

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 226

Criminal Case No 40 of 2015

Between

Public Prosecutor

And

- (1) Dominic Martin Fernandez
- (2) Nazeri Bin Lajim

GROUND OF DECISION

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

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Public Prosecutor
v
Dominic Martin Fernandez and another

[2017] SGHC 226

High Court — Criminal Case No 40 of 2015

Kan Ting Chiu SJ

11–14, 18–21, 25–26 August 2015; 21–22 January, 10 February 2016; 18–19 April, 3, 9, 11 May 2017; 8 August 2017

21 September 2017

Kan Ting Chiu SJ:

Introduction

1 There are two accused persons in this trial, namely Dominic Martin Fernandez (“Dominic”) and Nazeri Bin Lajim (“Nazeri”). They were arrested by officers of the Central Narcotics Bureau (“CNB”) in one operation in respect of the same subject matter. The charge against Dominic was that he:

on 13 April 2012, at about 5.05 a.m., at the junction of Anguilla Park and Orchard Road, Singapore, along the pavement near Far East Shopping Centre, did traffic in a Controlled Drug specified in Class “A” of the First Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the Act”), *to wit*, by delivering to one Nazeri bin Lajim (NRIC No. Sxxxxxxx) two (2) bundles containing a total of 906.4 grams of granular/powdery substance which was analysed and found to contain not less than 35.41 grams of diamorphine, without any authorisation under the Act or the regulations made thereunder, and [he had] thereby committed an offence

under s 5(1)(a) and punishable under s 33(1) of the Act, and further upon [his] conviction under s 5(1)(a) of the Act, [he] may alternatively be liable to be punished under s 33B of the Act.

and the charge against Nazeri was that he:

on 13 April 2012, at about 5.05 a.m., at the junction of Anguilla Park and Orchard Road, Singapore, along the pavement near Far East Shopping Centre, did traffic in a Controlled Drug specified in Class "A" of the First Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), *to wit*, by having in [his] possession for the purpose of trafficking, two (2) bundles containing a total of 906.4 grams of granular/powdery substance which was analysed and found to contain not less than 35.41 grams of diamorphine, without any authorisation under the Act or the regulations made thereunder, and [he had] thereby committed an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the Act, and further upon [his] conviction under s 5(1)(a) of the Act, [he] may alternatively be liable to be punished under s 33B of the Act.

("Grams" was used by the prosecution although the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") uses "grammes". It is preferable to use "grammes" or "g" for short).

2 The basic facts relating to the arrest of Dominic and Nazeri were not controverted. In the early morning of 13 April 2012, Dominic rode a motorcycle and parked it along Anguilla Park near its junction with Orchard Road. At the same time Nazeri arrived at Anguilla Park in a taxi, alighted and went to Dominic who was by the motorcycle.

3 Nazeri had a sling bag¹ with him, and Dominic had a backpack² when they met. Nazeri opened his sling bag, took out two envelopes containing

¹ P70.

² P71.

\$10,450³ and placed them in Dominic’s backpack and Dominic in turn took two bundles wrapped in black tape⁴ and placed them in Nazeri’s sling bag.

4 Immediately following the exchange, the Central Narcotics Bureau (“CNB”) officers who were keeping surveillance on them moved in and arrested them, and recovered the backpack, sling bag, the two bundles and the envelopes.

5 Of the two bundles recovered, one bundle⁵ contained 453g of granular/powdery substance which was analysed and found to contain not less than 18.3g of diamorphine, and the other bundle⁶ contained 453.4g of the same substance which contained not less than 17.11g of diamorphine.

6 At the time of arrest and in the course of investigations, contemporaneous statements, cautioned statements and investigation statements were recorded from both accused persons which were admitted in evidence without objection.

The contemporaneous statements

7 A contemporaneous statement⁷ was recorded from Dominic soon after his arrest by Senior Station Inspector David Ng (“SSI David Ng”). The statement was in the form of 15 questions and answers -

Q1 What is inside the envelope that found inside your brown bag?

³ B1.

⁴ A2A and A2B.

⁵ A2A.

⁶ A2B.

⁷ P49.

- A1 I think is money.
- Q2 How much inside the envelope?
- A2 I don't know.
- Q3 Who pass the envelope to you?
- A3 The bold guy, I called him 'Mike'.
- Q4 Did you pass anythings to him in return?
- A4 Two packets sealed with black tape.
- Q5 *What is inside the black tape?*
- A5 *I don't know.*
- Q6 Who ask you to pass the two packets to 'Mike'?
- A6 My friend 'Kumar' from JB.
- Q7 What is 'Kumar' contact number?
- A7 016 xxxx xxx
- Q8 When you arrived in Singapore, did you contact 'Mike' before you was arrested?
- A8 Yes.
- Q9 What did you told him in the phone?
- A9 I told 'Mike' I will be here by 5.00 am.
- Q10 How many times have you been meeting up with 'Mike'?
- A10 2 or 3 times.
- Q11 Can you remember when was the first time?
- A11 First time was last week at the same place and same time where I was arrested today.
- Q12 When was the second time?
- A12 Also last week but I can't recalled which day same place and same time. These is the third time.
- Q13 How many packets did you passed it to 'Mike' on the first and second time?
- A13 On the first and second time, I passed one packet with black tape wrapped it. Today, I passed 2 packets to 'Mike'.

Q14 Did you collect anything from 'Mike' on the first and second time?

A14 'No'. Only today, 'Mike' passed the envelope to me.

Q15 Did 'Kumar' give you any money for passing the packet to 'Mike'?

A15 'No'. Nothing at all.

[emphasis added]

8 Two contemporaneous statements were recorded from Nazeri by Station Inspector Larry Tay Chok Chwee ("SI Larry Tay") after he was arrested. The first statement⁸ was recorded in his pocket diary at 5.10am which read:

I asked Nazeri Bin Lajim whose bag is that in the bush. He replied mine.

I then asked him what is inside he told me heroin.

