

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

[2021] SGHC 48

Criminal Case No 42 of 2017

Between

Public Prosecutor

And

- (1) Dzulkarnain bin Khamis
- (2) Sanjay Krishnan

GROUND OF DECISION

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

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Public Prosecutor
v
Dzulkarnain bin Khamis and another

[2021] SGHC 48

General Division of the High Court — Criminal Case No 42 of 2017
Hoo Sheau Peng J
20–23, 27–30 June 2017, 27–29 March, 3–6 April 2018, 15–18, 30–31
January, 14–15 February, 16 July 2019, 5 June 2020, 11 September 2020

25 February 2021

Hoo Sheau Peng J:

Introduction

1 The first accused person, Mr Dzulkarnain bin Khamis (“Dzulkarnain”), claimed trial to two charges of trafficking in not less than 2,375.1g of cannabis and not less than 2,329.1g of cannabis mixture under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”) by delivering the cannabis and cannabis mixture to the second accused person, Mr Sanjay Krishnan (“Sanjay”). Sanjay claimed trial to two corresponding charges of possession of the cannabis and cannabis mixture for the purpose of trafficking of the same under s 5(1)(a) read with s 5(2) of the MDA.

2 Prior to the filing of the parties’ reply submissions, the Court of Appeal released *Saravanan Chandaram v Public Prosecutor* [2020] 2 SLR 95 and held that it is impermissible for the Prosecution to concurrently prefer charges of

trafficking in both cannabis and cannabis mixture with respect to the same compressed block of cannabis-related plant material. However, in another pending appeal, the Prosecution raised new arguments on this point for the Court of Appeal's consideration. Thus, upon the Prosecution's application, the charges in relation to the cannabis mixture have been stood down.

3 Subsequently, I found the accused persons guilty of the respective charges involving not less than 2,375.1g of cannabis. Dzulkarnain was sentenced to life imprisonment, while the mandatory death sentence was imposed on Sanjay. Both the accused persons have appealed against their convictions and sentences, and I now provide my full reasons.

Undisputed facts

4 On 23 February 2015, at about 12.30am, Dzulkarnain met Sanjay at the branch of the United Overseas Bank ("UOB") located at People's Park Complex.¹

5 Sometime that afternoon, Dzulkarnain collected a brown box from a bus stop near Tuas Checkpoint. To do so, Dzulkarnain used a van bearing registration number GU9036U.² Then, at around 4.00pm, Dzulkarnain drove the van to Lorong 21 Geylang and thereafter to Lorong 37 Geylang ("Lorong 37").³ Upon reaching Lorong 37, Dzulkarnain carried the brown box out of his van and walked into the back lane.⁴ He proceeded out of the back lane and

¹ P121 at [10]–[16]; Agreed Bundle ("AB"), p 451.

² P118 at p 427; P127 at p 453.

³ AB, pp 345–346.

⁴ AB, p 346.

placed the brown box near a green dustbin located next to 14 Lorong 37 (the “drop-off point”).⁵ He then drove off.

6 Shortly after, Sanjay drove his car bearing registration number SDS721E into Lorong 37. After alighting, Sanjay retrieved a brown box from the drop-off point. He returned to his car and drove off.⁶

7 Immediately after, at about 4.35pm, Sanjay was apprehended and arrested by a team of officers from the Central Narcotics Bureau (“CNB”) near Lorong 36 Geylang.⁷ At around 4.40pm, Dzulkarnain was arrested at an Esso petrol kiosk at Ipoh Road by another team of CNB officers.⁸

8 From Sanjay’s person, Senior Station Inspector David Ng recovered a handphone marked by CNB as “SK-HP1”.⁹ From Sanjay’s car, the CNB officers seized, among other things: (a) a brown box with marking “SKP” (the ““SKP” box”);¹⁰ (b) four handphones with CNB markings as “SK-HP2” to “SK-HP5”;¹¹ (c) a blue notebook (the “blue notebook”) and a black notebook (the “black notebook”),¹² and (d) two samurai swords and a 30-cm knife¹³. Among other

⁵ AB, p 346.

⁶ AB, p 267; AB, p 281.

⁷ AB, p 281.

⁸ AB, p 347.

⁹ AB, p 257.

¹⁰ AB, p 268; photograph in P35.

¹¹ P219–P222 (marked “SK-HP2” to “SK-HP5”); see photograph in P49.

¹² P254 and P211 respectively.

¹³ AB, pp 333 and 335.

items seized from Dzulkarnain, there was a handphone marked as “DBK-HP1”.¹⁴

9 The “SKP” box contained five bundles of vegetable matter that comprise the subject matter of the capital charges.¹⁵ Eventually, analysis by the Health Sciences Authority (the “HSA”) revealed that the vegetable matter in the five bundles contained not less than 2375.1g of cannabis and 2329.1g of cannabinal and tetrahydrocannabinol with the detailed breakdown as follows:¹⁶

S/N	Exhibit Marking	Analysis
1	A1A1A	500.4g of cannabis 480.3g of cannabinal and tetrahydrocannabinol
2	A1B1A	434.9g of cannabis 458.8g of cannabinal and tetrahydrocannabinol
3	A1C1A	486.6g of cannabis 418.4g of cannabinal and tetrahydrocannabinol
4	A1D1A	461.1g of cannabis 500.8g of cannabinal and tetrahydrocannabinol
5	A1E1A	492.1g of cannabis 470.8g of cannabinal and tetrahydrocannabinol

¹⁴ AB, p 387; photograph in P51.

¹⁵ P131–P135; photographs in P38 and P41.

¹⁶ Revised HSA certificates are marked as P69A to P73A.

The parties' cases

The Prosecution's case

10 The Prosecution's case was that Dzulkarnain collected a brown box which he then delivered to the drop-off point for collection by Sanjay. In fact, it was Sanjay who gave instructions to Dzulkarnain regarding the delivery, including the location of the drop-off point at Lorong 37.

11 Shortly after Dzulkarnain drove off in his van, Sanjay drove into Lorong 37 in his car. He collected the "SKP" box from the drop-off point and drove off. Sanjay was arrested almost immediately thereafter.

12 As Dzulkarnain and Sanjay were being tailed by different teams of officers from the CNB, it was undisputed that there was a short period of time – estimated to be a few minutes – when the brown box left by Dzulkarnain was not kept under observation by any CNB officer. However, the Prosecution's position was that the "SKP" box picked up by Sanjay was the very same brown box left by Dzulkarnain. When Sanjay was arrested, he was on the way to perform an onward delivery of the cannabis in the "SKP" box.

13 After the "SKP" box was recovered from Sanjay's car, there was proper custody by the relevant CNB officers to ensure the integrity of the drug exhibits until they were handed over for analysis to be conducted by the HSA.

14 Apart from relying on the evidence of witnesses, especially the CNB officers, the Prosecution also relied on statements recorded from the accused persons in the course of investigations which were admitted without any objections by the accused persons pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). For convenience, I set out

some of the contents of these statements in my summaries of the cases for the accused persons, together with the responses of the accused persons to such aspects: see [19]–[21] and [29] below.

15 As against Sanjay, the Prosecution also relied on communication records of three out of the five handphones recovered from Sanjay’s car. The relevant communications for the period of 20 to 22 February 2013 were collated in an exhibit entitled “Summary of Telecommunications between B1, B2 & Bala Luk Kor”, otherwise known as “Annex F”. In that period, there were communications between SK-HP1 with the number 81967339 (saved as “Bala” in SK-HP1). During the same period, there were also communications between Dzulkarnain’s handphone DBK-HP1 and the same number (saved as “Boss Bro” in DBK-HP1). Then, on 23 February 2015, the records of SK-HP2 and SK-HP3 showed 24 exchanges with DKB-HP1.¹⁷

16 Further, the Prosecution relied on the contents of the blue and black notebooks found in Sanjay’s car. Deputy Superintendent Qamarul Zaman bin Hussin (“DSP Qamarul”), the officer-in-charge of the Intelligence Division of the CNB, was called as an expert on the street names and prices of drugs. Based on the handwritten entries within the notebooks, he testified that they related to multiple drug transactions, *ie*, prices and weights of transactions in, *inter alia*, cannabis, methamphetamine, ecstasy, Erimin-5 and heroin.¹⁸

17 I should add that the Prosecution also showed that on 23 February 2015, Sanjay was present at two locations *ie*, Peninsula Plaza and Ngee Ann City,

¹⁷ See Annex F at items 84–122 for the exchanges on 23 February 2015.

¹⁸ NEs, 28 June 2017, p 80 line 6 to p 81 line 17.

around the times when a sum of \$250 each was transferred via ATM at 9.34am and 2.45pm respectively to the bank account of Ms Nur Ratnawati (“Nur”), Dzulkarnain’s partner.¹⁹ This was preceded by a text message from DBK-HP1 to SK-HP2 at 1.11am on 23 February 2015, providing Nur’s bank account number.²⁰

18 In its closing submissions, the Prosecution submitted that both Dzulkarnain and Sanjay had been proved to be in actual possession of the “SKP” box and its contents (albeit at different times), thus triggering the presumption within s 18(2) of the MDA that they each knew the nature of the drugs they were delivering. Neither of them was able to rebut the presumption of knowledge. The other elements of the respective charges had also been established. On this basis, the Prosecution contended that the accused persons should be convicted of the respective charges.²¹

Dzulkarnain’s case

19 At the trial, Dzulkarnain remained silent. He did not call any factual witness. Instead, Dzulkarnain adduced a statement which he furnished on 23 February 2015 at 5.15pm in response to a notification under s 33B of the MDA²² (“Dzulkarnain’s s 33B MDA statement”). In it, Dzulkarnain said “I do not know what the things are and how many. I know that it is illegal things. Thought it was cigarette. My wage is only \$250.”

¹⁹ As summarised in the Prosecution’s Closing Submissions (“PCS”) at [103]–[105].

²⁰ Annex F at item 90.

²¹ PCS and Prosecution’s Reply Submissions.

²² Exh 1D-1.

20 As part of the Prosecution’s case, six statements recorded from Dzulkarnain were admitted. In the statement recorded on 23 February 2015 at 5.30pm (“Dzulkarnain’s contemporaneous statement”), Dzulkarnain said that he did not know the contents of the brown box which he collected for delivery to Sanjay in return for a sum of \$250.²³ In the cautioned statement recorded on 24 February 2015 at 10.35pm (“Dzulkarnain’s cautioned statement”), he admitted that he knew he was supposed to “deliver drugs to Sanjay”.²⁴ As payment for the task, Sanjay had transferred a sum of \$250 to his wife’s account.²⁵ In the four other statements recorded on 3, 5, 7 and 10 March 2015 respectively (“Dzulkarnain’s long statements”), he explained the circumstances surrounding his involvement in the collection and delivery of drugs to Sanjay.²⁶

21 To summarise, Dzulkarnain stated that his friend, one “Bala Luk Kor”, who was a member of a gang known as “369”, knew that Dzulkarnain was in financial difficulty. “Bala Luk Kor” told him that he could earn \$500 for each drug delivery job. Dzulkarnain saved the contact number of “Bala Luk Kor” under “Boss Bro” in his handphone. On 22 February 2015, “Bala Luk Kor” told Dzulkarnain that Sanjay, another member of “369”, had a drug delivery job for him. Sanjay would contact Dzulkarnain about the drug delivery job. Thereafter, on 23 February 2015, Sanjay contacted Dzulkarnain to make the arrangements.²⁷ When they met that early morning of 23 February 2015, Sanjay told him he would be paid \$250 first, and then another \$250 upon completion of the job *ie*

²³ AB, pp 337–339 and 341.

²⁴ P118 at p 427.

²⁵ P118 at p 427.

²⁶ P120, P121, P125 and P127.

²⁷ P120 at [4], [6] and [7].

\$500 in total.²⁸ Later that afternoon, he collected the brown box at a bus stop near Tuas Checkpoint. Then, he delivered the brown box to Lorong 37.²⁹

22 In questioning the Investigation Officer, Senior Staff Sergeant Ranjeet Ram Behari (“IO Ranjeet”) who recorded Dzulkarnain’s cautioned statement and long statements, Dzulkarnain’s counsel, Mr Eugene Thuraisingam (“Mr Thuraisingam”) brought IO Ranjeet through the multiple references to “drug” and/or “drugs” within them, and suggested that Dzulkarnain did not mention “drug” and/or “drugs” at all. These allegations were flatly denied by IO Ranjeet.³⁰ IO Ranjeet was informed that Dzulkarnain’s position was that he had only agreed to transport cigarettes.³¹ This point, however, was not raised in the closing submissions.³²

23 In questioning IO Ranjeet, some of the other Prosecution witnesses, as well as Sanjay, Mr Thuraisingam suggested that the “SKP” box picked up by Sanjay *may* not have been the brown box left by Dzulkarnain at the drop-off point. Indeed, in the closing submissions, the focus was that the Prosecution had failed to establish this crucial fact *ie*, of delivery by Dzulkarnain of the “SKP” box to Sanjay. Therefore, the charge had not been made out.³³

24 I note that Dzulkarnain called an expert, Dr Munidas Winslow (“Dr Winslow”), who diagnosed that at the time of the offence, he suffered from an

²⁸ P121 at [14].

