

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

[2022] SGHC 111

Criminal Case No 18 of 2021

Between

Public Prosecutor

And

Mohammad Shaffy bin Hassan

GROUND OF DECISION

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

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Public Prosecutor
v
Mohammad Shaffy bin Hassan

[2022] SGHC 111

General Division of the High Court — Criminal Case No 18 of 2021

Audrey Lim J

3–4, 7–11, 15–16 February 2022, 25 April 2022, 13 May 2022

13 May 2022

Audrey Lim J:

1 The accused (“Shaffy”) was charged with possession of diamorphine for the purpose of trafficking, an offence under s 5(1)(a), read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), as follows:

That you, **Mohammad Shaffy bin Hassan**,

on or about 21 June 2018 at about 7.35pm in the vicinity of East Coast Parkway (ECP) exit 10B slip road to Bedok South Road ... Singapore, did traffic in a “Class A” controlled drug ... *to wit*, by having in your possession for the purpose of trafficking seven packets containing a total of 1047.02 grams of granular / powdery substance which was analysed and found to contain not less than 16.34 grams of diamorphine, without authorisation ... and you have thereby committed an offence under section 5(1)(a) read with section 5(2) ... which is punishable under section 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

2 Shaffy claimed that he had collected bundles which were supposed to contain ecstasy pills and intended to return the bundles to his supplier upon

discovering that they contained diamorphine. I rejected his defence and found that the Prosecution had proved the charge against Shaffy beyond a reasonable doubt. Accordingly, I convicted Shaffy on the charge. As the Prosecution did not issue a certificate of substantive assistance in respect of Shaffy and I had found that he was not a courier within the meaning of s 33B(2)(a) of the MDA, I passed the mandatory death sentence on him.

Prosecution's case

3 The Prosecution's case was as follows.

4 On 21 June 2018, at about 7.35pm, a vehicle driven by Shaffy ("the Car") was intercepted by officers from the Central Narcotics Bureau ("CNB") at East Coast Parkway Exit 10B slip road to Bedok South Road. Station Inspector Sunny Tay ("Sunny"), Staff Sergeant Au Yong ("Au Yong") and Sergeant Nasrulhaq ("Nasrulhaq") arrested Shaffy, whilst Staff Sergeant Helmi ("Helmi") and another officer arrested Shaffy's girlfriend ("Umi"). To effect the arrest, Sunny broke the window on the driver's side following an unsuccessful attempt to open the driver's door of the Car.¹

At the Carpark and recovery of the Drugs in the Car

5 Au Yong then drove the Car to a multi-storey carpark ("the Carpark") with Shaffy and Nasrulhaq seated in the backseat.

6 At about 7.45pm, Sergeant Dadly ("Dadly") asked Shaffy a number of questions. In particular, Dadly asked Shaffy if he had anything to surrender and

¹ AB 100 (Sunny's Statement at [5]); AB 114 (Helmi's Statement at [5]); AB 117 (Au Yong's Statement at [5]); AB 150 (Nasrulhaq's Statement at [5]); 3/2/22 NE 10–11, 17, 26; 4/2/22 NE 60; 8/2/22 NE 3–4.

he replied that he had two parcels containing powdery substances inside his bag in the Car. Dadly then narrated the questions and answers to Helmi which Helmi wrote in the field diary (“Field Diary”). I will refer to this as the 1st Statement.²

7 At about 7.50pm at the Carpark, Au Yong searched the Car and found various items.³ These included a Gucci bag (Exhibit A1) containing one NTUC plastic bag (Exhibit A1A) on the floorboard of the driver’s seat. Upon searching inside the NTUC plastic bag, Au Yong found the following items:

- (a) a black bundle (Exhibit A1A1) – this was subsequently found to contain a packet of brown granular substances (Exhibit A1A1A);
- (b) a packet (Exhibit A1A2) containing one packet of brown granular substances (Exhibit A1A2A); and
- (c) a packet (Exhibit A1A3) containing four packets of brown granular substances (Exhibits A1A3A, A1A3B, A1A3C and A1A3D).

8 The six packets, namely Exhibits A1A1A, A1A2A, A1A3A, A1A3B, A1A3C and A1A3D, and an additional packet (Exhibit A1A3D1) which Investigating Officer Neo Zhan Wei (“IO Neo”) noticed was in A1A3D whilst the exhibits were processed at CNB Headquarters (“CNB HQ”), were subsequently analysed by the Health Sciences Authority (“HSA”) and found to contain a total of 1,047.02 grams of powdery substance with not less than 16.34 grams of diamorphine.⁴ I refer to them in totality as “the Drugs”.

² AB 133 (Dadly’s Statement at [7]); AB 138–139, 160–161; 4/2/22 NE 2–4.

³ AB 118 (Au Yong’s Statement at [7]–[8]).

⁴ AB 50–56.

9 Au Yong also found Shaffy’s personal properties in the Car and Gucci bag and on Shaffy. I will refer to the items found in the Car and Shaffy’s personal properties as “the Items”. Au Yong provided a description of the Items which Helmi recorded in the Field Diary.⁵ Sunny packed the Items into tamper-proof bags, and sealed the bags save for the one containing Shaffy’s personal properties as his personal properties might be required when the CNB officers conducted a raid at Shaffy’s home. Sunny then placed the tamper-proof bags in a duffel bag (“Duffel Bag”) and handed the Duffel Bag to Dadly for Dadly to record a statement from Shaffy. Whilst Au Yong searched the Car, Nasrulhaq and Dadly were escorting Shaffy. Inspector Kua was also present and had witnessed Sunny sealing the seized items in tamper-proof bags.⁶

10 At about 8.35pm, Dadly proceeded to record a contemporaneous statement from Shaffy (“2nd Statement”) in a CNB vehicle at the Carpark.⁷ At about 9.19pm, Shaffy received a WhatsApp call from one “M2” on his handphone, which he did not answer. At about 9.26pm, Dadly directed Shaffy to return M2’s call and Shaffy spoke to M2 via loudspeaker in Dadly’s presence (“First Call”). At the same time, Dadly transcribed the contents of this conversation in the Field Diary, which Shaffy signed. Subsequently M2 called Shaffy at about 9.39pm and 10.11pm via WhatsApp (the “Second Call” and “Third Call” respectively). Shaffy answered both calls and spoke to M2 via loudspeaker in Dadly’s presence. Dadly similarly transcribed both conversations in the Field Diary, which Shaffy signed. At about 10.45pm, Dadly

⁵ 4/2/22 NE 60–61; 8/2/22 NE 17, 19–20.

⁶ AB 92–93 (Kua’s Statement at [7]–[9]); AB 102 (Sunny’s Statement at [9]–[10]); AB 119 (Au Yong’s Statement at [9]); AB 134 (Dadly’s Statement at [11]–[12]); 3/2/22 NE 29; 4/2/22 NE 9, 42, 57; 8/2/22 NE 2, 5–6, 13–14.

⁷ AB 134 (Dadly’s Statement at [13]); AB 143–147, 157–158.

completed recording the 2nd Statement and Shaffy signed against the contents after the statement was read back to him.⁸

11 Dadly then handed the Duffel Bag, containing the Items, to Sergeant Yogaraj (“Yogaraj”).⁹

Search of Shaffy’s residence

12 Subsequently, Yogaraj, Dadly and Nasrulhaq escorted Shaffy to his residence (“the Unit”) in a CNB car, with Yogaraj holding the Duffel Bag. Yogaraj and Staff Sergeant Muhammad Fardlie (“Fardlie”) searched the Unit, with Nasrulhaq, Dadly and Shaffy present. Fardlie recovered various items from the kitchen (“the Kitchen Items”) which included:¹⁰

- (a) a digital weighing scale (Exhibit B1);
- (b) a packet (Exhibit B2) of empty sachets (Exhibit B2A);
- (c) a plastic bag (Exhibit B3) containing cut straws (Exhibit B3A);
and
- (d) a white plastic bag (Exhibit C1) containing, among others, a packet containing numerous empty sachets (Exhibit C1A) and four empty sachets (Exhibit C1E).

⁸ AB 134–136 (Dadly’s Statement at [13]–[19]); AB 140–142, 162–164; AB 157–158; AB 759; 4/2/22 NE 19–22, 29–31.

⁹ AB 136 (Dadly’s Statement at [20]); AB 128–129 (Yogaraj’s Statement at [5]).

