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

[2026] SGHC 52

Magistrate's Appeal No 9203 of 2024

Between

Abdullah bin Mohammad Kunhi

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Elements of crime — Mens rea — Knowledge]
[Criminal Law — Statutory offences — Misuse of Drugs Act — Whether presumption of trafficking applied to attempts to possess drugs for trafficking]
[Criminal Law — Attempt]
[Criminal Procedure and Sentencing — Charge — Alteration]
[Criminal Procedure and Sentencing — Sentencing — Effect of s 12 of the Misuse of Drugs Act]

Abdullah bin Mohammad Kunhi
v
Public Prosecutor

[2026] SGHC 52

General Division of the High Court — Magistrate's Appeal No 9203 of 2024
Sundaresh Menon CJ, Steven Chong JCA and Ang Cheng Hock JCA
5 February 2026

9 March 2026

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 The appellant, Mr Abdullah bin Mohammad Kunhi, appealed against his conviction and sentence in respect of a charge of attempted possession of not less than 15.01g of methylenedioxymethamphetamine or "MDMA", which has a street name of "ecstasy", for the purpose of trafficking (the "Attempted Trafficking Charge"). The charge has been reproduced at [48] of the judgment of the learned District Judge ("DJ") who heard the matter: see *Public Prosecutor v Abdullah bin Mohammad Kunhi* [2024] SGDC 264 ("GD").

2 On 3 December 2019, the appellant was arrested when he was in possession of two bundles that were found to contain various quantities of methamphetamine and diamorphine, and 100 tablets containing not less than 15.01g of MDMA. He was charged with (among other things):

(a) possession of methamphetamine;

(b) possession of diamorphine; and

(c) possession of not less than 15.01g of MDMA for the purpose of trafficking (the "Trafficking Charge").

These charges have been reproduced at [7] of the GD.

3 The appellant asserted that the drugs in his possession had been mistakenly delivered to him. He claimed that he had only ordered 100 MDMA tablets and not the other drugs. The DJ accepted his defence of mistaken delivery and acquitted him of the charges of being in possession of methamphetamine and diamorphine. The DJ also held that the Trafficking Charge was not made out. However, having regard to the evidence, he decided to amend the Trafficking Charge to the Attempted Trafficking Charge, and convicted the appellant on that charge. For this, the DJ sentenced the appellant to 11 years' imprisonment and ten strokes of the cane. The appellant appealed against his conviction and sentence for the Attempted Trafficking Charge. Although the Prosecution maintained before the DJ that the Trafficking Charge had been made out, it did not appeal against the DJ's decision. We can understand this from the point of view that the sentencing regime for the offence itself and for the attempted offence are the same under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), as we explain below at [39]. But as we pointed out to the learned Deputy Public Prosecutor who was before us, where there is an important point of law that the Prosecution considers was incorrectly decided, it may be unsatisfactory to leave that position undisturbed and untested by an appellate court. In the present circumstances, as we also explain below, we proceeded to consider the correctness of the DJ's decision on this point even in the absence of an appeal by the Prosecution.

4 In the event, we dismissed the appellant's appeal. We also set aside the conviction on the Attempted Trafficking Charge, restored the Trafficking Charge (in the terms stated at [7] of the GD) and convicted the appellant on the Trafficking Charge. We imposed the same sentence that the appellant received for the Attempted Trafficking Charge (11 years' imprisonment and ten strokes of the cane). We gave brief reasons for our decision after the appeal and now set out our reasons more fully.

Facts

Undisputed facts

5 Between 29 November and 1 December 2019, the appellant ordered 100 MDMA tablets from someone named "Boy", and transferred $1,350 to Boy.

6 On 2 December 2019, at about 10.14pm, one Jude Leslie Paul ("Jude") entered Singapore from Malaysia to deliver drugs. On 3 December 2019, at about 12.50am, Jude arrived at an arranged location near a carpark and handed a plastic bag to the appellant. The plastic bag contained two bundles – one was marked "TAMIL 100 - 250", while the other was marked "TAMIL 125". The appellant took the plastic bag and immediately entered a private hire car which had been waiting for him.