²⁹ P127 at [28], [30] and [31].

³⁰ NEs, 4 April 2018, p 89 lines 7–17.

³¹ NEs, 4 April 2018, p 98 line 26 to p 99 line 11.

³² Dzulkarnain’s Closing Submissions (“DCS”) and Reply Submissions (“DRS”).

³³ DCS at [4]–[39]; DRS at [2]–[14].

adjustment disorder and a stimulant use disorder.³⁴ Dzulkarnain relied on Dr Winslow's evidence for the purpose of sentencing only.³⁵

Sanjay's case

25 Turning to Sanjay's case, he testified that he picked up the "SKP" box. In essence, Sanjay's defence was that one "Boy Lai" had asked him to collect "some collectors' hunting knives and possibly some contraband cigarettes that he had ordered from one "Malaysian Boy""³⁶ from Dzulkarnain. Then, he was to deliver the items to Boy Lai at Hotel La Mode at Lorong 10 Geylang ("Lorong 10"). As Boy Lai was a fellow knife collector, Sanjay agreed to do so. In return, he was promised a payment of \$300. As such, Sanjay did not know that the "SKP" box in fact contained five bundles of cannabis. In his testimony, Sanjay described his relationship with Boy Lai, and the circumstances surrounding the collection and delivery he agreed to carry out for Boy Lai.

26 While Sanjay admitted that the two handphones marked as SK-HP4 and SK-HP5 were his, he denied that the other three handphones (*ie*, SK-HP1, SK-HP2 and SK-HP3) belonged to him. Just before he collected the "SKP" box, Boy Lai was in the car. Boy Lai left those three devices in his car for his use. By and large, the communications records of the three devices had nothing to do with him.

27 Sanjay also denied that the two notebooks were his. Specifically, he claimed that the black notebook belonged to Boy Lai, while the blue notebook

³⁴ Exh 1D-2 at [23]–[24].

³⁵ DCS at [47]–[68].

³⁶ NEs, 17 January 2019, p 25 lines 1–4.

belonged to someone who previously rented his car. He also denied that he transferred two sums of \$250 each to Nur's account.

28 To support his assertion that he was a knife collector, Sanjay highlighted that during the search of his car on 23 February 2015, knives were seized: see [8] above. In a statement given to the police on 2 February 2017 in relation to his possession of the knives which he introduced into evidence, Sanjay mentioned that he was a collector of knives. He also mentioned that he had bought two of those knives from Boy Lai.³⁷ He called a witness, Mr Billy Chu Jun Kuan ("Billy Chu"), who testified that once, he bought three knives from Sanjay. Sanjay also called his girlfriend Ms Shankiri d/o Danakodi ("Shankiri") and Mr Graceson Ang as witnesses.

29 There were ten statements recorded from Sanjay adduced by the Prosecution. While I shall not set out the contents of four long statements recorded on 1, 5, 6 and 7 March 2015 respectively by IO Ranjeet,³⁸ I set out aspects of the six other statements as follows:

- (a) Immediately after his arrest but before the "SKP" box was opened, Sanjay was asked by Station Inspector Tay Cher Yeen ("SI Tay") about its contents. Sanjay shrugged, but did not answer. His reaction was recorded by Senior Staff Sergeant Wong Kah Hung ("SSSgt Wong") in the field diary which I shall refer to as the "oral

³⁷ Exh 2D-2.

³⁸ P119, P122, P123 and P124.

statement”.³⁹ Both the officers disagreed that Sanjay had told them that it was a box of “knives and cigarettes”.⁴⁰

(b) A few hours later, when questioned by SI Tay, Sanjay said that he did not know what the “SKP” box contained (the “contemporaneous statement”).⁴¹ The accuracy of this was not challenged until Sanjay’s cross-examination when he explained that as he was asked to collect “knives and possibly cigarettes”, and not “a brown box”, there was nothing wrong with his answer that he did not know the contents of the box.⁴²

(c) In his cautioned statement recorded on 24 February 2015 by IO Ranjeet (“Sanjay’s cautioned statement”), Sanjay stated that “I believe that it was illegal cigarettes, as told by a guy called Malaysian Boy.” He was paid \$300 for delivering the “illegal cigarettes”.⁴³ At trial, however, Sanjay alleged that he actually wanted to say, “I believe that it was illegal cigarettes *and hunting knives, as told by a guy called “Boy Lai” which he ordered from Malaysian Boy.*” IO Ranjeet refused to allow him to make the additions. Thus, he refused to sign the cautioned statement.⁴⁴ When questioned, IO Ranjeet stated that Sanjay did not give any reason for not signing the cautioned statement.⁴⁵

³⁹ AB, p 275 at [16].

⁴⁰ NEs, 27 June 2017, p 90 lines 8–11; NEs, 22 June 2017, p 5 lines 16–19.

⁴¹ AB, p 298 at Q4–A4.

⁴² NEs, 31 January 2019, p 33 line 20 to p 35 line 1, p 36 lines 7–8.

⁴³ AB, p 422.

⁴⁴ NEs, 30 January 2019 p 33 line 14 to p 35 line 15.

⁴⁵ NEs, 3 April 2018, p 25 lines 22–30.

(d) In a statement recorded on 8 March 2015, also recorded by IO Ranjeet (the “8 March long statement”), Sanjay mentioned that he had been told by Boy Lai to collect knives. Further, he was told that “there may also be contraband ‘Udang Garam’ cigarettes”.⁴⁶ This was the version he maintained thereafter.

(e) In the statements recorded on 10 March 2015 and 17 June 2015 by IO Ranjeet, Sanjay described the events surrounding the transaction.⁴⁷ The latter was unsigned.

30 I digress to emphasise that there were no objections to the admissibility of the two unsigned statements. As encapsulated within Explanation 2(e) of s 258(3) of the CPC, a breach of the signature requirement alone (being a procedural requirement within ss 22 or 23 of the CPC) would not render a statement inadmissible: *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [44]–[45]. The weight to be accorded to the cautioned statement is a matter I discuss at [84] below.

31 In his closing submissions, Sanjay’s counsel, Mr Peter Fernando (“Mr Fernando”) argued that the Prosecution had not proved that he was in *knowing* possession of the drugs. Even if the Prosecution could rely on the presumption of possession under s 18(1) of the MDA, Sanjay had rebutted the presumption of possession on a balance of probabilities. Further, if the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA applied to Sanjay, he had also rebutted it. The charge had not been established against him.

⁴⁶ AB, pp 450–451.

⁴⁷ AB, pp 459–466.

Another challenge raised by Mr Fernando was in relation to the chain of custody of the drug exhibits *after* they were seized by SI Tay.⁴⁸

32 In the analysis below, I shall expand on the evidence adduced by each of the parties. For now, I briefly set out the applicable law.

The law

33 Section 5 of the MDA provides:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore –

(a) to traffic in a controlled drug;

...

(2) For the purpose of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

34 Under s 2 of the MDA, “traffic” is defined to include “sell”, “send”, “transport” and “deliver”.

35 Dzulkarnain was charged with trafficking by delivering the cannabis under s 5(1) of the MDA. The elements of such an offence are: (a) trafficking in a controlled drug; and (b) knowledge of the nature of the drugs which may be proved or presumed pursuant to s 18(2) of the MDA.

36 Sanjay was charged with having the cannabis in his possession for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA. The elements for such an offence are: (a) possession of a controlled drug, which may

⁴⁸ Sanjay’s Closing Submissions (“SCS”) and Reply Submissions (“SRS”).

be proved or presumed pursuant to s 18(1) of the MDA; (b) knowledge of the nature of the drug, which may be proved or presumed pursuant to s 18(2) of the MDA; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]).

37 In this connection, s 18 of the MDA provides:

Presumption of possession and knowledge of controlled drugs

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

(a) anything containing a controlled drug;

...

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

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

...

(4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

38 As set out above at [18], the Prosecution asserted that the accused persons had been proved to have had the drugs in their possession, and that the Prosecution was only relying on the presumption of knowledge within s 18(2) of the MDA. To rebut the s 18(2) presumption, each of the accused persons had to “lead evidence to prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug”: *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng Comfort*”) at [37]. As the Court of Appeal explained in *Obeng Comfort* at [39]–[40]:

39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, *he should be able to say what he thought or believed he was carrying*, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. ... Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. ...

40 Where the accused has stated what he thought he was carrying ('the purported item'), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. ... *Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (ie, whether his assertion that he did not know the nature of the drugs is true)*. This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

[emphasis added]

Findings in relation to Dzulkarnain

39 I now set out my findings in respect of Dzulkarnain. To reiterate, Mr Thuraisingam's main plank was that the Prosecution did not prove that the brown box Dzulkarnain had delivered was the "SKP" box containing the cannabis: see [23] above. Indeed, Mr Thuraisingam argued that the short gap in time during which the brown box was unmonitored by any CNB officer constituted a "break" sufficient to raise reasonable doubt as to the identity of the drug exhibits. Relying on *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Mohamed Affandi*") at [39], it was argued that, if a gap in the chain of evidence occurring during police custody cannot

sustain a conviction, an acquittal must result *a fortiori* where the break occurs before the exhibit enters police custody.

40 As for the Prosecution, it argued that from the contents of the statements, Dzulkarnain knew that the delivery concerned drugs. As highlighted above at [18], the Prosecution submitted that Dzulkarnain delivered the “SKP” box by depositing it at the drop-off point. Reliance on *Mohamed Affandi* was misplaced in that the “chain of custody” begins at the point in time when officers seize and take the evidence into custody. Based on the evidence, the “SKP” box was the brown box delivered by Dzulkarnain; it was farfetched to contend otherwise. Dzulkarnain had therefore trafficked in the drugs therein. As this would entail naturally that Dzulkarnain was in possession of the cannabis at the point of delivery, the Prosecution relied on s 18(2) of the MDA to presume Dzulkarnain’s knowledge of the nature of the drugs. Dzulkarnain elected not to give any evidence, and the presumption had not been rebutted.

Weight to be accorded to contents of the statements

41 I begin my analysis by considering the contents of Dzulkarnain’s statements.

42 I acknowledge that in Dzulkarnain’s s 33B MDA statement (which was the earliest statement to be recorded from him), Dzulkarnain claimed that he thought the box he delivered contained cigarettes: see [19] above.⁴⁹ Then, in his contemporaneous statement, he said that he did not know what was in the box.⁵⁰ However, as further set out in [20] above, from his cautioned statement onwards, Dzulkarnain disclosed that he was paid to collect a brown box of drugs

⁴⁹ Exh 1D-1.

⁵⁰ AB, pp 337–339 and 341.

from Tuas and was instructed to deliver the same brown box of drugs to Sanjay at Lorong 37.

43 At trial, Mr Thuraisingam suggested that Dzulkarnain, rather than having knowledge that the brown box contained drugs, thought that he was delivering cigarettes. However, IO Ranjeet disagreed that the multiple references in the cautioned statement and the long statements to “drug” and/or “drugs” were not made by Dzulkarnain. In contrast, Dzulkarnain elected not to give evidence. As such, I did not have any explanation from Dzulkarnain how there could have been so many inaccurate references to “drug” and/or “drugs” in his statements.

44 Having considered the contents of all the statements, as well as IO Ranjeet’s evidence, I did not accept the position mentioned only in the s 33B MDA statement and taken by Mr Thuraisingam during the cross-examination of IO Ranjeet that Dzulkarnain thought he was delivering cigarettes. Dzulkarnain chose not to give evidence on this. Further, this point was abandoned in the closing submissions. As admitted by Dzulkarnain in the cautioned statement and the long statements, I found that Dzulkarnain knew that he was collecting a brown box of drugs from Tuas which he then delivered by leaving it at the drop-off point for collection by Sanjay.

45 At this juncture, I digress to observe that Mr Fernando raised some concerns regarding Dzulkarnain’s statements. Specifically, he pointed out that there were inconsistencies with respect to: (a) his knowledge of the contents of the brown box; (b) the precise location in Tuas where he collected the drugs; (c) the availability of the van for use in the drug drop-off; (d) his knowledge of another Indian male at the meeting with Sanjay at UOB; (e) the mode and transfer of money to himself from Sanjay; and (f) the precise manner of the drug

pick-up.⁵¹ In relation to the case against Sanjay, these inconsistencies may be given short shrift because the Prosecution accepted that it need not and in fact did not rely on Dzulkarnain's statements for this purpose.⁵² As against Dzulkarnain, I have already given my reasons for accepting that Dzulkarnain knew that the delivery concerned drugs.

Whether Dzulkarnain delivered the "SKP" box

46 The key dispute, of course, centred on whether the brown box delivered by Dzulkarnain was the "SKP" box collected by Sanjay. Admittedly, the Prosecution accepted that nobody from the CNB watched the brown box for a few minutes after it was left behind by Dzulkarnain. In *Mohamed Affandi* at [39], the Court of Appeal stated:

... It is well established that the Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused. ... *This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis.* In the context of the Prosecution establishing the chain of custody, the Defence may also seek to suggest that there is a break in the chain of custody. *This refers not necessarily to challenging the Prosecution's overall account but to showing that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken.* ...

