

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 268

Criminal Case No 61 of 2018

Between

Public Prosecutor

And

Muhammad Nabill bin Mohd Fuad

GROUND OF DECISION

[Criminal Law] — [Statutory Offences] — [Misuse of Drugs Act]
[Criminal procedure and sentencing] — [Sentencing] — [Conviction]

TABLE OF CONTENTS

INTRODUCTION.....	1
THE PROSECUTION’S CASE.....	1
EVENTS LEADING UP TO AND THE ARREST OF NABILL	1
DRUGS WHICH FORMED THE SUBJECT OF THE CHARGES.....	1
NABILL’S HANDPHONE RECORDS.....	1
HEALTH SCIENCES AUTHORITY (“HSA”) ANALYSIS AND DNA EVIDENCE	1
FORENSIC EXAMINATION OF PLASTIC FILMS AND PLASTIC BAGS SEIZED FROM THE FLAT.....	1
URINE TESTS AND MEDICAL EXAMINATION OF NABILL	1
NABILL’S STATEMENTS	1
CLOSE OF THE PROSECUTION’S CASE.....	1
NABILL’S CASE	1
THE LAW.....	1
DECISION ON CONVICTION.....	1
WHETHER NABILL KNEW THAT FAIZAL BROUGHT THE TROLLEY BAG TO THE FLAT	1
WHETHER NABILL KNEW THE CONTENTS OF THE TROLLEY BAG.....	1
WHETHER NABILL HAD POSSESSION AND KNOWLEDGE OF THE DIAMORPHINE FOUND IN BEDROOM 1	1
<i>Nabill’s evolving account of the diamorphine</i>	<i>1</i>
<i>Nabill’s account that Sufian had placed the drugs on the bed in Bedroom 1</i>	<i>1</i>
<i>Other evidence</i>	<i>1</i>

NABILL’S STATEMENTS TO CNB	1
SUBMISSIONS BY THE DEFENCE.....	1
CONCLUSION	1
DECISION ON SENTENCE	1

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Public Prosecutor
v
Muhammad Nabill bin Mohd Fuad

[2018] SGHC 268

High Court — Criminal Case No 61 of 2018
Audrey Lim JC
13–16 August, 5 November 2018

3 December 2018

Audrey Lim JC:

Introduction

1 The accused (“Nabill”) claimed trial to two charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”), which read as follows:

(1st Charge)

That you, Muhammad Nabill bin Mohd Fuad,

on 27 January 2016, at about 8.02 p.m., at Blk 440B Fernvale Link, [unit xxx], Singapore, did traffic in a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed) (“MDA”), *to wit*, by having in your possession for the purpose of trafficking, sixty-four (64) packets containing 1,827.21 grams of granular/powdery substance, which was analysed and found to contain not less than 63.41 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) punishable under s 33(1) of the MDA, and further upon your conviction under s 5(1)(a) read with s 5(2) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

(2nd Charge)

That you, Muhammad Nabill bin Mohd Fuad,

on 27 January 2016, at about 8.02 p.m., at Blk 440B Fernvale Link, [unit xxx], Singapore, did traffic in a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed) (“MDA”), *to wit*, by having in your possession for the purpose of trafficking, nine (9) blocks containing not less than 2,251.90 grams of vegetable matter, which was analysed and found to be cannabis, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) punishable under s 33(1) of the MDA, and further upon your conviction under s 5(1)(a) read with s 5(2) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

2 At the conclusion of the trial, I found that the Prosecution had proved beyond a reasonable doubt the two charges against Nabill, and I convicted him on the charges. Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the prescribed punishment is death. Pursuant to s 33B(1)(a) of the MDA, the court has a discretion not to impose the death penalty if the requirements set out in s 33B(2)(a) of the MDA are satisfied. I found that the requirements of s 33B(2)(a) were not satisfied and further, the Prosecution did not issue a certificate of substantive assistance under s 33B(2)(b) of the MDA. Accordingly, I passed the mandatory death sentence on Nabill.

3 Nabill has filed an appeal against his conviction and sentence.

The Prosecution’s case

Events leading up to and the arrest of Nabill

4 On 27 January 2016, Senior Staff Sergeant Ika Zahary bin Kasmari (“SSgt Ika”) from the Central Narcotics Bureau (“the CNB”) briefed a party of CNB officers about an operation relating to Nabill, who was suspected of being involved in drug activities.

5 Around 7pm that day, CNB officers arrived at a multi-storey carpark beside Block 440B Fernvale Link and began observing Nabill's apartment ("the Flat"). At about 8pm, Nabill and one Mohamed Khairul Bin Jabar ("Khairul") were arrested when they were both leaving the Flat. The CNB officers then entered the Flat and arrested one Mashitta Binte Dawood ("Mashitta"), Nabill's wife. Khairul was arrested because he was found with two packets of methamphetamine in his bag and Mashitta was arrested because she was a suspected drug addict.

6 The CNB officers proceeded to search the Flat in Nabill's presence. The following exhibits were seized from "Bedroom 1" (with the serial numbers of the items forming the subject of the charges in bold and underline):¹

Items on the bed

S/N	Description of item
1	One "Mintek" bag ("G1") which contained Items S/N 2–6 below
<u>2</u>	One plastic bag ("G1A"), which contained one packet of granular/powdery substance ("G1A1") later analysed and found to contain not less than 0.19g of diamorphine ²
3	One red packet (and a rubber band) ("G1B"), which contained 100 tablets in slabs ("G1B1") later analysed and found to contain nimetazepam ³
4	One red packet (and a rubber band) ("G1C"), which contained 100 tablets in slabs ("G1C1") later analysed and found to contain nimetazepam ⁴

¹ PB 285–287.

² PB 143.

³ PB 166.

5	One packet of numerous plastic bags (“G1D”)
6	Six tablets (“G1E”), later analysed and found to contain nimetazepam ⁵

Items at the side of the bed

S/N	Description of Item
7	One black pouch (“H1”) which contained items S/N 8–9 below.
8	One black plastic bag (and a rubber band) (“H1A”), which contained two packets of crystalline substance (“H1A1”) and (“H1A2”) later analysed and found to contain not less than 2.83g and 41.23g of methamphetamine respectively ⁶
9	Two digital scales (“H1B” and “H1C”)
10	One cloth case (“H2”) which was later the same morning found to contain cash totalling \$14,400 (“H2-Cash”) ⁷

Items inside a foldable wardrobe

S/N	Description of Item
11	One “amore” metal container (“E1”), which contained seven glass apparatus and two tissue paper (“E1A”)
12	One “Beautex” tissue box (“E2”), which contained numerous smoking utensils and packaging (“E2A”)

Items beside the foldable wardrobe

⁴ PB 167.

⁵ PB 168.

⁶ PB 144–145.

⁷ PB 310, para 15; PB 290, para 19.

S/N	Description of Item
13	One “Akira” box (“F1”) which contained items S/N 14–31 below
<u>14</u>	One packet of granular/powdery substance (“F1A”), later analysed and found to contain not less than 16.18g of diamorphine ⁸
<u>15</u>	One packet of granular/powdery substance (“F1B”), later analysed and found to contain not less than 15.86g of diamorphine ⁹
<u>16</u>	One packet of granular/powdery substance (“F1C”), later analysed and found to contain not less than 16.47g of diamorphine ¹⁰
17	One plastic bag (“F1D”) which contained items F1D1, F1D2 and F1D3 (S/N 18–20 below)
<u>18</u>	One medium-sized ziplock bag (“F1D1”), which contained 10 mini packets containing granular/powdery substance (“F1D1A”) later analysed and found to contain not less than 2.49g of diamorphine ¹¹
<u>19</u>	One medium-sized ziplock bag (“F1D2”), which contained 10 mini packets containing granular/powdery substance (“F1D2A”) later analysed and found to contain not less than 2.51g of diamorphine ¹²
<u>20</u>	One medium-sized ziplock bag (“F1D3”), which contained 10 mini packets containing granular/powdery substance (“F1D3A”) later analysed and found to contain not less than 2.56g of diamorphine ¹³
21	One plastic bag (“F1E”) which contained items F1E1, F1E2 and F1E3 (S/N 22–24 below)
<u>22</u>	One medium-sized ziplock bag (“F1E1”), which contained 10 mini packets containing granular/powdery substance (“F1E1A”) later

⁸ PB 134.

⁹ PB 135.

¹⁰ PB 136.

¹¹ PB 137.

¹² PB 138.

¹³ PB 139.

	analysed and found to contain not less than 2.42g of diamorphine ¹⁴
23	One medium-sized ziplock bag (“F1E2”), which contained 10 mini packets containing granular/powdery substance (“F1E2A”) later analysed and found to contain not less than 2.42g of diamorphine ¹⁵
24	One medium-sized ziplock bag (“F1E3”), which contained 10 mini packets containing granular/powdery substance (“F1E3A”), later analysed and found to contain not less than 2.31g of diamorphine ¹⁶
25	One paper bag (“F1F”), which contained: ¹⁷ (a) 164 red tablets (“F1F1”); (b) 99 blue tablets (“F1F2”), (c) 150 green tablets (“F1F3”); and (d) 21 green and four red tablets (“F1F4”); all of which were later analysed and found to contain methamphetamine and other controlled drugs
26	One red bag (“F1G”) which contained items S/N 27–30 below
27	Three packets of plastic bags (“F1G1”)
28	One packet (“F1G2”) containing numerous ziplock bags (“F1G2A”)
29	One packet (“F1G3”) containing one roll of cling wrap (“F1G3A”) and numerous empty packets (“F1G3B”)
30	A digital scale (“F1G4”), a packet of two smoking apparatus (“F1G5”) and a packet of small tubes (“F1G6”)
31	An electronic kitchen scale (“F1H”)

*Items on the floor, beside the bed*¹⁸

¹⁴ PB 140.

¹⁵ PB 141.

¹⁶ PB 142.

¹⁷ PB 147–152.

¹⁸ 14/8/18 NE 26.

S/N	Description of Item
32	One metal container (“J1”), which contained numerous ziplock bags (“J1A”)
33	One metal container (“J2”), which contained numerous ziplock bags (“J2A”)

7 SSgt Richard Chua Yong Choon (“SSgt Richard”) explained that after the search in Bedroom 1 had concluded, SSgt Ika asked Nabill if there were any more drugs in the Flat, to which Nabill replied, “storeroom”.¹⁹ SSgt Richard did not hear the conversation between SSgt Ika and Nabill, but was informed of it by SSgt Ika.²⁰ SSgt Ika stated that after the search of Bedroom 1 had ended, he asked Nabill “ada lagi” (meaning “still some more”), essentially to ask Nabill if there were any more drugs in the Flat.²¹ SSgt Ika stated that Nabill answered “storeroom” and he then escorted Nabill to the storeroom at about 9.45pm.

8 The storeroom was searched in Nabill’s presence and SSgt Richard seized the following items from the storeroom (with serial numbers of items forming the subject matter of the charges in bold and underline):²²

S/N	Description of Item
34	One red trolley bag (“B1”), in which items S/N 35–43 below were found
<u>35</u>	One cling wrap (“B1A”) which contained a piece of newspaper (“B1A1”) which in turn contained two blocks of vegetable matter (“B1A1A”), containing not less than 250.6g of vegetable matter which

¹⁹ PB 340, para 8.

²⁰ 13/8/18 NE 63.

²¹ PB 308, para 8; 15/8/18 NE 47, 52, 59.

