating, “*Bro ahne call* ask about tomorrow want to *order* or not?”<sup>365</sup> These references to “*aneh*” appear to mean Vishu, which shows that Shisham had himself been communicating with Vishu. His role was not confined to simply giving Jumadi Vishu’s contact.

247 In relation to the delivery of drugs, I set out an example of an exchange between Jumadi and Shisham on 11 June 2017, as follows:<sup>366</sup>

Time	Sender	Recipient	Message (translated)
5.33pm	Jumadi	Shisham	<i>Bro</i> where are you at.. I have <i>order</i>
5.36pm	Jumadi	Shisham	<i>Oohh ok..</i> You still at <i>amk</i> ?
5.36pm	Shisham	Jumadi	<i>Ok order</i> at where? <i>Yes ang kio</i>

<sup>363</sup> 2 AB 1205, at para 7.

<sup>364</sup> Exhibit G, at p 11.

<sup>365</sup> Exhibit G, at p 22.

<sup>366</sup> Exhibit G, at pp 4–5.

5.39pm	Jumadi	Shisham	<i>Maybe amk.. Later I'll double confirm... Kak pau's one yesterday didn't sent right</i>
5.50pm	Shisham	Jumadi	<i>Didn't delever! And to day I called he/she already took from other place!</i>
5.51pm	Jumadi	Shisham	<i>Okok.. Never mind.. The amk one later I'll confirm</i>
5.59pm	Jumadi	Shisham	<i>By 7pm he/she call me.. The amk one</i>
6.27pm	Shisham	Jumadi	<i>Is there anything or not BRO IF not I will go out of ANG MO KIO!</i>
6.28pm	Jumadi	Shisham	<i>7pm then he/she confirm want half or 1 set bro</i>
6.32pm	Shisham	Jumadi	<i>Ok no prolem I jst get a set only t5 in house use, coz I'll already place an order.</i>
6.33pm	Jumadi	Shisham	<i>U mean there is 1 set only</i>

In the above exchange, Jumadi and Shisham referred to “half or 1 set”. These were terms used by Jumadi when describing the quantities of diamorphine he purchased. Specifically, a half set contained about 37.5g to 40g of diamorphine, divided into five packets (see [28] above).<sup>367</sup> Thus, it is clear from this exchange that Jumadi and Shisham were discussing the delivery of diamorphine by Shisham in the Ang Mo Kio area of Singapore.

<sup>367</sup> NEs, 26 August 2020, at p 43, line 32 to p 44, line 5.

248 I set out another example of another exchange between Jumadi and Shisham on 12 June 2017, as follows:<sup>368</sup>

<b>Date</b>	<b>Sender</b>	<b>Recipient</b>	<b>Message (translated)</b>
5.53pm	Jumadi	Shisham	<i>Bro later got blk 7 hougang</i>
5.55pm	Shisham	Jumadi	<i>Roger BOSS</i>
5.55pm	Shisham	Jumadi	How many/much???
5.56pm	Jumadi	Shisham	Go 691 first bro
6pm	Jumadi	Shisham	This take \$350 at 691
6.01pm	Jumadi	Shisham	<i>Than Hougang ave 7.. Give half [...] and half beg \$400 herwanto</i>
7.06pm	Jumadi	Shisham	<i>Bro where are you bro.. It's always me who have to answer to customer.. If you can't send, can't do.. I'll do bro.. From 1st customer become last.. You think this work is fooling around or what. Or did you prioritise on smoking</i>

Again, the above exchanges show Jumadi informing Shisham about a delivery to be made at Hougang, which Shisham acknowledged. Jumadi also appears to be chastising Shisham in relation to the deliveries to customers.

249 In relation to the collection of the Bundles on 22 June 2017, several calls were exchanged between Shisham's mobile number and Vishu's mobile number at various times between 4pm and 7.27pm on 21 June 2017. As explained above, these are consistent with Jumadi's account in his Statements

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<sup>368</sup> Exhibit G, at pp 7–8.

that he had asked Shisham to confirm with Vishu the order for the five Bundles.<sup>369</sup> On 22 June 2017, at least six calls were exchanged between Shisham’s mobile number and Vishu’s mobile number. As Jumadi testified, the phone was placed on loudspeaker mode and Jumadi spoke to Vishu in Shisham’s presence during the calls on 22 June 2017 (see [228(d)] above).<sup>370</sup> There was also a message on the evening of 21 June 2017 in which Shisham informed Jumadi that the Bundles would be collected at “[t]en in the morning” the next day (see [175] above).

250 The above calls and messages contradict Shisham’s case that he did not have knowledge of the five Bundles because he was under the influence of drugs to the extent that his mental functions were impaired and he was not paying attention to Jumadi’s discussions with Vishu.<sup>371</sup> Critically, Shisham’s contention that he was “so high ... that he was not aware of what was going on and of the [diamorphine] ordered by Jumadi” is pure speculation and not supported by any credible evidence. To the contrary, Jumadi’s evidence of Shisham’s involvement on 21 June and 22 June 2017, as well as the calls and messages recovered from Shisham’s mobile phone, show that Shisham was paying attention to the discussion between Jumadi and Vishu, and that he had knowledge of the Bundles.

251 I turn now to the Notebook used by Jumadi and Salzawiyah to record drug-related transactions. The entries therein support Jumadi’s evidence that the profits of the drug trafficking operation were divided equally between himself

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<sup>369</sup> PCS, at para 154(b).

<sup>370</sup> PCS, at para 154(e).

<sup>371</sup> 2DCS, at paras 87–89.

and Shisham. A useful example is the entry made by Jumadi on 19 June 2017.<sup>372</sup> On the left page of the Notebook, Jumadi had written the words “SYAM - \$400” and “SYAM HP = \$140”. In court, Jumadi explained that these were expenses incurred in relation to Shisham. Below that entry, Jumadi had written “EACH = \$1265 – ADY” and “AFTER DEDUCT = 725. SYAM”. Jumadi explained that “Ady” referred to himself, and the figure of \$1,265 referred to his share of the profits. On the other hand, the figure of \$725 referred to Shisham’s share of the profits. This amount was reached by deducting Shisham’s expenses (amounting to \$540 in total) from his share of the profits (amounting to \$1,265).<sup>373</sup> This shows that, contrary to Shisham’s claims in his statements, he received half of the profits of the drug trafficking operation.