[emphasis added]

47 As submitted by the Prosecution, I agreed that the applicable principles as to the integrity of the chain of custody were not applicable. Here, the "SKP" box had not yet been taken into custody by the CNB officers. Nonetheless, the heavy onus remained for the Prosecution to prove beyond a reasonable doubt

⁵¹ SCS at [43]–[70].

⁵² PCS at [4].

that the brown box was the “SKP” box. This was a crucial matter. While it was significant that there had been a gap of time during which the brown box was not monitored by CNB officers, in my view, this was not sufficient to raise a reasonable doubt as against the Prosecution’s case. For the reasons that I elaborate below, the entirety of evidence proved that the brown box left at the dustbin was the “SKP” box.

48 For a start, Dzulkarnain’s description of the appearance, weight and contents of the brown box fitted the same aspects of the “SKP” box. To elaborate, Dzulkarnain did not dispute the portions of his long statement of 10 March 2015 where he estimated that the box weighed 5kg, and that it was a brown box sealed with tape.⁵³ When the “SKP” box was recovered by the CNB officers, it was sealed with masking tape. Also, as weighed by IO Ranjeet, the gross weight of the drug exhibits amounted to 4,993.68g *ie*, about 5kg without taking into account the weight of the “SKP” box.⁵⁴ Moreover, as I outlined at [44] above, I accepted that Dzulkarnain knew that the brown box he delivered contained drugs; this matched the contents of the “SKP” box.

49 Next, the location for the delivery and collection was one and the same *ie*, at the green dustbin outside 14 Lorong 37. Indeed, this was the pre-arranged location. Dzulkarnain did not dispute that he had been instructed by Sanjay and that Sanjay was supposed to pick up the brown box there.⁵⁵ It was not disputed that Dzulkarnain “placed the brown coloured box behind the green dustbin”,⁵⁶

⁵³ P127 at [28] and [31].

⁵⁴ AB, p 397 at [26].

⁵⁵ PCS at [56].

⁵⁶ P127 at [31].

while Sanjay testified that he picked up the “SKP” box from behind the green dustbin.⁵⁷ Dzulkarnain had told Sanjay where the box was over the phone.⁵⁸

50 At this juncture, I set out in detail the evidence of the CNB officers as follows:

(a) Originally, Dzulkarnain’s van was tailed by Senior Staff Sergeant Eng Chien Loon Eugene (“SSSgt Eng”) and Sergeant Muhammad Hidayat bin Jasni (“Sgt Hidayat”) in their car along Sims Avenue to Lorong 37. They then lost sight of him.⁵⁹

(b) Thereafter, three CNB officers, Inspector Muhammad Faizal bin Baharin (“Insp Faizal”), Staff Sergeant Ace Ignatius Siao Chen Wee and Staff Sergeant Azman bin Mohd Saleh, tailed Dzulkarnain into Lorong 37 in their car. They testified that Dzulkarnain was carrying a “brown box” near 14 and 16 Lorong 37.⁶⁰ Insp Faizal observed Dzulkarnain putting the brown box “near a green rubbish bin with the number ‘14’ in white” and subsequently returning empty-handed to his van.⁶¹ Insp Faizal stated that thereafter, when his car started following Dzulkarnain’s van, he stopped watching the brown box.⁶² Insp Faizal stated that the “SKP” box as shown in a photograph exhibit

⁵⁷ NEs, 18 January 2019, p 23 lines 1–27.

⁵⁸ NEs, 17 January 2019, p 61 line 5 to p 62 line 7.

⁵⁹ AB, pp 267, 281.

⁶⁰ NEs, 22 June 2017, p 91 lines 4–6; NEs, 28 June 2017, p 50 lines 24–28; NEs, 22 June 2017, p 123 lines 16–20.

⁶¹ AB, p 346.

⁶² NEs, 22 June 2017, p 90, lines 14–20.

corresponded to the brown box carried by Dzulkarnain.⁶³ However, the three officers conceded that they could not positively identify the brown box that they saw Dzulkarnain carrying as being the “SKP” box that was adduced at trial.⁶⁴

(c) Nonetheless, Insp Faizal testified that he saw the brown box from the driver’s seat as he drove past the green rubbish bin.⁶⁵ Insp Faizal was also able to confirm that before Dzulkarnain left the brown box there, there was no brown box at the dustbin.⁶⁶ When Insp Faizal drove past the dustbin, he only saw one brown box at the dustbin.⁶⁷ In re-examination, Insp Faizal was asked why he was so sure that there was only one brown box at the dustbin during the period of observation and when he drove past the dustbin, and he stated:⁶⁸

A. The only box that I saw was the box that the subject placed at the dust bin. As I drove out from number 11, I’m able to see the surrounding of the dust bin. So I’m very sure that’s the only box – only brown box that is around the dustbin.

(d) Subsequently, SSSgt Eng and Sgt Hidayat saw Sanjay’s car turn into Lorong 37 and they followed him in. This was around 4.30pm.⁶⁹ Riding on a motorcycle, Station Inspector Kua Boon San (“SI Kua”) also followed Sanjay’s car into Lorong 37. Again, this was at around

⁶³ NEs, 22 June 2017 p 87 lines 1–23; P35.

⁶⁴ NEs, 22 June 2017, p 87 lines 3–4; p 127 lines 13–19; 28 June 2017, p 60 lines 12–20.

⁶⁵ NEs, 22 June 2017, p 102 lines 11–27.

⁶⁶ NEs, 22 June 2017, p 99 line 31 to p 100 line 1.

⁶⁷ NEs, 22 June 2017, p 101 line 3 to p 103 line 18; p 107 line 14 to p 108 line 4.

⁶⁸ NEs, 22 June 2017, p 110 lines 20–26.

⁶⁹ AB, pp 267 and 281.

4.30pm.⁷⁰ SSSgt Eng estimated that this was about five minutes from the time he lost sight of Dzulkarnain's van near Lorong 37 (see [(a)] above).⁷¹

(e) After depositing the brown box, Dzulkarnain was seen driving along Sims Avenue near Lorong 35 Geylang – the lane immediately after Lorong 37 – at 4.33pm by Staff Sergeant Goh Jun Xian (“SSgt Goh”).⁷²

(f) Thereafter, SSSgt Eng, Sgt Hidayat and SI Kua observed Sanjay retrieving a brown box from the dustbin.⁷³ Sanjay was arrested at 4.35pm along Geylang Road.⁷⁴

51 Having considered the evidence of the CNB officers, especially the observations at [50(d)] to [50(f)] above, I found that the time gap between the delivery by Dzulkarnain and the collection by Sanjay was not more than five minutes. It was undisputed that there was an arrangement between the parties for a delivery and collection of a brown box at the dustbin at 14 Lorong 37. Pursuant to that arrangement, there was coincidence of time, place (*ie*, behind the green dustbin at 14 Lorong 37) and subject matter (*ie*, a sealed brown box) in the delivery and collection. In these circumstances, it was rather farfetched to suggest that Sanjay picked up a wrong box at the green dustbin.

⁷⁰ AB, p 302.

⁷¹ NEs, 15 February 2019, p 4 lines 2–7.

⁷² AB, p 306.

⁷³ AB, pp 267, 281 and 303.

⁷⁴ AB, p 267.

52 Furthermore, I accepted Insp Faizal’s evidence that there was no other brown box at the drop-off point before Dzulkarnain dropped off the brown box, and that there was only that same brown box dropped off by Dzulkarnain as he drove past the drop-off point. Crucially, I reiterate what I said at [49] above that Sanjay said that he got out of the car and picked up the box from behind the green dustbin (after he was specifically told by Dzulkarnain where the box was). In this regard, I also refer to [81(k)] below where I set out Sanjay’s evidence on this aspect in some detail. To my mind, the possibility that Sanjay missed the brown box dropped off by Dzulkarnain and collected the “SKP” box by mistake was remote.

53 I turn to deal with Dzulkarnain’s submission that the brown box he dropped off might have been switched with a different box *ie*, the “SKP” box. This submission began with the argument that in relation to the green dustbin, the “SKP” box was in a different position from the brown box that Dzulkarnain left behind.⁷⁵ In this connection, Insp Faizal testified that when he observed Dzulkarnain at Lorong 37, he saw that the dustbin was placed “a bit further away from the kerb”, and “not as close as in [the scene photographs P7, P8 and P9 taken after the arrests]⁷⁶”.⁷⁷ On the other hand, SSSgt Eng testified that when he tailed Sanjay to Lorong 37, the dustbin was “on the double yellow line and just beside the kerb”.⁷⁸ Sgt Hidayat confirmed that the green dustbin was “in

⁷⁵ DCS at [22]–[29].

⁷⁶ Scene photographs P7–P9 show the green dustbin positioned up against the kerb at Lorong 37, with its entire body confined within the double yellow lines. The green dustbin is a “sembcorp” dustbin with a lid and wheels. The number “14” is labelled in white on both sides of the dustbin.

⁷⁷ NEs, 22 June 2017, p 105 lines 6–9.

⁷⁸ NEs, 15 February 2019, p 15 lines 1–11.

front of the kerb”.⁷⁹ In other words, as observed by the different CNB officers, the green dustbin was “a bit further away from the kerb” when Dzulkarnain placed the brown box and “just beside the kerb” when Sanjay picked up the box. I also note that Sanjay testified that that he could not see any box from his car after stopping beside the green dustbin,⁸⁰ in contrast to Insp Faizal who was able to see a brown box as he drove past.

54 Based on the apparent contradictions in evidence, Mr Thuraisingam suggested that: (a) the green dustbin had moved during the intervening period between the drop-off and the pick-up; and (b) the brown box near the green dustbin might have been taken by a third party without being detected by the CNB. This was claimed to be likely given that the green dustbin was located next to residential property and was accessible by the general public. Further, given the way drug syndicates operate, it would not be surprising if there were other members of the syndicate (or even other syndicates) in operation at Lorong 37 that day.⁸¹

55 I was not persuaded at all that this happened. First, Insp Faizal’s testimony was reconcilable with the accounts of SSSgt Eng and Sgt Hidayat. Insp Faizal did not clarify what “a bit further” from the kerb meant precisely. At the end of the day, it seemed to me that the CNB officers’ evidence was consistent that the green dustbin was near the kerb. Second, assuming that there was an inconsistency in the evidence as to the position of the green dustbin, I was not satisfied that the difference was material and sufficient to overcome the evidence establishing the coincidence of time, place and subject matter. Third,

⁷⁹ NEs, 15 February 2019, p 39 lines 15–20.

⁸⁰ NEs, 17 January 2019, p 61 lines 4–10.

⁸¹ DCS at [22]–[32].

while I did not reject Sanjay's account that he could not see the "SKP" box when he stopped beside the green dustbin, this certainly did not undermine Insp Faizal's evidence of what he observed. Insp Faizal was in the middle of a surveillance operation. As he drove past the green dustbin, he certainly would have been alert to the location of the brown box as left behind by Dzulkarnain vis-à-vis the green dustbin. In contrast, Sanjay did not have the benefit of seeing Dzulkarnain's actions in the vicinity of the green dustbin. He also knew that, in any event, he had to get down the car to collect the brown box.

56 To accept that there was a possibility that the "SKP" box was not the brown box dropped off by Dzulkarnain would entail contemplating not only that the brown box dropped off by Dzulkarnain was removed from the scene by a third party (as postulated by Mr Thuraisingam at [53]), but further that the "SKP" box containing drugs was then placed at the location by the same or another third party at around the same time. To my mind, this added another layer of implausibility to Dzulkarnain's tenuous position.

57 Furthermore, as testified by DSP Qamarul, the street value of 1kg of cannabis at that time was between \$1,800 to \$2,800. Thus, the "SKP" box contained 5kg of cannabis with an estimated street value of \$9,000 to \$14,000. As I discuss above at [44], I accepted that Dzulkarnain knew that he was to deliver a box of drugs to Sanjay. If there had been an accidental switch of the two boxes by one or more third parties (as the area was accessible to the general members of the public), it was incredible that the "SKP" box would have involved drugs (and of such a large quantity with such a high value). If there had been an intentional switch of the two boxes by one or more third parties (which Mr Thuraisingam seemingly attributed to members of drug syndicates), there was certainly no suggestion by Dzulkarnain (or even Sanjay) that anyone

would wish to implicate them in so serious a matter in such a surreptitious manner.

58 At this juncture, I note that Mr Thuraisingam pointed out that despite the fact that the brown box's surface and contents had been swabbed, the HSA could not trace Dzulkarnain's DNA.⁸² On this matter, I agreed with Dr Chuah Siew Yeam, from the HSA, who testified that it was possible for Dzulkarnain to have carried the brown box without leaving traces of his DNA.⁸³ In my view, the absence of Dzulkarnain's DNA on the brown box was, at best, a neutral factor.

