

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

**[2021] SGHC 211**

Criminal Case No 35 of 2019

Between

Public Prosecutor

And

Chong Hoon Cheong

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**JUDGMENT**

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

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**Public Prosecutor**  
**v**  
**Chong Hoon Cheong**

**[2021] SGHC 211**

General Division of the High Court — Criminal Case No 35 of 2019

Vincent Hoong J

13–16, 20–23 August 2019, 24 February, 2–6, 12, 13 March, 2, 4, 9–11,  
16 November 2020, 1, 2, 4 February, 2 March, 7 May 2021

13 September 2021

Judgment reserved.

**Vincent Hoong J:**

1 The accused, Mr Chong Hoon Cheong, claimed trial to one charge of having in his possession not less than 25.01g of diamorphine for the purpose of trafficking (“the Trafficking Charge”), which is an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the punishment prescribed for unauthorised traffic in more than 15g of diamorphine is death. I will refer to diamorphine as “heroin”.

2 It is undisputed that the heroin forming the subject matter of the Trafficking Charge, *viz*, Exhibits “A1A”, “A2”, “A4A” and “D1A2”, were recovered from the accused’s rented room at Room 7 of 26B Hamilton Road,

Singapore (“the Rented Room”) and that he knew that the drug contained in those exhibits was heroin.<sup>1</sup>

3 The only issue in dispute is the purpose for which the accused possessed the drugs in Exhibit D1A2. The accused’s defence is that out of the 25.01g of heroin, only the 10.93g of heroin in Exhibits A1A, A2 and A4A was in his possession for the purpose of trafficking. The remaining 14.08g of heroin in Exhibit D1A2 was for his own consumption (“the Consumption Defence”).<sup>2</sup>

### **Agreed facts**

4 Central Narcotics Bureau (“CNB”) officers raided the property at 26B Hamilton Road, and arrested the accused on 8 December 2015 at or about 7.35pm.<sup>3</sup> Around the same time that day, CNB officers arrested one Eng Kok Seng (“Eng”) after he was seen exiting the same property.<sup>4</sup>

5 After arresting the accused, the CNB officers searched the Rented Room in his presence. Among other items, Exhibits A1A, A2, A4A and D1A2 were recovered from the Rented Room.<sup>5</sup> Exhibits A1A, A2 and A4A were found on the floor of the Rented Room. Exhibit D1A2 was found in the bottom right compartment of a dressing table at location “D” (“Dressing Table D”) in the

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<sup>1</sup> Statement of Agreed Facts of 14 August 2019 (“SOAF”) at paras 34–35; Prosecution’s Closing Submissions of 16 April 2021 (“PCS”) at para 2; Defence’s Closing Submissions of 16 April 2021 (“DCS”) at paras 1–2.

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

<sup>3</sup> SOAF at para 11.

<sup>4</sup> SOAF at paras 4–6.

<sup>5</sup> SOAF at para 12.

Rented Room.<sup>6</sup> Analysis of these exhibits by the Health Sciences Authority (“HSA”) revealed the following:<sup>7</sup>

- (a) Exhibit A1A contained not less than 6.53g of heroin;
- (b) Exhibit A2 contained not less than 2.52g of heroin;
- (c) Exhibit A4A contained not less than 1.88g of heroin; and
- (d) Exhibit D1A2 contained not less than 14.08g of heroin.

6 The following statements (which I shall refer to collectively as the accused’s “CNB statements”) were recorded from the accused at various times after his arrest:

(a) On 8 December 2015, at or about 9.30pm in the Rented Room, Inspector Eng Chien Loong Eugene (“Insp Eugene”) recorded a contemporaneous statement from the accused (“the First Contemporaneous Statement”). The First Contemporaneous Statement was recorded in Hokkien and Insp Eugene contemporaneously translated the statement into English when recording it.<sup>8</sup>

(b) On 8 December 2015, at or about 11.20pm in the Rented Room, Insp Eugene recorded another contemporaneous statement from the accused (“the Second Contemporaneous Statement”). The Second Contemporaneous Statement was recorded in Hokkien and Insp Eugene

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<sup>6</sup> SOAF at para 12.

<sup>7</sup> SOAF at para 16.

<sup>8</sup> SOAF at para 24; Agreed Bundle of Documents (“ABOD”) at pp 74–76.

contemporaneously translated the statement into English when recording it.<sup>9</sup>

(c) On 9 December 2015, at or about 5.23pm in Central Police Division lock-up, Inspector Desmond Liang Duanting (“Insp Desmond”) recorded a statement (“the Cautioned Statement”) from the accused under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). The accused spoke in Mandarin and Mr Wong Png Leong (“Mr Wong”) served as his interpreter.<sup>10</sup>

(d) On 15 December 2015, at or about 10.54am in ‘A’ Division lock-up, Insp Desmond recorded a statement from the accused under s 22 of the CPC (“the First Long Statement”). The accused spoke in Mandarin and Mr Wong served as his interpreter.<sup>11</sup>

(e) On 15 December 2015, at or about 3.10pm in ‘A’ Division lock-up, Insp Desmond recorded a statement from the accused under s 22 of the CPC (“the Second Long Statement”). The accused spoke in Mandarin and Mr Wong served as his interpreter.<sup>12</sup>

(f) On 16 December 2015, at or about 11.34am in ‘A’ Division lock-up, Insp Desmond recorded a statement from the accused under s 22 of the CPC (“the Third Long Statement”). The accused spoke in Mandarin and Mr Wong served as his interpreter.<sup>13</sup>

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<sup>9</sup> SOAF at para 25; ABOD at p 77.

<sup>10</sup> SOAF at para 27; ABOD at pp 240–243.

<sup>11</sup> SOAF at para 28; ABOD at pp 259–261.

<sup>12</sup> SOAF at para 29; ABOD at pp 262–266.

<sup>13</sup> SOAF at para 30; ABOD at pp 267–271.

(g) On 16 December 2015, at or about 4.16pm in ‘A’ Division lock-up, Insp Desmond recorded a statement from the accused under s 22 of the CPC (“the Fourth Long Statement”). The accused spoke in Mandarin and Mr Wong served as his interpreter.<sup>14</sup>

7 All of the statements set out in the preceding paragraph were provided voluntarily by the accused.<sup>15</sup>

8 Although not found in the Statement of Agreed Facts (“SOAF”), the following points are also not in dispute. At or around October 2015,<sup>16</sup> the accused agreed to work for a Malaysian, known to the accused only as “Ah Kiat”. The accused was to repack heroin into smaller sachets and deliver these sachets to another location for collection. How Ah Kiat remunerated the accused for this work is contested.

9 It is also common ground that the accused consumed heroin and methamphetamine on 8 December 2015, prior to his arrest.<sup>17</sup> But, the quantum of such drugs he consumed, and their effects (if any) on the accused at the time of the recording of the contemporaneous statements, is in dispute.

### **The parties’ cases**

#### ***The Prosecution’s case***

10 As to whether the accused possessed Exhibit D1A2 for the purpose of trafficking, the Prosecution advances two alternative cases.

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<sup>14</sup> SOAF at para 31; ABOD at pp 272–274.

<sup>15</sup> SOAF at paras 26 and 32.

<sup>16</sup> P113 (“Second Long Statement”) at paras 12–13; ABOD at p 264.

<sup>17</sup> Second Long Statement at para 11; ABOD at p 263; PCS at para 62.

11 The Prosecution's primary case is that the evidence proves, beyond a reasonable doubt, that the accused possessed the drugs in Exhibit D1A2 for the purpose of trafficking.<sup>18</sup> They say that throughout the course of investigations, the accused consistently maintained that Exhibit D1A2 was meant for repacking and delivery according to the arrangement he had with Ah Kiat. The Prosecution relies on the following aspects of the accused's statements:

(a) The general arrangement between the accused and Ah Kiat was that the accused would collect heroin from dead-drops, repack it into smaller sachets, and deliver it to another location for collection by one of Ah Kiat's men. He would keep the heroin that remained after repacking for his own consumption.<sup>19</sup>

(b) In the accused's First Contemporaneous Statement, he said that the purpose of Exhibit D1A2 was the "same" as Exhibit A1A, *viz*, to "repack into smaller packets and pass ... to Ah Kiat's friend".<sup>20</sup>

(c) In the accused's long statements, when he was shown a photograph labelled "Photo 22"<sup>21</sup> (which depicts Exhibits D1, D1A, D1A1 and D1A2), he explained that he intended to "repack" the bundle in the photograph, *viz*, Exhibit D1A2, "into 60 smaller sachets of 'Bai Fen'".<sup>22</sup> "Bai Fen" is a Mandarin street name for heroin. The heroin that

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<sup>18</sup> PCS at para 50.

<sup>19</sup> PCS at para 50(a); Second Long Statement at paras 12 and 14–17; ABOD at pp 264–266; P115 ("Fourth Long Statement") at para 41; ABOD at p 274; P114 ("Third Long Statement") at para 25; ABOD at p 269.

<sup>20</sup> PCS at para 50(b); P104 ("First Contemporaneous Statement") at Q9/A9; ABOD at p 75.

<sup>21</sup> ABOD at p 286.

<sup>22</sup> Fourth Long Statement at para 37; ABOD at p 272.

remained after repacking Exhibit D1A2 would be for his own consumption.<sup>23</sup>

12 The Prosecution’s alternative case is that the accused is presumed to have possessed the heroin for the purpose of trafficking under s 17(c) of the MDA.<sup>24</sup> This provision states that:

**Presumption concerning trafficking**

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

...

(c) 2 grammes of diamorphine;

...

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

13 Regardless of which case the Prosecution proceeds on, it also has to defeat the accused’s Consumption Defence. In this regard, the Prosecution submits that the Consumption Defence is not credible for the following reasons.<sup>25</sup>

14 First, the Prosecution argues that full weight should be given to the accused’s admissions in his statements that Exhibit D1A2 was meant for repacking and delivery.<sup>26</sup> According to the Prosecution, his attempts to challenge the accuracy of the statements should not be believed because:

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<sup>23</sup> PCS at para 50(c); Fourth Long Statement at para 37; ABOD at p 272.

<sup>24</sup> PCS at para 51.

<sup>25</sup> PCS at para 54.

<sup>26</sup> PCS at paras 55–56.

(a) While the accused alleges inaccuracies in his cautioned and long statements, which were recorded in Mandarin, on the basis that he is more conversant in Hokkien, the evidence shows the accused being conversant in both of these languages.<sup>27</sup>

(b) The accused's claims that he was labouring under the effects of drug intoxication at the time the contemporaneous statements were recorded, and drug withdrawal at the time the Cautioned Statement was recorded, lack credibility.<sup>28</sup>

(c) The Consumption Defence is an afterthought which first appeared in a report by Dr Julia Lam ("Dr Lam") dated 15 July 2019 ("Dr Lam's Medical Report").<sup>29</sup> Dr Lam was asked by the accused's counsel to provide an expert opinion on the effect of the accused's sustained drug abuse on his neurological functions (and *vice versa*) and its role in contributing to the commission of the offence in the Trafficking Charge.<sup>30</sup> The Prosecution argues that the accused's statements should be preferred over his testimony at trial as they set out a contemporaneous and consistent account of the offence.<sup>31</sup> The accused had also informed Dr Kenneth Koh ("Dr Koh") in December 2015 and October 2018 that he was involved in repacking and moving drugs around.<sup>32</sup> Dr Koh is a psychiatrist and senior consultant at the Institute

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<sup>27</sup> PCS at paras 57–61.

<sup>28</sup> PCS at paras 63–66 and 68–70.

<sup>29</sup> PCS at para 81.

<sup>30</sup> Dr Julia Lam's report of 15 July 2019 ("Dr Lam's Medical Report") at para 1: ABOD at p 546.

<sup>31</sup> PCS at para 80.

<sup>32</sup> PCS at paras 79 and 80(b).

of Mental Health (“IMH”) who conducted psychiatric assessments on the accused on 24, 28 and 31 December 2015 while the accused was remanded in the Changi Prison Complex Medical Centre (“CMC”),<sup>33</sup> and on 11 October 2018 at Changi Prison.<sup>34</sup>

15 Second, the Prosecution submits that the daily consumption rate of the accused (*ie*, between 16–20g of heroin *per* day), which he alleged at trial, is incredible and an afterthought.<sup>35</sup> The accused has reported an ever-increasing consumption rate to various persons since the time of his arrest.<sup>36</sup> Further, the road traffic accident the accused was involved in in 1978 (“the 1978 Accident”), which allegedly caused the accused to suffer from psychosis, had no significant effect on his neuropsychiatric state or any causal link with his drug use at the time of the offence.<sup>37</sup> The Prosecution also argues that the accused’s claim to have stored heroin in regular drinking straws is unsupported by the evidence.<sup>38</sup>

16 Third, the Prosecution submits that the accused was remunerated for the work he did for Ah Kiat in money and not heroin. He agreed to work for Ah Kiat because he was facing financial difficulties.<sup>39</sup>

17 Finally, as a general submission, the Prosecution argues that the accused is not a credible witness. The Prosecution gives three reasons in support of this

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<sup>33</sup> Dr Kenneth Koh’s conditioned statement of 4 November 2016 at paras 1–2: ABOD at p 141.

<sup>34</sup> Dr Kenneth Koh’s medical report of 12 October 2018 (“Dr Koh’s Second Medical Report”) at p 1: ABOD at p 532.

<sup>35</sup> PCS at para 82.

<sup>36</sup> PCS at paras 83–85.

<sup>37</sup> PCS at paras 86–87.

<sup>38</sup> PCS at paras 89–93.

<sup>39</sup> PCS at para 100.

submission. First, the accused's testimony at trial is "wildly inconsistent" with his accounts to the CNB and Dr Koh.<sup>40</sup> The case his counsel put to various Prosecution witnesses also morphed.<sup>41</sup> Second, the accused has a propensity for lying in his self-interest. During trial, he admitted to having lied to various witnesses.<sup>42</sup> Third, the accused performed a *volte-face* as regards Eng's involvement in Ah Kiat's drug operation. Until his cross-examination in November 2020, the accused had consistently exonerated Eng from any involvement in the repacking of the drugs. However, under cross-examination, the accused painted Eng as Ah Kiat's right-hand man who had delivered drug trafficking paraphernalia to him.<sup>43</sup>

18 For all the above reasons, the Prosecution urges the court to convict the accused.

### *The Defence's case*

19 To recapitulate, the accused's defence is that the 14.08g of heroin in Exhibit D1A2 was for his own consumption and was given to him by Ah Kiat as remuneration for work done.<sup>44</sup> The accused makes the following points in support of the Consumption Defence.

20 First, the accused argues that he has a long history of heavy drug abuse since he was about 18 years old. In particular, the 1978 Accident caused the accused to turn to heroin. This is because the accused began suffering from

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<sup>40</sup> PCS at para 108.

<sup>41</sup> PCS at para 108.

<sup>42</sup> PCS at paras 111–113.

<sup>43</sup> PCS at paras 114–115.

<sup>44</sup> DCS at para 12.

auditory hallucinations featuring the voice of his friend, “Ah Heng”, who died in the 1978 Accident.<sup>45</sup> When the accused’s close friend, “Alice”, committed suicide in the 1980s, the accused reported hearing her voice as well.<sup>46</sup> The accused also began abusing methamphetamine in the early 2000s, which exacerbated his auditory hallucinations.<sup>47</sup> The accused urges the court to accept the evidence of his expert, Dr Ng Beng Yeong (“Dr Ng”), over that of Dr Koh. Dr Ng diagnosed the accused as suffering from a psychotic disorder due to a traumatic brain injury sustained in the 1978 Accident.<sup>48</sup> Additionally, after his release from the Drug Rehabilitation Centre (“DRC”) in December 2014, the accused’s heroin consumption rate increased from 4 to 5g of heroin over two to three days in December 2014 to 16 to 20g a day by October 2015.<sup>49</sup>

21 Second, the accused submits that his agreement with Ah Kiat was, *inter alia*, that for every 7.8g sachet of heroin he repacked, he would be paid \$10 not in cash but in kind (*ie*, in heroin).<sup>50</sup> The accused’s main motivation behind working for Ah Kiat was to obtain heroin for his own consumption, not to earn money.<sup>51</sup> The accused argues that the cost price of the heroin in Exhibit D1A2 corresponds to the amount he earned for the initial four instances of repacking he had performed for Ah Kiat since October 2015.<sup>52</sup>

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<sup>45</sup> DCS at para 14.

<sup>46</sup> DCS at para 14.

<sup>47</sup> DCS at para 15.

<sup>48</sup> DCS at para 117; Notes of Evidence (“NE”), 4 February 2021, pp 7:19–21, 92:21–24.

<sup>49</sup> DCS at para 16.

<sup>50</sup> DCS at para 19.

<sup>51</sup> DCS at paras 21, 23 and 26.

<sup>52</sup> DCS at paras 42–49.

22 Third, the accused submits that consuming 16 to 20g of heroin a day is believable.<sup>53</sup> Among other factors, the accused relies on the expert evidence of Dr Munidasa Winslow (“Dr Winslow”) to prove that the concentration of heroin found in his urine sample in Exhibit D1 (“Urine Sample D1”), taken on 9 December 2015, is consistent with a consumption rate of 16 to 20g of heroin a day.<sup>54</sup>

23 Fourth, as regards his statements, the accused submits that he stated, at para 36 of the Fourth Long Statement, that the heroin in Exhibit D1A2 was for his own consumption.<sup>55</sup> In relation to para 37 of the Fourth Long Statement, the accused submits that his recorded response “I intend to repack *this* bundle of ‘Bai Fen’ into 60 smaller sachets” [emphasis added] was given in reference to Exhibit A1A, not Exhibit D1A2. The Fourth Long Statement does not record that “this bundle” refers to Exhibit D1A2.<sup>56</sup>

24 He also argues that his contemporaneous statements should be given little weight as he was under heavy drug intoxication at the time, having consumed a mixture of heroin and methamphetamine approximately two and four hours before the recording of the two contemporaneous statements respectively.<sup>57</sup> He had therefore lost the ability to analyse questions being posed to him and to give accurate answers.<sup>58</sup> In particular, at Q9 of the First Contemporaneous Statement, where he is recorded as answering “[s]ame,

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<sup>53</sup> DCS at para 29.

<sup>54</sup> DCS at para 35–38.

<sup>55</sup> DCS at para 51; Fourth Long Statement at para 36: ABOD at p 272.

<sup>56</sup> DCS at paras 108–109; Fourth Long Statement at para 37: ABOD at p 272.

<sup>57</sup> DCS at para 56.

<sup>58</sup> DCS at para 61.

repack into smaller packets and pass it to Ah Kiat's friend",<sup>59</sup> the accused argues that he was operating under the mistaken impression that he was being asked about Exhibit A1A, not Exhibit D1A2.<sup>60</sup>

25 As for his Cautioned Statement, the accused submits that he failed to outline his Consumption Defence for good reasons: (a) he was suffering from withdrawal symptoms from not having consumed heroin or methamphetamine for many hours;<sup>61</sup> and (b) he was completely unaware of the importance of stating that the heroin in Exhibit D1A2 was for his own consumption.<sup>62</sup> This is because the accused is of borderline intelligence.<sup>63</sup> No adverse inference should be drawn against the accused for failing to state his Consumption Defence in the Cautioned Statement.<sup>64</sup>

26 As for his long statements, while the accused accepts that they are more reliable, his case is that they contain inaccuracies.<sup>65</sup> Insp Desmond's questions were translated to the accused in Mandarin. However, the accused is not proficient in Mandarin and was unable to understand several portions of the questions translated to him.<sup>66</sup> The accused also submits that some parts of his long statement were erroneously recorded, including para 4 of the First Long Statement where he is recorded as saying that he consumed half a packet of 7.8g

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<sup>59</sup> First Contemporaneous Statement at Q9/A9: ABOD at p 75.

