IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 116

Criminal Appeal No 25 of 2019

Between

Sulaiman bin Jumari

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 48 of 2018

Between

Public Prosecutor

And

Sulaiman bin Jumari

JUDGMENT

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

CONTENTS

Sulaiman bin Jumari
v
Public Prosecutor

[2020] SGCA 116

Court of Appeal — Criminal Appeal No 25 of 2019
Sundaresh Menon CJ, Tay Yong Kwang JA and Belinda Ang Saw Ean J
1 July 2020

2 December 2020 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 The appellant, Sulaiman bin Jumari, was tried and convicted on the following charge under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

> That you … on 23 June 2016, at about 4.45 p.m., at Sunflower Grandeur, 31 Lorong 39 Geylang #03-02, Singapore, did traffic in a 'Class A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit,* by having in your possession for the purpose of trafficking, twenty two (22) packets containing not less than 1520.23 grams of granular/powdery substance which was analysed and found to contain not less than 52.75 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*), read with section 5(2) and punishable under section 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), or alternatively be liable to be punished under section 33B of the same Act.

2 The primary issue in the trial in the High Court was whether the contemporaneous statement recorded from the appellant shortly after his arrest was admissible as evidence. The contemporaneous statement contained admissions relating to the appellant's possession and knowledge of the nature of the drugs that were the subject of the charge. The appellant sought to exclude the statement on two grounds: first, under s 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") because there was an inducement given by the recording officer and second, under the court's exclusionary discretion set out in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"). In support of this second ground, the appellant alleged that during the recording of the contemporaneous statement: (a) he was suffering from drug withdrawal having consumed diamorphine earlier that day; (b) he had consumed methamphetamine shortly before his arrest; and (c) he had not slept for the previous three days due to the influence of drugs.

3 At the end of an ancillary hearing, which took approximately six days, the trial Judge ("the Judge") found that the contemporaneous statement was admissible under both s 258 of the CPC and the principles set out in *Kadar*. At the conclusion of the trial, the Judge maintained his earlier finding on the admissibility of the contemporaneous statement and gave full weight to it. Given the admissions in the statement, the Judge held that the Prosecution had proved the elements of the trafficking charge beyond reasonable doubt. As the appellant was involved in selling the drugs, he was held not to be a mere courier and therefore did not qualify for the alternative sentencing regime in s 33B of the MDA. Accordingly, the Judge passed the mandatory death sentence on the appellant. The Judge's decision is recorded in *Public Prosecutor v Sulaiman bin Jumari* [2019] SGHC 210 ("the GD").

4 The appellant appealed against his conviction, primarily on the ground that the Judge erred in admitting the contemporaneous statement as evidence despite the appellant's vulnerable condition at the material time. This appeal therefore turns essentially on whether the contemporaneous statement should have been admitted in evidence. In our judgment, we also discuss the relationship between the admissibility of statements under s 258 of the CPC and the common law exclusionary discretion stated in *Kadar*.

Facts

5 Most of the background facts were not disputed and were set out in a statement of agreed facts. The appellant is a male Singapore Citizen. He was 56 years old at the time of the arrest. He is now 60 years old. On 23 June 2016, the appellant was arrested by officers from the Central Narcotics Bureau ("CNB") while he was alone in a rented room of an apartment on the third storey of Sunflower Grandeur, a condominium in Geylang. Drug exhibits were seized from three locations in the room namely, the second drawer of a wardrobe ("A"), the bedside table ("B") and underneath the bed ("C").

6 At the trial, the appellant admitted possession of all drug exhibits except the three drug bundles found in the second drawer of the wardrobe, *ie*, location A ("the drugs in question"). The drugs in question were analysed by the Health Sciences Authority ("HSA") subsequently and found to contain a total of 49.86g of diamorphine. They comprised:

Exhibit	Analysis
1 bundle wrapped in black tape marked **A1** containing 1 plastic marked A1A	Gross weight: 455.7g Nett weight: 17.87g of diamorphine

1 bundle wrapped in black tape marked **A2** containing 1 plastic marked A2A	Gross weight: 459.1g Nett weight: 15.05g of diamorphine
1 plastic marked **A3**	Gross weight: 455.3g Nett weight: 16.94g of diamorphine

7 The three bundles of the drugs in question, together with various smaller packets of diamorphine recovered from the bedside table, location B, containing a total of 2.89g, for which possession was not disputed, formed the subject matter of the trafficking charge.

8 In the same second drawer where the drugs in question were found, the following exhibits were also seized:[1]

(a) 1 blue plastic bag marked A4 containing (i) a taped bundle containing granular substance; and (ii) a packet containing crystalline substance. No common controlled drug was detected in A4;

(b) 1 packet containing crystalline substance marked A5, analysed and found to contain 80.62g of methamphetamine;

(c) 1 packet containing granular substance marked A6, analysed and found to contain 0.26g of diamorphine;

(d) 1 electronic weighing scale marked A7, with no common controlled drug detected; and

(e) 5 polka-dotted pink packets marked A8.

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1 Record of Proceedings ("ROP") Vol II, pp 2 to 3.

9 The appellant was also found in possession of a remote control for the main/vehicle gates of the condominium, a key for the side/pedestrian gate of the condominium, a key for the main door of the apartment and a key to the room rented by him. The appellant was the only person in possession of the remote control at the material time. There were also seven mobile phones, two tablet computers and two thumb-drives in the rented room.

The arrest

10 The arrest took place at around 4.45pm on 23 June 2016. The CNB officers forced their way into the appellant's rented room and found the appellant lying on his bed using his mobile phone. One of the officers asked whether the appellant had anything to surrender and he responded by saying "three" and using his head to gesture towards the wardrobe.

11 A search was conducted in the wardrobe and the drugs in question were found in the second drawer there.[2] The rest of the room was also searched and the other drug exhibits were found at the appellant's bedside table (B) and underneath his bed (C). The search was conducted in the presence of the appellant who was sitting on the bed.

Circumstances surrounding the contemporaneous statement

12 At around 5.55pm that day, after the search and the marking of the scene were completed, Sergeant Fardlie ("the recording officer") recorded the contemporaneous statement from the appellant in his field diary. The questions and the answers were in Malay as that was the language chosen by the appellant.

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2 Transcript, 31 July 2018, pp 79 to 80.

This took place while the other CNB officers stood outside the rented room. The process took approximately 32 minutes, ending at around 6.27pm.

13 The contemporaneous statement consisted of a series of 29 questions and answers. In the contemporaneous statement, the appellant admitted that the drugs in question belonged to him, identified them as heroin and stated that they were intended for consumption and for sale.[3]

14 At the trial, the appellant took issue with the contemporaneous statement in two main respects. First, he alleged that before the commencement of the contemporaneous statement, the recording officer offered an inducement to him by telling him to "make it fast then you go and rest".[4] Second, the appellant asserted that he was in a vulnerable mental state during the recording of the contemporaneous statement due to the confluence of three factors:[5]

(a) He had consumed diamorphine that morning and had begun to experience withdrawal symptoms;

(b) He was high on methamphetamine having consumed it shortly before the CNB officers entered his room; and

(c) He had not slept for three days due to the effects of methamphetamine.

Accordingly, the appellant argued that the contemporaneous statement should be excluded as it was involuntary within the meaning of s 258(3) of the CPC or

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3 Prosecution's closing submissions dated 16 April 2019 ("PCS"), para 16.

4 Defence's ancillary hearing submissions dated 23 August 2018 ("DAS"), para 3.1

5 DAS, para 38.

on the basis of the common law discretion to exclude evidence under the *Kadar* principles. As a result of the appellant's challenge to the admission of the contemporaneous statement, an ancillary hearing was convened in accordance with s 279 of the CPC.

15 We set out below an overview of the key events concerning the appellant's arrest and the recording of the contemporaneous statement:

(a) On 23 June 2016:

(i) In the morning, the appellant consumed diamorphine;

(ii) Shortly before his arrest at 4.45pm, the appellant consumed methamphetamine;

(iii) At around 4.45pm, the appellant was arrested; and

(iv) From 5.55pm to 6.27pm, the contemporaneous statement was recorded.

(b) On 24 June 2016:

(i) At around 4.15pm, before the recording of the cautioned statement, the appellant underwent a pre-statement medical examination by Dr Yak Si Mian ("Dr Yak"). No drug withdrawal symptoms were observed by the doctor;

(ii) Between 4.50pm and 5.12pm, the cautioned statement was recorded;

(iii) At around 10.12pm, the appellant underwent his post-statement medical examination by Dr Raymond Lim. No drug withdrawal symptoms were observed by the doctor.

(c) On 25 June 2016 at around 4.10pm, the appellant was admitted into the Complex Medical Centre ("CMC") for drug withdrawal assessment. He was found to be suffering from moderate drug withdrawal symptoms and was warded.

(d) In the morning of 28 June 2016, the appellant was discharged from the CMC.

16 The appellant's drug consumption on 23 June 2016 was not contested and was evidenced by the urine tests conducted after his arrest.[6] What was disputed was its effect on the appellant during the recording of the contemporaneous statement later that day. The thrust of the appellant's case was that his mental state at the time of the contemporaneous statement was impaired. This argument rested primarily on the finding of drug withdrawal symptoms on 25 June 2016 by the CMC doctors as well as expert evidence adduced during the ancillary hearing concerning the onset and progression of drug withdrawal symptoms.