²² PB 288.

	was later analysed and found to be cannabis ²³
<u>36</u>	One cling wrap (“B1B”) which contained a piece of newspaper (“B1B1”) and which in turn contained one block of vegetable matter (“B1B1A”), containing not less than 230.9g of vegetable matter which was later analysed and found to be cannabis ²⁴
<u>37</u>	One cling wrap (“B1C”) which contained one block of vegetable matter (“B1C1”), containing not less than 38.3g of vegetable matter which was later analysed and found to be cannabis ²⁵
<u>38</u>	One foil wrap and cling wrap (“B1D”) which contained one block of vegetable matter (“B1D1”), containing not less than 394.8g of vegetable matter which was later analysed and found to contain cannabis ²⁶
<u>39</u>	One foil wrap and cling wrap (“B1E”) which contained one block of vegetable matter (“B1E1”), containing not less than 335.4g of vegetable matter which was later analysed and found to be cannabis ²⁷
40	One black plastic bag (“B1F”) which contained items B1F1, B1F2 and B1F3 (S/N 41–43 below)
<u>41</u>	One foil wrap and cling wrap (“B1F1”) which contained one block of vegetable matter (“B1F1A”), containing not less than 318.7g of vegetable matter which was later analysed and found to be cannabis ²⁸
<u>42</u>	One foil wrap and plastic wrap (“B1F2”) which contained one block of vegetable matter (“B1F2A”), containing not less than 316.3g of vegetable matter which was later analysed and found to be cannabis ²⁹
<u>43</u>	One foil wrap and plastic wrap (“B1F3”) which contained one block of

²³ PB 155.

²⁴ PB 156.

²⁵ PB 157.

²⁶ PB 158.

²⁷ PB 159.

²⁸ PB 160.

²⁹ PB 161.

	vegetable matter (“B1F3A”), containing not less than 366.9g of vegetable matter which was later analysed and found to be cannabis ³⁰
44	40 cartons of contraband cigarettes (which were later referred to Singapore customs)

9 SSgt Richard explained that after Nabill had directed SSgt Ika to the storeroom (see [7] above) and was escorted to the storeroom, SSgt Richard asked Nabill, “where?”. In reply, Nabill pointed to item B1, the trolley bag.³¹ SSgt Richard gave evidence that when he conducted the search of the storeroom, the trolley bag was on the floor between a ladder and the metal rack lining one wall,³² while the 40 cartons of contraband cigarettes were in a black trash bag³³ located on the top of the metal rack closer to another wall, meaning that the trolley bag and the cartons of cigarettes were in “totally two different directions” if one were to point at either of them from where Nabill was standing outside the door of the storeroom.³⁴

10 Around 10.10pm, SSgt Ika escorted Nabill to the master bedroom and the following items were seized from the master bedroom toilet and the floor:³⁵

- (a) smoking utensils (“C1” and “D2”);
- (b) a spectacle box (“D1”) which contained two glass tubes (“D1B”) and one packet of crystalline substance (“D1A”) later analysed and found to contain not less than 16.32g of methamphetamine.³⁶

³⁰ PB 162.

³¹ 13/8/18 NE 66–69.

³² P19 at location marked “B”.

³³ 15/8/18 NE 59.

³⁴ 13/8/18 NE 64–65, 69, 72, 76; see P18.

³⁵ PB 310 and 337.

11 On 28 January 2016 at about 3.08am, the kitchen was searched and SSgt Muhammad Yazid Bin Aziz seized a plastic bag (“A1”) and a packet of powdery substance (“A1A”) (later analysed and found to contain not less than 104.5g of ketamine).³⁷ Around 7am, Nabill was escorted to Jurong Police Divisional Headquarters.

Drugs which formed the subject of the charges

12 Among the items seized, the following drugs formed the subject of the two charges against Nabill:

(a) 64 packets containing 1,827.21g of granular/powdery substance, which was analysed and found to contain not less than 63.41g of diamorphine. Save for one packet which was found on the bed in Bedroom 1 (G1A1; see S/N 2 at [6] above), all these packets were found in the “Akira” box in Bedroom 1 (*ie*, S/N 14–16, 18–20 and 22–24 at [6] above); and

(b) nine blocks of vegetable matter found to contain not less than 2,251.9g of cannabis, all of which were recovered from the trolley bag in the storeroom (*ie*, S/N 35–39 and 41–43 at [8] above).

Nabill’s handphone records

13 The Prosecution tendered the records of calls and messages found on Nabill’s Samsung handphone (exhibit “MN-HP1”) and iPhone (exhibit “MN-HP2”).³⁸ It is not disputed that the two handphones belonged to Nabill, even

³⁶ PB 146.

³⁷ PB 133 and PB 337.

³⁸ PB 65, PB 511 and PB 1530.

though MN-HP1 was registered in Mashitta's name and MN-HP2 was registered in the name of Nabill's friend, one Salinah Binte Alit.³⁹

Health Sciences Authority (“HSA”) analysis and DNA evidence

14 The Defence did not dispute the items seized from the Flat or HSA's reports on and analysis of the nature and quantity of drugs seized from the Flat.⁴⁰ Additionally, blood samples were taken from Nabill, Mashitta, Khairul and Nabill's cousin, Sheikh Sufian (“Sufian”). The DNA profiles obtained from them were not in dispute.⁴¹

15 Dr Pook Sim Hwee, an Analyst from the DNA Profiling Laboratory of the HSA, submitted a report of her analysis of the DNA profiles obtained from swabs of various exhibits that were seized from the Flat.⁴² For purposes of referring to the HSA DNA report, it bears mentioning that barcode number S142296 refers to Nabill's DNA, and barcode number S142244 refers to Faizal's DNA.⁴³ Nabill's DNA was found on various items, including:

- (a) the exterior surface of F1E3 (a ziplock bag which was found to contain 10 mini packets containing diamorphine);
- (b) the exterior surface of F1D3A (one of the mini packets containing diamorphine found inside a ziplock bag F1D3);⁴⁴

³⁹ Exhibit H; PB 65, PB 97; 14/8/18 NE 19; 16/8/18 NE 46.

⁴⁰ 14/8/18 NE 90; 15/8/18 NE 69, 117–119; PB 116–170.

⁴¹ Exhibit E; PB 171–173; 14/8/18 NE 81.

⁴² PB 174–246; 14/8/18 NE 62–82.

⁴³ 14/08/18 NE 30–31; 67.

⁴⁴ PB 181; 13/8/18 109–110.

- (c) the exterior surface of F1F4 (a pack containing methamphetamine tablets);
- (d) the exterior surface of a roll of plastic wrapper (F1G3A);
- (e) the exterior of the “Mintek” bag (G1); and
- (f) the exterior and interior surfaces of G1A (a plastic bag which was found to contain one packet of diamorphine).

16 Dr Pook explained that where there is an “uninterpretable component” in addition to a matchable contributor of DNA, the uninterpretable component refers to DNA that is present in such a low level that it is not possible to match the DNA to any person’s DNA profile.⁴⁵ Where the report states that “no interpretable DNA profile” could be obtained, Dr Pook explained that this could be because there was no DNA found at all, or because the DNA profile was contributed to by so many persons that it could not be matched to an individual contributor.⁴⁶ Dr Pook also explained that whether a person’s DNA is found on an object depends on various factors, including his propensity to shed cells, whether and how much of his DNA was transferred from another item to that object, and the duration and intensity of contact between him and the object.

Forensic examination of plastic films and plastic bags seized from the Flat

17 Yew Sok Yee (“Yew”), a Forensic Scientist with the HSA, examined the physical characteristics of the plastic bags seized from the Flat to determine if they could be associated with one another.⁴⁷ She examined the manufacturing

⁴⁵ 14/8/18 NE 70.

⁴⁶ 14/8/18 NE 76–78.

⁴⁷ PB 247–269; 13/8/18 NE 80–93; Exhibit C.

marks and polarising marks on the bags. Polarising patterns or manufacturing marks are incidental to the process of manufacturing plastic bags and can be caused or created by various parts of the manufacturing machine such as the dye, mandrel or rollers.⁴⁸ They are not visible to the naked eye but can be seen under a polarising light and by microscopic examination respectively. Yew examined the bags seized from the Flat to see if they were “physically fitted to one another”, meaning whether the manufacturing marks flowed through from one bag to the next and so on.⁴⁹ If the manufacturing marks did not flow from one bag to the next, it could be said that the bags were not manufactured in sequence (eg, there was a missing bag manufactured in between the bags being examined). Nonetheless, if there were similar clusters of manufacturing marks, some inferences could be drawn about the likelihood of their being manufactured by the same machine.⁵⁰

18 Yew concluded that J1A (40 bags found in Bedroom 1) and F1D1, F1D2 and F1D3 (the three plastic bags which contained a total of 30 mini-packets of diamorphine) could have been manufactured by the same machine or machines that manufacture bags with similar characteristics. This is because there were similar clusters of manufacturing marks even though they did not flow from one bag to the other. However, Yew could not tell how probable it was that all these bags had been manufactured by the same machine.⁵¹

19 Yew also concluded that the following bags were manufactured by the same machine as one another:⁵²

⁴⁸ Exhibit C3.

⁴⁹ 13/8/18 NE 80; Exhibit C1.

⁵⁰ Exhibit C2; 13/8/18 NE 80–81.

⁵¹ 13/8/18 NE 82.

- (a) two bags in J1A and the two bags F1D1 and F1D3;
- (b) 11 bags in J1A, one bag in F1D1A and one bag in F1D2A;
- (c) three bags in J2A, one bag in F1D1A and one bag in F1D3A;
- (d) two bags in J2A and one bag in F1D3A;
- (e) 48 bags in J2A and one bag in F1D2A; and
- (f) one bag in J1A and three bags in F1D1A.

Yew's conclusion in these cases was based on the fact that the lines flowed from one bag to the other.⁵³ Yew also explained that the bags F1D2, F1D3, one of the bags from J1A (which Yew labelled "J1A-V41") and another bag from J1A (which Yew labelled "J1A-V40") were actually manufactured in that sequence as the manufacturing marks on those four bags flowed from one bag to the next in that order.

Urine tests and medical examination of Nabill

20 On 28 January 2016 at about 10.36pm, Nabill was subjected to an instant urine test, in which he tested positive for amphetamine. Nabill's urine sample was also brought to the HSA on 29 January 2016 for testing and found to contain methamphetamine.

21 Dr Yak Si Mian conducted a pre-statement medical examination of Nabill on 1 February 2016 at about 8.15pm.⁵⁴ Nabill informed Dr Yak that he

⁵² PB 258-259.

⁵³ As depicted in Exhibit C1.

⁵⁴ PB 270–272.

had used methamphetamine and heroin the previous Thursday and was suffering from mild withdrawal symptoms, including nausea/retching and shivering/tremors. Dr Yak observed Nabill to be fully alert and oriented to time, place and person during the examination. Additionally, rhinorrhea and tremors were noted. Dr Yak also conducted a post-statement medical examination of Nabill on the same day at about 10.15pm.⁵⁵ Dr Yak stated that Nabill had the same complaints as during the pre-statement medical examination, namely that he had mild drug withdrawal symptoms. However, Dr Yak observed during the examination that Nabill was fully alert and oriented to time, place and person.