<sup>60</sup> DCS at para 72.

<sup>61</sup> DCS at para 74.

<sup>62</sup> DCS at para 77.

<sup>63</sup> DCS at para 79.

<sup>64</sup> DCS at paras 76 and 80.

<sup>65</sup> DCS at para 91.

<sup>66</sup> DCS at paras 92 and 94.

of heroin *per day* prior to his arrest in December 2015.<sup>67</sup> Some nuances in his responses were also not accurately recorded.<sup>68</sup> In addition, the accused submits that while the long statements were being recorded, multiple photographs were left on the table, instead of those irrelevant to the question being asked being kept away. Multiple questions were also asked at a time. These latter two practices, combined with the accused's rudimentary understanding of and ability to speak Mandarin, led to confusion by the accused.<sup>69</sup>

27 Fifth, the accused submits that he was unaware of the importance of including certain crucial information in his statements and in examination-in-chief ("EIC") because he is a layman with borderline intelligence.<sup>70</sup> These include that: (a) Eng told the accused that the heroin in Exhibit D1A2 was his salary;<sup>71</sup> (b) there was a straw of heroin inside a white soapbox in the Rented Room containing 1–2g of heroin, which was not seized by the CNB officers;<sup>72</sup> and (c) the accused collected horseracing money for Ah Kiat in the amounts of \$18,000 and \$3,000 before he started repacking heroin for Ah Kiat.<sup>73</sup>

### Issues to be determined

28 Based on the foregoing, the issues for my determination are as follows:

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<sup>67</sup> DCS at para 95; P112 ("First Long Statement") at para 4; ABOD at p 260.

<sup>68</sup> DCS at para 99 and 102–104.

<sup>69</sup> DCS at paras 105–106.

<sup>70</sup> DCS at para 81.

<sup>71</sup> DCS at para 82.

<sup>72</sup> DCS at paras 85–88.

<sup>73</sup> DCS at paras 89–90.

- (a) whether the Prosecution has established beyond a reasonable doubt, on a *prima facie* basis (see [34] below), that the accused possessed the heroin in Exhibit D1A2 for the purpose of trafficking; and
- (b) whether the accused has established, on the balance of probabilities, the Consumption Defence.

### **Elements of the Trafficking Charge**

29 The elements of the offence of trafficking under s 5(1)(a) read with s 5(2) of the MDA are enumerated in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59] as follows:

- (a) possession of a controlled drug (“Possession Element”) – which may be proved or presumed under s 18(1) of the MDA, or deemed under s 18(4) of the MDA;
- (b) knowledge of the nature of the drug (“Knowledge Element”) – which may be proved or presumed under s 18(2) of the MDA; and
- (c) proof that possession of the drug was for the purpose of trafficking which was not authorised (“Purpose Element”).

30 For the Purpose Element, whether the drugs are in the accused’s possession for the purpose of trafficking may be proved or presumed pursuant to s 17 of the MDA (see [12] above).

31 If the elements of the charge are made out, the accused is to be convicted and the next issue that would arise is sentencing. Where a person is convicted under s 5(1)(a) read with s 5(2) of the MDA for trafficking in more than 15g of heroin, the punishment prescribed under s 33 read with the Second Schedule of

the MDA is death. This is subject to s 33B of the MDA, which provides an alternative sentencing regime if the conditions therein are fulfilled.

**Whether the Prosecution has established a *prima facie* offence?**

***Possession and Knowledge Elements***

32 The Possession and Knowledge Elements of the trafficking offence are not in dispute and are therefore proved beyond a reasonable doubt. It bears emphasising that the drugs forming the subject matter of the Trafficking Charge are Exhibits A1A, A2, A4A and D1A2. The SOAF makes clear at para 35 that:

At all material times, [the accused] knew that Exhibits “A1A”, “A2”, “A3”, “A4A” “B1C1”, “B1C2”, “B1C3”, “B1C4”, “B1C5A”, B1D1” and “D1A2” contained diamorphine. [The accused] was also in possession of the exhibits above.

***Purpose Element***

33 I will examine the Prosecution’s alternative cases in turn, beginning with its primary case.

*Whether the Prosecution can establish beyond a reasonable doubt, on a prima facie basis, that the accused possessed the drugs in Exhibit D1A2 for the purpose of trafficking?*

34 Preliminarily, I clarify what I mean by asking whether the Prosecution can establish possession for the purpose of trafficking beyond a reasonable doubt on a *prima facie* basis. The Court of Appeal in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 (“GCK”) at [149(e)] said that the principle of proof beyond a reasonable doubt can be conceptualised in two ways. The first is where a reasonable doubt arises from *within* the case mounted by the Prosecution. The Court of Appeal explained (*GCK* at [149(e)]):

As part of its own case, the Prosecution must adduce sufficient evidence to establish the accused person's guilt beyond a reasonable doubt on at least a *prima facie* basis. Failure to do so may lead to a finding that the Prosecution has failed to mount a case to answer, or to an acquittal.

35 In this section, I therefore consider whether the Prosecution has proved the accused's guilt beyond a reasonable doubt on at least a *prima facie* basis. The Prosecution argues that the accused consistently maintained that Exhibit D1A2 was meant for repacking and delivery *per* the arrangement he had with Ah Kiat.<sup>74</sup>

36 I accept that the general arrangement between the accused and Ah Kiat was that the accused would repack heroin into smaller sachets and deliver it to another location for collection. He also kept any heroin that remained after the completion of repacking for his own consumption. This much is clear from the accused's First Contemporaneous Statement,<sup>75</sup> Second Long Statement,<sup>76</sup> Third Long Statement<sup>77</sup> and testimony during his EIC.<sup>78</sup> Also, in the accused's submissions, he is not contesting that he "helped a drug supplier, only known to [him] as 'Ah Kiat', to repack drugs and transact drug monies".<sup>79</sup>

37 But, this general arrangement is not an admission that Exhibit D1A2 was meant for repacking and delivery. To prove this, the Prosecution points to the

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<sup>74</sup> PCS at para 50.

<sup>75</sup> First Contemporaneous Statement at Q2/A2, Q4/A4: ABOD at p 74.

<sup>76</sup> Second Long Statement at paras 12, and 14–17: ABOD at pp 264–266.

<sup>77</sup> Third Long Statement at paras 20, 24–25: ABOD at pp 267–269.

<sup>78</sup> NE, 5 March 2020, pp 11:10–13, 49:10–15, 50:9–20; NE, 12 March 2020, p 51:5–6. See also Accused's Opening Address: NE, 4 March 2020, p 5:10–13.

<sup>79</sup> DCS at para 3.

accused's First Contemporaneous Statement and Fourth Long Statement.<sup>80</sup> I will examine each statement in turn.

(1) First Contemporaneous Statement

38 The First Contemporaneous Statement is a series of questions and responses uttered by Insp Eugene and the accused respectively. The Prosecution relies on Q9 and A9. For context, I reproduce the portion of First Contemporaneous statement starting from Q6 and A6:<sup>81</sup>

Q6: What is this? (recorder's note: Accused was shown 01 blue bag containing 01 bundle of brown granular substance)

A6: Pei Hoon

Q7: How much is inside the blue bag?

A7: 1 pound

Q8: Whose [sic] does it belong to?

A8: It also belongs to Ah Kiat. It was left in my room together with the earlier packet.

Q9: What are you suppose [sic] to do with it?

A9: Same, repack into smaller packets and pass it to Ah Kiat's friend.

39 The Prosecution submits that the "blue bag" referred to in Q6 and Q7 is Exhibit D1, which is the blue bag in which Exhibit D1A2 was found.<sup>82</sup> Insp Eugene testified that he showed the accused Exhibit D1 when Q6 was asked.<sup>83</sup> The Prosecution argues that the question and response recorded in Q9

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<sup>80</sup> PCS at paras 50(b) and 50(c).

<sup>81</sup> First Contemporaneous Statement at Q6/A6 to Q9/A9: ABOD at p 75.

<sup>82</sup> PCS at para 67.

<sup>83</sup> NE, 16 August 2019, p 26:13–28.

and A9 respectively speak to the purpose for which Exhibit D1A2 was in the accused's possession.

40 In response, the accused submits that little weight should be placed on both contemporaneous statements because he was labouring under heavy drug intoxication at the time they were recorded.<sup>84</sup> He was suffering from effects such as confusion.<sup>85</sup> Specifically, when the accused responded to Q9, he submits that he was “operating under the mistaken impression that he was being asked about Exhibit A1A again, and ... he meant that he was supposed to repack the remainder of the heroin in Exhibit A1A”.<sup>86</sup>

41 There are two issues I have to resolve. First, whether the accused intended to refer to Exhibit D1A2 when he answered Q9 in the First Contemporaneous Statement. Second, the extent to which the accused was intoxicated by drugs at the time the contemporaneous statements were recorded. I begin my analysis with the second issue because it affects the first one as well.

(A) TO WHAT EXTENT DID THE ACCUSED SUFFER FROM EFFECTS OF DRUG INTOXICATION WHEN THE CONTEMPORANEOUS STATEMENTS WERE BEING RECORDED?

42 It is not disputed that the accused consumed heroin and methamphetamine on the day of his arrest on 8 December 2015.<sup>87</sup> The parties disagree on the effect that this had on the accused at the time that the contemporaneous statements were recorded – at or about 9.30pm and 11.20pm on 8 December 2015 respectively.

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<sup>84</sup> DCS at para 64.

<sup>85</sup> DCS at para 73.

<sup>86</sup> DCS at para 72.

<sup>87</sup> PCS at para 62.

43 I am unable to pinpoint the times at which the accused consumed heroin and methamphetamine on the day of his arrest. In his EIC, the accused said that he started consuming these drugs at about “5.00 to 6.00pm or 6.00 to 7.00pm” and did so all the way until he was arrested at or about 7.35pm.<sup>88</sup> In his submissions, he describes the time of his consumption variously as “sometime between 6.50pm and 7.25pm”,<sup>89</sup> “approximately two and four hours” before each contemporaneous statement respectively,<sup>90</sup> “a few hours before his contemporaneous statements were recorded”,<sup>91</sup> and “just 2 hours before” the First Contemporaneous Statement was recorded.<sup>92</sup> In its submissions, the Prosecution does not expressly challenge these aspects of the accused’s submissions. I will therefore assume, without deciding, that the drugs were consumed by the accused approximately two to four hours before each contemporaneous statement.

44 The accused claims that he was labouring under heavy drug intoxication at the time of the contemporaneous statements, as evidenced by the fact that Urine Sample D1 reflected a high amount of amphetamines and opioids in his body.<sup>93</sup> Further, he argues that his heavy drug intoxication did not manifest physically and could not have been observed by the CNB officers who interacted with him during and around the time of the recording of the

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<sup>88</sup> NE, 6 March 2020, p 28:5–7.

<sup>89</sup> DCS at para 4.

<sup>90</sup> DCS at para 56.

<sup>91</sup> DCS at para 70.

<sup>92</sup> Defence’s Reply Submissions of 7 May 2021 (“DRS”) at para 4.

<sup>93</sup> DCS at paras 57–60.

contemporaneous statements – Insp Eugene and Senior Staff Sergeant Bukhari Bin Ahmad (“SSSgt Bukhari”).<sup>94</sup>

45 I will address each argument in turn.

(I) *THE URINE TESTS*

46 I begin by examining the significance of the results of the accused’s two urine tests. Urine Sample D1 was taken from the accused at about 2.10am on 9 December 2015.<sup>95</sup> The instant urine test (“IUT”)<sup>96</sup> performed on the same day recorded “over-range” amphetamine levels and 1148.0 nanograms *per ml* of opiates.<sup>97</sup> The IUT is a presumptive screening test before a confirmatory test by the HSA (“HSA Urine Test”) is performed.<sup>98</sup> The results of the HSA Urine Test are summarised as follows:<sup>99</sup>

<b>Substance</b>	<b>Sample</b>	<b>Concentration (nanograms <i>per</i> ml)</b>	<b>Concentration (mg/l)</b>
Monoacetylmorphine	C-SA-15-01874-1	16.3	0.0163
	C-SA-15-01874-2	16.4	0.0164
Methamphetamine	C-SA-15-01874-1	74,600	74.60

<sup>94</sup> DCS at para 65–70.

<sup>95</sup> D8, Dr Munidasa Winslow’s First Report of 31 January 2020 (“Dr Winslow’s First Medical Report”) at para 18; D1; DCS at para 57.

<sup>96</sup> NE, 1 February 2021, p 91:6–8.

<sup>97</sup> D1.

<sup>98</sup> NE, 2 March 2020, pp 2:30–3:2.

<sup>99</sup> Dr Winslow’s First Medical Report at p 8; NE, 2 March 2020, pp 7:24–8:3.

	C-SA-15-01874-2	66,500	66.5
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47 The accused relies heavily on Dr Winslow’s opinion that these results indicate that the level of methamphetamine in the accused’s system was “way about the cut-off levels for detection”.<sup>100</sup> Dr Winslow hypothesised that the accused was therefore likely suffering from some form of altered mental status and physical symptoms when the contemporaneous statements were recorded.<sup>101</sup> In contrast, the Prosecution argues that Dr Winslow’s evidence cannot shed any light on the accused’s condition when the contemporaneous statements were recorded from him.<sup>102</sup> This is because: (a) Dr Winslow’s conclusion in his first report of 31 January 2020 (“Dr Winslow’s First Medical Report”) that the concentration of methamphetamine in the accused’s urine was 13 to 14 times the toxic range is unsupported; and (b) his hypothesis in his second report of 24 February 2021 (“Dr Winslow’s Second Medical Report”) that the accused likely suffered from some form of “altered mental status” during the recording of the contemporaneous statements is speculative.<sup>103</sup>

48 I agree with the Prosecution for the following reasons.

49 First, Dr Winslow’s assertion that the level of methamphetamine in the accused’s urine was 13 to 14 times the usual levels associated with toxicity (“the Toxicity Assertion”) is devoid of merit. Dr Winslow conceded in cross-examination that he mistakenly compared the accused’s *urine* test results to

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<sup>100</sup> DCS at para 58; D13, Dr Munidasa Winslow’s Second Report of 24 February 2021 (“Dr Winslow’s Second Medical Report”) at para 5.

<sup>101</sup> DCS at para 58; Dr Winslow’s Second Report at paras 5–6.

<sup>102</sup> PCS at para 65.

<sup>103</sup> PCS at paras 63–64.

literature on toxic ranges in *blood*.<sup>104</sup> He further accepts that there is no formula by which to extrapolate toxicity levels for blood from that of urine.<sup>105</sup> When recalled as a witness, Dr Winslow ventured that based on his practical experience, the concentration of methamphetamine in a person's urine will correspond with that in the person's blood. But, he conceded that this purported correspondence was simply his hypothesis.<sup>106</sup> In Dr Winslow's Second Medical Report, he also admits that he is unable to locate research that correlates concentrations of drugs in urine with levels of toxicity and that there is "no ext[ra]nt literature on urine toxicology levels related ... to toxicity symptoms of methamphetamine".<sup>107</sup> In my view, the Toxicity Assertion is merely conjecture and I do not accord it any weight.

50 Second, although Dr Winslow discards the Toxicity Assertion in his Second Medical Report, he instead opines that the accused's urine test results disclose "very high levels of methamphetamine concentrations" which would have altered the accused's mental status. He says this because he reads the accused's level of methamphetamine as having been recorded as "over-range" in his IUT.<sup>108</sup> However, I accept the Prosecution's submission that the "over-range" reading does not reveal the precise quantity of drugs in the accused's urine at the material time, much less the effect of drug intoxication on the accused.<sup>109</sup>

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<sup>104</sup> NE, 1 February 2021, pp 91:11–93:14.

<sup>105</sup> NE, 1 February 2021, p 93:15–17.

<sup>106</sup> NE, 2 March 2021, pp 5:30–7:15, 15:22–16:10.

<sup>107</sup> Dr Winslow's Second Medical Report at para 4; NE, 2 March 2021, p 4:22–23.

<sup>108</sup> Dr Winslow's Second Medical Report at paras 5–6.

<sup>109</sup> Prosecution's Reply Submissions of 7 May 2021 ("PRS") at para 13.

51 The “over-range” reading for amphetamines in the IUT simply means that the quantity of amphetamines detected exceeded a cut-off value (1,000 nanograms *per ml* of urine).<sup>110</sup> As explained by Ms Zhang Huifen Hannah (“HSA Analyst Zhang”), the HSA analyst who analysed Urine Sample D1: if the cut-off value is exceeded, HSA then tests for the presence of a particular compound.<sup>111</sup> Further, HSA Analyst Zhang clarified that the IUT detects the presence of amphetamines, which includes both controlled and non-controlled substances.<sup>112</sup> Seen in this context, the “over-range” reading of *amphetamines* in the IUT is not determinative of the concentration of *methamphetamine* in the accused’s urine and therefore the extent to which the accused suffered from effects of drug intoxication (if at all). In other words, Dr Winslow’s hypothesis that the accused suffered from an altered mental status and a host of physical symptoms at the time the contemporaneous statements were recorded has no leg to stand on.

52 The other aspect of Dr Winslow’s evidence relied on by the accused is that the peak effects of consuming heroin and methamphetamine would usually be felt within the first four hours.<sup>113</sup> The accused submits that the contemporaneous statements were taken within this window of time and therefore the effect of the methamphetamine and heroin would have been extremely strong.<sup>114</sup> But this is a leap of logic – even accepting that the peak of the intoxicating effects occurred within this window, the argument still presupposes that the amount of drugs consumed by the accused was sufficient

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<sup>110</sup> NE, 2 March 2020, p 4:29–31.

<sup>111</sup> NE, 2 March 2020, pp 2:30–5:19.

<sup>112</sup> NE, 2 March 2020, p 5:5–11.

<sup>113</sup> NE, 1 February 2021, pp 13:29–14:10.

<sup>114</sup> DCS at para 60.

to induce an altered mental state and physical symptoms. To the contrary, as I later explain at [63], the objective circumstances contradict the accused's claim to have suffered such serious intoxicating effects.

(II) *THE ACCUSED'S ACCOUNT OF THE EFFECTS OF DRUG INTOXICATION*

53 Next, I consider the weight to be given to accused's own account of the intoxicating effects he felt and his claim that these effects did not manifest physically and could not have been observed by the CNB officers recording the contemporaneous statements.

54 The accused testified that he felt like he was "floating" after smoking the mixture of heroin and methamphetamine on the day of his arrest.<sup>115</sup> He also describes himself as having felt sleepy,<sup>116</sup> "blur blur" and not alert during the recording of the First Contemporaneous Statement.<sup>117</sup> As for when the Second Contemporaneous Statement was being recorded, the accused says he continued to feel "high", meaning that he was able to answer questions when asked but was unable to "analyse" them.<sup>118</sup> Based on his prior testimony, I assume that by "analyse", he meant to say that he was unable to determine whether his answers were accurate or inaccurate.<sup>119</sup>

55 In contrast, the Prosecution submits that the evidence of the CNB officers who interacted with the accused around the time of and during the recording of the contemporaneous statements (*ie*, Insp Eugene and

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<sup>115</sup> NE, 6 March 2020, p 31:16–17.