59 Based on the analysis above, to my mind, it was inconceivable that Dzulkarnain delivered a sealed brown box of drugs weighing about 5kg to the pre-arranged drop-off point at the pre-arranged time for Sanjay's collection, but that Sanjay collected a wrong sealed brown box weighing 5kg which contained not simply drugs, but a large quantity of drugs of a high street value. In this regard, I shall deal with Sanjay's claim that he was meant to collect illegal knives and cigarettes in due course. Significantly, when called to give evidence, Dzulkarnain elected to remain silent. Thus, there was absolutely no evidence from Dzulkarnain even asserting a different version of events from the one that the Prosecution advanced. Dzulkarnain was best-placed to shed light on the matter, but he chose not to do so. As such, I did not think that a reasonable doubt had been cast on the Prosecution's position that Sanjay picked up the "SKP" box left by Dzulkarnain. Any such doubt raised by Dzulkarnain was fanciful; it did not suffice to constitute a real or reasonable doubt: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [58]. I should add that

⁸² AB, pp 184–186.

⁸³ NEs, 28 June 2017, p 43 lines 3–10.

in accordance with s 291(3) of the CPC, arising from Dzulkarnain's refusal to give evidence, I considered it proper to draw an adverse inference against him that he well knew that the "SKP" box was the one he delivered. Nothing put forth before me (including Dr Winslow's evidence) suggested that "his physical or mental condition" made it "undesirable for him to be called on to give evidence" such that s 291(3) should not have applied by operation of s 291(6) of the CPC.

60 For all the foregoing reasons, I was of the view that the Prosecution had proved beyond a reasonable doubt that the brown box left behind by Dzulkarnain was the "SKP" box that Sanjay picked up. Therefore, Dzulkarnain had trafficked by delivering the "SKP" box of drugs to Sanjay.

Whether Dzulkarnain knew the nature of the drugs

61 As Dzulkarnain was proved to be in possession of the box of drugs, by s 18(2) of the MDA, Dzulkarnain was presumed to have known of the nature of that drug. Again, I refer to [44] above where I rejected any suggestion that Dzulkarnain thought he was delivering cigarettes. I found that on a balance of probabilities, Dzulkarnaian had not rebutted the presumption that he had known of the nature of the drugs.

Conclusion

62 Accordingly, I found that the Prosecution had proven beyond a reasonable doubt the charge against Dzulkarnain, and I convicted him of the charge.

Findings in relation to Sanjay

63 I turn now to my findings in respect of Sanjay. Under s 5(1)(a) read with s 5(2) of the MDA, the Prosecution had to prove that: (a) Sanjay was in possession of the drugs; (b) Sanjay knew the nature of the drugs; and (c) Sanjay was in possession of the drugs for the purpose of trafficking *ie*, by delivering the drugs to another party. Prior to dealing with these elements, I turn to the challenge raised by Mr Fernando in relation to the chain of custody of the drug exhibits after they were seized by SI Tay to the time IO Ranjeet handed the exhibits over to the HSA for analysis.⁸⁴

Chain of custody of the drug exhibits

64 As set out at [46] above, to establish the identity of drug exhibits, the Prosecution is required to account for the movement of the drug exhibits from the point of seizure to the point of analysis: *Mohamed Affandi* at [39]. I shall set out the relevant sequence of events and highlight the stages where Mr Fernando challenged the chain of custody.

65 After Sanjay’s arrest, Sergeant Dadly bin Osman (“Sgt Dadly”) drove his car to a multi-storey carpark at Block 56A Cassia Crescent.⁸⁵ At the multi-storey carpark, and in Sanjay’s presence, SI Tay conducted a search of the car, and seized the “SKP” box from the floor of the front passenger seat. SI Tay tore away the masking tape which served to seal the “SKP” box, and removed the five bundles from the “SKP” box.⁸⁶ Then, he handed each bundle to Sgt Hidayat,

⁸⁴ SCS at [146]–[153].

⁸⁵ AB, pp 263–264.

⁸⁶ AB, p 290.

who packed and sealed them into individual polymer bags.⁸⁷ During the search process, SSSgt Wong recorded the markings and description of the seized items into the operation field book.⁸⁸ Then, Sgt Hidayat placed the seized drug exhibits into a green duffel bag (the “duffel bag”). Sgt Hidayat then handed the duffel bag to SI Jason Tay.⁸⁹ This process ended at about 6.09pm.⁹⁰

66 Thereafter, SI Tay placed the duffel bag on the front passenger seat of a CNB operational vehicle while he recorded statements from Dzulkarnain while they were seated at the back of the car. The recording process ended at about 8.30pm.⁹¹ At around 8.38pm, SI Tay handed the duffel bag to SSSgt Eng so that he could use the restroom.⁹² While SI Tay was away, in Sanjay’s presence, SSSgt Eng removed cash amounting to \$26,000 to hand over to another CNB officer from the Financial Investigation Team for investigative purposes; the drug exhibits remained in the duffel bag.⁹³ At about 9pm, SI Jason Tay returned, and SSSgt Eng handed back the custody of the duffel bag to SI Jason Tay.⁹⁴

67 Before they headed off to Sanjay’s unit at 9H Yuan Ching Road to conduct a search, SI Tay placed the duffel bag into the boot of the CNB operational vehicle. It was the only duffel bag there.⁹⁵ SSSgt Wong drove the

⁸⁷ AB, pp 270 and 293; NEs, 16 July 2019, p 5 lines 10–27.

⁸⁸ AB, p 278.

⁸⁹ NEs, 16 July 2019, p 67 line 26 to p 69 line 9.

⁹⁰ AB, p 270 and 293.

⁹¹ NEs, 16 July 2019, p 21 lines 5–21.

⁹² NEs, 16 July 2019, p 22 lines 1–8; p 57 lines 13–19.

⁹³ NEs, 16 July 2019, p 41 line 15 to p 42 line 8.

⁹⁴ AB, p 286.

⁹⁵ NEs, 16 July 2019, p 23 line 26 to p 26 line 17.

car with Sgt Dadly in the front passenger seat, while SI Tay and Sanjay sat at the rear of the car.⁹⁶ Upon reaching the carpark at Yuan Chin Road at about 9.30pm, SI Tay asked SSSgt Wong to open the boot of the car. He retrieved the duffel bag and proceeded to Sanjay's unit to conduct the search with the other officers. Throughout the search, SI Tay continued to hold onto the duffel bag.⁹⁷

68 After the search concluded at 9.45pm, SI Tay, SSSgt Wong, Sgt Dadly and Sanjay returned to the CNB operational vehicle, where SI Tay once again placed the duffel bag in the boot of the car after SSSgt Wong opened the boot.⁹⁸ Thereafter, they drove to Tuas Checkpoint for checks to be carried out on Sanjay's car.⁹⁹ There, they remained in the CNB operational vehicle. The drug exhibits remained in the boot.¹⁰⁰

69 Then, SSSgt Wong drove the CNB operational vehicle to Alexandra Hospital, arriving there at about 10.50pm.¹⁰¹ At about 11.10pm, a relief team of CNB officers comprising SSSgt Eng, SSgt Goh, Sgt Hidayat and SSgt Au Yong Hong Mian arrived in another CNB vehicle. Both CNB vehicles were parked side by side at the open-air car park outside the emergency department of Alexandra Hospital.¹⁰² After custody of Sanjay was handed over from SI Tay's team to SSSgt Eng's team, there was a handover of the seized exhibits as well.¹⁰³

⁹⁶ NEs, 16 July 2019, p 102 lines 11–18.

⁹⁷ NEs, 16 July 2019, p 26 line 18 to p 27 line 12.

⁹⁸ NEs, 16 July 2019, p 27 line 13 to line 18.

⁹⁹ AB, pp 295–296.

¹⁰⁰ NEs, 16 July 2019, p 10 lines 12–25.

¹⁰¹ AB, p 296.

¹⁰² AB, p 296; NEs, 16 July 2019, p 29 lines 1–19.

¹⁰³ AB, p 296.

70 While the evidence of the CNB officers was clear and consistent up to this point, there appeared to be some uncertainties as regards the handover of the seized exhibits between the two teams. In the conditioned statements of SSSgt Eng and SI Tay, they stated that it was *SI Tay* who handed the seized exhibits to SSSgt Eng.¹⁰⁴ However, Sgt Dadly stated in his conditioned statement that *he* handed the seized exhibits to SSSgt Eng.¹⁰⁵

71 When the CNB officers were recalled on 16 July 2019 on Mr Fernando's application to clarify the matter, SI Tay explained that the reason why he said that he handed the drug exhibits to SSSgt Eng was because he had instructed Sgt Dadly to retrieve the drug exhibits and hand them to SSSgt Eng.¹⁰⁶ SSSgt Eng gave similar evidence.¹⁰⁷ Elaborating, SI Tay explained that being the team leader, he had handed over the responsibility for the drug exhibits to SSSgt Eng.¹⁰⁸ The particular mode by which this was effected was through instructing Sgt Dadly to retrieve the duffel bag containing the exhibits and Sgt Dadly handing it over to SSSgt Eng.¹⁰⁹ SI Tay was present when Sgt Dadly completed this task, and the trio were close together.¹¹⁰ Sgt Dadly testified that he retrieved the duffel bag from the car boot and handed the same over to SSSgt Eng upon SI Tay's instructions.¹¹¹

¹⁰⁴ AB, p 286 at [29] and AB, p 296 at [44].

¹⁰⁵ AB, p 265 at [40].

¹⁰⁶ NEs, 16 July 2019, p 29 line 31 to p 31 line 26.

¹⁰⁷ NEs, 16 July 2019, p 45 lines 23–28; p 54 lines 27 to p 55 line 3.

¹⁰⁸ NEs, 16 July 2019, p 31 lines 23–26.

¹⁰⁹ NEs, 16 July 2019, p 30 lines 1–27.

¹¹⁰ NEs, 16 July 2019, p 104 lines 25–32.

¹¹¹ AB, p 265 at [40]; NEs, 16 July 2019, p 95 lines 30–31 and p 96 lines 1–13.

72 Mr Fernando contended that the CNB officers should have stated these facts in their conditioned statements clearly from the outset and that they had “padded” their evidence. Having reviewed the evidence, I found the explanations of SI Tay, SSSgt Eng and Sgt Dadly to be credible. In my judgment, the chain of custody of the drug exhibits had been clearly established up to this point.

73 Mr Fernando also argued that thereafter, SSSgt Eng did not clearly account for the custody of the drug exhibits until he handed them over for photograph taking. In his conditioned statement, SSSgt Eng did not explicitly state where the drug exhibits were from 1.45am to 3.24am.¹¹² However, SSSgt Eng testified that after he received the duffel bag, he alone had possession of the duffel bag while escorting Sanjay for the medical check-up from about 1.45am till the next day when the team proceeded back to the CNB headquarters. As he drove from Alexandra Hospital to the CNB Headquarters, SSSgt Eng had the duffel bag on his lap. After his arrival at the CNB Headquarters, he continued holding onto the duffel bag until he handed it to IO Ranjeet at 3.24am for the photo-taking of the exhibits.¹¹³ Once again, I found the further details given by SSSgt Eng to be satisfactory.

74 Thereafter, IO Ranjeet conducted the photo-taking, swabbing and weighing of the drug exhibits in the presence of Sanjay and Dzulkarnain. After the weighing concluded, IO Ranjeet placed the drug exhibits in a locked safe in his office and then transferred them to the CNB store thereafter. On 2 March 2015, IO Ranjeet submitted the drug exhibits to the HSA for analysis.¹¹⁴

¹¹² AB, pp 286–287 at [31]–[33].

¹¹³ NEs, 16 July 2019, pp 47–50; p 49 lines 10–14.

¹¹⁴ AB, pp 390–398 at [20]–[28] and p 402 at [52].

75 While I agreed that the relevant CNB officers could have set out the sequence of events in their conditioned statements in more detail, based on their clarifications in court which I accepted, I was satisfied that there was no gap in the chain of custody of the drug exhibits.

Whether Sanjay was in possession of the drugs

76 Turning to the element of possession, Mr Fernando argued that as stated in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 (“*Adili*”), the Prosecution had to, in order to prove the ingredient of knowing possession, either: (a) prove beyond reasonable doubt knowledge of the thing that is subsequently determined to be a controlled drug; or (b) invoke the presumption under s 18(1) of the MDA. In this regard, Mr Fernando contended that the Prosecution had not clearly set out its position against Sanjay. To prove the element of possession, the Prosecution had to adduce evidence sufficient to prove beyond reasonable doubt that Sanjay knew of the five wrapped-up packages inside the sealed brown box. This, it was argued, the Prosecution had failed to do. Even if the Prosecution could rely on the presumption of possession under s 18(1) of the MDA, Sanjay had rebutted the presumption of possession on a balance of probabilities.¹¹⁵

77 In response, the Prosecution argued that to prove knowing possession, it was not required to show that Sanjay knew that there were “5 wrapped-up packages” inside the “SKP” box. Rather, it simply needed to show that Sanjay knew of the existence of the thing within the brown box.¹¹⁶ The Prosecution did not rely on the presumption within s 18(1) of the MDA.

¹¹⁵ SCS at [37].

¹¹⁶ PCS at [84].