22 On 29 January 2016, Nabill was referred by the CNB to the Complex Medical Centre for observation for drug withdrawal. Dr Henry Chua prepared a medical report of the medical examinations conducted by Dr Xu Bang Yu, Dr Tan Chong Hun and Dr Sahaya Nathan respectively on 30 and 31 January and 1 February 2016.⁵⁶ During the period of observation, Nabill complained of stomach cramps, nausea, body aches and runny nose. Dr Chua opined that based on clinical assessment, Nabill was “positive for non-opioid drug withdrawal”. In his oral evidence, Dr Chua stated that it was not possible for a clinician to tell how severe the withdrawal was and that drug withdrawal symptoms for non-opioid drugs (and methamphetamine) would generally last between two to seven days, depending on the person and the amount of drugs consumed.⁵⁷

23 Finally, Dr Kelvin Ng examined Nabill on 22 and 23 February and 4 March 2016 for the purposes of providing a psychiatric evaluation.⁵⁸ In Dr Ng’s

⁵⁵ PB 273–274.

⁵⁶ PB 275–278.

⁵⁷ 15/8/18 NE 15.

⁵⁸ PB 279–283.

report, Nabill described to Dr Ng what had happened the night before and on the day of his arrest, referring to details such as his friend “Dhanesh” purportedly leaving a box in a room in the Flat which Dhanesh usually occupied, this being the box that the CNB officers subsequently seized and was found to contain drugs.

Nabill’s statements

24 The Prosecution tendered various statements recorded from Nabill. Nabill did not object to their admissibility.⁵⁹ I will refer to the statements briefly in chronological order, as they are material to the findings I made. It is not disputed that by “heroin”, “ice” and “erimin”, Nabill was referring to diamorphine, methamphetamine and nimetazepam respectively. I will therefore use the respective pairs of terms interchangeably.

25 First, Nabill gave a contemporaneous statement recorded by ASP Seak on 27 January 2016 at about 10.50pm at the Flat (about three hours after his arrest) (“the 1st Statement”) in which he stated as follows:⁶⁰

- (a) The erimin tablets (G1B1 and G1C1) belonged to Danish, who had brought them for Nabill to sell.
- (b) The heroin (G1A1) and the “ecstasy” pills (F1F1 to F1F4) belonged to Danish.
- (c) The three large packets and two plastic bags of mini packets of heroin (F1A, F1B, F1C, F1D and F1E) must have been brought to the

⁵⁹ 15/8/18 NE 69.

⁶⁰ PB 293–300; 13/8/18 NE 31–37.

Flat by Danish that morning while Nabill was asleep, and Nabill had never seen them before.

(d) The cannabis blocks (B1D, B1E, B1F1, B1F2, B1F3, B1A1, B1B1 and B1C1) did not belong to him.

(e) The “ice” found in Nabill’s master bedroom (D1A) was for his personal consumption.

(f) The weighing scales (H1B and H1C) belonged to Nabill and were used by Danish and Sufian to pack drugs. Nabill claimed that he was not involved in packing.

(g) Nabill would ask Khairul, his friend, to help him sell his drugs, but had not passed Khairul any drugs on the night of their arrest.

26 Second, a contemporaneous statement was recorded by ASP Seak on 28 January 2016 at about 4.45am at the Flat (“the 2nd Statement”). The CNB officers and Nabill had not left the Flat since Nabill’s arrest.⁶¹ Nabill stated that Sufian, his cousin, would know about the drugs found in the Flat because Sufian had let Danish into the Flat on the morning prior to Nabill’s arrest at around 3am. Nabill claimed that before he went to bed, he had informed Sufian to open the door and let Danish into the Flat. He stated that during the night, he heard the door opening and heard Danish’s voice. He also stated that Danish would usually come to the Flat at about 3am to “drop drugs” and “rest awhile”.

27 Third, after a first charge relating to diamorphine was read to him, Nabill gave a cautioned statement recorded by ASP Peh Zhen Hao (“ASP Peh”) on 1

⁶¹ PB 301–304; 13/8/18 NE 42.

February 2016 at 9.15pm (“the 3rd Statement”).⁶² Nabill stated that he had no intention to traffic in drugs and that it was Danish who owned the drugs. Danish had informed Nabill that “someone will pick up the thing” and he would return to pick up the money, but had not informed Nabill what “the thing” contained and “how much thing” was in there. Nabill felt that he was “framed” by Danish and he would not have “[taken] the risk” if he knew that Danish was “bringing this much in [his] house”.

28 Fourth, in a statement recorded by ASP Peh on 2 February 2016 at about 9.27am (“the 4th Statement”),⁶³ Nabill stated as follows:

(a) He gave a fairly detailed account of how he first met Danish in early 2015 and how they would go out for drinks together. Sometime in October 2015, Danish asked Nabill if he could stay over at the Flat and leave for work the next day from there. Nabill agreed and from then onwards, Danish would stay at the Flat frequently, almost five days a week (on the weekdays), in Bedroom 1 together with Sufian.

(b) Around 3am on 27 January 2016, Danish came to the Flat to sleep. Nabill was aware that Danish had planned to come to the Flat and had asked Sufian to open the door for Danish. Nabill asked Danish to bring 25g of “ice” for his (Nabill’s) consumption. The “ice” found in Bedroom 1 could have been brought by Danish for Nabill, though Danish had brought more than Nabill had asked for. As for the drugs found in the “Akira” box (F1) in Bedroom 1 and the cannabis found in the trolley bag (B1) in the storeroom, Nabill was sure that Danish had brought them to his Flat on 27 January 2016, because these items were

⁶² PB 397–399.

⁶³ PB 400–434.

not there when Nabill was fixing the wardrobe in Bedroom 1 and the rack in the storeroom on 26 January 2016. After Danish left the Flat at about 5am, he messaged Nabill to say that someone will come and pick up the “things” within half an hour, but no one came. Nabill woke up at 10am and saw Danish’s message. He then tried to call Danish every hour and Danish kept telling him that he would come to pick up the things, but he did not.

(c) Nabill stated that Danish had brought 25g of “ice” for him on three occasions, once in December 2015 and twice in January 2016. However, each time, Danish would bring more than 25g so that Nabill could sell the extra. Nabill thought this was a “trap” because Danish would not take back the extra “ice” and wanted Nabill to “clear” them for him. However, Nabill had not sold any of the “ice” yet, which was why they were still in large packets. He said he did not even know how to go about selling drugs.

29 Fifth, Nabill gave a statement recorded by ASP Peh on 2 February 2016 at about 8.40pm (“the 5th Statement”).⁶⁴ He stated that Sufian was in the Flat on 26 January 2016. Nabill, Sufian and Mashitta fixed the rack in the storeroom that day, and Sufian was in the Flat until about 2pm or 3pm on 27 January 2016.

30 Sixth, in a statement recorded by ASP Peh on 3 February 2016 at about 2.23pm (“the 6th Statement”),⁶⁵ Nabill stated as follows:

(a) He started smoking “ice” around September 2015 due to Danish’s influence. Danish also started to stay at the Flat regularly since

⁶⁴ PB 435–436.

⁶⁵ PB 437–446.

November 2015, almost every weekday, every week. Sufian knew Danish because Sufian would open the door for him when he came to the Flat late at night when Nabill was already sleeping.

(b) Sufian had let Danish into the Flat in the early morning of 27 January 2016, as Nabill went to bed earlier at around 11pm on 26 January 2016. Danish left the Flat at about 5am on 27 January 2016.

(c) Nabill reiterated that on previous occasions when Danish brought “ice”, he would bring larger quantities than what Nabill had requested for. After quarrelling with Danish for bringing such large quantities, he would return the extra amounts to Danish. However, Danish never took the extra amounts of “ice” out of the Flat but would leave them in the black pouch (H1) on the floor beside the bed in Bedroom 1 and would continue to ask Nabill to “clear” the “ice” for him.

31 Seventh, after a second charge relating to cannabis was read to Nabill, he gave a cautioned statement recorded by ASP Peh on 23 May 2016 between 10.40am and 11.03am (“the 7th Statement”).⁶⁶ Nabill stated that the cannabis in the trolley bag was not his and was brought to the Flat by Faizal.

32 Eighth, Nabill gave a statement recorded by ASP Peh on 24 May 2016 at about 2.08pm (“the 8th Statement”), in the course of which he was questioned about persons appearing in snapshots of CCTV footage, and he stated as follows:⁶⁷

⁶⁶ PB 447–449.

⁶⁷ PB 450–466.

- (a) When Danish brought “ice” for Nabill, it would be in a transparent ziplock bag and the packet would be wrapped in black tape.
- (b) Nabill also, for the first time, stated that Danish had never come to the Flat. Nabill explained that he obtained his supply of “ice” from Danish and it was through Faizal that he came to know Danish.
- (c) Nabill claimed that Faizal had brought the trolley bag to the Flat as Faizal was at the Flat on the evening of 26 January 2016. He did not see Faizal bring the trolley bag into the Flat as he was asleep when Faizal arrived, but the “heroin”, cannabis, “erimin” and “ecstasy” found in the Flat must have been in the trolley bag.

33 Ninth, in a statement recorded by ASP Peh on 28 July 2016 at about 2.37pm (“the 9th Statement”),⁶⁸ Nabill stated as follows:

- (a) He obtained his “ice” supply from Faizal who in turned obtained it from Danish. His order was for around 50g of “ice” a week. He had never seen Danish before and Danish had never been to the Flat. Faizal went to the Flat regularly, about three to five times a week, to smoke “ice”.
- (b) Faizal had previously left “heroin”, cannabis, “erimin” and “ecstasy” in the Flat. Nabill knew the nature of the drugs because Faizal had told him so when asked. However, he did not know what quantity of drugs Faizal had left in the Flat. Nabill would call Faizal to come and retrieve the drugs, and sometimes Faizal would only retrieve them from the Flat the next day.

⁶⁸ PB 467–471.

(c) Nabill stated that when Faizal came to the Flat on the night of 26 January 2016, he was aware that Faizal had gone there to place a trolley bag. He had asked Faizal what the trolley bag contained and Faizal informed him that it contained cigarettes. Nabill only realised that the trolley bag contained drugs after his arrest. He maintained that he was asleep when Faizal came to the Flat with the trolley bag.

34 Finally, in a statement recorded by ASP Peh on 7 October 2016 at about 9.36am (“the 10th Statement”),⁶⁹ Nabill reiterated that Danish had never been to the Flat, he had never seen Danish before, and he obtained his “ice” supply from Faizal who in turn obtained it from Danish. Nabill also stated that he only saw the trolley bag in the storeroom at around 2pm on 27 January 2016. As for the drugs found in Bedroom 1, Nabill did not know if they were brought by Faizal in the trolley bag. He only saw those drugs when he woke up at about 2pm on 27 January 2016 to find the drugs laid out in Bedroom 1, and shortly after, quarrelled with Mashitta. During the quarrel, Mashitta threw the drugs at him as she was angry that people had come to the Flat “to do drugs and to make use of [Nabill]”. He then picked up the drugs and put them at one side.

Close of the Prosecution’s case

35 At the close of the Prosecution’s case, I found that there was sufficient evidence against Nabill for him to be called upon to give evidence in his defence. Nabill chose to testify but did not call any other witnesses.

⁶⁹ PB 472–476.

Nabill's case

36 Nabill and Mashitta were the registered owners of the Flat and they occupied the master bedroom. He consumed “ice” on a daily basis, at times with his friends (including Faizal and Khairul) and his cousins (Sufian and Hizamudin). Sufian lived in the Flat in Bedroom 1, whilst Hizamudin and his friends would come to the Flat about three to five times a week.