Decision of the High Court

17 At the conclusion of the ancillary hearing, the Judge held that the contemporaneous statement was admissible. He affirmed this conclusion at the end of the trial. In respect of the alleged inducement by the recording officer of the statement, the Judge was of the view that the evidence established beyond reasonable doubt that the alleged inducement was not made (GD at [40]). The Judge considered that, in any event, the inducement was too vague and did not involve any *quid pro quo* or suggest consequences that would befall the

6 ROP Vol II, p 286; ROP Vol II, p 212 to 213; Transcript, 31 July 2018, pp 61 to 62.

appellant if he failed to give a statement (GD at [35]). The statement was therefore held to be voluntary and admissible under s 258 of the CPC.

18 In respect of the appellant's physical condition, the Judge found that it was unlikely that the appellant was suffering from drug withdrawal when the contemporaneous statement was recorded on 23 June 2016. The assessments of the appellant by Dr Yak and Dr Raymond Lim before and after the recording of the cautioned statement on 24 June 2016 militated against the appellant's assertions (GD at [50]). While the doctors' assessments were not concerned specifically with the identification of drug withdrawal symptoms, the Judge was satisfied that, assuming the doctors had performed the examinations properly, they would have been expected to observe at least some of the possible symptoms of drug withdrawal. Both doctors denied anything of that nature and the Judge did not see any reason to take issue with the examinations of the appellant. In respect of the assessments by the CMC doctors, the peak of the appellant's symptoms appeared to be on the first day of the appellant's admission on 25 June 2016. The Judge did not accept the evidence of the appellant's expert (Dr Lim Yun Chin) that extrapolating backwards from 25 June 2016 would lead to the conclusion that the appellant was suffering from more severe withdrawal symptoms on 23 June 2016 when the contemporaneous statement was recorded (GD at [57]).

19 The Judge was not persuaded that the appellant was suffering from any drug withdrawal symptoms at the time of the making of the contemporaneous statement. He accepted that drug withdrawal could be a separate ground on which a court could exercise its common law discretion to exclude evidence where its prejudicial effect outweighs its probative value, relying on the principles set out in *Kadar*. The Judge noted that drug withdrawal in itself was not sufficient to give rise to such prejudice but it must be such as to raise serious

doubts about the reliability of the statement (GD at [60]). The Judge declined to exercise the *Kadar* discretion because he accepted the Prosecution's evidence that the appellant was not in a state that raised serious doubts about the reliability of the contemporaneous statement.

20 The Judge was also of the view that it was impermissible to rely on the cogency of the contemporaneous statement itself to show that the appellant was not suffering from any drug withdrawal symptoms (GD at [62]). He held that this would be begging the question and that "the statement had to be shown to be admissible from other evidence before it could be considered as evidence itself".

21 The Judge held that the reliability of the contemporaneous statement was buttressed by the fact that it was corroborated by extrinsic evidence (GD at [65]). In the statement, the appellant identified the nature of the various drug exhibits accurately and was even able to state that the exhibit marked A4 contained fake drugs, something that the recording officer could not have known before the exhibits were analysed by the HSA. He held that even if he was wrong on the issue of admissibility of the contemporaneous statement and the weight to be placed on it, possession of the drugs in question would still have been made out on other evidence (GD at [66]).

22 He also found that the appellant knew that the drugs in question were diamorphine, as evidenced by the contemporaneous statement. In any event, the presumption of knowledge under s 18(2) of the MDA operated against the appellant. The appellant's assertion was that the drugs in question were placed in the wardrobe by someone without his knowledge, not that he did not know that they were diamorphine. As the Judge had found against him on the issue of possession, the presumption was not rebutted (GD at [81]–[84]).

23 The Judge also found that the drugs were meant for trafficking as the appellant had admitted that the drugs were "for smoke and sale" and even detailed the profit that he expected to earn from them (GD at [85]–[86]). He rejected the appellant's claim that he only intended to traffic in "a non-capital amount of diamorphine" (GD at [90]).

24 Accordingly, the Judge convicted the appellant on the charge. On sentence, as the appellant had the drugs for sale, he was not a mere courier and could not qualify for the alternative sentencing regime in s 33B of the MDA. Accordingly, the Judge passed the mandatory death sentence on the appellant.

The parties' arguments on appeal

The Appellant

25 First, the appellant submitted that the Judge erred in finding that the recording officer did not make the inducement to "make it fast" prior to the recording of the contemporaneous statement. The appellant, who was labouring under the complex effects of withdrawal from diamorphine and methamphetamine, wanted to get through the process so that he could get rest as soon as possible.[7] This account was corroborated by the fact that the 29 questions and answers were recorded in just 32 minutes, with the recording officer purportedly unpacking, displaying, confirming and then repacking the drug exhibits single-handedly. The appellant asserted that the drug exhibits were not displayed or confirmed during the recording. The appellant also alleged that the recording officer was planning to attend an event (the breaking of fast in the evening as it was the Muslim Ramadan month) and was inclined to complete

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7 Defence's submissions dated 8 June 2020, para 21.

the recording quickly. The CNB's field diary indicated that the officer left the scene early.[8] The appellant complied by fabricating some answers so as to have the interview end quickly.

26 Second, the appellant argued that he was suffering from drug withdrawal symptoms at the material time, contrary to the Judge's findings. Specifically, while under the influence of drugs, the appellant had hallucinated that his girlfriend was coming out of the screen of his mobile device before the CNB officers broke into his room.[9] At one point, he also thought that the CNB officers were not real. The appellant also submitted that more weight should have been given to the Defence's expert evidence as compared to that of the Prosecution's.[10] Therefore, the statement was involuntary and inadmissible pursuant to s 258(3) of the CPC.

27 The appellant also contended that the contemporaneous statement should be excluded because its prejudicial effect outweighed its probative value.[11] He highlighted that he was a "hardcore addict" of nearly forty years and consumed about 9 to 15g of diamorphine and about 12 to 15g of methamphetamine a day over multiple sessions, depending on whether other people were smoking with him and the potency of the drug.[12] The implication appeared to be that given the high frequency and the amounts of drugs

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8 Defence's submissions dated 8 June 2020, para 23.

9 Transcript, 3 August 2018, p 47, 70; Defence's submissions dated 8 June 2020, para 41.

10 Defence's submissions dated 8 June 2020, para 31.

11 Defence's submissions dated 8 June 2020, para 49.

12 Defence's submissions dated 8 June 2020, para 52.

consumed, the Prosecution failed to show that the appellant would not have experienced drug withdrawal symptoms.[13]

28 Finally, even if the contemporaneous statement was admissible, it ought to be given minimal weight for the same reasons outlined above. After the appellant's contemporaneous statement and his treatment for drug withdrawal at the CMC, he denied consistently possession and knowledge of the drugs in question.[14]

The Prosecution

29 The Prosecution supported the Judge's findings regarding the alleged inducement. It submitted that the Judge was correct to find that there was no relevant inducement made since the alleged exhortation could not be construed objectively as such.[15]

30 Second, the Judge was also correct to find that the appellant was not suffering from drug withdrawal symptoms at the material time. The Prosecution highlighted that the appellant did not claim to have been suffering from severe drug withdrawal symptoms.[16] Further, the contemporaneous statement itself showed that the appellant was thinking and answering coherently at the material time.[17] The Prosecution submitted that the court was entitled to consider the

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13 Defence's submissions dated 8 June 2020, para 54.

14 Defence's submissions dated 8 June 2020, paras 57 to 58.

15 Prosecution's submissions dated 8 June 2020, para 37.

16 Prosecution's submissions dated 8 June 2020, para 41.

17 Prosecution's submissions dated 8 June 2020, para 48.

contents of the statement when its admissibility was being determined, contrary to the Judge's decision.[18]

31 Since the appellant was not operating under any inducement or the effects of drug withdrawal, the contemporaneous statement was admissible and reliable.[19] Thus, full weight ought to be given to the statement and the conviction should be upheld on the basis of the unequivocal confessions to possession of the drugs in question, knowledge of their nature and the intention to traffic in them.

Issues before this Court

32 In respect of the contemporaneous statement, there are two issues to determine. First, whether the statement was involuntary under s 258(3) of the CPC and therefore should not be admitted. Second, whether the prejudicial effect of the statement outweighed its probative value and should therefore be excluded under the *Kadar* discretion.

33 After determining the admissibility of the contemporaneous statement, the issues are whether the Prosecution has proved that the appellant had possession of the drugs in question, knowledge of their nature and the intention to traffic in them.

The applicable legal principles

34 We begin by setting out the principles applicable to the admissibility issue under s 258 of the CPC and under *Kadar*.

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18 Prosecution's submissions dated 8 June 2020, paras 49 to 50.

19 Prosecution's submissions dated 8 June 2020, paras 57.

Section 258 CPC

35 The primary ground for challenging the admissibility of an accused person's statement is found in s 258 of the CPC which provides:

> **Admissibility of accused's statements**
>
> 258.–(1) Subject to subsections (2) and (3), where any person is charged with an offence, any statement made by the person, whether it is oral or in writing, made at any time, whether before or after the person is charged and whether or not in the course of any investigation carried out by any law enforcement agency, is admissible in evidence at his trial; and if that person tenders himself as a witness, any such statement may be used in cross examination and for the purpose of impeaching his credit.
>
> (2) Where a statement referred to in subsection (1) is made by any person to a police officer, no such statement shall be used in evidence if it is made to a police officer below the rank of sergeant.
>
> (3) The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
>
> *Explanation 1* - If a statement is obtained from an accused by a person in authority who had acted in such a manner that his acts tend to sap and have in fact sapped the free will of the maker of the statement, and the court is of the opinion that such acts gave the accused grounds which would appear to the accused reasonable for supposing that by making the statement, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, such acts will amount to a threat, an inducement or a promise, as the case may be, which will render the statement inadmissible.
>
> *Explanation* 2 - If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:

> (*a*) under a promise of secrecy, or in consequence of a deception practised on the accused for the purpose of obtaining it;
>
> (*aa*) where the accused is informed in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap. 185) under which life imprisonment may be imposed in lieu of death;
>
> (*b*) when the accused was intoxicated;
>
> (*c*) in answer to questions which the accused need not have answered whatever may have been the form of those questions;
>
> (*d*) where the accused was not warned that he was not bound to make the statement and that evidence of it might be given against him;
>
> (*e*) where the recording officer or the interpreter of an accused's statement recorded under section 22 or 23 did not fully comply with that section; or
>
> (*f*) where an accused's statement under section 22 or 23 is in writing, when section 22(5) or 23(3B) (as the case may be) requires the statement to be recorded in the form of an audiovisual recording.