78 I agreed with the Prosecution in respect of what it was required to prove. In *Adili* at [31], the Court of Appeal held as follows:

... [P]ossession, for the purposes of the MDA, has been interpreted to mean not just *physical possession or custody but also to incorporate an element of knowledge* (*Sim Teck Ho v PP* [2000] 2 SLR(R) 959 (*'Sim Teck Ho'*) at [11]). This raises a question as to the sort of knowledge that would have to be shown in order to sustain a finding that the accused person was in fact in possession of the drugs. *In our judgment, all that is required in this context of establishing the fact of possession is that the accused person must know of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug; it is not necessary that the accused person also knows that the thing was in fact a controlled drug, much less its specific nature.* ...

[emphasis in original omitted; emphasis added in italics]

79 I agreed that based on *Adili* at [31], it sufficed for the Prosecution to establish that Sanjay knew that the “SKP” box contained “*the thing*” for delivery purposes. In other words, the Prosecution had to show that Sanjay knowingly took possession of the “SKP” box’s contents; the Prosecution was not required to show that he knew that the contents comprised five wrapped-up bundles. I observe, in this regard, that the outcome ultimately arrived at in *Adili* should be understood in the light of the appellant’s contention that he did not even know that the drug bundles were hidden in the suitcase (which was a defence which went towards the question of whether he was in *knowing* possession of the drug bundles), and the Prosecution’s concession that the appellant did not in fact have actual knowledge of the drug bundles within the suitcase: see *Adili* at [31] and [82].

80 In Sanjay’s oral testimony and statements adduced at trial, Sanjay gave an account that the “SKP” box was collected on behalf of one Boy Lai and he believed that it contained collectors’ hunting knives and possibly contraband cigarettes. He did not know, as such, that the “SKP” box contained five

wrapped-up packages. None of the Prosecution witnesses gave evidence at trial to the effect that Sanjay knew that the box contained five wrapped-up packages. It was not disputed that the “SKP” box in question was, as observed by the CNB officers, sealed with masking tape. Neither was it disputed that the five wrapped-up packages did not contain Sanjay’s DNA. That said, at no time did the Prosecution concede that Sanjay did not know of the drug bundles. However, once again, I reiterate that the Prosecution only needed to prove *knowledge of the thing*. I found that Sanjay’s knowledge that the “SKP” box contained items meant that he knew “of the existence, within his possession ... of the thing which [was] later found to be a controlled drug”: *Adili* at [31]. Sanjay had certainty as to the thing’s existence or mere fact of the thing being within the “SKP” box but not its essence or nature. As the Prosecution argued, it was not Sanjay’s case that he thought that the “SKP” box was empty. As such, I found that Sanjay was in possession of the drugs. To my mind, the nature of Sanjay’s case essentially raised a defence concerning his knowledge of the nature of the drugs; his defence was not about an *unknowing* possession of the contents of the “SKP” box.

Whether Sanjay knew the nature of the drugs

81 With Sanjay’s possession of the drugs proven, the presumption of knowledge of the nature of the drugs within s 18(2) of the MDA was triggered against Sanjay. In this connection, Sanjay claimed that he only agreed to do a favour for Boy Lai to collect hunting knives and possibly contraband cigarettes, which he believed were contained in the “SKP” box. To this end, Sanjay provided extensive testimony about: (a) his relationship with Boy Lai; (b) Boy Lai’s involvement in the transaction; and (c) the events of 23 February 2015 as follows:

(a) In terms of their relationship, Sanjay met Boy Lai in 2014 at Orchard Towers, which he frequented regularly to socialise and play pool.¹¹⁷ He saw Boy Lai around, and they would smile at each other and nod in acknowledgement. However, Sanjay got to know Boy Lai personally only three months before his arrest on 23 February 2015 when Boy Lai introduced himself to Sanjay.¹¹⁸ On that occasion, Boy Lai intervened to help Sanjay settle an argument with some other men.¹¹⁹

(b) After that, Sanjay saw Boy Lai a few more times at Orchard Towers. On one such occasion, Sanjay agreed to give Boy Lai, who was accompanied by three Russian women, a lift to Lavender.¹²⁰ After the women alighted, Sanjay drove back to Orchard Towers with Boy Lai. He believed that Boy Lai was a pimp who operated from Orchard Towers.¹²¹

(c) On yet another occasion, Boy Lai approached Sanjay to send the women to Lavender, but Sanjay rejected the request as he was clubbing, although he allowed Boy Lai to use his car.¹²² After returning Sanjay's keys, Boy Lai told Sanjay that he saw Sanjay's "ice-smoking instruments" and knives in the car.¹²³ Boy Lai said that he too was an "ice-smoker" and that he had an "passion for collecting and trading

¹¹⁷ NEs, 17 January 2019, p 7 lines 11–32.

¹¹⁸ NEs, 17 January 2019, p 8 lines 23–31.

¹¹⁹ NEs, 17 January 2019, p 9 lines 1–20.

¹²⁰ NEs, 17 January 2019, p 9 line 25 to p 10 line 10.

¹²¹ NEs, 17 January 2019, p 9 line 25 to p 10 line 20.

¹²² NEs, 17 January 2019, p 10 lines 21–31.

¹²³ NEs, 17 January 2019, p 11 lines 9–16.

knives”.¹²⁴ By “ice”, Sanjay was referring to methamphetamine.¹²⁵ Sanjay had been collecting and trading in knives since 2012.¹²⁶

(d) On 20 February 2015, Boy Lai met Sanjay in the carpark of Orchard Towers and asked to borrow his car for three days from 20 February 2015 to 22 February 2015. Sanjay agreed to rent the car to Boy Lai for \$80 per day.¹²⁷ Previously Sanjay had rented out the car to a few people.¹²⁸ Subsequently, Sanjay met Boy Lai on 22 February 2015, when Boy Lai returned the car keys.¹²⁹ Later that night at around 11.30pm, Sanjay (who was on his way to Newton) met Boy Lai, who asked Sanjay if he could tag along.¹³⁰ Sanjay was going to Newton Hawker Centre to meet one “Bala” to collect money owed from a previous drinking session.¹³¹ Seeing Bala at the taxi pick-up point at Newton Hawker Centre, Sanjay stopped the car and Bala proceeded to sit in the back seat. Boy Lai was seated in the front seat.¹³² After parking, Bala gave Sanjay money.¹³³ Bala and Boy Lai seemed to know each other.¹³⁴

¹²⁴ NEs, 17 January 2019, p 11 lines 9–16.

¹²⁵ NEs, 17 January 2019, p 11 lines 17–29.

¹²⁶ NEs, 17 January 2019, p 12 lines 19–20.

¹²⁷ NEs, 17 January 2019, p 18 lines 1–7.

¹²⁸ NEs, 17 January 2019, p 6 line 6.

¹²⁹ NEs, 17 January 2019, p 18 lines 15–18.

¹³⁰ NEs, 17 January 2019, p 20 line 22 to p 22 line 2.

¹³¹ NEs, 17 January 2019, p 22 lines 11–15.

¹³² NEs, 17 January 2019, p 24 lines 1–6.

¹³³ NEs, 17 January 2019, p 24 lines 7–15.

¹³⁴ NEs, 17 January 2019, p 24 lines 16–24.

(e) After Bala left the car, Boy Lai asked Sanjay whether he would be free “around 2 pm” the following day *ie*, 23 February 2015.¹³⁵ Later, Sanjay clarified that Boy Lai asked if he would be free from “around 1pm to 2pm”.¹³⁶ Boy Lai told him that he needed a favour to collect “some collectors’ hunting knives and possibly some contraband cigarettes that he had ordered from one “Malaysian Boy””.¹³⁷ Sanjay asked why Boy Lai could not simply collect them on his own. Boy Lai answered that he might have an appointment at the relevant time and did not wish to miss the appointment to collect the items.¹³⁸ He was willing to pay Sanjay \$300 if Sanjay collected the items and dropped them off to him at Lorong 10.¹³⁹ Sanjay then asked Boy Lai where he had to collect the items, and Boy Lai told him that they could go immediately to meet the person he was to collect the items from.¹⁴⁰ Boy Lai then made a call and directed Sanjay to go to People’s Park Complex in Chinatown. This was about 11.30pm to midnight.¹⁴¹ Since he was free the next day, Sanjay told Boy Lai that he was available to do him the favour.¹⁴²

(f) At a taxi stand near People’s Park Complex, Boy Lai identified, from a distance, one Malay man at the UOB ATM machine named

¹³⁵ NEs, 17 January 2019, p 24 lines 28–30.

¹³⁶ NEs, 17 January 2019, p 26 line 23.

¹³⁷ NEs, 17 January 2019, p 25 lines 1–4.

¹³⁸ NEs, 17 January 2019, p 25 lines 6–9; p 26 line 31 to p 27 line 1.

¹³⁹ NEs, 17 January 2019, p 25 lines 9–10; p 27 lines 1–3.

¹⁴⁰ NEs, 17 January 2019, p 25 lines 12–17; p 27 lines 4–7.

¹⁴¹ NEs, 17 January 2019, p 27 lines 24–32.

¹⁴² NEs, 17 January 2019, p 27 lines 21–23.

“Nai”.¹⁴³ In court, Sanjay identified “Nai” as being Dzulkarnain.¹⁴⁴ The pair walked towards Dzulkarnain, and Boy Lai told Sanjay to speak to Dzulkarnain.¹⁴⁵ On the way, Boy Lai also told Sanjay to tell Dzulkarnain that Dzulkarnain would be paid \$250.¹⁴⁶ During this time, Boy Lai’s handphone rang and it appeared that he took the call.¹⁴⁷ Sanjay told Dzulkarnain that he was supposed to collect the items the following day; Dzulkarnain told him that he was aware of this. After informing Dzulkarnain that he would be paid \$250, Dzulkarnain told Sanjay to tell Boy Lai that he preferred for the money to be transferred to him instead. Sanjay agreed and ended the conversation as he felt that Dzulkarnain had bad breath.¹⁴⁸ Throughout this exchange, Boy Lai was behind Sanjay.¹⁴⁹ After the conversation, Sanjay and Boy Lai returned to the car, where Sanjay informed that Dzulkarnain had asked for a money transfer instead.¹⁵⁰ Boy Lai agreed.¹⁵¹ Boy Lai then told Sanjay to drop him off at Orchard Towers.¹⁵² Sanjay himself proceeded to a club called “the Living Room” at the Marriot Hotel.¹⁵³

¹⁴³ NEs, 17 January 2019, p 28 lines 1–6.
¹⁴⁴ NEs, 17 January 2019, p 28 lines 21–24.
¹⁴⁵ NEs, 17 January 2019, p 28 lines 7–8.
¹⁴⁶ NEs, 17 January 2019, p 28 lines 14–17.
¹⁴⁷ NEs, 17 January 2019, p 29 lines 5–8.
¹⁴⁸ NEs, 17 January 2019, p 28 lines 26–32.
¹⁴⁹ NEs, 17 January 2019, p 29 lines 1–4.
¹⁵⁰ NEs, 17 January 2019, p 29 lines 20–28.
¹⁵¹ NEs, 17 January 2019, p 29 lines 20–28.
¹⁵² NEs, 17 January 2019, p 29 lines 20–28.
¹⁵³ NEs, 17 January 2019, p 29 line 29 to p 30 line 7.

(g) In the early hours of 23 February 2015, Sanjay was leaving another club, the “Naughty Girls Club” at Orchard Towers, when he saw Boy Lai at the ATM machine.¹⁵⁴ Boy Lai was carrying a “Massimo Dutti” paper bag (*ie*, Exh P44).¹⁵⁵ The pair walked to Sanjay’s car behind Orchard Towers.¹⁵⁶ Boy Lai told Sanjay that he found a black-coloured “Givenchy” box in Sanjay’s car and asked if it was his, before extracting the box from the “Massimo Dutti” paper bag.¹⁵⁷ The “Givenchy” box contained an assortment of drugs packed in small plastic bags.¹⁵⁸ Sanjay assumed the “Givenchy” box belonged to someone else who had previously rented the car from him.¹⁵⁹ While seated in the backseat, Boy Lai asked Sanjay for his ice-smoking instrument.¹⁶⁰ Sanjay then gave Boy Lai his blue coloured pouch containing the instrument.¹⁶¹

(h) Subsequently, the pair fell asleep in the car and woke up around 10am.¹⁶² Sanjay drove to Peninsula Plaza to alter two shirts and Boy Lai said he would tag along.¹⁶³ Then, Boy Lai proceeded to Lavender, while Sanjay went to Takashimaya Shopping Centre. Boy Lai asked Sanjay to

¹⁵⁴ NEs, 17 January 2019, p 30 line 26 to p 31 line 3.

¹⁵⁵ NEs, 17 January 2019, p 32 lines 15–22; Photograph P42.

¹⁵⁶ NEs, 17 January 2019, p 31 lines 11–14.

¹⁵⁷ NEs, 17 January 2019, p 33 lines 20–30.

¹⁵⁸ NEs, 17 January 2019, p 35 lines 1–13.

¹⁵⁹ NEs, 17 January 2019, p 32 lines 12–14.

¹⁶⁰ NEs, 17 January 2019, p 35 lines 1–13.

¹⁶¹ NEs, 17 January 2019, p 35 lines 1–13.

¹⁶² NEs, 17 January 2019, p 37 lines 8–27.

