

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

**[2016] SGHC 150**

Criminal Case No 9 of 2016

Between

Public Prosecutor

*... Public Prosecutor*

And

Mohsen Bin Na'im

*... Accused*

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**JUDGMENT**

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Illegal importation of controlled drugs]

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] —  
[Presumptions of possession and knowledge]

## TABLE OF CONTENTS

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<b>THE CHARGE</b> .....	<b>2</b>
<b>THE ACCUSED</b> .....	<b>2</b>
<b>AGREED FACTS</b> .....	<b>6</b>
<b>THE PROSECUTION’S CASE</b> .....	<b>11</b>
PRESUMPTIONS UNDER SS 18(1) AND (2) OF THE MISUSE OF DRUGS ACT .....	11
THE ACCUSED’S FIRST CONTEMPORANEOUS STATEMENT .....	12
<b>THE ACCUSED’S CASE</b> .....	<b>13</b>
THE ACCUSED’S ACCOUNT OF EVENTS .....	13
ALI AND HIS RELATIONSHIP WITH THE ACCUSED .....	17
THE TWO PREVIOUS DELIVERIES .....	19
THE ACCUSED’S DEFENCE .....	21
<b>THE KEY ISSUES</b> .....	<b>22</b>
THE EFFECT OF THE FIRST CONTEMPORANEOUS STATEMENT .....	23
<i>Events prior to the recording of the First Contemporaneous Statement</i> .....	23
<i>The recording of the First Contemporaneous Statement</i> .....	28
<i>Events after the recording of the First Contemporaneous Statement</i> .....	33
<i>My conclusion on the effect of the First Contemporaneous Statement</i> .....	37
WHETHER THE ACCUSED HAD CAUSE FOR SUSPICION IN RELATION TO THE ITEMS HANDED TO HIM ON 30 DECEMBER 2014 .....	38
<i>The circumstances in which the Accused collected the diamorphine were         highly suspicious</i> .....	38

<i>The Accused was told that the items he would be bringing into Singapore were illegal.....</i>	<i>41</i>
<i>The Accused was told only that he would be delivering “Cas Cas” bird food but he was also handed other items that did not fit the description.....</i>	<i>44</i>
<i>The Accused’s relationship with Ali would not have given him any reason to attempt such a delivery .....</i>	<i>45</i>
<i>The Accused failed to give a credible or consistent explanation of how the contents of the packets resembled “Cas Cas” .....</i>	<i>49</i>
<i>Conclusion on the existence of cause for suspicion .....</i>	<i>55</i>
WHETHER AND TO WHAT EXTENT THE ACCUSED ACTUALLY INVESTIGATED THE ITEMS HANDED TO HIM ON 30 DECEMBER 2014.....	56
<b>THE LAW .....</b>	<b>62</b>
THE PRESUMPTIONS UNDER SS 18(1) AND (2) OF THE MDA .....	62
A FRAMEWORK FOR APPLYING SS 18(1) AND (2) OF THE MDA .....	66
FURTHER OBSERVATIONS ON <i>DINESH PILLAI</i> .....	68
<b>MY DECISION .....</b>	<b>70</b>
<b>CONCLUDING REMARKS.....</b>	<b>72</b>

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**Public Prosecutor**  
**v**  
**Mohsen Bin Na'im**

**[2016] SGHC 150**

High Court — Criminal Case No 9 of 2016  
Chan Seng Onn J  
4, 8–11 March, 27 April; 17 June 2016

29 July 2016

Judgment reserved.

**Chan Seng Onn J:**

1 The accused claimed trial to a single charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), punishable under s 33(1) of the MDA. In the morning of 31 December 2014, the accused entered Singapore from Malaysia in a car, together with his wife and two of his brothers-in-law. Found in the car were three packets of brown granular substance containing diamorphine, three packets of white crystalline substance containing methamphetamine, 1,000 tablets containing nimetazepam and two baskets containing 200 live birds.

2 I have considered with great care the evidence and submissions of both the Prosecution and the accused, who have put before me two competing factual narratives. Neither narrative is without some degree of attractiveness,

nor is either free from difficulty. But given the statutory presumptions on which the Prosecution relies as part of its case, the burden ultimately lies on the accused to demonstrate that he did not have the requisite knowledge. On the evidence, I find that the accused has failed to discharge this burden and I reject his defence. I also find that the elements of the offence under s 7 of the MDA have been satisfied.

3 I therefore find the accused guilty of the offence for which he has been charged. I will explain my reasons.

### **The charge**

4 There are three charges against the accused, all under s 7 and punishable under s 33(1) of the MDA. The Prosecution proceeded with one charge at trial, for the importation of diamorphine (“the Charge”). The Charge reads as follows:

That you, MOHSEN BIN NA'IM,

on 31 December 2014 at or about 8.45 a.m., at the Tuas Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class ‘A’ of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, not less than 1378 grams of granular I powdery substance which was analysed and found to contain not less than 44.75 grams of diamorphine, without authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under section 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

### **The accused**

5 The accused is Mohsen Bin Na'im (“the Accused”). He is a 42-year-old Singapore citizen. His wife is Yusmazina Binte Mohd Yusof (“Yusmazina”), a Malaysian citizen.<sup>1</sup> They have one biological child. The

Accused and Yusmazina resided at Jalan Indah Nusajaya, Johor Bahru, Malaysia (“the Accused’s residence”) together with their biological child and two children from Yusmazina’s previous marriage.

6 Yusmazina has two brothers-in-law. They are Saiful Azman Bin Mohd Yusof (“Saiful”) and Baddrul Shah Bin Mohd Yusof (“Baddrul”). Yusmazina had been working in Singapore since 2010. She was employed at Singapore Airlines as a ticketing officer and thereafter worked at Carlson Wagonlit Travel Pte Ltd as a travel consultant.<sup>2</sup> Every weekday morning, Yusmazina would drive into Singapore from Malaysia to attend at her workplace<sup>3</sup> in her car, a white 7-seater Proton Exora bearing Malaysian registration number JMT7831 (“Yusmazina’s car”).<sup>4</sup> Prior to 31 December 2014, Yusmazina earned a monthly salary of S\$2,800 to S\$3,000.<sup>5</sup>

7 I will describe the Accused’s employment history and family finances in some detail as they are relevant to his submissions.

8 At trial, the Accused provided a full description of his employment history. Between 1995 and 2013, he worked in a number of companies, largely in the export and logistics industries.<sup>6</sup> He resigned in November 2013 to focus on several “businesses” which he had started during his formal employment.<sup>7</sup> These “businesses” were unregistered businesses and were largely operated on

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<sup>1</sup> NE 8 March 2016, p 103 lines 25 and 26.

<sup>2</sup> 1AB 200 at paras 3 to 4.

<sup>3</sup> NE 8 March 2016, p 107 lines 13 to 31.

<sup>4</sup> 1AB 200 at para 4.

<sup>5</sup> NE 8 March 2016, p 108 at lines 13 to 18.

<sup>6</sup> NE 9 March 2016, p 29 line 28 to p 30 line 9.

<sup>7</sup> NE 9 March 2016, p 30 at lines 6-9.

a freelance basis.<sup>8</sup> He started a “travel business” sometime in 2011 or 2012, and another “bird [trading] business” in 2012.<sup>9</sup> The Accused also had a “transport business” which he began in 2011.<sup>10</sup> In addition, he owned a chicken farm in Johor Bahru since 2014. This was a small-scale operation. The chicken farm was located at a compound at the back of a house belonging to a friend of the Accused. His friend provided the necessary property space and managed the farm, while the Accused himself provided the finance to build the chicken coops. The Accused invested approximately 10,000 RM in the chicken farm, and earned about RM 1,000 of profit per month from the farm.<sup>11</sup>

9 The Accused’s sister and mother live at Spooner Road, Singapore.<sup>12</sup> The Accused commuted into Singapore with Yasmazina frequently for business, at a rate of about four or five days out of a five-day working week in December 2014.<sup>13</sup> On each occasion, Yasmazina would drop him off at his mother’s residence at Spooner Road. The Accused would bring with him any items ordered by the customers of his “bird business” and deliver those items to his customers in the morning. This would normally take between two to three hours. The Accused would then return to his mother’s residence. At about 2 to 3 pm, he would either go to his uncle’s flat at Bedok North and thereafter to a bird shop near his uncle’s flat, or to HarbourFront to assist in a friend’s ferry ticketing business. If the Accused went to the bird shop, he would look for bird cages or new birds, and would also trade with the shop.<sup>14</sup>

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<sup>8</sup> NE 9 March 2016, p 31 at lines 13-17.

<sup>9</sup> NE 9 March 2016, p 30 at lines 13 to 20.

<sup>10</sup> NE 9 March 2016, p 30 at line 29 to p 31 line 1.

<sup>11</sup> NE 9 March 2016, p 31 line 19 to p 33 line 17.

<sup>12</sup> NE 9 March 2016, p 33 line 26 to p 34 line 28.

<sup>13</sup> NE 9 March 2016, p 46 at lines 12 to 16.

<sup>14</sup> NE 9 March 2016, p 35 at lines 11 to 17.

If he had orders for ferry tickets, he would head to HarbourFront where his friend's company, "Wave Master Ferry Services", was located. The Accused would refer customers to his friend or collect ferry tickets from him. At about 5 to 5.30 pm, the Accused would make his way to Yasmazina's office and return to Johor Bahru together with her. They would reach home past 7 pm on a normal day. On days when he did not have travel orders or bird business orders, he would remain in Johor Bahru.<sup>15</sup>

10 In relation to the family finances, I gather from the evidence provided by the Accused, both at trial and in his statements to the police, that his family was reasonably comfortable, free from debt and in fact able to indulge quite frequently in holidays abroad. He stated that he was able to earn about S\$3,000 per month from the bird trading business and S\$2,000 to S\$4,000 per month from his travel business. During the school holiday season, he could easily earn S\$4,000 a month as there was a higher demand for travel.<sup>16</sup> The Accused gave Yasmazina S\$800 to S\$1,000 a month, of which Yasmazina saved between S\$300 to S\$500. The remaining amount was used for travel and other expenses.<sup>17</sup> The Accused himself spent S\$500 to S\$600 per month for his own purposes.<sup>18</sup> Added to Yasmazina's monthly income of S\$2,800 to S\$3,000, it would appear as a matter of simple arithmetic that the family's combined monthly income ranged from S\$7,800 to S\$10,000.

11 The Accused emphasised that his family did not suffer from financial problems prior to his arrest. This was corroborated by Yasmazina's evidence.<sup>19</sup>

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<sup>15</sup> NE 9 March 2016, p 47 line 1 to p 49 line 24.

<sup>16</sup> 1AB 259 at para 2.

<sup>17</sup> NE 9 March 2016, p 38 line 28 to p 39 line 10.

<sup>18</sup> NE 9 March 2016, p 39 lines 11 to 15.

<sup>19</sup> NE 8 March 2016, p 108 lines 8 to 20.



The family travelled to Hong Kong in March and November 2014, and to Tokyo in October 2014.<sup>20</sup> He paid S\$1,500 and S\$2,200 for the two Hong Kong trips respectively<sup>21</sup> and S\$3,500 for the holiday to Tokyo.<sup>22</sup> Yasmazina paid for the remaining expenses.<sup>23</sup> Before 2014, the family visited locations closer to Malaysia such as Phuket, Thailand and Bandung, Indonesia.<sup>24</sup>

### **Agreed facts**

12 The Prosecution and the Accused have jointly produced a Statement of Agreed Facts under s 267 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), which I will adopt. I begin by summarising the key facts.

13 On 31 December 2014, at about 7.15 am, the Accused drove Yasmazina’s car from the Accused’s residence towards the Second Link Checkpoint in Johor Bahru. Yasmazina sat on the front passenger seat of the car, while Saiful and Baddrul sat on the passenger seats behind the driver’s seat. When they reached the Second Link Checkpoint, the Accused and Yasmazina switched seats. Yasmazina then proceeded to drive the car to the A1 Green Channel, lane 10 of Tuas Checkpoint.

14 Yasmazina’s car was stopped by officers from the Immigration and Checkpoint Authority (“ICA”) for an inspection. Corporal Mohammed Fithzuan Bin Maschek (“CPL Fithzuan”) proceeded to check Yasmazina’s car, and found two baskets of live birds under the driver’s seat. CPL Fithzuan then directed Yasmazina to drive the car to the Arrival Green Channel Zone 1

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<sup>20</sup> NE 9 March 2016, p 40 lines 10 to 15.

<sup>21</sup> NE 9 March 2016, p 41 lines 8 to 9.

<sup>22</sup> NE 9 March 2016, p 42 lines 1 to 3.

<sup>23</sup> NE 9 March 2016, p 42 lines 12 to 15.

<sup>24</sup> NE 9 March 2016, p 43 lines 9 and 10.

Vehicle 100% Inspection Pit (“the Inspection Pit”) for further checks. The Accused, Yasmazina, Saiful and Baddrul were directed to exit the car. They were subsequently placed under arrest.

15 At about 8.35 am, at the Inspection Pit, ICA officers conducted a search on Yasmazina’s car. They found two baskets of live birds under the front passenger seat and two grey plastic bags suspected to contain controlled drugs under the passenger seats behind the driver’s seat.

16 The Central Narcotics Bureau (“CNB”) was immediately notified. While ICA officers awaited the arrival of CNB personnel, the two grey plastic bags and their contents were left on the passenger seat behind the driver’s seat. CNB officers arrived at about 8.50 am and seized several items as case exhibits.

17 When CNB officers arrived, they seized:<sup>25</sup>

- (a) One grey plastic bag (marked as “A1”) containing:
  - (i) One transparent plastic packet (marked as “A1A”) containing one transparent plastic packet of brown granular substance (marked as “A1A1”); and
  - (ii) One transparent plastic packet (marked as “A1B”) containing one transparent plastic packet of brown granular substance (marked as “A1B1”).
- (b) One grey plastic bag (marked as “A2”) containing:

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<sup>25</sup> Statement of Agreed Facts at [5]

- (i) One grey plastic bag (marked as “A2A”), which contained wrapping paper with a strip of black tape (marked as “A2A1”). Within A2A1 was further wrapping paper (marked as “A2A1A”). Inside A2A1A was one translucent plastic packet with strips of black tape (marked as “A2A1A1”), which in turn contained one translucent plastic packet of brown granular substance (marked as “A2A1A1A”).