7 About ten minutes later, officers from the Central Narcotics Bureau ("CNB") arrested the appellant. While the officers were directing the appellant out of the private hire car, one of the bundles dropped from the appellant's body onto the floor. A further search of the appellant was conducted, and the other bundle was found on his person. The two bundles contained methamphetamine, diamorphine, and 100 tablets containing not less than 15.01g of MDMA.

Appellant's version of events

8 The appellant's case at trial was that he had ordered only 100 MDMA tablets from Boy, and these were all for his own consumption. He claimed that he did not order methamphetamine or diamorphine. He also claimed that the sum of $1,350 that he transferred to Boy comprised $800 being payment for the MDMA tablets, and $550 being payment for e-cigarette ("vape") products that the appellant had previously ordered from Boy.

9 Jude entered Singapore on the instructions of someone named "Dinesh" in order to deliver the two bundles in the plastic bag. After Jude had delivered the bundles to the appellant, he was on his way back to Malaysia when Dinesh called him and told him to retrieve the two bundles from the appellant and deliver the same two bundles to another person, whom we refer to as the "Intended Recipient".

10 Meanwhile, after the appellant received the plastic bag from Jude, he boarded the private hire car, then looked into the plastic bag and saw two bundles.

(a) He was "shocked" or "surprised" to see two bundles because he had ordered only 100 MDMA tablets, and these did not usually come in two bundles.

(b) In his statements to the CNB, the appellant said he thought that the bundles contained 100 MDMA tablets packed with vape accessories.

(c) The appellant decided that when he reached his destination, he would call Boy and ask him why he had received two bundles. He did want to check the contents of the bundles, but he did not do so in the private hire car "since [he] ordered illegal things [and] the situation at

the place didn't permit [him] to check the contents" of the bundles.

Decision below

11 To make out an offence of possessing drugs for the purpose of trafficking, the Prosecution must prove that (*Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 ("*Chong Hoon Cheong*") at [4]):

(a) the accused person possessed the controlled drug in question ("Possession Element");

(b) the accused person knew the nature of the drug ("Knowledge Element"); and

(c) such possession of the drug was for the purpose of trafficking which was not authorised ("Purpose Element").

12 The DJ held that if the appellant made good his contention that the bundles in question had been delivered to him by mistake, then the Trafficking Charge could not be made out. The Prosecution's case was that the two bundles the appellant received were in fact intended for him. The Prosecution had never taken the position that while the MDMA tablets were correctly delivered to the appellant, it was only the other drugs that had been wrongly delivered. Accordingly, the DJ concluded that it would be unrealistic to disaggregate the MDMA from the other drugs and treat it independently (GD at [30]).

13 The DJ considered that if the mistaken delivery defence was established, the appellant could not have been aware of what the bundles contained, including whether they contained 100 tablets of MDMA. In line with this, the DJ found it material that the appellant was "surprised" or "shocked" when he

discovered that he had received two bundles. While the appellant ventured in his statements to the CNB that the bundles contained 100 MDMA tablets and vape accessories, this was "at best, a guess and a guess is insufficient" to satisfy the Knowledge Element; instead, the Prosecution must prove that the appellant was "almost certain" of the nature of the drugs, which is a higher bar to cross (GD at [31]).

14 The DJ accordingly accepted the appellant's defence of mistaken delivery.

(a) From the day of his arrest, the appellant had consistently and repeatedly said that he had ordered only 100 tablets of MDMA (GD at [34]).

(b) Jude testified that Dinesh had instructed him to retrieve the drugs from the appellant and this was highly probative of the fact that the drugs had been wrongly delivered to the appellant (GD at [37]). The DJ placed significant weight on Jude's evidence, bearing in mind (among other things) that the appellant and Jude were not acquainted (GD at [38]).

15 The DJ then considered whether the Attempted Trafficking Charge could be made out under the framework for impossible attempts set out in *Han Fang Guan v Public Prosecutor* [2020] 1 SLR 649.