I asked how many inside the bag.

400g.

9 The second statement⁹ was recorded at about 5.15am by SI Larry Tay consisting of 9 questions and answers:

Q1 Can you speak English?

A1 Yes.

Q2 This brown colour sling bag that you thrown inside the bush before you was arrested belong to who?

(The recording officer pointed to the brown sling bag.)

A2 Me.

Q3 What is inside the bag.

A3 Heroin.

Q4 How much heroin?

⁸ P118 p 94.

⁹ P51.

A4 2.

Q5 What is the heroin for?

A5 Sell.

Q6 Who you took the heroin from?

A6 Dick.

Q7 Is this Dick?

(Recorder's note: Accused was shown a photo of dick from Kua Boon San's handphone) Dick particulars was ascertained to be Dominic Martin Fernandez Gxxxxxxx).

A7 Yes.

Q8 How much you paid him for the heroin?

A8 5000 plus.

Q9 How many times have you took heroin from him?

A9 First time.

The cautioned statements

10 After the contemporaneous statements were recorded, the investigations proceeded with the recording of cautioned statements and investigation statements under ss 22 and 23, Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

11 In Dominic's case, he was charged with trafficking the two bundles of diamorphine on 13 April 2012 and his cautioned statement¹⁰ was:

"Seriously, I do not know what was inside the black bundle. My friend Kumar asked me to pass these packets to "Mike". I have known him about two weeks. After my arrest, I asked the officers what they were arresting me for. I told the officers that I do not know what was inside the bundles in my earlier statement".

[emphasis added]

¹⁰ P56.

12 Nazeri was initially charged with being in possession of the diamorphine in the two bundles and his cautioned statement¹¹ was:

“I cannot say anything so I am abnormal. My mind cannot work. I am sick”.

(The charge was subsequently replaced by one for trafficking the two bundles of diamorphine.)

The investigation statements

Dominic’s investigations statement

13 Dominic made two investigation statements with the paragraphs numbered continuously through them. His first investigation statement¹² was recorded on 21 April 2012 in which he narrated on his family, education and employment background. In his second investigation statement recorded on 23 April 2012¹³, he narrated the events of his arrest:

10 I am asked to relate the events that had led to my arrest on 13 April 2012. On the same day I woke up about 2.45 a.m. in my room at my church. Usually I will wake up at this time to go to work into Singapore. After that I had my shower. I then had my morning prayers which I do normally before I leave for work. I then got ready and left my church for Singapore. It was about 3.55 a.m. when I left my church. When I left my house, I carried my brown coloured backpack. The backpack contained my personal stuff such as body wash and shaving items. I am now shown a photograph of one brown bag with marking ‘B’ (recorder’s note: accused was shown a photograph of the brown coloured bag which he was carrying on the day of his arrest and which was later marked as ‘B’) Inside the same backpack I had also carried my passport and wok [sic] permit. Also inside backpack were two bundles which were covered with black tape, which was given to me by my friend ‘Kumar’ the day before, which was on the

¹¹ P57.

¹² P61.

¹³ P62.

12 of April at about 10.00 p.m. 'Kumar' had asked me to do him a favour to bring these two bundles to his friend in Singapore. Upon carrying all these items inside my brown backpack. I left my church and reached the motorcycle. Before I started the motorcycle, I placed my brown backpack on the front basket which was attached to the motorcycle 'JMY6202'. I then started the motorcycle and began riding towards Woodlands Checkpoint. The journey to Woodlands Checkpoint from my church was about 15 to 20 minutes. When I reached Woodlands Checkpoint it was about 4.15 a.m. to 4.20 a.m.

11 In Woodlands Checkpoint, I produced my passport inside the machine at the primary checking area. After then I rode pass the Secondary checking area without being checked. I then proceeded on and cleared the checkpoint. After clearing the checkpoint, I called one guy known to me as 'Mike'. When 'Mike' answered I told him that I was 'Dom' speaking and further told him that I would reach Orchard road by 5.00 a.m. to pass him the bundles. *'Mike' said ok and told me that he will come there to take the two bundles from me.* After that I put down my phone and then headed towards Orchard Road. I am asked whether I have met 'Mike' before. I have met 'Mike' three times, including on the day of arrest. So when I called him that day, I just introduced myself to him as 'Dom' and he knew who I was. In fact, I have met him on these occasions to pass him bundle with black tapes each time, under the instructions of 'Kumar'. However, for the last two times, I have only passed him one bundle with back [sic] tape on each of the occasion. Only this time, which is the third time and before I was arrested, I had passed him two bundles. I cannot remember 'Mike's' phone number now. But his number is saved as 'John' under my handphone. I do not know why it is saved as 'John'. 'Kumar' had sent me a Business Card of his number which stated 'John' I just saved the business card which 'Kumar' had sent me. However, during the first time, I met 'Mike' he told me his name was 'Mike'.

[emphasis added]

12 By the time, I reached Orchard it was about 4.55 a.m. I then proceeded to the main road and stopped the motorcycle nearby to Wheelock Place. I then alighted from the motorcycle and then waited for him near telephone booth, while standing beside my motorcycle. I did not call him because I had already told 'Mike' earlier that I would be there by 5.00 a.m. Within 5 minutes, I saw 'Mike'. 'Mike' proceeded towards me and greeted me. After this, he took out a brown envelope from his bag. I do not know what the brown envelope contained. Upon seeing my brown backpack on the basket, he went near my motorcycle and then placed the envelope inside the backpack. My backpack was already opened at that time because when I

was waiting for 'Mike' I had opened it to take my phone to play some games in it. I did not zip after that. I am asked what was inside the brown envelope. I do not know. When 'Mike' placed the envelope inside my backpack, he just asked me to pass the brown envelope to 'Kumar'. I also did not ask 'Mike' what the envelope contained. However, I was planning to check on it once 'Mike' left. This was because I was suspicious as the brown envelope was thick. I am now shown a photograph of one bald guy (recorder's note: accused was shown a photograph of Nazeri Bin Lajim NRIC: Sxxxxxxx). This is 'Mike'. I am now shown another photograph of one brown envelope which has marking 'B1' (recorder's note: accused was shown a photograph of brown envelope marked as 'B1' and where money was seized). This is the brown envelope that 'Mike' had placed inside my backpack.