252 Shisham seeks to rely on the fact that none of the entries in the notebooks used by Jumadi and Salzawiyah to record drug-related transactions were made by him. This was confirmed by the Prosecution’s handwriting expert, Mr Yap Bei Sing.<sup>374</sup> However, I do not find this to be of particular significance. Shisham’s role in the drug trafficking operation, as appears from the evidence discussed above, was not to record drug-related transactions in the notebooks, unlike Jumadi and Salzawiyah. Thus, it is eminently logical that none of the entries in the notebooks were made by him. It does not raise a reasonable doubt in the Prosecution’s case against Shisham.

253 From the above, it is evident that Shisham was not simply a passive consumer of drugs at the Unit. Rather, he played an active role in liaising with drug suppliers including Vishu and Black. Furthermore, he assisted in

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<sup>372</sup> Exhibit 1D1 at p 45.

<sup>373</sup> NEs, 23 September 2020, at p 32, line 6 to p 33, line 22.

<sup>374</sup> 2DCS, at para 16; 1 AB 788.

delivering drugs, including diamorphine, to various locations in Singapore. He also shared in the profits of the drug trafficking operation. These messages and entries are consistent with Jumadi's and Salzawiyah's accounts of Shisham's involvement in the drug trafficking operation, as contained in their statements and in Jumadi's testimony in court. Given the extent of his involvement in the drug trafficking operation, it can be further inferred that Shisham was similarly involved in the purchase and collection of the Drugs found in the Unit, as Jumadi and Salzawiyah testified. This includes the Bundles which were ordered on 21 June 2017 and collected on 22 June 2017.

*Shisham's statements to the CNB*

254 I shall now consider the effect of Shisham's statements to the CNB, weighed against the evidence I have discussed above. Shisham, in his statements, claimed that his "only involvement" in Jumadi's drug trafficking operation was to introduce Black to Jumadi by giving Jumadi Black's phone number. He claimed that the diamorphine and methamphetamine that were found in his jeans were given to him by Jumadi. He also said that Jumadi allowed him to smoke drugs in the Unit for free and he was also allowed to stay in the Unit by Jumadi.<sup>375</sup> In relation to the events of 22 June 2017, although Shisham admitted that he accompanied Jumadi to Changi South Lane, he sought to distance himself from the drug collection, as follows:<sup>376</sup>

8 ... After that Jumadi told me that he is going out and that he wanted me to follow him. I said okay. I did not ask Jumadi where we are going or why he needed me to follow. It is not my style to ask and moreover I am staying at his place for free, so I usually agree to whatever Jumadi ask me to.

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<sup>375</sup> 2 AB 1211–1213, at paras 15 and 20; 2 AB 1205, at para 7.

<sup>376</sup> 2 AB 1205–1206, at paras 8–10.

9 ... We reached Changi South about 10.30 am and I saw that Jumadi had parked his car beside Block 1003. Inside the car, Jumadi told me that he was going to meet an Indian man to take ‘things’. I did not ask Jumadi who the Indian man was or what ‘things’ he was going to take. I did not ask as I understand the ‘things’ could mean either money or drugs. ...

10 I then told Jumadi that I was going to the cafeteria to buy drinks. Jumadi told me to buy the same drink as the one I am buying for myself. I alighted from the car and walked to a cafeteria nearby to buy drinks. I bought 2 bottles of sugar cane and walked back to the car. I estimated that I spent about 10 minutes. When I boarded the car, Jumadi told me that we can leave and returned to the apartment. I did not ask Jumadi if he had met up with the Indian man or if he had already collected the ‘things’. I did not think much and when he said we can leave, I just acknowledged and we left together in the car. I did not notice if there was any plastic bags or ‘things’ that could be inside the car. ...

255 However, Shisham could not provide a reasonable explanation as to why Jumadi would provide drugs and lodging for free to Shisham. In Shisham’s own words:<sup>377</sup>

I don’t know why Jumadi will give me heroin and ‘ice’ for free or let me smoke drugs for free. Even though we only knew each other for about 3 weeks, Jumadi allowed me to stay at his apartment for free and let me smoke drugs for free. I can’t explain why Jumadi is so good to me.

256 Shisham also omitted to mention this defence in his Cautioned Statement, which was recorded on 23 June 2017.<sup>378</sup> This was one day after the accused persons’ arrests on 22 June 2017. As such, the events of 21 June 2017 and 22 June 2017 should still have been fresh in Shisham’s mind. Having been read the charge against him and the notice pursuant to s 23(1) of the CPC, one would expect Shisham to mention his defence as set out in his subsequent long statements since he was warned that: “If you keep quiet now about any fact or

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<sup>377</sup> 2 AB 1213, at para 21.

<sup>378</sup> PCS, at para 167.

matter in your defence and you reveal this fact or matter in your defence only at your trial, the judge may be less likely to believe you. This may have a bad effect on your case in court”. However, Shisham merely said that he had “nothing to say”.<sup>379</sup> This further diminishes the credibility of the subsequent assertions in his long statements and suggests that those were merely afterthoughts.

257 In light of this, I place little weight on the exculpatory portions of Shisham’s statements in so far as he sought to disclaim any involvement in the drug trafficking operation. Jumadi’s and Salzawiyah’s evidence that he was also involved and participated in Jumadi’s drug trafficking activities is more reliable, especially given that their accounts are supported by objective contemporaneous evidence. This explains why Shisham was allowed by Jumadi to stay at the Unit and consume the drugs for free.

*Shisham’s alleged lack of financial means*

258 Shisham also submits that he could not have been Jumadi’s “partner” in the drug trafficking operation because he did not have the means to do so.<sup>380</sup> However, this is a bare assertion that is not borne out by any evidence. Apart from the fact that \$221.80 was seized from him on the day of his arrest, Shisham did not produce any evidence of his financial situation or testify regarding the same. The fact that only \$221.80 was seized from Shisham does not necessarily mean that he was not a partner in this drug trafficking operation. This is only reflective of the amount of money he had on his person at the relevant time. It

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<sup>379</sup> 2 AB 1201–1202.

<sup>380</sup> 2DCS, at paras 40–41.

does not go very far in showing the amount of money he had and the state of his finances.