16 The DJ found that the appellant had intended to possess 100 tablets of MDMA. Furthermore, the burden was on the appellant to prove on a balance of probabilities that the 100 MDMA tablets he intended to possess were not for the purpose of trafficking (GD at [63]). This was because s 17(*i*) of the MDA provided for a statutory presumption of trafficking that applied if a person had in his possession more than 10g of MDMA. In this case, 100 tablets

of the type of MDMA the appellant ordered weighed not less than 15.01g (GD at [62]).

17 The appellant contended that he did not intend to traffic in the MDMA tablets and maintained that he had ordered them for his own consumption so as to rebut the statutory presumption of trafficking. The DJ rejected this and concluded that the appellant's intention to possess the MDMA was for the purpose of trafficking (GD at [82]).

(a) The appellant testified that he intended to consume between two and five MDMA tablets a day. This testimony differed from the account he gave in his statements to the CNB (in which he said that when he last consumed MDMA in March 2019, he would consume two to three tablets daily). There was no corroborative evidence regarding the appellant's rate of consumption (GD at [65]).

(b) The appellant said that he had not consumed drugs after his release on bail on 26 October 2019. The appellant had been arrested on 16 April 2019 for suspected drug offences, and was released on bail in respect of those suspected offences on 26 October 2019. Having remained drug-free since his release on bail, the appellant could not provide a consistent explanation for why he formed an intention to consume MDMA, and why he would order 100 tablets at once (GD at [67]–[69]).

(c) The appellant could not satisfactorily explain how he could afford the drugs he bought if he did not intend to sell them, because he had limited funds and the cost of the drugs was out of proportion to his financial means (GD at [71]–[74]).

(d) The Prosecution adduced messages between the appellant and one "Robin" dated 27 November 2019, in which it was evident that the appellant had been attempting to sell MDMA tablets to someone named Robin a few days before he ordered the MDMA (GD at [75]).

On this basis, the DJ concluded that there was the requisite criminal intent to support the Attempted Trafficking Charge.

18 Turning to the question of the requisite actions, the DJ concluded that the appellant did take sufficient steps to further his criminal intention, because he had done everything possible to complete the offence (GD at [83]–[85]). Accordingly, the DJ convicted the appellant of the Attempted Trafficking Charge.

19 The DJ sentenced the appellant to 11 years' imprisonment and ten strokes of the cane for the Attempted Trafficking Charge. He agreed with the Prosecution that an uplift from the mandatory minimum sentence was appropriate, as this was the appellant's third conviction for a drug trafficking or attempted drug trafficking offence (GD at [117]).

Issues to be determined

20 We considered the following issues in reaching our decision:

(a) Did the DJ err in holding that the Trafficking Charge was not made out?

(b) Can the presumption of trafficking apply to an offence of attempting to possess a controlled drug for the purpose of trafficking?

(c) Did the appellant possess the 100 MDMA tablets for the purpose of trafficking?

(d) What was the appropriate sentence?

Did the DJ err in holding that the Trafficking Charge was not made out?

21 With respect, we considered that the DJ erred in holding that the Trafficking Charge was not made out. Central to this was the manner in which the DJ analysed the question of the appellant's knowledge that he possessed 100 tablets containing MDMA. It seemed to us that the DJ adopted an erroneous approach to the question of knowledge. We also considered that he placed undue weight on the subjective intention of the supplier of the drugs to deliver a particular consignment of drugs to the Intended Recipient and relatedly, he overlooked the fact that on the evidence before him, the MDMA tablets were essentially fungible. The latter proposition was reflected in the fact that despite concluding that the appellant was meant to receive a different consignment of 100 MDMA tablets, the DJ nonetheless attributed the weight of the MDMA found in the consignment of tablets which the appellant did receive to the consignment of tablets which he attempted to (but did not) receive (see [16] above and [62] of the GD).

22 The DJ's reasoning followed on from his finding that the bundles the appellant received were in fact meant by the supplier to be delivered to the Intended Recipient. The DJ concluded on this basis that the appellant could not have known what was in a package intended for someone else. He also considered that when the appellant said in his statements to the CNB that he thought it was MDMA and accessories for vaping, he was at best guessing, when what was required was knowledge to a degree approaching certainty (GD at [31], citing *Public Prosecutor v Yeo Liang Hou* [2023] SGHC 157 at

[30]; *Public Prosecutor v Koo Pui Fong* [1996] 1 SLR(R) 734 ("*Koo Pui Fong*") at [14]).