13 After placing the envelope, 'Mike' asked me a question these words "where are my things which I left back?" When he said this, I took out the two bundles with black tapes. He then opened up his brown bag he was carrying and asked me to put the bundles with black tape inside the same bag. I then took out his two bundles with black tape and put them inside his bag, while he was holding inside his bag. He did not touch the bundles. I do not know why 'Mike' asked me to do that, instead of asking me to pass the two bundles straight to his hand. I am asked why 'Mike' asked me those words "“where are my things which I left back?”. When 'Kumar' passed me the two bundles the night before 'Kumar' had told me that 'Mike' has accidentally left his belonging, which is the two bundles wrapped in black tape, in Johor when he had met 'Kumar'. So 'Kumar' had asked me do him a favour by passing these two bundles with black tape back 'Mike' before I go to work the next day. So when 'Mike' asked me those words, I know I had to pass the two bundles to him as they belonged to him. I am asked whether 'Kumar' told me what the two bundles contained. Before I got the bundles from 'Kumar', I asked him what the bundles contained. 'Kumar' told me he did not know as the bundles had belonged to 'Mike'. *I do not [sic] what the two bundles had contained.* I am now shown a photograph of a brown bag with marking 'A'. I am asked whether I recognize this bag (recorder's note: accused was shown a photograph of exhibit marked as 'A'). I recognize this bag as the brown bag 'Mike' was carrying on that day and where I had placed the two bundles wrapped in black tape inside.

[emphasis added]

14 When I had placed the two bundles inside his brown bag, he closed his bag. Without saying anything, he walked away. I then zipped my bag and was ready in ride off to my

workplace. I was getting ready to get onto the motorcycle. At this time, two cars came and stopped beside me. Some men came out of the car and asked me to kneel down. I saw that there were a lot of people there. When this happened I was shocked. I thought it was a robbery. Feeling [sic] scared, I did as told and knelt down. Suddenly some of them took y [sic] hand from behind and handcuffed me. When they did so, I asked them why they were placing a handcuff on me. In fact, when they placed a handcuff on me, I know that these people were from Police and so they were officers. So I asked them why they arrested me. Some officers said that they were from CNB and asked me whether I had known [sic] what I had passed to that guy. By this I know they are referring to 'Mike'. I told them that I had passed to 'Mike' what had actually belonged to him. They did not believe me. They then placed inside their car and one elderly Chinese officer questioned me. He asked me some questions which I cannot recall. Upon asking these questions, he wrote down my answers in his notebook. I later saw from the car that the motorcycle which I had come in was being towed by a tow truck.

and he elaborated on the events at paragraphs 19 to 22:

19 I am now being referred to paragraph 10. I am asked to relate the events that happened on 12 April 2012 and how the two black bundles wrapped in black tape ended up with me. On 12 April 2012, at about 10.00 p.m. 'Kumar' came to my church. Upon reaching my church, he called me. When I answered, 'Kumar' told me that he was downstairs and whether I could come down to meet him. I was surfing internet then. 'Kumar' did not fix any appointment to meet up with me that day. However, I was not shocked either because usually 'Kumar' would come to my church to look for me. We would go for a drink thereafter. I am asked about my relationship with 'Kumar'. 'Kumar' is a friend of mine of 4 months. I first met him at the same pub 'Relax' where later I became a Disc Jockey. In fact, 'Kumar' was the one who had helped me to get a job as a Disc Jockey in the same pub. After some meet up we became good friends. 'Kumar' told me that he had his own spa business in Johor. But I do not know the details of his business. I am asked to describe 'Kumar'. 'Kumar' is about my height and has a light skin colour. He keeps a 'goatee' and has curly hair. He is around 28 years old. He stays in Taman Nesa which is in Skudai. He drives a silver 'WAJA' which has a registration prefix 'JGF'. I do not know the registration number.

20 So on that day, when 'Kumar' called me and told me he was downstairs, I went down. When I met him, we greeted

each other. I asked him why he was looking for me at that hour of 10.00 p.m. He asked me whether I could do him a favour. He told me his Singaporean friend 'Mike' had again left his belonging accidentally and as I was going to work in Singapore that next day, 'Kumar' asked me whether I can assist him to pass the belonging to 'Mike' the following day. I agreed. 'Kumar' then took out the two bundles wrapped in black tape and passed them to me. After the receiving the bundles, I asked 'Kumar' what they were. 'Kumar' told me he was not sure but asked me to pass to 'Mike'. 'Kumar' also told me to bring the two bundles inside my backpack normally the next day. I agreed. I am asked whether I suspected that bundles might have contained anything illegal. I did not suspect anything. When I received the bundles from 'Kumar' I noted that they were covered in black tape. I pressed them with my fingers and both bundles felt hard. I thought it was some 'Keropok' so I did not suspect. Also 'Kumar' asked me to bring the two bundles normally to Singapore. If 'Kumar' had asked me to hide the two bundles somewhere before entering Singapore, then I would have suspected something. Thus, I did not suspect. After giving me the two bundles, 'Kumar' asked me to call 'Mike' after entering Singapore. Since I have met 'Mike' before I agreed and went up to my room. I placed the two bundles with black tape inside my backpack before I went to sleep.