259 To the contrary, the evidence that I have highlighted above shows that Shisham not only contributed financially to the drug trafficking operation, he also benefitted financially from it. In particular, Jumadi explained in his Third Long Statement and his Sixth Long Statement that Shisham had contributed to the pool of money used to purchase diamorphine and that Shisham had also received part of the proceeds of sale of the diamorphine (see [226(c)] and [226(g)] above). This is supported by an entry in the Notebook recording Shisham having received his share of the profits of the drug sales after making deductions for certain expenses (see [251] above). I have already explained above the reasons why I find Jumadi's statements *in relation to Shisham* reliable. I should add that Shisham has sought in his submissions to offer an alternative explanation for the entries in the Notebook, in particular, that the "expenses" recorded in relation to him could have been for the diamorphine and methamphetamine that he consumed.<sup>381</sup> First, this explanation is inconsistent with my finding that Shisham received half of the profits of the drug trafficking operation after making deductions for his expenses. Second, and more importantly, there is no evidence at all to support this alternative explanation. Shisham's counsel did not cross-examine Jumadi or Salzawiyah about this alternative explanation. Hence, it is again pure speculation and I place little weight on it.

260 In any case, I emphasise that the critical question is not the state of Shisham's finances or whether Shisham was Jumadi's "partner" in the drug

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<sup>381</sup> 2DCS, at para 43.

trafficking operation – the critical question for the purpose of the amended charge against him is the *level of his involvement* in the drug trafficking operation. In this regard, the evidence above (including evidence from Salzawiyah and Jumadi and, more importantly, the objective evidence) shows that he was heavily involved in the drug trafficking operation. Regardless of whether he contributed and benefitted financially from the drug trafficking operation, Shisham was involved in liaising with the drug suppliers and making deliveries of the drugs. For these reasons, I am not persuaded by Shisham’s arguments in this regard.

*Absence of Shisham’s DNA*

261 I now turn to the fact that Shisham’s DNA was not recovered from any of the exhibits seized by the CNB and sent for HSA analysis, including the red bag, the Drugs and the weighing scales. Shisham relies on this to submit that he was not involved in the drug trafficking operation and that, contrary to Jumadi’s Statements, he had not helped to pack some of the Drugs.<sup>382</sup>

262 However, as I observed above at [215], the fact that a person’s DNA is not found on an object does not necessarily mean that the person did not come into contact with that object. Given the importance of this issue, at the request of Shisham’s counsel, Dr Pook was recalled as a witness midway through the parties’ closing submissions to testify regarding the absence of Shisham’s DNA on the exhibits seized from the Unit. However, Dr Pook unequivocally testified that the absence of a person’s DNA on an object is not conclusive in showing that the person did not come into contact with that object.<sup>383</sup> Although Dr Pook

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<sup>382</sup> 2DCS, at paras 21 and 46–51.

<sup>383</sup> NEs, 12 November 2020, at p 11, lines 8–15.

agreed with Shisham’s counsel that certain factors (*eg*, the duration of contact, the frequency of contact, the amount of force applied, and the material of the object) may increase or decrease the likelihood of DNA being left on the object and subsequently being recovered and interpreted, she emphasised that this was a “multi-factorial” approach<sup>384</sup> and she could not say for sure whether Shisham had or had not touched the relevant objects. According to Dr Pook, it was possible for a person to touch various items frequently and over a prolonged period of time, yet leave no interpretable DNA on the items.<sup>385</sup>

263 Therefore, I do not find that the absence of Shisham’s DNA raises a reasonable doubt in the Prosecution’s case. As the Court of Appeal observed in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [128], the DNA evidence “has to be considered as a whole in the context of the coherence of the case advanced by the [accused]”. Similarly, the Court of Appeal observed in *Mohammad Rizwan bin Akbar Husain v Public Prosecutor and another appeal and other matters* [2020] SGCA 45 at [96] that the accused’s explanation for the DNA evidence “should not be considered in isolation as a theoretical possibility. Instead, the case must be analysed as a whole in determining whether [the accused’s explanation] could have taken place as a matter of factual probability on the evidence adduced before the court”. While the Court of Appeal in the latter case was examining the possibility of secondary transference, in my view, this approach is equally applicable to the interpretation of DNA evidence in general and the inferences sought to be drawn from the DNA evidence. In this case, while the absence of DNA could *theoretically* support an inference that Shisham did not come into

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<sup>384</sup> NEs, 12 November 2020, at p 5, line 29.

<sup>385</sup> NEs, 12 November 2020, at p 11, lines 1–4.

contact with the Drugs and/or the red bag, such an inference is simply not tenable given the totality of the evidence against Shisham which I have explained above. This includes the statements and evidence of two witnesses as well as the objective, contemporaneous evidence.

*Conclusion on Shisham's amended charge*

264 Based on the above, the evidence shows that Shisham played a much more active role than simply being a passive consumer of drugs at the Unit. The evidence also shows that, on 21 June 2017 and 22 June 2017, Shisham had been involved in liaising with Vishu in relation to the five Bundles. He also had accompanied Jumadi to collect the Bundles. This is based on portions of Jumadi's Statements, which he maintained in his testimony in court. Jumadi's evidence is also corroborated by Salzawiyah's evidence, which she maintained consistently in her statements as well as in her testimony in court. Importantly, Jumadi's and Salzawiyah's accounts of Shisham's involvement are supported by objective evidence – the messages contained in Shisham's mobile phone and the entries made in the Notebook. In these circumstances, the observations of Lord Slynn in *Murray v Director of Public Prosecutions* [1994] 1 WLR 1 at 11 (cited by the Court of Appeal in *Kelvin Chai* ([83] *supra*) at [82]) are apposite:

... [I]f aspects of the evidence taken alone or in combination with other facts clearly call for an explanation which the accused ought to be in a position to give, if an explanation exists, then a failure to give any explanation may as a matter of common sense allow the drawing of an inference that there is no explanation and that the accused is guilty.

265 Similarly, the Court of Appeal in *Took Leng How v Public Prosecutor* [2006] 2 SLR(R) 70 at [43] cited Prof Tan Yock Lin, *Criminal Procedure* vol 2 (LexisNexis, 2005) at para 3003 that:

... Where evidence which has been given calls for an explanation which the accused alone can give, then silence on his part may

lead to an inference that none is available and that the evidence is probably true ...