37 Nabill claimed that Faizal had brought the trolley bag to the Flat and placed it in the storeroom without his knowledge. On 26 January 2016, Nabill went to sleep at about 7pm. At about 8.20pm, Faizal came to the Flat but Nabill did not see Faizal then as he was asleep. He only found out that Faizal was at the Flat when Mashitta woke him up at around 10pm. He claimed that Faizal came to his house on 26 January 2016 to pass methamphetamine to him.⁷⁰ When he woke up, Faizal and he went to Bedroom 1 to chat, and there Faizal passed him some methamphetamine. Faizal left the Flat at about 10.20pm, and Nabill escorted him downstairs via the lift. Nabill only discovered the trolley bag at about 4pm on 27 January 2016 (when he saw it in the storeroom) and only realised that it contained drugs after he was arrested.⁷¹ Nabill claimed that the trolley bag must have contained all the drugs seized from the Flat including the drugs found in the “Akira” box in Bedroom 1 (save for the methamphetamine in the master bedroom toilet which Nabill admitted he knew about and explained was for his consumption). This was because he did not see any drugs in the Flat when he woke up at 10pm on 26 January 2016 and even in the morning and afternoon of 27 January 2016.⁷²

⁷⁰ 16/8/18 NE 27.

⁷¹ 16/8/18 NE 30, 48–49; PB 473.

⁷² 16/8/18 NE 22–23.

38 As for the drugs in Bedroom 1, Nabill first discovered them on the bed on 27 January 2016 at about 2pm when he quarrelled with Mashitta. He claimed that Sufian had placed them there and suspected that they belonged to either Faizal or Danish.⁷³ When he saw the items on the bed, he knew then that some of them (*ie*, F1A, F1B, F1C, F1D and F1E) were diamorphine.⁷⁴ During the quarrel, Mashita threw the drugs at him and he then picked them all up and “chucked” them into the empty “Akira” box (which had been in Bedroom 1 all along).⁷⁵ He then called Faizal and Sufian to ask them to clear the “stuff”.⁷⁶ It was during this call that Nabill asked Faizal what was in the trolley bag, and Faizal told him that it was cigarettes.⁷⁷

39 Regarding the events of his arrest, Nabill stated that after the CNB officers had searched Bedroom 1, SSgt Ika asked him “ada barang salah lagi?” (meaning “any more illegal things/items”) or “ada barang lagi” (meaning any more things).⁷⁸ Nabill replied, “ada in the storeroom” (meaning, “have/got in the storeroom”) and they proceeded to the storeroom.⁷⁹ Nabill stated that he did not point to the trolley bag in the storeroom. He claimed that the black trash bag containing the contraband cigarettes was on the floor beside the ladder in the storeroom. Nabill explained that when he said, “ada, in the storeroom,” he meant to inform the CNB officers that there were cigarettes in the storeroom.⁸⁰

⁷³ 16/8/18 NE 33, 68, 74.

⁷⁴ 16/8/18 NE 64.

⁷⁵ 16/8/18 NE 34, 64, 74.

⁷⁶ 16/8/18 NE 34.

⁷⁷ 16/8/18 NE 29.

⁷⁸ 16/8/18 NE 7, 82.

⁷⁹ 16/8/18 NE 7.

⁸⁰ 16/8/18 NE 38.

40 After his arrest and while still at the Flat, Nabill had informed the CNB officers that all the drugs found there belonged to Danish. He then called Danish to ask him when he was coming to the Flat to collect the items.⁸¹ However, in his later statements to CNB, Nabill claimed that he had never met Danish and that Danish had never gone to the Flat. Nabill explained that when he gave the 1st to 6th Statements, all of which attributed the drugs to Danish, he was suffering from drug withdrawal symptoms and he also genuinely believed that Danish had brought the drugs to the Flat because Danish was the drug supplier.⁸² Nabill explained that he changed his evidence from the 7th Statement onwards to state that Faizal had brought the drugs to the Flat because he discovered from Mashitta (who had been informed by their domestic helper) that Faizal had brought the trolley bag to the Flat.⁸³ This was why he stated in the 7th Statement that the CNB ought to check the CCTV footage to see if it captured Faizal bringing the trolley bag to the Flat.⁸⁴ Nabill maintained that the account given from the 7th Statement onwards was the more accurate one.⁸⁵

The law

41 The elements to be proved for a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are: (a) possession of a controlled drug (which may be proved or presumed pursuant to s 18(1) of the MDA or deemed pursuant to s 18(4) 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

⁸¹ 16/8/18 NE 11.

⁸² 16/8/18 NE 17–18.

⁸³ 16/8/18 NE 19–20.

⁸⁴ 16/8/18 NE 19.

⁸⁵ 16/8/18 NE 95, 101.

authorised (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]).

42 Additionally, the relevant rebuttable presumptions in ss 17, 18(1) and 18(2) of the MDA provide as follows:

Presumption concerning trafficking

17. Any person who is proved to have had in his possession more than —

...

(c) 2 grammes of diamorphine;

(d) 15 grammes of cannabis;

...

whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

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;

...

(c) the keys of any place or premises or any part thereof in which a controlled drug is found; or

...

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.

43 As regards the element of possession, the Court of Appeal in *Zainal bin*

Hamad v PP [2018] SGCA 62 (“*Zainal*”) held that where the Prosecution seeks to prove the fact of possession, it must prove not only that the accused was in possession of the package or the container but also that he knew that it contained something, which may later be established to be the drugs in question (at [12]). The Prosecution need not prove that the accused specifically knew that he was in possession of drugs or even of something that turns out to be contraband; the question of whether he knows the package or container contains drugs is an inquiry that arises when considering the question of knowledge rather than of possession (at [12]–[13]). Once it is proved that the accused had physical control over or possession of the package or container that contains the thing in question, the court is entitled to infer that he had knowledge of the existence of that thing. It is then incumbent on the accused to discharge the evidential burden by raising a reasonable doubt that this was not the case (at [16]). In an appropriate case, the Prosecution may also rely on the presumption of possession under s 18(1) of the MDA.

44 In the present case, the Prosecution proceeded on the basis that it had proved actual possession and knowledge and sought to rely on the presumption of trafficking under s 17 of the MDA. In the alternative, it submitted that the presumptions of possession and knowledge under s 18(1) and s 18(2) of the MDA were engaged and that Nabill had failed to rebut the presumptions, and that it had proved that Nabill had the drugs in his possession for the purposes of trafficking.

45 As a preliminary point, the Prosecution is not precluded from relying on both alternatives mentioned above. This was recognised by the Court of Appeal in *Hishamrudin bin Mohd v Public Prosecutor* [2017] SGCA 41 at [20]–[21] when it considered the case on the alternative premises of the accused’s actual and presumed possession of drugs found in his car. This was also the case in

Zainal, where the Court recognised that the presumptions under ss 17 and 18 of the MDA could apply, in that the Prosecution could prove the facts of possession and knowledge and invoke the presumption of trafficking, or invoke the presumption of possession and/or knowledge and prove that such possession was for the purpose of trafficking (at [55]). The Court in *Zainal* concluded that, based on an analysis of *each of the scenarios*, the corresponding presumptions were not rebutted in that case. In other words, the Prosecution can rely on the two alternatives, so long as the presumption under s 17 and the presumptions under s 18(1) and (2) of the MDA are not invoked and applied together (because they cannot be so applied), and the Prosecution makes clear which presumptions it seeks to rely on (*Zainal* at [53]).

Decision on conviction

46 After assessing all the evidence, I was satisfied that on either alternative (as set out at [44] above), the Prosecution had proved its case against Nabill. I first explain my findings of fact before I conclude by explaining why I found that all the elements of both charges had been proved.

47 Nabill's case relating to the diamorphine in Bedroom 1 was as follows:

(a) In relation to possession, he did not deny that 63 packets of diamorphine were found in the "Akira" box and one packet of diamorphine (G1A1) was found in the "Mintek" bag on the bed. By his own evidence, he had placed the 63 packets of diamorphine in the "Akira" box. He also did not deny that he had control and possession of the Flat and of Bedroom 1. However, he claimed that the diamorphine did not belong to him and he did not know how it came to be present in Bedroom 1. The first time he saw the diamorphine was around 2pm on 27 January 2016 when he found the packets laid out on the bed. He

claimed that Faizal must have brought the diamorphine to the Flat in the trolley bag and that Sufian may have laid it out on the bed. Hence, the drugs belonged to Faizal or Sufian, and he merely tidied up the room by placing them into the “Akira” box.

(b) He essentially admitted that he knew that the packets contained diamorphine because, by his own account, he had seen them laid out on the bed at around 2pm on 27 January 2016 and was able to recognise that they contained diamorphine.

(c) He also claimed that the diamorphine did not belong to him and by implication he had no intention to sell it. He claimed that he was in possession of it for the purpose of returning it to Faizal. Faizal was supposed to have retrieved the diamorphine on 27 January 2016, but did not do so although Nabill had called him multiple times.

48 Nabill’s case relating to the cannabis in the trolley bag was as follows:

(a) In relation to possession, he claimed that Faizal had brought the trolley bag to the Flat while he was asleep and without his knowledge, and he only discovered it in the storeroom at 4pm on 27 January 2016.

(b) He claimed that he did not know that the trolley bag contained cannabis but had instead believed, based on what Faizal had told him, that it contained cigarettes.

(c) He also claimed that the cannabis did not belong to him and by implication he had no intention to sell it. He claimed that he was in possession of it for the purpose of returning it to Faizal. Faizal was supposed to have retrieved the trolley bag with its contents on 27

January 2016, but did not do so although Nabill had called him multiple times.

49 To determine whether the disputed elements have been proved by the Prosecution, it was necessary to assess the objective evidence and the internal consistency and veracity of Nabill's account of various matters such as his knowledge of Faizal bringing the trolley bag to the Flat at the material time, his knowledge of the contents of the trolley bag at the material time, and his account of how the diamorphine came to be found in Bedroom 1.

Whether Nabill knew that Faizal brought the trolley bag to the Flat

50 I begin with a preliminary point regarding the trolley bag (B1) found in the storeroom. I found that Faizal had brought the trolley bag to the Flat on 26 January 2016. The Prosecution did not dispute that Faizal brought a trolley bag similar in appearance to B1 to the Flat, although it could not say with certainty that it was B1.⁸⁶ The CCTV footage of the lift leading to the Flat captured Faizal in the lift with a similar-looking trolley bag at about 8.20pm on 26 January 2016. Around 10.20pm, the CCTV footage captured Faizal in the lift together with Nabill and without that bag.⁸⁷ Additionally, Faizal's DNA was found on the interior surface of B1 and on the exterior surface of the taped bundle and foil which contained one block of cannabis (B1D).⁸⁸ I therefore found that Faizal had brought the trolley bag to the Flat around 8.20pm on 26 January 2016.

51 Nabill claimed that he was unaware that Faizal was planning to come to the Flat on 26 January 2016 to deposit a trolley bag. He claimed that he was

⁸⁶ 15/8/18 NE 78; 16/8/18 NE 125.

⁸⁷ 13/8/18 NE 56–58; PB 460–461.

⁸⁸ PB 197–198.

asleep between 7pm and 10pm that night, so he was asleep when Faizal arrived and only realised that Faizal was at the Flat when Mashitta woke him up around 10pm. Although he and Faizal subsequently had a chat, Nabill claimed that Faizal did not tell him that he had brought a trolley bag to the Flat.⁸⁹ He discovered the trolley bag in the storeroom only around 4pm on 27 January 2016 and found out that it contained cannabis only after he was arrested. I rejected Nabill's testimony and found that he knew on 26 January 2016, when Faizal came to the Flat, that Faizal had brought the trolley bag to the Flat and had done so with Nabill's permission and consent.