¹⁰ Agreed Statement of Facts at [3]; AB 111 (Fardlie’s Statement at [10]–[11]); AB 129 (Yogaraj’s Statement at [6]–[8]); AB 136–137 (Dadly’s Statement at [21], [23]); AB 150 (Nasrulhaq’s Statement at [9]); 3/2/22 NE 23; 4/2/22 NE 55; 11/2/22 NE 31–33.

13 Inspector Eugene Eng placed and sealed the Kitchen Items in tamper-proof bags and handed them to Yogaraj who placed them in the Duffel Bag. Yogaraj recorded the description of the items in the Field Diary, which description was provided by Fardlie, and handed the Duffel Bag to Dadly who was returning to CNB HQ.¹¹ A further search was later conducted of the Unit by Senior Staff Sergeant Asilah who found a packet of empty straws (Exhibit D1), which Fardlie then sealed in a tamper-proof bag and handed to Helmi.¹²

At CNB HQ

14 Following the search of the Unit, Shaffy was escorted to CNB HQ by Fardlie, Yogaraj and Nasrulhaq in a CNB vehicle. Separately, Dadly also proceeded back to CNB HQ whereupon he handed the Duffel Bag to Staff Sergeant James Phang who then handed it to Helmi as Helmi was tasked to hand over the seized items to the investigating officer.¹³

15 At CNB HQ, Shaffy was escorted to a room adjacent to the Exhibit Management Room (“EMR”) by Helmi and other officers, where he had a clear view of the EMR as the two rooms were separated by a glass window.¹⁴ In the EMR, the Items, the Kitchen Items and Exhibit D1 were processed. Helmi handed the exhibits in the Duffel Bag to IO Neo who handed them to the Forensic Response Team officers, Haifaa and Nurliyana (“FORT Officers”). The FORT Officers unsealed the tamper-proof bags and laid the exhibits on a

¹¹ AB 97 (Eugene’s Statement at [12]); AB 130 (Yogaraj’s Statement at [9]–[10]); 3/2/22 NE 56, 64; 4/2/22 NE 93; 11/2/22 NE 32–34.

¹² AB 111–112 (Fardlie’s Statement at [14]); AB 115–116 (Helmi’s Statement at [12]); AB 154 (Asilah’s Statement at [4]); 4/2/22 NE 63–64, 97.

¹³ AB 115 (Helmi’s Statement at [11]); AB 127 (James’s Statement at [10]); AB 137 (Dadly’s Statement at [26]); 3/2/22 NE 44, 48; 4/2/22 NE 12–13, 64–65, 76.

¹⁴ AB 116 (Helmi’s Statement at [13]); AB 171 (Neo’s Statement at [10]); 4/2/21 NE 64–65; 8/2/22 NE 30–31; 10/2/22 NE 4–5.

table to facilitate photography, DNA collection, marking and weighing of the exhibits. While they laid Exhibit A1A3D on the table, IO Neo noticed a packet of granular/powdery substance (“the Extra Packet”) within Exhibit A1A3D. He thus instructed Nurliyana to remove the Extra Packet from Exhibit A1A3D and marked it as Exhibit A1A3D1.¹⁵

Shaffy’s statements

16 The Prosecution tendered eight statements recorded from Shaffy (“the Statements”), as follows:

(a) two contemporaneous statements recorded by Dadly on 21 June 2018 (the 1st and 2nd Statements respectively);¹⁶

(b) a cautioned statement recorded under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) on 22 June 2018 by IO Neo (“3rd Statement”);¹⁷

(c) five investigative statements recorded by IO Neo under s 22 of the CPC on 26 June 2018 at about 10.36am (“4th Statement”), 26 June 2018 at about 2.45pm (“5th Statement”), 27 June 2018 (“6th Statement”), 17 September 2018 (“7th Statement”) and 21 December 2018 (“8th Statement”).¹⁸

17 While the Defence posited that IO Neo had posed Shaffy several questions to record the 3rd to 8th Statements and failed to record these

¹⁵ AB 41 (Nurliyana’s Statement at [4]); AB 116 (Helmi’s Statement at [14]); AB 172 (IO Neo’s Statement at [10]–[11]); 8/2/22 NE 40; 10/2/22 NE 2–3, 7, 35–36.

¹⁶ AB 138–139, 143–147, 157–158, 160.

¹⁷ AB 189–191.

¹⁸ AB 192–194; AB 195–196; AB 197–226; AB 227–239; AB 240–244.

questions, Shaffy agreed that the Statements were voluntarily given and did not dispute the accuracy of their contents.¹⁹ In court, Shaffy sought to clarify certain aspects of some of the Statements, which I will deal with later where relevant.

Close of the Prosecution’s case

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

The Defence

19 Shaffy’s case was as follows.

20 Shaffy came to know one “MB” in early 2018. MB initially offered Shaffy a job to deliver tobacco. Around May 2018, MB requested Shaffy to deliver a different item (“the Stuff”) which MB did not specify but Shaffy suspected were drugs as it was always sealed in blue tape. He would collect the Stuff in the vicinity of Jurong Bird Park (“JBP”) and send them to Boon Lay Mall or an address at MacPherson. On the second occasion he delivered the Stuff, he became suspicious and asked MB about its contents and MB informed him that he was transporting pills and said it was nothing serious. MB gave the contact of a Malaysian person, “M2”, to Shaffy and instructed Shaffy to place orders for the Stuff directly with M2. Shaffy would then place orders with M2 on MB’s instructions, and M2 would inform Shaffy when to collect the Stuff.²⁰

¹⁹ Defence’s Reply Submissions dated 28 March 2022 (“DWS2”) at [3(ii)]; 10/2/22 NE 23–24; 15/2/22 NE 3, 12.

²⁰ AB 195–196 (5th Statement at [12]–[15], [19]); 15/2/22 NE 45, 49–50, 95.

21 On 19 June 2018, MB instructed Shaffy to order “2 packets”. Although MB did not tell him what the “2 packets” were, Shaffy knew he was ordering drugs. Shaffy then sent a WhatsApp message to M2 saying, “tomorrow 2”.²¹

22 On 20 June 2018, at about 7.00am, M2 sent a WhatsApp message to Shaffy to say that that his order was ready for collection. That evening, Shaffy proceeded to JBP and collected a plastic bag (“Plastic Bag”) which was white. He then sent a WhatsApp message, “Done boss”, to M2 at about 11.07pm to say that he had collected the goods.²²

23 Shaffy intended to deliver one packet to “Wak” (who was MB’s customer for drugs) at Boon Lay Mall and another packet to “Scar” at MacPherson, after collecting the Plastic Bag. It was not disputed that Scar is one Mohamed Hanafiah (“Hanafiah”). Shaffy called Wak twice but Wak did not answer the phone. He then called Hanafiah who said that he could not collect the goods that day. Shaffy then brought the Plastic Bag home. He did not wish to leave it at JBP as he was afraid the goods would go missing.²³

24 After bringing the Plastic Bag home, Shaffy went out and returned to the Unit at about 4.00am on 21 June 2018. He then opened the Plastic Bag and discovered two big bundles wrapped in black tape and one small bundle wrapped in blue tape. He felt something was wrong as he had only ordered two bundles of drugs, previously the bundles were wrapped in blue tape, and the blue bundle which he received this time had an unusual texture. Hence, he

²¹ AB 192 (4th Statement at [2]); 15/2/22 NE 24–26.

²² AB 193 (4th Statement at [3]); AB 886 (WhatsApp chat at s/n 24); AB 887 (WhatsApp chat at s/n 33); 15/2/22 NE 27–28, 30, 37, 92–93.

²³ AB 193 (4th Statement at [3]–[4]); AB 760 (s/n 42–44); 10/2/22 NE 14–15, 48–50; 15/2/22 NE 32–34, 40, 42, 143.

unwrapped the black tape from one bundle which revealed the contents as in Exhibit A1A2 and the blue tape of the small bundle which revealed the contents as in Exhibit A1A3. He left the remaining bundle (Exhibit A1A1) intact. When he saw the contents of Exhibits A1A2 and A1A3 were brown, he suspected they were heroin (or diamorphine). He knew heroin was powdery as he had previously seen white heroin and consumed heroin. He also knew that ecstasy was in the form of pills. As he suspected the drugs to be heroin, he removed a packet from Exhibit A1A3 (which bundle contained a few packets), smelt it, smashed that packet on the outside to make the contents powdery, then took a bit of the powder, placed it on a foil and burnt and smoked it. That was when he was sure it was heroin.²⁴

25 In the process of smashing the small packet, Shaffy damaged it. He thus transferred its contents into a new plastic packet (which could have been Exhibit A1A3B) and placed that packet into Exhibit A1A3. This would explain the analysis by Cheryl Tan from the HSA, who found Exhibit A1A3B and various plastic packets from Exhibits B2A and C1E (seized from the Unit) to have been manufactured by the same machine and come from the same source.²⁵

26 At about 4.26pm on 21 June 2018, Shaffy received a call from one “Danny” who asked if he was going to Haig Road where they would usually hang out. Shaffy asked Danny if MB would be at Haig Road and told Danny that he wanted to meet MB to discuss something. Shaffy wanted to meet MB and “do the exchange” of bundles because Shaffy was supposed to have received two bundles of ecstasy pills but he had received three bundles of heroin. When he placed an order for “2 packets” with M2 on 19 June 2018, he

²⁴ AB 193 (4th Statement at [4]–[6]); 15/2/22 NE 34, 67–70, 89–94; 16/2/22 NE 6–7, 14.