18 At about 10.37 am, CNB officers conducted another search on Yasmazina’s car. Near the last row of passenger seats, within a white plastic bag with a red logo (marked as “B1”), CNB officers found:<sup>26</sup>

- (a) One pink “MUZIC” brand biscuit box (marked as B1A”). Inside this box was one transparent plastic packet (marked as “B1A”), which held one transparent plastic packet containing white crystalline substance (marked as “B1A1A”) and 100 slabs of tablets (marked as “B1A2”).
- (b) One packet of “Yeo’s” winter melon drink (marked as “B1B”). Within this packet was one transparent plastic packet (marked as “B1B1”), which held one transparent plastic packet containing white crystalline substance (marked as “B1B1A”).
- (c) One packet of “Yeo’s” winter melon drink (marked as “B1C”). This contained one transparent plastic packet (marked as “B1C1”), which in turn held one transparent plastic packet containing white crystalline substance (marked as “B1C1A”).

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<sup>26</sup> Statement of Agreed Facts at [6]

19 The search ended at about 11.15 am.<sup>27</sup> The seven drug exhibits (*ie*, A1A1, A1B1, A2A1A1A, B1A1A, B1B1A, B1C1A and B1A2) were analysed by Ms Lim Jong Lee Wendy (“Ms Lim”), an analyst from the Health Sciences Authority (“HSA”). Ms Lim produced seven certificates, all dated 11 February 2015, certifying that:<sup>28</sup>

- (a) A1A1 was a packet containing 459.6 g of granular/powdery substance, which was analysed and found to contain not less than 15.02 g of diamorphine;
- (b) A1B1 was a packet containing 459.6 g of granular/powdery substance, which was analysed and found to contain not less than 15.11 g of diamorphine;
- (c) A2A1A1A was a packet containing 458.8 g of granular/powdery substance, which was analysed and found to contain not less than 14.62 g of diamorphine;
- (d) B1A1A was a packet containing 124.2 g of crystalline substance, which was analysed and found to contain not less than 83.34 g of methamphetamine;
- (e) B1B1A was a packet containing 124.1 g of crystalline substance, which was analysed and found to contain not less than 83.17 g of methamphetamine;
- (f) B1C1A was a packet containing 124.2 g of crystalline substance, which was analysed and found to contain not less than 82.93 g of methamphetamine; and

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<sup>27</sup> Statement of Agreed Facts at [7]

<sup>28</sup> Statement of Agreed Facts at [20]

(g) B1A2 consisted of a total of 1,000 tablets containing nimetazepam.

20 Collectively, exhibits A1A1, A1B1 and A2A1A1A were therefore found to contain 1,378 g of granular/powdery substance containing not less than 44.75 g of diamorphine, at a confidence level of 99.9999%.<sup>29</sup>

21 The Statement of Agreed Facts also indicates that three cautioned statements and four long statements were recorded from the Accused. These statements were given voluntarily by the Accused and no threat, inducement or promise was made to the Accused at any time before or during the recording of these statements. I note that the Statement of Agreed Facts makes no mention of two contemporaneous statements that the Prosecution subsequently relied on at trial. I will describe these two statements in greater detail later in this judgment.

22 I will now describe the cases of the Prosecution and the Accused. At this juncture, it suffices for me simply to outline their respective cases. I will examine and evaluate their detailed arguments on the facts, evidence and law when I explain my findings.

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

#### ***Presumptions under ss 18(1) and (2) of the Misuse of Drugs Act***

23 The Prosecution relies on the statutory presumptions in ss 18(1) and (2) of the MDA. The Accused admits to placing A1, A2, B1 and their contents in Yusmazina's car, and causing them to be imported into Singapore. The Accused also admits that he drove Yusmazina's car with the drug exhibits

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<sup>29</sup> Statement of Agreed Facts at [21]

from his home toward the immigration checkpoint at Johor Bahru, and switched seats with Yusmazina at the checkpoint. Yusmazina then drove the car to Tuas Checkpoint.<sup>30</sup> Thus, according to the Prosecution, the Accused does not deny that he was in possession of the seven drug exhibits (as set out at [19] above), including the diamorphine.<sup>31</sup>

24 The Prosecution submits that, accordingly, under s 18(1) of the MDA, the Accused is presumed to be in possession of diamorphine, a controlled drug. The presumption under s 18(2) of the MDA is in turn triggered. Since the Accused is presumed to have had the diamorphine in his possession, he is, until the contrary is proved, presumed to have known the nature of the drug.<sup>32</sup> The Prosecution further argues that the Accused is unable to rebut the s 18(2) presumption. He collected the diamorphine under suspicious circumstances with full knowledge that they were illegal items, and yet chose to wilfully turn a blind eye towards the contents of the items received. His wilful refusal or failure to check the contents is indicative of his actual knowledge of the nature of the drugs and he fails to rebut the s 18(2) presumption on a balance of probabilities.<sup>33</sup>

***The Accused's first contemporaneous statement***

25 As aforementioned (at [21]), the Accused made two contemporaneous statements, both recorded under s 22 of the CPC.<sup>34</sup> The Prosecution relies in particular on the contemporaneous statement that was first recorded. According to the Prosecution, this statement was recorded by CPL

<sup>30</sup> Prosecution's closing submissions at para 11.

<sup>31</sup> Prosecution's closing submissions at para 12.

<sup>32</sup> Prosecution's closing submissions at para 12.

<sup>33</sup> Prosecution's closing submissions at para 13.

<sup>34</sup> P76 and P77

Muhammad Shalihan Bin Mohamed Ansary (“CPL Shalihan”) on 31 December 2014 at 9.50 am at the A1 Green Channel inspection area, and witnessed by Station Inspection Mohd Raziff Bin Mohd Yusoff (“SI Raziff”). I will refer to this as “the First Contemporaneous Statement”. It is a short but important statement and I set it out in full:

ON 31/12/2014, 0950 HRS at A1 Green Channel inspection area, I CPL Muhammad Shalihan Bin Mohamed Ansary, recorded the contemporaneous statement of B1) MOHSEN BIN NAIM, [NRIC No redacted] [the writing ‘[redacted]’ is cancelled]. B1 was offered on the language to speak and he chose to speak in Malay language. Recording of contemporaneous statement of B1 is witnessed by SI Raziff.

- Q1) What is these? (Recorders Note: I point to two packets of brownish granular substance and one unopened bundle)
- A1) Drugs.
- Q2) What drug is this?
- A2) I do not know.
- Q3) Who does it belong to?
- A3) I do not know.
- Q4) What are you going to do with these drugs?
- A4) Someone will call me and I will hand it over to him.
- Q5) Who is the someone?
- A5) I do not know. I was instructed by my friend, Ali, to just wait for the call after entering Singapore.

The above statement consisting of 05 questions and 05 answers was read back to B1 in English and interpreted in Malay language. B1 affirm that it is his statement and do not wish to make any amendments to it.

At the bottom of the First Contemporaneous Statement are the Accused’s name and NRIC Number as well as the signatures of the Accused, CPL Shalihan and SI Raziff.

**The Accused's case**

26 The Accused claims that “[a]t all times until his arrest, [he] did not have the slightest suspicion that he was carrying drugs in his car”.<sup>35</sup> The presumption under s 18(2) of the MDA is rebutted because the Accused was at most negligent or reckless in failing to establish the contents of the items he was given for delivery. This is “insufficient to amount to wilful blindness as suspicion has not been aroused”.<sup>36</sup>

27 I will now outline the sequence of events described by the Accused.

***The Accused's account of events***

28 At about 6 pm on 30 December 2014, a person named Ali, whom the Accused describes as a friend, called the Accused. Ali asked the Accused when he would be going to Singapore and if he could help Ali to bring some items to Singapore for delivery to Ali's friends.<sup>37</sup> Ali told him that the items to be brought into Singapore were bird food called “Cas Cas”, and that the “Cas Cas” was to be hidden from the ICA officers when the Accused entered Singapore. If ICA officers discovered the “Cas Cas”, the Accused would be questioned on its origins.<sup>38</sup>

29 The Accused added that he did not know if “Cas Cas” could be brought into Singapore without infringing Singapore law, but did not bother to ask around or find out from the authorities if this was legal. He had assumed that if “Cas Cas” was illegal, it would simply be confiscated by ICA officers

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<sup>35</sup> Accused's closing submissions at para 123.

<sup>36</sup> Accused's closing submissions at para 129.

<sup>37</sup> Accused's closing submissions at para 14.

<sup>38</sup> Accused's closing submissions at para 15.



and he would have had to pay a fine at most. The Accused thus agreed to Ali's request. Ali told the Accused that he would ask his friends – whom Ali described as one male Indian and one male Chinese – to hand the items over to the Accused at about 8.30 pm that night at “JUSCO Bukit Indah”, which is a hypermart about 1 km from the Accused's house.<sup>39</sup>

30 That evening, the Accused sent his youngest daughter to a nearby dentist for a tooth filling, and returned home with his daughter at about 8 pm.<sup>40</sup> Thereafter, the Accused drove Yusmazina's car<sup>41</sup> to JUSCO Bukit Indah to meet Ali's friends and collect the items. As the Accused exited the car, he saw one male Indian and one male Chinese waving their hands at him and signalling for him to come over. The Accused had not seen those two men before.<sup>42</sup> The male Chinese asked the Accused if he was “Botak's friend”. The Accused replied “yes”, thinking that “Botak” was Ali since Ali was bald. He did not ask the two males whether they knew “Ali”.<sup>43</sup> The male Indian then passed him two plastic bags containing items. The plastic bags were not tied, but the Accused did not open them to see what they contained. The Accused then carried the bags back to Yusmazina's car and drove home. He arrived at home at about 9 pm and proceeded to place the two plastic bags in the car boot of Yusmazina's car. He then locked the car and went inside his home.<sup>44</sup>

31 The Accused woke at about 6 am the next day, said his prayers, and went to Yusmazina's car and started the engine. He then retrieved one of the

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<sup>39</sup> Accused's closing submissions at para 15.

<sup>40</sup> Accused's closing submissions at para 16.

<sup>41</sup> NE 9 March 2016, p 54 lines 7-9.

<sup>42</sup> Accused's closing submissions at para 17.

<sup>43</sup> NE 10 March 2016, p 69 lines 5 to 20.

<sup>44</sup> Accused's closing submissions at para 18.

two plastic bags from the car boot. He noticed that there were another two grey plastic bags (*ie* A1 and A2) within that bag and that there were items within A1 and A2.<sup>45</sup> The Accused opened the other plastic bag and saw that it held a white plastic bag with red wording on it (*ie* B1). This white plastic bag contained two drink packets (*ie* B1B and B1C) and one box of biscuits (*ie* B1A). He left B1 in the car boot, thinking that the customs officers would not bother with those items when they checked the car.<sup>46</sup>

32 The Accused then stowed A1 and A2 under the rear passenger seat. He did not open them to check what they contained, but when he was holding A1 and A2 he “could feel that they were like a bird food package”.<sup>47</sup> The Accused also placed two baskets of birds (more specifically, Munias, which are a type of bird) under the driver’s seat and another two baskets under the front passenger seat. There were a total of 200 birds in the baskets. His intention was to bring the birds into Singapore and sell them for S\$3 each.<sup>48</sup>

33 Alongside the Accused and Yasmazina in Yasmazina’s car were Baddrul and Saiful, who wanted to go for a short trip to Singapore and do some shopping.<sup>49</sup> The Accused drove to the immigration checkpoint at Johor Bahru. Upon clearing customs at the checkpoint, the Accused and Yasmazina switched seats. Yasmazina then drove to the Green Channel at Tuas Checkpoint, where they were stopped by customs officers for a check of the vehicle. Yasmazina exited the car, went to the back of the car and opened the car boot. The Accused waited in the front passenger seat. A male Malay ICA

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<sup>45</sup> Accused’s closing submissions at para 23.

<sup>46</sup> Accused’s closing submissions at para 24.

<sup>47</sup> Accused’s closing submissions at para 25.

<sup>48</sup> Accused’s closing submissions at para 26.

<sup>49</sup> Accused’s closing submissions at para 22.

officer checked the underside of the driver's seat and discovered the two baskets of birds there. The ICA officer asked the Accused what the baskets contained and the Accused responded, "birds, sparrow". The Accused in turn asked the ICA officer if the birds could be released, and the ICA officer replied, "Definitely not". The ICA officer then instructed Yasmazina to drive the car further forward for additional inspection.<sup>50</sup>

34 After Yasmazina parked the car at the Inspection Pit, the Accused exited the car and surrendered the two other baskets of birds kept under the front passenger seat. He did not think of the plastic bags kept under the seats and in the car boot. The Accused claims that he was more concerned that a fine would be imposed for the smuggling of birds into Singapore.<sup>51</sup> The Accused, Yasmazina, Baddrul and Saiful then went into the ICA office. Subsequently, the ICA officers told the Accused to return to Yasmazina's car for photo-taking. Yasmazina, Baddrul and Saiful remained in the ICA office.<sup>52</sup>

35 The Accused returned to the car and saw Corporal Muhammad Fairuz Bin Mohammad ("CPL Fairuz") conducting a check on the rear passenger seats. CPL Fairuz found the two plastic bags kept there (*ie* A1 and A2). From A1, CPL Fairuz took out two packets containing brown substance (*ie* A1A1 and A1B1), and asked the Accused what they contained. The Accused saw that A2 contained a package wrapped with coloured paper.<sup>53</sup> CPL Fairuz kept asking the Accused to answer his question about the contents of A1A1 and A1B1. The Accused was shocked and did not know what to say in reply, as he knew that A1A1 and A1B1 were not "Cas Cas" seeds and they did not look

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<sup>50</sup> Accused's closing submissions at para 27.

<sup>51</sup> Accused's closing submissions at para 28.

<sup>52</sup> Accused's closing submissions at para 29.