266 Given the weight of the evidence against Shisham, one would expect Shisham to testify and explain the evidence adduced against him, such as his financial situation, his mental state at the time that the Bundles were ordered, and what had transpired at Changi South Lane. The evidence would have been known to him and he could easily have produced evidence or testified in support of those aspects of his defence. Similarly, he was best placed to explain the incriminating phone messages and calls made and received from his mobile phone number. However, Shisham did not do so. He elected not to give evidence in his defence. This was despite the fact that the consequences of such a decision were explained to him not once but *twice*: once at the close of the Prosecution’s case and again when he indicated that he wished to change his mind about taking the stand. Even then, he was given the opportunity to reconsider his decision (see [53] above). As such, I find that Shisham’s decision not to testify in the face of the abundant evidence against him is extremely telling. It reinforces my finding that he was indeed involved in Jumadi’s drug trafficking operation, as well as the placing of the order with Vishu and the collection of the five Bundles on 21 June 2017 and 22 June 2017.

267 For these reasons, I find that the elements of the trafficking charge against Shisham have been proven beyond a reasonable doubt. Although it is true that Jumadi was the leader of the drug trafficking operation and had the most say and control over it, Shisham was extensively and actively involved in the drug trafficking operation – he assisted in ordering the drugs, collecting the drugs, repacking and making deliveries of the drugs to customers. In particular, he was involved in the ordering and collection of the five Bundles from Vishu. Given the extent of his involvement and participation in the drug trafficking operation, there was sufficient “dealing between the parties” in relation to the

Drugs (see *Mohammed Azli* ([132] *supra*) at [52]) such that Shisham knew that Jumadi had the Drugs in his possession and consented to Jumadi having such possession of the Drugs. Thus, Shisham is deemed by virtue of s 18(4) of the MDA to have been in joint possession of the Drugs. Given that s 18(4) is operative, the presumption in s 18(2) arises and Shisham is presumed to have known the nature of the Drugs. Based on my analysis above, Shisham has failed to rebut this presumption on a balance of probabilities. Even without relying on the presumption, I find that, based on Shisham's deep level of involvement in the drug trafficking operation, he knew the nature of the Drugs and intended to traffic in them. This intention to traffic in the Drugs was in furtherance of the common intention shared amongst the accused persons. I shall elaborate more on the element of common intention below.

***The amended charge against Salzawiyah***

268 The Prosecution's case is that, by virtue of her involvement in Jumadi's drug trafficking operation, Salzawiyah also knew and consented to Jumadi's possession of the Drugs. She knew the nature of the Drugs and intended to traffic in them. In relation to the Bundles in particular, the Prosecution submits that Salzawiyah gave Jumadi \$10,000 in cash in order to purchase the five Bundles. By so doing, Salzawiyah knew and consented to Jumadi's possession of the Bundles, knew the nature of the drugs contained in the Bundles, and intended to traffic in the Bundles.

269 In response, Salzawiyah admits liability for all of the Drugs except for the Bundles and packets found in the red bag and the camouflage bag. Specifically, she denies liability in respect of the packets of diamorphine marked A1A, A1B1, A1C1, A1D1, A1E1, A1F1 and A2A1. Her defence as regards this portion of the Drugs is three-fold. Firstly, she is not deemed to be

in possession of the Bundles by virtue of s 18(4) or s 18(1) of the MDA. Secondly, in rebuttal of the presumption under s 18(2) of the MDA, Salzawiyah claims that she did not have knowledge of the nature of the Bundles. Thirdly, she did not have the common intention with Jumadi and/or Shisham to traffic in the Bundles.<sup>386</sup> This was her position in her statements to the CNB,<sup>387</sup> which she maintained in court. According to Salzawiyah, she had extricated herself from the drug trafficking operation around 10 June 2017.<sup>388</sup> A few days before 22 June 2017, she had also stopped helping Jumadi pack drugs.<sup>389</sup> She also denies giving Jumadi \$10,000 in cash for the purchase of the Bundles, pointing to the fact that the Notebook did not contain any entry to this effect. Thus, the three elements of possession, knowledge of the nature of the drugs and intention to traffic are all in dispute.

*Salzawiyah's involvement in the drug trafficking operation in June 2017*

270 I shall deal first with the extent of Salzawiyah's involvement in the drug trafficking operation in June 2017. Salzawiyah submits that she was no longer involved in the drug trafficking operation from 10 June 2017 onwards as most of the entries in the Notebook were made by Jumadi.<sup>390</sup> Salzawiyah explained this as follows:<sup>391</sup>

Q: Okay. So Salza, can you explain why is it in A2K onwards is mostly Jumadi's handwriting?

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<sup>386</sup> 1DCS, at para 10.

<sup>387</sup> 2 AB 992–993.

<sup>388</sup> NEs, 21 August 2020, at p 75, lines 11–15.

<sup>389</sup> NEs, 21 August 2020, at p 70, line 32 to p 71, line 4.

<sup>390</sup> 1DCS, at para 93.

<sup>391</sup> NEs, 21 August 2020, at p 75, lines 11–15.

A: At that time, we were often quarrelling. I had already told him that I do not want to be involved with this thing. That was why the notebook was kept by him.

Q: Okay, can you explain what you mean by ‘this thing’?

A: Recording of transaction which is involved in the drug activities.

271 Salzawiyah further referred to an entry in the Notebook made by Jumadi. On 11 June 2017, Jumadi made the following entry: “*Cry pecah kongsi*”. In court, Jumadi explained this entry as follows:<sup>392</sup>

I would call [Salzawiyah] by nickname ‘Cry’ if we were quarrelling. So the sentence ‘*Cry, pecah, kongsi*’ means ‘Salzawiyah is no longer with me doing the drug business.’

...

At that time, my relationship with Salzawiyah has deteriorated. We often quarrel. So I decided to operate [my drug business] on my own without Salzawiyah.

272 Salzawiyah also relies on portions of Jumadi’s Statements in which he stated that Salzawiyah had “tried to discourage” him from buying so much diamorphine, and that she had nagged him after Jumadi brought Shisham to the Unit. According to Salzawiyah, this was consistent with her evidence that she was afraid and wanted Jumadi to stop trafficking in drugs.<sup>393</sup>

273 However, I find that the evidence does not support Salzawiyah’s contention that, by June 2017, she had completely extricated herself from the drug trafficking operation. To the contrary, the evidence indicates that, despite the purported deterioration in their relationship and her dissatisfaction with the state of affairs at the time, Salzawiyah continued to be involved in the drug

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<sup>392</sup> NEs, 26 August 2020, at p 51, line 24 to p 52, line 7.