23 With respect, the inquiry into knowledge is never undertaken by reference to whether someone in possession of a package knows to a degree approaching certainty what precisely the package contains even before he has opened it, or for that matter, what every discrete item contained in the package is. Were that the correct way to undertake this inquiry, most accused persons would not be able to say with certainty what a package they had not opened contained. Instead, the inquiry starts with examining whether the accused person was aware that he was in possession of the thing that turns out to be the controlled drug. Once this has been established, the next question is what he thought it was (see *Zainal bin Hamad v Public Prosecutor* [2018] 2 SLR 1119 ("*Zainal*") at [12] and [49]). If the accused person acknowledges that (a) he expected or thought that he was in possession of the thing that turns out to be drugs (such as a consignment of tablets); and (b) he expected or thought that the thing was the controlled drug in question, that is the end of the inquiry, and the court may conclude that the accused person has the requisite knowledge.

24 The DJ erred in analysing the law by reference, first, to whether the appellant was or could be almost certain what the bundles in the plastic bag contained. Having framed the issue in this way, he concluded that the appellant could not have had such knowledge because those bundles were intended for a different recipient. But this placed undue emphasis on the subjective intent of the supplier. Suppose the supplier had packed two parcels, each containing 100 MDMA tablets, and marked one with 'X' for an intended recipient, 'A', and the other marked 'Z' for an intended recipient 'C', and suppose further the parcels are mistakenly delivered such that A gets Z and C gets X. It would be preposterous to suggest that the criminal act is not completed because the

subjective intention of the supplier to deliver the parcels to particular recipients was not fulfilled. And that analysis is not in any way affected if it happens that the package marked X also contains an envelope with $1000 to settle a debt owed by the supplier to A, but which ends up being received by C. Even so, the fact remains that A wanted and expected to obtain 100 tablets of MDMA from the supplier and he did obtain that.

25 In the present case, the appellant was in possession of a package that included 100 MDMA tablets. The analysis of the appellant's subjective mental state should then proceed from the *appellant's* perspective, rather than the perspective of other participants in the supply chain of the drugs. The appellant had ordered 100 MDMA tablets, expected to receive 100 MDMA tablets, and did receive 100 MDMA tablets from someone whom his supplier, Boy, directed him to meet. Since the appellant transacted with Boy to obtain 100 MDMA tablets, the appellant must have expected that any delivery he received pursuant to this transaction would contain 100 MDMA tablets. None of this would be displaced if the bundles happened to contain additional drugs that the appellant had not ordered. To that extent, he would not be liable for those other drugs, but that would not in any way affect his liability for the drugs he did order and receive.

26 The DJ also found support for his conclusion that the appellant did not know that the bundles contained 100 MDMA tablets because he had expected the tablets to come in one bundle and was "shocked" or "surprised" to receive two bundles (GD at [31]). Knowledge "entails a high degree of certainty" in the fact said to be known (*Koo Pui Fong* at [14]), and the DJ reasoned that the appellant was insufficiently certain of the contents of the bundles for his mental state to count as knowledge (GD at [31]). We disagreed. In his CNB statements and at trial, the appellant never said that he did not think the bundles

contained 100 MDMA tablets. On the contrary, he expressly and unequivocally told the CNB that he thought the bundles contained, among other things, 100 MDMA tablets. There was no evidence to suggest that his surprise at receiving two bundles caused him not to expect or believe that the bundles contained the drugs he ordered. On the contrary, his own explanation for what he made of the presence of two bundles was that he believed the delivery contained 100 MDMA tablets and some other things. And the fact that this was precisely what transpired made it untenable for the appellant to deny knowledge that he was in possession of that controlled drug.