52 First, I did not believe Nabill's claim that he was asleep from 7pm to 10pm on 26 January 2016 such that he was unaware that Faizal had come to the Flat at about 8.20pm with a trolley bag. He could not have been asleep as his handphone records showed multiple calls were made to and from his handphone during the same time period. These included calls made to and from his handphone at 7.51pm and 8.20pm, around the time when Faizal arrived.⁹⁰ A call lasting 43 seconds was even made from Nabill's phone to *Faizal's* phone at 7.49pm, when Nabill was supposedly asleep.⁹¹ When confronted with these records, Nabill tried to explain that he had left his handphone in Bedroom 1 while he was asleep, and so anyone (including Sufian) could have used it to make or receive calls. Nabill claimed that it was not uncommon for Sufian's friends to call Sufian on his handphone.⁹² I rejected Nabill's explanation. Sufian was not called to testify to support Nabill's account. Moreover, Nabill conceded that Sufian had his own handphone, hence there was no conceivable reason why

⁸⁹ 16/8/18 NE 19–21.

⁹⁰ 16/8/18 NE 56–58; PB 109.

⁹¹ 16/8/18 NE 56; PB 108 (item 589); Exhibit H.

⁹² 16/8/18 NE 58–59.

Sufian would have had to use Nabill's handphone. In my view, Nabill's explanation was but a feeble attempt to shore up his claim that he was asleep when Faizal arrived at the Flat. His claim that he was asleep when Faizal arrived was, in turn, an attempt to distance himself from the drugs.

53 Second, in the 9th Statement recorded on 28 July 2016, Nabill stated that he was aware that Faizal had gone to the Flat on 26 January 2016 to "put things" and identified the "things he put" as the "trolley bag" (see [33] above).⁹³ This clearly contradicted his testimony in court that he only discovered the trolley bag the next day. When pressed during cross-examination, Nabill first tried to explain that the "things" which he knew Faizal came to deliver was only "ice" for his consumption.⁹⁴ When confronted with the 9th Statement, Nabill admitted that he knew, *on 26 January 2016 itself*, that Faizal was going to the Flat with a trolley bag.⁹⁵ By Nabill's own evidence, he was aware in advance that Faizal was going to the Flat with the trolley bag and to deliver drugs. For completeness, the CCTV footage captured Faizal, accompanied by Nabill, going down the lift at about 10.20pm without a trolley bag. Thus Nabill would have known that Faizal had left the Flat without the trolley bag and had deposited it in the Flat.

54 Next, I found it unbelievable that Faizal would have brazenly hidden from Nabill the fact that he had brought the trolley bag (containing drugs, and in such large quantities) to the Flat and intended to keep it there without Nabill's permission or knowledge. Nabill claimed that Faizal had secretly sought to leave all kinds of drugs (*eg*, heroin, cannabis, ecstasy and erimin) in the Flat on

⁹³ PB 470.

⁹⁴ 16/6/18 NE 54, 60.

⁹⁵ 16/8/18 NE 61–62.

about five prior occasions.⁹⁶ When Nabill discovered the drugs on each occasion, he would tell Faizal off and ask him to immediately remove them.⁹⁷ Nabill added that he had developed a habit of checking the Flat every time after Faizal left to ensure that he did not leave unwanted drugs behind. Going by Nabill's account, it was difficult to believe that Faizal would disrespectfully continue to deposit drugs in the Flat without Nabill's consent and knowledge, running the risk of outraging Nabill and affecting their friendship. On Nabill's account, it was also unbelievable that he would continue to allow Faizal to come to the Flat regularly when he knew full well that there was a substantial risk that Faizal would again hide drugs in the Flat and put him at risk of being caught with those drugs which he knew could attract imprisonment or the death penalty. I disbelieved Nabill's explanation that he continued to allow Faizal to come to the Flat because he needed Faizal to supply drugs to him for consumption. As Nabill admitted, he could easily have met Faizal somewhere outside the Flat to obtain the drugs from Faizal.⁹⁸ Therefore, Nabill's account was not internally coherent and suggested, instead, that he was expecting Faizal to come to the Flat with the trolley bag containing the drugs and had knowingly allowed him to deposit the trolley bag with the drugs in the Flat.

55 Indeed, if Nabill were truly so mistrusting of Faizal that he would check the Flat for drugs whenever Faizal left, and given that he was aware of the severe legal consequences of being found with a large quantity of illicit drugs, then one would expect him to have done a thorough check of the Flat on 26 January 2016 (or the next day) after Faizal left. Instead, Nabill claimed he had checked *only* Bedroom 1 and was satisfied upon this cursory check that there were no drugs

⁹⁶ 16/8/18 NE 50.

⁹⁷ 16/8/18 NE 114–115, 122; PB 469.

⁹⁸ 16/8/18 NE 52–53, 115–116.

in *the whole Flat* (apart from the methamphetamine in the master bedroom toilet which was for his consumption) and only discovered the huge quantities of diamorphine when it was laid out on the bed the next day and the cannabis when he was arrested.⁹⁹ Nabill's complacency suggested that he was not worried about Faizal bringing drugs to the Flat and was aware that he would do so.

Whether Nabill knew the contents of the trolley bag

56 I was also satisfied that Nabill knew that the trolley bag contained drugs, and that he knew the nature of the drugs in the trolley bag, at the material time when Faizal brought the trolley bag to the Flat. Nabill's evidence was that all the drugs found in Bedroom 1 and the storeroom had been brought by Faizal on 26 January 2016, because they were not present in the Flat before that time. If so, then if it were found that Nabill knew what the trolley bag contained when Faizal brought it to the Flat, this knowledge would extend not only to the cannabis found in the trolley bag but also to all the other drugs which had somehow found their way from the trolley bag into Bedroom 1 by the time of Nabill's arrest.

57 First, there was evidence of Nabill's familiarity with drugs (and the type of drugs found at his Flat), and his past experience with Faizal bringing drugs, including diamorphine and cannabis, to the Flat. In the 1st Statement recorded after his arrest, Nabill was able to identify the various types of drugs that were seized from the Flat. He also testified that he consumed drugs regularly with others. He claimed that Faizal came to the Flat a few times a week to smoke "ice" and that he obtained his "ice" from Faizal, who in turn obtained it from Danish. As mentioned at [54] above, Nabill also claimed that on about five prior

⁹⁹ 16/8/18 NE 22–23, 62–63.

occasions, Faizal had brought various kinds of drugs (including diamorphine and cannabis) to the Flat without his permission or knowledge, and would retrieve them only upon Nabill's prompting, which was why he would check the Flat each time after Faizal left to make sure that he had not left behind any drugs.

58 Second, even by Nabill's account, his reaction upon discovering the trolley bag in the storeroom strongly suggested that he in fact knew that the trolley bag contained drugs and not cigarettes. I should state first that I rejected Nabill's evidence that he only discovered the trolley bag on 27 January 2016. As I found at [53] above, Nabill was aware that Faizal had gone to the Flat on 26 January 2016 to deposit a trolley bag and to deliver drugs.¹⁰⁰ Nonetheless, I proceeded to assess the internal coherence of Nabill's own account of the facts, on the basis that he discovered the trolley bag on 27 January 2016 as he claimed, in order to determine whether he was to be believed.

59 In this regard, Nabill claimed that when he discovered the trolley bag in the storeroom around 4pm on 27 January 2016, he immediately or "straightaway" phoned Faizal to remove it, because he *knew or at least suspected that it contained drugs*.¹⁰¹ His knowledge or suspicion was entirely to be expected given Faizal's purported history of bringing unwanted large quantities of various drugs to the Flat. However, what was incongruent with Nabill's innocence was his reaction to Faizal's reply that the trolley bag only contained cigarettes. Nabill stated that he did not open the trolley bag to verify its contents and that he trusted Faizal because of the "size of the trolley".¹⁰² It

¹⁰⁰ PB 470; 16/8/18 NE 61–62.

¹⁰¹ 16/8/18 NE 72–73.

¹⁰² 16/8/18 NE 116.

was not obvious how the size of the trolley bag would have given Nabill any assurance. Faizal had never brought large quantities of cigarettes to the Flat before,¹⁰³ whereas the many varieties of drugs that Faizal had previously brought to the Flat could have easily been contained within a trolley bag. Indeed, in the 9th Statement, Nabill said that it was “difficult to say” what quantity of drugs Faizal left at the Flat on various occasions because the quantities differed and were concealed in various bags, such as a “sling bag”, “bag”, “paper bag” or “plastic bag”.¹⁰⁴ Nabill explained, however, that he could tell that Faizal had on occasion brought small quantities because the drugs were contained in “just a small plastic bag or small sling bag”.¹⁰⁵ If anything, the size of the trolley bag should have given Nabill cause for worry.

60 Furthermore, Nabill’s conduct and his purported trust in Faizal on 27 January 2016 (in taking Faizal at his word that the trolley bag contained cigarettes) was inconsistent with his apparent lack of trust in Faizal on previous occasions, as seen in the way that he had allegedly searched the Flat after each visit by Faizal to ensure Faizal had not left unwanted drugs in the Flat. It was also inconsistent with his apparent lack of trust in Faizal the night before he was arrested (*ie*, 26 January 2016) as he claimed he did a check of Bedroom 1 after Faizal left the Flat that night. His complacency on this occasion is particularly stark given that Nabill stated that he *actually suspected*, when he called Faizal, that the trolley bag might have contained drugs, and was aware of the serious penalties attached to drug offences. Additionally, according to his version of events, when he called Faizal about the trolley bag around 4pm on 27 January 2016, he had already discovered the large quantities of drugs (which he knew at

¹⁰³ 16/8/18 NE 117.

¹⁰⁴ PB 469.

¹⁰⁵ 16/8/18 NE 53.

that time to be diamorphine) in Bedroom 1, and suspected that either Sufian or Faizal was responsible for its presence in the Flat. In this context, it is inexplicable that Nabill did not act to verify that the trolley bag contained cigarettes as Faizal claimed, as one would expect him to have been worried about the presence of more drugs.

61 It was also strange that Nabill was in no hurry to get Faizal to remove the trolley bag from the Flat. He only called Faizal once, and did not try to reach him again even though he did not turn up for some four hours between the phone call and the time of Nabill's arrest.¹⁰⁶ Moreover, after Nabill was arrested, he made phone calls (in the presence of CNB officers) to *Danish* rather than Faizal to ask *Danish* to collect the items, even though by this time he knew that the trolley bag belonged to Faizal.¹⁰⁷

62 Hence, I found that Nabill's evidence and conduct as mentioned above were all inconsistent with his claim to innocence. They suggested instead that he already knew that the trolley bag contained drugs when Faizal brought it to the Flat on 26 January 2016 and moreover, that he knew what the drugs were.

63 These findings were supported by Nabill's conduct immediately after his arrest. SSgt Ika testified that after Bedroom 1 had been searched and the diamorphine discovered, he asked Nabill, "ada lagi?" (meaning "still some more?" or "anymore?") to which Nabill replied, "storeroom". I did not believe Nabill's alternative account that SSgt Ika had asked, "ada barang salah lagi?" (meaning "any more illegal things?"), and that Nabill had directed the CNB officers to the storeroom because of the contraband cigarettes rather than the

¹⁰⁶ 16/8/18 NE 76–77.