²⁵ AB 240 (8th Statement at [34]); AB 75–80; 9/2/22 NE 5–11; 15/2/22 NE 70, 139.

assumed that he had ordered ecstasy pills. His assumption was based on the occasion where MB had told him that he was delivering “pills” (see [20] above) and another occasion where Shaffy had assisted Wak to exchange drugs which Wak had wrongly received when Wak should have then received ecstasy pills.²⁶

27 Before Shaffy left the Unit, he placed Exhibits A1A1, A1A2 and A1A3 into another plastic bag (Exhibit A1A) as he had disposed the Plastic Bag. After placing Exhibit A1A into his Gucci bag (Exhibit A1), he left the Unit at about 7.00pm to fetch Umi (with the Gucci bag in the Car) and they headed towards the east of Singapore for a meal. That was when he was subsequently arrested.²⁷

28 Shaffy admitted that he had ever consumed heroin, “ice” and ecstasy pills. As for dealing in drugs, his role was limited to delivering them. He did not take orders from customers nor supplied drugs. Further, he had only ever delivered ecstasy pills and had never ordered heroin for, nor delivered heroin to, anyone.²⁸

Elements of the charge

29 The elements to be proved for a charge of possession of a controlled drug for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA are: (a) possession of a controlled drug; (b) knowledge of the nature of the drug; and (c) that possession of the drug was for the purpose of trafficking which was not authorised (*Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 at [63]).

²⁶ AB 693 (s/n 28); 15/2/22 NE 6, 13, 35–36, 45, 95–96, 127, 145; 16/2/22 NE 37.

²⁷ AB 193–194 (4th Statement at [7]); 15/2/22 NE 37–38, 84–85; 16/2/22 NE 14, 36.

²⁸ 15/2/22 NE 45, 47, 130; 16/2/22 NE 7.

30 The Prosecution claimed that Shaffy had actual possession of the Drugs at the time of his arrest and relied on the presumption under s 18(2) of the MDA which provides that any person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of that drug. The Prosecution argued that Shaffy was unable to rebut the presumption on a balance of probabilities. Shaffy admitted that he knew Exhibits A1A2 and A1A3 contained heroin and was indifferent to the contents of Exhibit A1A1. The Prosecution also argued that Shaffy had possession of the Drugs for the purpose of trafficking. This could be inferred from the large quantity of diamorphine in Shaffy's possession which was not for his consumption and the drug trafficking paraphernalia (*ie*, the Kitchen Items) seized from the Unit.²⁹

Integrity of the chain of custody of the Drugs

31 I deal first with the integrity of the chain of custody of the Drugs as Shaffy claimed that he did not witness the search of the Car or the kitchen of the Unit. Shaffy's counsel, Mr Almenoar, also submitted that there was a break in the chain of custody, as the Prosecution was unable to explain how the Extra Packet was not detected by the CNB officers prior to the exhibit processing.³⁰

32 The Prosecution must account for the movement of the exhibits from the point of seizure to analysis, such that there cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits (*Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 at [39]). I was satisfied that the Prosecution had

²⁹ Prosecution's Written Submissions dated 14 March 2022 ("PWS") at [4], [12]–[21].

³⁰ Defence's Written Submissions dated 14 March 2022 ("DWS1") at [132]–[136]; DWS2 at [129(b)].

established beyond a reasonable doubt the chain of custody of the Items (and the Kitchen Items) which were subsequently found to contain the Drugs.

Search and recovery of the Items from the Car

33 Shaffy claimed that he did not witness the search of the Car as he was seated at a kerb (some distance from the Car) and tending to the injuries he had sustained from broken glass when the Car window was smashed to effect his arrest. Hence, he did not know what items were recovered from the Car.³¹ I rejected his claim that he did not witness the search and seizure of the Items.

34 Nasrulhaq and Dadly (who escorted Shaffy during the search) as well as Helmi attested that Shaffy was standing near the Car and observing the search and that he was able to see the search taking place. Sunny, who placed the Items into tamper-proof bags, testified that Shaffy was just beside the Car and positioned near the Car because he had to witness the search. I accepted the testimony of the CNB officers whom I found had no reason to lie. Even if Shaffy did not witness the search of the Car, this was immaterial as he did not dispute that the Items were recovered from the Car.³² In the main, his objection regarding the integrity of the chain of custody pertained to the Extra Packet, which I will deal with later.

Search of the Unit

35 Shaffy also claimed that he did not witness the search of the kitchen in the Unit by Yogaraj and Fardlie and the recovery of the Kitchen Items as he was in the living room.³³ Again, I disbelieved Shaffy. Nasrulhaq and Dadly (who

³¹ 15/2/22 NE 51–52.

³² 3/2/22 NE 18–21; 4/2/22 NE 41–42, 62, 70; 8/2/22 NE 5, 11; 15/2/22 NE 73–75.

³³ 15/2/22 NE 54.

escorted Shaffy) attested that Shaffy had witnessed the search. Yogaraj and Fardlie stated that Shaffy stood at the entrance of the kitchen during the search because the kitchen was small and it would have been difficult to conduct the search of it if Shaffy were present inside. I found the CNB officers had no reason to lie. Regardless, whether Shaffy witnessed the search of the kitchen was not material to the integrity of the chain of custody of the Kitchen Items much less the Drugs (which were found in the Car). Shaffy admitted that the Kitchen Items and Exhibit D1 were from the Unit and that the Kitchen Items (save for Exhibits B3 and B3A) belonged to him.³⁴

Discovery of the Extra Packet and movement of the Drugs

36 Next, Mr Almenoar asserted that the CNB officers' inability to account for the Extra Packet until it was discovered during the exhibit processing cast doubt on the integrity of the chain of custody of the Drugs in totality.³⁵

37 I was satisfied that the Prosecution had established beyond a reasonable doubt the chain of custody of the Drugs including the Extra Packet, and that the drugs found in the Car were the same exhibits analysed and found to contain diamorphine. I accepted the CNB officers' accounts of how the Items were seized, sealed in tamper-proof bags and placed in the Duffel Bag; and how the Duffel Bag was passed from one CNB officer to another until it ended up with IO Neo for exhibit processing at the EMR (see [7]–[15] above).

38 In particular, although the CNB officers had, before the Items were processed at CNB HQ, assumed that there were only four packets of brown

³⁴ AB 42A; AB 42B; 3/2/22 NE 19, 23; 4/2/22 NE 12–13, 55, 86–88, 93–94; 11/2/22 NE 32, 40; 15/2/22 NE 57–59, 63–64.

³⁵ DWS1 at [132]–[134], [136]; DWS2 at [3(i)], [129(b)].

granular substances (Exhibits A1A3A, A1A3B, A1A3C and A1A3D) within Exhibit A1A3, their failure to notice the Extra Packet was unremarkable and did not affect the integrity of the Drugs.

39 At the Carpark, Au Yong had merely looked at Exhibit A1A3 from the outside, which was a transparent packet, to count the number of packets inside. He did not open Exhibit A1A3 to maintain its integrity.³⁶ It was not unusual that Au Yong had overlooked the Extra Packet as it was placed inside Exhibit A1A3D which was in turn one of four packets inside Exhibit A1A3, and the Extra Packet might have been difficult to spot just by looking through Exhibit A1A3 (which was not a big packet and which contained smaller packets). Likewise, when Sunny packed the Items into tamper-proof bags, it was unremarkable that he noticed only four packets within Exhibit A1A3 as he did not open it to verify its contents. Hence, I accepted that Sunny had, in the police report lodged on Shaffy's arrest and exhibits seized, reported Exhibit A1A3 as containing four packets of brown granular substances, and which in any event he had based on a record of the exhibits in the Field Diary.³⁷

40 None of the other CNB officers who had seen Exhibit A1A3 had opened it to verify the number of packets within it. There was also no evidence that the officers who had handled the Duffel Bag had tampered with the Drugs placed in it and given that they were sealed in tamper-proof bags.