<sup>53</sup> Accused's closing submissions at para 29.

anything similar in shape to “Cas Cas” seeds. The Accused thought that they might contain drugs. Given the “serious look” of CPL Fairuz, the Accused knew that it was wrong to have A1A1 and A1B1. After about a minute, the Accused told CPL Fairuz that A1A1 and A1B1 were “bird food ‘Cas Cas’”. CPL Fairuz replied “you do not know what is these?” Before the Accused could answer, he was handcuffed by other ICA officers.<sup>54</sup>

### *Ali and his relationship with the Accused*

36 Ali is undoubtedly a key figure in the Accused’s narrative, given that the Accused only received the diamorphine under Ali’s instructions. I will therefore set out key details provided by the Accused at trial about Ali and his relationship with the Accused. However, the exact identity of Ali remains unknown.

37 The Accused claims that Ali is a Singaporean male in his 40s. He has other nicknames such as “Alex”, but his actual name as reflected in his passport is “Iskandar”.<sup>55</sup> The Accused also claims to have a photocopy of Ali’s passport,<sup>56</sup> though he did not produce this at trial.

38 According to the Accused, he first met Ali in the middle of 2013.<sup>57</sup> Ali became a customer of the Accused’s bird business and would buy birds and bird cages from the Accused. The Accused claims that Ali would pay RM 3,000-4,000 for two to three birds, despite a cost price of only RM 300-400 for the birds.<sup>58</sup> They met a total of five times in 2013, all for the same purpose of

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<sup>54</sup> Accused’s closing submissions at para 31.

<sup>55</sup> Accused’s closing submissions at para 91.

<sup>56</sup> NE 9 March 2016, p 71 lines 18 to 22.

<sup>57</sup> NE 11 March 2016, p 38 line 28 to p 39 line 9.

<sup>58</sup> NE 9 March 2016, p 72 line 1 to p 73 line 5.

Ali's purchase of birds and bird cages from the Accused.<sup>59</sup> The Accused did not liaise directly with Ali to arrange these meetings. Instead, the Accused would contact or be contacted by one of Ali's friends.<sup>60</sup> Following the transactions in 2013, the Accused next communicated with Ali only in October 2014. The Accused agreed that prior to October 2014 (which was about two months prior to his arrest), he knew very little about Ali.<sup>61</sup>

39 From October 2014, the Accused and Ali would make telephone calls to each other on Saturdays and Sundays, when the Accused was in Johor Bahru.<sup>62</sup> The calls were about birds and for the purpose of marketing birds to Ali.<sup>63</sup> The Accused explained that this was part of his standard business practice: his customers would inform him if they wanted certain birds, and he would then call those customers if those birds became available.<sup>64</sup>

40 In November 2014, Ali asked the Accused about the Accused's travel services as Ali was seeking to purchase tickets from Johor Bahru to Batam.<sup>65</sup> At some later point in November 2014, Ali invited the Accused and his family for a trip to Desaru, Malaysia.<sup>66</sup> The Accused and his family arrived in Desaru at about 9 pm for a night barbeque and left at 3 am the next day.<sup>67</sup> The Accused gave evidence that even after the Desaru trip, he and Ali were "not

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<sup>59</sup> NE 11 March 2016, p 39 lines 20 to 24.

<sup>60</sup> NE 11 March 2016, p 54 lines 16 to 22.

<sup>61</sup> NE 11 March 2016, p 55 lines 8 to 24.

<sup>62</sup> NE 11 March 2016, p 56 lines 7 to 8.

<sup>63</sup> NE 11 March 2016, p 57 lines 8 to 25.

<sup>64</sup> NE 11 March 2016, p 57 lines 15 to 22.

<sup>65</sup> NE 11 March 2016, p 57 lines 29 to 32.

<sup>66</sup> NE 11 March 2016, p 39 lines 27 to 31.

<sup>67</sup> NE 11 March 2016, p 41 line 31 to p 42 line 9.

close”.<sup>68</sup> He described their relationship as “normal friends, casual friends”.<sup>69</sup> Between October and December 2014, the Accused met Ali not more than ten times in total.<sup>70</sup> On each occasion, their meeting would last between half an hour to two hours.<sup>71</sup>

### ***The two previous deliveries***

41 The Accused testified that he made deliveries for Ali from Malaysia to Singapore on two previous occasions. The first occasion was in November 2014. Ali called the Accused and requested him to deliver two boxes of “Ferrero Rocher” chocolates and six packets of “Yeo’s” packet drinks from Malaysia into Singapore.<sup>72</sup> Ali told the Accused that the items were for Ali’s children.<sup>73</sup> The Accused collected the items directly from Ali, who arrived outside the Accused’s house in a taxi.<sup>74</sup> Ali instructed the Accused to deliver the items to a person who would be waiting for the Accused at 1 pm the following day outside the front gate of Temenggong Mosque, which was near VivoCity, in Singapore.<sup>75</sup> The Accused did as told.<sup>76</sup> At trial, the Accused stated that when he received the items from Ali in a plastic bag, he could see the drink packets and the boxes of chocolates,<sup>77</sup> but did not further inspect

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<sup>68</sup> NE 11 March 2016, p 42 lines 22 to 29.

<sup>69</sup> NE 11 March 2016, p 42 line 27.

<sup>70</sup> NE 11 March 2016, p 61 lines 20 to 22.

<sup>71</sup> NE 11 March 2016, p 62 lines 26 to 27.

<sup>72</sup> NE 11 March 2016, p 72 line 27 to p 73 line 3.

<sup>73</sup> NE 11 March 2016, p 71 line 31.

<sup>74</sup> NE 11 March 2016, p 72 lines 4 to 17.

<sup>75</sup> NE 11 March 2016, p 75 lines 22 to 28.

<sup>76</sup> NE 10 March 2016, p 73 lines 9 to 16.

<sup>77</sup> NE 11 March 2016, p 74 lines 5 to 8.

them as he assumed by their looks and weight that they were drinks and chocolates.<sup>78</sup>

42 The second occasion was in December 2014. Similar to the first occasion, Ali asked the Accused whether he would be entering Singapore the next day and if he was willing to send food to Ali's children. The Accused agreed to pass the items to a person outside Temenggong Mosque.<sup>79</sup> The Accused received the items from the taxi driver who had driven Ali to the Accused's home on the previous occasion.<sup>80</sup> Ali himself did not turn up this time. The Accused received a plastic bag containing two other plastic bags, which in turn held what appeared to be three or four chocolate boxes. The Accused did not look inside the plastic bags but merely felt the shape of the chocolate boxes.<sup>81</sup> The next day, when the Accused was outside Temenggong Mosque, a person waved the Accused over and asked him if he was "Iskandar's friend". The Accused indicated that he was and handed over the items to that person.<sup>82</sup>

### ***The Accused's defence***

43 In short, the Accused submits that he was manipulated by Ali into carrying out the deliveries of items into Singapore. Ali created the impression that he was a valuable customer by purchasing expensive birds from the Accused.<sup>83</sup> Ali knew that the Accused travelled frequently into Singapore and would go for Friday prayers at Temenggong Mosque.<sup>84</sup> Thus, Ali deliberately

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<sup>78</sup> NE 11 March 2016, p 73 lines 22 to 27.

<sup>79</sup> NE 11 March 2016, p 78 lines 4 to 9.

<sup>80</sup> NE 11 March 2016, p 78 lines 13 to 20.

<sup>81</sup> NE 11 March 2016, p 78 line 27 to p 79 line 12.

<sup>82</sup> NE 11 March 2016, p 81 line 27 to p 82 line 15.

<sup>83</sup> Accused's closing submissions at para 105.

requested the Accused to make the first and second deliveries on Fridays.<sup>85</sup> The Accused submits that “he is a very pleasing person” and possessed a “spirit of volunteerism for his customers”. He therefore agreed to run errands for Ali, which ultimately precipitated in disaster.<sup>86</sup>

44 The Accused also argues that his conduct up to the point of arrest indicates that he did not have the slightest suspicion that the plastic bags handed to him on 30 December 2014 contained drugs.<sup>87</sup> It suffices for me to set out the most pertinent examples of such conduct:

- (a) The Accused did not take great pains to conceal A1 and A2. He simply inserted them under the car seats. CPL Fairuz was able to detect A1 and A2 without much difficulty.
- (b) The Accused entered Singapore together with his wife and brothers-in-law. If he had known that he was carrying drugs, he would not have placed them at risk of arrest.
- (c) The Accused had no reason to suspect that A1 and A2 contained drugs, given that he had carried out two previous deliveries for Ali without incident.
- (d) The Accused brought 200 live birds with him. If he had known that he was importing such quantities of drugs into Singapore, he would not have risked arousing the suspicion of ICA officers by bringing in such a large number of birds. If the ICA officers checked

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<sup>84</sup> Accused’s closing submissions at para 106.

<sup>85</sup> Accused’s closing submissions at paras 107 and 108.

<sup>86</sup> Accused’s closing submissions at para 110.

<sup>87</sup> Accused’s closing submissions at para 131.



Yusmazina's car, they would invariably have found the birds and thereafter subjected Yusmazina's car to a full inspection.

(e) The Accused and his family were financially stable with no financial problems. The Accused and Yusmazina collectively earned a not insubstantial income and could bring the family for several holidays in 2014 (see [10] and [11] above). There was therefore no reason for him to resort to drug importation to earn additional money. In fact, he received no money from Ali for the deliveries.

### **The key issues**

45 Having received and considered the evidence and submissions, I find that the following key issues arise for my determination:

- (a) The effect of the First Contemporaneous Statement;
- (b) Whether the Accused had reason to investigate the items handed to him on 30 December 2014; and
- (c) Whether and to what extent the Accused actually investigated those items.

46 I will now describe and explain my findings on each of these issues.

### ***The effect of the First Contemporaneous Statement***

#### ***Events prior to the recording of the First Contemporaneous Statement***

47 The First Contemporaneous Statement poses an obvious and immediate hurdle to the Accused's bid to prove on the balance of probabilities that he did not know the contents of the packets that he carried into Singapore.

In this statement, the Accused's response to CPL Shalihan's query about the contents of A1A1, A1B1 and A2A1A1A was, quite simply, "Drugs." I have set out the entirety of the statement at [25] above. It is significant that when CPL Shalihan asked the Accused the first question "What is these?", two packets of brownish granular substance and one *unopened* bundle were shown to the Accused.<sup>88</sup> The Accused's answer that they were "Drugs" extended not only to the two packets of brownish granular substance contained in transparent packaging (*ie* A1A1 and A1B1) but also to the *unopened* bundle. As described above at [17(b)(i)], the packet of diamorphine (*ie* A2A1A1A) within this unopened bundle was contained in a further translucent plastic packet with strips of black tape (*ie* A2A1A1), which was in turn contained in a sheet of wrapping paper (*ie* A2A1A), which was then further wrapped in another sheet of wrapping paper with a strip of black tape (*ie* A2A1). I emphasise that A2A1A1A therefore could not have been visible when the overall bundle remained unopened. This is very important from the point of view of establishing whether or not the Accused had prior intimate knowledge of the nature of the items contained in the plastic bag that he was bringing into Singapore.

48 The Accused submits that prior to the recording of the First Contemporaneous Statement, ICA officers had already informed the Accused that the packets contained "heroin". He suggests that CPL Fairuz showed the two packets of brown granular substance to him and told him that the packets contained "heroin".<sup>89</sup> The Accused relies on certain responses given by Sergeant Muhammad Dzulkhairi Bin Karsani ("SGT Dzulkhairi") during

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<sup>88</sup> See also NE 10 March 2016, p 11 line 15 to p 12 line 11.

<sup>89</sup> Accused's closing submissions at para 65.

cross-examination. At the material time, SGT Dzulkhairi held the rank of Corporal.

49 According to the conditioned statement of SGT Dzulkhairi, he performed a search on Yasmazina's car on 31 December 2014 at about 8.30 am at Tuas Checkpoint, together with CPL Fairuz and Sergeant Muhamad Fahmi Bin Chupari ("SGT Fahmi").<sup>90</sup> During cross-examination, SGT Dzulkhairi indicated that after the search ended, he remained together with the Accused as his task was to secure the Accused to prevent his escape.<sup>91</sup> SGT Dzulkhairi was then asked whether anyone spoke to the Accused after the cessation of the search, and SGT Dzulkhairi gave evidence that as far as he remembered, no one else talked to the Accused.<sup>92</sup> I reproduce the relevant section of the cross-examination by Mr Kanagavijayan Nadarajan, counsel for the Accused, that followed upon SGT Dzulkhairi's reply:

Q: So if that's the case then no one would have---no one from ICA would have told the accused what they had found in his car. Correct?

Court: Logically, if no one spoke to him---

Witness: Mm.

Court: ---then no one else would have told him that packages of drugs were found in the car. Because no one approached him to talk to him.

Witness: Er, as far as I can remember when, er, I was at the back of the car with him and my colleague, Cpl Fairuz, showed him a plastic bag.

Court: Oh, Cpl Fairuz showed him a plastic bag---

Witness: Showed him a plastic bag.

Court: ---whilst he was---the accused was with you at the back of the car.

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<sup>90</sup> 1AB216

<sup>91</sup> NE 4 March 2016, p 80 lines 17 to 27.

<sup>92</sup> NE 4 March 2016, p 81 lines 8 to 25.

Witness: Yes.

Court: Then did you hear Cpl Fairuz asked anything?

Witness: I cannot remember what he asked but, er---

...

Q: Now, Cpl Fairuz---Mr Khairi?

A: Yes.

Q: Cpl Fairuz had earlier given evidence---

A: Mm-hm.

Q: ---that he did not talk to the accused at all, that he had shown the plastic bag to Insp Quek, who in turn had inspected the plastic bag. So he had early---earlier given evidence in this Court, so now you're saying that Cpl Fairuz showed a plastic bag to the accused. So is Cpl Fairuz telling a lie in this Court or are you telling the truth?

A: No, *as far as I can remember that Cpl Fairuz showed him the plastic bag and the subject, er---upon seeing the plastic bag, the subject looked down.*

Court: Looked down.

Witness: Yah.

Q: So what do you see---what did he say?

A: I cannot remember what he say.

...