<sup>116</sup> NE, 6 March 2020, p 46:22.

<sup>117</sup> NE, 6 March 2020, p 50:29.

<sup>118</sup> NE, 12 March 2020, p 19:29–32.

<sup>119</sup> NE, 12 March 2020, p 11:2–28.

SSSgt Bukhari) should be preferred. The CNB officers said that the accused did not display any symptoms which were a cause for concern. However, they conceded that they had no insight as to the accused's mental state.<sup>120</sup> The Prosecution makes this argument to discredit Dr Winslow's evidence on the accused's condition when the contemporaneous statements were recorded from him. But, I will consider it in the broader context of what weight to attach to the accused's account of the effects of drug intoxication.

56 I am not prepared to find that the CNB officers' evidence renders the accused's account wholly unbelievable.

57 On one hand, both CNB officers each have over two decades of experience interacting with drug addicts and are able to identify typical symptoms of drug intoxication and withdrawal.<sup>121</sup>

58 Neither CNB officer observed the accused displaying any physical symptoms of drug intoxication or withdrawal. SSSgt Bukhari identified several common symptoms of a drug high and withdrawal: shivering, vomiting and runny nose.<sup>122</sup> He did not notice the accused exhibiting any of these symptoms at the material time.<sup>123</sup> Similarly, Insp Eugene said that the accused did not show: (a) any signs of needing medical attention; (b) any signs of drug withdrawal such as teary eyes, runny nose, headache and diarrhoea; (c) slurred speech, which Insp Eugene identified as an effect of drug intoxication or

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<sup>120</sup> PCS at para 65.

<sup>121</sup> NE, 16 August 2019, pp 8:14–9:30 (Insp Eugene); NE, 13 August 2019, p 106:18–30 (SSSgt Bukhari).

<sup>122</sup> NE, 13 August 2019, p 108:16.

<sup>123</sup> NE, 13 August 2019, p 108:17–18.

withdrawal; or (d) delayed response. To the contrary, Insp Eugene described the accused as responsive.<sup>124</sup>

59 But, that the accused appeared physically well does not exclude the possibility of drug intoxication affecting his mental state. SSSgt Bukhari accepts that “[m]aybe” one can look physically normal but still be labouring under the influence of drugs.<sup>125</sup> Similarly, Insp Eugene admits that he had no insight as to the accused’s mental state at the material time.<sup>126</sup> In addition, Insp Eugene says that he was not trained to determine if suspects were under the influence of drugs and was therefore speaking only from his own experience.<sup>127</sup> Upon arresting the accused, Insp Eugene also did not ask the accused if he had taken any drugs.<sup>128</sup>

60 In addition, I cannot discount the point Dr Winslow made during his EIC – that not all effects of drug intoxication may be visible, especially for the mixture of heroin and methamphetamine consumed by the accused. Methamphetamine is a stimulant which makes a person more alert, awake or agitated. Conversely, heroin is a tranquiliser or relaxant with euphoric properties; it causes one to be more relaxed or restful.<sup>129</sup> Dr Winslow opined during his EIC that not all the effects of consuming this mixture would be visible

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<sup>124</sup> NE, 16 August 2019, pp 8:12–9:21.

<sup>125</sup> NE, 13 August 2019, p 115:5–7.

<sup>126</sup> NE, 20 August 2019, p 3:12–14.

<sup>127</sup> NE, 20 August 2019, pp 2:31–3:3.

<sup>128</sup> NE, 20 August 2019, p 7:29–30.

<sup>129</sup> NE, 1 February 2021, p 10:7–13.

and reckoned that one would experience confusion and agitation after consuming a mixture of heroin and methamphetamine:<sup>130</sup>

Q: ... So I guess my question is given that one is a stimulant and one is a tranquiliser, in that sense, what would [be] the net effect of mixing that and consuming that day?

A: Usually you'll get effects for both of them, *not all of them are visible because they tend to cancel like each other to a certain extent* in –

Q: Can I clarify the statement you said? Not all of them are visible because they tend to cancel cannot [sic] – what do you mean by that?

A: Well, there are a lot of symptoms which a person using may have. For example, you may feel like sense of inner restlessness or inner tension. But, yah, it is not visible to people from outside.

...

Q: So what kind of effects would one expect from consuming a mixture of Ice and heroin?

A: It's very difficult to say. Okay. But given that the predominance there was the Ice –

Q: Yes.

A: – I would say that it would be more one of *confusion or agitation*.

Q: Confusion and agitation. These are the effects associated with his mental state or do you mean that in a physical form?

A: *Mental state* –

Q: Right.

A: – usually.

[emphasis added]

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<sup>130</sup> NE, 1 February 2021, pp 10:14–11:25.

Dr Winslow further added in his EIC that people who are high generally agree to most things, whatever is asked of them.<sup>131</sup>

61 The accused also highlights that Dr Chua Teck Meng Henry (“Dr Chua”) explained that consuming heroin would affect the accused’s clarity and coherence, and consuming methamphetamine would lead to disinhibition.<sup>132</sup> Dr Chua is a medical officer attached to the CMC, where the accused was sent for drug withdrawal observation from 10 December 2015 to 12 December 2015.<sup>133</sup> However, as Dr Chua was not asked to comment on the possible effects of consuming *both* heroin and methamphetamine at the same time, I do not ascribe any significance to this portion of his evidence.

62 Nonetheless, the evidence of Insp Eugene, SSSgt Bukhari and Dr Winslow indicates that the accused may have experienced psychological side effects which did not manifest in observable symptoms. Accordingly, I acknowledge the possibility that the accused was under some effects of drug intoxication at the time the contemporaneous statements were recorded.

63 But, I do not agree with the accused’s submission that the drug intoxication was so severe that it “obfuscated his comprehension of which exhibit he was being questioned on” at Q9 of the First Contemporaneous Statement.<sup>134</sup> There is simply insufficient evidence to that effect. In my view, the absence of observable physical symptoms detracts from the severity of the intoxicating effects. That the accused had the presence of mind to deny

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<sup>131</sup> NE, 1 February 2021, p 14:24–26.

<sup>132</sup> DCS at para 63; NE, 15 August 2019, p 110:4–20.

<sup>133</sup> Dr Chua Teck Meng Henry’s conditioned statement at paras 2–3; ABOD at p 137.

<sup>134</sup> DCS at para 70; DRS at para 3.

ownership of the drugs found in his possession, blame Ah Kiat's men for putting the drugs inside the Rented Room and assert that he was only repacking drugs into smaller packets for collection by Ah Kiat's men also undermines this submission, and his claim that he was unable to discern if his answers were accurate or not.<sup>135</sup> Instead, the accused's responses recorded in the First Contemporaneous Statement are exculpatory, to an extent, and uncharacteristic of a confused mind.

64 Further, Dr Winslow accepts that because he was unable to examine the accused at the time the contemporaneous statements were recorded, he is unable to opine on the degree to which the accused's mental state was altered at that time.<sup>136</sup> He agreed, under cross-examination, that the court should then consider the observations of those who interacted with the accused at the material time.<sup>137</sup> To my mind, such persons must include Insp Eugene and SSSgt Bukhari.

65 In the final analysis, although it is possible for the accused to have experienced some effects of drug intoxication, I reject the contention that these effects were so severe as to deprive his responses in the contemporaneous statements of all or most of their evidential value.

(B) DID THE ACCUSED INTEND TO REFER TO EXHIBIT D1A2 WHEN HE ANSWERED Q9 IN THE FIRST CONTEMPORANEOUS STATEMENT?

66 To recapitulate, at A9, the accused is recorded as saying that the exhibit he was shown was meant to be repacked for Ah Kiat. Two issues arise:

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<sup>135</sup> ABOD at pp 74–75 (Q2/A2, Q3/A3, Q4/A4, Q8/A8).

<sup>136</sup> NE, 2 March 2021, p 18:1–6.

<sup>137</sup> NE, 2 March 2021, p 18:10–14.

(a) Was the accused shown Exhibit D1A2 at Q6? By way of context, the accused accepts that Q1–Q4 relate to Exhibit A1A.<sup>138</sup> Q6–Q9 in the First Contemporaneous Statement were asked in relation to one particular exhibit, the identity of which is to be determined.<sup>139</sup>

(b) Even if so, did the accused know that his response at A9 was given in respect of Exhibits D1 and D1A2?

67 As regards issue (a), the accused argues that even though the First Contemporaneous Statement records Insp Eugene as having shown the accused a blue bag (*ie*, Exhibit D1 in which Exhibit D1A2 was found) at Q6, it is “highly plausible” that the accused was “under the mistaken impression that he was being asked about Exhibit A1A again”.<sup>140</sup> This is because the accused was “under heavy drug intoxication at the time these questions were being posed to him, and likely suffering from effects such as confusion”.<sup>141</sup> Exhibits A1A and D1A2 also contained identical drugs and were wrapped and packaged identically.<sup>142</sup> The Prosecution argues that Insp Eugene’s testimony confirms that he showed the accused Exhibits D1 and D1A2 at Q6 of the First Contemporaneous Statement. Insp Eugene also maintained under cross-examination that the accused could not have been confused about which exhibit he was being asked about given the way he had presented the exhibits to him.<sup>143</sup>

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<sup>138</sup> DCS at para 71; NE, 6 March 2020, pp 48:7–52:14.

<sup>139</sup> ABOD at p 75; DCS at para 72.

<sup>140</sup> DCS at para 72–73.

<sup>141</sup> DCS at para 73.

<sup>142</sup> DCS at para 73.

<sup>143</sup> PCS at para 67.

68 Having considered both parties' submissions, I prefer Insp Eugene's evidence. Not only is there a contemporaneous record of a "blue bag" (*ie*, Exhibit D1) being shown to the accused in the recorder's note at Q6 of the First Contemporaneous Statement, Insp Eugene confirmed multiple times under oath that Exhibits D1 and D1A2 were shown to the accused when Q6 was asked.<sup>144</sup>

69 In contrast, the accused's version of events is in constant flux. When cross-examining Insp Eugene, counsel for the Defence suggested to him that the accused had been confused about which exhibit was shown to him because of the effects of drug intoxication. According to the accused, he had mistakenly thought that Insp Eugene was repeating the earlier question relating to Exhibit A1A.<sup>145</sup> Later, in his own EIC, the accused said that the Insp Eugene *only* held up a sealed transparent bag of heroin (*ie*, no Exhibit D1) when Q6 was asked.<sup>146</sup> Up to this point, I do not think the accused's case is necessarily inconsistent. However, the accused performed a *volte-face* in a later tranche of his EIC when he admitted to being shown the blue bag (*ie*, Exhibit D1) with Exhibit D1A2 outside of the blue bag.<sup>147</sup> But, he still maintained that he thought he was being asked about Exhibit A1A at Q9.<sup>148</sup> It bears emphasising that the accused took this new position on 12 March 2020 when I allowed him to clarify three aspects of his evidence given in EIC about *a week* earlier on 6 March 2020.<sup>149</sup> Even further still, during his re-examination on 16 November 2020, the accused attempted to recant his earlier admission on 12 March 2020 that he was shown

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<sup>144</sup> NE, 16 August 2019, p 26:13–20; NE, 20 August 2019, p 33:2–6.

<sup>145</sup> PCS at para 66(a); NE, 20 August 2019, p 19:15–23.

<sup>146</sup> NE, 6 March 2020, p 54:18–24.

<sup>147</sup> NE, 12 March 2020, pp 16:30–18:2.

<sup>148</sup> NE, 12 March 2020, p 17:3–4.

<sup>149</sup> NE, 12 March 2020, p 9:11–26.

the blue bag (*ie*, Exhibit D1), by saying “I’m not sure whether I was shown a blue bag. I really can’t recall ...”.<sup>150</sup> Put simply, the accused blew hot and cold about whether he was shown Exhibit D1 (the blue bag) at Q6. I therefore reject the accused’s contention that he was not shown Exhibits D1 and D1A2 at Q6.

70 As regards issue (b), I am satisfied that the accused knew that the questions at Q6–Q9 were directed at Exhibits D1 and D1A2. I do not accept his assertion that he mistook Q9 to be in reference to Exhibit A1A. The accused claims that severe drug intoxication confused him as to which exhibit he was being asked about. However, I have rejected this submission at [63] above. There is insufficient evidence to show that the intoxicating effects were that debilitating. In addition, during his re-examination on 16 November 2020, the accused raised a new allegation that after being arrested, told to sit on the bed and asked what he had to surrender, he “told [the] inspector that [Exhibit] D1A2 was for [his] own consumption”. He alleged that this occurred before the contemporaneous statements were recorded and that he did not know he “had to repeat [himself] and make another statement”.<sup>151</sup> This allegation was not put to Insp Eugene when he was cross-examined on 20 August 2019.<sup>152</sup> I have no hesitation in rejecting this allegation as an afterthought.

71 Based on the foregoing, I accept that A9 in the First Contemporaneous Statement is an admission that Exhibit D1A2 was in the accused’s possession for the purpose of trafficking. However, the weight I am prepared to assign to this admission is reduced on account of the possible drug intoxication effects the accused was experiencing at the time.

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<sup>150</sup> NE, 16 November 2020, p 67:26–27.

<sup>151</sup> NE, 16 November 2020, pp 66:13–17.

<sup>152</sup> See NE, 20 August 2019, pp 9:32–10:10.

## (2) Fourth Long Statement

72 The Prosecution submits that in the accused's long statements, he said that he intended to repack the bundle in Exhibit D1A2 into 60 smaller sachets of heroin. In support of this submission, the Prosecution footnotes to only para 37 of the Fourth Long Statement,<sup>153</sup> which reads as follows:<sup>154</sup>

... I remember that there were two bundles of 'Bai Fen' for this consignment. I had then put one bundle of 'Bai Fen' into my safe, which was later opened for the repacking into smaller sachets while I kept the other bundle of 'Bai Fen' in the bag and then into my cabinet. I did not keep both bundles of 'Bai Fen' into the safe as the safe was too small. I intend to repack *this bundle* of 'Bai Fen' into 60 smaller sachets of 'Bai Fen' and the remaining 'Bai Fen' will be for my own consumption.

[emphasis added]

73 The parties disagree on how to interpret the words "this bundle" in the last sentence of the excerpt ("the Disputed Para 37 Sentence"). The Prosecution's view is that "this bundle" refers to Exhibit D1A2. In response, the accused argues that he did not specifically state, in this long statement, that the heroin in Exhibit D1A2 was for repacking. According to him, when he said he intended to repack "this bundle of 'Bai Fen' into 60 smaller sachets", he was still referring to Exhibit A1A. The remaining heroin stated to be for his own consumption refers to Exhibit D1A2.<sup>155</sup> The accused also highlights having said in his EIC and cross-examination that when various photographs were shown to him during the recording of the long statements, they were left on the table instead of being kept away if they were irrelevant to the question at hand. He further points out that Insp Desmond admitted during cross-examination that it

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<sup>153</sup> PCS at para 50(c).

<sup>154</sup> Fourth Long Statement at para 37: ABOD at p 272.

<sup>155</sup> DRS at para 10.

was his own impression that the accused was referring to Exhibit D1A2 when he stated that he intended to repack “this bundle of ‘Bai Fen’ into 60 sachets”.<sup>156</sup>

74 For reasons I explain at [106]–[128] below, I prefer the Prosecution’s interpretation of the Disputed Para 37 Sentence *on the balance of probabilities*. But this does not change the fact that this sentence is poorly worded, and I therefore do not think it can sustain the weight of the accused’s conviction. Even taking it together with A9 in the First Contemporaneous Statement, I am unable to conclude that these two admissions establish the Purpose Element, in relation to Exhibit D1A2, beyond a reasonable doubt on a *prima facie* basis. In keeping with the exhortation in *GCK* at [149(e)] to “particularise the specific weakness in the Prosecution’s own evidence that irrevocably lowers it below the threshold of proof beyond a reasonable doubt”, I find that: (a) the possibility of the accused experiencing drug intoxication when the First Contemporaneous Statement was recorded; and (b) a reasonable doubt as to the proper interpretation of the Disputed Para 37 Sentence, combine to raise a reasonable doubt as to the accused’s guilt. Of course, whether these statements, among others, are sufficient to defeat the accused’s Consumption Defence is a separate issue which I examine below. To succeed, the Prosecution must therefore rely on the presumption under s 17(c) of the MDA.

#### *Presumption under s 17 of the MDA*

75 The presumption in s 17(c) of the MDA is raised because the Possession and Knowledge Elements in respect of the 25.01g of heroin in the Trafficking Charge are made out. The accused is thus presumed to have had all 25.01g of heroin in his possession for the purpose of trafficking – both the *actus reus* and

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<sup>156</sup> DRS at paras 10–11.

*mens rea* of trafficking are deemed to be present (*Lee Ngin Kiat v Public Prosecutor* [1993] 1 SLR(R) 695 at [22], cited in *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 (“*Ali*”) at [94]). The onus shifts to the accused to prove on the balance of probabilities that his possession of Exhibit D1A2 was not for the purpose of trafficking (*Public Prosecutor v Wan Yue Kong and others* [1995] 1 SLR(R) 83 at [20]–[21]; *Ali* at [94]).

**Whether the Consumption Defence is established on the balance of probabilities?**

76 When dealing with a defence of consumption, a court will consider the overall circumstances of the case, including the following factors (*Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 (“*Muhammad bin Abdullah*”) at [29] and [31]):

- (a) the rate of drug consumption;
- (b) the frequency of supply;
- (c) whether the accused had the financial means to purchase the drugs for himself; and
- (d) whether he had made a contrary admission in any of his statements that the whole quantity of drugs was for sale.

***Whether the accused made contrary admissions in any of his statements?***

77 One relevant factor mentioned in *Muhammad bin Abdullah* is whether the accused made any admissions contrary to the Consumption Defence in any of his statements.

78 I found earlier that the accused admitted in the First Contemporaneous Statement that Exhibit D1A2 was to be repacked for Ah Kiat. I now examine other relevant statements given by the accused in the course of investigations. The Prosecution argues that full weight should be given to the admissions in the accused's statements and that the challenges to the accuracy of the statements lack credibility.<sup>157</sup> The accused takes the converse position.

*Cautioned Statement*

79 The Prosecution argues that the accused failed to state the Consumption Defence in the Cautioned Statement. The accused merely denied selling the drugs and said that his job scope was confined to passing the drugs to people who wanted them and collecting money on Ah Kiat's behalf.<sup>158</sup> The accused argues that no adverse inference should be drawn against him for failing to state his Consumption Defence in this statement. He offers two reasons for this omission: (a) he was suffering from withdrawal symptoms from not having consumed heroin or methamphetamine for many hours;<sup>159</sup> and (b) he was completely unaware of the importance of stating that the heroin in Exhibit D1A2 was for his own consumption.<sup>160</sup> This is because the accused is of borderline intelligence.<sup>161</sup> I will consider each of these reasons in turn.

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<sup>157</sup> PCS at para 56.

<sup>158</sup> PCS at para 23.

<sup>159</sup> DCS at para 74.

<sup>160</sup> DCS at para 77.

<sup>161</sup> DCS at para 79.

- (1) Was the accused suffering from drug withdrawal symptoms when the Cautioned Statement was recorded?