41 I accepted that it was only during the exhibit processing in the EMR and when the FORT Officers were unsealing the tamper-proof bags that IO Neo noticed the Extra Packet within Exhibit A1A3D, and he then assigned the

³⁶ 8/2/22 NE 22, 25.

³⁷ AB 102 (Sunny's Statement at [13]); AB 104–107; 8/2/22 NE 6–7, 12–13.

marking “A1A3D1” to it. This was corroborated by Nurliyana who attested that she also saw the Extra Packet within Exhibit A1A3D in the EMR.³⁸ Given Nurliyana’s testimony that she processed the Extra Packet (which was unchallenged by the Defence), there was nothing to Mr Almenoar’s claim that IO Neo did not know whether Nurliyana or Haifaa had processed the tamper-proof bag containing the Extra Packet and there was thus something amiss in the processing of the Drugs.³⁹

42 I also found Mr Almenoar’s claim that the Extra Packet could have been left behind in the EMR prior to the exhibits in Shaffy’s case being brought into the EMR to be pure speculation. As Staff Sergeant Eric Goh (a CNB officer who escorted Shaffy during this time) stated, the EMR would be cleared before it was used for another matter.⁴⁰ More importantly, IO Neo and Nurliyana had attested that the Extra Packet was found *inside* Exhibit A1A3D.

43 Pertinently, Shaffy stated that when he saw Exhibit A1A3 at the Unit, *he did not know how many packets it contained*,⁴¹ despite that he claimed to have handled Exhibit A1A3 extensively. He claimed to have removed one packet from Exhibit A1A3, consumed some of the contents and transferred the remaining contents into a new packet which he then placed into Exhibit A1A3. Further, the packets of the Drugs were individually weighed in Shaffy’s presence in the EMR and Shaffy signed on IO Neo’s Investigation Diary to acknowledge this as he agreed that the weight of the drugs as stated therein was

³⁸ AB 41 (Nurliyana’s Statement at [4]); 8/2/22 NE 40, 43–44.

³⁹ DWS2 at [9]–[11].

⁴⁰ 8/2/22 NE 29.

⁴¹ 15/2/22 NE 69.

accurate.⁴² Shaffy was also subsequently shown photographs of the Drugs when the 4th Statement was recorded and he acknowledged that he had placed Exhibits A1A1, A1A2 and A1A3 into Exhibit A1A and brought them with him in the Car.⁴³ On both occasions, Shaffy did not challenge that the number of packets found within Exhibit A1A3 was incorrect although he had handled Exhibit A1A3. Hence, it was unsurprising for the CNB officers who had merely peered into Exhibit A1A3 to conclude that it contained four packets.

44 Mr Almenoar asserted in Closing Submissions that the court should draw adverse inferences against the Prosecution in respect of the chain of custody of the Drugs. First, the other FORT Officer Haifaa did not testify on the discovery of the Extra Packet which thus supported that its discovery was “highly suspect”. Second, the Prosecution failed to adduce the Field Diary when the various CNB officers who took custody of the Drugs had based their respective accounts of the chain of custody on this document.⁴⁴

45 That Haifaa was not called as a witness did not therefore lead to the conclusion that the discovery of the Extra Packet was highly suspect. Mr Almenoar had not shown how Haifaa’s testimony would have raised a reasonable doubt on the existence of the Extra Packet found in Exhibit A1A3, and IO Neo’s testimony as to how the Extra Packet was discovered was supported by Nurliana. Similarly, Mr Almenoar had not demonstrated why the Field Diary was material and why the Prosecution’s failure to adduce it called for an explanation. Even though the various CNB officers had prepared their conditioned statements with reference to the Field Diary (which I found to be

⁴² AB 176 (IO Neo’s Statement at [16]–[17]); 10/2/22 NE 5, 38; 15/2/22 NE 86.

⁴³ AB 193–194 (4th Statement at [7]); AB 218; 15/2/22 NE 86–87.

⁴⁴ DWS1 at [128]–[131], [135]–[136]; DWS2 at [7]–[12], [129(b)].

unobjectionable), the Field Diary would, at best, support the Defence's claim that the CNB officers who handled Exhibit A1A3 believed that it contained four, rather than five, packets of granular substances. This was, however, not disputed by the CNB officers themselves. As there was also nothing to suggest that the Prosecution withheld evidence to hinder or hamper the Defence, I declined to draw adverse inferences against the Prosecution for its failure to call Haifaa or to adduce the Field Diary in evidence.

46 Importantly, even if I disregarded the Extra Packet (which was subsequently analysed by the HSA and found to contain not less than 0.03g of diamorphine), the total weight of diamorphine in the other packets of drugs would nevertheless have exceeded the threshold that attracted the death penalty.

47 For completeness, I deal with Shaffy's contention that he did not witness the opening of the tamper-proof bags in the EMR and that the discovery of the Extra Packet by IO Neo was not brought to his attention. At that time, he was eating in the adjacent room.⁴⁵ Even if Shaffy chose not to pay attention to what was happening in the EMR, this did not cast a reasonable doubt on the integrity of the chain of custody of the Drugs. Shaffy acknowledged that he could see into the EMR from the adjacent room through a glass panel, and IO Neo further attested that Shaffy was given the opportunity and was able to witness the exhibit processing.⁴⁶ In any event, Shaffy was subsequently brought into the EMR to witness the weighing of the Drugs including the Extra Packet.

⁴⁵ 15/2/22 NE 64–66.

⁴⁶ 8/2/22 NE 32; 10/2/22 NE 37; 15/2/22 NE 65.

Accuracy of the amount of diamorphine found in the Drugs

48 Mr Almenoar also asserted that the process of analysis of the Drugs by the HSA was inherently defective, which assertion I rejected.

49 At this juncture and for completeness, I accepted that after the Drugs were weighed in the EMR, IO Neo placed them in his locked cabinet at CNB HQ and to which only he had the keys; and that he subsequently handed the Drugs to Staff Sergeant Rafi who submitted the packets containing the brown granular substances (Exhibits A1A1A, A1A2A, A1A3A, A1A3B, A1A3C, A1A3D and A1A3D1, collectively the “Seven Packets”) to the HSA for analysis.⁴⁷ This chain of events was not challenged.

50 The HSA Analyst, Merula, had explained how the contents of the Seven Packets were analysed for the quantity of diamorphine. I found her testimony and explanation to be cogent and I had no reason to doubt the integrity of the processing and analysis done by her.

51 Merula first performed the following steps for each of the Seven Packets. She weighed an empty HSA packet to obtain its weight (“1st Weight”), then transferred the contents of the original packet (*eg*, the contents of Exhibit A1A1A) to the empty HSA packet and weighed them together to obtain the cumulative weight. By subtracting the 1st Weight and the uncertainty associated with the weighing process from the cumulative weight, she obtained the gross weight of the contents of granular substances in each of the Seven Packets. I

⁴⁷ AB 165–167 (Rafi’s Statement at [2] and [5]); AB 176–177 (IO Neo’s Statement at [18]–[19]).

rejected Mr Almenoar's assertion, that replacing the original packaging of the Drugs affected the integrity of the weight of the Drugs, to be without basis.⁴⁸

52 Next, Merula individually homogenised and pulverised the contents of each of the Seven Packets to obtain a homogenous, powdery product ("the Homogenised Product"), extracted six test samples from the Homogenised Product, and subjected the samples to instrumental analysis to ascertain the purity of the diamorphine therein. She then subtracted a figure representing a 15% variation from the measurement of purity of diamorphine ascertained from the corresponding six test samples and multiplied the result by the gross weight of the contents in each of the Seven Packets. In this manner, Merula was able to ascertain the final weight of diamorphine found in each of the Seven Packets.⁴⁹

53 Merula explained that the six samples were obtained from a homogenised product, meaning that every part was representative of the whole. The sampling technique was used because it was not practical to test the entirety of a pulverised drug exhibit as this would require a large amount of solvent. Merula also explained that she used two independent techniques to determine the purity of the six test samples and adopted the lower purity between the techniques. Additionally, the purity of diamorphine for each of the six samples fell within the HSA's criteria for acceptance. I further accepted that the HSA laboratory is accredited, implements a quality assurance programme which it maintains in order to remain accredited, and that its analysis maintains a 99.9999% degree of confidence. Moreover, as the present case involved a

⁴⁸ 9/2/22 NE 21–22; DWS1 at [112].