27 For these reasons, we set aside the DJ's findings on the Trafficking Charge. Irrespective of whether the mistaken delivery defence was made out, the appellant was in possession of the 100 tablets, and as far as those tablets were concerned, there was no basis at all for thinking that he did not know they were MDMA tablets. On these facts, the Possession Element and Knowledge Element were made out, and the Purpose Element may then be presumed (*Chong Hoon Cheong* at [4(c)]). Where the presumption of trafficking is invoked, the offence of possession of not less than 15.01g of MDMA for the purpose of trafficking would be made out, unless the appellant proved on a balance of probabilities that he did not possess the MDMA for the purpose of trafficking. Since we found that the Trafficking Charge could *prima facie* be made out on the facts, we exercised our discretion under s 390(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") to set aside the conviction on the Attempted Trafficking Charge and restored the Trafficking Charge (in the words stated at [7] of the GD).

28 To do this, we had to be satisfied that there was sufficient evidence to constitute a case which the accused person had to answer. Further, we had to be satisfied that the proceedings below would have taken the same course, and

the evidence led would have been the same had the altered charge been presented at the trial. The primary consideration was to be sure that the amendment would not cause any injustice, or affect the presentation of the evidence, in particular, the accused person's defence (*Imran bin Mohd Arip v Public Prosecutor* [2021] 2 SLR 1198 at [30]).

29 The amendment of the charge did not prejudice the appellant because the Trafficking Charge was the charge he faced at the trial. This was the charge against which he gave his evidence and presented his defence. We thus amended the charge and complied with the safeguards set out in s 390 of the CPC. We asked the appellant whether he intended to offer a defence different from that presented at the trial (as required under s 390(6) of the CPC). He confirmed, through his counsel, that he did not so intend.

Can the presumption of trafficking apply to an offence of attempting to possess a controlled drug for the purpose of trafficking?

30 Before explaining our reasons for why the Trafficking Charge was made out on the evidence, we address the question of whether the presumption of trafficking in s 17 of the MDA could apply to an offence of *attempting* to possess a controlled drug for the purpose of trafficking. Although this no longer arose on the view we had taken on the need to amend the charge below, the applicability of the presumption to an offence of attempted possession for the purpose of trafficking was the primary issue raised in the appeal. As a result, the point was fully addressed by the parties. Indeed, because it was a novel point, we had appointed Mr Mah Hao Ran, Ian ("Mr Mah") as Young Independent Counsel to assist us. Mr Mah presented a detailed set of submissions, for which we are grateful. In all the circumstances, we will address this issue briefly, even though it is now moot. In our view, the presumption cannot apply to an offence of attempted possession for the

purpose of trafficking.

31 The point was ultimately a simple one, in our judgment. Section 17 of the MDA provides that the presumption is engaged once a person is "proved to have had in his possession" more than a specified quantity of a drug. In other words, the predicate fact that engages the presumption is the accused's knowing possession of drugs beyond a certain quantity (see *Zainal* at [47]–[49]). In a case where the accused person fails to possess a controlled drug, such as where he orders a quantity of MDMA tablets but mistakenly receives a quantity of diamorphine only, the predicate fact of being in possession of the MDMA tablets will not have been established, and the presumption under s 17 cannot then be applied in respect of the attempt to possess that drug.

32 Accordingly, if the DJ had been right that the appellant could not be found to be in possession of the MDMA tablets because the bundles in question were meant for the Intended Recipient and/or because the appellant did not in fact know what they contained, then the presumption of trafficking could not have applied. However, we have since restored the Trafficking Charge, and the presumption of trafficking may indeed be invoked on the facts of this case.

Did the appellant possess the 100 MDMA tablets for the purpose of trafficking?

33 It was not disputed that the appellant was in physical possession of the 100 MDMA tablets as they were inside the two bundles in his possession. He had ordered 100 MDMA tablets, and could not deny that this was included in the bundles he received (see [25]–[26] above). Since the Possession Element and Knowledge Element were made out, the presumption of trafficking could be invoked and the appellant would be presumed to have possessed the 100

MDMA tablets for the purpose of trafficking. The appellant bore the burden of proving on a balance of probabilities that he did not possess the MDMA for the purpose of trafficking. He failed to do so.

34 The appellant argued that he ordered the 100 MDMA tablets for his own consumption, not to traffic in them. But the evidence did not bear this out.