36 In accordance with s 258(1) of the CPC, the starting point is that any statement given by an accused person in the course of investigations is admissible in evidence at his trial. This is subject to the requirement of voluntariness expressed in s 258(3) of the CPC. Where the voluntariness of a statement is challenged, an ancillary hearing may be convened to determine its admissibility in accordance with s 279 of the CPC. In such a case, the Prosecution bears the legal burden of proof to show beyond reasonable doubt that the statement was given voluntarily (*Panya Martmontree and others v Public Prosecutor* [1995] 2 SLR(R) 806 at [26]). Where a statement is found to be involuntary within the meaning of s 258(3), the provision mandates that the court "shall refuse to admit the statement".

37 It has been suggested that the rationale underpinning the admissibility regime in s 258(3) of the CPC is reliability. This was alluded to in *Poh Kay Keong v Public Prosecutor* [1995] 3 SLR(R) 887 ("*Poh Kay Keong*") which considered briefly the purpose of s 24 of the Evidence Act (Cap 97, 1990 Rev Ed), a progenitor of s 258(3) of the CPC. There, the court stated at [42] that the purpose of s 24 of the Evidence Act was to "ensure the reliability of a confession and is founded on the premise that a confession brought about as a result of an inducement, threat or promise is not reliable and therefore should be excluded".

38 While the reliability rationale underpins s 258(3) of the CPC in so far as the use of inducement, threat or promise in the taking of statements raises the spectre of false confessions, there may be other considerations as well (see, generally, Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) at para 5.043, which considers a number of other rationales). The prohibition in s 258(3) of the CPC may also be said to discourage misconduct or other improprieties on the part of law enforcement officers who might be tempted to use an inducement, a threat or a promise to cajole or even compel an accused person to say something that he would not have said otherwise. The objection in principle to the use of such strategies in the course of statement-recording is that they could amount to abuse of power and undermine the rule of law and the integrity of the judicial process.

39 The primary requirement for admissibility in s 258(3) of the CPC is that the statement must be a voluntary one. Whether a statement is voluntary or not turns on whether any of the elements mentioned in s 258(3) of the CPC was present in the statement-taking process. The first stage of the inquiry is whether there was any inducement, threat or promise having reference to the charge against the accused person. If any of these was present, the next stage examines whether the said inducement, threat or promise was such that it would be

reasonable for the accused person to think that he would gain some advantage or avoid any "evil" (meaning adverse consequences) in relation to the proceedings against him. These constitute the twin limbs of the voluntariness test (*Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [53]). The first stage considers objectively whether any inducement, threat or promise was made. This entails a consideration of what might be gained or lost as well as the degree of assurance (see, for example, *Poh Kay Keong* and *Ismail bin Abdul Rahman v Public Prosecutor* [2004] 2 SLR(R) 74). The second stage, which is the subjective limb, considers the effect of the inducement, threat or promise on the mind of the accused person.

40 The nature of any inducement, threat or promise and its purported effect may take a myriad of forms and the court's assessment is necessarily a fact-sensitive one. For instance, if the alleged inducement, threat or promise is so vague or trivial in the circumstances, it is unlikely to get past the objective standard at the first stage (see, for example, *Yeo See How v Public Prosecutor* [1996] 2 SLR(R) 277 and *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541). Similarly, at the second stage, the court will consider all the circumstances, including the personality and experience of the accused person, when it decides whether and how any inducement, threat or promise has affected the accused person in the statement-taking process.

41 Explanation 2 in s 258(3) of the CPC specifies that the mere presence of certain situations do not render a statement inadmissible. The effect of Explanation 2 is essentially that the prescribed circumstances would not, by themselves, render a statement inadmissible. For example, as stated in Explanation 2(*b*), the mere fact that an accused person is intoxicated would not render the statement he gave inadmissible. However, this does not mean that intoxication will never be relevant. An accused person who is in an obvious

state of delirium or semi-consciousness from severe intoxication would not be capable of giving statements which could be relied upon safely. In the final analysis, much depends on the degree of intoxication and the intensity of its effect on a particular accused person.

42 The scope of Explanation 2(*b*) was the subject of some contention before the Judge. The appellant relied on *Public Prosecutor v Dahalan bin Ladaewa* [1995] 2 SLR(R) 124 ("*Dahalan*") for the proposition that drug withdrawal could be a basis for finding that a statement was given involuntarily and that *Kadar* provided a basis for excluding voluntary statements where the prejudicial effect of the evidence exceeded its probative value, even if the evidence was otherwise admissible. The Prosecution argued that the term "intoxicated" encompassed drug withdrawal symptoms and that the appellant's challenge as to voluntariness on this ground was therefore a non-starter. The Judge did not think that Explanation 2 was meant to overrule *Dahalan*. He was of the view that such statements were excluded not because they were involuntary but rather because of serious concerns about their reliability. He also did not think that the insertion of Explanation 2 into the CPC, which took place after *Kadar* was decided, overruled the *Kadar* discretion to exclude prejudicial evidence with respect to statements obtained while an accused person was allegedly labouring under the effects of drug withdrawal. The Judge did not make a definitive ruling on the scope of "intoxicated" in Explanation 2(*b*). However, he noted that even if he accepted the Prosecution's argument that "intoxicated" encompassed drug withdrawal symptoms, Explanation 2(*b*) did not leave the *Kadar* discretion with no room to operate where an accused person's statement was disputed on the ground of drug withdrawal (GD at [44]).

43 Although this point was not repeated before us, we hold the view that "intoxicated" in Explanation 2(*b*) to s 258(3) of the CPC can and should include

drug withdrawal. The ordinary meaning of "intoxication" refers to the diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption (see Bryan A Garner (ed in chief), *Black's Law Dictionary* (Thomson Reuters, 11th Ed, 2019)). We find further support for our view in ss 85 and 86(3) of the Penal Code (Cap 224, 2008 Rev Ed) which provide:

> **Intoxication when a defence**
>
> **85**.—(1) Except as provided in this section and in section 86, intoxication shall not constitute a defence to any criminal charge.
>
> (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and —
>
> > (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
> >
> > (b) the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.
>
> **Effect of defence of intoxication when established**
>
> **86.**—(1) …
>
> (2) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
>
> **Interpretation**
>
> (3) For the purposes of this section and section 85 "intoxication" shall be deemed to include a state produced by narcotics or drugs.

Using a purposive approach, there is good reason why "intoxicated" in Explanation 2(*b*) to s 258(3) of the CPC should not be confined to a state caused by the consumption of alcohol. Depending on the type and the quantity of the

substances consumed, both are equally capable of depriving a person of his rational thinking and even his consciousness.

***Kadar* exclusionary discretion**

44 Apart from the admissibility regime set out in s 258(3) of the CPC, the court also has a residual discretion at common law to exclude evidence where its prejudicial effect outweighs its probative value. The origin for the court's exclusionary discretion was discussed in *Kadar* at some length. At [51]–[53], the court stated:

> 51 In determining whether a residual discretion exists to exclude voluntary statements made by an accused person, it is necessary to consider the observations of the court in [*Phyllis Tan*] … the court further held (at [126]) that the key holding of the House of Lords in *Regina v Sang* [1980] 1AC 402 ("*Sang*") to the effect that there remained a discretion to exclude any evidence that had more prejudicial effect than probative value is "consistent with the EA and in accordance with the letter and spirit of s 2(2), and is therefore applicable in the Singapore context".
>
> 52 Even before *Phyllis Tan* was decided, the existence of the *Sang* type of discretion had been endorsed by this court in *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 ("*Rayney Wong*") in the following terms (at [27]):
>
> > We know of no principle which states that evidence that has been procured improperly or unfairly in order to prosecute offenders but which is not procured unlawfully is an abuse of process or that it is inadmissible in evidence, except when there would be unfairness at the trial in terms of its prejudicial effect exceeding its probative value.
>
> In Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 3rd Ed, 2010) … at ch 10 … this discretion is regarded as not only approved in *Phyllis Tan*, but as arising from an inherent jurisdiction of the court to prevent injustice at trial…
>
> 53 For present purposes, it suffices for us to state that from the recent authorities cited above, it is clear that a common law discretion to exclude voluntary statements that would otherwise be admissible exists where the prejudicial effect of the

> evidence exceeds its probative value (for convenience, this discretion will be referred to hereafter as the "exclusionary discretion" where appropriate). In our view, the discretion exercised by Rajendran J in [*Public Prosecutor v Dahalan bin Ladaewa* [1995] 2 SLR(R) 124] … was none other than this exclusionary discretion…

45 At its core, the exclusionary discretion is concerned with the reliability of the statements as evidence to be admitted: *Kadar* at [55]. This residual discretion applies to statements which, despite having been found or accepted to be voluntary within the meaning of s 258(3) of the CPC, nonetheless suffer from some form of unfairness in terms of the circumstances and process by which they were obtained. In other words, their prejudicial effect outweighs their probative value. As the Judge noted, such statements are excluded not because they are involuntary but because of the serious concerns about their reliability: GD at [44].