21 I am asked to relate the number of times I had met 'Mike'. I had met 'Mike' two times before to pass him the bundle. The first time was 3rd or 4th April 2012. On one of these days, 'Kumar' had met me the night earlier and asked me whether I can do a favour for him. He told me that he was not going into Singapore and since I was going in for my work, he asked me to pass one bundle wrapped with black tape to his friend. He then passed me a very small bundle which was covered in black tape. I agreed. I am asked whether I had asked 'Kumar' what the small bundle had contained. I did not ask 'Kumar' because it was the first time 'Kumar' had asked me of a favour and so I agreed. 'Kumar' then sent me a business card via my handphone and asked me to call this friend of his to pass the small bundle to. That was the first time when he had sent me the business card with name 'John'. 'Kumar' told me since my workplace was in Orchard road, I can meet his friend in Orchard road. The very next day after clearing Woodlands Checkpoint, I called 'Kumar's friend. That was the first time I had called 'Mike'. I introduced myself and told him that 'Kumar' had asked me to contact him to pass him the small bundle. I told him that I can reach Orchard Road near Forum shopping mall by 5 a.m. He agreed to meet. After some time, 'Mike' came. That was the first time I

had met 'Mike'. I then passed the one small bundle to him by hand and he left.

22 The second time was on the 6th of April 2012. On the night of 5th April, 'Kumar' and I went out for dinner. During dinner time, he asked me whether I can do him another favour. He told me that I would need to pass 'Mike' again one more bundle before I go to work the next day. I agreed and 'Kumar' pass me one bundle wrapped with black tape. This bundle was slightly bigger than the bundle which I had passed to 'Mike' the first time. I am asked whether I asked 'Kumar' what the bundle had contained. This time, I asked 'Kumar' what the bundle had contained. 'Kumar' told me that he was not sure also as the bundle belonged to 'Mike'. 'Kumar' told me that he had an urgent work to see to the following day and so he could not meet 'Mike'. I did not suspect much as 'Kumar' was my friend and I know he would not be involved in anything illegal. I trusted him and I agreed to do this favour. For the second time, I met 'Mike' near the same place where I was arrested and when I met him the third time. When I met 'Mike' the second time, I passed the bundle to him by hand. After that I left for work. I have not known that all these while passed me drugs to pass to 'Mike'. I felt cheated by 'Kumar' when I was arrested.

Nazeri's investigation statements

14 Nazeri made four investigation statements with the paragraphs numbered continuously through the first three of them. His first statement¹⁴ recorded on the morning of 18 April 2012 covered his family, education and work background, and he admitted to consuming cannabis, heroin (diamorphine), "ice" (methamphetamine) and Erimin-5. He then went on to narrate the events of 13 April:

9 I am asked to relate the events that led to my arrest on 13 April 2012. On that day at about 4.45 a.m., I left my house at Boon Tiong Road. I then took the stairs down my block and reached level one of my block. When I left the house, I carried my two phones, I also carried a brown sling bag. Inside the brown sling bag, I had placed one black wallet with some money, some cash of \$10000 which was placed inside two brown envelopes. I had also placed one cigarette box inside the same bag. I am now shown some photographs of one

¹⁴ P58.

brown sling bag, one black wallet with some money, two brown envelopes containing some cash and one cigarette box (recorders' note: accused was shown a photograph of 'A' showing the brown sling bag, 'B1' showing brown envelopes, 'B1B' showing cash of over \$10000 and 'A3' showing a black wallet with some money and some cards, 'A1' showing one cigarette box and one lighter). All these items belonged to me and I carried them with me when I left my house on that day. I then walked to the bus-stop which was nearby my house and flagged a taxi. I do not remember the registration number of the taxi or the colour of the taxi. But I think it a 'Comfort' taxi. I then boarded the taxi. I then asked the taxi driver to proceed to 'Liat Towers' at Wheelock place. I am asked about the reason for going to 'Liat Towers' at Wheelock place at that time. I wanted to go to that place to take heroin from one person which I know as 'Dominic'. Throughout the journey I did not talk to the taxi driver. I was also alone in the taxi and no one was with me. I was sitting behind in the passenger seat within the taxi.

10 During the journey to the place I received a call in my black Nokia phone. When I picked up the call, an Indian spoke to me. He told me 'Sudah Mari'. I do not know whether that was 'Dominic'. I then told him to wait and I said I will come. When I reach there, I alighted at the taxi stand which was below 'Liat Towers'. The taxi fare came to about \$12. After I paid the taxi driver, the taxi left. It was about 5.00 a.m. At that time, the place was not crowded. I did not see any Indian there. I then called the same Malaysian number which I had received when I was in the taxi. When I got through, I said "I am here". The caller then said "OK, I will come". I then waited at one of the telephone booths which were nearby. Within a minute, one Indian man came in front of me. When I saw him, I know that is the guy who I am supposed to receive the heroin from. In fact, I have seen him before and this is my second time meeting him. He had introduced himself as 'Dominic' the previous time. He then approached me. When he reached me, there was no conversation. I just opened my brown sling bag and took out the two brown envelopes containing cash of \$10000 from my brown sling bag. I then passed this envelope containing money to 'Dominic'. After this, he opened up his haversack bag. He took out two black bundles and then threw inside my brown sling bag which was still opened.

11 I am asked whether I knew what the two black bundles contained when 'Dominic' threw both bundles inside my brown sling bag. I know that one bundle contained heroin. This was because I had ordered only one bundle of heroin. I did not know what the other bundle contained. So, I then

asked 'Dominic' how come there were two bundles when I had only ordered only one bundle of heroin. He said he does not know. I told him never mind. I told him this because 'Dominic' was only a worker passing the heroin to me. I had wanted to call the Malaysian supplier to clarify this later after I reach home. After this, I parted with him. I then began walking a few steps. When I was walking I saw some people running towards me. When this happened, I knew that these people were CNB officers. I immediately threw my brown sling bag containing the two black bundles away. The bag landed on a nearby bush. I began to run. I am asked why I threw away my brown sling bag. I threw away the brown sling bag because I had heroin inside the bag. As a drug addict I knew that it is an offence in Singapore to keep a lot of heroin. One might be hanged in Singapore for committing such offences.