Q: So we are asking you to assist this Court---

A: Yes, I understand.

Q: ---if the accused had said anything upon seeing this plastic bag.

A: That is so far as I can remember.

Court: So all you remember is that he looked down.

Witness: Yes.

Court: Did he say anything?

Witness: I cannot remember what he said.

Q: Or did Cpl Fairuz say anything to the accused? You said---

Court: When he showed him the plastic bag---

Nadarajan: Yes.

Court: ---*did Cpl Fairuz ask him any questions, say anything to him?*

Witness: *I cannot remember.*

Court: All you remember is Cpl Fairuz showed him a plastic bag.

Witness: Show him a plastic bag, yah.

Court: Well, showed him one plastic bag.

Witness: Yes, Sir.

Court: Okay.

Q: What happened after that?

A: After that the---

Court: The accused looked down, that's what he said.

Witness: Yah.

Court: The accused looked down---

Nadarajan: Yes.

Court: ---after that what else happened?

Nadarajan: Yes, yes.

Q: After the accused looked down, what happened?

A: Then the---the whole op---we were instructed by Insp Quek to cease the whole operation.

Court: Yes.

A: Yah.

Q: I have no further questions. Thank you.

[emphasis added]

50 The Accused submits that “there is some credible evidence...to show that there could have been a conversation between [CPL Fairuz] and the Accused”.<sup>93</sup> He explains that “there was some contact and conversation

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<sup>93</sup> Accused's closing submissions at para 55.

between the Accused and [CPL Fairuz]", and that SGT Dzulkhairi gave evidence that "he could not remember" whether there was such a conversation between the Accused and CPL Fairuz. He proceeds to argue that "[h]ence, even before the record of the contemporaneous statement, it is submitted that the Accused had come to know from the ICA officers that the plastic bag contained drugs".<sup>94</sup>

51 I reject this submission. I find that the responses provided by SGT Dzulkhairi during cross-examination do not indicate that CPL Fairuz spoke to the Accused, much less that he actually told the Accused that the packets contained "heroin". SGT Dzulkhairi's evidence is that when CPL Fairuz showed the Accused the plastic bag, the Accused simply "looked down". I believe SGT Dzulkhairi's evidence on this point. It is pertinent to highlight that this spontaneous behaviour of the Accused in looking down immediately upon being shown the plastic bag in itself suggests to me that the Accused was involuntarily exhibiting some guilty feelings, even *before* the items within the bag (which could not be seen at this stage) were taken out and shown to the Accused. SGT Dzulkhairi was unable to recall whether CPL Fairuz said anything to the Accused, or if the Accused said anything upon seeing the plastic bag. There is nothing in this series of questions and answers that demonstrates that the Accused was informed by ICA officers, prior to the recording of the First Contemporaneous Statement, that A1A1, A1B1 and A2A1A1A contained "heroin".

52 I will make two further observations on this submission. First, the Accused did not state in any of his nine recorded statements that any ICA officer told him that the packets contained "heroin". He had the full

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<sup>94</sup> Accused's closing submissions at para 60.

opportunity to give a detailed and complete account of the events that occurred on 31 December 2014, yet failed to mention a conversation as crucial to his case as this. This omission casts serious doubt on the Accused's submission. Second, counsel for the Accused never once asked or put to CPL Fairuz during his cross-examination that CPL Fairuz spoke to the Accused, and told the Accused that the packets contained "heroin" or drugs. I am led ineluctably to the conclusion that the Accused's defence in this regard is nothing but an afterthought.

*The recording of the First Contemporaneous Statement*

53 I now turn to the Accused's allegations regarding CPL Shalihan's recording of the First Contemporaneous Statement. At trial, the Accused claimed that he did not say, in response to CPL Shalihan's question about what A1A1, A1B1 and A2A1A1A were, that they were "Drugs" (or "*dadah*" in Malay). According to the Accused, his response was "'Cas Cas' bird food". He also asserted that he told CPL Shalihan that ICA officers had told him that the packets were actually drugs.<sup>95</sup> But the Accused agreed that the First Contemporaneous Statement correctly and accurately records his responses to CPL Shalihan's remaining questions (*ie* Questions Q2 to Q5).<sup>96</sup>

54 The Accused further alleged that when CPL Shalihan read the statement back to him in Malay, CPL Shalihan interpreted the Accused's response to the question about the contents of A1A1, A1B1 and A2A1A1A as "You answered as 'Cas Cas' bird food, but ICA said drugs, right?"<sup>97</sup> The

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<sup>95</sup> NE 9 March 2016, p 104 lines 11 to 20.

<sup>96</sup> NE 9 March 2016, p 104 line 21 to p 105 line 9.

<sup>97</sup> NE 9 March 2016, p 105 lines 20 to 24.

Accused agreed that both he and CPL Shalihan had then signed the First Contemporaneous Statement.

55 The Prosecution proceeded to cross-examine the Accused on why, if the Accused had informed CPL Shalihan that the packets contained “Cas Cas” bird food (*ie* in response to the first question), he would have gone on to answer the remaining questions in the First Contemporaneous Statement as he did.<sup>98</sup>

Q: Was question 2 asked to you?

A: Yes.

Q: So the question was: [Reads] “What drug is this? Correct, right?

A: Yes.

Q: *Why didn't you say, “But I say this is ‘Cas Cas’”?*

A: *But be---because before that, I have already told him. But it was ICA that inform who---inform me that they were drugs.*

Q: So meaning to say, you thought that these were drugs by the time you answered question 2?

A: I actually do not---I'm not sure because as far as I know, these items are “Cas Cas”, bird food.

Q: Wouldn't you be eager to point out that, “This is ‘Cas Cas’, this is not drugs”?

A: Yes, I told.

Q: When asked second question: [Reads] “What drug is this?” *Wouldn't you want to repeat and say, “I think this is ‘Cas Cas’”?*

A: *Well, because this question was: [Reads] “What drug is this?” I really do not know what drug this is. So---and as far as I knew, these items were “Cas Cas”, which is bird food.*

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<sup>98</sup> NE 9 March 2016, p 25 line 30 to p 27 line 16



- Q: Okay. Let me just ask you about question 3, then:  
[Reads] "Who does it belong to?" Why did you say:  
[Reads] "I do not know."
- A: Well, yes, it is so because I do not know to whom I was to deliver these items.
- Q: *You know by then, according to you, ICA told you it's drugs, right? According to you, right? So, wouldn't you be eager to tell CNB, "This is not my things? This is Ali's."*
- A: May I know---may I know what is it that you are asking? I'm not sure what you are asking.
- Q: Why did you say: [Reads] "I do not know?"
- A: *The question 3 is: [Reads] "Who does it belong to?" I really do not know to whom I was to send the item to. I really do not know.*
- Q: But didn't you say that Ali was the one who passed this to you?
- A: Yes. But---but these items were to be handed to somebody else.
- Q: Okay. So, you stand by your answers to question 4 and question 5, correct?
- A: Yes.
- Q: And you could say that Ali was the one who gave you instructions to wait for a call upon coming into Singapore?
- A: It's not actually an instruction. Because he knew that when I---after I entered Singapore, he will call me because I actually don't have the time to de---to send this item. I---I will just tell him where I would be because I have many places to go to.
- Q: Okay. So you just happen to not mention that the item belongs to Ali and it's not your item.
- A: That is so. I did not mention because question five, referring to question five: "Who is this someone?" Just asking about the "someone"?

56 I agree with the Prosecution that if the Accused had really believed that the packets contained "Cas Cas" bird food and had informed CPL Shalihan as such in response to CPL Shalihan's first question, the Accused would not have

gone on to provide such replies to CPL Shalihan's remaining questions as recorded in the statement. For instance, in response to CPL Shalihan's subsequent query "What are you going to do with these drugs?", one would have expected the Accused to (i) deny that the packets contained drugs; (ii) reiterate that he was under the impression that the packets contained "Cas Cas" bird food and (iii) explain that, on that premise, he was to deliver the packets to one of Ali's friends in Singapore. Instead, the Accused simply replied, "Someone will call me and I will hand over it to him."

57 The fact remains that in his responses to questions Q2 to Q5, the Accused never once contended that the packets did not contain drugs or that he did not know they contained drugs as opposed to bird food. This was despite the repeated references to drugs in CPL Shalihan's questions. The Accused admitted that he was at all times aware that drug importation was a serious criminal offence in Singapore which potentially carried the death penalty.<sup>99</sup> In my judgment, given the Accused's knowledge of the gravity of the situation, had he truly no knowledge that the packets contained drugs as opposed to bird food, he would have assertively and categorically denied that the packets contained drugs or that he had any such knowledge when answering CPL Shalihan's questions. I also find that the equivocal and oblique manner in which he responded to questions during cross-examination in the extract at [55] above marred his credit in the eyes of the court.

58 I also reject the Accused's claim that CPL Shalihan deliberately misread the Accused's answer when reading the First Contemporaneous Statement back to the Accused.<sup>100</sup> The Accused could not provide any explanation why CPL Shalihan would have done so. In addition, I accept CPL

<sup>99</sup> NE 10 March 2016, p 6 lines 16 to 23.

<sup>100</sup> NE 10 March 2016, p 28 lines 8 to 15.

Shalihan's evidence, given repeatedly and consistently under cross-examination, that he showed the Accused the statement and allowed him to read the statement before the Accused signed it.<sup>101</sup> In any case, I do not think that the Accused, a literate and intelligent man capable of running several businesses and who was fully aware of the seriousness of the situation, would have signed the First Contemporaneous Statement without having read it and assured himself that it accurately reflected his answers. It is a very brief statement containing short questions that were to the point and brief answers from the Accused that answered the questions directly. I do not think that the Accused would have any difficulty reading the First Contemporaneous Statement for himself and ensuring that it was accurate before he signed it. I observe also that SI Raziff gave evidence that he clearly remembered CPL Shalihan reading the statement back to the Accused, and that the answer to the first question read by CPL Shalihan was "*dadah*".<sup>102</sup> SI Raziff testified that CPL Shalihan also interpreted the word "*dadah*" into English and then Malay.<sup>103</sup>

*Events after the recording of the First Contemporaneous Statement*

59 The Prosecution refers to the conditioned statement of Staff Sergeant Muhammad Syahrul Hisyam Bin Pungot ("SSGT Syahrul").<sup>104</sup> According to SSGT Syahrul, after A1A1, A1B1 and A2A1A1A were found, SSGT Syahrul approached the Accused at about 10.37 am and asked him whether he had anything he wished to declare. The Accused said that he did not know. SSGT Syahrul then asked him if he wished to cooperate with the CNB, to which the Accused replied, "I really don't know". SSGT Syahrul then asked the Accused

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<sup>101</sup> NE 8 March 2016, p 12 lines 8 to 13, p 13 lines 1 to 2; p 21 line 25 to p 22 line 12..

<sup>102</sup> NE 8 March 2016, p 34 lines 10 to 22, p 35 lines 14 to 24.

<sup>103</sup> NE 8 March 2016, p 35 lines 17 to 24

<sup>104</sup> 1AB 228 to 230.

once more if he wished to cooperate, following which the Accused led SSGT Syahrul to the rear of Yusmazina's car and informed him that there was another plastic bag which had been given to him.

60 SSGT Syahrul testified that he had asked the Accused what was inside the plastic bag he had mentioned, and the Accused had replied that he had been told that it was meant for his children. SSGT Syahrul then instructed the Accused to show him the plastic bag. The Accused pointed to a plastic bag "on the left side of the drink compartment holder" in the car.<sup>105</sup> SSGT Syahrul retrieved the plastic bag and inspected its contents. He saw that the plastic bag contained one biscuit box (*ie* B1A) and two "Yeo's" drink packets (*ie* B1B and B1C). SSGT Syahrul took a packet of crystalline substance (*ie* B1A1A) and numerous slabs of tablets (*ie* B1A2) out of the biscuit box. He noticed that the bottoms of B1B and B1C appeared to have been opened previously and subsequently resealed. He then opened the bottoms of B1B and B1C and saw that they each contained a packet of crystalline substance (*ie* B1B1A and B1C1A). He then handed over the exhibits to SI Raziff.<sup>106</sup>

61 The Prosecution submits that if the Accused took the position that he did not import drugs into Singapore, he would have said "no" in response to SSGT Syahrul's query about whether he had anything else to declare, rather than "I don't know". Counsel for the Accused simply put to SSGT Syahrul during cross-examination that at no time did the Accused say to SSGT Syahrul that B1 was for the Accused's children, and that the Accused had in fact mentioned to SSGT Syahrul that the Accused's "friend" had asked him to bring B1.<sup>107</sup> Counsel did not furnish any explanation or identify any basis for these assertions.

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<sup>105</sup> NE 4 March 2016, p 103:10

<sup>106</sup> 1AB 229–230

62 During the Prosecution's cross-examination of the Accused on this point, the Accused continued his dance of equivocation:

Q: Well, according to PW9, after you said "I don't know", he asked you again, "Do you wish to cooperate with the CNB?" Do you remember that?

A: Yes, maybe.

Q: It was only then that you mentioned you had another plastic bag which had been given to you, correct?

A: Yes.

Q: Do you remember that PW9 Syahrul, asked you what the plastic bag contained?

A: He didn't ask.

Q: I'm telling you now that PW9's evidence is that he did ask you, and this was at the point before PW9 saw the plastic bag for himself. Do you remember that he said that in Court?

A: I can't really remember that.

Q: *His evidence is that you replied that it was meant for your children, do you remember that?*

A: *That is not so, that was after I had shown him.*

Q: *So let me just confirm your version, so you said---so you agreed that you did say it was meant for your children?*

A: *I didn't. I didn't say like that.*

Q: *So what do you mean when you say "it was after I had shown him"?*

A: *He asked me whose items are these---whose item this belonged to.*

Q: But how did PW12 know where the plastic bag was, did you show it to him?

A: I showed to him.

[emphasis added]

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<sup>107</sup> NE 4 March 2016, p 104 line 28 to p 105 line 3.