46 The court's exclusionary discretion therefore rests on a different footing from s 258(3) of the CPC. As explained, the statutory admissibility regime focuses on voluntariness using the factors of inducement, threat or promise. However, in its exercise of its residual discretion to exclude evidence, the court is concerned essentially with the reliability of the statement.

47 The probative value of any evidence is its ability to prove a fact in issue or a relevant fact. Its prejudicial effect refers to how its admission might be unfair to the accused person as a matter of process. Prejudice here is not measured by the inculpatory or exculpatory nature of the statement since an inculpatory statement will always be prejudicial to the accused person because it goes to prove his guilt. This balancing exercise between prejudice and probative value takes into account the competing considerations in this area of the law including the rights of accused persons to be protected from acts that are beyond the bounds of propriety or situations that are patently unfair.

48 It is neither prudent nor possible to lay down a set of definitive principles as to how the court should exercise its exclusionary discretion, given the innumerable scenarios in which the reliability of an accused person's statement might be in issue. Some examples for evaluating prejudicial effect would include whether the accused person was under the influence of alcohol or of drugs, his physical condition at the material time and his ability to understand the language used.

49 In *Dahalan*, the appellant was found in possession of a clutch bag containing diamorphine. On the day the appellant's statement was taken, he had consumed heroin and erimin before his arrest and that caused him to be sleepy and to have little recollection of what was happening. One police officer testified that when the appellant was arrested that morning at 10.40am, he appeared pale and his gait was unsteady. The same officer also testified that the appellant had to be awakened from his sleep prior to the interview for the impugned statement which was recorded at around 2.15pm that day at the police station. He also said that the appellant looked sleepy during the recording. Upon analysis, a high quantity of morphine was found in the appellant's urine sample. At the trial, the appellant, when asked by his counsel as to what he recalled from the day of the arrest, his recollection was limited and in particular, he was unable to recall telling one Sergeant Lai that he had intended to sell the drugs, as was recorded in the impugned statement.

50 The court held that the statement taken from the appellant was inadmissible for several reasons. The appellant had consumed drugs that morning, the effects of which, including drowsiness, were experienced by him when the statement was taken (at [69]). Moreover, Sergeant Lai was found to have "flagrantly disregarded" the provisions of the CPC and the Police General

Orders in relation to the taking of the statement and no reasonable explanation was offered for the lapses (at [79] and [85]).

51 In *Kadar*, two brothers were charged with murder. The relevant prejudicial effect arose from procedural irregularities in the recording of two statements from one Ismil. Specifically, the Court of Appeal found that there was deliberate and repeated non-compliance with the procedural requirements for the taking of statements stipulated in the CPC as well as in the Police General Orders (*Kadar* at [140]–[144]). In the circumstances, the statements in question were found to be inadmissible because their prejudicial effect exceeded their probative value.

52 The Court of Appeal in *Kadar* noted that little or no weight could be given to all of Ismil's statements because there was real doubt as to their reliability (at [150]). One of the factors was that at the material time, Ismil was suffering from drug withdrawal symptoms owing to his Dormicum addiction which was in the moderate to severe range and which caused him to be in a state of confusion and/or unable to cope with stressful situations. Notably, there was independent evidence from the officers involved that, among other things, the appellant appeared tired, was limping, had bloodshot eyes, slurred speech and appeared "high" on the day that the disputed statements were recorded (at [160]–[165]).

53 While the situations in which the prejudicial effect of evidence might justify exclusion of voluntary evidence are myriad, this should not be a licence to put forward unmeritorious challenges to statements. In any balancing exercise, where a voluntary statement is found to be highly probative, evidence of significant prejudice to the accused person would be required to justify the exclusion of the statement.

Summary

54 In summary, where there is a dispute as to the admissibility of a statement, the following questions should be considered:

(a) First, was the statement given voluntarily based on the requirements set out in s 258(3) of the CPC?

(i) If the statement was involuntary due to an inducement, threat or promise within the meaning of s 258(3) of the CPC, then it shall be excluded and that is the end of the admissibility inquiry.

(ii) If the statement was voluntary, the enquiry proceeds to the second step.

(b) Second, even if the statement was voluntary, would the prejudicial effect of the statement outweigh its probative value? This is a discretionary exercise and the court's foremost concern is in evaluating the reliability of the statement in the light of the specific circumstances in which it was recorded.

55 The question of admissibility – whether under the statutory regime or the common law discretion – is, however, separate from the question of weight. Where statements, particularly confessions, have been retracted, the court will exercise care in assessing the retracted confession as highlighted in *Kadar* at [74] affirming *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [85]–[86]:

> 85 However, both *Lim Thian Lai* and *Panya Martmontree* have cautioned that the evidential weight to be assigned to the retracted statement should be assiduously and scrupulously assessed by the courts. In particular, I would add, if the retracted statement forms the only evidence upon which the

> Prosecution's case rests, such statements should attract painstaking if not relentless scrutiny. Therefore, in *Lim Thian Lai* ([84] *supra*) at [43], it was held that it was necessary for the court to be satisfied that the retracted confession is voluntary, *true* and reliable…
>
> 86 I pause here only to emphasise that the requirements of the proviso to the general principle that a retracted statement may still be relied upon as being true, *viz*, that the statement should *be voluntary and objectively reliable* should be required conjunctively. Therefore, it is not sufficient for the Prosecution merely to prove beyond reasonable doubt that the statement was made voluntarily. A statement by a witness (or even an accused) even if it was given voluntarily may or may not be reliable depending on the circumstances of the case and the cogency of the statement itself and may to that extent, be dubious.
>
> [emphasis in original]

Our decision on admissibility

Section 258(3) of the CPC

56 The appellant alleged that the recording officer of the contemporaneous statement here had offered him the following inducement, "make it fast then you go and rest". The allegation was that the recording officer was trying to rush through the recording of the statement because he had to leave the scene of arrest in order to be in time for the breaking of fast in the evening as it was the Muslim Ramadan month. The appellant pointed to the fact that the recording of the contemporaneous statement comprising 29 questions and answers took only 32 minutes (5.55pm to 6.27pm) and that the recording officer left the scene of arrest at 6.45pm.[20]

57 We are not persuaded by this contention. Both the recording officer and the appellant spoke in Malay as that was the language that the appellant chose

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[20] Defence's submissions dated 8 June 2020, paras 21 to 23.

to speak in. The questions and the answers were recorded in Malay. As shall be seen later, it is apparent from the contemporaneous statement that practically all the questions posed were short and simple ones and the appellant's answers to them were also short and simple. For instance, translated into English, one question merely asked, "What is this?" and the one-word answer was "Heroin". Another question asked, "What is it for?" and the answer was, "Same also. For smoke and sale". The fact that the recording of the contemporaneous statement took only 32 minutes therefore did not appear to be an impossible feat and certainly did not give the impression that it was a rushed job. The fact that the recording officer left the scene at 6.45pm after the recording of the contemporaneous statement was completed at 6.27pm did not lead to the conclusion that he was rushing off for his breaking of fast because one might even argue that he would have left much sooner rather than delay some 18 minutes after finishing the recording of the contemporaneous statement before leaving the scene.

58 In the circumstances, we agree with the Judge that no inducement was given by the recording officer to the appellant before the recording. We agree that the Prosecution has proved beyond reasonable doubt that the contemporaneous statement was given voluntarily under s 258(3) of the CPC. The contemporaneous statement is therefore admissible under s 258(3) of the CPC.

59 For completeness, we discuss s 258(6)(*c*) of the CPC briefly. The provision reads:

> (6) Notwithstanding any other provision in this section —
>
> > (*a*) where a person is charged with any offence in relation to the making or contents of any statement made by him to any officer of a law enforcement agency in the course of any investigation carried out by the

> agency, that statement may be used as evidence in the prosecution;
>
> (*b*) any statement made by the accused in the course of an identification parade may be used as evidence; and
>
> (*c*) when any fact or thing is discovered in consequence of information received from a person accused of any offence in the custody of any officer of a law enforcement agency, so much of such information as relates distinctly to the fact or thing thereby discovered may be proved.

60 The premise of s 258(6)*(c)* is that part of the statement which is subsequently confirmed by the discovery of a material fact is likely to be reliable. While this provision was not raised by either party before us, we note that upon the CNB officers' forced entry into the appellant's rented room, one of the officers asked the appellant whether he had anything to surrender. In response, the appellant said "three" and gestured with his head towards the wardrobe, where the three bundles of the drugs in question were found as a consequence. Therefore, even if the contemporaneous statement were inadmissible under the voluntariness test, the fact that the three bundles were found as a result of information which came from the appellant could be proved under s 258(6) of the CPC. This would show at least that the appellant was aware of the presence of the three bundles in the wardrobe.

Exclusionary discretion

61 As the contemporaneous statement was given voluntarily, the second issue here is whether there was nevertheless such unfairness in the circumstances of its recording that its prejudicial effect outweighed its probative value. As already mentioned, the appellant argued that he was in a vulnerable mental state at the time of recording of the statement because of: (a) his consumption of diamorphine and the withdrawal effects; (b) his consumption of

methamphetamine shortly before his arrest; and (c) his lack of sleep for three consecutive days before his arrest due to his consumption of methamphetamine.