<sup>393</sup> 1DCS, at paras 97–100.

trafficking operation. She continued to make entries in the Notebook relating to drug transactions, although less so than before.<sup>394</sup> For instance, on 13 June 2017, Salzawiyah made three entries in relation to “AH BOY – 1 SET”.<sup>395</sup> On 14 June 2017, she recorded another three entries referring to “METHADONE” and “SET”.<sup>396</sup> Given the references to “set” and “methadone”, these entries were clearly in relation to drugs. In her testimony in court, Salzawiyah admitted that those entries were made by her.<sup>397</sup> In Salzawiyah’s Third Long Statement, she admitted that, even on 17 June 2017, she helped Jumadi and Shisham to repack the half *batu* that they had bought.<sup>398</sup> This undermines Salzawiyah’s assertion that she had stopped her involvement in Jumadi’s drug trafficking business.<sup>399</sup>

274 Salzawiyah’s continued involvement in Jumadi’s drug trafficking business is affirmed by the text messages found in her mobile phone.<sup>400</sup> For example, on 11 June 2017, Salzawiyah exchanged the following messages with Jumadi, ostensibly discussing customer complaints regarding the weight of the drugs sold:<sup>401</sup>

<b>Time</b>	<b>Sender</b>	<b>Recipient</b>	<b>Message (translated)</b>
7.48pm	Salzawiyah	Jumadi	Did anyone complain on the weight lately?

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<sup>394</sup> PCS, at para 129.

<sup>395</sup> Exhibit 1D1, at p 39.

<sup>396</sup> Exhibit 1D1, at p 40.

<sup>397</sup> NEs, 21 August 2020, at p 72, lines 8–10.

<sup>398</sup> 2 AB 989, at para 22.

<sup>399</sup> PCS, at paras 107–108.

<sup>400</sup> PCS, at para 109.

<sup>401</sup> Exhibit G, p 70.

7.50pm	Jumadi	Salzawiyah	Nope
7.50pm	Jumadi	Salzawiyah	Y ehhh
7.51pm	Jumadi	Salzawiyah	Is there anyone who complain?
7.51pm	Salzawiyah	Jumadi	Yep..nvm
7.54pm	Salzawiyah	Jumadi	Later we talk about it

275 On 13 June 2017, Salzawiyah also exchanged messages with one “Eileen”, in which they appeared to discuss the prices and quality of drugs.<sup>402</sup> On the same day, Salzawiyah also received messages from one “Lin”, who appeared to be a runner that Salzawiyah had recruited. I shall give several examples of the messages:<sup>403</sup>

Time	Sender	Recipient	Message (translated)
8.54pm	Lin	Salzawiyah	Sis, the one that day sis offer I, the chances still open?
8.56pm	Lin	Salzawiyah	The one that u ask me to run
8.58pm	Lin	Salzawiyah	Can explain me in more details how it goes? And your terms n condition all this?

276 Even on 21 June 2017, Lin and Salzawiyah continued to exchange messages regarding timings of when Lin could meet Salzawiyah and whether

<sup>402</sup> Exhibit G, pp 79–83.

<sup>403</sup> Exhibit G, at pp 83–84.

Salzawiyah had managed to get a car. Given Lin's role as a runner, it appears that these messages related to the collection and delivery of drugs.<sup>404</sup>

277 Therefore, the evidence shows that Salzawiyah continued to be involved in the drug trafficking operation – in particular, the packing of the drugs, recording of drug-related transactions in the Notebook and liaising with drug runners.

*Whether Salzawiyah gave Jumadi the money he used to purchase the Bundles*

278 I turn now to the issue of whether Salzawiyah had given Jumadi \$10,000 in cash to purchase the Bundles. The Prosecution relies on Jumadi's Statements, in which he stated that he had obtained the \$10,000 from Salzawiyah.<sup>405</sup> In response, Salzawiyah relies on Jumadi's testimony in court that he had taken the money of his own accord from an envelope in a black tray in the bedroom of the Unit while Salzawiyah appeared to be asleep.<sup>406</sup> Furthermore, according to Jumadi's testimony, Salzawiyah would have been outside of the Unit at the time when the calls with Vishu were made arranging for the order of the diamorphine. Salzawiyah also points to the fact that the Notebook does not contain any record of her giving \$10,000 to Jumadi and Shisham. According to Salzawiyah, if she had given \$10,000 to Jumadi and Shisham, she would have recorded it down because it was a large sum of money and the money did not belong to her.<sup>407</sup>

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<sup>404</sup> Exhibit G, p 86.

<sup>405</sup> PCS, at paras 116–118.

<sup>406</sup> 1DCS, at para 108.

<sup>407</sup> NEs, 21 August 2020, at p 77, lines 12–18; p 78, lines 2–5.

279 Having considered the evidence, I find that Salzawiyah had given Jumadi the \$10,000 in cash for him to purchase the Bundles. This occurred around 4pm, after Jumadi's and Shisham's call with Vishu, before Salzawiyah left the Unit. In coming to this conclusion, I place significant weight on Jumadi's Statements, as compared to his testimony in court. In his Fourth Long Statement, Jumadi stated as follows:<sup>408</sup>

... I then went to ask Salzawiyah how much money she has at hand. She told me \$10,000 and I said to give me all the money. I explained to her that I need to stock up heroin for Hari Raya. But I did not tell her how much I am actually buying. I then took \$10,000 plus another \$1,000 with me from the sale of heroin. I counted \$11,000. At night, I told Sham to call Ah Neh to confirm that I want 5 'batu' of heroin. Sham called and said confirm that the heroin will come in Thursday and the money will be \$10,000.