80 To prove that he was suffering from drug withdrawal symptoms at the time of the Cautioned Statement (*ie*, 9 December 2015 at about 5.23pm),<sup>162</sup> the accused relies on medical examinations conducted *after* 9 December 2015. Namely, he highlights that Dr Chua and Dr Cheok Liangzhi (“Dr Cheok”), who examined him at the CMC, observed him displaying drug withdrawal symptoms.<sup>163</sup> Dr Chua and Dr Cheok’s observations are recorded in the former’s medical report of 22 February 2016 (“Dr Chua’s Medical Report”). By way of background, the accused was sent for drug withdrawal observation at the CMC from 10–12 December 2015 and was discharged on 14 December 2015.<sup>164</sup>

81 Dr Chua saw the accused at the CMC on 10 December 2015.<sup>165</sup> He records the accused complaining of “chills, difficulty in sitting still, severe bodyache, nasal stuffiness, vomiting and ... increasing irritability and anxiousness”. Dr Chua also noticed a “[g]ross tremor with muscle twitching”.<sup>166</sup> On 11 and 12 December 2015, the accused was seen by Dr Cheok. On 11 December, he records that the accused complained of chills, severe body ache, runny nose and diarrhoea. Dr Cheok also notes that the accused’s pupils were possibly larger than normal for room light and that he had a slight observable tremor.<sup>167</sup> On 12 December, Dr Cheok records the accused

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<sup>162</sup> P106 (“Cautioned Statement”) at p 1; ABOD at p 241.

<sup>163</sup> DCS at para 74; DRS at para 24.

<sup>164</sup> Dr Chua Teck Meng Henry’s medical report of 22 February 2016 (“Dr Chua’s Medical Report”) at paras 2 and 5(f); ABOD at pp 138–139.

<sup>165</sup> Dr Chua’s Medical Report at para 3; ABOD at p 138.

<sup>166</sup> Dr Chua’s Medical Report at paras 3(e)–3(f); ABOD at p 139.

<sup>167</sup> Dr Chua’s Medical Report at paras 4(a)–4(c); ABOD at p 139.

complaining of chills, difficulty in sitting still, mild body ache, nasal stuffiness, diarrhoea and increasing irritability and anxiousness. The accused’s pupils were still possibly larger than normal for room light.<sup>168</sup> Dr Chua’s Medical Report concludes that the accused was positive for “moderate opioid drug withdrawal”.<sup>169</sup> Evidently, Dr Chua and Dr Cheok examined the accused *after* the Cautioned Statement was taken. But Dr Chua accepted under cross-examination – rightfully, in my view – the *possibility* of the accused’s drug withdrawal symptoms starting before 10 December 2015.<sup>170</sup>

82 To counter the accused’s contention that he was suffering from drug withdrawal symptoms at the material time, the Prosecution points to medical reports from and on behalf of doctors who examined the accused directly before and after the Cautioned Statement was taken. Dr Kevin Teh (“Dr Teh”) performed a pre-statement medical examination on the accused on 9 December 2015 at about 5.11pm (*ie*, about 10 minutes before the Cautioned Statement was recorded). He is currently a doctor attached to the Healthway Medical Group.<sup>171</sup> In his clinical notes, Dr Teh records not having observed any drug withdrawal signs from the accused (including mydriasis, rhinorrhea, tearing, tremors, muscle twitching, disphoresis and piloerection).<sup>172</sup> In his conditioned statement, Dr Teh also endorses the contents of a medical report dated 1 February 2016 prepared by Dr Kang Jun Hui Larry (“Dr Kang”) pertaining to the pre-statement medical examination the former had carried out (“Dr Kang’s Medical

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<sup>168</sup> Dr Chua’s Medical Report at paras 5(a)–5(c): ABOD at p 139.

<sup>169</sup> Dr Chua’s Medical Report at para 7: ABOD at p 139.

<sup>170</sup> NE, 15 August 2019, p 104:24–26.

<sup>171</sup> Dr Kevin Teh’s conditioned statement at para 1: ABOD at p 129.

<sup>172</sup> P207, Dr Kevin Teh’s clinical notes (“Dr Teh’s Clinical Notes”) at p 3.

Report”).<sup>173</sup> This report states that on examination, the accused was “alert and well with full GCS [*ie*, Glasgow Coma Scale] of 15, pupil equal and reactive to light ... and his gait was intact”.<sup>174</sup> For clarity, Dr Teh testified that a GCS score of 15 means that the accused was “fully alert, oriented, able to converse, and able to follow instructions”.<sup>175</sup> As for the post-statement medical examination, this was performed by Dr Cheriane Canlas Tanhueco (“Dr Cheriane”), a clinical associate attached to the Emergency Medicine Department of the National University Hospital.<sup>176</sup> The post-statement examination took place on 9 December 2015 at about 8.11pm. In her medical report dated 11 July 2016, Dr Cheriane notes that the accused was “alert and not in any cardiopulmonary distress. Vital signs were normal ... he has stable gait. He was otherwise neurologically intact”.<sup>177</sup>

83 On balance, I am not satisfied that the accused was likely suffering from drug withdrawal symptoms, or ones that were so serious as to diminish the reliability of the Cautioned Statement. I prefer the evidence of Dr Teh (corroborated by Dr Kang’s Medical Report) and Dr Cheriane because their examinations of the accused were more proximate in time to the recording of the Cautioned Statement than Dr Chua and Dr Cheok’s. Crucially, Dr Teh did not observe any drug withdrawal symptoms in the pre-statement examination and both Dr Kang’s and Dr Cheriane’s medical reports describe the accused as being “alert”.

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<sup>173</sup> Dr Kevin Teh’s conditioned statement at para 3: ABOD at p 129.

<sup>174</sup> Dr Kang Jun Hui Larry’s medical report (“Dr Kang’s Medical Report”): ABOD at p 131; NE, 15 August 2019, p 68:29 (for spelling out of GCS).

<sup>175</sup> NE, 15 August 2019, p 68:29–30.

<sup>176</sup> Dr Cheriane Canlas Tanhueco’s conditioned statement at paras 1–2: ABOD at p 133.

<sup>177</sup> Dr Cheriane Canlas Tanhueco’s medical report of 11 July 2016: ABOD at p 134.

84 Further, the accused’s submission that he intended to “complete [his] statement as soon as possible so that [he] could go back to the lock-up to rest”<sup>178</sup> and that he was unable to express himself well during the recording of the Cautioned Statement as he was suffering from withdrawal symptoms<sup>179</sup> does not advance his case. I have already rejected the accused’s submission as regards experiencing drug withdrawal symptoms at the time the Cautioned Statement was recorded. The second contention is thus a non-starter. As regards the first contention, I have difficulty accepting that his desire to go back and rest, even assuming this to be true, is a reasonable excuse for not raising the Consumption Defence. I agree with the Prosecution’s submission that the contents of the Cautioned Statement speak to the accused’s lucidity. He was careful enough to deny selling the drugs.<sup>180</sup> He also detailed the extent of his involvement in these terms:<sup>181</sup>

‘Ah Kiat’ told me that he will send someone to send things to my place and he will ask those who want it to collect it from my place. I am supposed to help him pass the things to these people and collect money on his behalf. ‘Ah Kiat’ told me he will send someone to collect the money later. I never sell these things.

I do not accept the accused’s characterisation of the Cautioned Statement as “scanty” and suffering a “glaring dearth of detail on his involvement in Ah Kiat’s drug enterprise”.<sup>182</sup> To the contrary, the accused sought to distance himself from Ah Kiat’s drug enterprise and paint himself as a mere conduit. His claim to not have been in the “frame of mind”<sup>183</sup> during the recording of the

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<sup>178</sup> DCS at para 75; NE, 9 November 2020, pp 45: 21–22, 63:12–14.

<sup>179</sup> DCS at para 76; NE, 9 November 2020, p 47:10–12.

<sup>180</sup> PCS at para 68(c).

<sup>181</sup> Cautioned Statement at p 3; ABOD at p 243.

<sup>182</sup> DRS at para 26.

<sup>183</sup> DCS at para 76.

Cautioned Statement to know to state his Consumption Defence is hard to believe.

- (2) Was the accused unaware of the importance of stating the Consumption Defence?

85 In addition, the accused submits that he is of borderline intelligence. Therefore, although he is able to function independently and carry out simple day-to-day tasks, he did not know how crucial it was to state the mainstay of his defence in the Cautioned Statement. If he was not asked a question on an issue, he would not know to volunteer such information.<sup>184</sup> He also did not know the purpose of the Cautioned Statement at the time.<sup>185</sup>

86 I do not accept this submission. First, even assuming that the accused is of borderline intelligence, this does not explain his failure to raise the Consumption Defence in the Cautioned Statement. To illustrate his borderline intellect, the accused cites certain findings in the medical report of Dr Ng dated 17 October 2017 (“Dr Ng’s Medical Report”). Dr Ng is a consultant psychiatrist and director of Ng Beng Yeong Psych Medicine Clinic Pte Ltd and is one of the accused’s expert witnesses.<sup>186</sup> Specifically, Dr Ng noted that the accused was slower to achieve developmental milestones like walking and speaking and failed the Primary School Leaving Examination.<sup>187</sup> The accused also cites Dr Winslow’s belief that even if he has a low Intelligence Quotient (“IQ”), he can nonetheless be street-smart and make judgment calls.<sup>188</sup> The accused’s point

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<sup>184</sup> DCS at paras 79–80; DRS at para 27.

<sup>185</sup> DCS at para 77; NE, 16 November 2020, p 68:28–30.

<sup>186</sup> D11, Dr Ng’s *curriculum vitae* at p 2.

<sup>187</sup> Dr Ng Beng Yeong’s medical report of 17 October 2017 (“Dr Ng’s Medical Report”) at p 4; ABOD at p 544.

<sup>188</sup> DCS at para 80; NE, 1 February 2021, p 22:13–21.

is that just because he lived independently and took care of himself does not mean that he was intelligent enough to know to state the Consumption Defence.<sup>189</sup>

87 However, the portion of Dr Ng’s Medical Report referred to is neither here nor there. The accused’s delayed achievement of the aforementioned developmental milestones does not explain his failure to raise the Consumption Defence. Namely, Dr Ng’s Medical Report does not shed light on why the accused had the awareness to deny selling the heroin forming the subject matter of the Trafficking Charge, yet failed to mention the Consumption Defence.

88 Further, Dr Winslow’s evidence is neutral to the accused’s case at best, and detrimental to it at worst. What is significant is Dr Winslow’s recognition that someone with a low IQ can still be “street-smart”, make judgment calls, and that the accused’s “disabilities along the way ...[do] not mean that he cannot think”.<sup>190</sup> By “disabilities”, Dr Winslow was referring to the accused’s broken family, drug-using family members, head injury and the 1978 Accident where Ah Heng died. One reading of Dr Winslow’s evidence is that even someone with a low IQ ought to have the presence of mind to raise his defence at the earliest opportunity. I do not see how this aspect of Dr Winslow’s evidence assists the accused.

89 In sum, Dr Ng and Dr Winslow’s evidence on the accused’s intellect does not account for his failure to raise the Consumption Defence in the Cautioned Statement. The accused is also not a babe in the woods. He has numerous drug-related antecedents, including for trafficking of heroin and

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<sup>189</sup> DCS at para 80.

<sup>190</sup> NE, 1 February 2021, p 22:13–21.

consumption and possession of a range of drugs.<sup>191</sup> I therefore reject the argument that the accused was not intelligent enough to appreciate the need to state the Consumption Defence in the Cautioned Statement.

90 I conclude with this general remark – I agree with the Prosecution that the accused’s challenge to the accuracy of the Cautioned Statement has constantly morphed. In her cross-examination of Insp Desmond on 21 August 2019, his counsel put it to Insp Desmond that he had omitted to state the Consumption Defence because he was labouring under the effects of drug withdrawal.<sup>192</sup> Later, in his EIC on 12 March 2020, the accused said that he did not state the Consumption Defence because he “was not asked”. He also alleged that Insp Desmond asked “short questions” to elicit the Cautioned Statement although neither of these points were put to Insp Desmond on the stand.<sup>193</sup> I therefore view these challenges (including those I have dismissed above) with circumspection.

91 For all the above reasons, the accused is unable to account for his failure to raise the Consumption Defence in the Cautioned Statement. I explore the significance of this at [133]–[136] below.

#### *Long statements*

92 The Prosecution relies on the long statements primarily to show that the accused admitted to possessing Exhibit D1A2 for the purpose of repacking it and that he did not mention the Consumption Defence.<sup>194</sup> The accused

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<sup>191</sup> D2, Accused’s antecedents at pp 6–9 and 12–16.

<sup>192</sup> NE, 21 August 2019, p 101:2–12.

<sup>193</sup> NE, 12 March 2020, p 29:3–22.

<sup>194</sup> PCS at para 80(a).

acknowledges that the long statements are “more reliable” but claims there are several inaccuracies.<sup>195</sup> These alleged inaccuracies are that:

(a) the accused’s rate of consumption of heroin is erroneously recorded in the First Long Statement;<sup>196</sup>

(b) the Second Long Statement did not record the reason he kept Exhibit D1A2 in Dressing Table D, which was that Exhibit D1A2 contained a large quantity of heroin and he did not want his friends to know exactly how much heroin he had;<sup>197</sup>

(c) that para 40 of the Fourth Long Statement, which records the accused as referring to “[a]ll the money that [he] earned from drugs”, failed to capture the fact that this “money” refers to \$2,700 Ah Kiat gave him to cover his rental, the money he would get for collecting horseracing monies and the “few tens of dollars” he had received for moving drugs other than heroin. It is not a general admission that the accused was remunerated only in cash for repacking heroin;<sup>198</sup> and

(d) that the accused told Insp Desmond that the heroin in Exhibit D1A2 was for his own consumption at paras 36 and 37 of the Fourth Long Statement.<sup>199</sup>

93 The alleged reasons for these inaccuracies are: (a) the accused’s lack of proficiency in Mandarin (the language in which the interviews were conducted);

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<sup>195</sup> DCS at para 91.

<sup>196</sup> DCS at paras 95–98.

<sup>197</sup> DCS at paras 99–100.

<sup>198</sup> DCS at para 104.

<sup>199</sup> DCS at paras 51–53 and 107–110.

(b) that photographs of exhibits were left on the table during questioning instead of being kept away and multiple questions were asked of a single photograph at once; and (c) that Insp Desmond made certain assumptions. I will analyse these alleged reasons so as to ascertain whether the long statements are inaccurate in the abovementioned ways.

(1) Whether the accused is conversant in Mandarin?

94 For the recording of all the long statements, Insp Desmond was assisted by an interpreter, Mr Wong, who translated his questions to the accused in Mandarin and translated the accused’s responses back to him in English. Mr Wong is a Mandarin Language officer attached to the Investigation Division of the CNB.<sup>200</sup>

95 The accused’s case is that he can speak and understand simple Mandarin. However, he is much more comfortable in Hokkien and will always default to Hokkien if he needs to express himself better.<sup>201</sup> His understanding of Mandarin is also limited.<sup>202</sup> The accused relies on the evidence of his brother, Mr Chong Cheong Chai (“Mr Chong”), Dr Ng and Insp Eugene to corroborate his claim that he is “much more proficient in the Hokkien language and uses Hokkien to converse most of the time”.<sup>203</sup> He then claims that he did not know he could elect to speak in Hokkien during his statement recording because Insp Desmond started speaking to him in Mandarin.<sup>204</sup> Because of his alleged lack of proficiency in Mandarin, he testified that he did not understand what

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<sup>200</sup> Mr Wong Png Leong’s conditioned statement at para 1: ABOD at p 199.

<sup>201</sup> DRS at paras 15–17.

<sup>202</sup> DRS at para 15.

<sup>203</sup> DCS at para 92.

<sup>204</sup> NE, 12 March 2020, p 37:25–27; DCS at para 92.

Mr Wong was saying at several points but failed to clarify because he did not know he could do so or how to do so.<sup>205</sup> Some nuances of his responses were also not accurately recorded. When the statements were read back to the accused entirely in Mandarin, he was unable to detect the inaccuracies or know that he needed to make amendments.<sup>206</sup>

96 I need not decide whether the accused is more proficient in Mandarin or Hokkien. The true issue is whether the accused was adequately proficient in Mandarin to understand questions being put to him during the recording of the long statements and to express his responses accurately and completely (“the Mandarin Proficiency Issue”). I answer this question in the affirmative because I agree with the Prosecution that the totality of the evidence establishes the accused being conversant in Mandarin.<sup>207</sup>

97 In his EIC, the accused admits to knowing “a little” Mandarin and being able to read “simple” Mandarin characters. But, he claims to be unable to understand difficult Mandarin most of the time and to need to mix Mandarin with Hokkien when trying to converse in the former.<sup>208</sup>

98 However, I am not convinced that the accused’s proficiency in Mandarin was so poor as to compromise the reliability of the long statements (or the Cautioned Statement for that matter). I first address Mr Chong’s, Dr Ng’s and Insp Eugene’s evidence which the accused relies on to corroborate his claim to lack proficiency in Mandarin. The strongest evidence in his favour is Dr Ng’s.

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<sup>205</sup> NE, 12 March 2020, p 38:20–23; DRS at para 16.

<sup>206</sup> DRS at para 16.

<sup>207</sup> PCS at para 61.

<sup>208</sup> NE, 4 March 2020, p 10:12–32.

Dr Ng testified that the accused is more fluent in Hokkien and that he therefore switched from Mandarin to Hokkien when interviewing the accused. Dr Ng said he came to this realisation because he had to repeat his questions in Mandarin before the accused could “really understand”.<sup>209</sup> Even so, Dr Ng’s observations do not mean that the accused was unable to understand questions in Mandarin or express himself accurately in Mandarin. At best, Dr Ng’s evidence shows that the accused was more *comfortable* conversing in Hokkien. But, this latter conclusion does not necessarily mean that the Mandarin Proficiency issue should be resolved in the accused’s favour. It is also incongruous with the fact that the accused *chose* to speak in Mandarin for the recording of the Cautioned Statement and long statements (see [102] below). Thus, I do not think Dr Ng’s evidence takes the accused very far.

99 Mr Chong’s evidence as regards the accused’s Mandarin proficiency is even more equivocal than Dr Ng’s. Mr Chong testified that he communicates with the accused in Hokkien and that the accused is only a little conversant in Mandarin.<sup>210</sup> However, I accept the Prosecution’s submission that Mr Chong’s assessment of the accused’s Mandarin proficiency is premised merely on greetings he heard the accused exchange with others.<sup>211</sup> To my mind, this is an insufficient basis to write off the accused’s Mandarin proficiency. Pertinently, Mr Chong also admitted that he hardly kept in contact with the accused in the three to four years leading up to the commission of the offence.<sup>212</sup> Thus, I do not regard Mr Chong’s assessment of the accused’s Mandarin proficiency to be well-supported or contemporaneous with the offence.

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<sup>209</sup> NE, 4 February 2021, p 9:9–14.

<sup>210</sup> NE, 2 February 2021, pp 2:33–3:8.

<sup>211</sup> PCS at para 60.

<sup>212</sup> NE, 2 February 2021, pp 21:2–22:12, 23:5–8.

100 Insp Eugene’s evidence also does not assist the accused. Insp Eugene began speaking to the accused in Hokkien because he assumed that it was common for middle-aged Chinese males to converse in Hokkien.<sup>213</sup> He did not do so because the accused was unable to converse in Mandarin.

101 Thus, the corroborative evidence cited by the accused is weak. Instead, the contention that he was unable to understand Mr Wong at certain points or that his true response was lost in translation rings hollow against a substantial body of evidence indicating otherwise. I explain.