62 It was undisputed that amphetamine, morphine and opiate were detected in the appellant's urine based on tests conducted after his arrest.[21] A lot of time was spent during the ancillary hearing in adducing medical evidence on the appellant's physical condition during the recording of the contemporaneous statement. The medical evidence came from the following doctors:

(a) Dr Yak and Dr Raymond Lim who examined the appellant before and after the cautioned statement taken on 24 June 2016 respectively;

(b) The evidence of the doctors from the CMC (Dr Tan and Dr Nathan) who examined the appellant when he was admitted for drug withdrawal assessment between 25 and 27 June 2016;

(c) Dr Jason Lee, a psychiatrist with the Institute of Mental Health, who assessed the appellant in July 2016; and

(d) The appellant's expert witness, Dr Lim Yun Chin, a psychiatrist from Raffles Hospital, who assessed the appellant in July 2018.

63 The examinations made by the first two groups of doctors above were the most proximate assessments of the appellant in relation to the contemporaneous statement recorded on 23 June 2016. In contrast, the evidence of Dr Jason Lee and Dr Lim Yun Chin dealt with the onset and progression of drug withdrawal symptoms. As mentioned earlier, it was undisputed that the

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[21] ROP Vol II, p 286; ROP Vol II, p 212 to 213.

appellant was diagnosed to be suffering from drug withdrawal symptoms from 25 June 2016 to 27 June 2016 when he was admitted into the CMC. The issue here is whether he was experiencing similar symptoms at the time of the recording of the contemporaneous statement on 23 June 2016.

64 The evidence of the doctors from the CMC formed the basis for the appellant's arguments. Between 25 June 2016 and 27 June 2016, the appellant was assessed using the Clinical Opiate Withdrawal Scale (COWS), a tool used to determine the severity of withdrawal from diamorphine. In brief, the COWS employs a scoring system based on various symptoms which include pulse rate, sweating, restlessness, pupil size, bone or joint aches, runny nose or tearing, gastrointestinal upset, tremors and yawning.[22] Depending on the total score obtained, the patient's withdrawal symptoms can be classified into one of five bands: negative, mild, moderate, moderately severe and severe. For our present purposes, it suffices to note that the mild band ranges from 5 to 12 points whereas the moderate band ranges from 13 to 24 points.

65 The appellant was given a COWS score of 13 on 25 June 2016 followed by a score of 7 for each of the remaining two days at the CMC, *ie*, he was at the bottom of the moderate band on the first day of admission and within the mild band for the second and the third day. In a report dated 15 August 2016 by Dr Edwin Vethamony from the CMC, it was stated that the appellant was "positive for moderate drug withdrawal".[23] This was based on a review of the appellant's COWS scores and the clinical notes of Dr Tan and Dr Nathan who had reviewed the appellant during his stay in the CMC. Dr Vethamony emphasised that the

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22 ROP Vol II, p 292.

23 ROP Vol II, p 284.

COWS operates on a spectrum and since the highest score given to the appellant out of the three days was 13, he arrived at a conclusion of moderate drug withdrawal.

66 The appellant took issue with two aspects of the CMC's assessment. First, it was alleged that the appellant's rate of drug consumption was in fact higher than what was recorded in the clinical notes. Dr Tan's notes stated that the appellant consumed 0.3g of diamorphine per day and 0.5g of methamphetamine per day. Before the Judge, the appellant testified that he consumed about 8g of diamorphine per day (smoking about 2 to 5g per session); as for methamphetamine, it was approximately 3 to 5g per session four times a day.[24] Second, the appellant argued that the correct COWS score for the second day of his stay at the CMC, 26 June 2016, should be 10 instead of 7. This was because the appellant had complained of nausea and vomiting and three episodes of diarrhoea and these should have yielded a higher score under the "gastrointestinal upset" factor.[25]

67 In our view, neither contention has any merit. While Dr Tan conceded in cross-examination that he did not ask the appellant how much drugs he consumed per session and did not go into an extended inquiry as to the appellant's drug history since his youth,[26] this was not sufficient to cast doubt on the accuracy of his notes. In any case, when the appellant was examined in 2018 by his expert witness, Dr Lim Yun Chin, the evidence was that he informed Dr Lim Yun Chin that he was not in a position to know how many grams of

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24 Transcript, 3 August 2018, pp 43 to 44.

25 Transcript, 1 August 2018, p 81, lines 15 to 21.

26 Transcript, 31 July 2018, p 101 to 102.

diamorphine and of methamphetamine he took daily.[27] Instead, the appellant only informed Dr Lim Yun Chin that he consumed about 1 to 1.5 packets of diamorphine of unspecified weight every 4 to 6 hours and that his usage of methamphetamine was irregular and erratic. The appellant's own account of his consumption habits was therefore flimsy and we are not able to see any basis for doubting Dr Tan's evidence. The appellant's criticism of the COWS score given for 26 June 2016 is also of little consequence. For the second day of his stay at the CMC on 26 June 2016, even if the appellant's "gastrointestinal upset" score was given the maximum of 5 points instead of the 2 points as scored, the total COWS score would be 10 and that would only place the appellant at the higher end of the mild withdrawal range of 5 – 12 instead of at the lower end.

68 Taking the appellant's moderate drug withdrawal between 25 June 2016 and 27 June 2016 as the reference point, the appellant argued that he was probably experiencing even more severe symptoms during the recording of the contemporaneous statement on 23 June 2016. The appellant relied on Dr Lim Yun Chin's evidence while the Prosecution relied on Dr Jason Lee's.

69 While the evidence of Dr Lim Yun Chin and Dr Jason Lee diverged in some respects, there were two points of consensus. Both psychiatrists agreed generally that:

> (a) The consumption of diamorphine and methamphetamine at different times by the appellant on 23 June 2016 presented significant difficulty in postulating how the appellant's body would have responded during the recording of the contemporaneous statement;

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27 Transcript, 21 August 2018, p 76.

(b) However, being in a state of drug withdrawal and/or under the influence of drugs would not necessarily prevent someone from giving a voluntary and reliable statement.

70 Dr Lim Yun Chin's evidence was that the withdrawal symptoms from consumption of diamorphine could begin anytime between 6 to 72 hours from last use and could peak anytime within that period.[28] Because of the severity and chronicity of the appellant's drug addiction, the symptoms could take effect as early as 4 to 6 hours after his last use of drugs in the morning of 23 June 2016.[29] The typical progression of the symptoms could be represented graphically as a sigmoid curve (which increases at a relatively speedy rate at the start and then decreases at a gentler pace) in contrast to a symmetrical bell-shaped curve (where both the flow and the ebb of the symptoms occur at the same rate).[30] At the same time, Dr Lim Yun Chin stated that the symptoms could fluctuate during the withdrawal process.[31] His opinion was that the peak of the appellant's drug withdrawal symptoms should have occurred before 25 June 2016 when he was assessed by the CMC. Hence, by extrapolating backwards, it was likely that the appellant would have been experiencing more severe and distressing drug withdrawal symptoms during the recording of the contemporaneous statement in the evening of 23 June 2016.

71 Dr Jason Lee testified that withdrawal symptoms for diamorphine typically include agitation, restlessness, nausea, diarrhoea, increased heart rate and runny nose. They would usually begin to show about 8 to 12 hours after last

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28 Transcript, 21 August 2018, pp 88 to 89.

29 Transcript, 21 August 2018, p 88, line 17.

30 Transcript, 21 August 2018, p 88.

31 Transcript, 21 August 2018, pp 108 to 109.

use and the peak of the symptoms would usually come 24 to 48 hours before subsiding.[32] Therefore, the appellant could only have had mild drug withdrawal symptoms at the time of the recording of the contemporaneous statement.[33] When the statement (as shall be discussed below) was shown to Dr Jason Lee on the stand, he noted that the appellant's answers were relevant, coherent and goal-directed.[34]

72 The key portions of Dr Lim Yun Chin's report dated 27 July 2018 under "Opinion" stated:[35]

> I have been informed that that the accused was suffering from heroin withdrawal during the recording of the contemporaneous police statements at about 6pm & 10pm on 23 Jun 2016.
>
> Based on Dr Vethmony's report, the severity of his withdrawal symptoms was graded a score of 13 (moderate range) on 25.6.2016. On 26.6.2016, the score came down to 7 (mild range). On 27.6.2016 the score was also 7.
>
> It is a common phenomenon that heroin withdrawal symptoms reduce with time over a period that could extend to two weeks. On 23.6.2016, the severity of withdrawal symptoms were not graded but it is logical to assume it could be higher than 13.
>
> The withdrawal symptoms that Dr Vethmony documented on 25.6.2016 was that the accused was having "diffuse body ache and joint pain in to abdominal cramps with nausea" and "loose stools". The doctor's clinical examination revealed the accused was "restless, but alert" and he had "increased tearing and nasal secretion, slight body temperature" all sign of heroin withdrawal.
>
> If these same symptoms (namely, diffuse body ache, joint pain, abdominal cramps, loose stools, restlessness, tearing and nasal secretion and body temperature) were present on 23.6.2018, it

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32 Transcript, 1 August 2018, p 27, lines 5 to 25.

33 Transcript, 1 August 2018, p 29, lines 3 to 6; p 42, lines 1 to 2.

34 Transcript, 1 August 2018, p 32, lines 19 to 29.

35 ROP Vol II, p 18 to 19.

> is likely the symptoms were more severe and distressing. However it would be conjectural whether someone with such extensive symptoms could be medically fit to be interrogated for contemporaneous police statements at about 6pm & 10pm on 23 Jun 2016 as drug addicts vary in their resilience to withdrawal symptoms.