63 I find that the Accused's responses are elusive and duplicitous. They detract substantially from his credibility. I note also that Yasmazina, the Accused's wife, gave evidence that she saw B1 with the biscuit box and two drink packets in the car boot in the morning of 31 December 2014, before they left for Singapore. She asked the Accused if those items were intended for the children, and if so, why he did not simply leave those items at home. The Accused replied that it was okay and that they should just leave the items there as Yasmazina was already late for work.<sup>108</sup> Yasmazina affirmed this version of events repeatedly at trial.<sup>109</sup> When cross-examined, the Accused claimed that he had in fact told Yasmazina that the items in B1 were for his "friend".<sup>110</sup> Nothing of the sort was mentioned by Yasmazina.

64 In the circumstances, I prefer the evidence given by SSGT Syahrul and Yasmazina. In response to Yasmazina's query as to why the Accused did not simply leave the biscuit box and packet drinks at home, the Accused avoided answering her directly, telling her that it was okay and she should just leave the items in the car as she was already late for work. When SSGT Syahrul asked the Accused subsequently what the plastic bag contained, the Accused replied that he had been told that the items were meant for his children (*ie* the Accused's children). This account is clearly inconsistent with the Accused's case that Ali had instructed the Accused to deliver B1 and its contents to a recipient outside Temenggong Mosque.

65 The Prosecution also produced a second contemporaneous statement, recorded by CPL Shalihan on 31 December 2014 at 11.45 am at Tuas Checkpoint CNB A2 Office, strip search room ("the Second Contemporaneous

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<sup>108</sup> 1AB 201 at para 11.

<sup>109</sup> NE 8 March 2016, p 121 lines 1 to 6, lines 19 to 25; p 123 lines 3 to 29.

<sup>110</sup> NE 10 March 2016, p 51 line 18 to p 52 line 9.

Statement”). The Second Contemporaneous Statement deals with B1A1A, B1A2, B1B1A and B1C1A. When asked what B1A1A, B1B1A and B1C1A were, the Accused replied “This is a prohibited items”. When asked what B1A2 was, the Accused responded “This is also a prohibited items”. The Accused then answered “I do not know” to the subsequent questions “What is this prohibited items?” and “Who does it belong to?” In response to the question where the Accused got the items from, he answered, “I got it from a male Indian and a Chinese Malaysian at [the writing “Bu” is cancelled] Jusco Bukit Indah yesterday.” And when asked what he was going to do with them, he responded, “I was told by my friend Ali to wait for a call for further instruction after entering Singapor[e].”

66 The Accused’s explanation in respect of the Second Contemporaneous Statement is that, when responding to the question about the contents of B1A1A, B1B1A and B1C1A, he never said “This is a prohibited items”. Rather, he said that he did not know what they were.<sup>111</sup> He did not use the words “prohibited items” (which is translated as “*barang terlarang*” in Malay).<sup>112</sup> But when confronted with the fact that the words “prohibited items” were used in CPL Shalihan’s subsequent question “What is this prohibited items?” the Accused resorted to the explanation that he simply could not remember what CPL Shalihan had asked: “I cannot remember. This question I cannot remember.”<sup>113</sup> When asked moments later about whether the words “prohibited items” (“*barang terlarang*”) were uttered by CPL Shalihan both during the taking of the statement and the reading back of the statement to the Accused, the Accused indicated that those words were never mentioned.<sup>114</sup> I

<sup>111</sup> NE 10 March 2016, p 52 line 31 to p 53 line 4.

<sup>112</sup> NE 10 March 2016, p 54 line 17.

<sup>113</sup> NE 10 March 2016, p 55 line 12.

<sup>114</sup> NE 10 March 2016, p 56 line 16 to p 57 line 15.

find that the Accused's tendency to offer piecemeal and inconsistent answers considerably diminished his standing in the proceedings and was more indicative of a proclivity to present answers that suited his present needs rather than a desire to tell the truth.

*My conclusion on the effect of the First Contemporaneous Statement*

67 For the above reasons, I find that the Accused fails to offer a convincing explanation of the First Contemporaneous Statement. The First Contemporaneous Statement shows that the Accused was content to describe A1A1, A1B1 and A2A1A1A (which was still wrapped in two sheets of wrapping paper (see paragraphs 17(b)(i) and 42 above)) as drugs, and gave no indication whatsoever that he was labouring under the impression that they were bird food instead. The First Contemporaneous Statement is consistent with the Prosecution's case that the Accused knew that what he imported into Singapore was drugs.

68 I have also explained why the circumstances surrounding the recording of the First Contemporaneous Statement and the Accused's attempts to explain the statement have seriously dented his credibility. The overall impression that I have is that of an intelligent yet deceitful character with a penchant for the cunning lie.

***Whether the Accused had cause for suspicion in relation to the items handed to him on 30 December 2014***

69 The Prosecution submits that the Accused received A1A1, A1B1 and A2A1A1A under suspicious circumstances with full knowledge that they are illegal items.<sup>115</sup> It identifies a number of reasons for its submission which, in

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<sup>115</sup> Prosecution's closing submissions at para 13.



my view, have considerable force. I will explain these reasons and my findings thereon.

*The circumstances in which the Accused collected the diamorphine were highly suspicious*

70 According to the Accused, he was informed by Ali to collect “Cas Cas” bird food from certain friends of Ali, who would hand the items over to the Accused at about 8.30 pm at “JUSCO Bukit Indah”. These friends were one male Indian and one male Chinese. At “JUSCO Bukit Indah”, the Accused saw a male Indian and a male Chinese waving him over. The male Chinese asked him if he was a friend of “Botak” and the Accused replied “yes”. In the Accused’s mind, “Botak” referred to Ali as Ali was bald. The male Indian then passed the Accused two plastic bags (*ie* A1 and A2) containing items. The Accused then left for home.<sup>116</sup>

71 The Prosecution observes that given the circumstances, the Accused had every reason to make enquiries, or at the very minimum, take a look at the items collected. I agree with this submission. The circumstances in which the Accused collected A1 and A2, which contained diamorphine, were highly suspicious.

72 First, the Accused was acquainted with neither the male Chinese nor the male Indian. He had no basis for assuming that the items collected from them were indeed from Ali. The Accused was given no further details by Ali about the persons he was to meet other than that they consisted of one male Chinese and one male Indian. The Accused did not have their names, telephone numbers or any other contact details.

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<sup>116</sup> 1AB 259 at paras 4-5; 1AB 261 at para 7.

73 Second, further increasing the intrigue of the situation, the two persons whom he met asked him if he was a friend of “Botak”. Up to this point, the Accused had never encountered a reference to Ali as “Botak”. Yet it appears that the Accused never asked the two men if they were really referring to Ali, or made further inquiries of them to ascertain if “Botak” and “Ali” was one and the same person. In my view, this would have been the immediate instinct of the Accused. Nor did he call Ali to confirm that these two men, who knew only “Botak”, were indeed the two men he was supposed to meet.

74 Third, the Accused had never collected items from Ali in this manner before. On the first occasion in November 2014, Ali personally delivered the items to him, arriving at the Accused’s house in a taxi. On the second occasion, the items were passed to him also at his house, by the taxi driver who had ferried Ali to the Accused’s house on the previous occasion. The collection of items from two unknown men at “JUSCO Bukit Indah” was therefore an entirely different practice.

75 When asked during cross-examination why he did not open the plastic bags there and then to verify if they contained “Cas Cas”, the Accused’s response was, “Firstly, I wanted to go home quickly. And secondly, I was tired. And thirdly, I believed that the s---these guys whom I met were Ali’s friends.”<sup>117</sup> I find the Accused’s explanation unconvincing. It would have been the easiest and quickest of tasks for the Accused simply to have removed the few items from the plastic bags and taken a quick look at them, even if the Accused was in a hurry to go home. This brief and elementary visual examination would immediately have revealed that the plastic bags contained a clearly suspicious brown granular substance which did not bear even a

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<sup>117</sup> NE 10 March 2016, p 70 lines 7 to 11.

remote resemblance to “Cas Cas” bird food. The brown granular substance would have been clearly visible through the transparent packaging of A1A1 and A1B1, even if one were to disregard the package A2A1A1A, the contents of which were concealed under wrapping paper. The Accused would immediately have observed that the brown granular substances were simply too coarse to be bird food, at least for small birds. I note that the bird food and “Cas Cas” obtained by the Prosecution (see [92] – [95]) below) from “Kip Mart Tampoi” based on the directions of the Accused are not even remotely as coarse as the substance that could be seen in A1A1 and A1B1. They are so different both in their colour and overall texture that I do not think the Accused would have failed to realise that A1A1 and A1B1 could not be bird food, or “Cas Cas”, or bird food mixed with “Cas Cas”. He would then have been prompted to remove A2A1A1A from its wrapping paper, and would plainly have observed that A2A1A1A contained the same suspicious substance.

*The Accused was told that the items he would be bringing into Singapore were illegal*

76 Based on the Accused’s own account, Ali expressly informed the Accused that the “Cas Cas” bird food he would be bringing into Singapore was illegal.<sup>118</sup> Ali further stated that the “Cas Cas” had to be hidden and should not be checked by ICA officers in Singapore. If ICA officers discovered the “Cas Cas”, they would question him on the origins of the “Cas Cas”. Even taken alone, Ali’s warning that the items handed to him were illegal would surely have been grave cause for suspicion. Ali, who was more of a customer than a very close friend of the Accused, was asking the Accused to run the risk of getting caught for bringing prohibited items into Singapore. In fact, the

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<sup>118</sup> 1AB 259 at para 4.

Accused testified that prior to Ali's warning, the Accused already knew that "Cas Cas" was illegal in Singapore, having been so informed by "[m]any people – [his] uncle, [and his] bird enthusiast friends".<sup>119</sup>

77 Ali had never asked the Accused to commit any illegal acts for him before. The requested delivery of the illegal "Cas Cas" bird food was itself a massive escalation from the delivery of chocolates and packet drinks on the previous two occasions. The Accused's response to this objection was that despite the illegality of "Cas Cas" bird food, "it may not be so bad that it may, at the most, I might be summoned or fined".<sup>120</sup> He indicated that he had no qualms with bringing in illegal items into Singapore, as long as the only penalty was a fine,<sup>121</sup> and that he would ask Ali to reimburse him if he received a fine.<sup>122</sup>

78 Subsequently, however, the Accused qualified his position in a number of ways:

- (a) He agreed that he had not asked Ali if he was willing to "reimburse" the Accused if the Accused paid a fine.<sup>123</sup>
- (b) He suggested that he would not have been prepared to take the risk that Ali might not "reimburse" him for the fine paid if the fine was about S\$500.<sup>124</sup> Yet the Accused had no knowledge of the punishment

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<sup>119</sup> NE 10 March 2016, p 64 lines 25 to 31.

<sup>120</sup> NE 10 March 2016, p 66 lines 12 to 13.

<sup>121</sup> NE 10 March 2016, p 66 lines 14 to 16.

<sup>122</sup> NE 10 March 2016, p 66 lines 18 to 19.

<sup>123</sup> NE 10 March 2016, p 66 lines 20 to 22.

<sup>124</sup> NE 10 March 2016, p 67 lines 12 to 15.

or the quantum of fine that might be imposed for bringing “Cas Cas” bird food into Singapore.

(c) He indicated that he would refuse to deliver items “which are dangerous to [him]”. He agreed that delivering a pistol was “dangerous” because it was “illegal to possess” a pistol.<sup>125</sup> The Accused further stated that in order to make sure that an item was not “dangerous”, he would first ask what the item was, and that he would want to know what the item looked like before he collected it for delivery, regardless of whom the customer was.<sup>126</sup>

79 I consider that the Accused’s agreement to deliver “Cas Cas”, an illegal item, is inconsistent with his concession that he would not deliver items which are illegal to possess. Equally questionable is the fact that the Accused never ascertained the size of the fine that he would likely have to pay if caught with the “Cas Cas” (given that he was amenable to taking such a risk only if the fine did not exceed S\$500), nor did he seek confirmation from Ali that Ali would “reimburse” the Accused for any fine paid. The Accused was also asked whether he told Ali that, in accordance with his usual practice for customers, he would not bring illegal items into Singapore:

Q: Did you tell him that you do not usually bring illegal items to Singapore for customers?

A: No.

Court: Did you check with him, “If I get a fine, are you going to pay me back?”

Witness: I did not ask him, but I am sure he will pay me back.

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<sup>125</sup> NE 11 March 2016, p 67 line 27 to p 68 line 5.

<sup>126</sup> NE 11 March 2016, p 68 lines 6 to 13.

Court: You are sure because of what? What's the basis for your confidence in him paying you back?

Witness: Because he is one of my customers. And whatever birds or bird accessories like cages, he would pay them promptly. He doesn't delay payment. And from his manner of payment, I trusted him that he would pay.

Court: How much of business have you done with him? Wit---\$10,000 worth of business? You know, \$15,000 worth of business? How much?

Witness: I did not record.

Court: Roughly?

Witness: If I were to convert to Singapore dollars, about 6 or 7 thousand. About 6 or 7 thousand.

Court: Dollars worth of business with him?

Witness: During---during that 3 months, if I'm not mistaken.

Court: Yes, okay.

Q: And Mr Mohsen, you are not able to produce any evidence of these transactions, right?

A: I wanted to show the evidence, but as I've explained in Court, when we were tran---shifting from Johor to KL, many of my items were missing.

80 None of these proffered explanations are persuasive. The Accused has offered no indication that he had ever done anything illegal for a customer, nor am I convinced that the Accused was satisfied to run the risk of a fine simply on the basis of Ali's creditworthiness. At the very least, the apparent illegality of the items to be delivered would be sufficient cause for suspicion.

*The Accused was told only that he would be delivering "Cas Cas" bird food but he was also handed other items that did not fit the description*

81 Despite Ali's clear direction that the Accused would only be bringing "Cas Cas" bird food into Singapore, the Accused was also handed what he

perceived to be a box of chocolates.<sup>127</sup> According to the Accused, the chocolate box was protruding from one of the plastic bags.<sup>128</sup>

82 In cross-examination, the Accused was asked, “So why didn’t you call Ali to tell him, ‘I received a chocolate box, not “Cas Cas”?’”<sup>129</sup> The Accused gave a wholly irrelevant and rambling response, claiming that Ali called him later that night at about 9-10 pm, making no mention whatsoever of the chocolate box.<sup>130</sup> When the question was asked to the Accused again, the Accused finally admitted that he did not ask Ali what he was supposed to do with the chocolate box.<sup>131</sup> In my view, this is yet another instance of how the Accused’s defence raises more questions than answers when confronted with the facts.