280 In contrast, Jumadi's testimony in court was vastly different. His evidence was that he did not ask Salzawiyah for the \$10,000. Instead, on the morning of 22 June 2017, he took the money from an *ang pow* in the black tray which was located in the bedroom of the Unit. Before he left the bedroom, he told Salzawiyah that he "took the money to take *barang*". At this time, Salzawiyah was lying on the bed with her eyes closed. She did not reply when he told her that he was going to "take *barang*".<sup>409</sup> Furthermore, according to Jumadi's testimony, the calls with Vishu arranging for the purchase of diamorphine was made at 6.57pm, 7.27pm and 11pm on 21 June 2017. At this time, Salzawiyah's evidence was that she was outside of the Unit, at her late father's house in Hougang.<sup>410</sup>

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<sup>408</sup> Exhibit P233, at para 53.

<sup>409</sup> NEs, 27 August 2020, at p 6, line 3 to p 7, line 22.

<sup>410</sup> NEs, 21 August 2020, at p 47, lines 4–15.

281 As between Jumadi's Statements and his testimony in court, I find that Jumadi's Statements are more credible. As I have explained at [166] and [168] above, Jumadi was not able to provide a satisfactory explanation for why he would lie in his Statements regarding how he obtained the money to purchase the Bundles. Instead, his explanations were vacillating and contradictory. This was similarly the case in relation to his evidence regarding the timing of the calls made with Vishu on 21 June 2017 (see [190] above). In contrast, Jumadi's Statements are generally consistent with each other, and were made relatively closer in time to the critical events of 21 June 2017 and 22 June 2017.

282 I have observed that Jumadi was willing to fabricate evidence to suit his own purposes. In this case, it is likely that Jumadi lied in court for two reasons. First, he was seeking to distance himself from his admission in his Statements that he took \$10,000 from Salzawiyah to buy diamorphine, such sum being sufficient to purchase more than three *batu* of diamorphine (see [170] above).<sup>411</sup> Second, he also wished to protect Salzawiyah by distancing her from the purchase of the Bundles. It is telling that, in his Statements, Jumadi already sought to downplay Salzawiyah's involvement in the drug trafficking business in order to protect her. In fact, Jumadi admitted that he had lied in certain parts of his Statements "about Salzawiyah's involvement in the drug trafficking business ... so as not to implicate her".<sup>412</sup> Yet, he nevertheless stated in his Fourth Long Statement that he had obtained the \$10,000 in cash from Salzawiyah. There was no reason for Jumadi to lie in this aspect.<sup>413</sup> In fact, given his desire to protect Salzawiyah, one would have expected him to lie to cover

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<sup>411</sup> PCS, at para 67.

<sup>412</sup> NEs, 28 August 2020, at p 54, lines 18–21.

<sup>413</sup> PCS, at para 118.

up for the fact that he had obtained \$10,000 from Salzawiyah. This suggests that he was telling the truth.

283 Furthermore, Jumadi’s account regarding the \$10,000 in his Statements is also consistent with Salzawiyah’s role in the drug trafficking operation.<sup>414</sup> This is one aspect of his Statements that Jumadi maintained in his testimony in court. In cross-examination, Jumadi admitted that it was true that, “every time [he] wanted money to buy drugs, [he] got it from Salzawiyah”.<sup>415</sup> In this regard, I am sceptical of Salzawiyah’s testimony that Jumadi would typically take the money of his own accord from the envelope in the black tray.<sup>416</sup> This does not accord with her role in keeping accounts in the drug trafficking operation, which was not only to physically safekeep the moneys<sup>417</sup> but also to manage the accounts of the drug trafficking operation.<sup>418</sup> The fact that Jumadi took the \$10,000 from Salzawiyah to pay Vishu for the five Bundles of diamorphine is consistent with his description of Salzawiyah’s role, both in his Statements as well as his testimony in court. Therefore, Jumadi’s Statements should be believed over his testimony in court, when he said that he obtained the \$10,000 from Salzawiyah to purchase the Bundles.

284 I am aware that Salzawiyah submits that the notebooks did not contain any record of her giving \$10,000 to Jumadi. Thus, she argues that it shows that she did not give Jumadi the \$10,000. However, as Salzawiyah herself

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<sup>414</sup> PCS, at para 122.

<sup>415</sup> NEs, 22 September 2020, at p 10, lines 1–3.

<sup>416</sup> NEs, 25 August 2020, at p 64, lines 3–9; 26 August 2020, at p 25, lines 3–15.

<sup>417</sup> NEs, 25 August 2020, at p 30, lines 9–11.

<sup>418</sup> NEs, 25 August 2020, at p 75, line 25 to p 76, line 12.

acknowledged,<sup>419</sup> the notebooks used by Jumadi and Salzawiyah to record drug-related transactions do not contain *any* entries of instances when Salzawiyah passed money to Jumadi for Jumadi to purchase drugs. This suggests that, in the first place, Salzawiyah and Jumadi had no such practice of recording down sums of money that Salzawiyah passed to Jumadi in order for him to purchase drugs. Moreover, the record keeping in the notebooks was done haphazardly, crudely and informally. It was not according to proper accounting principles. It appears that the entries in the notebooks were organised according to date. For each date, two pages would be used – the page on the left side would be used to record outgoing moneys (*eg*, expenses), whereas the page on the right side would generally be used to record incoming moneys (*eg*, proceeds of sale of the drugs). Jumadi testified in court that he would sometimes use the page on the right side to record the purchase price of drugs even if he did not subsequently expend the money to buy such drugs. If Jumadi’s explanation is accepted, it means that there could be anomalies in the bookkeeping. Furthermore, Jumadi explained that entries in the notebooks would be made as and when convenient, with the total sums calculated only at the end of the day.<sup>420</sup> This was confirmed by Salzawiyah.<sup>421</sup> As the accused persons were arrested in the early afternoon on 22 June 2017, this could explain why no entry regarding the \$10,000 was made in the Notebook.<sup>422</sup> Thus, the absence of an entry regarding the \$10,000 in the notebooks is not conclusive of whether Salzawiyah had given this sum to Jumadi to pay Vishu for the five Bundles of diamorphine.

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<sup>419</sup> NEs, 25 August 2020, at p 64, lines 4–14.

<sup>420</sup> NEs, 23 September 2020, at p 6, lines 1–6.

<sup>421</sup> NEs, 25 August 2020, at p 65, line 28 to p 66, line 8.

<sup>422</sup> PCS, at para 134(b).