73 The date "23.6.2018" in the last quoted paragraph must be a typographical error because the events in issue took place in 2016. We have difficulty accepting Dr Lim Yun Chin's evidence for a number of a reasons. First, he appeared to have assumed the very thing which he was tasked to assess when he stated that he was "informed that … the accused was suffering from heroin withdrawal" during the recording of the contemporaneous statement. When asked about this in cross-examination, Dr Lim Yun Chin's evidence was that the appellant had told him that and he did not ask the appellant about his symptoms during the material time.[36]

74 Second, no scientific basis was given for the extrapolation from the appellant's symptoms on 25 June 2016 backwards to 23 June 2016 when the contemporaneous statement was recorded. On Dr Lim Yun Chin's theory, the appellant's symptoms on 24 June 2016 ought to have been more severe than those assessed by the CMC on 25 June 2016. However, this was not borne out on the evidence.

75 Third, Dr Lim Yun Chin did not consider the contents of the contemporaneous statement. The crux of the appellant's case was that the contemporaneous statement was inaccurate and should be excluded because he was labouring under the effects of drug withdrawal at the material time. When this point was put to Dr Lim Yun Chin in cross-examination, he conceded that

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[36] Transcript, 21 August 2018, p 79 to 80.

this was a limitation to his evaluation on whether the appellant was in fact medically fit and in a proper frame of mind to be interrogated.[37] In our judgment, the appellant's answers in the statement were relevant to the assessment of his mental state at that point in time and the omission to consider it diminishes the weight to be given to Dr Lim Yun Chin's opinions.

76 Dr Yak examined the appellant between 4.15pm and 4.20pm on 24 June 2016 prior to the recording of his cautioned statement. She stated that she did not observe any drug withdrawal symptoms during the examination. Her report stated that the appellant "was alert and well, with stable vital signs" and the examination was unremarkable. Dr Raymond Lim assessed the appellant at 10.12pm on the same day after the completion of the cautioned statement. He also did not observe any drug withdrawal symptoms. While the examination by Dr Raymond Lim lasted about three minutes only, we do not think that undermined the accuracy of the doctor's observations.[38] Dr Raymond Lim's clinical notes recorded a negative finding for drug withdrawal signs.[39] His report also stated that the appellant was "alert, comfortable and responsive" and he was "speaking in full sentences".[40] While the two doctors' assessments were not for the specific purpose of detecting drug withdrawal symptoms, there was no dispute that both Dr Yak and Dr Raymond Lim were qualified in observing and detecting such symptoms. We agree with the Judge that they would have been able to detect drug withdrawal symptoms if they had conducted the examinations properly. There was no evidence that they had not done so.

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37 Transcript, 21 August 2018, p 103, lines 4 to 9.

38 Transcript, p 117, lines 13 to 24.

39 ROP Vol II, p 253.

40 ROP Vol II, p 250 and 256.

77 Dr Lim Yun Chin's extrapolation was therefore incongruous with the objective evidence of the appellant's condition on 24 June 2016. If his backward extrapolation were accepted, it would mean that the appellant experienced more severe withdrawal symptoms on 23 June 2016 than on 25 June 2016 but somehow did not exhibit any discernible drug withdrawal symptoms when examined by the two doctors on 24 June 2016 on separate occasions some six hours apart. In our view, this was highly improbable and was also at odds with the usual progression of drug withdrawal symptoms in the trajectory of a sigmoid curve as explained by Dr Lim Yun Chin.

78 The postulations of Dr Jason Lee and Dr Lim Yun Chin on the onset and peak of the drug withdrawal symptoms after the appellant's last use of diamorphine in the morning of 23 June 2016 can be tabulated as follows for easy reference:

	Onset	**Peak**
Dr Lim Yun Chin	as soon as 4 to 6 hours	between 6 to 72 hours
Dr Jason Lee	about 8 to 12 hours	between 24 to 48 hours

79 In our view, the more likely sequence of events was that the appellant's withdrawal symptoms peaked sometime after the medical examination by Dr Raymond Lim at 10.12pm on 24 June 2016 but before his first examination at the CMC at 4.10pm on 25 June 2016 by Dr Tan. There was no clear evidence as to when in the morning of 23 June 2016 the appellant consumed diamorphine. Nonetheless, taking 8am as the estimated reference point (see [91] below), this would suggest that the appellant's withdrawal symptoms from diamorphine peaked at some point between 38 hours and 56 hours after consumption. This

range would be within the postulations for peak withdrawal symptoms stated by both Dr Lim Yun Chin and Dr Jason Lee.

80 Finally, even on the appellant's own evidence, he was, at most, at an early stage of withdrawal. This could be observed from two related exchanges in his cross-examination during the trial.

81 The first exchange related to the appellant's motivations and reasons for the answers in the contemporaneous statement:[41]

> Q Why were you prepared to give false answers and sign off on false answers just to end the interview quickly? Why was that so important to you?
>
> A Because at that moment in time, my mind was confused. I was scared of the withdrawal symptoms and so many things went through my mind.
>
> Q What are these so many things?
>
> A Things regarding my daughter. I would be in prison for a long time. Okay, I was thinking about the pain that I will have to face during my withdrawal. Those are the things confusing me.

82 The second exchange was a follow-up to the above questions:[42]

> Q And, just now, you testified that there were many things going through your mind. Right?
>
> A Yes.
>
> Q You said that you were afraid withdrawal symptoms would set in.
>
> A Yes.
>
> …

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41 Transcript, 3 August 2018, p 59, lines 20 to 25.

42 Transcript, 3 August 2018, p 72 to 73.

> Q Alright. You said that you were afraid withdrawal symptoms would set in. This is your own thoughts, right? You are scared that withdrawal symptoms will set in. Your thoughts.
>
> A I'm at the early stage of withdrawal symptom.

83 The appellant's own evidence suggested that he was experiencing only mild drug withdrawal symptoms at the material time. His account would therefore be inconsistent with Dr Lim Yun Chin's backward extrapolation discussed above. For all these reasons, like the Judge, we do not accept Dr Lim Yun Chin's evidence on the appellant's condition on 23 June 2016.

84 We are satisfied that the appellant was not suffering from any significant drug withdrawal symptoms or medical condition which would have a prejudicial effect in relation to the contemporaneous statement. It certainly could not be said that the appellant was in a state of "near delirium" such that his mind did not go with the statement he was making (*Garnam Singh v Public Prosecutor* [1994] 1 SLR(R) 1044 at [31]). Contrary to the appellant's submissions, we also do not think that he was in "a state of drowsiness or confusion such as to make it unsafe to admit his statement made": *Public Prosecutor v Ismil bin Kadar and another* [2009] SGHC 84 at [26].[43]

85 We now consider the contents of the contemporaneous statement which, as mentioned, contained highly incriminating admissions. In our opinion, the court is entitled to examine the contents of an impugned statement in its determination of whether it should be excluded or not. This is particularly so in situations such as the present where the allegations centred on the level of alertness and consciousness of the person making the statement. The paramount concern of the court here is the reliability of the statement and it would be

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[43] Defence's submissions dated 8 June 2020, paras 27 to 28.

artificial and against common-sense not to look at the contents of the statement when deciding whether there was prejudicial effect that outweighed its probative value. This is because the answers in the statement may reveal facts which were known only to the person making the statement or details which could not have been uttered by a person who was so mentally exhausted or confused or who was drifting in and out of consciousness.

86 The contemporaneous statement consisted of 29 open-ended questions and answers. The salient portions which were most damaging to the appellant's case can be summarised as follows:

(a) The appellant identified unequivocally the bundles of the drugs in question (*ie*, exhibits A1, A2 and A3) as heroin that belonged to him and that the drugs were for "smoke and sale". In relation to exhibits A1 and A2, he also explained that the two bundles allowed him to make 100 packets or about 10 sets which he would sell for $800 each.

(b) When asked about exhibit A4, the appellant identified it correctly as "fake stuffs".

(c) When referred to exhibits A5 and A6, the appellant identified them correctly as heroin and as ice respectively and also commented on their damaged or poor quality.

(d) When asked about the various packets found at B, the bedside table, the appellant was likewise able to identify them as heroin or as ice, state their weight and whether they were for consumption or sale. He also stated the price of each packet of ice found in a ziplock bag marked B3 as being about $800.

(e) When asked whom he took all the drugs from, the appellant said, "From Malaysian people." When asked when he last collected drugs, the appellant stated, "This morning. Three stones."

87 It was evident that the appellant had made clear admissions about his knowledge of the presence of the drugs in the room and of their nature. He had also indicated what he intended to do with the drugs. It was equally apparent on the face of the statement that the appellant's responses to the open-ended questions were coherent and clear. All these militated against any suggestion that the appellant was experiencing severe drug withdrawal symptoms during the recording of the contemporaneous statement. Moreover, the appellant identified the contents of exhibit A4 to be "fake stuffs" and not the drugs they purported to be and that turned out to be true after analysis by the HSA. This was a fact which the CNB officers could not have been aware of at that stage of the investigations. Such special knowledge showed the appellant's clarity of mind despite having consumed drugs earlier and certainly bolstered the reliability of the contemporaneous statement.

88 Before us, there was some dispute as to the accuracy of the portion of the contemporaneous statement concerning the source of the appellant's drugs.[44] The final questions and answers in the contemporaneous statement were:

Q26 All these drugs you take from who?

A26 From Malaysia people.

Q27 When did you last take?

A27 This morning. Three stones.

Q28 Who did you take from?

A28 Malaysia person also at Woodlands.

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44 Transcript, 1 July 2020, p 31.

Q29 Do you know the Malaysia person who send?

A29 No. They always change people.