*The Accused’s relationship with Ali would not have given him any reason to attempt such a delivery*

83 I make the preliminary observation that what little we know about the figure of Ali comes exclusively from the evidence of the Accused. I emphasise also that such evidence consists entirely of the Accused’s description of Ali in his statements and at trial. There are no documentary records indicating the existence of such a person or evidencing his relationship with the Accused. The Prosecution has offered no evidence of Ali, nor would it need to do so in order to establish its case. Considering the circumstances, I have formed the view that the Accused’s account of how he came to have such faith in Ali that

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<sup>127</sup> NE 10 March 2016, p 77 lines 5 to 7.

<sup>128</sup> NE 10 March 2016, p 77 lines 22 to 24.

<sup>129</sup> NE 10 March 2016, p 78 lines 4 to 5.

<sup>130</sup> NE 10 March 2016, p 78 lines 6 to 9.

<sup>131</sup> NE 10 March 2016, p 78 lines 30 to 32.

he was willing to hazard an illegal venture makes little sense. I will explain my reasons.

84 During his examination-in-chief, the Accused identified four reasons why he “trusted Ali”:<sup>132</sup>

- (a) Ali was one of the Accused’s first regular customers in the Accused’s bird business.
- (b) Ali’s payments were always prompt.
- (c) The Accused knew that Ali is a Singapore citizen as he had previously arranged trips to Thailand and Batam for Ali.
- (d) The Accused had met Ali’s family before during a trip to Desaru.

85 As the Prosecution points out,<sup>133</sup> the Accused has produced no business records evidencing any commercial transactions between Ali and the Accused. On the Accused’s account, he has transacted with Ali numerous times over 2013 and 2014, with Ali making substantial payments to the Accused (see [36] to [38] above). The Accused purchased birds and bird cages from Singapore and delivered or resold them to Ali in Malaysia. He also arranged overseas trips for Ali as part of the Accused’s travel business. One would have expected the Accused to have produced any number of receipts, invoices, tickets, records or like documentary evidence to prove such transactions.

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<sup>132</sup> NE 9 March 2016, p 69 lines 1 to 9.

<sup>133</sup> Prosecution’s closing submissions at para 57.



86 When questioned on the absence of such evidence, the Accused conveniently claimed that they could no longer be found.<sup>134</sup>

Court: You say you have arranged for him trips to Thailand before. How you arranged these trips? What did you do? In terms of administrative procedure, what did you do?

Witness: I only arranged for his transport to KL. And as far as Batam is concerned, I arranged for him the ferry tickets and accommodation.

Court: When you arranged for these things, do you have his passport?

Witness: Yes. I have helped him to check-in when he was in Johor Bahru.

Court: So you keep records of all these?

Witness: Yes but in Johor Bahru.

Court: They can be brought to Singapore? Your wife can bring all these record so we know who---his passport, who is this fellow.

Witness: *The problem is when I was arrested with my wife, many of my documents were lost. Were lost, I couldn't find.*

Court: You mean---you mean you're no longer renting there or what---how were they lost?

Witness: When---my wife, I arrested, Sir, we were remanded for about 2 months.

Court: Okay.

Witness: The rental for 2 months were not paid.

Court: And then?

Witness: *My mother-in-law then decided to transfer all those things to KL.*

Court: *Transfer what things? All your documents?*

Witness: *Household things, Sir.*

Court: *And what about these documents of your business?*

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<sup>134</sup> NE 9 March 2016, p 69 line 10 to p 70 line 7.

Witness: *When---after I was arrested, Sir, there were important items which I wanted, couldn't find them.*

I do not see any apparent connection between the Accused's mother-in-law's decision to transfer "household things" to Kuala Lumpur and the Accused's alleged loss of all the documents pertaining to his business.

87 I also do not find that the Accused had so close a personal relationship with Ali to warrant any lack of suspicion as to the delivery requested on 30 December 2014. I refer to the Accused's description of his relationship with Ali (at [36] to [40] above): The Accused met Ali only five times in 2013. Each of these meetings was for the purpose of the sale and purchase of birds or bird cages. The Accused agreed that on all the occasions when he met Ali in 2013, the Accused would simply deliver the birds to Ali and Ali would hand over the necessary cash payment and "that was it".<sup>135</sup> Moreover, the Accused contacted Ali only through an intermediary, never personally. There was then a substantial period of at least nine months when the Accused did not have any contact with Ali at all. When they resumed contact, their interactions were only in relation to the marketing of birds to Ali as part of the Accused's standard business practice.

88 The Accused claims that Ali invited him and his family to Desaru, where they had a night barbeque. The Prosecution expresses doubt that a customer of such remote social connection would suddenly invite the Accused to an all-expenses paid holiday or barbeque gathering.<sup>136</sup> Despite Yusmazina's presence at the barbeque, I note that her evidence during cross-examination was that she did not know who "Ali" or "Iskandar" was.<sup>137</sup> She stated that she

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<sup>135</sup> NE 11 March 2016, p 54 lines 23 to 26.

<sup>136</sup> Prosecution's closing submissions at para 64.

<sup>137</sup> NE 8 March 2016, p 134 line 32 to p 135 line 10.

was never introduced to him, although she claimed that she would recognise him.<sup>138</sup> In my view, regardless of whether such a trip to Desaru ever occurred, the Accused has indicated that even after the trip they were not particularly close friends, but were simply “normal friends, casual friends”: see [40] above. I do not accept that on the basis of such a relationship as described by the Accused, he would have been willing to import an illegal item into Singapore at the request of Ali and countenance the possibility of criminal conviction and punishment.

89 The Accused is a self-proclaimed “savvy businessman”<sup>139</sup> who does not consider himself gullible.<sup>140</sup> I therefore find that the Accused, a man of some intelligence and judgment, would not have determined that his relationship with Ali nullified any cause for suspicion regarding the delivery to be carried out on 31 December 2014.

*The Accused failed to give a credible or consistent explanation of how the contents of the packets resembled “Cas Cas”*

90 I summarise the various ways in which the Accused has described the nature and appearance of “Cas Cas”:

(a) “Cas Cas” has two forms: it comes either as “black or yellow coloured seeds”. It is “a bird food”. Twenty years ago, the Accused saw “Cas Cas” and “it was either in black or yellow coloured seeds form”. When the Accused held A1 and A2, they felt like “a bird food package”. But if he had opened up A1 and A2, and saw A1A1, A1B1 and A2A1A1A within, he would have found these items suspicious as

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<sup>138</sup> NE 8 March 2016, p 135 lines 25 to 31.

<sup>139</sup> NE 10 March 2016, p 4 lines 25 to 26.

<sup>140</sup> NE 10 March 2016, p 5 lines 1 to 5.

“[they do] not look anything like ‘Cas Cas’ seeds”: statement recorded on 3 January 2015 at 1.05 pm.<sup>141</sup>

(b) The shape of “Cas Cas” seeds is not at all similar to the “reddish brown substance” found in A1A1 and A1B1: statement recorded on 5 January 2015 at 9.35 am.<sup>142</sup>

(c) “Cas Cas” is a sort of opium seed mixture that can be mixed into normal bird food. It comes usually in powdered or in non-grinded dark coloured cubes: statement recorded on 17 April 2015 at 11.25 am.

(d) When CNB officers showed the Accused A1A1, A1B1 and A2A1A1A after his arrest, the Accused saw that it was “reddish” but “still believe[d] that it was ‘Cas Cas’ which is bird food”: cross-examination on 10 March 2016.<sup>143</sup>

(e) “Coarser bird food” would look like A1A1, A1B1 and A2A1A1A: cross-examination on 10 March 2016.<sup>144</sup>

(f) Bird food that had been mixed with “Cas Cas” would look like A1A1, A1B1 and A2A1A1A: cross-examination on 10 March 2016.<sup>145</sup>

(g) The original “Cas Cas”, in seeds, is black in colour. They consist of small seeds: cross-examination on 10 March 2016.<sup>146</sup>

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<sup>141</sup> 1AB 262 at para 10.

<sup>142</sup> 1AB 266 at para 19.

<sup>143</sup> NE 10 March 2016, p 12 lines 25 to 31.

<sup>144</sup> NE 10 March 2016, p 13 lines 6 to 10.

<sup>145</sup> NE 10 March 2016, p 13 lines 24 to 25.

<sup>146</sup> NE 10 March 2016, p 15 line 30 to p 16 line 3.

(h) There are three types of “Cas Cas”. Unprocessed “Cas Cas” is in seed form and is “half the size of...rice”.<sup>147</sup> The other two types have been processed.<sup>148</sup> One is yellowish in colour and comes in powdery form. The other type is black and comes in lumps, each roughly the size of three or four rice grains put together:<sup>149</sup> cross-examination on 10 March 2016.

(i) In order to make a mixture of “Cas Cas” and bird food, the Accused would pound the black processed “Cas Cas” and mix it with bird food. If he used the yellow “Cas Cas” then he would not need to pound it but would merely mix it with bird food. The end product was lumpy, but each lump was no more than the size of a few grains of rice: cross-examination on 10 March 2016.<sup>150</sup>

(j) The mixture of “Cas Cas” and bird food that the Accused has himself produced before is “greyish” and not as lumpy as A1B1: cross-examination on 10 March 2016.<sup>151</sup>

(k) The black lumpy type of processed “Cas Cas” has dimensions of about 1.4 cm x 1.4 cm. It resembles A1B1 in shape, but it is black unlike A1B1: cross-examination on 10 March 2016.<sup>152</sup>

(l) When the Accused saw A1A1 and A1B1 on 31 December 2014, he “still thought that they were ‘Cas Cas’ bird food”. It looked

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<sup>147</sup> NE 10 March 2016, p 17 line 1.

<sup>148</sup> NE 10 March 2016, p 16 lines 21 to 24.

<sup>149</sup> NE 10 March 2016, p 18 lines 5 to 10.

<sup>150</sup> NE 10 March 2016, p 18 line 30 to p 19 line 23.

<sup>151</sup> NE 10 March 2016, p 19 line 24 to p 20 line 24.

<sup>152</sup> NE 10 March 2016, p 22 lines 7 to 30.

like it was “in the form of bird food”, only “coarser”. The “kind of bird food” seen in A1A1 and A1B1 may need to be pounded to make it smaller. The Accused maintained at trial that in his view, A1A1 and A1B1 still looked like “bird food”: cross-examination on 10 March 2016.<sup>153</sup>

91 The variety of descriptions and explanations of “Cas Cas” offered by the Accused is bewildering. From the totality of the Accused’s evidence, it is thoroughly unclear:

(a) Whether “Cas Cas” comes in the form of (i) black or yellow seeds; (ii) in powdered or non-grinded dark coloured cubes; (iii) unprocessed seed form (half the size of a grain of rice) and processed powdery or lumpy (the size of three or four grains of rice put together) forms; or (iv) processed lumpy forms about 1.4 cm x 1.4 cm in size.

(b) Whether, in the Accused’s view, A1A1, A1B1 and A2A1A1A looked similar to or different from “Cas Cas”. He took the position in his statements of 3 January 2015 at 1.05 pm and 5 January 2015 at 9.35 am that A1A1, A1B1 and A2A1A1A did not look anything like “Cas Cas” and would have raised his suspicions. Subsequently at trial, however, he indicated that A1A1, A1B1 and A2A1A1A looked like “coarser bird food”, or bird food that had been mixed with “Cas Cas”, or bird food that may need to be pounded to make it smaller.

92 During cross-examination, the Accused testified that he saw “Cas Cas” sold at “Kip Mart” in Malaysia, at a shop that sells rice.<sup>154</sup> Thereafter, on 14

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<sup>153</sup> NE 10 March 2016, p 43 line 22 to p 44 line 11.

<sup>154</sup> NE 10 March 2016, p 14 lines 8 to 30.

April 2016, Senior Staff Sergeant Fathli Bin Mohd Yusof (“SSSGT Fathli”), Senior Station Inspector Che Yahya, Home Team Specialist 14 Koh Soon Sim (“HTS14 Koh”) and Narcotics Crime Investigation Department officer Shafiq went to “Kip Mart Tampoi” located at LOT 129842, Jalan Titiwangsa 1, Taman Tampoi Indah, 81200 Johor Bahru, Malaysia. HTS14 Koh was the designated photographer.

93 According to SSSGT Fathli, “Kip Mart Tampoi” is a wet market with many stalls. The officers located a pet shop “CITY OCEAN” at S125, “Kip Mart Tampoi”, and found a range of bird food within the shop. SSSGT Fathli asked two shopkeepers within the shop if they knew of something called “Cas Cas” which could be mixed with bird food to enhance the singing of birds, but they replied that they had never heard of “Cas Cas”. SSSGT Fathli proceeded to purchase one packet of each of the five types of bird food available at “CITY OCEAN”.<sup>155</sup>

94 The officers continued walking around “Kip Mart Tampoi” to look for shops selling rice. They approached two such shops but the shopkeepers informed the officers that they had never heard of “Cas Cas”. They then spotted an Indian spices stall, “REMPAH KARI VALLIS”, that sold spices and rice. SSSGT Fathli approached the shopkeeper and asked her if she sold “Cas Cas”. She informed SSSGT Fathli that she only had “Cas Cas” in a form which was powdered and pre-mixed with other spices, and that it was meant for cooking. She further indicated that it was illegal to sell the seed form of “Cas Cas”. If authorities were to find any shop selling the seed form, that shop would be given a fine. SSSGT Fathli proceeded to purchase 400 g for RM 28.

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<sup>155</sup> PS36A at paras 4 to 5; Photographs 6 and 7.