[emphasis added]

12 After a short chase the CNB officers arrested me by pushing me to the ground. I was then handcuffed. There were a lot of people. Some of the officers also stepped on my face. One of the officers brought my brown sling bag which I had thrown away earlier and asked me whether the bag belonged to me. I admitted ownership to the bag and said it belonged to me. They searched the bag but nothing was inside. Thereafter they found two bundles which were lying separately on ground nearby to the bush. I think the bundles should have scattered to different locations when I threw away the brown sling bag because I had not zipped the bag. When the officers showed me the two bundles, I also admitted ownership to the bundles and said it belonged to me. I do not know what happened to 'Dominic'. I am now shown a photograph with two black bundles and one orange straw (recorder's note: accused was shown a photograph with two black bundles marked as 'A2A' and 'A2B' and one straw marked as 'A2C'). These are the two bundles which 'Dominic' had passed to me and which I had claimed ownership to. However I had ordered only one bundle. I do not know why there were two bundles. As for the orange straw, it belongs to me and is for my own consumption. It was not given to me by 'Dominic'. It was inside my brown sling bag, which I had totally forgotten about.

15 In his second investigation statement¹⁵ recorded on the afternoon of 18 April 2012, Nazeri went into greater detail on his drug dealings:

¹⁵ P59.

15 I am referred to paragraph 9 of my previous statement. I had stated that I had left my house at 4.45 a.m. and went to 'Liat Towers' to collect heroin. I am asked what the heroin was for. The heroin is for selling. Usually I will order one bundle of heroin from a supplier named 'Mahmud'. 'Mahmud' will then send an Indian man to pass me the bundle of heroin. Once I receive the bundle of heroin I will go back home to re-pack. Usually one bundle is about 447 grams. I will break down the bigger packet and re-pack them into smaller 8 gram packets. I have a weighing machine and I will weigh each packet before sealing them. For this, I will buy many small zip-lock plastic packets to pack the heroin. Usually I will have 58 packets of heroin after repacking. I will then sell one packet of heroin for \$150. I will usually take about two weeks to sell all of these packets of heroin. I have a habit of selling all the packets first before re-ordering another bundle from 'Mahmud'. Usually I will buy one bundle of heroin for about \$5300 or \$5400. Out of the 58 packets, *I will take five packets of heroin for my own consumption*. These five packets will last me for two weeks because I only smoke about 4 grams of heroin a day. Sometimes, I smoke lesser than 4 grams. After selling all the packets of heroin, I will make a profit of about \$1000 or more. I have only started selling heroin for about two months. I have about three or four clients who regularly buy heroin from me. All the clients are male Malay residing in areas in Woodlands, Bukit Merah and Redhill area. My clients will call me when they need supply of heroin and I will then arrange to meet them to sell.

[emphasis added]

The accused persons' admissions

16 Dominic and Nazeri admitted that they were in possession of the two bundles Dominic delivered to Nazeri. Nazeri had admitted he was taking delivery of heroin from Dominic for selling. Dominic was presumed to have knowledge that the bundles were diamorphine under s 18(2) of the MDA, which provides that:

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

and he had admitted to delivering the bundles to Nazeri. Consequently the prosecution had proved a sufficient case for them to be called to enter their defence.

The accused persons' defences

17 Both of them kept largely to their statements when they made their defences, which raised issues of facts.

Dominic's defence

18 Dominic's defence is summed up in the closing submissions:

17 Dominic's defence for the Charge at the Court trial is that he was doing a favour for his trusted friend Kumar ("Kumar") to return to Nazeri what belonged to Nazeri, and *he did not know what the two bundles contained but thought they contained keropok* [Malay for prawn crackers] after pressing them. The defence if true rebuts the presumption of knowledge of the nature of drug pursuant to Section 18(2) of the Act.

...

22 ... In his EIC, Dominic confirms that,

Suspicion, there was no suspicion actually, Your Honour. But on the third occasion, after I received the bundles from Kumar, as I was going back to my room in the church, I was fidgeting with the bundles and I heard crunching sounds. So I assumed, *I thought that it was "keropok"*.

[emphasis added]

19 When an accused person like Dominic is presumed to have knowledge, he can seek to rebut the presumption. He can *inter alia* plead ignorance, that he did not know what the bundles were, or he can plead mistake, that he believed them to be something else. These are discrete pleas, and Dominic pleaded mistake.

Nazeri's defence

20 Nazeri's defence was set out clearly in the closing submissions, that:

51 The defence of Nazeri can be summarized briefly as follows. He had ordered only "one bundle" which was to be 400 grams of Heroin. He met Dominic on the day of arrest (that is 13th April 2012) about 5.00 a.m. at "Wheelock Place". He gave Dominic two envelopes containing a total of \$10,450.00. Dominic put two black bundles into his sling bag. **Nazeri's Defence is that he had only ordered one bundle of 400 grams of heroin, out of which a portion was for his own use.**

[emphasis in original]

He was not disputing that he was trafficking, but was seeking to assert that the death penalty did not apply to him because he did not traffic in more than 15g of diamorphine (the minimum weight for the application of the death penalty).

Examination of Dominic's defence

21 By virtue of s 18(2) MDA, the burden is on Dominic prove on a balance of probabilities that he did not know that the bundles contained diamorphine.

22 Dominic said that he was not suspicious about the two bundles wrapped in black tape because when he pressed them and heard crunching sounds he thought they were keropok. However he admitted that he had not carried packages of his own wrapped in black tape, and that such packing is unusual, and keropok is not normally sold wrapped like that¹⁶.

23 His evidence that he really believed the bundles to be keropok was not credible because he knew keropok was not normally packed that way, and Kumar who handled the bundles to him told him he was not sure what they

¹⁶ NE 22 January 2016 pp 118 and 119.

contained¹⁷. In addition to that, his evidence was inconsistent with his earlier statements. When he was questioned in his contemporaneous statement about the contents of the two bundles, his answered “I don’t know” and he also said in his cautioned statement and his investigation statement that he did not know what was inside the bundles. Those pleas of ignorance were at odds with his professed belief that the bundles were keropok.