285 From the totality of the evidence, I accept Jumadi's Statements where he stated that Salzawiyah had given him \$10,000 in cash, which he used to purchase the Bundles. Furthermore, although he did not tell her the exact amount of diamorphine he was purchasing, he told her that the \$10,000 was to "stock up heroin for Hari Raya". I accept this version in Jumadi's Statements over Jumadi's and Salzawiyah's testimonies in court.

*The DNA recovered from the red bag and the camouflage bag*

286 Finally, I turn to the DNA evidence in relation to the red bag and the camouflage bag. Both Salzawiyah's and Jumadi's DNA were recovered from the exterior of the red bag, that is, the front, back, sides and base of the red bag, as well as the exterior surface and front compartment of the camouflage bag.<sup>423</sup> I do not find the presence of Salzawiyah's DNA on the red bag and the camouflage bag conclusive of whether she had touched them. As Dr Pook acknowledged, there are at least two other possible reasons for this. First, Salzawiyah's DNA could have been transferred onto the red bag and/or camouflage bag by primary transference if she had inadvertently touched them.<sup>424</sup> This might have occurred in the course of the raid when Salzawiyah was struggling while being pinned to the floor, near to the location where the red bag and camouflage bag were found.<sup>425</sup> Second, Salzawiyah's DNA could have been transferred onto the red bag and/or camouflage bag by secondary transference if Salzawiyah's DNA had been on the floor of the living room in the Unit and the red bag and/or camouflage bag subsequently came into contact

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<sup>423</sup> 1 AB 744, 748–749; NEs, 14 July 2020, at p 39, lines 27–32; 1DCS, at paras 58–59.

<sup>424</sup> NEs, 14 July 2020, at p 54, lines 26–29.

<sup>425</sup> NEs, 15 July 2020, at p 44, lines 9–25; p 45, lines 11–20; p 67, line 13 to p 69, line 20; 21 August 2020, at p 63, line 31 to p 64, line 9.

with the floor. In such a situation, the living room floor would have been the “common vector”, as described by Dr Pook. According to Dr Pook, it was likely that a person’s cells would be on the floor of the living room of their house. Secondary transference could also have occurred if Jumadi had been the common vector, *ie*, Jumadi came into contact with Salzawiyah such that some of her DNA was left on him, and subsequently, Jumadi came into contact with the red bag and/or camouflage bag thereby depositing Salzawiyah’s DNA onto them.<sup>426</sup> For these reasons, I do not place much weight on the fact that Salzawiyah’s DNA was found on the red bag and camouflage bag. Instead, my findings as regards her continued involvement in the drug trafficking operation and the fact that she passed Jumadi \$10,000 in cash are much more significant. In any case, the Prosecution is not relying on the DNA evidence to prove its charge against Salzawiyah,<sup>427</sup> and rightly so.

*Jumadi’s admission in his Statements that the Drugs all belonged to him*

287 Salzawiyah further relies on Jumadi’s admissions in several of his Statements that the Drugs in the Unit were “his” and belonged to him only.<sup>428</sup> In my view, these admissions should be understood in light of the fact that Jumadi was the leader of the drug trafficking operation.<sup>429</sup> Furthermore, they cannot be looked at in isolation but must be read in conjunction with the other parts of Jumadi’s Statements, as well as with the totality of the evidence. Given the evidence which I have discussed above, I place little weight on the fact that

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<sup>426</sup> NEs, 14 July 2020, at p 54, lines 2–25; 1DCS, at paras 60–62.

<sup>427</sup> NEs, 11 November 2020, at p 15, lines 20–25.

<sup>428</sup> 1DCS, at paras 121–130.

<sup>429</sup> NEs, 11 November 2020, at p 22, lines 21–29.

Jumadi had admitted in his Statements that all the Drugs in the Unit belonged to him alone.

*Conclusion on Salzawiyah's amended charge*

288 In relation to the Bundles, I find that Salzawiyah knew and consented to Jumadi's possession of them, such that she is deemed pursuant to s 18(4) of the MDA to have been in joint possession of them. I turn first to the element of knowledge. Salzawiyah submits that, even if she had handed the \$10,000 to Jumadi, she did not know the specific quantity of diamorphine Jumadi was intending to purchase.<sup>430</sup> However, Jumadi had informed her that he was going to "stock up heroin for Hari Raya". Furthermore, Salzawiyah was aware that the price of one *batu* of diamorphine was approximately \$3,700, as evidenced from her phone records.<sup>431</sup> From this, she would have known that \$10,000 could purchase about three *batu* of diamorphine. This is affirmed by Salzawiyah's own cautioned statement, where she stated that she knew that Jumadi and Shisham were "going to take 'batu'" and that they intended to buy a "large amount of heroin".<sup>432</sup> Therefore, although she might not have known the precise quantity of diamorphine Jumadi and Shisham were going to buy, she knew that they were going to buy a large amount of a controlled drug, specifically, diamorphine. Based on the circumstantial evidence, it can also be inferred that she knew Jumadi and Shisham were buying five Bundles of diamorphine on 22 June 2017.

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<sup>430</sup> 1DCS, at paras 110–112.

<sup>431</sup> Exhibit G, at p 57.

<sup>432</sup> 2 AB 977; PCS, at paras 119–121.

289 Next, I turn to the element of consent. I find that Salzawiyah’s conduct in giving Jumadi \$10,000 in cash to purchase the diamorphine is sufficient to amount to consent for the purposes of s 18(4) of the MDA. Therefore, Salzawiyah was not only in joint possession of the Bundles, she also knew the nature of the Bundles (*ie*, that they contained diamorphine). At this juncture, I address an argument raised by Salzawiyah that she was not the “financier” of the drug trafficking operation and did not have any “power or authority over the money”. According to Salzawiyah, even if she had given Jumadi \$10,000 as requested by him (which, as I have found above, she did), such conduct amounted to acquiescence and was insufficient to meet the legal threshold for consent under s 18(4). Therefore, s 18(4) did not apply.<sup>433</sup> I do not accept this argument. The first observation to be made is that, strictly speaking, the power or authority is assessed in relation to the *drugs*, rather than the money used to purchase the drugs. That being said, it is possible that a person’s power or authority over the money used to purchase the drugs may also affect that person’s power or authority over the drugs themselves.