102 First, I accept that the accused elected to be interviewed for the long statements and Cautioned Statement in Mandarin. Insp Desmond consistently maintained that before a statement was recorded, the accused was offered an open-ended choice of language or a list of languages that included Hokkien,<sup>214</sup> that the accused chose Mandarin and that he had no difficulty communicating in Mandarin.<sup>215</sup> The start of each long statement also records that the accused chose to have the statement recorded in Mandarin.<sup>216</sup> The long statements were read back to the accused and signed by him. Mr Wong has no recollection of the interviews with the accused. However, he corroborates Insp Desmond’s evidence by confirming that the practice is to give the interviewee an open-ended choice of language.<sup>217</sup> Mr Wong also said that if the accused had been

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<sup>213</sup> NE, 16 August 2019, p 7:4–18.

<sup>214</sup> NE, 21 August 2019, pp 52:1–7 (First Long Statement), 60:9–13 (Second Long Statement), 65:8–12 (Third Long Statement), 72:6–8 (Fourth Long Statement), 94:2–95:13 (Cautioned Statement), 101:28–102:28 (First Long Statement).

<sup>215</sup> NE, 21 August 2019, pp 92:31–93:26, 95:21–32; NE, 22 August 2019, p 7:29–8:2.

<sup>216</sup> First Long Statement at para 1: ABOD at p 259; Second Long Statement at para 7: ABOD at p 262; Third Long Statement at para 19: ABOD at p 267; Fourth Long Statement at para 35: ABOD at p 272.

<sup>217</sup> NE, 22 August 2019, pp 83:2–86:24, 88:5–89:8, 113:7–19, 114:13–115:5.

more comfortable in Hokkien, he would have asked Insp Desmond to change languages for the next interview or proceed in Hokkien with Insp Desmond making a note of the change in language. Mr Wong does not recall this happening.<sup>218</sup> There is also no notation in the long statements of a switch from Mandarin to Hokkien.

103 Second, other witnesses testified as to having conversed with the accused in Mandarin and having had no difficulty doing so (whether through an interpreter or otherwise): Dr Teh,<sup>219</sup> Dr Chua,<sup>220</sup> Dr Koh<sup>221</sup> and Dr Winslow.<sup>222</sup> Dr Koh's testimony is supported by contemporaneous clinical notes, in which he records speaking to the accused in "Chinese".<sup>223</sup> In fairness, Dr Winslow said that the accused lapsed into some Hokkien once in a while.<sup>224</sup> This corroborates the accused's and Mr Chong's account that the accused would mix Mandarin with Hokkien when conversing in the former. However, this alone does not prove on the balance of probabilities that the accused was unable to understand Insp Desmond's questions (as translated by Mr Wong in Mandarin) or express his responses fully and accurately in Mandarin. Especially for the latter point, Mr Wong is also proficient in translating Hokkien.<sup>225</sup> If the accused did lapse into Hokkien, Mr Wong would have been able to appreciate the totality of the accused's response.

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<sup>218</sup> NE, 22 August 2019, pp 116:1–16, 117:14–118:1.

<sup>219</sup> NE, 15 August 2019, pp 66:1–16, 77:20–26.

<sup>220</sup> NE, 15 August 2019, p 90:20–91:8.

<sup>221</sup> NE, 3 March 2020, pp 11:1–10, 34:3–6.

<sup>222</sup> NE, 1 February 2021, pp 6:32–7:18.

<sup>223</sup> Dr Teh's Clinical Notes, p 2.

<sup>224</sup> NE, 1 February 2021, p 7:9–11.

<sup>225</sup> NE, 22 August 2019, p 81:19–22.

104 Finally, as a minor point, the accused said this about Dr Lam’s Mandarin: “[s]he did not know much about Mandarin. She doesn’t speech [*sic*] much. Simple Mandarin”.<sup>226</sup> I accept the Prosecution’s submission that it is difficult to see how he could assess Dr Lam’s language proficiency without himself being conversant in Mandarin.<sup>227</sup> This is another factor undermining his claim to have only a limited understanding of Mandarin and to have been unable to express all the nuances of his responses in Mandarin.

105 Based on the foregoing, I resolve the Mandarin Proficiency Issue against the accused. Accordingly, I discount any challenge to the reliability or accuracy of the long statements based on his alleged lack of Mandarin proficiency. For completeness, I also reject his argument that he did not know of his option to elect to speak in Hokkien. Insp Desmond and Mr Wong have sufficiently demonstrated that he was availed of this option. Further, having given both contemporaneous statements in Hokkien,<sup>228</sup> his alleged ignorance of the availability of the option of speaking in Hokkien is hard to believe.

(2) Whether the accused admitted that Exhibit D1A2 was for repacking in the Fourth Long Statement?

(A) PARAGRAPH 37 OF THE FOURTH LONG STATEMENT

106 The question is whether the accused admitted, in the Disputed Para 37 Sentence in the Fourth Long Statement, that Exhibit D1A2 was meant for repacking.

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<sup>226</sup> NE, 11 November 2020, p 41:18–19.

<sup>227</sup> PCS at para 59(d).

<sup>228</sup> First Contemporaneous Statement: ABOD at p 74; Second Contemporaneous Statement: ABOD at p 77.

107 The accused's position is that he did, in fact, clearly inform Insp Desmond and Mr Wong that Exhibit D1A2 was for his own consumption when para 37 of the Fourth Long Statement was being recorded.<sup>229</sup> He argues that he pointed to the photograph showing Exhibit A1A when he uttered the Disputed Para 37 Sentence.<sup>230</sup> He confirms that drug withdrawal symptoms or lack of Mandarin proficiency did not lead to confusion about which exhibit he was talking about at the material time.<sup>231</sup> According to the accused, the *only* issue in dispute, pertinent to the interpretation of the Disputed Para 37 Sentence, is whether multiple photographs of multiple exhibits were left on the table after each question or kept away. The accused argues that various photographs were left on the table during the recording of the long statements ("the Multiple Photograph Allegation").<sup>232</sup> Presumably, this allowed the accused to point to the photograph depicting Exhibit A1A even though para 37 relates to the photograph depicting Exhibits D1 and D1A2, and also caused Insp Desmond and Mr Wong confusion. He asserts that Insp Desmond formed his own erroneous impression of what was told to him by the accused and recorded it.<sup>233</sup>

108 The Prosecution argues that Insp Desmond and Mr Wong testified that the accused was shown only one photograph at a time and his explanation for the exhibits in each photograph would be recorded. The accused also signed against each photograph to acknowledge that it had been shown to him. The

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<sup>229</sup> DRS at para 31.

<sup>230</sup> DRS at para 31.

<sup>231</sup> DRS at para 32.

<sup>232</sup> DRS at para 33.

<sup>233</sup> DCS at para 110.

Prosecution argues that the accused ultimately conceded that both witnesses had shown him one photograph at a time.<sup>234</sup>

109 I first examine the significance of the accused's admission that he was only shown one photograph at a time during the recording of the long statements. The accused does not dispute having made this admission.<sup>235</sup> In fact, he made this admission twice during cross-examination. The relevant portions of his cross-examination are as follows:<sup>236</sup>

**9 November 2020**

Q: So at various stages, photographs were shown to you pursuant to the information sought from you. You were asked to initial on the photographs. And after you answer questions pursuant to the photograph, it was *taken away*, I'm putting to you.

A: Yes.

Q: So it's only the relevant photographs that were shown to you at certain stages.

A: On the table?

Q: These – no, it's only shown to you at appropriate junctures then after that, it's taken away, I'm putting to you.

A: No –

Q: You disagree?

A: – the photographs were placed on the table.

Q: I put it to you that when you give your answers to the questions pursuant to [*sic*] photograph shown, there is *no confusion by you whatsoever*. Put it to you –

A: Yes.

Q: – at no point in time was there any confusion to you.

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<sup>234</sup> PCS at para 75.

<sup>235</sup> DRS at para 33.

<sup>236</sup> NE, 9 November 2020, pp 70:22–71:11; NE, 10 November 2020, pp 50:23–51:1.

A: Yes.

Q: And again once all the statements is done, you had the – you – this was read back to you in Mandarin by Png Leong and you were given a chance to make any amendments, alterations and you declined to do so because it’s accurately recorded as you repeated earlier.

A: Yes.

**10 November 2020**

Q: Okay, Mr Chong, I move away from Heng Dai’s involvement. So, as I had pointed out to you at various stages, Desmond Liang, the recorder’s position is to refer you to certain photographs, let you initial it, and then after you have initialled it, removed the photograph from the table.

A: At times, no, the photographs were placed in front of me and –

Q: Anyway, that’s what I’m putting to you. It’s up to you to agree or disagree.

A: *I agree with that.*

Q: And the whole reason for this is to ensure that you are not confused by the wrong photo when the different questions are asked. That’s why he adopts this practice. Okay, Mr Chong?

A: *Yes, I accept.*

[emphasis added]

110 To the accused’s credit, his admissions are not unqualified. In the excerpted portion of the 9 November 2020 cross-examination, the accused says that “the *photographs* were placed on the table” [emphasis added].<sup>237</sup> This response appears to be in disagreement with the Prosecution’s point that irrelevant photographs are taken away when new questions are asked. In re-examination, the accused again states that the “*photographs* were placed in front

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<sup>237</sup> NE, 9 November 2020, p 71:1.

of me” [emphasis added] when responding to his counsel’s question on whether the photographs were taken away or left in front of him.<sup>238</sup>

111 However, based on the foregoing portions of the accused’s testimony, I find the totality of his evidence to be equivocal. He vacillated on the veracity of the Multiple Photograph Allegation. I therefore treat the Multiple Photograph Allegation with caution.

112 In my judgment, the accused’s equivocal evidence does not overcome the combined force of Insp Desmond and Mr Wong’s testimony. Insp Desmond testified that during the interviews for the long statements, including when para 37 of the Fourth Long Statement was recorded, only one photograph was shown to the accused at a time.<sup>239</sup> Mr Wong confirmed that it is not the practice to leave a “whole lot” of photographs out when questioning an accused person.<sup>240</sup>

113 For completeness, in his reply submissions, the accused argues that he only admitted that the Multiple Photograph Allegation was false because he was “worn down” by Deputy Public Prosecutor Mark Tay’s “rigorous questioning” on the Multiple Photograph Allegation.<sup>241</sup> I see little merit in this argument. If the accused held his ground with regards the Consumption Defence, I fail to see why he was unable to do the same for the Multiple Photograph Allegation.

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<sup>238</sup> NE, 16 November 2020, p 69:25–27.

<sup>239</sup> NE, 21 August 2019, pp 72:12–73:13; NE, 22 August 2019, pp 63:31–64:21, 70:14–21, 72:4–21.

<sup>240</sup> NE, 22 August 2019, pp 97:12–32, 99:3–23, 100:3–13; NE, 23 August 2019, pp 33:22–34:29.

<sup>241</sup> DRS at para 33.

114 The accused has therefore not discharged his legal burden of proving the Multiple Photograph Allegation.

115 But this does not dispose of the question of how to interpret the Disputed Para 37 Sentence. The accused launched a final salvo: regardless of whether the Multiple Photograph Allegation is true, he informed Insp Desmond during the recording of the Fourth Long Statement that Exhibit D1A2 was for his own consumption.<sup>242</sup> I am unable to find that he did so at the Disputed Para 37 Sentence for the following reasons.

116 First, if the accused is right that the bundle for repacking mentioned in the Disputed Para 37 Sentence refers to Exhibit A1A, I see no reason for Insp Desmond to have recorded this twice within the same paragraph. It is undisputed that the “one bundle of ‘Bai Fen’ [in the accused’s] safe, which was later opened for the repacking into smaller sachets” (earlier on in para 37 of the Fourth Long Statement) already refers to Exhibit A1A. That Exhibit A1A was meant for repacking is also already captured in para 25 of the Third Long Statement. There was simply no need for Insp Desmond to belabour the same point in the first half of the Disputed Para 37 Sentence. Further, the focus in para 37 was on photograph 22<sup>243</sup>, which depicts the blue bag (*ie*, Exhibit D1) and Exhibit D1A2. This is clear from the first sentence of para 37, which states that the accused was “further shown one photograph with the marking ‘Photo 22’ ...”.<sup>244</sup> Insp Desmond also testified, in his EIC, that after the accused was shown a photograph, he would ask the accused questions on it. After the accused responded, the accused would sign on the photograph before Insp Desmond

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<sup>242</sup> DRS at para 34.

<sup>243</sup> Photograph Bundle (“PB”), photograph 61.

<sup>244</sup> Fourth Long Statement at para 37: ABOD at p 272.

proceeded to the next photograph.<sup>245</sup> I cite this portion of Insp Desmond’s EIC not to revisit the Multiple Photograph Allegation, but to establish Insp Desmond’s general approach to the conduct of the statement recording. True to this general approach, Insp Desmond testified that he asked the accused about the “other bundle of ‘Bai Fen’ which [was] not packed [and] that [was] found in the bag” [emphasis in original omitted]:<sup>246</sup>

Q: ... [Reads] “I intend to repack this bundle of ‘Bai Fen’ into 60 smaller sachets of ‘Bai Fen’ and the remaining ‘Bai Fen’ will be for my own consumption.”

A: Yes.

Q: Right? Okay, we’re there now. Okay, this bundle of “Bai Fen”, earlier you said it was your impression that when he said “this bundle of ‘Bai Fen’”, he was referring to D1A2.

A: Yes.

Q: Where do you get this impression from?

A: Because ***I did ask him what about the other bundle of ‘Bai Fen’ which is not packed that were found in the bag.*** I asked him this and he told me that he intend [sic] to repack this ‘Bai Fen’ into 60 smaller sachets.

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

Insp Desmond maintained that he asked the accused this question despite being challenged on multiple occasions by counsel for the Defence, but accepted that this was not recorded in the statement.<sup>247</sup> I see no reason to disbelieve Insp Desmond. There is nothing unusual about this because he also testified to having asked questions about photographs 2–5<sup>248</sup> when para 24 of the Third Long Statement was being recorded. These earlier questions pertained to the

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<sup>245</sup> NE, 21 August 2019, p 73:11–13.

<sup>246</sup> NE, 22 August 2019, p 35:22–32.

<sup>247</sup> NE, 22 August 2019, pp 36:3–17, 37:28–38:4.

<sup>248</sup> PB, photographs 39–42.

drugs in the exhibits beginning with “A”.<sup>249</sup> What the preceding analysis confirms is that Insp Desmond is likely to have understood the accused to be referring to Exhibit D1A2 and intended to record his statement as such.

117 However, I still need to deal with the accused’s submission that it was Insp Desmond’s own impression that the accused was referring to Exhibit D1A2 in the Disputed Para 37 Sentence.

118 I find it more likely than not that the accused uttered the response in the Disputed Para 37 Sentence in reference to Exhibit D1A2. This is because:

(a) The accused admitted on multiple occasions in the long statements that his remuneration from Ah Kiat was in cash, not in kind. Thus, there was no reason for Ah Kiat to give the accused an entire bundle of heroin for his consumption (see [180] below).

(b) Given that Insp Desmond asked about the purpose of the bundle in photograph 22 (*ie*, Exhibit D1A2), the accused was likely to have spoken of the purpose of Exhibit D1A2 (even if not expressly naming the exhibit).

(c) The accused did not disclose the Consumption Defence to Dr Koh when he examined the accused on 24, 28 and 31 December 2015 or 11 October 2018.<sup>250</sup>

I elaborate on the accused’s account of the offence to Dr Koh.

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<sup>249</sup> NE, 22 August 2019, p 72:16–30.

<sup>250</sup> Dr Kenneth Koh’s medical report of 5 January 2016 (“Dr Koh’s First Medical Report”) at p 1: ABOD at p 142; Dr Koh’s medical report of 12 October 2018 (“Dr Koh’s Second Medical Report”) at p 1: ABOD at p 532.

119 Dr Koh first examined the accused in December 2015, approximately one to two weeks after the long statements were recorded. In my judgment, that the accused failed to disclose the Consumption Defence to Dr Koh in December 2015 casts significant doubt on his claim to have done so to Insp Desmond on 16 December 2015. The account of the offence in Dr Koh's medical report of 5 January 2016 ("Dr Koh's First Medical Report") coheres with that in the accused's First Contemporaneous Statement and Cautioned Statement. Dr Koh's First Medical Report states that the accused was involved in passing drugs to customers of Ah Kiat and collecting money from these customers. He also sometimes repacked the drugs into smaller portions. The relevant part of Dr Koh's First Medical Report reads as follows:<sup>251</sup>

[The accused] described that the arrangement was for him to take items that persons he did not meet would deposit near his house .... He would receive instructions over the phone as to where to get these packages and where he should subsequently put them. There were also other times when he had to collect money. ...

...

[The accused] admitted at the first interview that he had known that it had been drugs that he was dealing with as he sometimes had to repackage the drugs into smaller portions. ...

120 Plainly, the report does not mention the Consumption Defence. Besides the accused's statements, Dr Koh's First Medical Report is another contemporaneous record of the accused's account as at December 2015 of his involvement in Ah Kiat's drug operation. The logical inference is that the accused did not mention the Consumption Defence to Dr Koh. If the accused had indeed told Insp Desmond on 16 December 2016 (*ie*, when the Fourth Long Statement was recorded) that Exhibit D1A2 was meant for consumption, I see no reason for such a material portion of the accused's defence to be withheld

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<sup>251</sup> Dr Koh's First Medical Report at p 2: ABOD at p 143.

from Dr Koh. I thus have reservations on whether the accused had raised the Consumption Defence to Insp Desmond in the first place.

121 For completeness, the Consumption Defence was not raised to Dr Koh in 2018 either. Although Dr Koh’s second medical report of 12 October 2018 (“Dr Koh’s Second Medical Report”) records that the accused sometimes dipped into the drugs he received and used them, the accused admits that this portion of Dr Koh’s Second Medical Report is not in reference to a particular batch or bundle of heroin being for his consumption.<sup>252</sup> This portion of Dr Koh’s Second Medical Report can equally be said to align with his Third Long Statement which states that the heroin remaining in a bundle after 60 sachets were repacked would be for his own consumption.<sup>253</sup> As such, I do not regard this part of Dr Koh’s Second Medical Report as amounting to a reference to the Consumption Defence.

122 Third, there are other contextual clues in the series of long statements which are consistent with the accused having intended to say that Exhibit D1A2 was meant for repacking in the Disputed Para 37 Sentence.

123 The first contextual clue is the accused’s practice of not keeping away heroin that was meant for his consumption. It is not disputed that Exhibit D1A2 was found in a blue bag (Exhibit D1) *stored* in the bottom right compartment of Dressing Table D.<sup>254</sup> What is relevant is that the accused is recorded at para 10 of the Second Long Statement as stating that he does *not* keep away methamphetamine and heroin which are meant for his own consumption. He

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<sup>252</sup> NE, 13 March 2020, p 31:10–20.

<sup>253</sup> Third Long Statement at para 25:ABOD at p 269.

<sup>254</sup> PB, photographs 34–36; SOAF at para 12.

leaves these drugs lying on the floor of the Rented Room.<sup>255</sup> He confirms the same at para 39 of the Fourth Long Statement. He further states at para 39 that he would “normally keep away those drugs that are meant for delivering to ‘Ah Kiat’ or ‘Da Ge’ customers when [he] know [*sic*] that there are going to be visitors to [his] room”.<sup>256</sup> Therefore, storing Exhibit D1A2 in Dressing Table D suggests that it was not meant for the accused’s consumption.