The officers then explored the shops at “Kip Mart Tampoi” for other bird shops or rice shops, but found none.<sup>156</sup>

95 The Accused was showed a photograph of “Kip Mart Tampoi” (*ie* P143), and he agreed that this was the “Kip Mart” that he was familiar with and that it was the “correct place”.<sup>157</sup> But when confronted with a photograph of the bird food purchased at “CITY OCEAN” (*ie* P148), the Accused suggested that the bird shop sold “only the common types” of bird food.<sup>158</sup> He was “not sure whether the big ones...can be found there”.<sup>159</sup> When he was subsequently asked where larger bird food could be found, the Accused stated, “Maybe at Bedok or Teck Whye or Serangoon North Avenue 2.”<sup>160</sup> In my judgment, these were simply further examples of the Accused’s willingness to shift his position and adapt his evidence to suit his present needs.

96 The Accused’s rapidly morphing narrative quickly tumbled into the realm of the unbelievable. He stated that when he received A1 and A2, he “could feel that the plastic felt like this as in P149 [*ie* a photo of bird food purchased from “CITY OCEAN”]. The texture felt like bird food.” But when ICA officers later showed him A1A1, A1B1 and A2A1A1A, he saw “the food were red in colour and also big---big and rough. So I thought they were a new bird food which already has been mixed with ‘Cas Cas’.”<sup>161</sup> The Accused completely failed to explain how he could have experienced the texture of the bird food shown in P149 – which consists of fine, roughly round grains, when

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<sup>156</sup> PS36A at paras 6 to 8.

<sup>157</sup> NE 27 April 2016, p 12 lines 12 to 20.

<sup>158</sup> NE 27 April 2016, p 13 lines 18 and 19.

<sup>159</sup> NE 27 April 2016, p 13 lines 27 to 29.

<sup>160</sup> NE 27 April 2016, p 14 lines 23 to 24.

<sup>161</sup> NE 27 April 2016, p 18 lines 2 to 10.



A1A1, A1B1 and A2A1A1A really consisted of “big and rough” lumps. The Accused was then shown a photograph of the powder purchased from “REMPAH KARI VALLIS” (*ie* P151). When it was put to him that the powder did not look like A1A1 or A1B1, the Accused simply disagreed.<sup>162</sup> I do not consider it even remotely arguable that the fine whitish powder found in P151 resembles A1A1 or A1B1, which can only be described as much larger, reddish-brown lumps. Suffice to say, the Accused’s response thoroughly undermined his credibility.

97 I therefore reject in its entirety the Accused’s submission that he had no reason for suspicion because the contents of A1 and A2 (*ie* A1A1, A1B1 and A2A1A1A) either visually resembled “Cas Cas” or otherwise felt like “Cas Cas”.

*Conclusion on the existence of cause for suspicion*

98 Considering the totality of the circumstances outlined above, I find that the Accused had every reason to be suspicious about the contents of A1A1, A1B1 and A2A1A1A. A reasonable person in the Accused’s shoes could not have avoided these glaring and urgent signals that Ali’s request was out of the ordinary, and would have proceeded to make further inquiries with Ali or at the very least taken out A1A1, A1B1 and A2A1A1A from A1 and A2 in order to conduct a serious examination of their contents to ascertain what they truly were. This was especially when the Accused was not ignorant of the harsh laws against importation of controlled drugs into Singapore.

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<sup>162</sup> NE 27 April 2016, p 19 lines 30 to 32.

***Whether and to what extent the Accused actually investigated the items handed to him on 30 December 2014***

99 The Accused's evidence on whether he had actually taken steps to investigate the contents of A1 and A2 was similarly provided in a fragmentary, halting and inconsistent manner. I will explain my findings.

100 The Accused's evidence begins in his long statement recorded on 3 January 2015 at 1.05 pm. Here, he claimed that when he first received the two plastic bags containing A1, A2 and B1 from the two men outside "JUSCO Bukit Indah", he did not open the plastic bags to see what was inside.<sup>163</sup> It was only on 31 December 2014 at about 6.30 am, while removing the plastic bag containing A1 and A2 from the car boot and throwing away that exterior plastic bag, that he felt that A1 and A2 were "like a bird food package". He did not open A1 or A2.<sup>164</sup>

101 In his further long statement recorded on 5 January 2015 at 9.35 am, the Accused stated that he had not opened either of the two plastic bags received from the two men to check them even up to the time he placed them under the rear seat. He only felt that there were two bundles in one of the plastic bags and one bundle inside the other plastic bag. He did not know that one of the three bundles was wrapped with coloured paper (*ie* A2A1A1A) as he did not open up the plastic bags.<sup>165</sup> The Accused made no mention in this statement that when holding the plastic bags, he felt that they contained packages of bird food.

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<sup>163</sup> 1AB 261 at para 7.

<sup>164</sup> 1 AB 261 to 262 at paras 9 and 10.

<sup>165</sup> 1 AB 264 at para 19.

102 On the fourth day of trial, the Accused first suggested that he “saw” the contents of A1A1 and A1B1 before his arrest. He mentioned this sighting when asked if he had seen the contents of A1 and A2 earlier at the point when the bags were handed to him by Ali (more accurately by the male Chinese and male Indian):<sup>166</sup>

Court: Okay. Just to be clear. Would this be the first time you saw A1A, A1B in the form as you see in photograph P27 and A2A1 in the form that you see at P31?

Witness: Yes, first.

Court: First time. Earlier on when these bags were handed to you, you never saw these---before when the Mr Ali handed to you?

Witness: *I saw but they were not clear. It was about six in the morning.*

Court: Not clear then---what do you mean by “not clear”?

Witness: Because A1A was inside A1 in P27.

[emphasis added]

103 Subsequently, the Accused added further to his account of events that occurred on the night of 30 December 2014, just after he received the plastic bags from the two men. He claimed that he had felt the plastic bags at that juncture:<sup>167</sup>

Q: So how do you know that they will give you *Kaskas* which is what Ali asked you to bring?

A: *When I took them, when I walked to the car, I was---I was at the passenger door and I was want---and I was going to place the items in the car boot, I felt that the package were like bird food.*

...

Q: Right. Let me focus your attention on what happened at Jusco after you collected the two plastic bags from

<sup>166</sup> NE 10 March 2016, p 12 lines 15 to 23.

<sup>167</sup> NE 10 March 2016, p 70 line 2 to p 72 line 3.

the male Chinese and the male Indian. Your evidence was that you felt the plastic bags.

A: *That was when I was going to place them in the car.*

Q: You felt them meaning you touched them? You held the contents?

A: Yes.

Q: So why did you do that?

A: *When I was carrying it and then lifting it and I wanted to put behind the back of the car, that when I felt it.*

Q: You could have just opened it to see what it was, right?

A: *I was aware and I knew that when I was carrying---lifting it and I felt it, they 1 felt like bird food.*

Q: Which---you had two plastic bags, right?

A: Correct.

Q: Which plastic bag did you hold?

A: Both of them.

Q: So both of them felt like bird food to you?

A: One felt like a box. But from the top, I saw a chocolate box.

Q: So why didn't you open up to see whether you really received bird food from this male Indian and male Chinese?

A: As I have said just now, when I held the plastic bags containing the package, when I hold them, I felt that they felt like bird food. So I didn't---so I didn't suspect anything as I believe that the items which I'm going to take were bird food.

Q: All right, Mr Mohsen, then tell us what were you feeling for to co---satisfy yourself that it was bird food? What do you have to feel to believe that the item is bird food?

A: *When---when I was feeling it, the shape of the package is those of the standard bird food. They felt grainy or sandy. That was why I was sure that what I had taken from the other two guys were bird food.*

...

Q: So wouldn't it be much simpler to just open the plastic bag to see whether it was bird food?

A: Yes, but after I held it, I was sure it is bird food.

[emphasis added]

Suffice to say, this was again an entirely new addition to his evidence, not heretofore known to anyone else but the Accused.

104 Later in the cross-examination, the Accused confirmed that he did not look into any of the plastic bags to ascertain whether they contained bird food.<sup>168</sup> But only moments later, he indicated that he had in fact looked into the plastic bags, and saw "the shape of the packet which is like bird food".<sup>169</sup>

Q: You had to look into the interior of the bag to see that there were two more grey plastic bags inside, right?

A: Correct.

Q: So why didn't you just look into the items inside the grey plastic bags?

A: *It's not that I didn't look inside them. When I saw the bag---the plastic bags, I saw that there were already many bags---plastic bags. So I threw away the first plastic bag. After I had thrown it away, it was then I saw the shape---the packet---the shape of the packet which is like bird food.*

[emphasis added]

105 Further additions and embellishments followed, in relation to the colour and the shape of what the Accused saw:

Court: You s---you say you saw? You say you saw. I thought you only felt? At that time. You only saw when ICA opened for you---or the CNB officers.

Witness: Before---when I was---before my arrest, when I throw away the plastic bag---

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<sup>168</sup> NE 10 March 2016, p 78 lines 18 to 24.

<sup>169</sup> NE 10 March 2016, p 81 lines 5 to 12.

Court: You mean you saw?

Witness: ---at the s---I saw. From the plastic.

Court: So did you inside there? I mean, see the brown---brownish packaging which is transparent? When you threw away the plastic bag, did you see this A1---A1A and A1B? Or part of A1A or part of A1B? When you were throwing away the plastic, did you see this? Apart from feeling, I know you have felt, but did you see?

Witness: I saw oen---s---a little of it.

Court: Saw a little of that? So therefore, you did see a little of--never mind whether it's A1A or A1B, you saw a little of that?

Witness: Yes.

Court: *Did you see the colour?*

Witness: *I saw the colour.*

Court: *What was the colour that you saw at that---at that first--that---at that time when you threw away the plastic bag?*

Witness: *It was dark.*

Court: Dark? What do you mean?

Witness: It was dark in my car, so I didn't really see exactly.

Court: What time was that?

Witness: About 6.00, 6.15?

...

Court: Okay. So it was dark? So you saw something dark, here? Colour, are you sure? Can---are you sure? Can you tell me the colour?

Witness: I'm not sure.

Court: Not sure. But you saw something which is transparent? There's a transparent plastic bag, you can see inside?

Witness: Yes.

Court: *Can you see the shape or not? Shape of the item, you know?*

Witness: *I saw that they were coarse.*

Court: Okay. So to that extent, you saw---up to that degree of, what do you call it, clarity? *You saw some rough items, you know, granular items? Granular.*

Witness: Yes.

Court: Okay. Colour, you're not sure, except it's dark. All right. You saw to that degree of detail because it was dark? Morning at about, what? 7.00? 7.00-plus?

Witness: No, it was quarter past 6.00. 6.00 or quarter past 6.00.

[emphasis added]

106 I accept the Prosecution's submission that the Accused's obvious difficulty in maintaining one consistent account of the time and place in which he took steps to feel or look at the contents of A1 and A2 is strongly indicative of his lack of truthfulness particularly in relation to his alleged complete absence of knowledge that the items he was bringing into Singapore were controlled drugs. I find also that the Accused departed dramatically from the account given in his recorded statements, where he stated only that he had felt A1 and A2 on the morning of 31 December 2014, without any further indication that (i) he had also felt them on the night of 30 December 2014 just after receiving them and found them "grainy or sandy"; (ii) saw "the shape of the packet which is like bird food"; (iii) saw that the colour of the contents was "dark"; and (iv) saw that the shape of the item was "coarse" or "granular".

107 I reject the Accused's varying accounts of how he felt, saw or otherwise attempted to examine the contents of A1A1, A1B1 and A2A1A1A. The incoherence of his evidence utterly undermines its believability. I am led to the conclusion based on the totality of the evidence that either the Accused already knew what the contents of those packets were prior to collecting them and therefore did not carry out further checks after having collected them, or he had checked, felt and/or taken a look at the items after collecting them and

knew what they were. I find it hard to believe that he would not have had a good opportunity to examine the items for himself and that he would not have even taken a good look at the items when he put them inside his wife's car, retrieved them the next day, threw away the extra plastic bags and thereafter, placed the items under the car seat.

## The law

### *The presumptions under ss 18(1) and (2) of the MDA*

108 There is no dispute on the applicable legal principles. The Prosecution relies on the presumptions under ss 18(1) and (2) of the MDA. The Accused agrees that if the Court is of the view that s 18(1) of the MDA has been satisfied, then the Accused has to rebut the presumption under s 18(2).<sup>170</sup> It therefore suffices for me to set out the key principles and the relevant cases. I will then summarise these principles by way of a framework that sets out the steps to be followed to determine whether the presumptions in ss 18(1) and (2) of the MDA apply and, if so, whether they have been rebutted.

109 The relevant sections of the MDA read as follows:

#### **Presumption of possession and knowledge of controlled drugs**

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

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

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<sup>170</sup> Accused's closing submissions at para 124.



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

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

110 Section 18(1) identifies four scenarios in which an accused will be presumed to have had the controlled drug in his possession. Under s 18(2), where he is presumed (or proved) to have had the drug in his possession, another presumption is triggered. The accused is, until the contrary is proved, presumed to have known the nature of the drug. The phrase “the nature of that drug” under s 18(2) refers to the actual controlled drug found in the bag or container that was in the possession of the accused: *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 (“*Nagaenthran*”) at [24]. The Court of Appeal in *Nagaenthran* held that to rebut the s 18(2) presumption, the accused would have to prove on a balance of probabilities that he did not know the nature of the drug.

111 The subsequent decision of *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 (“*Dinesh Pillai*”) involved an appellant who was charged under s 7 of the MDA for importing diamorphine. The Court of Appeal held that the presumption of possession under s 18(1) was triggered because the appellant was in physical possession of a brown packet containing the controlled drug. The appellant argued that he did not have the controlled drug in the brown packet in his possession because he did not know that the brown packet contained a controlled drug. On the facts, the Court of Appeal rejected this submission.