⁴⁹ 9/2/22 NE 22, 24–27, 29.

capital charge, Merula was accompanied by a colleague who bore witness to the propriety of her analysis of the Seven Packets.⁵⁰

54 Pertinently, Merula explained that she had subtracted a variation of 15% from the measurement of purity of diamorphine (ascertained from the six test samples) to obtain the net weight of diamorphine contained in each of the Seven Packets. This was done because the degree of variation for drug quantitation (of more than 20 quantitative methods) ranged from 5% to 12.8%. The HSA therefore set the standard of variation higher at 15% to provide a greater allowance, with the effect that the final net value of the quantity of diamorphine reported is at the minimum level. As Merula stated, if she had not accounted for the 15% variation in calculating the amount of diamorphine present, the amount of diamorphine eventually determined to be contained in the Seven Packets would have been *higher*.⁵¹ As such, the application of a 15% variation during the drug quantitation process was in fact favourable to Shaffy.

55 In the round, Mr Almenoar's challenge of the analysis process was without merit. He did not provide any credible basis as to why and how the HSA's testing and analysis of the contents of the Seven Packets were unreliable or flawed. I was satisfied as to the propriety of the analysis by the HSA and the accuracy of the results obtained in relation to the amount of diamorphine found in the Seven Packets.

Possession of the Drugs

56 Possession, for the purposes of the MDA, encompasses factual possession and knowledge of the existence of the thing which is in the accused

⁵⁰ 9/2/22 NE 25–30.

⁵¹ 9/2/22 NE 26–28, 31.

person's possession, custody or control and is later found to be a controlled drug. It is not necessary to prove that an accused person also knows that the thing was in fact a controlled drug, much less its specific nature (*Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [31]).

57 It was clear that Shaffy was in possession of the Drugs when he was arrested. He had placed the Drugs in the Gucci bag, which bag was placed in the Car. I had also found that Shaffy witnessed the recovery of the Drugs from the Car and that the Prosecution had established beyond a reasonable doubt the chain of custody of the Drugs including the Extra Packet. Shaffy's defence that he intended to exchange the three bundles for ecstasy pills upon discovering the bundles contained heroin was also predicated on his possession of the Drugs.

Knowledge of the nature of the Drugs

58 Next, the Prosecution relied on the presumption of knowledge under s 18(2) of the MDA. However, it also asserted that Shaffy knew the nature of the Drugs because he admitted he knew the contents of Exhibits A1A2 and A1A3 were heroin, he had not received a wrong consignment as he claimed, his intention to return all the Drugs (which were predicated on them being heroin) could not be believed, and the evidence showed that Shaffy had arranged for Hanafiah to collect one "batu" of heroin from Shaffy after Shaffy had collected the Drugs from JBP. On this basis, I found that Shaffy knew the Drugs (including Exhibit A1A1) contained diamorphine when he saw the contents of Exhibits A1A2 and A1A3 and even when he placed an order for drugs from M2 on 19 June 2018 and collected the Plastic Bag at JBP.

Shaffy's handling of the Drugs prior to his arrest

59 Mr Almenoar argued that Shaffy did not know that Exhibits A1A1 and A1A2 contained heroin because he did not open Exhibit A1A1 and he did not consume a sample from Exhibit A1A2.⁵² I rejected Mr Almenoar's arguments.

60 I found that Shaffy knew that the three bundles (the Drugs) contained heroin when he saw the contents of Exhibits A1A2 and A1A3 and claimed to have smoked some of the contents of Exhibit A1A3. Shaffy stated in the 4th Statement that when he opened one big bundle and one small bundle, he "realized that it was heroin"; this was before he consumed any of it. Shaffy also stated in court that he knew from looking at the contents of Exhibits A1A2 and A1A3 that "it might be heroin", and when he consumed some of Exhibit A1A3 he knew for sure that it was heroin because he had previously consumed heroin. Shaffy also stated that Exhibit A1A2 was initially wrapped in black tape like Exhibit A1A1.⁵³ Hence I found that Shaffy knew that Exhibit A1A1 (which would have looked like Exhibit A1A2 before it was unwrapped) also contained heroin, having seen the contents of Exhibit A1A2 and also having consumed (as he claimed) some of the contents of Exhibit A1A3.

61 Pertinently, Shaffy relied on his knowledge of the Drugs to support his defence that he had obtained the wrong type of drugs (heroin) in *all three* bundles and which he had intended to exchange for ecstasy pills. Hence, Shaffy knew that the Drugs contained heroin (which he knew was the street name for diamorphine)⁵⁴ even before he was arrested.

⁵² DWS1 at [28], [104]; 15/2/22 NE 5–19.

⁵³ AB 193 (4th Statement at [5]); 15/2/22 NE 90.

⁵⁴ 15/2/22 NE 91.

62 Alternatively, Shaffy had failed to rebut the presumption of knowledge under s 18(2) of the MDA. He was indifferent to the contents of Exhibits A1A1 and A1A2 although he had the means and opportunity to verify them, and particularly after he claimed to have smoked some of Exhibit A1A3 and confirmed that it was heroin. Knowing that Exhibit A1A3 contained heroin and which contents looked like Exhibit A1A2 (which, in turn, if unwrapped looked like Exhibit A1A1), Shaffy did not say that he thought Exhibit A1A1 or A1A2 was something else.

63 Additionally, I found that Shaffy knew the nature of the Drugs that he was ordering from M2 on 19 June 2018, based on the following.

Hanafiah’s testimony that he had ordered diamorphine from Shaffy

64 I accepted Hanafiah’s testimony that he had ordered one “batu” (or approximately 445g) of heroin (“the Order”) from Shaffy and had arranged to collect the Order from Shaffy on 21 June 2018.⁵⁵ In an investigative statement made on 22 February 2021 (“22/2/21 Statement”),⁵⁶ Hanafiah stated that he started to purchase drugs from “Ah Siao” (whom he identified in court as Shaffy) in around June 2018 and whom he knew was dealing in drugs, namely heroin, and he would contact Ah Siao as his backup if he could not obtain drugs from his main supplier. He further stated that since June 2018, he had obtained drugs from Ah Siao about two to three times and that each time he would order one “batu” from Ah Siao for \$3,200. Hanafiah also stated in the 22/2/21 Statement that the last occasion he was supposed to purchase one “batu” of heroin and collect it from Ah Siao was on 21 June 2018 at about 7.00pm at MacPherson, but this did not materialise as he was subsequently arrested. In

⁵⁵ 10/2/22 NE 54–59, 61, 64; 11/2/22 NE 26–27.

⁵⁶ Prosecution’s Bundle at p 1.

relation to this transaction, Shaffy had called Hanafiah on the night of 20 June 2018 to tell Hanafiah that he had the “stuff”, but Hanafiah did not wish to collect it then as it was late. It was not disputed that this intended transaction on 21 June 2018 was the same one that Shaffy testified to (putting aside the type of drugs he claimed he was supposed to deliver to Hanafiah) (see [23] above).

65 Mr Almenoar submitted that Hanafiah’s evidence had to be treated with caution as Hanafiah had an incentive to avoid implicating himself in a drug-related transaction.⁵⁷ In this regard, I accepted that Hanafiah had lied in an earlier investigative statement of 1 March 2019 (“1/3/19 Statement”) wherein he stated that he had never obtained drugs from Shaffy. Hanafiah explained that when he provided the 1/3/19 Statement, he had not been sentenced for his other drug-related offences and was afraid of being served a distinct charge for ordering drugs from Shaffy.⁵⁸ Nevertheless, I accepted Hanafiah’s testimony in court (and in his 22/2/21 Statement) that he had ordered heroin from Shaffy and intended to receive it on 21 June 2018. I found no conceivable reason why Hanafiah would fabricate false testimony against Shaffy given that he would also implicate himself. Pertinently, Shaffy did not dispute that he intended to deliver some of the drugs (but merely the type of drugs) that he had collected at JBP to Hanafiah on 21 June 2018. He had also admitted to having delivered drugs to Hanafiah on about five previous occasions.⁵⁹

66 Moreover, that Hanafiah had placed an order of drugs and arranged to collect them from Shaffy on 21 June 2018 was corroborated by a 48-second phone call from Shaffy to him on 20 June 2018 at 11.11pm (“20/6/18 Call”) and

⁵⁷ DWS1 at [85]–[87]; DWS2 at [99].