124 The accused argues that he intended to qualify para 10 of the Second Long Statement. Namely, he says that at the material time, there was still heroin he had not yet consumed on the floor of the Rented Room and he thus kept the heroin in Exhibit D1A2 in Dressing Table D first.<sup>257</sup> He elaborated that his practice was to keep heroin of larger quantities away but that he would take out a portion to share with friends who came to his room to consume drugs. He did so because he did not want his friends to know exactly how much heroin he had.<sup>258</sup> The accused submits that these nuances to para 10 of the Second Long Statement were not recorded because his ability to express himself in Mandarin was “hindered”. He was also unable to pick up inaccuracies in the statements when it was read back to him in Mandarin.<sup>259</sup>

125 However, given my finding that the accused is conversant in Mandarin and elected to be interviewed in Mandarin, I reject his attempt to challenge the accuracy of the Second Long Statement. Reading para 10 of the Second Long Statement and para 37 of the Fourth Long Statement together, that the accused

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<sup>255</sup> Second Long Statement at para 10: ABOD at p 263.

<sup>256</sup> Fourth Long Statement at para 39: ABOD at p 273.

<sup>257</sup> NE, 12 March 2020, p 47:22–23.

<sup>258</sup> NE, 12 March 2020, pp 47:29–48:5.

<sup>259</sup> DCS at para 100.

kept Exhibit D1A2 in Dressing Table D is implicit recognition that this bundle was meant for repacking for Ah Kiat. This contextual clue fortifies my reading of the *whole* of the Disputed Para 37 Sentence being made in reference to Exhibit D1A2.

126 The second contextual clue is in para 25 of the Third Long Statement in which the accused is recorded as making a general statement that he *always* repacked bundles of heroin (with a mass of about 450g) into 60 smaller sachets. The remaining heroin after these sachets were packed would be for the accused's consumption. For every bundle of heroin that the accused repacked, he would have about one and a half to two packets of 7.8g of heroin *per* packet left for his own consumption (*ie*, about 11.7 to 15.6g of heroin).<sup>260</sup> It is an agreed fact that Exhibit D1A2 has a mass of about 450g (to be exact, 448.7g).<sup>261</sup> When taken together with para 25 of the Third Long Statement, it is highly likely that that Exhibit D1A2, like all other 450g bundles of heroin, was meant for repacking, and was not for the accused's own consumption.

127 I do not accept the accused's attempt to qualify the ambit of his general statement in para 25 of the Third Long Statement. In his EIC, the accused testified that by "always", he was only referring to "the previous bundle – 1½ bundles [he] repack [*sic*] into 60 sachets".<sup>262</sup> However, this is an unnatural fetter on the plain meaning of the word "always". I agree with the Prosecution's characterisation of the first sentence in para 25 of the Third Long Statement as a "[g]eneral practice" of the accused.<sup>263</sup> I should add that Insp Desmond

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<sup>260</sup> Third Long Statement at para 25: ABOD at p 269.

<sup>261</sup> SOAF at para 16(k); NE, 22 August 2019, pp 29:25–30:3.

<sup>262</sup> NE, 12 March 2020, p 57:17–18.

<sup>263</sup> PCS at para 27(d).

understands this first sentence to be a general statement as well.<sup>264</sup> If the accused did not intend to make this general statement, he should have amended the sentence when the long statement was read back to him before signing it. For completeness, any suggestion that he was unable to appreciate the need to amend the statement because of his Mandarin proficiency is a non-starter given my finding that the accused is conversant in Mandarin and elected to be interviewed in Mandarin.

128 To summarise thus far, I agree with the Prosecution that the bundle for repacking referenced by the accused in the Disputed Para 37 Sentence is Exhibit D1A2. This is because I reject the Multiple Photograph Allegation – as such, the accused’s claim that he pointed to the photograph of Exhibit A1A when providing the response recorded in the Disputed Para 37 Sentence is dismissed. In any case, even if I am wrong about the Multiple Photograph Allegation, I also do not accept the accused’s submission that he in fact told Insp Desmond in the Disputed Para 37 Sentence that Exhibit A1A was for repacking while Exhibit D1A2 was for his own consumption. This does not square with the accused’s account of his involvement to Dr Koh in December 2015 or other contextual clues in the long statements.

(B) PARAGRAPH 36 OF THE FOURTH LONG STATEMENT

129 The interpretation of the last sentence of para 36 of the Fourth Long Statement (“the Disputed Para 36 Sentence”) is also contested. That sentence reads:<sup>265</sup>

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<sup>264</sup> NE, 22 August 2019, pp 24:19–21, 37:5–7.

<sup>265</sup> Fourth Long Statement at para 36: ABOD at p 272.

The bundle of ‘Bai Fen’ is about 450 grams and I think there was [sic] some small packets of Ice which were *meant for my own consumption* and a packet of 100 grams of Ice in the safe.

[emphasis added]

130 It is undisputed that the “bundle” in this sentence refers to Exhibit D1A2. The question is whether the phrase “meant for my own consumption” is in reference to the “small packets of Ice” only or the “bundle of ‘Bai Fen’” as well.

131 The accused submits that he meant that the bundle of heroin in Exhibit D1A2 *and* the small packets of methamphetamine were meant for his own consumption. He says that the connector “and” in the Disputed Para 36 Sentence suggests that both Exhibit D1A2 and the methamphetamine were for his own consumption. Therefore, when the statement was read back to him, he could not be expected to raise any objection to this portion of the Fourth Long Statement.<sup>266</sup>

132 For reasons which are similar to those set out in relation to para 37 of the Fourth Long Statement, I find that on the balance of probabilities, the accused did not say that Exhibit D1A2 was meant for his personal consumption. First, he admitted in other parts of the series of long statements that he was remunerated in cash, not in kind, for work done for Ah Kiat (see [180] below). If he intended to qualify or change his account in such a material way, this should have been made clear. Second, the two contextual clues analysed at [122]–[127] above also contradict the accused’s contention that Exhibit D1A2 was for his personal consumption and these call for an explanation. However, no credible one is forthcoming. The accused has therefore not persuaded me to read the Disputed Para 36 Sentence in the manner he contends.

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<sup>266</sup> DCS at para 52.

(3) Was the Consumption Defence an afterthought?

133 Based on the foregoing, I agree with the Prosecution that the Consumption Defence was an afterthought.

134 First, I have found that the Consumption Defence was not raised in the accused's contemporaneous statements, Cautioned Statement or long statements. He also failed to mention it to Dr Koh in 2015 and 2018. I should state that a court is entitled to disbelieve the evidence of a witness even without having to draw an adverse inference against him for omitting to mention earlier some material fact which, if disclosed, would be in his favour (*Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [20]; *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [70]). I therefore do not need to decide whether an adverse inference should be drawn on the basis of the accused's CNB statements. The fact remains that in all of these instances, the accused either admitted that Exhibit D1A2 was meant for repacking or failed to say otherwise. This heavily undermines the credibility of the Consumption Defence.

135 Second, I accept the Prosecution's submission that the first record of the Consumption Defence is in Dr Lam's Medical Report which is dated 15 July 2019 (*ie*, approximately a month before trial commenced).<sup>267</sup> Dr Lam was not called as a witness and her report was not formally admitted into evidence, although it is found in the parties' Agreed Bundle. However, I make brief reference to her report in this regard for the accused's benefit because if this report is not taken into account, the earliest time at which the Consumption Defence would have surfaced is trial itself. Preliminarily, I should also clarify

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<sup>267</sup> PCS at para 81.

that *Dr Ng's* Medical Report does not mention the Consumption Defence. The accused was examined by Dr Ng at Changi Prison on 20 June, 28 June and 16 October 2017 and the latter obtained corroborative accounts from the accused's mother and brother on 13 June 2017 at his clinic.<sup>268</sup> Dr Ng's Medical Report records that *all* of the drugs were for the accused's personal consumption.<sup>269</sup> Plainly, this account of the offence differs from the Consumption Defence the accused now advances at trial – that Exhibit A1A was for repacking while Exhibit D1A2 was meant for his own consumption. In his EIC, the accused recognises that this aspect of Dr Ng's Medical Report and the current iteration of the Consumption Defence differ.<sup>270</sup> He claims to have not revealed the Consumption Defence to Dr Ng because he thought Dr Ng was “the government's lawyer” and he “dare[d] not to reveal much about the heroin”.<sup>271</sup> Therefore, the first record of the Consumption Defence appears in Dr Lam's Medical Report. Dr Lam interviewed the accused at Changi Prison on 7 June, 13 June and 4 July 2019. She also interviewed the accused's mother and brother.<sup>272</sup> Her report states that “[the accused] informed that one intact bundle of the heroin was his salary and was for his own consumption. The other bundle of heroin belonged to Ah Kiat, and part of it was re-packed into smaller sachets...”.<sup>273</sup>

136 In my view, the Consumption Defence was raised by the accused on the doorstep of trial, which commenced on 13 August 2019. It bears emphasising

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<sup>268</sup> Dr Ng's Medical Report at p 1: ABOD at p 541.

<sup>269</sup> Dr Ng's Medical Report at p 3: ABOD at p 543.

<sup>270</sup> NE, 13 March 2020, p 48:15–16.

<sup>271</sup> NE, 13 March 2020, p 48:22–23.

<sup>272</sup> Dr Lam's Medical Report at para 2: ABOD at p 546.

<sup>273</sup> Dr Lam's Medical Report at para 23: ABOD at p 551.

that the accused did not even call Dr Lam as a witness. That he failed to raise his defence from 2015 to 2018 is a significant factor undermining the credibility of the Consumption Defence.

***Whether the accused consumed more than 16g of heroin a day at the time of his arrest?***

137 According to *Muhammad bin Abdullah*, another factor relevant to assessing the credibility of the Consumption Defence is the accused’s rate of drug consumption. Exhibit D1A2 contains about 450g of heroin. At trial, the accused claims that he was smoking 16–20g of heroin a day at the time of his arrest (“the Accused’s Alleged Heroin Consumption Rate”). He submits that he was an “extremely heavy user of diamorphine at the material time and that he would have easily finished consuming [E]xhibit D1A2 within a reasonable timeframe”.<sup>274</sup>

138 I agree with the Prosecution that the Accused’s Alleged Heroin Consumption Rate should be disbelieved. My reasons are as follows.

139 First, the accused reported an ever-increasing consumption rate to various persons over the years:

- (a) In 2015, during the recording of his long statements by Insp Desmond, the accused said *twice*, in the First and Third Long

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<sup>274</sup> DCS at para 3.

Statements, that he consumed about half a packet of heroin (*ie*, about 4g of heroin) each day.<sup>275</sup> A full packet contains 7.8–8g of heroin.<sup>276</sup>

(b) In 2015, after the long statements were recorded, the accused was examined by Dr Koh on 24, 28 and 31 December 2015. Dr Koh’s Medical Report records the accused as claiming to have taken about 5–6g of heroin a *day*.<sup>277</sup>

(c) Dr Winslow first examined the accused on 2 December 2019. Dr Winslow’s First Medical Report states that: “[a]t the height of his addiction in 2015, prior to his arrest for the index offences, [the accused] stated that he would consume about two packs, which approximated five to six *long* straws (with each straw containing about five to six grams) of heroin ... *per day*” [emphasis added].<sup>278</sup>

(d) In his EIC in March 2020, the accused maintains that at the time of his arrest, he consumed 16–20g of heroin *per day*, or about two packets of 7.8–8g each.<sup>279</sup> During his cross-examination in November 2020, he claimed his consumption rate was at least 20g but less than 25g of heroin *per day*.<sup>280</sup>

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<sup>275</sup> First Long Statement at para 4: ABOD at p 260; Third Long Statement at para 25: ABOD at p 269.

<sup>276</sup> First Long Statement at para 4: ABOD at p 260; Third Long Statement at para 25: ABOD at p 269.

<sup>277</sup> Dr Koh’s First Medical Report at p 1: ABOD at p 142.

<sup>278</sup> Dr Winslow’s First Medical Report at para 15.

<sup>279</sup> NE, 4 March 2020, p 43:19–32.

<sup>280</sup> NE, 9 November 2020, pp 20:2–7, 22:1–6, 31:13–17.

140 For completeness, Dr Lam’s Medical Report records the accused as saying that he consumed four to five straws or up to a gross weight of 8g of heroin *per day*.<sup>281</sup> The accused was examined by Dr Lam on 7 June, 13 June and 4 July 2019.<sup>282</sup> However, as Dr Lam’s Medical Report is not admitted into evidence, I do not take it into account for this issue.

141 The first express record of the accused’s claim to have consumed more than 8g of heroin a day is Dr Winslow’s First Medical Report. The accused challenges the veracity of earlier records of his daily consumption rate of heroin in an attempt to show that he asserted the Accused’s Alleged Heroin Consumption Rate at an earlier juncture.

142 The accused argues that his response in the First Long Statement was in reference to his consumption rate in June 2014, not December 2015.<sup>283</sup> The relevant sentence at para 4 of the First Long Statement reads: “[t]he rate of my consumption of ‘Bai Fen’ increases as time goes by and two months ago, I started smoking about half a packet of ‘Bai Fen’ each day”.<sup>284</sup> In his EIC, the accused testified that he told Insp Desmond that he was smoking a straw of heroin every two to three days *in 2014* when he was released from the DRC, but that he smoked more and more as time went by.<sup>285</sup> But, this explanation was not put to Insp Desmond. To the contrary, all that was put to Insp Desmond was that if the accused indeed smoked half a packet of heroin a day in October 2015, it would make sense that by the time he was arrested, his rate of consumption

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<sup>281</sup> Dr Lam’s Medical Report at para 15: ABOD at p 550.

<sup>282</sup> Dr Lam’s Medical Report at para 2: ABOD at p 546.

<sup>283</sup> DCS at para 95.

<sup>284</sup> First Long Statement at para 4: ABOD at p 260.

<sup>285</sup> NE, 12 March 2020, pp 40:30–41:16.

would have increased.<sup>286</sup> This shift in the accused's challenge to his response in the First Long Statement is already a cause for concern. Adding to that the fact that the accused could have corrected the statement when it was read back to him and that he *repeated* the consumption rate of about 4g of heroin a day in the Third Long Statement, I am unable to accept the accused's challenges to this portion of the First Long Statement.

143 Next, the accused argues that Dr Koh's report is inaccurate because he told Dr Koh that he consumed 5–6g of heroin *per consumption*, instead of *per day*. The accused submits that this inaccuracy is due to a miscommunication, potentially due to his lack of proficiency in speaking and understanding Mandarin.<sup>287</sup> Having found that the accused was adequately proficient in Mandarin to understand questions being put to him and to express his responses accurately and completely, I find this hard to believe. The inconsistency between his reported consumption rate in Dr Koh's Medical Report and his evidence at trial remains unexplained.

144 I also do not accept the accused's submission that he told Dr Chua on 10 December 2015 that he smoked 16–20g of heroin daily.<sup>288</sup> Dr Chua's Medical Report states that the accused "smoked 4 to 5 straws daily over 3 to 4 months duration".<sup>289</sup> During his EIC, the accused testified that he was referring to the straws containing 4–5g of heroin each.<sup>290</sup> However, there is no corroborative evidence that in 2015, the accused specified the quantity of heroin

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<sup>286</sup> NE, 22 August 2019, pp 4:6–26, 19:29–20:26, 27:14–28:24.

<sup>287</sup> DCS at paras 30–31.

<sup>288</sup> DCS at para 32.

<sup>289</sup> Dr Chua's Medical Report at para 3(c)(i): ABOD at p 138.

<sup>290</sup> NE, 4 March 2020, p 44:15–20.

in each straw to Dr Chua. To the contrary, in his CNB statements *and* Dr Koh's Medical Report, both of which are based on interviews or examinations of the accused in December 2015, the accused only reported consuming 4–6g of heroin *per* day. The first recorded instance of the accused claiming that each straw he used contained 5–6g of heroin is recorded in Dr Winslow's First Medical Report of 31 January 2020.<sup>291</sup> This report was prepared based on an interview of the accused on 2 December 2019. Accordingly, the accused has not proved on the balance of probabilities that he intended to tell Dr Chua in 2015 that each straw he used contained 4–5g of heroin.

145 As a final point on the evolving nature of the Accused's Alleged Heroin Consumption Rate, the accused submits that the discrepancy between his alleged consumption rate in his EIC and cross-examination is not unreasonable. He argues that "as a heavy user of heroin, [he] would not have paid such close attention to the exact number of grams of heroin he smoked each day".<sup>292</sup> But, I do not expect the accused to recall his consumption rates with scientific precision. Having found that the Accused's Alleged Heroin Consumption Rate was not raised until his examination with Dr Winslow in 2019, what is concerning is that his alleged consumption rate increased *fivefold* from that stated in his long statements in 2015. This vast discrepancy remains unaccounted for.

146 Second, I agree with the Prosecution that the accused's assertion that he stored 5–6g of heroin in each straw ("the Storage Claim")<sup>293</sup> lacks an evidential basis. The accused told Dr Winslow that each straw contained about 5–6g of

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<sup>291</sup> Dr Winslow's First Medical Report at para 15.

<sup>292</sup> DRS at para 38.

<sup>293</sup> DCS at para 36.

heroin, as is recorded in Dr Winslow’s First Medical Report.<sup>294</sup> He claims that he told Dr Chua that the straws he used contained 4–5g of heroin each (although this is not recorded in Dr Chua’s Medical Report).<sup>295</sup>

147 However, the evidence of Inspector Yeo Kheng Wei (“Insp Yeo”) on the two main types of straws which drug addicts typically store heroin in, which is actually corroborated by Dr Winslow, casts significant doubt on the Storage Claim. Insp Yeo is a team leader in the Intelligence Division of the CNB and has been with the CNB for slightly over 20 years.<sup>296</sup> He testified that drug addicts typically consume heroin from two types of straws: a long straw about the length of a disposable lighter and a short straw which is about half the length of a long straw. These straws contain approximately 0.6–0.8g and 0.3–0.4g of heroin respectively.<sup>297</sup> In a similar vein, Dr Winslow testified that *sukus* (straws which are the length of a quarter of a normal transparent drinking straw) containing about 0.2–0.3g of heroin and lighter-size straws containing 0.5–0.6g of heroin are used by drug addicts in Singapore.<sup>298</sup>

148 Although Dr Winslow added that long straws of two different capacities are also used in Singapore, I now explain my reasons for rejecting this portion of Dr Winslow’s evidence.

149 In his EIC, Dr Winslow testified that the long straw is a third variety of straw used by drug users. He *presumes*, based on his experience, that such long

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<sup>294</sup> Dr Winslow’s First Medical Report at para 15.

<sup>295</sup> DCS at para 32; NE, 4 March 2020, p 44:15–20.

<sup>296</sup> NE, 2 March 2020, p 15:11–19.

<sup>297</sup> NE, 2 March 2020, pp 25:8–27:25.

<sup>298</sup> NE, 1 February 2021, pp 19:1–26.

straws comprise four *sukus* (ie, 0.8–1.2g of heroin). But he qualifies this by stating that he has not seen any research on such long straws.<sup>299</sup> Even further still, in Dr Winslow’s Second Medical Report, he states that there are long straws approximately 8–9 inches long, filled with approximately 3–4g of heroin each.<sup>300</sup> During his further cross-examination (when Dr Winslow was recalled as a witness in light of his Second Medical Report), Dr Winslow testified that he came to know of the latter long straw from a client he examined between the time he first took the stand on 1 February 2021 and the drafting of his second report dated 24 February 2021. He also claims to have identified another client, in his clinical notes from 2017–2018, who mentioned this latter long straw.<sup>301</sup> I am not persuaded to take Dr Winslow’s word at face value on the usage of either variety of long straw in Singapore. In particular, I have no sight of Dr Winslow’s alleged clinical notes from 2017–2018 nor the benefit of any details on the alleged examination that took place in February 2021. Therefore, I do not ascribe any weight to Dr Winslow’s evidence that either of the abovementioned long straws are used by drug abusers in Singapore.