¹⁰⁷ 16/8/18 NE 10–11.

trolley bag containing the drugs. First, Nabill's version of SSgt Ika's question kept evolving. He offered three versions in all: "ada barang salah?" (meaning "any illegal things?"); "ada barang salah lagi?" (meaning "any more illegal things"); and "ada barang lagi?" (meaning "any more things?").¹⁰⁸ In contrast, SSgt Ika was consistent in his testimony that he had merely asked "ada lagi?" and that Nabill had replied "storeroom". Second, the context supports the inference that Nabill understood SSgt Ika to be asking whether there were any more drugs and had directed the CNB officers to the storeroom because he was aware that there were drugs in the trolley bag. SSgt Ika had asked Nabill this question after Bedroom 1 had been searched and a large amount of drugs had been uncovered. In this context, Nabill would have been aware that SSgt Ika was asking whether there were any more *drugs* in the Flat. Furthermore, Nabill was aware that the officers were from the CNB and that they were not conducting a raid for contraband cigarettes.¹⁰⁹ This supported my finding that Nabill was aware that there were drugs in the storeroom and that they were in the trolley bag.

Whether Nabill had possession and knowledge of the diamorphine found in Bedroom 1

64 I turn now to the diamorphine found in Bedroom 1 (the subject of the 1st Charge) namely, 63 packets (contained in F1A, F1B, F1C, F1D and F1E) that were found in an "Akira" box and one packet (G1A1) that was found in a "Mintek" bag on the bed. I was satisfied that Nabill was in possession of the diamorphine and knew of its nature at the material time. I rejected his claim that he only discovered the diamorphine (among other drugs which do not form the subject of the charges) in Bedroom 1 around 2pm on 27 January 2016 and

¹⁰⁸ 15/8/18 NE 32, 52; 16/8/18 NE 7, 82.

¹⁰⁹ 16/8/18 NE 82.

stowed them away in the “Akira” box to return them to Faizal or Sufian. I found Nabill to be a dishonest witness who contradicted himself on material particulars and concocted facts as he went along, in an attempt to disassociate himself from possession and knowledge of the diamorphine at the material time.

Nabill’s evolving account of the diamorphine

65 Nabill’s account of the diamorphine in Bedroom 1 was continually evolving and therefore not credible. I set out the more material changes in his version of events throughout the investigation process and until the trial.

66 First, Nabill altered his account of whether and when he saw the diamorphine exhibits prior to his arrest. In the 1st Statement, he stated that he had *never touched or seen* the diamorphine exhibits *before his arrest*.¹¹⁰ However, in the 10th Statement, he said that he saw the drugs in Bedroom 1 for the first time on the bed at about 2pm on 27 January 2016, that Mashitta quarrelled with him and threw the packets of drugs at him, and that he then “put them at one side”.¹¹¹ During the trial, Nabill testified that he picked up the drugs Mashitta had thrown at him and chucked them into the “Akira” box.¹¹²

67 Second, Nabill altered his account of when the “Akira” box and the trolley bag appeared in the Flat. In the 4th Statement, he stated that he was certain that Danish had brought the drugs to the Flat around 3am on 27 January 2016 because when Nabill was fixing the wardrobe and the storage rack (in Bedroom 1 and the storeroom respectively) on 26 January 2016, the “Akira” box and trolley bag were *not there* (in Bedroom 1 and the storeroom

¹¹⁰ PB 297–298.

¹¹¹ PB 474

¹¹² 16/08/2018 NE 34.

respectively) at that time. When this statement was recorded, Nabill had yet to put forward the version of events in which he discovered the drugs on the bed and chunked them into the “Akira” box after quarrelling with Mashitta. During the trial, after his account of his quarrel with Mashitta had emerged, Nabill stated that the “Akira” box had always been in Bedroom 1.¹¹³

68 Third, Nabill completely altered his account of who the diamorphine belonged to. In the 1st Statement, he stated that it belonged to Danish who had brought it to the Flat and in particular for G1A1, that Danish had intended to sell it. In the 2nd to 6th Statements, Nabill supplied details that would make this story about Danish more realistic – details such as how he came to know Danish, Danish’s regular stays at the Flat, Danish’s supply of “ice” to him, Danish’s history of leaving extra “ice” behind to “frame” Nabill into selling the excess “ice” for him, and how Nabill had heard Danish entering the Flat in the early hours of 27 January 2016. However, in the 7th Statement, Nabill claimed for the first time that Faizal had brought the cannabis to the Flat. From that point on, Nabill did an about turn and claimed that it was Faizal who had brought all the drugs to the Flat in the trolley bag on 26 January 2016. Nabill then denied that he knew Danish and that Danish had ever come to the Flat. By the time the 7th Statement was recorded, Nabill must have realised that there was CCTV footage of the lift leading to the Flat, which was why, in that statement, he stated for the first time that Faizal was the person who had brought the trolley bag and drugs to the Flat, and requested for the CCTV footage to be examined. In fact, during the trial, Nabill admitted that he changed his account from “Danish” to “Faizal” after ASP Peh showed him the CCTV footage of the lift leading to the Flat.¹¹⁴ The CCTV footage captured Faizal in the lift with the trolley bag going

¹¹³ 16/8/18 NE 35.

¹¹⁴ 16/8/18 NE 100; PB 452–453.

up the lift and did not capture any images of Danish. I found that Nabill changed his account to attribute the drugs to Faizal only when he realised that his account about Danish could not stand in the face of the objective records.

69 Lastly, Nabill altered his account of how the diamorphine came to be found in Bedroom 1. In the 4th Statement, he explained that Danish must have brought them to the Flat at about 3am on 27 January 2016, because these items were not there when Nabill was fixing the wardrobe in Bedroom 1 on 26 January 2016. In the 8th to 10th Statements, Nabill merely said that all the drugs in Bedroom 1 and the storeroom must have been brought to the Flat in Faizal's trolley bag. In the 10th Statement, he claimed that he first saw the diamorphine laid out on the bed in the afternoon on 27 January 2016 when he quarrelled with Mashitta, but did not explain how they came to be laid out on the bed. When questioned whether Sufian was connected to the drugs that Faizal brought to the Flat, Nabill stated that he did not know, and added that he did not know "if Sufian saw Faizal taking the drugs out of the trolley bag".¹¹⁵ However, during the trial, Nabill claimed that the diamorphine would have been laid out on the bed by Sufian, and not Faizal, as Nabill did not see anything on the bed when he checked Bedroom 1 after Faizal left the Flat on 26 January 2016 and Sufian was at home on 27 January 2016.¹¹⁶

70 As can be seen, Nabill's story was evolving throughout the proceedings. This was incredibly damaging to his credibility and led me to question why he felt compelled to concoct a story about Danish in the first place instead of offering at the earliest opportunity the defence which he ultimately offered at trial – namely that the diamorphine belonged to either Faizal or to Sufian (who

¹¹⁵ PB 453.

¹¹⁶ 16/8/18 NE 68.

allegedly placed it in Bedroom 1, having possibly obtained it from the trolley bag). I will return to the issue of Nabill's evolving defence in light of his statements later (see [77]–[82] below).

Nabill's account that Sufian had placed the drugs on the bed in Bedroom 1

71 Next, I rejected Nabill's explanation that Sufian had placed the diamorphine on the bed in Bedroom 1. The way that Nabill conducted himself upon discovering the drugs was not as one would expect if he had innocently found such a large quantity of diamorphine in his Flat. He claimed that he called Sufian to come back to the Flat and clear "all the thing inside [Bedroom 1]".¹¹⁷ Strangely, however, he did not ask Sufian why there were drugs (and so much of them) in the room and who had brought them to the Flat. He agreed that he did not even mention the word "drugs" to Sufian. Nabill tried to explain that he did not ask Sufian about the drugs because Sufian "sounded so innocent at that point in time".¹¹⁸ I found this unconvincing especially given that Sufian was a known drug user.¹¹⁹ Further, Nabill did not produce any independent evidence to support his account that Sufian had laid the diamorphine out on the bed before Nabill chucked it in the "Akira" box for Sufian to clear it. He did not call Mashitta to support his account that he first found the diamorphine on the bed in Bedroom 1 at about 2pm on 27 January 2016 and then packed the drugs into the "Akira" box after quarrelling with her, or call Sufian to support his phone conversation with Sufian after he discovered the diamorphine.

¹¹⁷ 16/8/18 NE 76–77.

¹¹⁸ 16/8/18 NE 76.

¹¹⁹ PB 471.

Other evidence

72 There was also objective evidence that Nabill had been in contact with some packets of diamorphine, which supported a finding that he was in possession of it and knew the nature of its contents as he was involved in packing it.

73 Nabill's DNA was found on F1D3A, which comprised 10 mini packets of diamorphine which were packed into a larger ziplock bag (F1D3), which was in turn found in a white plastic bag (F1D) retrieved from the "Akira" box.¹²⁰ It must be emphasised that there were multiple layers of external packaging, which made it very unlikely that Nabill's DNA could have been found on F1D3A by accidental touching. His DNA was also found on F1E3 (a ziplock bag which contained 10 mini packets of diamorphine (F1E3A)), which was found in a white plastic bag (F1E) retrieved from the "Akira" box. There was objective evidence that the plastic bag used for F1D3A could have come from the same stock as J1A or J2A because the bags were manufactured by the same machine (see [19] above), and Nabill agreed that F1D3A came from the same stock as J2A.¹²¹

74 When asked how his DNA might have ended up on F1D3A and F1E3, Nabill explained that when he was quarrelling with Mashitta, the diamorphine was laid out on the bed in the form of larger ziplock bags (eg, F1D1, F1D2, F1D3, F1E1, F1E2 and F1E3) of 10 mini packets each.¹²² After the quarrel, he picked up these larger ziplock bags and placed them into the "Akira" box. He stated that did not come into contact with the mini packets of diamorphine found

¹²⁰ PB 203.

¹²¹ 16/8/18 NE 68.

¹²² 16/8/18 NE 64.

within the larger ziplock bags, including F1D3A. He suggested that his DNA was found on F1D3A as he used similar bags to pack his “ice”, and speculated that Faizal or Sufian could have obtained plastic bags from the same stock (*ie*, the empty plastic bags in J1A or J2A) to pack the diamorphine.¹²³

75 I rejected Nabill’s claim that he only came into contact with the packets of diamorphine when he was packing them away after the quarrel with Mashitta. Even if it explained how he came into contact with the exterior surface of the larger packets (*eg*, F1E3, on which his DNA was found (see [15(a)] above)) it does not explain why his DNA was found on F1D3A, which was one of the mini packets *enclosed within one such larger packet, F1D3*. I also rejected his assertion that Faizal or Sufian could have used plastic bags from J1A or J2A to pack the drugs, and that since “some of” J1A or J2A belonged to Nabill, his DNA could have been found on the empty bag they used to pack F1D3A.¹²⁴ This was pure speculation. There was also no explanation why, on Nabill’s speculation, his DNA was transferred onto an empty bag in the stock of empty plastic bags contained in J1A or J2A (which were all neatly bundled and clearly new and unused) before Faizal or Sufian supposedly used that same bag to pack the diamorphine. The better explanation is that Nabill’s DNA was found on F1D3A because he was involved in packing it.

76 I was also satisfied that Nabill had been in contact with the packet of diamorphine, G1A1, which was in a plastic bag (G1A) *inside* a “Mintek” bag (G1) which was in turn found on the bed. Nabill’s DNA was found on the exterior and *interior* surfaces of the plastic bag (G1A).¹²⁵ Since G1A was found

¹²³ 16/8/18 NE 38–40, 64, 79.

¹²⁴ 16/8/18 NE 38–40.