89 The appellant testified at the trial that he did not leave his room in the morning of 23 June 2016. He only left his room around 3pm to collect food from a friend, Icam, through a side gate of the condominium. At the continued hearing of the trial some months later, he added that sometime after 10am that morning, a friend called Jepun brought him some breakfast which he also collected at the side gate. Counsel for the appellant highlighted that there was absolutely no evidence that the appellant left the condominium compound in the morning of 23 June 2016 or that he had gone to Woodlands to collect the drugs. According to the investigating officer, there was no CCTV recording available on the appellant's movements that morning. The appellant therefore submitted that this portion of the statement was recorded incorrectly and this eroded the overall reliability of the statement.

90 We make the following observations on this contention. In the original Malay language version of the contemporaneous statement, the appellant said in Answer 27 that he took "tiga batu", which was translated as "three stones". At the trial, the appellant stated that he knew this meant three pounds in drug jargon.[45] This corresponded to the three bundles of drug in question which weighed approximately one pound each.

91 There was no objective evidence on whether the appellant left or did not leave the condominium compound on 23 June 2016. However, on the appellant's evidence, he did leave his room to go to the side gate of the condominium at least twice that day, purportedly to collect breakfast and then

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45 Transcript, 21 August 2018, pp 11 to 12.

lunch from two different friends.[46] In fact, there were a lot of movements into and out of the room that morning. The appellant had also testified that at about 1am, a friend named Dino (also known as Zainudin) drove to the condominium to meet him. When the appellant left his room (while his girlfriend called Juliana was still inside) to meet Dino, the appellant realised that he had forgotten to bring along the remote control for the gates. As a result, he climbed over the gates to meet Dino in his car outside the condominium. The appellant said that Dino was supposed to give him methadone but told him that he could not get it. The appellant then returned to his room and continued consuming drugs and conversing with Julianna until she left around 5am. Sometime past 6am that day, Dino and his girlfriend Sue went to the condominium to consume drugs with the appellant in his room. At about 8am, another friend named Akay wanted to go to the condominium so the appellant asked Dino and his girlfriend to leave as he did not want too many persons to be in the room because it would be noisy. The two visitors were told to leave by the lift and the main gates while the appellant walked down the staircase to receive Akay at the side gate. He did not want Akay to meet Dino and his girlfriend. Akay and the appellant consumed drugs in the room until Akay left sometime past 10am. After that, there was the purported delivery of breakfast and then lunch by his two friends.

92 It was pointed out to us that there was a deleted outgoing call made from the appellant's phone to a taxi company at 6.46am on 23 June 2016. At the trial, the appellant said that it was normal for him to delete unimportant calls.[47] He explained that he made this call after his girlfriend, Juliana, who was then at Sembawang, contacted him to call a taxi for her as she had to rush to

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46 Transcript, 26 February 2019, pp 76 to 77.

47 Transcript, 27 February 2019, p 97, lines 14 to 16.

Woodlands.[48] When it was put to the appellant that this account was contrived by him to conceal the truth that he had called a taxi to go to Woodlands himself, the appellant denied it.

93 For completeness, we mention briefly the appellant's behaviour at the time when the CNB officers entered his room forcefully using a battering ram. The evidence showed that the appellant was lying on the bed, watching a video on his mobile device when this took place. The appellant's seeming nonchalance at the noisy intrusion was rather unusual. However, this point was not developed in the proceedings and we do not need to say more about it. In any case, as we have explained, the coherence and cogency of the contemporaneous statement together with the absence of any evidence of the appellant's purported drug withdrawal symptoms on 23 and 24 June 2016 lead us to the conclusion that the appellant's mind was lucid at the material time.

94 On the totality of the evidence therefore, it could not be said that there was an error in the contemporaneous statement in relation to when and where the three bundles of drugs were collected. Even if there was such an error made inadvertently or otherwise by the appellant in his answers, that alone would not cast doubt on the reliability of the rest of the statement. The whole tenor of the statement showed that the appellant was quite clear minded at the time of its recording. As we have discussed earlier, he was aware of the presence of the three bundles of drugs in the wardrobe, he could tell their approximate weight and knew what they contained. He could even tell which were "fake stuffs" or "damaged stuff". In the premises, the probative value of the contemporaneous statement is very high. His alleged suffering from drug withdrawal symptoms

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48 Transcript, 27 February 2019, p 78.

at the material time has been shown to be untrue. Accordingly, there is no question of any prejudicial effect outweighing the probative value of the contemporaneous statement because there was no prejudice at all in the recording of the statement. There is no reason that warrants the court's exercise of its exclusionary discretion. The contemporaneous statement is clearly admissible and the Judge was correct in allowing it into evidence.

Whether the charge was proved

95 Having determined the admissibility question, we now consider whether the Prosecution has proved the trafficking charge against the appellant beyond reasonable doubt. The issues to be determined are:

(a) Whether the appellant had possession of the drugs in question;

(b) Whether the appellant had knowledge of the nature of the drugs in question; and

(c) Whether the appellant possessed the drugs in question for the purposes of trafficking.

Possession and the presumption in s 18(1)(c) of the MDA

96 The applicable principles are fairly settled. As the Judge noted (GD at [63]), this court in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") has addressed at length the general principles concerning the element of possession. *Adili* was decided about a couple of weeks after the Judge gave his decision but before he set out his reasons in writing. The Judge also noted GD at [71]) that there was no question of wilful blindness in this case.

97 The Judge found that the contemporaneous statement was reliable and that it showed clearly that the appellant had possession of the drugs in question as well as knowledge of their nature (GD at [64] and [81]). The Judge added that if he was wrong on the issue of the admissibility of the contemporaneous statement, he was still satisfied on the rest of the evidence that the appellant had the requisite possession. This was because the drugs in question were recovered from a drawer in the wardrobe in the appellant's room, alongside other drug exhibits which the appellant had admitted to ownership of (GD at [67]). Possession was therefore proved as a fact.

98 Before we discuss whether the Judge was correct in his conclusions about possession having been proved as a fact, we first consider the issue of the presumption of possession in s 18(1)(*c*) of the MDA. Having found that possession was proved, the Judge considered the Prosecution's alternative case that the presumption in s 18(1)(*c*) of the MDA applied. The provision states:

> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control –
>
> …
>
> (*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.

In *Poon Soh Har and another v Public Prosecutor* [1977–1978] SLR(R) 97 ("*Poon Soh Har*"), the Court of Appeal held (at [24]) that the above presumption (then set out in s 16(1)(*c*) of the Misuse of Drugs Act 1973 (Act 5 of 1973) applied "only if it was first proved that the second appellant had possession of all the relevant keys". In that case, there were two keys each to the letterbox and the apartment in which drugs were found and the second appellant had only one

set of the keys. The court therefore held that the presumption did not apply and acquitted the second appellant.

99 The Prosecution submitted that the presumption in s 18(1)(*c*) of the MDA applied in this case because the appellant had possession of the keys to the apartment and the rented room and the drugs were found in the wardrobe in that room. The Prosecution invited us to overrule *Poon Soh Har*'s interpretation of "the keys" in the presumption as referring to all the keys to the premises in issue. Instead, we were urged to adopt a purposive interpretation and hold that "the keys" meant a set of keys and that the appellant did not need to hold all the keys to the room. The Prosecution pointed out that Steven Chong JA sitting in the High Court in *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 ("*Tan Lye Heng*") had commented that *Poon Soh Har* was at odds with more recent Court of Appeal pronouncements that the presumption could apply even if an accused person was not the owner of the premises in question but was only a tenant or a visitor and that proof of possession of "the key" suffices to invoke the presumption (at [117]). The Prosecution also referred to Steven Chong JA's comment that it would be timely to revisit *Poon Soh Har* when the opportunity should arise in future.

100 The appellant argued that the presumption was inapplicable because Jepun (who apparently could not be located and was not a witness at the trial) also possessed a set of keys to the rented room as he was one of the persons who used the room and, together with three others, contributed to the rent. The room was a "drug haunt" which was used at various times by the appellant and other persons to consume drugs. In any case, even if the presumption applied, the appellant had rebutted it because there was at least one other set of keys to the room and numerous persons had unsupervised access to the room and the unlocked wardrobe and its drawers. Other persons could access the room

without the appellant's knowledge or presence and they did so in the days or hours before the appellant's arrest. Even if the appellant was the only one with the remote control to the main gates of the condominium, the remote control was irrelevant to accessing the rented room. Even the CNB officers gained access to the condominium by simply waiting for someone inside to open the gates to exit. The appellant emphasised that he did not have exclusive access to the room.

101 In response to the appellant's contentions, the Prosecution submitted that the appellant's claim about Jepun having another set of the keys was a bare assertion and was incredible. The appellant mentioned in his statements that he did not know Jepun's real name although he gave some descriptions about his physical appearance. Despite claiming that he had saved Jepun's phone number under three different names in three handphones, the appellant did not call Jepun to testify at the trial. Although the appellant claimed that some of the clothes in the room could have belonged to Jepun and the appellant's two other friends, the appellant's DNA was found on all the clothes (save for a T-shirt from which no DNA profile was obtained) and no other person's DNA was found on those clothes. In any event, the appellant said at the trial that the three bundles of the drugs in question could only have been placed in the wardrobe between 12 noon on 22 June 2016 when he last accessed the wardrobe and the time of his arrest on 23 June 2016. He added that Jepun did not visit the room during that stretch of time (Jepun only brought breakfast for the appellant at the side gate). Therefore, the Prosecution submitted, the one other person who allegedly held a set of keys to the rented room did not place the three bundles of drugs in the wardrobe.

102 The Judge noted the case law on this issue (*Poon Soh Har* and *Tan Lye Heng*) and concluded that the presumption in s 18(1)(*c*) of the MDA did not

apply in this case. He opined that the onus was on the Prosecution to show that there was no other person in possession of the keys to the premises in question before s 18(1)(*c*) could apply. In any event, the Judge did not find it necessary to rely on the presumption as he found that the appellant knew that the drugs in question were in his room and that they belonged to him. Possession was therefore proved as a fact (at [20], [21], [78] and [80]).