¹⁶³ NEs, 17 January 2019, p 38 line 22 to p 39 line 14.

pick him up from Lavender at about 2pm. Sanjay agreed.¹⁶⁴ After he picked Boy Lai up at around 2pm, Boy Lai told Sanjay to drive to Lorong 10. There, Boy Lai pointed out Hotel La Mode to Sanjay. Then, Boy Lai told Sanjay to drive around the Geylang area as he wanted to look at street prostitutes.¹⁶⁵ As instructed, Sanjay drove around the area, before Boy Lai asked him to drive to Lorong 19 Geylang (“Lorong 19”).¹⁶⁶ Boy Lai was talking on the phone for some time. After finishing the conversation, he instructed Sanjay to drive to Lorong 37.¹⁶⁷ Before reaching Lorong 37, Boy Lai asked him to drop him off at the main road (*ie*, Geylang Road) and Sanjay stopped the car at the end of Lorong 19. Before Boy Lai alighted, he told Sanjay that he would leave some phones behind for Sanjay to use and asked him to go and collect the knives from Lorong 37.¹⁶⁸ The handphones which Boy Lai left behind were SK-HP1, SK-HP2 and SK-HP3. Boy Lai left them behind for him to contact Sanjay.¹⁶⁹ They had not exchanged contact numbers before, and they did not have each other’s contact numbers. There was no reason for them to exchange contact numbers.¹⁷⁰

(i) As Sanjay was not able to find any parking lots at Lorong 37, he drove to the adjacent Lorong 39 Geylang (“Lorong 39”) and parked the

¹⁶⁴ NEs, 17 January 2019, p 41 lines 12–24.

¹⁶⁵ NEs, 17 January 2019 p 43 line 30 to p 44 line 32.

¹⁶⁶ NEs, 17 January 2019, p 45 lines 1–7.

¹⁶⁷ NEs, 17 January 2019, p 45 lines 14–24.

¹⁶⁸ NEs, 17 January 2019, p 45 line 22 to p 46 line 9.

¹⁶⁹ NEs, 17 January 2019, p 46 lines 20–32.

¹⁷⁰ NEs, 17 January 2019, p 47 lines 5–14.

car there.¹⁷¹ After parking, Sanjay noticed a paper bag hanging behind the front passenger seat.¹⁷² This was the “Massimo Dutti” bag which contained items as shown in the photograph marked as Exh P45. Looking inside, he saw a denim box with ice, an ashtray, the black notebook, and his blue-coloured pouch (which contained his smoking instrument).¹⁷³ With regard to the “ice” in the denim box, Sanjay claimed that it was not his.¹⁷⁴ As regards the black notebook, Sanjay said he had not seen it before and the entries were not made by him.¹⁷⁵ He placed it back on the hook behind the front passenger seat’s headrest.¹⁷⁶

(j) While the car’s engine continued to run, the handphone marked SK-HP3 started to ring.¹⁷⁷ Sanjay heard a Malay man’s voice and assumed it was Dzulkarnain.¹⁷⁸ The caller informed that he had arrived at Lorong 37 and asked where he wanted to put the knives.¹⁷⁹ Sanjay told the caller that he could not get a parking lot at Lorong 37.¹⁸⁰ He said that the caller responded in frustration as he was rushing for time but nevertheless agreed to come to Lorong 39.¹⁸¹ Sanjay also got angry and

¹⁷¹ NEs, 17 January 2019, p 50 lines 7–12.
¹⁷² NEs, 17 January 2019, p 50 lines 25–31.
¹⁷³ NEs, 17 January 2019, p 51 lines 4–30.
¹⁷⁴ NEs, 17 January 2019, p 51 lines 29–32.
¹⁷⁵ NEs, 17 January 2019, p 54 lines 11–32.
¹⁷⁶ NEs, 17 January 2019, p 55 lines 3–10.
¹⁷⁷ NEs, 17 January 2019, p 55 lines 19–31.
¹⁷⁸ NEs, 17 January 2019, p 56 lines 4–8.
¹⁷⁹ NEs, 17 January 2019, p 56 lines 4–23.
¹⁸⁰ NEs, 17 January 2019, p 57 lines 9–13.
¹⁸¹ NEs, 17 January 2019, p 57 lines 16–25.

told the caller to simply leave the knives at the alley.¹⁸² The caller responded that there was someone in the alley.¹⁸³ Sanjay tried to reassure the caller saying, “It’s ok, it’s just knife. Can just leave it there.” The caller said “no”.¹⁸⁴

(k) The caller then asked if he had any “ice” to smoke, which caused Sanjay to think that the caller mistook him for Boy Lai.¹⁸⁵ Sanjay clarified that he was Sanjay and not Boy Lai, that he did not have “ice” to smoke, and that the caller could leave the knives “outside” the dustbin of the last apartment on the right of Lorong 37.¹⁸⁶ Sanjay knew of the dustbin’s location because he had tried to park there.¹⁸⁷ At the material time, the green dustbin was not in the same position as shown in the photographs marked as Exh P6, P7 and P8, and it was not against the kerb.¹⁸⁸ Sanjay stopped the car beside the dustbin outside the last apartment on the right of Lorong 37.¹⁸⁹ At first, he did not see anything, and thus he redialled the most recent number on the handphone marked SK-HP3.¹⁹⁰ The caller answered and told him that he had left the box of knives behind the dustbin.¹⁹¹ Sanjay’s evidence was that this was the first

¹⁸² NEs, 17 January 2019, p 58 lines 7–14.

¹⁸³ NEs, 17 January 2019, p 58 lines 7–14.

¹⁸⁴ NEs, 17 January 2019, p 58 lines 7–14.

¹⁸⁵ NEs, 17 January 2019, p 58 lines 15–31.

¹⁸⁶ NEs, 17 January 2019, p 59 lines 1–7.

¹⁸⁷ NEs, 17 January 2019, p 59 lines 16–21.

¹⁸⁸ NEs, 17 January 2019, p 59 line 29 to p 60 line 9.

¹⁸⁹ NEs, 17 January 2019, p 60 lines 16 to p 61 line 10.

¹⁹⁰ NEs, 17 January 2019, p 61 lines 7–10.

¹⁹¹ NEs, 17 January 2019, p 61 lines 21–28.

time he realised the knives were in a box.¹⁹² He then opened the driver's door, got out of the car, picked up the box and placed it on the front passenger seat through the driver's side.¹⁹³

(l) As Sanjay was driving off, he missed a call from Dzulkarnain to SK-HP3. When he returned the call, Dzulkarnain asked him whether he had collected the box of knives. He confirmed that he had. Sanjay was on his way to Lorong 10 when he was arrested.¹⁹⁴

82 Having considered the evidence, and the surrounding facts and circumstances, I rejected Sanjay's account that he had only agreed to collect hunting knives and possibly contraband cigarettes from Dzulkarnain for delivery to Boy Lai. These are my reasons.

Differing accounts of the contents of the "SKP" box

83 Central to Sanjay's defence was his knowledge and belief as to the contents of the "SKP" box. However, on this crucial aspect, Sanjay's position had evolved over time. Upon his arrest, Sanjay responded to SI Tay's query as to the contents of the "SKP" box by shrugging his shoulders. In the contemporaneous statement recorded on the same day by SI Tay, Sanjay replied that he did not know its contents. In his cautioned statement, Sanjay shifted his position, stating that it contained "illegal cigarettes"; there was no mention of the knives. It was only in the 8 March long statement that Sanjay claimed that the "SKP" box contained knives and possibly contraband cigarettes: see [29] above. He maintained this position thereafter.

¹⁹² NEs, 17 January 2019, p 62 lines 1–2.

¹⁹³ NEs, 17 January 2019, p 62 line 3 to p 63 line 17.

¹⁹⁴ NEs, 17 January 2019, p 66 lines 2–21.

84 In this regard, I accepted the evidence of the recording officers, SI Tay and IO Ranjeet, that the oral statement, the contemporaneous statement and the cautioned statement were correctly recorded. I did not see any reason for these officers not to accurately record what Sanjay said to them. In relation to the oral statement, apart from SI Tay, SSSgt Wong witnessed Sanjay's non-verbal response. SI Tay was not asked about the accuracy of the contemporaneous statement, and the challenge arose only in the course of Sanjay's cross-examination. As for the cautioned statement, it was inexplicable to suggest that IO Ranjeet would be willing to record Sanjay's belief that it was a box of "illegal cigarettes" but refuse to include a reference to knives. While the cautioned statement was unsigned, I accepted that the contents reflect what Sanjay stated. The allegations casting aspersions on the accuracy of these statements, in my view, were untenable.

85 Given that this was a core aspect of Sanjay's defence, such differences were material. Further, it was troubling that the chronology was such that Sanjay mentioned the cigarettes before any mention of the knives. I say this because Sanjay's defence was that while cigarettes might possibly be involved, the knives were the main items for his collection. Thus, it was baffling that he did not mention the knives first. It seemed to me that given that the "SKP" box measured approximately 43cm by 20cm by 9cm,¹⁹⁵ it could not have contained a quantity of illegal cigarettes sufficient to warrant the rather unusual arrangements which Sanjay claimed had been made at the time (see especially [81] and [89] below). It also seemed to me that with knives being seized from Sanjay's car upon his arrest, this was a line of defence for which Sanjay could

¹⁹⁵ NEs, 29 March 2018, p 41 lines 2–25.

muster more supporting evidence (which I discuss below at [110]) compared to a claim that he was to collect cigarettes for delivery.

Delay in mentioning Boy Lai's role in the transaction

86 Another significant aspect of Sanjay's defence was the role of Boy Lai. However, Sanjay failed to mention Boy Lai's involvement in the transaction until the 8 March long statement.

87 During the recording of Sanjay's contemporaneous statement, SI Tay asked Sanjay who the "SKP" box belonged to and why it was in the car. To both questions, Sanjay said he did not know. He did not mention that Boy Lai instructed him to carry out the delivery of the "SKP" box.¹⁹⁶ This did not stem from any wish to protect Boy Lai. A few questions later, Sanjay was prepared to disclose that Boy Lai left the "Massimo Dutti" paper bag (which contained "ice") in his car.¹⁹⁷

88 Nothing was mentioned about Boy Lai in Sanjay's cautioned statement as well. Once again, I rejected Sanjay's allegation that IO Ranjeet did not permit him to add in the reference to Boy Lai.¹⁹⁸ Furthermore, there were four long statements prior to the 8 March long statement *ie*, those recorded on 1, 5, 6 and 7 March 2015. In these, Sanjay also remained quiet about Boy Lai's involvement in the transaction (although he provided details of his relationship with Boy Lai). Admittedly, these long statements were recorded in chronological order. However, in the long statements recorded on 6 and 7 March

¹⁹⁶ AB, p 298 at Q2–A2 and Q3–A3.

¹⁹⁷ AB, p 299 at Q7–A7 and Q8–A8.

¹⁹⁸ NEs, 17 January 2019, p 82 line 29 to p 83 line 27.

2015, Sanjay spoke of his interactions with Boy Lai (including events from 12am to 4am on 23 February 2015).¹⁹⁹ Yet, he did not mention Boy Lai's role in the transaction itself. Like the differing accounts of the contents of the "SKP" box, the delay in mentioning Boy Lai's role was troubling.

Unsatisfactory aspects of defence of collection of knives and possibly cigarettes

89 Moving on, I found various unsatisfactory aspects of Sanjay's evidence with regard to the arrangements made with Boy Lai and the events of 23 February 2015 as follows:

(a) To begin with, I thought it extremely odd that Sanjay did not obtain Dzulkarnain's contact number when they met at UOB (even though they knew they were to carry out a delivery and pick up later that same day).

(b) Then, according to Sanjay, Boy Lai needed him to help to collect the knives at 1pm to 2pm because Boy Lai might have something to do at the time and did not want to miss the appointment to collect the items. However, after picking up Boy Lai at about 2pm, they drove around for two hours until "4 plus" when Boy Lai was dropped off at the end of Lorong 19.²⁰⁰ This was shortly before the actual collection from Dzulkarnain. Thus, not only was there a departure from the original plan, but Boy Lai also appeared to have been available to collect the items himself until "4 plus". Indeed, Boy Lai was in the vicinity of Lorong 37.

¹⁹⁹ AB, pp 442–446.

²⁰⁰ NEs, 30 January 2019, p 71 lines 18–26.

Yet, he chose to await Sanjay's delivery at Hotel La Mode at Lorong 10 (which was also in the vicinity).

(c) For Sanjay's help, Boy Lai was prepared to pay Sanjay \$300. In my view, for such a service within the vicinity of Geylang *ie*, from Lorong 37 to Lorong 10, \$300 was a substantial amount (even if it was purportedly for a box of illegal knives and possibly cigarettes which carried some risk for the courier). It remained a substantial amount even though unexpectedly, Sanjay spent two hours aimlessly driving Boy Lai around. I note that the sum of \$300 was meant to be paid in addition to the sum of \$250 which Sanjay claimed had to be paid to Dzulkarnain by or through Boy Lai for the other leg of the delivery.