⁵⁸ Defence’s Bundle at pp 2–3; 11/2/22 NE 9, 19–20.

⁵⁹ 15/2/22 NE 46–47.

WhatsApp messages between them on 21 June 2018 (“21/6/18 Messages”). In court, Shaffy and Hanafiah agreed that the 20/6/18 Call pertained to drugs which Shaffy was to deliver to Hanafiah (and which Hanafiah stated was heroin) and the 21/6/18 Messages pertained to the arrangement by Shaffy to deliver the drugs to Hanafiah at about 7.00pm on 21 June 2018.⁶⁰

67 I also rejected Mr Almenoar’s submissions that Hanafiah concocted the 22/2/21 Statement because he had provided it in response to Investigating Officer Cindy Ow (“IO Ow”) informing him that Shaffy had implicated him but without specifying details; and that an adverse inference should be drawn against the Prosecution for failing to call IO Ow to corroborate Hanafiah’s testimony.⁶¹ Shaffy agreed that he was supposed to deliver drugs to Hanafiah on 21 June 2018 and Hanafiah’s version of events in the 22/2/21 Statement was also corroborated by the 20/6/18 Call and the 21/6/18 Messages. This rendered IO Ow’s testimony superfluous. The disagreement between Shaffy and Hanafiah pertained to the type of drugs that Shaffy was to deliver to Hanafiah. This matter would not have been within IO Ow’s knowledge. She would not have been able to shed light on the truth of the contents of the 22/2/21 Statement.

68 I also found that while Hanafiah claimed to have previously ordered heroin and ecstasy pills from Shaffy, he maintained that what he had ordered and was to collect from Shaffy on 21 June 2018 was heroin. Hanafiah stated that he ordered one “batu” which referred to heroin and he would have said “ikan” (the code word for ecstasy pills) if he had intended to order ecstasy pills.⁶²

⁶⁰ AB 760 (s/n 42); AB 882–883; 10/2/22 NE 54–59; 15/2/22 NE 33–34, 143–145.

⁶¹ DWS1 at [92], [94]–[96], [103].

⁶² 10/2/22 NE 55, 57, 64; 11/2/22 NE 13, 24–25.

69 In the round, I accepted Hanafiah’s evidence that he had ordered heroin from Shaffy, which further supported that Shaffy knew the nature of the Drugs when he collected the Plastic Bag at JBP.

70 At this juncture I deal with Mr Almenoar’s assertion that there was no evidence to prove that Shaffy was “Ah Siao,”⁶³ which assertion I rejected. “Ah Siao” was merely Hanafiah’s way of describing Shaffy as he did not know Shaffy’s name. However, Hanafiah had identified Shaffy in court as “Ah Siao.”⁶⁴ It was undisputed that Shaffy had saved Hanafiah’s handphone numbers under the names “Scar” and “Scar2”, and Hanafiah admitted he was known as “Scar”. Pertinently, Shaffy admitted to having delivered drugs to Hanafiah previously, that he was intending to deliver a packet of drugs to Hanafiah on 21 June 2018 and that the phone communications with Hanafiah pertained to that intended drug delivery (see [65]–[66] above).

71 Finally, I observed that Hanafiah was a tentative witness in court who, at times, provided seemingly contradictory answers. He attested that he would order drugs from Shaffy when he was unable to obtain drugs from his main supplier, but then claimed to have ordered drugs from MB and that Shaffy would merely deliver them. Nevertheless, I did not find Hanafiah’s testimony in this regard to be inconsistent. He clarified that whilst he had previously ordered drugs from MB (with Shaffy doing the delivery), he had also on two to three occasions ordered drugs from Shaffy directly.⁶⁵ I also noted that Hanafiah initially stated in court that he had ordered the “stuff” (*ie*, heroin) from someone else but which Shaffy was to deliver, but when confronted with his 22/2/21

⁶³ DWS1 at [88], [100].

⁶⁴ 10/2/22 NE 61; 11/2/22 NE 10.

⁶⁵ 10/2/22 NE 64; 11/2/22 NE 12–16, 20, 24.

Statement he then admitted to having purchased drugs (and heroin) from Shaffy on previous occasions and that he had placed the Order with Shaffy.⁶⁶ Even if Hanafiah had placed the Order with someone else,⁶⁷ the fact remained that the Order was for heroin. In any event, this did not affect my finding that Shaffy nevertheless knew that what he was supposed to have delivered on 21 June 2018 to Hanafiah was heroin, as will be seen from other evidence below.

Shaffy's omission in the 4th Statement of the phone conversation with Hanafiah on 20 June 2018

72 That Shaffy knew he was to deliver heroin to Hanafiah can be inferred from his initial attempt in the 4th Statement to conceal the fact that he had spoken to Hanafiah on 20 June 2018 after he collected the Drugs. In the 4th Statement, Shaffy claimed that when he collected the Drugs from JBP, he did not know what type of drugs they were, and he called Wak and Hanafiah but both of them did not answer the calls. It was only in court that Shaffy admitted that Hanafiah had answered the 20/6/18 Call and told Shaffy that he was not available to collect the drugs and would arrange to collect it on another day.⁶⁸ Shaffy accepted that the 4th Statement was accurately recorded and stated in court that what he had meant to say to IO Neo (but did not) was that he had unsuccessfully called Wak twice and not that he was unable to communicate with *both* Wak and Hanafiah.⁶⁹ I found that Shaffy had deliberately concealed this phone conversation with Hanafiah in the 4th Statement. He could have corrected that statement at the material time to reflect the conversation (given that he did make corrections to other parts of that statement) but chose not to.

⁶⁶ 10/2/22 NE 54; 11/2/22 NE 26–27.

⁶⁷ DWS1 at [98] and [101].

⁶⁸ AB 193 (4th Statement at [3]–[5]); 15/2/22 NE 33–34.

⁶⁹ 10/2/22 NE 17; 15/2/22 NE 3, 8–10, 12, 78–79.

73 I found that Shaffy came clean about the conversation with Hanafiah on 20 June 2018 when faced with the call logs that showed the 20/6/18 Call was 48-seconds long and when Hanafiah had attested to having a conversation with Shaffy pertaining to the delivery of drugs.⁷⁰ I inferred that Shaffy had attempted to conceal the conversation in the 20/6/18 Call because it pertained to the arrangement to deliver heroin to Hanafiah. That was why Shaffy initially claimed in the 4th Statement that he could not get in touch with both Wak and Hanafiah on 20 June 2018, to support his claim that he did not know that the drugs he had collected from JBP were heroin until he discovered this at home.

Shaffy’s explanation for assuming he was collecting ecstasy

74 Next, I disbelieved that Shaffy had assumed the “2 packets” that MB instructed him to order were ecstasy pills. Shaffy maintained in court (and in the 4th Statement) that MB never informed him what the “2 packets” contained or what type of drugs MB had asked him to order.⁷¹ If so, there was no logical reason for Shaffy to equate the “2 packets” to ecstasy pills and thus to assume that he had wrongly been given heroin.

75 Indeed, what Shaffy stated in the 4th Statement (*ie*, that he did not know what drugs MB had asked him to order) was inconsistent with what he had initially informed Dadly in the 1st and 2nd Statements, namely that he *had* ordered ecstasy pills.⁷² He attempted to reconcile the two positions by stating that he *assumed* he had ordered ecstasy pills because MB had informed him, on the second occasion he delivered the Stuff, that the Stuff contained pills; and due to a previous occasion he helped Wak to exchange the goods that he had

⁷⁰ 15/2/22 NE 33, 79; PWS at [46].

⁷¹ AB 192 (4th Statement at [2]); 15/2/22 NE 25–26, 95, 97.

⁷² AB 161 (1st Statement); AB 158 (2nd Statement at A24); 15/2/22 NE 4.

delivered to Wak (the “Occasion”) (see [26] above). Shaffy claimed that the Occasion was the first time he knew he was delivering ecstasy pills to Wak, because Wak told him he had purchased ecstasy pills.⁷³

76 I found Shaffy’s explanations to be unbelievable. MB had purportedly on the second occasion informed Shaffy that the Stuff was “pills” and that it was “nothing serious” but never told Shaffy what pills they were. It was unclear how Shaffy thus formed the impression that he would always be ordering ecstasy pills whenever MB asked him to order drugs and given that MB did not inform Shaffy what “2 packets” meant in relation to the order Shaffy placed on 19 June 2018. In court, Shaffy could merely say that this was his “impression ... all the way”.⁷⁴ Likewise, I failed to see how Shaffy had formed the impression that Wak would order ecstasy pills on every occasion just because he had purportedly ordered ecstasy pills on the Occasion.