24 Something else he said had a more damaging effect on his credibility – he had admitted that he knew the bundles were drugs (and not keropok). He said that to Jean Tan, Senior Clinical Psychologist, Institute of Mental Health, who saw him on 19 and 21 August 2013. She had presented a psychological report dated 27 August 2013¹⁸ to Dr Tejpal Singh, Consultant Psychiatrist of the Institute of Mental Health and Woodbridge Hospital, who in turn produced a report to the Subordinate Courts dated 5 September 2013¹⁹ in which he stated:

He [Dominic] later informed my psychologist colleague Ms. Jean Tan that had previously brought similar bundles on 2 prior occasions to Singapore. He was arrested the 3rd time. He said he was not aware of the contents of the bundles on the first 2 occasions, but on the 3rd occasion he knew what they contained.

25 Jean Tan gave evidence on Dominic’s admission to her. She testified that she saw him on 19 and 21 August 2013²⁰. When she was referred to Dr Tejpal Singh’s statement that Dominic had informed her that he knew on the occasion that he was arrested that the bundles contained drugs, she said that

¹⁷ NE 22 January 2016 p 65.

¹⁸ P122.

¹⁹ P63.

²⁰ P123.

Dominic had requested her to inform Dr Tejpal Singh that he knew he was bringing drugs into Singapore²¹.

26 She initially said that it was likely that Dominic made the admission to her on 21 August 2013²². However she said she made notes²³ during the interview on 19 August 2013²⁴. It was recorded at page 3 of the notes:

knew it was drugs.

Financial Difficulties.

27 In cross-examination by Dominic's counsel, she clarified the information she received from Dominic on 19 August and 21 August²⁵:

So on the 19th, I did a clinical interview with him which gave the background of the case whereby, erm, I did---erm, whereby he did, er, admitted to saying that he knew that he was carrying drugs, all right. Based on Dr Tejpal's notes, those---that, erm, piece of information came on the 21st of August, where he asked me to relay the message to Dr Tejpal.

[When she was asked when Dominic made the statement that he knew the bundles were drugs]

On the 19th.

...

[When she was asked what took place on the 21st]

... he asked me to relay the message to Dr Tejpal that he---he didn't know that it was drugs on the first two---er, first two of---er, first---er, the first and second time, and the third time where I believe he was---that was the index offence, he knew that he was bringing drugs in.

and she went further to say²⁶:

²¹ NE 26 August 2015 p 16.

²² NE 26 August 2015 p 17.

²³ P123.

²⁴ NE 26 August 2015 pp 19 and 21.

²⁵ NE 26 August 2015 p 55 line 20 to p 56 line 2.

I kept notes on the 19th because I had to interview him. And so that ...

... that line “knew it was drugs”, it’s captured on my notes on the 19th

She clarified that when she saw Dominic on 21 August, it was not to interview him, but to complete the psychological tests she was conducting²⁷. She was definite it was the 19th because her notes were made on the first time she met Dominic²⁸. In summary, her evidence was that Dominic admitted to her on 19 August that he knew the bundles were drugs, and he asked her on 21 August to convey the information to Dr Tejpal Singh.

28 The date of the admission²⁹ is significant because Dominic acknowledged that he made the statement, but asserted that he was lying when he made it.

29 This was elaborated on in the closing submissions:

124 Thus, if this is true [*ie*, if Dominic did not know that the bundles contained drugs], and it is submitted here that it is, then, Jean Tan’s evidence, whichever Version, 1, or 2 or 3 is adopted, while might be true in the sense that Dominic *did say* to her, would certainly at a higher level *not be the truth* relevant to the Charge. Simply put, it was because Dominic was not telling the truth when he spoke to Jean Tan regardless how Prosecution is trying to milk the best possible out of Version 1 or 2 or 3 in its case against Dominic. It is humbly submitted that Prosecution is grasping at straws depending heavily on Jean Tan’s evidence.

125 For in his EIC, Dominic also gave reasons for the alleged admission (NE Day 12 Page 27 Line 9 to Page 29 Line 13):-

²⁶ NE 26 August 2015 p 58 lines 16 - 20.

²⁷ NE 26 August 2015 p 97 lines 2 - 3.

²⁸ NE 26 August 2015 p 92 lines 12 – p 93 line 4.

²⁹ 19 or 21 August 2013.

- (1) *Before Jean Tan's interview on 21st August 2013, Dominic's father and two sisters visited him at 12.45 pm and he felt "useless being the eldest in the family, not able to comfort or console my family in their times of distress" when his father and two sisters cried during the visit (NE Day 12 Page 28 Lines 1-6);*
- (2) *Also, Dominic's mother died some three months back and it was "not easy for my family to go through what they were going through" since Dominic was in prison and their mother died (NE Day 12 Page 28 Lines 8-10);*
- (3) *His father lost a lot of weight and his health was deteriorating at that point in time (NE Day 12 Page 28 Lines 10-11);*
- (4) *There was a barrier of glass down during the visit which "made me more broken down as I saw my family crying", "this glass which is a barrier for us. The, er ... I can see my family but I can't touch them. I'm close but at the same time ... I'm far from them" (NE Day 12 Page 28 Lines 11-18);*
- (5) *Then Dominic thought as follows:-*

At that point of time, **I had just thought of s--- finishing everything** and, er---so after the visit, I went--I came back and I was escorted for the psychiatric assessment---psychological assessment by Ms Jean. Then, during my journey back to cluster B2 to go for the assessment, I had this thought of why not I just tell Ms Jean that I knew it was drugs so that she will inform to Dr Tejpal, Dr Tejpal will inform to whoever, the IO or the prosecution, who sent them to come and see me. Because I just wanted the case to be over, Your Honour. So it's either I go back home to my family or I'm gone, Your Honour. That---that was my main thing, Your Honour. **Because it is not easy for my family to come and visit me. They are already suffering back home.** And for them just to come and see me, they need to spend about RM300 per person, Your Honour, just to see me. I didn't want to cause them more sufferings, Your Honour. They are already going through pain by seeing me here, by losing my mum. So this was my thoughts, Your Honour. So I just wanted this to end fast by saying all this. **But the truth is, I---**

---did not know what was it actually.