150 Mr Josiah Teh Choon Sin (“Josiah”), a witness for the Defence, testified that the accused had used long straws in the past. But, Josiah’s evidence lacks contemporaneity with the offence and does not, in my view, advance the accused’s case. Josiah has known the accused since the 1970s and used to consume heroin with him in the 1980s and in 2003.<sup>302</sup> Josiah testified that in 2003, he and the accused used “normal drinking straw[s]” to store heroin.<sup>303</sup> But,

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<sup>299</sup> NE, 1 February 2021, p 19:32–20:1.

<sup>300</sup> Dr Winslow’s Second Medical Report at para 7.

<sup>301</sup> NE, 2 March 2021, p 24:2–29.

<sup>302</sup> NE, 2 February 2021, pp 26:24, 27:1–2.

<sup>303</sup> NE, 2 February 2021, p 30:3–25.

Josiah does not know if the accused continued to use such long straws in 2015 because he was not with the accused then. Josiah also testified that he had not consumed drugs since 2003.<sup>304</sup>

151 Josiah’s testimony does not overcome the combination of Insp Yeo and Dr Winslow’s evidence which confirms the usage of lighter-length straws and short straws or *sukus*, but not long straws (whether containing 0.8–1.2g or more than 4g of heroin). I am unable to find, on the balance of probabilities, that the accused stored more than 4g of heroin in each straw at or around the time of the offence. My conclusion has these effects:

(a) The portion of Dr Winslow’s First Medical Report which records that each straw used by the accused contained 5–6g of heroin should not be believed. In any event, Dr Winslow *himself* admits that that five or six long straws would not come up to 20g of heroin given his “understanding of how most straws are packed”.<sup>305</sup> Dr Winslow also testified that he did not quiz the accused on his claim to have stored 5–6g of heroin in each straw and instead simply “let it be”.<sup>306</sup> As such, Dr Winslow’s First Medical Report does not prove that the accused did, in fact, store 5–6g of heroin in each straw.

(b) It follows from point (a) above that I accept the following submission by the Prosecution:<sup>307</sup> that although Dr Winslow testified during his EIC on 1 February 2021 that the “heroin level” in the

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<sup>304</sup> NE, 2 February 2021, pp 30:26–29, 32:24–29.

<sup>305</sup> NE, 1 February 2021, pp 80:30–81:5.

<sup>306</sup> NE, 1 February 2021, pp 81:2–5.

<sup>307</sup> PRS at para 6(b).

accused's urine is "consistent" with about five straws of heroin a day,<sup>308</sup> he could not have meant long straws containing 5–6g of heroin each. At most, he was referring to long straws containing 0.8–1.2g of heroin each which, in any case as I highlighted at [149] above, Dr Winslow merely *presumes* are used in Singapore.

(c) Closely related to the preceding point, the credibility of the accused's claim to have consumed 16–20g of heroin *per* day at the time of his arrest is severely undermined. Even assuming that his claim to have consumed four to five or five to six straws of heroin *per* day is correct,<sup>309</sup> the quantum of heroin in these straws is unlikely to have been as high as alleged by the accused.

152 Third, I struggle to see how the accused's long history of heavy drug abuse and his alleged psychosis following the 1978 Accident proves that the heroin in Exhibit D1A2 was for the accused's own consumption.

153 I summarise the salient points of the accused's drug history. The accused admits that he started consuming heroin at about 17 years old, even before the 1978 Accident.<sup>310</sup> The 1978 Accident was a motor accident in which a pick-up van he was in overturned. His close friend, Ah Heng, died beside him.<sup>311</sup> The accused submits that he suffered a head injury in the 1978 Accident and, thereafter, began experiencing auditory hallucinations of Ah Heng's voice and

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<sup>308</sup> NE, 2 February 2021, p 18:28–32.

<sup>309</sup> NE, 4 March 2020, p 44:7–8; Dr Winslow's First Medical Report at para 15; DCS at paras 32, 128(a).

<sup>310</sup> NE, 11 November 2020, pp 22:20–23:8.

<sup>311</sup> NE, 4 March 2020, pp 13:31–14:6.

seeing shadows.<sup>312</sup> The accused urges the court to accept the evidence of Dr Ng over that of Dr Koh. Specifically, Dr Ng diagnosed the accused as suffering from a psychotic disorder due to the traumatic brain injury he sustained in the 1978 Accident.<sup>313</sup> The accused said he “turned to” heroin to cope with these hallucinations.<sup>314</sup> He also references the suicide of another close friend, Alice. After Alice’s death, the accused claims to have heard her voice as well, in 1982.<sup>315</sup> Additionally, the accused submits that after his release from the DRC in December 2014, his heroin consumption rate increased from 4–5g over two to three days upon his release to 16–20g a day by October 2015.<sup>316</sup> The accused also began abusing methamphetamine in the early 2000s, which exacerbated his auditory hallucinations.<sup>317</sup>

154 I distil the following two issues from the accused’s history of drug abuse: (a) whether the accused suffered from psychosis from the 1978 Accident and, if so, how the existence of psychosis supports the Consumption Defence (if at all); and (b) whether the increase in the Accused’s Alleged Heroin Consumption Rate from December 2014 to October 2015 is believable. I will consider each issue in turn.

155 As regards (a), I am not convinced that the 1978 Accident caused the accused to suffer from psychosis. The accused relies on Dr Ng’s Medical Report which diagnosed the accused with post-traumatic psychosis. Dr Ng’s diagnosis

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<sup>312</sup> NE, 4 March 2020, pp 18:1–3.

<sup>313</sup> DCS at para 117.

<sup>314</sup> DCS at para 14.

<sup>315</sup> Dr Ng’s Medical Report at p 2; ABOD at p 542.

<sup>316</sup> DCS at para 16.

<sup>317</sup> DCS at para 15.

is based on diagnostic criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-5”).<sup>318</sup> He admits that these five diagnostic criteria must be satisfied conjunctively:<sup>319</sup>

- (a) prominent hallucinations or delusions (“Factor (a)”);
- (b) evidence from the history, physical examination, or laboratory findings that the disturbance is the direct pathophysiological consequence of another medical condition;
- (c) the disturbance is not better explained by another mental disorder;
- (d) the disturbance does not occur exclusively during the course of a delirium; and
- (e) the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning (“Factor (e)”).

156 Dr Ng also opined that the accused had surgery done to his head.<sup>320</sup> His medical report then concludes by stating that:<sup>321</sup>

At that time of the alleged offence, [the accused] was hearing the voices of Ah Heng and he also believed that he had a tumour of the abdomen and that he would die soon. *Hence, he bought a large amount of the drugs. His judgment and decision making processes were impaired by the psychotic illness and the false belief that he would die soon from the abdominal condition. He was holding the amount of drugs in his possession for his own personal use and did not intend to sell the drugs. ...*

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<sup>318</sup> NE, 4 February 2021, p 6:12–32.

<sup>319</sup> D12, p 115; NE, 4 February 2021, p 92:1–10.

<sup>320</sup> Dr Ng’s Medical Report at p 5: ABOD at p 545.

<sup>321</sup> Dr Ng’s Medical Report at p 5: ABOD at p 545.

[emphasis added]

157 In contrast, the Prosecution submits that Dr Koh’s evidence should be preferred over Dr Ng’s. Dr Koh assessed the accused not to have psychosis and that the aftermath of the 1978 Accident had no significant effect on his neuropsychiatric state or any causal link with his drug use at the time of the offence.<sup>322</sup> The Prosecution also attacks the reliability of Dr Ng’s evidence on the grounds that the accused lied to him and that Dr Ng’s clinical notes lack detail.<sup>323</sup> The Prosecution further criticises Dr Ng for focusing only on auditory hallucinations as a diagnostic criterion for psychosis, whilst ignoring other criteria Dr Koh considered (*eg*, impairment in social, occupational, or other important areas of functioning).<sup>324</sup>

158 As the DSM-5 illustrates, arriving at a diagnosis is a multi-factorial inquiry. I am not persuaded that the accused suffers from psychosis.

159 For Factor (e), according to Dr Ng, either clinically significant distress or impairment in social, occupational, or other important areas of functioning must be proved.<sup>325</sup> Dr Ng opined that the accused suffered from the former. He testified that hearing voices can cause a lot of distress to an individual even if these voices are “intermittent” (*eg*, once every few months).<sup>326</sup>

160 But, Dr Ng’s basis for concluding that the accused experienced such distress is tenuous.

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<sup>322</sup> PCS at para 87.

<sup>323</sup> PCS at para 87(b); PRS at para 17.

<sup>324</sup> PRS at para 16.

<sup>325</sup> NE, 4 February 2021, p 111:14–16.

<sup>326</sup> NE, 4 February 2021, p 13:1–11.

161 I accept the Prosecution’s submission that the accused was not forthcoming with Dr Ng.<sup>327</sup> That Dr Ng premises his assessment of “clinically significant distress” solely<sup>328</sup> on the accused’s word gives me pause. The accused did not even tell Dr Ng that he worked for Ah Kiat. He also informed Dr Ng that he bought *all* of the drugs he received, which flatly contradicts his account of the offence in his CNB statements and his current Consumption Defence. In fact, the accused admits that he was scared to tell Dr Ng the truth because he knew that Dr Ng was sent by the court to assess him.<sup>329</sup> Although in re-examination, the accused claims to have told Dr Ng the truth in the parts of the report concerning the 1978 Accident,<sup>330</sup> the veracity of what the accused shared with Dr Ng as a whole, and therefore Dr Ng’s assessment, is suspect. Dr Ng candidly accepts that his report “isn’t worth very much value to the Court” if the accused deliberately lied to him.<sup>331</sup>

162 Further, that Dr Ng did not take detailed contemporaneous clinical notes undermines the reliability of his diagnosis. Dr Ng said that he only took down “[m]aybe 20 to 30” key words to prepare his report across all three evaluations of the accused in 2017. He did not even retain these key words thereafter for inspection by counsel or the court.<sup>332</sup> In contrast, Dr Koh took contemporaneous notes, retained them, and referred to them in trial. These were not admitted into evidence, but counsel for the Defence were given a copy to peruse before cross-

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<sup>327</sup> PCS at para 87(b).

<sup>328</sup> NE, 4 February 2021, p 95:5–23.

<sup>329</sup> NE, 11 November 2020, pp 30:21–31:29.

<sup>330</sup> NE, 16 November 2020, p 71:5–9.

<sup>331</sup> NE, 4 February 2021, p 109:25–32.

<sup>332</sup> NE, 4 February 2021, pp 39:4–41:31.

examining Dr Koh.<sup>333</sup> Dr Ng's lack of diligence in his examination of the accused is another factor deterring me from accepting his opinion.

163 Moreover, I agree with the Prosecution that Dr Ng made at least one speculative conclusion in his report.<sup>334</sup> His report opines that "there was surgery done to [the accused's] head" after the 1978 Accident.<sup>335</sup> However, Dr Ng admits under cross-examination that he is unable to substantiate this conclusion with, for instance, other medical reports.<sup>336</sup> He simply relies on the accounts of the accused and his mother, as well as the accused's scar which he had observed from behind a barrier in prison, to conclude that the accused had undergone surgery.<sup>337</sup> That Dr Ng was willing to assert that the accused underwent surgery without a proper evidential basis does not inspire confidence in the remainder of his report.

164 Additionally, Dr Ng also agreed, during cross-examination, that while the first limb of Factor (e) (*ie*, clinically significant distress) is subjective, the second limb entailing impairment in social, occupational, or other important areas of functioning is "very hard to pretend" and can be objectively verified.<sup>338</sup> I therefore prefer the view of Dr Koh, who took these objective factors into account in finding that the accused does not have psychosis. In his first report, Dr Koh observed that the accused was not "simple-minded".<sup>339</sup> Under cross-

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<sup>333</sup> NE, 3 March 2020, pp 7:3–9, 123:5-8

<sup>334</sup> PRS at para 17(c)(ii).

<sup>335</sup> Dr Ng's Medical Report at p 5: ABOD at p 545.

<sup>336</sup> NE, 4 February 2021, p 63:8–14.

<sup>337</sup> NE, 4 February 2021, pp 63:3–64:25.

<sup>338</sup> NE, 4 February 2021, pp 95:21–96:1.

<sup>339</sup> Dr Koh's First Medical Report at p 2: ABOD at p 143.

examination, he explained that he meant that the accused was able to give a good account of how he was independent in his daily living, and was able to manage transactions and listen to instructions.<sup>340</sup> Dr Koh's observation in this regard is corroborated by the fact that, prior to his arrest in December 2015, the accused lived independently and leased three properties in Singapore (including the Rented Room) using his elder brother's Identity Card ("IC").<sup>341</sup> In his second report, Dr Koh observed that the accused did not have "disorganized speech &/or deterioration in self-care" and opined that this "suggest[s] strongly that what [the accused] has described are not true psychotic hallucinations".<sup>342</sup> Under cross-examination, Dr Koh added that the accused has done menial work throughout his life and has experienced no deterioration in occupational functioning. He also reiterated that the accused is capable of daily functioning (eg, using the toilet, bathing) without assisted care.<sup>343</sup> Dr Koh thus concluded that there was no substantial impairment to the accused's social, occupational or other important functioning and said that whether there was *some* effect would be difficult to measure given that the 1978 Accident was "a[n] incident 30 years ago".<sup>344</sup>

165 Even the accused's expert witnesses do not suggest that he experienced impairment in social, occupational, or other important areas of functioning. In fact, Dr Ng admits that the accused's social adaptability was not impaired at all.<sup>345</sup> Dr Winslow also denied observing any psychotic symptoms affecting the

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<sup>340</sup> NE, 3 March 2020, p 135:10–14.

<sup>341</sup> NE, 5 March 2020, pp 37:13–32, 47:23–26; NE, 1 February 2021, p 110:14–16.

<sup>342</sup> Dr Koh's Second Medical Report at p 2: ABOD at p 533.

<sup>343</sup> NE, 3 March 2020, pp 146:7–147:2.

<sup>344</sup> NE, 3 March 2020, p 147:14–18.

<sup>345</sup> NE, 4 February 2021, p 94:15–18.

accused's functioning altogether. Dr Winslow agreed that the accused was able to take care of himself and even came prepared for his medical examination by bringing documents and photographs.<sup>346</sup>

166 The picture that emerges from Dr Koh, Dr Ng and Dr Winslow's observations of the accused is one of normalcy. It bears emphasising that the objective circumstances – the accused living independently in the Rented Room and renting three properties using his brother's IC – makes it difficult to believe that the accused suffered from psychosis at the time of the offence.<sup>347</sup> Accordingly, on account of Factor (e) not being fulfilled, the accused fails to prove that the 1978 Accident caused him to suffer from psychosis. The 1978 Accident therefore does not add any credibility to the Accused's Alleged Heroin Consumption Rate.

167 For completeness, I note that Dr Ng and Dr Koh disagree on the frequency and nature of auditory hallucinations which are symptomatic of psychosis (*ie*, Factor (a) at [155(a)] above).<sup>348</sup> For instance, Dr Koh's Medical Report describes the accused's account of his hallucinations of Ah Heng's voice as being "not elaborate; the voice only said rudimentary words like 'hurry up, hurry up' and did not speak more ...".<sup>349</sup> Dr Koh testified that this was not "a conversation or a long discourse" which is the typical presentation of true psychotic hallucination.<sup>350</sup> In contrast, Dr Ng testified that that these could be considered "rudimentary hallucinations" and that the accused was probably

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<sup>346</sup> NE, 1 February 2021, pp 110:5–111:10.

<sup>347</sup> NE, 5 March 2020, pp 37:13–32, 47:23–26; NE, 1 February 2021, p 110:14–16.

<sup>348</sup> DCS at paras 116–126.

<sup>349</sup> Dr Koh's Second Medical Report at p 2: ABOD at p 533.

<sup>350</sup> NE, 3 March 2020, p 41:16–17.

trying to elaborate on all the kinds of sounds, noises and voices that he could hear.<sup>351</sup> However, it is not necessary for me to resolve this issue given that Factor (e) is not made out.

168 Even if I am wrong about the accused not having psychosis, I fail to see the relevance of his psychosis to the Consumption Defence. Dr Ng admits that it is his *assumption* that the accused's distress from the auditory hallucinations was a contributing factor to the offence.<sup>352</sup> He also concedes that it is speculative to say that the auditory hallucinations contributed to his drug-taking behaviour earlier on, his later severe drug addiction and his need to get more money to fund his consumption habit.<sup>353</sup> Dr Winslow's First Medical Report also opines that the accused's auditory hallucinations were not causally linked to his drug consumption by the time he was arrested in December 2015.<sup>354</sup>

169 As regards issue (b) (see [154] above), I am not prepared to believe the accused's account of his increasing consumption rate from December 2014 to December 2015. His own expert witness, Dr Winslow, opined that consuming 16–20g of heroin a day would only be sustainable for very short periods and that the accused's claim to have consumed daily at this rate for two months (*ie*, from October to December 2015) is "unusual".<sup>355</sup> Thus, although Dr Winslow also said that longer-term drug users are able to consume greater doses,<sup>356</sup> the mere fact that one's tolerance to a drug's effects increases over time does not

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<sup>351</sup> NE, 4 February 2021, pp 13:24–14:3.

<sup>352</sup> NE, 4 February 2021, p 96:24–30.

<sup>353</sup> NE, 4 February 2021, pp 97:18–98:12.

<sup>354</sup> Dr Winslow's First Medical Report at para 16.

<sup>355</sup> NE, 1 February 2021, p 68:8–30.

<sup>356</sup> NE, 1 February 2021, p 11:1–10.

suffice to establish the Accused's Alleged Heroin Consumption Rate. Further, that the accused only claimed to consume upwards of 16g of heroin a day at his first interview with Dr Winslow in December 2019,<sup>357</sup> after maintaining all the while since 2015 that he consumed about 4–6g daily, casts doubt on the truth of the Storage Claim and the Accused's Alleged Heroin Consumption Rate.

170 Finally, the accused's claim that the quality of heroin obtained from Ah Kiat was not as potent as the heroin he used to consume does not support the Accused's Alleged Heroin Consumption Rate. The accused submits that another reason he consumed 16–20g of heroin per day was because Ah Kiat's heroin was of a poorer quality than that he consumed prior to working for Ah Kiat. He gave this evidence during his EIC.<sup>358</sup> He argues that this claim is corroborated by Josiah's evidence.<sup>359</sup> Josiah testified that when he consumed heroin with the accused in 2003, the quality of heroin was poorer than in the 1980s and this caused him to consume more heroin.<sup>360</sup> However, I am reluctant to believe the accused. For one, Josiah's evidence has little corroborative value. His testimony that the potency of heroin he consumed in 2003 was lower than that he consumed in the 1980s has nothing to do with the alleged difference in the quality of heroin the accused obtained from Ah Kiat and that he purchased before working for Ah Kiat. Given the accused's weak credibility (see [191] below), I do not think his testimony alone establishes, on the balance of probabilities, that Ah Kiat's heroin was less potent than the other heroin he consumed prior to working for Ah Kiat.

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<sup>357</sup> Dr Winslow's First Medical Report at paras 5 and 15.