¹²⁵ PB 185.

inside G1 which was on the bed at the time of Nabill’s arrest, Nabill would not have come into contact with the surface of G1A when supposedly quarrelling with Mashitta or when putting the other packets of diamorphine into the “Akira” box after the argument. Nabill had no explanation of how G1A1 came to be in Bedroom 1. In the 1st Statement recorded at the time of his arrest, he recognised G1A1 as heroin and said it belonged to Danish who would sell it. However, since he later recanted all his accounts relating to Danish, this explanation (that G1A1 belonged to Danish who would sell it) no longer holds water. During the trial, he testified that he could not recall if he had seen G1A.¹²⁶ In my view, the DNA evidence is persuasive that Nabill had handled G1A which contained G1A1. While nothing turns on this, I also note that Nabill’s DNA was found on the exterior, handle, front compartment and main compartment of the “Mintek” bag.

Nabill’s statements to CNB

77 I turn now to Nabill’s investigation statements. As noted at [65]–[70] above, Nabill’s account was continually evolving, as should be apparent from my summary of his statements at [25]–[34] above. In my view, this was detrimental to Nabill’s credibility. The question is whether he had any good explanation for the changes in his account. Nabill explained that he had initially implicated Danish in the first six statements because he was suffering from drug withdrawal symptoms and was therefore confused, fearful and not in the right state of mind.¹²⁷ He claimed that the drug withdrawal symptoms lasted for about one week – presumably one week from the time of his arrest, in which period all the first six statements were recorded.

¹²⁶ 16/8/18 NE 64–65.

¹²⁷ 16/8/18 NE 16.

78 In my judgment, Nabill failed to show that his state of mind was affected by drug withdrawal symptoms at the time when he made the statements. On the contrary, I found that Nabill had made each statement being aware of what he was saying at the material time and had told deliberate untruths in the course of investigation. He did not give consistent evidence at the trial about his state of mind at the time of giving the statements. Overall, I found Nabill to be an untruthful witness.

79 First, Nabill's stated reasons for having falsely implicated one Danish (which allegations he subsequently recanted in his later investigation statements and at the trial) vacillated during the course of the trial. In my view, none of his stated reasons – apart from his final admission that he had deliberately fabricated the account about Danish – were convincing.

(a) Initially, he explained that he was suffering from drug withdrawal symptoms and was therefore confused, fearful and not in the right frame of mind when he gave the statements implicating Danish.

(b) Shortly after, he stated that he believed in the truth of the statements when he made them, *ie*, he sincerely believed at the time when he made the statements that it was Danish who had brought the drugs to the Flat.¹²⁸ Thus, he claimed that he had not deliberately made false statements. He stated that from the 7th Statement dated 23 May 2016 onwards, he came to believe that it was Faizal who had brought the drugs to the Flat, because Mashitta (who had in turn been informed by the domestic helper) had told him that Faizal brought the trolley bag. I found this explanation entirely unconvincing. According to Nabill at

¹²⁸ 16/8/18 NE 17–18.

trial, he had already discovered *prior to* his arrest at around 4pm on 27 January 2016 that Faizal had brought the trolley bag to the Flat and that it was in the storeroom. Thus, there was no reason why he would have implicated Danish in the first six statements which were all recorded *after* his arrest, and why he would change his position and implicate Faizal only from the 7th Statement when he was supposedly prompted to change his original account because of what Mashitta had allegedly told him. Nabill's final account did not admit room for him to have sincerely believed, at the time he made the statements implicating Danish, that Danish had brought the trolley bag and drugs to the Flat.

(c) In cross-examination, Nabill stated that he had given all his statements voluntarily and that he knew what he was saying when he made those statements, which included the statements implicating Danish.¹²⁹ He was then pressed about why he had to implicate an innocent person even if he was shocked and not in the right frame of mind and “felt [he had] to give an answer”.¹³⁰ He replied that he had *deliberately* implicated Danish because he knew from Faizal that Danish was the supplier of the drugs that were found in Bedroom 1 and the trolley bag.¹³¹ At the same time, he agreed that he was not confused or in fear, and was not ignorant of what he was saying when he made the statements implicating Danish. Nabill then adjusted his explanation – he stated that after the CNB allowed him to call Danish, he found out from Danish that the drugs belonged to Danish and Danish also told him that he had passed the drugs to Faizal. That was why he deliberately

¹²⁹ 16/8/18 NE 46.

¹³⁰ 16/8/18 NE 87.

¹³¹ 16/8/18 NE 87.

implicated Danish in the 1st Statement.¹³² I did not accept this explanation. It was undisputed that the phone call was made to Danish only *after* Nabill had given the 1st Statement.¹³³ His claim that he learnt that Danish was Faizal's supplier during this call was thus a patent lie.

(d) Later during cross-examination, Nabill attempted to revert to his earlier claim that he had "mistakenly mentioned" Danish's name because he was suffering from drug withdrawal symptoms and was not in the right frame of mind.¹³⁴ However, when questioned about specific parts of his statements, such as the details he furnished about how he met Danish, he admitted that he had *deliberately made up* stories regarding Danish.¹³⁵ When he was further questioned about specific parts of his statements, Nabill changed his stance again and said that he had deliberately told untruths in some parts of the statements and he was "talking nonsense" in other parts of the statements.¹³⁶ But he then admitted that the details he furnished about Danish had been deliberately concocted.¹³⁷

80 It was clear, in my view, that Nabill had knowingly and deliberately concocted a story about Danish having brought the drugs to the Flat, and that he had no good explanation for having done so. Nabill admitted that the statements made shortly after his arrest were made voluntarily and he knew what he was saying in those statements.¹³⁸ This included the 4th Statement (whereby he gave

¹³² 16/8/18 NE 88.

¹³³ 16/8/18 NE 88–89; PB 110 (at S/N 657).

¹³⁴ 16/8/18 NE 92–94.

¹³⁵ 16/8/18 NE 87, 92–95, 98–99.

¹³⁶ 16/8/18 NE 106–111.

¹³⁷ 16/8/18 NE 113.

a lengthy account of his relationship with Danish) in which he stated he had deliberately concocted a story pertaining to Danish based on what Faizal had told him. Indeed, Nabill must have been aware of what he was alleging because, in line with his allegation in the 1st Statement that the drugs belonged to Danish, he made phone calls (apparently) to Danish after his arrest in the presence of CNB officers.¹³⁹ Furthermore, the account of Danish which he later recanted was not bereft of details but was fairly lengthy. Clearly, despite any drug withdrawal symptoms, Nabill had applied his mind to developing an elaborate account about Danish, yet all these details were by his own admission untrue because he had never met Danish.¹⁴⁰ The inescapable conclusion was that Nabill had deliberately told lies to the CNB.

81 Second, even if Nabill was suffering from drug withdrawal symptoms when the 1st to 6th Statements were recorded, it was evident that these symptoms were not the reason why he had put forward his initial story about the drugs belonging to Danish. This was evident from the fact that Nabill tried to maintain this story about Danish even after any purported drug withdrawal symptoms would have worn off. Dr Chua testified that any such symptoms would last between two to seven days, and Nabill also agreed that any such symptoms that he suffered wore off after about seven days from his arrest.¹⁴¹

(a) Dr Kelvin Ng examined Nabill on 22 and 23 February and 4 March 2016 (see [23] above).¹⁴² Dr Ng stated that Nabill was able to give

¹³⁸ 16/8/18 NE 46.

¹³⁹ 16/8/18 NE 10–11, 88–89.

¹⁴⁰ PB 467–471.

¹⁴¹ 15/8/18 NE 15; 16/8/18 NE 16, 102.

¹⁴² PB 279–283.

a consistent account of what had occurred. At that time, Nabill continued to refer to “Dhanesh” which, he confirmed at the trial, was a reference to Danish.¹⁴³ He told Dr Ng about his relationship with Dhanesh and how Dhanesh had left the drugs in the Flat on the night of 26 January 2016. By the time Dr Ng examined Nabill, any drug withdrawal symptoms would have worn off. When he was asked why he nonetheless told Dr Ng that Danish was responsible for the drugs in the Flat, Nabill could only say that he could not recall what he said to Dr Ng.¹⁴⁴

(b) In the 8th Statement recorded on 24 May 2016, Nabill was asked in what packaging Danish supplied “ice” to him, and he gave an intelligible description, implicitly continuing to maintain that Danish, rather than Faizal, was his “ice” supplier. It was only after he was shown the CCTV footage of Faizal in the lift leading up to the Flat on 26 January 2016, and realising that the CCTV footage did not capture any images of Danish, that Nabill then changed his evidence in the *very same statement* to say that Danish had never been to his Flat. As I found at [68] earlier, Nabill changed his account to “Faizal” only when he realised that his account about Danish could not stand in the face of the objective CCTV evidence. Indeed, Nabill admitted that he began to attribute the drugs to Faizal in the end because he had viewed the CCTV footage, in that he had a “better view on the CCTV” footage.¹⁴⁵ I found this explanation, that the CCTV footage helped him to clarify what happened, to be utterly illogical and untrue. Details such as whether Nabill had ever met Danish, whether Danish had ever been to the Flat,

¹⁴³ 16/8/18 NE 117.

¹⁴⁴ 16/8/18 NE 117–118.

¹⁴⁵ 16/8/18 NE 100, 102; PB 452–453.

whether Danish had “framed” him with drugs and so on, were matters within Nabill’s own experience and knowledge, and he would not have needed the CCTV footage to realise that his account about Danish was false. Moreover, if he knew – as he later testified – before his arrest that Faizal had brought a trolley bag to the Flat, he did not need the CCTV footage to supply him with that knowledge.

82 Therefore, I found Nabill to be an untruthful and unreliable witness, who kept changing his story along the way. He clearly knew, at the time he made each statement, what he meant to say, and he had made up stories about Danish in his initial statements to hide the fact that he knew that Faizal had come to the Flat on 26 January 2016 with a trolley bag of drugs. I find he did so to disassociate himself from the drugs that were subsequently seized from the Flat.

Submissions by the Defence

83 Before I conclude, I deal with various arguments raised by the Defence which have not been dealt with above.

84 First, the Defence submitted that the CNB failed to investigate other persons who may have been involved in the drug transactions, such as Mashitta, Sufian, Khairul and Faizal.¹⁴⁶ It was unclear how this affected the Prosecution’s case against Nabill. The Defence did not dispute that multiple persons could be charged for the same offence in relation to the same transaction or the same set of drugs.¹⁴⁷ It did not dispute that Faizal had in fact been investigated, although charges against him were still pending.¹⁴⁸ Ultimately, the prerogative to charge

¹⁴⁶ Defence Closing Submissions, para 38–39.

¹⁴⁷ 16/8/18 NE 126.

any person lies with the Public Prosecutor. In so far as the Defence is alleging that the drugs could have “belonged” to and been intended for trafficking by any one of these other individuals,¹⁴⁹ my analysis will take account whether Nabill possessed the drugs for the purpose of returning them to any of these other individuals, or for the purpose of trafficking. I also add that there is no requirement to prove *ownership* of the drugs for an offence under s 5(1)(a) read with s 5(2) of the MDA to be made out.

85 Next, the Defence submitted that the Prosecution had refused to produce a statement taken from the domestic helper to show that she had allowed Faizal entry into the Flat on 26 January 2016 and that Faizal had brought the trolley bag.¹⁵⁰ Again this was immaterial and did not affect my findings. I had found that Faizal was the one who brought the trolley bag to the Flat, so the domestic helper’s evidence in this regard would add nothing more. Even if she had allowed Faizal into the Flat on 26 January 2016, this did not mean that Nabill was unaware that Faizal had brought a trolley bag containing drugs that night. I have explained my reasons for finding that Nabill knew that Faizal was bringing a trolley bag to the Flat and that the trolley bag contained drugs, and the evidence of the domestic helper would not impact any of those reasons. In fact, the Defence chose not to call witnesses who could have supported Nabill’s version of events, namely Mashitta, Faizal and Sufian (whom Nabill claimed had laid out the drugs in Bedroom 1 and whom Nabill called subsequently to ask him to clear the things).