290 Secondly, and more importantly, Salzawiyah did have some measure of control, power or authority over the Bundles. It is true that, based on the evidence, Jumadi was the leader of the drug trafficking operation and the primary decision-maker. It is also true that Salzawiyah gave Jumadi the \$10,000 upon his request. However, what is required for s 18(4) is “some measure of *control*” [emphasis in original] (see *Muhammad Ridzuan* ([132] *supra*) at [63]) and “a degree of ‘power or authority’” (see *Mohammad Azli* ([132] *supra*) at [52]) over the object in question. Such control, power or authority depends on the dealings between the parties in relation to the drugs and the role that the

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<sup>433</sup> 1DCS, at paras 74–92.

accused played therein (see *Muhammad Ridzuan* at [64]; *Mohammad Azli* at [52]). It is evident from the Court of Appeal's observations in the cases cited above that the control, power or authority need not be *absolute*; it is always a question of degree. In this case, looking at the dealing between Salzawiyah and Jumadi in relation to the Bundles, Salzawiyah was not only the safekeeper of the proceeds of the drug sales, she also helped to maintain the accounts of the drug trafficking operation. She could almost be regarded as a "treasurer" of sorts. In this context, her passing of the \$10,000 to Jumadi can hardly be characterised as acquiescence or passive. Her control, power or authority over the Bundles arose from her critical role in providing Jumadi the money used to purchase them, with the knowledge that such money was going to be used to purchase a large amount of controlled drugs, specifically diamorphine. This is even though such moneys were only being *safekept* by her rather than belonging absolutely to her. By passing Jumadi the money, she knowingly *enabled* him to pay for and collect the Bundles. Therefore, I find that she consented to Jumadi's possession of the Bundles for the purpose of s 18(4) of the MDA.

291 In relation to the other packets of diamorphine in the red bag and camouflage bag (marked A1E1 and A1F1), I also find that Salzawiyah knew that these were controlled drugs in Jumadi's possession and that Salzawiyah consented to Jumadi's possession of them, given her participation in Jumadi's drug trafficking activities.<sup>434</sup> She stayed in the Unit with Jumadi and was involved in the drug trafficking operation, specifically, in keeping the accounts, packing the drugs and liaising with runners. She also sold diamorphine to her friends. I note that in Salzawiyah's Third Long Statement, she admitted that she

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<sup>434</sup> PCS, at para 137.

had helped to pack diamorphine on 17 June 2017,<sup>435</sup> which was also the day that Jumadi had received the consignment of diamorphine from which the packets marked A1E and A1F originated.<sup>436</sup> Given the extent of her involvement, she must have known that these packets of diamorphine in the red bag and camouflage bag were controlled drugs in Jumadi's possession and consented to such drugs being in Jumadi's possession. Therefore, she is deemed, pursuant to s 18(4) of the MDA, to have been in joint possession of the packets of diamorphine marked A1E1 and A1F1.

292 In the alternative, s 18(1)(c) also applies such that Salzawiyah is presumed to have been in possession of the Drugs. The application of the presumption is not disputed as Salzawiyah had possession of the keycard to the Unit.<sup>437</sup> Based on the above findings, Salzawiyah has failed to rebut the presumption in s 18(1)(c) on a balance of probabilities.

293 Given that s 18(4) and/or s 18(1) of the MDA are operative, the presumption in s 18(2) arises and Salzawiyah is presumed to have known the nature of the Drugs. Based on the analysis above, Salzawiyah has not successfully rebutted this presumption on a balance of probabilities. Even without relying on the presumption, I am satisfied beyond a reasonable doubt that based on Salzawiyah's level of involvement in the drug trafficking operation, she knew of the nature of these packets of diamorphine.

294 Finally, given her involvement in the drug trafficking operation, which had not ceased by 22 June 2017, I find that Salzawiyah intended to traffic in the

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<sup>435</sup> 2 AB 989, at paras 21–22.

<sup>436</sup> PCS, at para 139.

<sup>437</sup> 1DCS, at para 137; NEs, 11 November 2020, at p 9, lines 7–14.

Bundles and the packets of diamorphine in the red bag and camouflage bag. This was in furtherance of the common intention shared amongst the accused persons to perpetuate their drug trafficking operation, which I shall elaborate further below.

295 For these reasons, I find that the trafficking charge against Salzawiyah in respect of all the Drugs has been proven beyond a reasonable doubt.

### ***Common intention***

296 Given my findings above, it is clear that the requirements for the common intention element of the charges against the accused persons have been proven beyond a reasonable doubt.<sup>438</sup> The criminal act was the possession of the Drugs for the purpose of trafficking. Under Jumadi's leadership and direction, there was a common intention amongst all the accused persons to traffic in the Drugs. Furthermore, the accused persons participated in the trafficking of the Drugs. Jumadi and Shisham were involved in, *inter alia*, ordering, buying, and collecting the diamorphine from the couriers of the seller. Thereafter, the accused persons repacked, sold and delivered the diamorphine to the buyers. Jumadi was also involved in the recording of the drug-related transactions. Salzawiyah was involved in, *inter alia*, packing the diamorphine, liaising with drug runners, safekeeping the proceeds of the diamorphine, sales of the diamorphine and recording drug-related transactions.

297 On 22 June 2017, Jumadi and Shisham were both involved in ordering, collecting and making payment for the Bundles. In relation to the Bundles, Salzawiyah passed Jumadi the \$10,000 to purchase the Bundles, with the

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<sup>438</sup> PCS, at paras 176–178.

knowledge that the money was going to be used to purchase a large amount of diamorphine.

298 For these reasons, I find that the accused persons intended to traffic in the Drugs in furtherance of the common intention of all of them.

### **Conclusion**

299 For the above reasons, I find that the amended charges against the accused persons have been proven beyond a reasonable doubt and convict them accordingly.

Tan Siong Thye  
Judge of the High Court

Terence Chua, Samuel Yap and Lu Yiwei (Attorney-General's  
Chambers) for the Prosecution;  
Gill Amarick Singh (Amarick Gill LLC) and Ng Huiling Cheryl  
(ZICO Insights Law LLC) for the first accused;  
Dendroff Jason Peter (J P Dendroff & Co) and Teh Ee-Von (Infinitus  
Law Corporation) for the second accused;  
Cheong Jun Ming Mervyn (Advocatus Law LLP) and Jerrie Tan Qiu  
Lin (K&L Gates Straits Law LLC) for the third accused.

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