35 The appellant admitted that he was not in the habit of consuming MDMA at the time he ordered it. He testified that he had not felt the urge to consume MDMA since his arrest in April 2019. His case was somewhat odd in that his primary contention was that he intended to consume MDMA *in the future*, but this assertion was unbelievable. The appellant provided far-fetched explanations for why he wanted to restart his drug habit. For instance, he claimed that his mother had cried when she caught him consuming another drug, "Epam", and so he wished to overdose on MDMA to take his life. Apart from being inherently unconvincing, it was contradicted by the appellant himself, as he later stated that his mother's emotional response only occurred after his arrest for the present offence on 3 December 2019, and if true, that could not have been the catalyst.

36 Another piece of evidence which undermined the appellant's personal consumption defence was his admission that his phone contained messages in which he tried to sell MDMA tablets to Robin. These messages were sent on 27 November 2019, a few days before the appellant ordered 100 MDMA tablets from Boy on 30 November 2019 or 1 December 2019. The fact that the appellant tried to sell MDMA to an associate just days before he ordered the MDMA suggested that he ordered the MDMA for the purpose of selling it – especially when the appellant had not himself been consuming MDMA at that time. The DJ rightly rejected the appellant's inconsistent explanations for

these messages.

(a) The appellant claimed that the messages showed that Robin was pestering him for MDMA and that the appellant was trying to put Robin off by quoting him a high price. The DJ took a sensible interpretation of the messages and found that the appellant had offered to sell Robin MDMA and that Robin rejected the offer, prompting the appellant to persuade him to buy the MDMA (GD at [76]). Robin's messages "Don't want bro" and "Next one I will take" implied that the appellant had been pressing Robin to purchase drugs from him.

(b) Separately, the appellant claimed that he was trying to sell Robin a vape product, and not MDMA. But the appellant admitted that he understood "frog" to refer to MDMA tablets, and the DJ correctly concluded that the messages, which referenced the sale of "frog", referred to the sale of MDMA tablets rather than vape products.

37 Accordingly, the appellant failed to rebut the presumption of trafficking, and the Trafficking Charge was made out. In any case, even without reliance on the presumption, the large quantity of MDMA, the appellant's inability to finance such a large amount of MDMA himself, and the appellant's documented attempt to sell MDMA to Robin all gave rise to the inference that the appellant had obtained the drugs for the purpose of trafficking. The appellant's inconsistent and unreliable evidence failed to raise even a reasonable doubt to displace such an inference.

What was the appropriate sentence?

38 Having convicted the appellant on the Trafficking Charge, we imposed the same sentence which the DJ had imposed on him for the Attempted Trafficking Charge (this being 11 years' imprisonment and ten strokes of the cane).

39 Under s 12 of the MDA, a person who "attempts to commit … any offence … shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence". This provision deems a person who attempted an offence as having committed that offence, and makes him liable to be punished as if he had committed that offence (see *Ali bin Mohamad Bahashwan v Public Prosecutor* [2018] 1 SLR 610 at [38]). Hence, when the appellant was sentenced for the Attempted Trafficking Charge by the DJ, he was punished as if he had committed the offence under the Trafficking Charge. In sentencing the appellant, the DJ did not err in deciding that an uplift from the mandatory minimum sentence was warranted, given that this was the appellant's third conviction for a drug trafficking offence (GD at [103] and [117]). We therefore imposed on the appellant the same sentence which he received for the Attempted Trafficking Charge.

Conclusion

40 For these reasons, we dismissed the appeal, having set aside the conviction on the Attempted Trafficking Charge, restored the Trafficking Charge, and convicted him on that. We did not interfere with the sentence.

41 We record our thanks to the Young Independent Counsel, Mr Mah Hao Ran, Ian, for his submissions on the application of the presumption of trafficking to attempts to possess drugs for the purpose of trafficking, which we found to be of assistance to us.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Prakash Otharam and Ashvin Hariharan (Ashvin Law Corporation) for the appellant;
Anandan Bala and Koh Yi Wen (Attorney-General's Chambers) for the respondent;
Mah Hao Ran Ian (Setia Law LLC) as young independent counsel.