¹⁴⁸ 16/8/18 NE 124.

¹⁴⁹ Defence Closing Submissions, para 40.

¹⁵⁰ Defence Closing Submissions, para 46.

86 Next, the Defence submitted that the Prosecution should have disclosed statements recorded from Mashitta, Faizal and Sufian because these statements could have been advantageous to the defence. I rejected this submission. Under s 259 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), any statement made by a person (other than the accused) in the course of any investigation is inadmissible in evidence unless it falls within an exception listed in s 259(a) to (e). The Defence did not identify which exception applied, and why it would apply, such that these statements if disclosed could be admitted at the trial. The Prosecution's disclosure obligations as set out in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar No 1*") are not affected by the operation of any ground for non-disclosure recognised by any law (see *Muhammad bin Kadar and another v Public Prosecutor and another matter* [2011] 4 SLR 791 at [18]). In any event, the Defence also did not attempt to show how these statements, even if inadmissible under s 259, could have fallen within the Prosecution's obligations to disclose "any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused" (*Kadar No 1* at [113]). If the Defence could have benefitted from the evidence of Mashitta, Sufian or Faizal, it could also have called them as witnesses but chose not to.

87 Finally, the Defence suggested that Sufian could have been connected to the drugs found in the Flat because the CCTV footage showed him carrying a red packet that was similar in appearance to G1B and G1C when he was in the lift heading down from the floor where the Flat was at around 6.33am on 26 January 2016. He was no longer carrying this packet when he was seen again in the lift, going up to the floor where the Flat was at around 6.57am.¹⁵¹ The

Defence claimed that Sufian could have been carrying out transactions involving the red packets.¹⁵² The drugs in G1B and G1C did not form the subject of the charges against Nabill (even if Sufian were in some way connected to those drugs), and the drugs which Nabill was charged with trafficking were packaged in a different manner. In any event, Sufian's role, if any, would not affect my findings as regards Nabill because Nabill's involvement in the drugs found in Flat was not precluded by Sufian's (even if proved).

Conclusion

88 In conclusion, I was satisfied that the Prosecution had proved its case beyond a reasonable doubt that Nabill had actual possession of the drugs (*ie*, the diamorphine in Bedroom 1 and the cannabis in the trolley bag) and knew the nature of these drugs. I was further satisfied that the Prosecution was able to rely on the presumption in s 17 of the MDA that Nabill was in possession of the drugs for the purposes of trafficking since the quantities of both types of drugs exceeded the amounts specified in s 17, and found that Nabill failed to rebut this presumption on the balance of probabilities. I summarise below my findings.

89 First, as regards the element of possession, since Nabill had physical control of the Flat, the "Akira" box, the "Mintek" bag and the trolley bag, the latter three of which contained the drugs in question, I was entitled to infer that Nabill had knowledge of the existence of the drugs in each of these receptacles (*Zainal* at [16]). It was incumbent on him to show why, despite his physical control of them, he "reasonably ought not to be taken to be in possession of [their] contents" (see *Zainal* at [17]).

¹⁵¹ 15/8/18 NE 105–106.

¹⁵² Defence Closing Submissions, para 41.

(a) In relation to the diamorphine, I found that Nabill was in possession of the diamorphine (G1A1) found in the “Mintek” bag because it was found in his control and his DNA was found on exhibit G1A. As for the 63 packets of diamorphine in the “Akira” box, Nabill by his own account *knew* that they were in the “Akira” box because, according to him, *he* had placed them there after the alleged quarrel with Mashitta. The fact that I have rejected his account means that Nabill by his own admission knew, prior to his arrest, that there was diamorphine in the “Akira” box, but had furnished no credible reason why it was there. I rejected his explanation that Sufian or Faizal was responsible for placing the diamorphine in Bedroom 1 because his account was discredited on many fronts. Even if Faizal had placed the diamorphine in Bedroom 1 on the night of 26 January 2016, I found that Nabill would have known of this and would have had agreed to it. This is because I have found that Nabill knew that Faizal was bringing a trolley bag to the Flat on 26 January 2016 and knew what it contained. Either way, Nabill had no credible explanation for why he ought not to be taken to be in possession of them. I was thus satisfied he had actual possession of them.

(b) As for the cannabis, even by Nabill’s account, he was aware of the presence of the trolley bag and that it contained something which turned out to be the cannabis. He claimed to have discovered the trolley bag at about 4pm on 27 January 2016, and immediately called Faizal about it. In any event, I rejected Nabill’s account that he did not know that Faizal had brought the trolley bag containing drugs to the Flat, and I found that Nabill knew that Faizal was bringing something to the Flat in the trolley bag and that he had agreed to it. He therefore had physical control of the cannabis in the trolley bag and the requisite knowledge

that the trolley bag contained something which was later discovered to be the cannabis.

90 Second, as regards the element of knowledge, I found that Nabill knew the nature of the drugs in the Flat, specifically that the drugs in Bedroom 1 which formed the subject of the 1st Charge were diamorphine and that the drugs found in the trolley bag which formed the subject of the 2nd Charge were cannabis.

(a) In relation to the diamorphine, Nabill on his own account had seen the diamorphine contained in F1A, F1B, F1C, F1D and F1E laid out on the bed before his arrest and recognised them as diamorphine. In relation to G1A1, I found that Nabill had been in contact with that packet and would have known it to contain diamorphine (as evident in the 1st Statement where he was able to identify the content of G1A1). Actual knowledge was therefore proved.

(b) As for the cannabis, I rejected Nabill's evidence that he thought the trolley bag contained cigarettes and his account of how the trolley bag was brought to the Flat without his knowledge or consent. I found that he knew that Faizal was bringing drugs in the trolley bag to the Flat on 26 January 2016. Even by his own account, Nabill knew by around 4pm on 27 January 2016 of the trolley bag in the storeroom and knew or suspected at that time that it contained drugs. The evidence as a whole, including my findings that Nabill was *expecting* and *involved in* the delivery of the drugs by Faizal and told deliberate lies to the CNB and to this court to conceal his involvement with the drugs in the trolley bag, lead to a strong inference that Nabill knew the precise nature of the drugs that Faizal was bringing to the Flat in the trolley bag.

91 Third, on the element that the possession of the drugs was for the purpose of trafficking, I found that Nabill failed to rebut the presumption of trafficking in s 17 such that he possessed the drugs for some other purpose. Nabill's case was that the drugs were in his possession for Faizal or Sufian to retrieve them, and that he was wholly uninvolved in the procurement or intended trafficking of these drugs. His evidence as to the intended purpose of the drugs was therefore inextricably linked to his wider story about how the drugs came to be found in the Flat without his knowledge or consent. For the reasons above, I rejected his evidence about how the drugs came to be found in the Flat, and accordingly rejected his evidence that he had no purpose for the drugs apart from storing them for Faizal or Sufian's retrieval. Nabill also did not put forward a defence that the drugs were intended for his personal consumption. Furthermore, a large quantity of diamorphine and cannabis was in his possession – more than four times the amount of diamorphine at which capital punishment would be imposed, and more than twice the amount of cannabis at which capital punishment would be imposed.

92 On the Prosecution's alternative case, I was also satisfied that the presumptions under ss 18(1) and 18(2) of the MDA were engaged. It was undisputed that Nabill and Mashitta owned the Flat and that Nabill was residing at the Flat and had the keys to, and control of, the Flat, including Bedroom 1 and the storeroom. As regards the "Akira" box specifically, it was not disputed that it belonged to Nabill. It was thus clear that the "Akira" box, the "Mintek" bag and trolley bag were also in his possession, custody or control at the material time. To rebut the presumptions, Nabil had to show on a balance of probabilities that he did not have the drugs in his possession because he did not know that the various receptacles or places contained a controlled drug and that he did not know or could not reasonably be expected to have known the nature of the drug

(see *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [16]–[17]; *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [34]–[35]). For the reasons given earlier (see also [89]–[90] above), I found that Nabill failed on a balance of probabilities to rebut the presumptions of possession and knowledge.

93 Turning to the element of trafficking, even without the presumption of trafficking under s 17 of the MDA, I was satisfied that the Prosecution had proved beyond a reasonable doubt that Nabill possessed the drugs in question for the purposes of trafficking. The court is entitled to infer the drugs were in the possession of an accused for the purpose of trafficking on the basis of evidence such as the quantity of drugs, the presence of drug trafficking paraphernalia, the absence of evidence that the drugs were for his personal consumption and other circumstantial evidence substantiating a finding that he was involved in drug trafficking (see, eg, *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550 at [48]; *Abdul Kahar bin Othman v Public Prosecutor* [2016] SGCA 11 at [92]). In the present case, the evidence pointed towards Nabill being involved in trafficking the drugs found in his possession.

94 As stated above, I rejected Nabill’s evidence that he intended to return the drugs to Faizal or Sufian. The sheer quantity of the drugs (as stated at [91] above) made an inference of trafficking irresistible. It was not Nabill’s case that the drugs were intended for his personal consumption and, as I had rejected his evidence that he had nothing to do with how the drugs came to be found in the Flat, I thus found that they were stored there for the purposes of trafficking. Nabill also did not deny that four weighing scales (H1B, H1C, F1H and F1G4) were in his possession and were used by him (though he claimed that his use was limited to ascertaining the weight of the “ice” he obtained for his own

consumption).¹⁵³ Moreover, the fact that Nabill's DNA was found on one of the mini packets of diamorphine (F1D3A) showed that he was involved in packing the mini packets. Finally, his attempts to distance himself from the drugs through the fabrication of elaborate accounts showed that he was concerned to conceal his involvement.

95 In sum, I rejected Nabill's defence in its entirety and found his evidence unreliable, incredible and inconsistent with the objective evidence. I found that on either of the Prosecution's alternative cases the elements of the 1st and 2nd Charges against Nabill had been proved beyond a reasonable doubt. Accordingly, I convicted Nabill on the charges.

Decision on sentence

96 Given the amount of drugs, the prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. However, s 33B of the MDA confers on the court the discretion to impose the alternative sentence of life imprisonment and the mandatory minimum 15 strokes of the cane, provided the offender satisfies the requirements in s 33(B)(2)(a) of the MDA and receives a certificate of substantive assistance from the Public Prosecutor. The accused bears the legal burden of proving, on a balance of probabilities, that his involvement in a drug trafficking offence was restricted only to the activities of a courier as listed in s 33B(2)(a) of the MDA (see *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [34]).

97 In the present case, the Prosecution submitted that Nabill failed to show that his involvement was restricted only to the activities listed under s 33B(2)(a) of the MDA. I agreed with the Prosecution's submission because Nabill, having

¹⁵³ 16/8/18 NE 85.

run a defence that he was unconnected to the drugs found in the Flat, had not adduced any evidence to show that his involvement was limited to that of a courier, and the Defence had also not suggested that Nabill was a courier.¹⁵⁴ In any event, the Prosecution did not issue a certificate of substantive assistance. Accordingly, I imposed the mandatory sentence of death on Nabill.

Audrey Lim
Judicial Commissioner

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for the Prosecution;
Hassan Esa Almenoar (R Ramason & Almenoar) and Sheik Umar bin
Mohamed Bagushair (Wong & Leow LLC) for the accused.

¹⁵⁴ 5/11/18 NE 6.