(d) As described, Boy Lai spent close to two hours in the car with Sanjay. Despite that, Boy Lai did not tell Sanjay that the illegal knives and possibly cigarettes would be in a box. He only found this out from Dzulkarnain before he left the car to pick up the box: see [81(k)] above. It was odd that Boy Lai did not tell Sanjay any further details to facilitate the pick-up from Dzulkarnain; nor did Sanjay ask for the same.

(e) Furthermore, it was inexplicable that Sanjay and Boy Lai did not exchange contact numbers. Contrary to Sanjay's explanation that they had no reason to do so (see [81(h)]), it seemed to me that to facilitate the delivery, they would have done so. Further, during the two hours in the car, Boy Lai did not make any arrangements for Dzulkarnain to be able to contact Sanjay. Instead, just before Boy Lai left the car, Boy Lai left not one, but three handphones for Sanjay to use. If, as Sanjay explained, Boy Lai was concerned that he should be able to contact Sanjay, he could simply have left just one handphone behind.

(f) Sanjay's failure to obtain Boy Lai's contact number, or indeed any other particulars from Boy Lai, was also in stark contrast to his approach when renting his car to other persons, when he would record "their names, their addresses, [and] their phone numbers".²⁰¹ Meanwhile, though Sanjay claimed to have rented the car to Boy Lai from 20 to 22 February 2015 for \$80 a day,²⁰² he did not request for Boy Lai's identity card number, handphone number or driving licence.²⁰³

90 As contended by the Prosecution, Sanjay's narrative made no sense. It was riddled with illogical aspects. Coupled with the delay in mentioning Boy Lai's role, I had grave concerns about the nature of the arrangements made with Boy Lai. Sanjay's evidence concerning the transaction did not ring of the truth.

Circumstances surrounding the transaction and relationship with Boy Lai

91 Even if I were to accept Sanjay's version that Boy Lai instructed him to collect illegal knives and possibly cigarettes, based on Sanjay's narrative set out at [81] above and my discussion at [89] above, it seemed to me that the circumstances surrounding Sanjay's arrangements with Boy Lai were suspicious. The fact that there had to be a separate leg performed by Dzulkarnain added to the surreptitious nature of the transaction. I did not think these unusual arrangements could be explained away by the fact that the goods were supposedly illegal knives and possibly cigarettes. In this connection, Sanjay had no basis to trust Boy Lai. According to Sanjay, they were formally introduced about three months before his arrest: see [81(a)] above. In his statements, he

²⁰¹ NEs, 18 January 2019, p 61 lines 5–14.

²⁰² NEs, 17 January 2019, p 18 lines 1–19

²⁰³ NEs, 30 January 2019, p 42 line 28 to p 43 line 17.

described Boy Lai as a “hi-bye” friend.²⁰⁴ In court, he described Boy Lai as a mere acquaintance.²⁰⁵ Given that Sanjay was not completely unfamiliar with drugs and that he knew that Boy Lai consumed “ice” (see [81(c)] and [81(g)] above), it was hard to believe that Sanjay trusted Boy Lai that the delivery was of illegal knives and possibly cigarettes as he claimed²⁰⁶.

Lies and evasive nature of Sanjay’s evidence

92 I now discuss how Sanjay had clearly lied or been evasive in three matters.

(1) Denial that SK-HP1, SK-HP2 and SK-HP3 belonged to Sanjay

93 To reiterate, after Sanjay’s arrest, five handphones were recovered. The handphone marked as SK-HP1 was found on his person. It was not disputed that SK-HP2 was found on a windscreen handphone holder, while SK-HP3 was on the dashboard of the car. In other words, these two handphones were placed to be easily accessible while he was driving. Meanwhile, SK-HP4 and SK-HP5 were on the front passenger seat.

94 I pause to observe that the numbers linked to these handphones and SIM cards, as well as the handphone seized from Dzulkarnain *ie* DBK-HP1, were set out in Exh H1. As stated earlier at [15], the communications among SK-HP1, SK-HP2, SK-HP3 and DBK-HP1 from 20 to 23 February 2015 are set out in Annex F. Annex F also included communications between DBK-HP1 and SK-

²⁰⁴ NEs, 30 January 2019, p 18 lines 8–9.

²⁰⁵ NEs, 30 January 2019, p 18 lines 5–11.

²⁰⁶ NEs, 30 January 2019, p 17 lines 13–25.

HP1 with a common contact number *ie*, 81967339, saved as “Boss Bro” in the former and “Bala” in the latter.

95 In respect of SK-HP1, according to IO Ranjeet, during the photograph taking of the exhibits on 23 February 2015, Sanjay admitted that SK-HP1 belonged to him, but he denied ownership of SK-HP4 and SK-HP5. He changed his position subsequently.²⁰⁷ In his 1 March long statement, he said that only SK-HP4 and SK-HP5 belonged to him, but he had “no idea to whom the remaining handphones ‘SK-HP1’, ‘SK-HP2’ and ‘SK-HP3’ belong to.”²⁰⁸

96 In giving evidence, Sanjay claimed that SK-HP1, SK-HP2 and SK-HP3 belonged to Boy Lai who left them in the car for his use. In cross-examination, he said that Boy Lai left them behind on the centre console when he alighted from the car so that Boy Lai could give him instructions. Therefore, he had moved them to accessible locations because he did not know which handphone Boy Lai would call him on.²⁰⁹ Further, Sanjay explained that SK-HP1 was recovered from his person because, when he stopped the car at the traffic light junction just before the arrest, he had taken SK-HP1 out from the door pocket of the car to twirl.²¹⁰

97 As I said earlier at [89(e)], it made little sense for Boy Lai to leave behind three handphones for him to contact Sanjay. He could well have decided which handphone to leave with Sanjay. With regard to SK-HP1, the explanation on why it was on Sanjay’s person was also unbelievable. Not only was the

²⁰⁷ NEs, 3 April 2018, p 39 line 12 to p 40 line 22.

²⁰⁸ AB, p 431 at [8].

²⁰⁹ NEs, 30 January 2019, p 73 lines 21–31; p 74 lines 1–6.

²¹⁰ NEs, 30 January 2019, p 115 lines 12–24.

handphone SK-HP1 found on Sanjay, I accepted IO Ranjeet's evidence that Sanjay had admitted that it was his handphone during the photo-taking session. It was evident that SK-HP1 belonged to Sanjay.

98 As for SK-HP2 and SK-HP3, it was not disputed that in DBK-HP1, their numbers were saved as "Bro Sanjay" and "Sanjay 2" respectively. If these handphones had belonged to Boy Lai, there was no reason for Dzulkarnain to attribute them to a "Sanjay". Further, Sanjay's girlfriend's contact number *ie* 85859086, was saved under her name "Shankiri" in SK-HP3. Given Shankiri's evidence that she did not know Boy Lai,²¹¹ there was no reason for Boy Lai to have her number or to call her on 11 February 2015 at 10.43am. I found that SK-HP2 and SK-HP3 belonged to Sanjay.

99 If these three handphones had truly belonged to Boy Lai, Sanjay should have been able to inform IO Ranjeet of this fact during the recording of 1 March long statement. Instead, he prevaricated. The version of the narrative suggesting that these handphones belonged to Boy Lai was clearly concocted by Sanjay. In this connection, it seemed to me that Sanjay had every reason to disassociate himself from SK-HP1, SK-HP2 and SK-HP3. I elaborate as follows:

- (a) From 20 to 22 February 2015, there were multiple communications between DBK-HP1 and "Boss Bro", as well as multiple communications between SK-HP1 and "Bala". By denying that SK-HP1 belonged to him, Sanjay distanced himself from any possible suggestion of his participation in a plan hatched with an unknown third party. That said, I should make it clear that as against Sanjay, I did not rely on what Dzulkarnain stated in his statement regarding the role of "Bala Luk Kor"

²¹¹ NEs, 14 February 2019, p 93 lines 20–25; p 98 lines 1–6.

(whose number was saved as “Boss Bro”) in the transaction. As Dzulkarnain did not give evidence, no light was shed on the role of the user of this contact number which was saved under “Boss Bro”. My point is simply that there was every reason for Sanjay to avoid any link with the same third party Dzulkarnain was in contact with by denying that SK-HP1 belonged to him.

(b) On 23 February 2015, from 12am onwards *ie*, just before the time of the meeting at UOB, there were multiple calls and messages between DBK-HP1 with SK-HP2 and SK-HP3 *ie*, 24 instances of communications listed within Annex F. Therefore, it appeared that arrangements were being tied down on that day itself. By claiming that the handphones belonged to Boy Lai, Sanjay sought to minimise his role in the transaction on the day in question.

100 I should add that prior to 23 February 2015, there were no communications between DBK-HP1 and SK-HP1, SK-HP2 or SK-HP3. Specifically, it was only at 12am on 23 February 2015 that “Bro Sanjay” *ie*, SK-HP2, called Dzulkarnain on DBK-HP1. This was followed by a call from Dzulkarnain on DBK-HP1 to “Bro Sanjay” on SK-HP2 at 12.15am. Almost immediately, at 12.16am, a message was sent from Dzulkarnain on DBK-HP1 to “Bro Sanjay” on SK-HP2, stating “Bro, I’m here already”. At 12.17am, “Bro Sanjay” replied “Ok. C u in a bit.”²¹² If these three handphones had belonged to Boy Lai, who already knew that Dzulkarnain was available to meet them that night and had then purportedly arranged for the meeting at UOB (see [81(e)] above), it was a little unusual that there were no communications with Dzulkarnain using any of those three handphones prior to 23 February 2015.

²¹² Annex F at items 84–87.

Again, this pointed to Sanjay's association with these three handphones, as the communications began only just before his arranged meeting at UOB with Dzulkarnain.

(2) Connection with the two notebooks

101 I turn to Sanjay's denial that he owned the two notebooks recovered from the car, and his claim that the black notebook (found in the Massimo Dutti paper bag) belonged to Boy Lai (along with other items within the same bag which he attributed to Boy Lai). As for the blue notebook found in the car, he claimed that it must have been left behind by someone else who rented his car previously.²¹³ Sanjay also denied making the entries within them.

102 To begin with, I reiterate that there was no challenge to the evidence of DSP Qamarul that both notebooks contained handwritten entries relating to drug transactions and prices.²¹⁴ If Sanjay were to be believed, an unknown person who rented the car left behind the blue notebook with handwritten contents of drug activities similar to the handwritten entries in the black notebook subsequently left behind by Boy Lai. This would be highly coincidental, and to my mind, quite unbelievable.

103 Further, the notebooks also included entries such as "Bala",²¹⁵ "Orchard Towers",²¹⁶ "Orchard Tower car park",²¹⁷ and "Geylang Lor 37".²¹⁸ As stated

²¹³ NEs, 18 January 2019, p 11 lines 18–22.

²¹⁴ NEs, 28 June 2017, p 80 lines 9–15.

²¹⁵ NEs, 28 June 2017, p 100 line 27; p 104 line 28; p 105 line 21.

²¹⁶ NEs, 28 June 2017, p 93 line 1; p 103 line 22; p 105 line 27.

²¹⁷ NEs, 28 June 2017, p 95 line 28.

²¹⁸ NEs, 31 January 2019, p 61 lines 25–32; p 62 lines 1–8.

above at [99(a)], Sanjay had a contact saved in SK-HP1 as “Bala”. It was not disputed that “Orchard Towers” and “Orchard Tower car park” were places frequented by Sanjay, whereas “Geylang Lor 37” was the location of the drop-off point for the transaction in question. Such entries indicated that both the notebooks were connected to Sanjay.

104 Under cross-examination, Sanjay was directed to a handwritten entry in the black notebook dated 30 January 2015 at 3pm, purportedly made by his brother Mr Arvyn Krishnan (“Arvyn”), confirming payment of \$700 to privately settle all claims in relation to a motor vehicle accident.²¹⁹ When initially questioned on the entry, Sanjay claimed that his brother wrote it. However, Arvyn did not inform Sanjay about the accident.²²⁰ Based on ICA records, Arvyn was not in Singapore at the material time; he had left Singapore on 22 January 2015.²²¹ Confronted with this, Sanjay agreed that Arvyn could not have written the entry. Further, Sanjay admitted that the alleged signature of Arvyn was very similar to his own.²²² To my mind, the weight of the evidence supported a finding that the entry was made by Sanjay. I should add that at the material time, Sanjay did not have a valid driving licence.²²³ It was therefore in his interest to settle any claims privately.

105 Turning to the blue notebook, I noted that there were several entries of the sign of a gang *ie*, “369”. Initially, Sanjay was evasive about having any

²¹⁹ NEs, 30 January 2019, p 127 line 16–32.

²²⁰ NEs, 30 January 2019, p 128 line 21 to p 129 line 25.

²²¹ P268, which shows that Arvyn departed Singapore on 22 January 2015 at 9.40pm via Tuas.

²²² NEs, 30 January 2019, p 139 line 24 to p 140 line 2.

²²³ NEs, 30 January 2019, p 141 lines 4–11.

knowledge about the sign.²²⁴ However, in cross-examination, he admitted that he had been part of the gang since he was about 15 or 16 years old.²²⁵ In fact, he had a 3cm tattoo of “369” on him.²²⁶ Again, this undermined his claim that the blue notebook had nothing to do with him.