...

(NE Day 12 Page 28 Line 18 to Page 29 Lines 1-16)

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

30 Dominic clarified that his father and sisters visited him on 21 August before Jean Tan saw him³⁰.

31 Inexplicably, his counsel put to Jean Tan that Dominic was unable to remember if he made the admission on 19 August:

I've just spoken to Dominic about what you a---you---what you answered---what your answer was just now. He distinctly remember that on the second meeting, which is the 21st of August, he did tell you that to inform Dr Tejjal that he knew this---the seized drugs were drugs, all right. And---but *as far as the 19 is concerned, con---he can't remember. He can't remember whether he told you or not.* But what he remembers also is that he did s---restate his defence that he didn't know the nature of the drug.³¹

and that

... *he re---sincerely doesn't remember whether he told you or not.* But he remembers that on the 21st he did tell you to tell Dr Tejjal, you confirm what he said on 21st.³²

[emphasis added]

If Dominic made the false admission *after* the family visit on 21 August³³, he should have no difficulty in remembering that he did not make it on 19 August. If Dominic told Jean Tan about the contents of the bundles on 19 August, *before* the family visit (as I find he did – see [32] and [33]) he should have mentioned keropok, not drugs, if he believed them to be keropok.

³⁰ NE 22 January 2016 p 27 lines 11 - 13.

³¹ NE 26 August 2015 p 65 lines 4-10.

³² NE 26 August 2015 p 76 lines 30-32.

³³ NE 22 January 2016 p 27 lines 10-13.

32 I reviewed the evidence relating to the date of the admission. Jean Tan initially stated that the admission was likely to have been made on 21 August, but when she checked her notes she was sure after seeing them that his admission was made on 19 August because she conducted a clinical interview with Dominic on 19 August in which he admitted to carrying drugs³⁴ and she did not conduct any clinical interview on 21 August, and only completed psychological tests³⁵. She was giving evidence on the performance of her duties. Her evidence was corroborated by her contemporaneous notes, and her impartiality was not questioned.

33 I accepted her evidence that Dominic made his admission on 19 August and reject Dominic's explanation that he made the untruthful incriminatory statement after the visit of the family members on 21 August. I found that his evidence (a) that he believed the bundles to be keropok, and (b) that he was lying when he made the admission of knowledge to Jean Tan was not worthy of belief. While the admission that he knew they were drugs falls short of proof of knowledge of diamorphine, he was presumed to have the knowledge under s 18(2), and he failed to present credible evidence to rebut the presumption on a balance of probabilities.

34 Consequently, I found him guilty and convicted him on the charge he faced.

Examination of Nazeri's defence

35 Nazeri's defence was that he had ordered one bundle of diamorphine from Kumar, not the two bundles which Dominic delivered to him.

³⁴ NE 26 August 2015 p 55 lines 30-32.

³⁵ NE 26 August 2015 p 97 lines 2-3.

36 Paragraph 58 of the closing submissions stated:

Nazeri asked what the two bundles contained. He knew one bundle contained heroin because he had ordered only one bundle of heroin. Nazeri did not know what the other bundle contained. *Nazeri then asked Dominic how come there were two bundles when he had only ordered one bundle. Dominic said he did not know. Nazeri then said never mind* as Dominic was only a worker and Nazeri intended to call the Malaysian supplier when he reached home.

[emphasis added]

37 This was in conformity with paragraph 11 of his investigation statement:

I am asked whether I knew what the two black bundles contained when 'Dominic' threw both bundles inside my brown sling bag. I know that one bundle contained heroin. This was because I had ordered only one bundle of heroin. I did not know what the other bundle contained. So, *I then asked 'Dominic' how come there were two bundles when I had only ordered only one bundle of heroin. He said he does not know. I told him never mind...*

[emphasis added]

38 Nazeri's counsel did not bring this up with Dominic when he cross-examined him³⁶. Instead of doing that he asked:

Q Then is it correct that Nazeri took brown envelopes, two brown envelopes, and put them into your haversack?

A That was before this, Your Honour. Before the bundles, Your Honour.

Q Okay. So he put first, and then he---

A Yes. Correct.

Q ---he put the two envelopes first into your bag, then you took the two bundles and put into his sling bag?

A Yes, Your Honour.

³⁶ NE 22 January 2016 p 40 lines 18 - 31.

Q Okay. Was there any other conversation after this between you and Nazeri? As far as you can remember.

A Yes, Your Honour. Nazeri asked me, “Where are my things?”

Q Okay.

A So I said, “I don’t know”, and he didn’t ask me further and he just left, Your Honour.

[emphasis added]

The last two answers were consistent with Dominic’s account of the events described in paragraph 13 of his investigation statement, and counsel appeared satisfied with them and went no further even though they contradicted Nazeri’s account that he asked Dominic why there were two bundles.

39 Counsel also did not cross-examine Dominic on his recollection in paragraph 11 of his investigation statement that Nazeri told him before they met that he would be taking two bundles from him.

40 Counsel’s passivity extended to his examination of Nazeri. He did not tell him about what Dominic had stated and seek his response to it. One would expect that to be brought up if Nazeri did not agree with it.

41 In Nazeri’s favour, his first contemporaneous statement was consistent with his defence. He told SI Larry Tay in that statement that there was 400g of heroin in his sling bag when he was arrested and he reaffirmed that in his evidence-in-chief that “I ordered only one bundle which contained 400g on that particular day³⁷”.

42 When he gave his defence he explained to his counsel³⁸:

³⁷ NE 18 April 2017 p 15 lines 19 - 21.