77 I found Shaffy had fabricated the Occasion as an afterthought to explain how he assumed he was collecting ecstasy pills on 20 June 2018. This story of the Occasion was never mentioned in the Statements. Hence, I found no credible basis for Shaffy’s purported assumption that he was to collect ecstasy pills at JBP on 20 June 2018. In fact, by Shaffy’s account, there was no reason for him to even assume that *Hanafiah* had ordered ecstasy pills, such that Shaffy assumed that *all* the drugs that he had collected were of the wrong type. The purported Occasion pertained to *Wak* and Shaffy claimed that *Hanafiah* had never told him what drugs he was ordering.⁷⁵ Shaffy’s account, which was

⁷³ 15/2/22 NE 36, 45, 95–97, 127; 16/2/22 NE 5.

⁷⁴ 15/2/22 NE 45, 125–127.

⁷⁵ 15/2/22 NE 127–128.

unconvincing and illogical, led me to infer that he knew he was collecting heroin on 20 June 2018 from JBP.

Shaffy’s claim that he had never dealt in heroin and his messages with Faliq

78 To disassociate himself from knowledge of the contents of the bundles when he collected the Plastic Bag and to support his claim that he had collected the wrong drugs, Shaffy asserted that: (a) although he has consumed heroin, he had never ordered heroin (even for his own consumption), dealt with heroin or delivered heroin to anyone; and (b) his role throughout in drug transactions was merely as a deliveryman and he had never taken orders directly from customers or end-consumers.⁷⁶ However, the evidence showed the assertions were untrue.

79 I had earlier accepted Hanafiah’s testimony that he had ever contacted Shaffy for drugs and ordered heroin from him (see [64]–[69] above). Hanafiah also attested that he knew that Shaffy was dealing in heroin, and that he had previously also ordered ecstasy pills from Shaffy.⁷⁷

80 Next, various WhatsApp messages between Shaffy and one Faliq showed Shaffy’s role in drug transactions was not confined to being a deliveryman but that a potential customer sourcing for drugs (including heroin) would communicate with him to get drugs and he would assist in procuring drugs. I reproduce salient portions of the messages between them on 17 June 2018 (“17/6/18 Messages”) and 20 June 2018 (“20/6/18 Messages”):⁷⁸

[17 June 2018]

Shaffy : Yoooo

⁷⁶ 15/2/22 NE 44–47, 130; 16/2/22 NE 7.

⁷⁷ 10/2/22 NE 60–61, 63; 11/2/22 NE 12–14, 16–17, 20.

⁷⁸ AB 877–881.

Faliq : Your 25g how much *uh..*
Faliq's pricing pls...

...

Shaffy : *Let me check if have*

Faliq : Wait
Just asking for the *price*

...

Shaffy : 750

...

[20 June 2018]

Faliq : You sell *hot per bag* or not
How much?

Shaffy : Have

Faliq : How much
Hurry up I want to meet the person

Shaffy : 140

[emphasis in original]

81 Shaffy stated that the 17/6/18 Messages where Faliq asked about the price of “25g” pertained to a drug “ice” and that *Faliq was going through Shaffy* to get “ice”. Even if Shaffy claimed not to have a ready supply of drugs, the messages showed that Faliq communicated with him to obtain drugs and he quoted a price for drugs. The 17/6/18 Messages also contradicted what Shaffy said in the 6th Statement, namely, that he was not involved in any drug activities apart from *assisting MB to transport* drugs and occasionally consuming drugs.⁷⁹

82 Shaffy also admitted that the 20/6/18 Messages pertained to a potential order of heroin, that “hot” referred to heroin, and that “140” meant \$140 for a

⁷⁹ 16/2/22 NE 22–23; AB 198 (6th Statement at Q1 and A1).

packet of heroin. As Dadly and IO Neo attested, “hot” is the street name for diamorphine, which testimony was unchallenged. Even if Shaffy claimed not to have a supply of heroin at the material time, Shaffy’s reply to say “have” when Faliq asked if he sold “hot” showed that Shaffy dealt in heroin in that he would be able to obtain it from a third party for Faliq.⁸⁰

83 Shaffy then claimed he would merely introduce Faliq to the supplier for Faliq to deal directly with the supplier and Shaffy would not even deliver for Faliq.⁸¹ Even if this were to be believed, it nevertheless contradicted his assertion that his role in any drug transaction was limited to being a deliveryman and also contradicted his 6th Statement (see [81] above).

Messages between Shaffy and M2 on 21 June 2018 and the First and Second Calls

84 Next, I found the messages between Shaffy and M2 between 9.22pm and 9.25pm on 21 June 2018 (“M2 Messages”) as well as the First and Second Calls, all made shortly after Shaffy’s arrest and on Dadly’s instructions, supported that Shaffy knew he was collecting heroin from JBP.

85 In relation to the M2 Messages, when Shaffy stated in a voice note to M2 that he had received a wrong package and said “... mine is the normal ecstasy. This you gave me is different one. I think wrong package ...”, M2 replied that he did not understand what Shaffy said and asked if Shaffy meant that the Drugs were not “P”.⁸²

86 I reproduce the First Call:

⁸⁰ 4/2/22 NE 27; 10/2/22 NE 14; 15/2/22 NE 132–134.

⁸¹ 15/2/22 NE 136; DWS2 at [104].

⁸² AB 888; 4/2/22 NE 18.

Shaffy : Hello boss, yesterday that stuff that I collect the package was wrong. The 2 big 1 small inside was wrong stuff not my package.

M2 : What are you saying I don't understand ah.

Shaffy : The stuff yesterday was wrong was not mine.

M2 : Eh, I don't understand lah.

Shaffy : I ordered [ecstasy] right but now it is the wrong stuff inside

M2 : Inside that package was there a 'P'?

Shaffy : What's that 'P'?

M2 : panas, panas (hot, hot)

Shaffy : No, I ordered [ecstasy] but you gave the wrong one ah

M2 : But you always ordered 'P'. What is [ecstasy]?

Shaffy : [Ecstasy] lah boss, the one for shaking

M2 : No lah you always take 'P' right where got [ecstasy]

Shaffy : Later I call you

87 I reproduce salient parts of the Second Call:

Shaffy : ... That one that you gave, is not mine.

M2 : That you mean all three bundles are not yours or two bundles are yours another one not yours?

Shaffy : All three are not

M2 : All three are not? They said those both are Heroin.

Shaffy : Erimin?

M2 : Heroin Heroin

Shaffy : Huh?

M2 : That panas (hot) ah.

88 The First and Second Calls showed that M2 did not understand Shaffy when the latter claimed the “2 big 1 small” he had collected was wrong or when he claimed to have ordered ecstasy. Indeed, M2’s replies were telling. He replied that Shaffy *always ordered* “P” or “panas” and refuted Shaffy’s claim that he had ordered ecstasy by saying that he “always take ‘P’”. Shaffy knew that “panas” meant “hot” and it was undisputed that “panas” is the street name for diamorphine. In this regard, I disbelieved that Shaffy did not know “panas” was the lingo for heroin or diamorphine until he was arrested and informed by the CNB officers of this.⁸³ Shaffy knew that “hot” referred to heroin as he had no difficulty understanding that Faliq wished to purchase heroin when he asked Shaffy: “You sell *hot per bag* or not” on 20 June 2018 (see [82] above) and he even attested that M2 had told him in the First Call that “P” meant “panas, panas hot”. I further found that Shaffy knew that “P” (as used by M2) meant “panas”.

89 I accordingly found Shaffy’s claims to M2 in the M2 Messages and the First and Second Calls, that he had ordered ecstasy pills and that the three bundles he collected were not his, to be self-serving. The conversations took place after Shaffy’s arrest, at a time when he had an incentive to disavow knowledge of the nature of the Drugs. These conversations were probative of Shaffy’s knowledge of the nature of the Drugs. Moreover, M2 was during the M2 Messages and First and Second Calls unaware of Shaffy’s arrest, and his responses to Shaffy in those conversations would have been frank.

90 Shaffy did not challenge the accuracy of the First and Second Calls, save that he claimed that Dadly did not record certain parts of the conversation in the First Call. Shaffy claimed that when he informed M2 that he had received wrong items and a white plastic bag, M2 asked: “It’s not red colour plastic bag?”