103 As will be seen later in this judgment, we agree with the Judge that possession of the drugs was proved by the Prosecution's evidence and that there was no need to resort to the presumption in s 18(1)(*c*). We therefore decline to consider whether the quoted statement of the law in *Poon Soh Har* concerning the scope of operation of the presumption is still correct. However, we will make a passing observation on the Judge's holding that the onus was on the Prosecution to show that there was no other person in possession of the keys to the premises in question before s 18(1)(*c*) could apply. Such a holding appears to require the Prosecution to prove a negative which is a practically impossible task in almost all cases since the Prosecution would not know how many sets of keys of any particular house or room exist at any point in time. This is even more so in cases where the house or room was rented out to various persons over several years.

104 Possession for the purposes under s 5 of the MDA refers to physical possession and knowledge of the item held in possession (*Adili* at [31] and [40]). It was clear from the appellant's contemporaneous statement that he had such knowing possession of the drugs in question. As we highlighted earlier, the appellant had identified all three bundles as heroin, had said that they were his and that they were for "smoke and sale". Moreover, the appellant identified exhibit A4 correctly as fake drugs and gave the following details:

> In the blue plastic all are fake stuffs. The one which is supposed to be heroin is cocoa and the one which is supposed to be Ice don't know what it is.

As the Judge also noted (GD at [65]), the recording officer could not have known this fact before the HSA's analysis of the seized exhibits. This bolsters the overall reliability of the contemporaneous statement and the admissions made therein. We therefore agree that full weight should be given to the contemporaneous statement.

105 The appellant's main defence was that someone had planted the drugs in question in the wardrobe without his knowledge sometime between 22 June 2016 when he last used the wardrobe and his arrest on 23 June 2016. According to the appellant's evidence, four persons entered his room during that period. They were Juliana, Dino, Dino's girlfriend Sue and Akay. The evidence from the forensic examination of the appellant's mobile phones corroborated broadly the appellant's account in so far as it showed that there was communication between the appellant and the four individuals at various times during those two days.[49]

106 However, the appellant's allegation that an unspecified person had planted the drugs in question was a bare assertion which could not be substantiated. As the Judge noted, the drugs in question were not concealed but were found with the other drugs which the appellant admitted possession of in the unlocked second drawer of the wardrobe.

107 Further, as discussed earlier, the appellant's action and answers in the contemporaneous statement showed clearly that he was aware of the presence

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49 ROP Vol II, p 589.

of the drugs in question before his arrest. We reiterate here that when the CNB officer asked the appellant whether he had anything to surrender, he replied "three" and then used his head to gesture towards the wardrobe and that was where the three bundles of the drugs in question were found in the drawer.

108 At the trial, the appellant contended that when he said "three", he was not referring to exhibits A1, A2 and A3 but was referring to exhibits A4, A5 and A6 which were also found in the same drawer.[50] Exhibits A4, A5 and A6 were respectively:

(a) 1 blue plastic bag containing (i) a taped bundle containing 489.8g of granular substance; and (ii) a packet containing 122.2g of crystalline substance. No common controlled drug was detected in exhibit A4;

(b) 1 packet weighing 122.0g containing crystalline substance analysed to contain 80.62g of methamphetamine; and

(c) 1 packet weighing 6.65g containing granular substance analysed to contain 0.26g of diamorphine.

In our view, the appellant's contention was incredible. Exhibits A1, A2 and A3 were very similar in terms of their gross weight and nett weight of diamorphine. Each of the bundles of the drugs in question weighed approximately one pound and each contained amounts of diamorphine which were above the threshold which attracted capital punishment. In contrast, exhibits A4, A5 and A6 were disparate items. A4 contained fake drugs, as the appellant mentioned in the contemporaneous statement. A5 contained methamphetamine and A6 contained a relatively small amount of diamorphine. In addition, according to the

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[50] Transcript, 3 August 2018, p 48, lines 4 to 5.

statement of agreed facts, there were also several items of drugs found at the bedside table and under the bed containing diamorphine, methamphetamine or nimetazepam. Why would the appellant single out the bundle of fake drugs and the other two smaller packets in the drawer when there were drug items spread around the room? In the context at that point in time, there could be no doubt that the appellant was singling out the three bundles, exhibits A1, A2 and A3, when he replied "three" as they were the biggest items of drugs and which were not broken down into smaller portions yet. Exhibits A1 and A2 were still wrapped in black tape at that time.

109 In his cautioned statement, the appellant also admitted without qualification that "the items in my possession is for my own possession and also to be sold to maintain my own consumption of drugs and my daily living". This is entirely consistent with the appellant's contemporaneous statement. As we have seen from the medical evidence discussed earlier, there could also be little doubt as to the reliability of the cautioned statement. Although the charge at that point in time was worded differently from the charge at the trial, it still referred to the appellant's possession of four bundles and 21 packets containing approximately 2,156.26g of substance believed to contain not less than 15g of diamorphine.

110 The appellant pointed out that his DNA was not found on any of the three bundles of the drugs in question. He submitted that this suggested that he had not touched them and lent credence to the assertion that they were not in his possession. Further, contrary to the appellant's submissions that unknown female DNA was detected on the three bundles,[51] female DNA was found on

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[51] Defence's submissions dated 8 June 2020, paras 67, 78, 99 and 103.

exhibit A5 only and no DNA was found on the bundles of the drugs in question.[52]

111 As we stated in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [62], there can be many reasons for the absence of a subject's DNA from an exhibit, including the degradation of DNA samples by intentional or unintentional means. Therefore, the absence of the appellant's DNA on the three bundles of the drugs in question would only be a neutral factor. The presence of female DNA on exhibit A5 would suggest that a female was involved in the illegal drug activities but that alone cannot possibly absolve the appellant.

112 For the above reasons, we are satisfied beyond reasonable doubt that the appellant had possession of all the drugs stated in the charge, including the three bundles of the drugs in question.

Knowledge of nature of drugs

113 As the Prosecution has proved that the drugs were in the appellant's knowing possession, the presumption of knowledge of the nature of the drugs provided in s 18(2) of the MDA would apply and there was no evidence to rebut this presumption. However, this presumption is not required in this case as we are satisfied that the evidence showed beyond reasonable doubt that the appellant had knowledge of the nature of the drugs in question. The appellant had identified the three bundles of the drugs in question as heroin in his contemporaneous statement.

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52 ROP Vol II, p 136.

Intention to traffic

114 The Judge noted that the appellant had admitted specifically his intention to traffic the drugs in question in his contemporaneous statement (GD at [86]). This was also supported by the drug paraphernalia found in the appellant's rented room, namely, the two digital weighing scales which were stained with diamorphine and methamphetamine and the numerous empty packets and tape. There was also another electronic weighing scale in the wardrobe with no drug stain.

115 The appellant stated in his contemporaneous statement that the three bundles of the drugs in question were for "smoke and sale". He also indicated the number of sets that the bundles of drugs could be divided into and the price that each set could be sold for. The three bundles of drugs in question weighed about three pounds and contained nearly 50g of diamorphine. Together with the rest of the drugs stated in the charge, there was a total of 52.75g of diamorphine. Such a huge amount pointed clearly to the fact that the drugs were intended for trafficking.

116 Although there was evidence that the appellant would also consume some of the diamorphine, the Judge found that any such consumption was incidental (GD at [22]). At the trial, the appellant claimed that he trafficked in only a non-capital amount of diamorphine. However, he did not know what amount of diamorphine would attract a capital charge. In the circumstances, the Judge rejected the appellant's claim. The Judge also held that the presumption of trafficking in s 17(*c*) of the MDA would have been applicable although the Prosecution did not invoke it. He stated that the presumption was not necessary on the facts and that the appellant could not have rebutted it in any case (GD at [89]–[90]).

117 We agree with the Judge's findings. The burden of proof to establish the extent of personal consumption of the drugs is on the appellant. It is incumbent on him to show by credible evidence the rate of personal consumption. As discussed earlier, his evidence on his rate of consumption was inconsistent. There was no credible evidence of the rate of consumption. Further, as stated in his cautioned statement, the drugs were for his own consumption and "also to be sold to maintain my own consumption of drugs and my daily living". His living expenses included renting a room in a condominium. His evidence at the trial was that selling drugs was his only source of income.[53] Obviously, this meant that the bulk of the drugs must be for sale and therefore trafficking. We reiterate here that the three bundles of the drugs in question contained a sizeable amount of almost 50g of diamorphine. Even if he consumed half of this lot of drugs, there would still be about 25g meant for trafficking and a capital offence would still be made out.

Conclusion

118 Accordingly, we agree with the Judge that all the elements of the trafficking charge were proved beyond reasonable doubt. We also agree that the appellant could not possibly be a mere courier for the purposes of alternative sentencing under s 33B of the MDA as he repacked drugs and sold them. The death sentence is therefore mandatory. The Prosecution has also confirmed that the appellant would not be issued the certificate of substantive assistance. We therefore affirm the Judge's decision and dismiss the appeal.

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53 Transcript, 27 February 2019, p 9, lines 7 to 8.

Sundaresh Menon	Tay Yong Kwang	Belinda Ang Saw Ean
Chief Justice	Judge of Appeal	Judge

Anand Nalachandran (Forte Law LLC), Lau Kah Hee (BC Lim & Lau LLC) and Koh Weijin Leon (N S Kang) for the appellant;
April Phang and Tan Ee Kuan (Attorney-General's Chambers) for the respondent.