³⁸ NE 18 April 2017 p 20 lines 17 - 21.

A From the beginning, Your Honour, normally, I would order only one bundle containing roughly 400 gram to sometime 450 gram.

Q And why this time---or why do you say in your statement 400 grams? Can you explain?

A At that time, I was short of cash, that's why I ordered only 400 gram.

43 The defence must be examined against the other evidence on this question. Nazeri's evidence was that the drugs can be purchased in bundles of 400g or 450g at different prices. The price for the former was \$5000³⁹, whereas the price for the latter was about 447g was about \$5300–\$5400⁴⁰, or \$5400 for a bundle of 450–453g⁴¹. In simple terms, the bundles were transacted in different quantities at different prices.

44 If Nazeri had ordered one 400-g bundle, his supplier would have made two mistakes in delivering to him (i) *two* bundles, (ii) of the *wrong weight* (of 453g and 453.4g). It challenges belief that the supplier could make mistakes on the number and weight of the bundles in the same transaction, drug suppliers cannot be so careless in their dealings. Furthermore Dominic's evidence that Nazeri told him that he was meeting him to collect two bundles was not challenged.

45 I found that Nazeri had placed orders for the two bundles delivered to him.

46 Nazeri's defence went on that if he had received 400g of diamorphine he would have been re-packed them into 50 small packets, and 12 of those

³⁹ NE 18 April 2017 p 77 lines 3 - 4.

⁴⁰ P59 para 15 and NE 18 April 2017 p 14 lines 3 - 4.

⁴¹ NE 18 April 2017 Day 14 lines 28 - 32.

small packets would have been reserved for his own consumption, such that only 13.318g of diamorphine would have been for re-sale, below the 15-g cut-off level at which the death penalty applies⁴².

47 I rejected his claim that he had ordered a 400-g bundle. However there was another difficulty with his defence. He had in his investigation statement at paragraph 15 stated that he would repack bundles of heroin into packets of 8g and:

... I will take *five packets* of heroin for my own consumption. These five packets will last me for two weeks because I only smoke about 4 grams of heroin a day. Sometimes, I smoke lesser than 4 grams. ...

[emphasis added]

48 He said in examination-in-chief that it was not correct that he smoked 4g of diamorphine a day, and that he actually smoked 12g of it. However, he added that his statement was correctly recorded, but he had made it incorrectly, because:

Actually it's *12 packets* for 2 weeks⁴³ ...

[emphasis added]

49 He explained that:

... at the time I was giving this statement, I was afraid that did not---they would not believe me.

... initially, I did mention. I---actually, I did mention, that they say I was smoking too much. Much too many and they didn't believe me. Then, that's why I said this---this statement

... I told them I smoke *10 packets* within ... two weeks. They say te---*10 packets* too much. And they won't believe me. And they--- then, they told me I should change my---my statement. So, I change.⁴⁴

⁴² 2nd Defendant's Closing Submissions para 87.

⁴³ NE 18 April 2017 p 22 lines 25 - 26.

[emphasis added]

but those allegations were not put to the recording officer, interpreter or any other CNB officer during the trial. Nazeri also did not address the discrepancy between the claims of 10 packets and 12 packets.

50 I did not accept Nazeri's defence that he intended to purchase a 400-g bundle of heroin and had intended to sell about 13.318g of it, and I find that Nazeri had ordered the two bundles of diamorphine that he received.

51 However as some of that diamorphine would be kept for his own consumption, a reduction should be made for that. The prosecution did not do that though it accepted that Nazeri consumed diamorphine. I am prepared to accept Nazeri's admission in his investigation statement that he will keep 5 packets for his consumption, but I do not accept that he would keep 10 packets or 12 packets as he claimed in court.

52 Nazeri had stated in paragraph 15 of his investigation statement (set out in para 15 thereof) that a bundle of about 447g can yield 58 packets. The two bundles recovered were heavier, weighing 453g and 453.4g, with an aggregate diamorphine content of 35.41g.

53 Even if the additional weight were disregarded (in Nazeri's favour), the two bundles would yield 116 (58 x 2) packets. On that basis, 111 (116 – 5) packets would have been meant for trafficking, and they would have a diamorphine content of 33.89g ($35.41 \times 111 \div 116$) which was misstated as 33.39g when the figure was first arrived at. For the purpose of completeness, even if Nazeri were to keep 12 packets for consumption, with the remaining

⁴⁴ NE 18 April 2017 p 99 lines 1 - 14.

104 packets to be sold, that would work out to 31.75g ($35.41 \times 104 \div 116$), within the range of application of the capital sentence.

54 I found Nazeri guilty of trafficking 33.39g of diamorphine by having them in his possession for the purpose of trafficking. The use of the incorrect lower weight did not prejudice him.

Sentence

55 After the accused persons were convicted, their sentences were to be determined with reference to s 33B MDA.

56 Under the section, the mandatory death sentence could be substituted with a sentence of life imprisonment and not less than 15 strokes of the cane if (i) their dealings with the drugs were restricted to being couriers, and (ii) they had rendered substantive assistance to the CNB, or (iii) they suffered from an abnormality of mind.

57 I found, after hearing counsel, that Dominic came within criteria (i) and (ii), but Nazeri did not come within either, and criteria (iii) had no application to either of them.

58 In the circumstances I sentenced Dominic to life imprisonment and 15

strokes of the cane, with the custodial sentence to run from the date of his arrest, 13 April 2012, and I imposed the death sentence on Nazeri.

Kan Ting Chiu
Senior Judge

Ng Cheng Thiam and Jane Lim Ern Hui (Attorney-General's
Chambers) for the Prosecution;
Seah Eng Chee Rupert (Rupert Seah & Co) and Tan Chin Aik Joseph
(Teo Keng Siang LLC) for the first Accused;
Masih James Bahadur (James Masih & Company) and Skandarajah
s/o Selvarajah (S Skandarajah & Co) for the second Accused.