112 In relation to the presumption of knowledge under s 18(2) of the MDA, the Court of Appeal held (at [18]) that the accused “bears the burden of prov[ing] on a balance of probabilities that he did not know *or could not*

*reasonably be expected to have known* the nature of the controlled drug that was found inside the Brown Packet [emphasis added]”. It found that the appellant failed to rebut the presumption through his mere assertion that he did not know what was in the brown packet, when (a) he did not believe that the brown packet contained what he was told it did (*ie* food); and (b) he had ample time and opportunity to open the brown packet to see what it contained. He did not bother to take the simple step of peeping into the brown packet to see what it contained despite suspecting that it contained something illegal. The Court of Appeal then held as follows:

21 In our view, the appellant has failed to rebut the s 18(2) MDA presumption on a balance of probabilities because *he turned a blind eye to what the Brown Packet contained despite suspecting that it contained something illegal*. The factual distinction between this case and *Khor Soon Lee* is that in the latter case, the accused did not have any suspicion that he was carrying anything other than erimin and ketamine (which the court accepted). In contrast, in the present case, the appellant was aware that he was carrying something illegal, and he could easily have verified what that thing was by simply opening the Brown Packet. It was not enough for the appellant to take the position that he did not open the Brown Packet because he had been told not to do so. *In using the expression “turning a blind eye” in this context, we do not mean to say that the appellant had actual knowledge that the Brown Packet contained diamorphine. In the context of s 18(2) of the MDA, it is not necessary for the Prosecution to prove wilful blindness as a means of proving actual knowledge on the appellant’s part of the nature of the controlled drug in the Brown Packet as the Prosecution has no such burden. Instead, it is for the appellant to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known that the Brown Packet contained diamorphine.* In our view, the appellant has failed to rebut the s 18(2) MDA presumption by his mere general assertions that he did not know what was in the Brown Packet as: (a) the nature of the controlled drug in that packet could easily have been determined by simply opening the packet; and (b) there was no evidence to show that it was not reasonably expected of him, in the circumstances, to open the packet to see what was in it. In short, *the appellant has failed to prove the contrary of what s 18(2) of the MDA presumes in the present case as he neglected or refused to take reasonable steps to find out what*

*he was asked to deliver to Ah Boy on 19 December 2009 in circumstances where a reasonable person having the suspicions that he had would have taken steps to find out (viz, by simply opening the Brown Packet to see what was in it).*

[emphasis added]

113 In *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Muhammad Ridzuan*”), the Court of Appeal described (at [75]) the approach taken in *Dinesh Pillai* as a refinement of the principles applicable to the rebuttal of the presumption of knowledge. The Court of Appeal also observed that it was accepted in *Dinesh Pillai* that an accused would not be able to rebut the presumption by a mere assertion of his lack of knowledge had he been wilfully blind as to the nature of the drugs.

114 In relation to the doctrine of wilful blindness, it suffices for me to adopt the clear and succinct exposition set out by Chan Sek Keong CJ in *Nagaenthran* (at [30]):

30 In *Tan Kiam Peng* at [141], this court held that s 18(2) of the MDA included both *actual knowledge* in its “purest form” (also referred to as “actual knowledge *simpliciter*” in *PP v Lim Boon Hiong* [2010] 4 SLR 696 as well as *wilful blindness*. However, one must be careful to avoid unnecessary refinement of the *mens rea* of knowledge. Wilful blindness (or “Nelsonian blindness”) is merely “lawyer-speak” for *actual knowledge* that is *inferred* from the circumstances of the case. It is an indirect way to prove actual knowledge; *ie*, actual knowledge is proved because the inference of knowledge is *irresistible* and is the *only rational inference* available *on the facts* (see *Pereira v Director of Public Prosecutions* (1988) 63 ALJR 1 at 3). It is a subjective concept, in that the extent of knowledge in question is the knowledge of the *accused* and not that which might be postulated of a hypothetical person in the position of the accused (although this last-mentioned point may not be an irrelevant consideration) (*ibid*). Wilful blindness is not negligence or an inadvertent failure to make inquiries. It refers to the blindness of a person to facts which, in the relevant context, he *deliberately refuses* to inquire into. Such failure to inquire may sustain an inference of knowledge of the actual or likely existence of the relevant drug. It must also be emphasised that where the Prosecution seeks to rely on actual

knowledge in the form of wilful blindness, the alleged wilful blindness must be *proved beyond a reasonable doubt*.

[emphasis in the original]

***A framework for applying ss 18(1) and (2) of the MDA***

115 I believe it is useful to summarise these principles and set out, in the interest of clarity, the approach to be used in the application of ss 18(1) and (2) of the MDA:

(a) The Prosecution may choose either to prove that the accused was in possession of the controlled drug, or may rely on s 18(1) of the MDA to raise a presumption that the accused possessed the controlled drug.

(i) In order to prove that the accused possessed the controlled drug, the Prosecution must prove beyond a reasonable doubt that the accused not only had physical control over the item but also that the accused knew or was aware that the item was a controlled drug: *Fun Seong Cheng v Public Prosecutor* [1997] 2 SLR(R) 796 at [53]; *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR (R) 1 at [87]. To prove possession by the accused of the controlled drug under this part, the Prosecution is not required to go on to establish beyond a reasonable doubt that the accused also had knowledge of the *specific nature* of the controlled drug found in his possession.

(ii) In order to trigger the presumption of possession by the accused of the controlled drug under s 18(1) of the MDA, the Prosecution must prove beyond a reasonable doubt that the

accused had any one of the following items in his possession or custody or under his control:

- (A) anything containing a controlled drug;
- (B) the keys of anything containing a controlled drug;
- (C) the keys of any place or premises or any part thereof in which a controlled drug is found; or
- (D) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug.

The accused may seek to rebut this presumption of possession of the controlled drug on a balance of probabilities.

(b) If the accused is either (i) proved to have had the controlled drug in his possession; or (ii) presumed under s 18(1) to have had the controlled drug in his possession, then he is presumed under s 18(2) to have known the *nature* of the drug, *ie*, the *specific* controlled drug found in his possession: *Nagaenthiran* at [23]–[27].

(i) The accused may rebut the s 18(2) presumption by showing, on a balance of probabilities, that (A) he lacked actual knowledge of the nature of the controlled drug (“Limb 1”); or (B) he could not reasonably be expected to have known the nature of the controlled drug (“Limb 2”): *Dinesh Pillai* at [18].

(ii) The accused will fail to rebut the s 18(2) presumption under Limb 2 on a balance of probabilities, if the court finds that the accused neglected or refused to take reasonable steps to

find out what such contents were, in circumstances where a reasonable person having the suspicions that he had would have taken steps to find out: *Dinesh Pillai* at [21].

(c) Alternatively, the Prosecution may choose to prove that the accused had actual knowledge of the specific nature of the drug rather than to rely on the presumption of such knowledge under s 18(2).

(i) Available to the Prosecution as an “indirect way to prove actual knowledge” is to prove, beyond a reasonable doubt, that the accused was wilfully blind: *Nagaenthran* at [30].

116 In my view, this framework sets out the proper approach as outlined in the cases on how the presumptions under ss 18(1) and (2) of the MDA are to be considered, applied and rebutted.

### ***Further observations on Dinesh Pillai***

117 In *Public Prosecutor v Khartik Jasudass and another* [2015] SGHC 199 (at [57] and [58]), Hoo Sheau Peng JC identified the differences between the doctrine of wilful blindness and the determination of whether the accused can reasonably be expected to have known the nature of the drug:

57 ...the Court of Appeal in *Dinesh Pillai* did not find that the accused was “wilfully blind” in the legal sense (*ie*, as the legal equivalent of actual knowledge). Rather, the Court of Appeal was of the view that *because the accused had turned a blind eye* to the contents of the “Brown Packet”, he failed to prove *on a balance of probabilities* the contrary of what s 18(2) of the MDA presumes.

58 Admittedly, there will often be many similarities and overlapping considerations between the issue of wilful blindness, and the issue of whether an accused could reasonably be expected to have known the nature of the drug

in his or her possession. However, I reiterate the crucial differences between the two matters. ... Wilful blindness, as “lawyer-speak” for actual knowledge inferred from the circumstances, must be proved by the Prosecution beyond a reasonable doubt. As stated in *Nagaenthran* at [30], a finding of wilful blindness must be “an irresistible inference” and “the only rational inference available on the facts”. Furthermore, a decision not to make specific inquiries must be a deliberate one and assessed subjectively. In contrast, to rebut the presumption under s 18(2) of the MDA, the accused bears the burden of showing that on a balance of probabilities he or she did not know or could not reasonably be expected to have known the nature of the drug in his or her possession. As stated in *Dinesh Pillai* at [21], this depends on whether in the circumstances, a reasonable person having the same suspicions as the accused would have taken steps to find out its nature. In other words, the accused’s conduct is measured against that of a reasonable person in his or her shoes. ...

[emphasis in the original]

118 I agree with the above observations of Hoo JC. In my view, it is of critical importance to maintain a clear analytical distinction between the doctrine of wilful blindness and the expression “turning a blind eye” used in *Dinesh Pillai*, despite their lexical similarities. The former is a means of proving actual knowledge, and the latter arises within the inquiry of whether the accused could not reasonably be expected to have known the nature of the controlled drug. Where the former is proven (beyond reasonable doubt), the Prosecution does not need to rely on the s 18(2) presumption at all. The latter becomes relevant only when the Prosecution relies on the s 18(2) presumption and the accused seeks to rebut that presumption (on the balance of probabilities).

### **My decision**

119 I find that s 18(1)(a) of the MDA raises a presumption that the Accused was in possession of A1A1, A1B1 and A2A1A1A at the material time. The Accused was at all times in physical possession of A1 and A2,

which contained A1A1, A1B1 and A2A1A1A. He placed A1 and A2 under the rear passenger seats in Yusmazina's car. He was the only person who knew where they were concealed when he entered Singapore together with them, prior to the search conducted by ICA officers on Yusmazina's car.

120 I do not consider that the Accused has succeeded in rebutting the presumption of his possession of the controlled drugs under s 18(1)(a) of the MDA on a balance of probabilities. The Accused had full physical control of A1A1, A1B1 and A2A1A1A. He planted them in Yusmazina's car, and could have moved them from their hidden location anytime he saw it fit to do so. In my judgment, the Accused also had the requisite mental element for possession. As I have explained at [47] to [68] above, the First Contemporaneous Statement is convincing evidence that the Accused knew that A1A1, A1B1 and A2A1A1A were controlled drugs. The Accused has not, for any of the reasons he has given, succeeded in casting doubt on the accuracy of the First Contemporaneous Statement and the veracity of the answers given therein as a true reflection of the Accused's knowledge at the time the statement was recorded.

121 The presumption of knowledge of the specific nature of the drug in the accused's possession under s 18(2) of the MDA is therefore triggered. The Accused is presumed to have known the nature of the drug, *ie*, that A1A1, A1B1 and A2A1A1A contain diamorphine. In attempting to rebut the presumption, the Accused argues that he had "not the slightest suspicion" that the drugs were present in the plastic bags handed over to him on 31 December 2014.<sup>171</sup> In this regard, the Accused alleges that he thought A1 and A2 felt or looked like "Cas Cas", that he had reason to trust Ali and that Ali had

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<sup>171</sup> Accused's closing submissions at para 131.



manipulated him. I have considered these submissions as well as the Prosecution's responses at [69] to [98] above, and found that the circumstances were such that the Accused, and any reasonable person in his position, would have every reason to regard the items received and the instructions to import them into Singapore with the deepest misgivings. I have also explained (at [98] to [106] above) my reasons for my finding that the Accused did not take any sufficient steps to allay his suspicions. The evidence provided by the Accused in this regard was a catalogue of inconsistencies, embellishments and half-truths. This not only tarnished his credibility but also cast serious doubt on whether the Accused had in fact taken any measures whatsoever to ascertain the contents of A1A1, A1B1 or A2A1A1A.

122 In the circumstances, I find that the Accused has failed to rebut the presumption of knowledge under s 18(2) of the MDA, either by showing on a balance of probabilities that he did not know the nature of the controlled drug or that he could not reasonably be expected to have had such knowledge. This is precisely a case in which the Accused "turned a blind eye" to the contents of A1 and A2. A reasonable person in his position would have made further enquiries about A1A1, A1B1 and A2A1A1A, or at the very least would have removed them from A1 and A2 to obtain a proper view of them. It is significant that the brownish granular substance in A1A1 and A1B1 was wrapped in *transparent* packaging and hence readily visible without having to remove any of the wrapping. It is inconceivable that a reasonable person would have been satisfied with the contrived and wholly deficient ways in which the Accused claimed to have inspected the items – *ie*, a momentary sighting of their texture, a glimpse of their shape, and a fleeting impression of their colour, seen in the dark. It is also difficult to believe that after handling the items and after having felt the texture of the items, the Accused would not

have realised that the items were much too coarse to be bird food mixed with “Cas Cas”, which would ordinarily have raised suspicions. These suspicions would have prompted the Accused to examine the items further to see if they were indeed bird food mixed with “Cas Cas” that he had been asked to bring into Singapore.

123 Given these facts, I am also satisfied beyond a reasonable doubt that the Accused was wilfully blind as to the contents of A1A1, A1B1 and A2A1A1A.

### **Concluding remarks**

124 For the above reasons, I find that the Prosecution has succeeded in proving beyond a reasonable doubt that the Accused committed the offence of importation of a controlled drug, *ie*, 44.75 g of diamorphine, into Singapore under s 7 of the MDA.

125 In reaching this conclusion, I bear well in mind that the Accused’s importation of diamorphine was accompanied by the entry of his wife and two brothers-in-law into Singapore, as well as the simultaneous importation of 200 live birds hidden under the front seats. The Accused relies on these as circumstantial evidence: if he had known that he was importing such a significant quantity of drugs into Singapore, he would not have put his wife and brothers-in-law at risk of arrest, nor would he have increased the chances of arousing the suspicion of ICA officers by bringing in so many live birds. There is some degree of persuasiveness to these arguments. But in the final calculus, I do not consider these circumstances to be determinative. They are equally consistent with the scheme of a shrewd and determined man to reduce suspicion by travelling with his family, and to furnish the basis for a claim that

A1 and A2 contained nothing more than bird food. To my mind, they ultimately do not provide sufficient traction for the Accused to rebut the presumptions. The Accused is guilty as charged and I convict him accordingly.

Chan Seng Onn  
Judge

Chee Min Ping and Jason Chua (Attorney-General's Chambers) for  
the Prosecution;  
Kanagavijayan Nadarajan and Ranadhir Gupta (A Zamzam & Co.,  
Kana & Co.) for the Accused.