<sup>358</sup> NE, 5 March 2020, p 7:32–8:7; NE, 12 March 2020, p 59:20–23.

<sup>359</sup> DCS at paras 39–40.

<sup>360</sup> NE, 2 February 2021, p 32:8–17.

171 Based on the foregoing, because the accused's consumption rate of heroin was less than 16–20g *per* day at the material time, the 450g of heroin in Exhibit D1A2 is wholly disproportionate to the accused's consumption needs. I find it unlikely that Ah Kiat would gift such a large quantum of heroin to the accused, especially in light of the remuneration arrangement he had with the accused. I now turn to the latter point.

***Whether the accused was remunerated by Ah Kiat in money or in kind?***

172 To reiterate, the accused claims that Exhibit D1A2 was given to him for his own consumption as *remuneration* for work done for Ah Kiat.

173 The accused submits that Ah Kiat agreed to pay him \$10 for every sachet of heroin he helped to repack. But, he was to be paid in heroin rather than in cash.<sup>361</sup> He argues that he was remunerated with approximately 700g of heroin (including the 450g in Exhibit D1A2) by Ah Kiat for his own consumption. He says that the 700g was payment for the 150 sachets he repacked on the first four occasions he worked for Ah Kiat.<sup>362</sup> Ah Kiat has not yet remunerated him for the 60 sachets he was supposed to repack from the heroin in Exhibit A1A.<sup>363</sup> He claims that 700g of heroin bought in Malaysia costs about \$1,555.56, which corresponds to the agreement for him to be paid \$10 *per* sachet repacked.

174 The accused also submits that it was mutually beneficial for Ah Kiat and him for him to be remunerated in heroin. Although the accused was paid in cash for moving around other drugs like Ecstasy, Ketamine and Erimin, Ah Kiat, as a drug dealer who dealt in heroin in bulk, would have been able to get a low

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<sup>361</sup> DCS at para 41.

<sup>362</sup> DCS at para 49.

<sup>363</sup> DCS at paras 42–49.

cost price on the heroin.<sup>364</sup> As a heavy drug consumer, the accused would also have been more “incentivised” to help Ah Kiat by being remunerated in heroin.<sup>365</sup>

175 I disagree with the accused’s submissions for these reasons.

176 First, I agree with the Prosecution that the amount of heroin that Ah Kiat allegedly remunerated the accused with does not correspond to the remuneration due to him for the number of sachets he packed in the previous four consignments (assuming he was paid for work done) or the number of sachets he was supposed to pack for the latest consignment (assuming he was paid upfront).<sup>366</sup> Preliminarily, in his EIC, the accused said that the first 50–60g of heroin he received for his own consumption on his first consignment was an extra benefit, and not remuneration for work done.<sup>367</sup> Only 640–650g of the heroin he allegedly received for his own consumption represents remuneration. In other words, on the accused’s own case, he was undercompensated by 50–60g of heroin for the 150 sachets he had already packed. Because, if he was entitled to \$10 *per* sachet repacked, he says he should be remunerated with 700g of heroin in total. Even assuming that Exhibit D1A2 was payment upfront for repacking Exhibit A1A only, the accused was only entitled to \$600 worth of heroin (based on \$10 *per* sachet repacked). Receiving an entire bundle of heroin (worth \$1,000 based on the accused’s own conversion)<sup>368</sup> is entirely disproportionate.

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<sup>364</sup> DCS at para 50.

<sup>365</sup> DCS at para 50.

<sup>366</sup> PRS at para 8.

<sup>367</sup> NE, 6 March 2020, at pp 6:28–7:5.

<sup>368</sup> NE, 9 November 2020, p 34:30–31; DCS at para 48.

177 Second, the accused admitted multiple times in his CNB statements and on the stand that: (a) he agreed to work for Ah Kiat because of his financial difficulties; and (b) he was to be remunerated in cash under his arrangement with Ah Kiat.

178 As regards the point at (a), I agree with the Prosecution’s submission that the accused was financially strapped when Ah Kiat first offered him work.<sup>369</sup> In his Second Long Statement, the accused states that he finally decided to work for Ah Kiat because he “was in need of cash. [He] was jobless and [had] no money”. He also lamented that in October 2015, his health was not good and he seldom worked due to his piles.<sup>370</sup> The accused also had not insignificant expenses to meet, including rental for at least the Rented Room (which was \$750 *per* month), daily necessities (*eg*, cigarettes and food) and drugs.<sup>371</sup>

179 Further, the accused’s denials of having financial difficulties do not stand up to scrutiny when seen against the other admissions he made:

(a) In his EIC, he admitted he had “no choice” but to accept Ah Kiat’s job offer as he “needed money to pay for rental”.<sup>372</sup>

(b) During cross-examination, after being shown his bank statements, the accused agreed that he had financial problems at the time he agreed to work for Ah Kiat.<sup>373</sup>

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<sup>369</sup> PCS at paras 96 and 100.

<sup>370</sup> Second Long Statement at para 13: ABOD at p 264.

<sup>371</sup> NE, 5 March 2020, pp 46:27–47:6 (rental); NE, 2 November 2020, pp 7:18–8:23 (rental), 11:23–29 (daily necessities), 13:8–13 (drugs).

<sup>372</sup> NE, 5 March 2020, pp 46:25–27.

<sup>373</sup> P215; NE, 2 November 2020, pp 21:16–23:15.

(c) The accused said his initial agreement with Ah Kiat was to receive not more than half a bundle of heroin for repacking.<sup>374</sup> When asked why he was not deterred from working for Ah Kiat even though Ah Kiat started giving him more than half a bundle to repack, the accused said he thought of quitting “after one or two more times” when he “would be able to collect [his] CPF”.<sup>375</sup> It is telling that he explained, under cross-examination, that “[i]f [he] could get a sum of money from CPF, [he] did not have to work for Ah Kiat”.<sup>376</sup>

180 As regards the point at (b) at [177] above, I agree with the Prosecution that the accused’s statements clearly record that Ah Kiat promised to remunerate him in cash:<sup>377</sup>

(a) In his First Contemporaneous Statement, when asked how much he earned from Ah Kiat, the accused said that “[f]or every small packets [*sic*] [he] packed, [he] earn[ed] \$10”.<sup>378</sup> The accused alleges that he explained to Insp Eugene that he would earn \$10 *worth of heroin* for each sachet repacked, but this was somehow not recorded.<sup>379</sup> I agree with the Prosecution that because this allegation was not put to Insp Eugene, I am unable to take it into account.<sup>380</sup>

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<sup>374</sup> NE, 2 November 2020, p 64:7–21.

<sup>375</sup> NE, 2 November 2020, pp 62:26–64:25.

<sup>376</sup> NE, 2 November 2020, p 65:23.

<sup>377</sup> PCS at para 98.

<sup>378</sup> First Contemporaneous Statement at Q12/A12: ABOD at p 76.

<sup>379</sup> NE, 6 March 2020, p 59:16–21.

<sup>380</sup> PCS at para 99; NE, 20 August 2019, p 21:4–11.

(b) In his Second Long Statement, the accused said that the very first time Ah Kiat contacted him, Ah Kiat asked him if he was “interested in earning money” and that he would “share the profits equally” with him.<sup>381</sup>

(c) In his Third Long Statement, the accused *again* said that his agreement with Ah Kiat was to share the profits equally. But, he complained that Ah Kiat did not honour the agreement and he only “earned about S\$10/- for each 8 gram sachet of ‘Bai Fen’ that [he] repacked”. He also said he was unable to provide the “total amount of *money*” [emphasis added] he had earned so far from helping Ah Kiat because he did not<sup>382</sup> accumulate any savings from the money earned from helping Ah Kiat. He even admitted that “[a]ll the money that [he] earned had been used to pay off [his] rental and [his] daily necessities.”<sup>383</sup>

(d) In his Fourth Long Statement, the accused repeated that “[a]ll the money that [he] earned from drugs were just enough for [his] rental and daily needs. As such, [he does] not have any savings that are from drug proceeds”.<sup>384</sup> The accused submits that the “money” in this sentence refers to a separate sum of \$2,700 that Ah Kiat gave him to cover his rental, the money he would get for collecting horseracing monies as well as the “few tens of dollars” he received for moving drugs other than heroin. But, he argues that these nuances were not captured “largely”

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<sup>381</sup> Second Long Statement at para 12: ABOD at p 264.

<sup>382</sup> NE, 22 August 2019, pp 12:27–13:6; NE, 23 August 2019, p 27:20–22; NE, 10 November 2020, p 35:3–32.

<sup>383</sup> Third Long Statement at para 20: ABOD at p 267.

<sup>384</sup> Fourth Long Statement at para 40: ABOD at p 273.

because of the accused's lack of Mandarin proficiency.<sup>385</sup> As I have resolved the Mandarin Proficiency Issue against the accused, I see no merit in the accused's attempt to qualify the meaning of the cited portion of the Fourth Long Statement.

I therefore find that the accused's submission that he was to be remunerated in kind is an afterthought to shore up the Consumption Defence.

181 For completeness, the accused explained that he was remunerated in kind because paying him in cash would put Ah Kiat at "a losing end to his disadvantage". He claims that Ah Kiat "could get to [heroin] supply with very cheap rate [*sic*]" and that it would cost Ah Kiat less to remunerate him in heroin than in cash.<sup>386</sup> However, this explanation does not account for why he repeatedly referenced the *money* he earned from Ah Kiat in his long statements.

182 Third, I reject the accused's evidence under cross-examination that Eng told him on Ah Kiat's behalf that the heroin in Exhibit D1A2 was for his salary. According to the accused, on the day of his arrest, Ah Kiat called him. The accused then passed the phone to Eng and Ah Kiat informed Eng to tell the accused that Exhibit D1A2 was for his consumption ("the Eng Communication Allegation").<sup>387</sup> But, that this convenient allegation was raised belatedly more than a year after trial commenced dents its credibility. During cross-examination the accused said he failed to mention the Eng Communication Allegation in his contemporaneous statements because he was not intelligent enough to know to say it then.<sup>388</sup> During re-examination, he reiterated that he failed to raise this

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<sup>385</sup> DCS at para 104.

<sup>386</sup> NE, 5 March 2020, pp 60:26–61:17; DCS at para 50.

<sup>387</sup> NE, 2 November 2020, pp 30:25–29, 31:23–28.

<sup>388</sup> NE, 2 November 2020, p 89:16.

during investigations or his EIC as he did not know what he should say and added that he did not recall this fact at the time.<sup>389</sup> As counsel for the Defence indicated during re-examination, the Eng Communication Allegation was not raised before cross-examination. Having dismissed the suggestion that the accused was not intelligent enough to appreciate the need to state the Consumption Defence in the Cautioned Statement (see [89] above), I fail to see why the accused would withhold this piece of information until his cross-examination. Absent a reasonable explanation for the late disclosure of the Eng Communication Allegation, I have no hesitation in finding that it is devoid of merit.

183 For the avoidance of doubt, Eng’s failure to give evidence was due to logistical complications which are unrelated to the merits of the case. At trial, a former CNB officer, Ms Jessica Ting Hui D’cruz, who was an Investigating Officer in the accused’s investigation, testified that Eng was repatriated to Malaysia before the accused’s trial commenced.<sup>390</sup> The CNB’s attempts to contact Eng, Eng’s family and the Malaysian police for leads on Eng’s whereabouts were unsuccessful.<sup>391</sup> The Prosecution also acceded to the Defence’s request for access to court documents relating to Eng’s prosecution.<sup>392</sup> An adverse inference ought not to be drawn if “the failure to produce evidence is reasonably attributable to reasons other than the merits of the case” (*Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [74(a)], citing *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141

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<sup>389</sup> NE, 16 November 2020, p 64:23–26.

<sup>390</sup> NE, 2 March 2020, p 50:3–16.

<sup>391</sup> NE, 2 March 2020, pp 46:23–47:3 (Jessica Ting Hui D’cruz (“Jessica Ting”)), 52:26–53:4 (SSSgt Asilah binte Rahman, the Investigating Officer who took over from Jessica Ting); NE, 1 February 2021, pp 1:12–2:28.

<sup>392</sup> PCS at para 116; D3; NE, 22 August 2019, p 43:7–20.

at [21]). In these premises, no adverse inference against the Prosecution is warranted. For the same reasons, the accused should not be penalised for failing to secure Eng's evidence.

184 In conclusion, the accused has not proved that the arrangement with Ah Kiat was for him to be remunerated in kind. Instead, his statements persuade me to find that the accused accepted Ah Kiat's job offer as he was desperate for money and that he was duly paid by Ah Kiat in cash.

**Whether the accused lacks credibility as a witness?**

185 The Prosecution submits that the accused is an uncredible witness because he provided a wildly inconsistent account of the offence at trial and has a propensity for lying in his self-interest.

186 First, I agree that the accused presented vastly different accounts of the offence at various points in time. Most significantly, the Consumption Defence only surfaced in Dr Lam's Medical Report in July 2019. For over three years prior to this, he consistently maintained that the bundles of heroin were in his possession for repacking. Even where Dr Koh's Second Medical Report stated that he dipped into the drugs he received and used them, the accused did not state that Exhibit D1A2 was for his consumption (see [121] above). As for the Accused's Alleged Heroin Consumption Rate, it increased fivefold from his long statements in December 2015 to his first interview with Dr Winslow in December 2019 (see [145] above). He also sought to resile from admissions made in his long statements that Ah Kiat remunerated him in cash (see [180] above).

187 The accused's belated recharacterisation of Eng's involvement in Ah Kiat's drug enterprise is another departure from his position in his long

statements. Throughout the investigations, the accused consistently exonerated Eng from any involvement in the repacking of the drugs and insisted that Eng's role was limited to that of a money courier.<sup>393</sup> In his Second Long Statement, the accused even questioned whether Eng (who he refers to as "Heng Dai" in the statement) knew that the money he was collecting for Ah Kiat was related to drugs.<sup>394</sup> However, in yet another *volte-face*, during his cross-examination, the accused claimed that Eng delivered drug trafficking paraphernalia (*eg*, plastic packaging and weighing scales) to him on behalf of Ah Kiat<sup>395</sup> and that Eng is a key witness who can corroborate his claim that Exhibit D1A2 was meant for his own consumption (*viz*, the Eng Communication Allegation).<sup>396</sup> The accused's explanation for this belated disclosure of the materiality of Eng's evidence is that he was not aware of its significance.<sup>397</sup> I find this difficult to believe. As early as his Cautioned Statement in 2015, the accused began to limit his own involvement in Ah Kiat's drug operation by claiming that he did not sell the drugs. If Eng was a witness who could corroborate his Consumption Defence, it is incredible that the accused's *cross-examination* was the first instance of the accused raising the importance of Eng's evidence, especially when he has had the benefit of legal representation. All the aforementioned departures from his earlier statements (which are not insignificant) add up to weigh against his credibility.

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<sup>393</sup> Second Long Statement at para 11: ABOD at p 263.

<sup>394</sup> Second Long Statement at para 10: ABOD at p 263.

<sup>395</sup> NE, 2 November 2020, pp 30:11–14.

<sup>396</sup> NE, 2 November 2020, pp 30:23–29, 32:4–19; NE, 4 November 2020, p 14:4–6.

<sup>397</sup> NE, 4 November 2020, pp 14:7–15:13; NE, 10 November 2020, p 38:4–20; NE, 16 November 2020, p 64:13–26.

188 Second, the accused took inconsistent positions within the trial itself. For instance, when cross-examining Insp Eugene, counsel for the Defence asked him if he found any straws *without drugs* in the cupboard pictured in photograph 27<sup>398</sup> in the Rented Room.<sup>399</sup> However, during the accused's cross-examination, he then alleged that there was also a straw of about 8cm in length containing heroin in a white soapbox in the Rented Room, which he did not point out to the CNB officers during the search.<sup>400</sup> Even further still, under cross-examination on 9 November 2020, the accused first said that he *never* told Insp Eugene about the white soapbox (see [27] above).<sup>401</sup> But during his re-examination on 16 November 2020, he then claimed that he *did* tell "the IO" during his arrest (and I infer that the accused was referring to Insp Eugene) about the white soapbox but that this was not recorded in his contemporaneous statements and that he only recalled the white soapbox when being cross-examined.<sup>402</sup>

189 The Prosecution alleges that the accused has a propensity to lie because: (a) he admits to lying to Dr Ng (which I accepted at [161] above); and (b) he claims to have lied to Insp Desmond and Mr Wong about accepting Ah Kiat's job offer because he needed money. I do not go so far as to agree with the Prosecution's allegation. I merely observe that the accused's attempt to explain away his reason for lying to Insp Desmond and Mr Wong appears to be an instance of embellishing his earlier evidence. For context, the accused claimed during cross-examination that the part of para 13 of his Second Long Statement

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<sup>398</sup> PB, photograph 27.

<sup>399</sup> NE, 20 August 2019, pp 10:13–11:6.

<sup>400</sup> NE, 2 November 2020, pp 48:1–49:7; NE, 9 November 2020, pp 22:23–25:12.

<sup>401</sup> NE, 9 November 2020, p 25:10–12.

<sup>402</sup> NE, 16 November 2020, pp 64:27–65:9.

which states that he accepted Ah Kiat’s job offer because he needed cash<sup>403</sup> is accurately recorded but is a lie. At first, on 10 November 2020, he dismissed this part of para 13 of the Second Long Statement as a mere “excuse” he gave to Insp Desmond and refused to explain further.<sup>404</sup> Later, during re-examination on 16 November 2020, the accused changed tack. He then asserted that he “didn’t know why” he told Insp Desmond that he had agreed to work for Ah Kiat because he needed money, and that at the time the Second Long Statement was being recorded, he was unwell and suffering from withdrawal symptoms.<sup>405</sup>

190 I should add that the evolving nature of the accused’s explanation for why he failed to raise the Consumption Defence in his First Contemporaneous Statement is another instance of him embellishing his earlier evidence (see [69] above).

191 In my judgment, the many inconsistencies described above taint the credibility of the accused and fortify the portions of my decision where I prefer the evidence of other witnesses over that of the accused, or decline to believe the accused’s evidence.

### **Conviction**

192 For all the foregoing reasons, the accused fails to establish the Consumption Defence on the balance of probabilities. The presumption of trafficking in s 17(c) of the MDA remains unrebutted.

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<sup>403</sup> Second Long Statement at para 13: ABOD at p 264.

<sup>404</sup> NE, 10 November 2020, pp 27:18–26, 29:5–7.

<sup>405</sup> NE, 16 November 2020, p 58:20–30.

193 I therefore find the accused guilty of having in his possession not less than 25.01g of diamorphine for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA and convict him of the Trafficking Charge accordingly.

### **Sentencing**

194 Having heard the parties' oral sentencing submissions, I find that the alternative sentencing regime in s 33B(1) of the MDA does not apply. Because he repacked the heroin in Exhibit A1A into smaller sachets to facilitate distribution,<sup>406</sup> the accused was not merely a courier (*Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [101]–[104], [112(d)]). Further, no certificate of substantive assistance under s 33B(2)(b) was granted by the Prosecution, nor did the accused submit that he was of unsound mind under s 33B(3)(b). I therefore impose the mandatory death penalty on the accused.

Vincent Hoong  
Judge of the High Court

Mark Tay and Teo Siu Ming (Attorney-General's Chambers) for the  
Prosecution;  
Chin Li Wen Tania, Laura Yeo (Withers KhattarWong LLP) and Lau  
Kah Hee (BC Lim & Lau LLC) for the accused.

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<sup>406</sup> Second Long Statement at paras 24–25: ABOD at pp 268–269.