106 At this juncture, I note that to ascertain whether the handwriting within the notebooks was Sanjay’s, the Prosecution had applied for Sanjay to tender his handwriting sample for an analysis to be carried out by a handwriting expert. After hearing parties, I ordered Sanjay to write three passages comprising a combination of words, number of symbols on paper pursuant to s 75(2) of the Evidence Act (Cap 97, 1997 Rev Ed) (“Evidence Act”). However, Sanjay refused to provide a sample. Based only on a copy of a letter written by Sanjay, Ms Nellie Cheng, Senior Forensic Scientist of the HSA, submitted an expert report wherein she stated that given the limitations, she was unable to determine the authorship of the numerals or letters within the notebooks; the results were inconclusive.²²⁷ While the Prosecution submitted that I should draw an adverse inference against Sanjay under illustration (g) of s 116 of the Evidence Act that the handwriting sample would not have been favourable to Sanjay, I state briefly that I did not consider it appropriate or necessary to do so. Based on the available evidence, it seemed to me clear that both notebooks were connected to Sanjay (and that he was involved in making entries in them).

²²⁴ NEs, 30 January 2019, p 55 lines 1–15.

²²⁵ NEs, 30 January 2019, p 59 lines 1–10.

²²⁶ NEs, 30 January 2019, p 58 line 17 to p 59 line 10.

²²⁷ NEs, 15 January 2019, p 58 line 27 to p 61 line 16.

(3) Involvement in the transfers of money to Dzulkarnain

107 I turn to the last area. According to Sanjay, Dzulkarnain expected a payment of \$250 by transfer for his role, and Sanjay merely conveyed the message to Boy Lai. Sanjay had nothing to do with any actual payment.

108 However, at 1.11am on 23 February 2015, shortly after Sanjay's meeting with Dzulkarnain at UOB where Dzulkarnain told Sanjay he wanted a transfer of funds (see [81(f)] above), there was a message from DBK-HP1 to SK-HP2, furnishing the POSB account number 038586203 that belonged to Nur.²²⁸ As an aside, I would say that, again, this further linked SK-HP2 to Sanjay. Then, later the same day, two sums of \$250 each were transferred via ATM at 9.34am and 2.45pm respectively to Nur's bank account from Peninsula Plaza and Ngee Ann City. It was undisputed that Sanjay was present at these two locations in the morning and the afternoon that very day (see [81(h)] above). His presence at two locations at two relevant time periods could hardly have been pure coincidence. In my view, Sanjay clearly had a role to play in the deposits of the sums of money in Nur's account (even if he might not have been the one who actually effected the transfers).

109 Once again, I should add that I did not rely on the contents of Dzulkarnain's statement to the effect that Sanjay was to pay him, in two tranches, \$500 in total for his task.²²⁹ I appreciated that there remained some uncertainty as to why there were two deposits amounting to \$500 in Nur's account on that day, instead of one deposit of \$250. Nonetheless, relying on Sanjay's evidence that Dzulkarnain was to be paid \$250, and the objective

²²⁸ Annex F at item 90.

²²⁹ P127 at [28] and [30].

evidence just discussed, it seemed to me that Sanjay was linked to the transfers of the sums of money at both locations.

Sanjay as a knife collector

110 To support his defence, Sanjay relied on the fact that knives were seized from his car upon his arrest. In a statement made during the investigations into his possession of those knives, Sanjay stated that he was a knife collector and that he had bought two of these knives from Boy Lai (a fellow knife collector): see [28] above. However, I observed that the statement was recorded from Sanjay after he had adopted the defence that he was tasked by Boy Lai to collect and deliver illegal knives and possibly cigarettes (*ie*, after 8 March 2015). Sanjay also relied on Billy Chu’s evidence that he had bought knives from Sanjay on one occasion.²³⁰ However, Billy Chu conceded that he had no personal knowledge about Sanjay’s alleged status as a knife collector.²³¹ In any event, he had no knowledge of the specific transaction in question. In my view, there was thin support for the defence that Sanjay and Boy Lai were engaged in a transaction involving knives. Even if I were to accept that Sanjay was a knife collector, this did not go very far to support Sanjay’s account that he was to collect and deliver illegal knives and possibly cigarettes. In this connection, I should reiterate that of the various versions of the contents of the “SKP” box, it was telling that Sanjay mentioned illegal knives last: see [85] above.

Conclusion

111 To round up, there were inherent problems with Sanjay’s account. It had also evolved over time on material aspects. It did not seem to me that given the

²³⁰ NEs, 14 February 2019, p 72 lines 12–28.

²³¹ NEs, 14 February 2019, p 76 line 23 to p 78 line 2.

suspicious nature of the transaction, Sanjay had any reason to believe Boy Lai that he was being tasked to deliver only illegal knives and possibly cigarettes. Sanjay's lies and evasiveness also affected his credibility. As such, I did not accept his defence. I found that Sanjay had not rebutted the presumption under s 18(2) of the MDA.

Whether possession was for the purpose of trafficking

112 Turning to the last element of the offence, Mr Fernando stated that “the uncontradicted evidence of Sanjay was that after he had collected the box, he intended to drive to Geylang Lorong 10 to meet Boy Lai and hand him the box he had collected”.²³² However, citing *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh Perumal*”) at [110] and [125], Mr Fernando contended that Sanjay was acting with an intent to return the drugs to Boy Lai who had originally arranged for Sanjay to collect the drugs. Therefore, Sanjay did not fall within the scope of the offence of trafficking.²³³

113 I was unable to agree with this contention. In *Ramesh Perumal*, the Court of Appeal held that a person who holds a quantity of drugs with no intention of parting with them other than to return to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs for the purpose of trafficking. However, should a person possess a quantity of drugs with a view to passing the drugs onwards to a third party, the intended transfer is presumptively part of the process of moving the drugs along a chain: see [110]. It was evident that Sanjay fell within the latter scenario. According to Sanjay, Boy Lai had ordered certain items from

²³² SCS at [157].

²³³ SRS at [59] to [60].

“Malaysian Boy”. Sanjay was meant to perform an onward delivery of the items ordered by Boy Lai which he collected from Dzulkarnain to Boy Lai (see [81(e)] above). In other words, Sanjay intended to deliver the drugs along the chain to a third party. I found that Sanjay’s possession was for the purpose of trafficking.

Conclusion

114 To summarise, I agreed with the Prosecution that it sufficed that Sanjay knew that the box contained items for delivery *ie, something for delivery*. When Sanjay took possession of the box, he knowingly took possession of its contents for delivery purposes to a third party. It had therefore been proved that Sanjay was in possession of the drugs. Given that Sanjay was proved to be in possession of the box of drugs, by s 18(2) of the MDA, he was presumed to have known of the nature of that drug. Sanjay’s defence amounted to a mere denial of knowledge of the nature of that drug. However, I rejected Sanjay’s claim that he believed the box contained illegal knives and possibly cigarettes. Accordingly, I found that Sanjay had failed to rebut the presumption of knowledge under s 18(2) of the MDA. It was also clear that the possession was for the purpose of trafficking *ie* delivery to a third party. I also found that the chain of custody of the cannabis was not broken. Given that the elements of the charge against Sanjay had been made out, I found him guilty and convicted him accordingly.

115 For completeness, I should add that even if I were to be wrong to conclude that the Prosecution had *proved* knowing possession of the drugs, it seemed to me that it could not be disputed that Sanjay was in possession of the “SKP” box containing the drugs. Therefore, s 18(1) of the MDA would have applied to presume Sanjay to be in possession of drugs. While the Prosecution

did not rely on this, *in the alternative*, Mr Fernando clearly submitted that should s 18(1) of the MDA be engaged, based on the very same defence that Sanjay believed he was delivering illegal knives and possibly cigarettes, Sanjay had rebutted the presumption of possession.²³⁴ Mr Fernando did not submit (nor do I think) there would or could be any difference in Sanjay's evidence (even if there were to be reliance on s 18(1) of the MDA). For the same reasons that I have set out for rejecting Sanjay's defence, I would disagree with Sanjay's position, and I would have found that Sanjay had not rebutted the presumption of possession.

Sentencing

116 I proceed to sentencing. The prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death. There is an alternative sentencing regime in 33B(1) of the MDA setting out the discretion of the court in certain specified circumstances not to impose the death penalty.

117 Under s 33B(1)(a), the court has the discretion to impose a mandatory term of imprisonment for life and 15 strokes of the cane provided two requirements are met. First, an offender must show that his acts fall within s 33B(2)(a)(i)–(iv) of the MDA. This is commonly described as acts of a courier. Second, the offender must also receive a certificate of substantive assistance from the Public Prosecutor ("PP") as set out in s 33B(2)(b) of the MDA. The decision to give or withhold such a certificate is at the sole discretion of the PP: s 33B(4) of the MDA. Both accused persons relied on this ground.

²³⁴ SCS at [37], [72] to [116].

118 In addition, under s 33B(1)(b) of the MDA, the court has the discretion to impose a mandatory term of imprisonment for life. There are also two requirements to be met. First, an offender must show that his acts fall within s 33B(3)(a)(i)–(iv) of the MDA *ie*, acts of a courier. Second, by 33B(3)(b) of the MDA, the offender must be suffering from “such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions”. This ground was relied on by Dzulkarnain.

Dzulkarnain’s sentence

119 In relation to Dzulkarnain, I found on a balance of probabilities that his role in the drug transaction was to collect and deliver the drugs. The Prosecution did not contest this, and the parties were agreed that he was a mere courier within the meaning of s 33B(2)(a)(i) of the MDA. Also, the PP had issued a certificate of substantive assistance under s 33B(2)(b) of the MDA. The alternative sentencing regime under s 33B(1)(a) of the MDA was available. Accordingly, I imposed the alternative mandatory sentence of life imprisonment backdated to 25 February 2015. As Dzulkarnain was above 50 years of age, he was not liable for caning.

120 In relation to Dzulkarnain’s reliance on s 33(1)(b) of the MDA, again, there was no dispute that he was a courier. In relation to the second requirement *ie*, whether his mental responsibility was substantially impaired by any abnormality of mind, as stated above at [59], Dr Winslow diagnosed that at the time of the offence, Dzulkarnain suffered from an adjustment disorder with depressed mood and a stimulant use disorder.

121 On the other hand, the Prosecution’s expert witness, Dr Jerome Goh Hern Yee (“Dr Goh”) from the Institute of Mental Health, opined that

Dzulkarnain had a history of substance abuse, and that he suffered from an adjustment disorder at the time of the offence.²³⁵ Dr Goh disagreed that Dzulkarnain also suffered from a depressed mood.²³⁶ In any event, in Dr Goh's view, the psychiatric illnesses did not impair Dzulkarnain's "thinking processes", and did not substantially impair his responsibility for the offence.²³⁷

122 In cross-examination, based on the consumption rate stated in Dzulkarnain's statements, Dr Winslow agreed with Dr Goh that Dzulkarnain's stimulant use disorder could only be classified as mild (and at most moderate).²³⁸ He also agreed that the adjustment disorder and stimulant use disorder did not substantively impair Dzulkarnain's mental responsibility in relation to the offence.²³⁹

123 In my view, there was no evidence showing on a balance of probabilities that Dzulkarnain suffered from an abnormality of mind that substantially impaired his mental responsibility for his acts. The alternative sentencing regime under s 33B(1)(b) of the MDA was not available.

Sanjay's sentence

124 In relation to Sanjay, I also found that he proved on a balance of probabilities that his role was that of a courier so as to satisfy the requirement under s 33B(2)(a)(i) of the MDA. Although the Prosecution argued that Sanjay's use of multiple handphones meant that he was actively communicating

²³⁵ AB, pp 479–481 at [20].

²³⁶ NEs, 27 March 2018, p 38 lines 14–16.

²³⁷ NEs, 27 March 2018, p 39 line 19 to p 40 line 13.

²³⁸ NEs, 16 January 2019, p 10 line 4 to p 13 line 24.

²³⁹ NEs, 16 January 2019, p 16 line 25 to p 17 line 7.

with others for the arrangement of the transaction, there were no clear messages regarding the extent of his involvement in such arrangements. Indeed, it was not disputed that Sanjay had to communicate with Dzulkarnain in order to finalise details concerning the drop-off and pick-up (which fell within the role as a courier). The Prosecution further relied on Sanjay's payment of money to Dzulkarnain as evidence of a heightened role in the transaction. However, even if Sanjay had a role to play in the transfer of money to Dzulkarnain which I found above, without more, that did not take Sanjay out of the courier role. Regardless, the Prosecution did not issue a certificate of substantive assistance. As the second requirement under s 33B(2)(b) of the MDA was not met, the alternative sentencing regime under s 33B(1)(a) of the MDA was not available, I therefore imposed the mandatory death sentence on him.

Hoo Sheau Peng
Judge of the High Court

Mark Tay, Sia Jiazheng and Gabriel Lim (Attorney-General's
Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Suang Wijaya and Johannes Hadi
(Eugene Thuraisingam LLP) for the first accused.
Peter Keith Fernando (Leo Fernando) and A. Revi Shanker s/o K.
Annamalai (ARShanker Law Chambers) for the second accused.