⁸³ 15/2/22 NE 17; 16/2/22 NE 4.

whereupon Shaffy replied that he had taken a white plastic bag. M2 then said, “never mind” and that he would update Shaffy later, and then the First Call ended.⁸⁴ Even if this conversation took place, this did not change my observations and findings at [88]–[89] above, particularly that M2 had informed Shaffy that he always ordered “P” or “panas”. I will return to the colour of the plastic bag Shaffy claimed he collected from JBP.

Shaffy’s failure to inform M2 of the wrong delivery of drugs prior to his arrest

91 Additionally, I found that Shaffy’s failure to inform M2 before Shaffy was arrested, that he had collected the wrong number of bundles or drugs after he allegedly discovered the Plastic Bag contained three bundles of heroin,⁸⁵ further supported that he knew he had obtained the correct delivery of drugs.

92 In this regard, Shaffy proffered two explanations. First, he could only provide “feedback” or inform M2 of any issues with the delivered goods after M2 messaged him to say, “all okay” (“the Protocol”), and he had to obey the Protocol even if M2 delivered the wrong drugs.⁸⁶ Second, he did not inform M2 that he had obtained a wrong delivery of drugs as he had intended to meet MB on 21 June 2018 to do an exchange of the three bundles so that he could deliver the correct drugs to Hanafiah on the same day. Shaffy wanted to talk to MB and not M2 as that was the first occasion he had received drugs that differed from his expectations, and he wanted to inform MB about it as MB was his boss and had direct connections to M2.⁸⁷ I found both explanations to be unbelievable.

⁸⁴ 15/2/22 NE 16.

⁸⁵ 15/2/22 NE 116, 123.

⁸⁶ 15/2/22 NE 29, 117–118; 16/2/22 NE 27–28; DWS1 at [70]–[74].

⁸⁷ 16/2/22 NE 10–12, 27.

93 There was no reason for Shaffy to speak to MB about the purported wrong consignment of drugs or rely on MB to facilitate the exchange of the Drugs between Shaffy and M2. MB did not supply the Drugs and it was M2 who had arranged the delivery of drugs to Shaffy. Shaffy could also contact M2 directly as can be seen from the WhatsApp chats between them even on the day prior to Shaffy’s arrest.⁸⁸ In fact, Shaffy did not even contact MB⁸⁹ but claimed merely to have asked Danny to tell MB that he wanted to meet MB to discuss something (see [26] above). I disbelieved Shaffy that he had asked Danny to pass a message to MB as such, which story I found Shaffy had fabricated to explain why he did not contact MB directly.

94 I further found that Shaffy had fabricated the Protocol to explain why he did not contact M2 directly despite purportedly having discovered he had obtained a wrong consignment of drugs. First, Shaffy’s claim of the existence of the Protocol and his intention to meet up with MB for MB to tell him what to do contradicted what he said in the 2nd Statement, namely that he intended to *contact M2 after returning the Drugs to the location at JBP*.⁹⁰ Second, Shaffy’s explanation that he could not contact M2 until M2 said “all okay” because M2 would turn off his handphone and would not reply even if Shaffy sent him a WhatsApp message, was unbelievable and unsupported by the evidence. On the contrary, the WhatsApp messages showed prior conversations between them on other matters without M2 prompting him with an “all okay” message.⁹¹ It was thus unclear how Shaffy’s inability to contact M2 because M2 would turn off his handphone transmuted into the Protocol which Shaffy had to “obey”. While

⁸⁸ AB 886–887.

⁸⁹ 16/2/22 NE 37.

⁹⁰ 16/2/22 NE 11; AB 158 (2nd Statement at Q23 and A23).

⁹¹ 15/2/22 NE 121; AB 884–886 (s/n 19, 21–25).

Shaffy initially claimed that the Protocol was an unyielding one, he eventually conceded that M2 only informed him to wait for the “all okay” message before contacting M2.⁹² Hence, there was no basis for Shaffy to claim that he could not, *in any circumstance*, contact M2 unless and until M2 said “all okay”.

95 In the round, I found that Shaffy had fabricated the Protocol to account for the absence of any messages or phone calls with M2 from the time he allegedly discovered the Drugs were heroin in the Unit until his arrest. Likewise, I rejected his assertion that he had intended to meet up with MB to arrange for an exchange of the Drugs.

Shaffy’s claim that he intended to return the Drugs

96 Next, Shaffy’s defence that he intended to return the Drugs was predicated on his assertion that had wrongly obtained heroin.⁹³ This formed the crux of Shaffy’s defence to the charge and went to the issue of whether Shaffy had possession of the Drugs for the purpose of trafficking. However, Shaffy’s claim that he intended to return the Drugs was not supported by the evidence.

97 First, as I earlier found, Shaffy did not inform M2 of the wrong delivery of drugs prior to Shaffy’s arrest. There was also no communication between Shaffy and MB to support that Shaffy intended to meet with and inform MB about the wrong delivery. As I had earlier found, contrary to Shaffy’s claim of the existence of the Protocol and his intention to meet with MB, he stated in the 2nd Statement that he intended to contact M2 after returning the Drugs to JBP.

⁹² 16/2/22 NE 26–28.

⁹³ DWS1 at [44], [46]–[56], [62]–[63]; DWS2 at [53].

98 Second, when Shaffy was asked by Dadly during the recording of the 1st Statement what he intended to do with the “stuff”, he replied: “I want to deliver to someone”. In court, Shaffy agreed that this was what he had said but explained that what he really meant to tell Dadly was that he wanted to deliver the Drugs back to the supplier, which explanation I rejected as an afterthought.⁹⁴

99 Third, whilst Shaffy claimed that he left home on 21 June 2018 intending to meet with MB to arrange for an exchange of the Drugs, he did not mention this in the Statements. On the contrary, he stated in the 4th Statement that he had brought the Drugs with him as he did not want his mother to know that he was dealing in drugs and there were *no other reasons* for bringing the Drugs out of the Unit. In court, Shaffy could not satisfactorily explain why he did not in the 4th Statement inform IO Neo that he brought the Drugs with him intending to return them.⁹⁵

100 Fourth, what Shaffy had informed Dr Cheow, who examined him on 6, 11 and 13 July 2018 principally to assess whether he was fit to plead in court, was telling. Dr Cheow recorded in his medical report of 16 July 2018 (“Dr Cheow’s Report”) that Shaffy said that after he opened two of the packages and discovered they likely contained illicit drugs, he “still intended to deliver the packages as he did not want to be blamed for any loss”. Shaffy also stated that on the day of his arrest, he had brought along the packages in the Car intending to deliver them later.⁹⁶

⁹⁴ AB 161 (1st Statement); 15/2/22 NE 111; 16/2/22 NE 2.

⁹⁵ AB 193–194 (4th Statement at [7]); 15/2/22 NE 106–108.

⁹⁶ AB 88–90 (Dr Cheow’s Report at [9]–[10]).

101 Mr Almenoar put it to Dr Cheow that Shaffy had told Dr Cheow that he discovered the two packages he opened contained heroin (and he did not say “illicit drugs”) and that he had expected to receive ecstasy pills. Further, Shaffy told Dr Cheow that he intended to return the drugs to his supplier because it was the wrong type of drugs. I rejected Mr Almenoar’s assertion that Dr Cheow’s Report was inaccurate. I accepted Dr Cheow’s testimony that Shaffy merely informed him that the two bundles he opened contained illicit drugs and did not mention what drugs they were, and that Shaffy also did not tell him that he intended to return the drugs.⁹⁷

102 In fact, what Mr Almenoar put to Dr Cheow differed from Shaffy’s own account. In court, Shaffy first claimed that he told Dr Cheow he “wanted to deliver” the packages, but he did not recall telling Dr Cheow that he wanted to return the packages. He then claimed there was a misunderstanding or miscommunication between him and Dr Cheow, and finally claimed that he could not recall what he had told Dr Cheow.⁹⁸

103 Overall, I preferred Dr Cheow’s testimony and found no reason to doubt Dr Cheow’s Report as an accurate account of what Shaffy had told him. This must be seen in the light of Shaffy’s admission that he could not recall what exactly he had said to Dr Cheow, contrary to what Mr Almenoar had put to Dr Cheow. Shaffy’s account to Dr Cheow further supported that Shaffy did not intend to return the Drugs but instead intended to deliver them onwards.

104 Fifth, the 21/6/18 Messages showed that Shaffy had arranged to deliver some of the Drugs to Hanafiah on 21 June 2018. At 3.54pm that day, Hanafiah

⁹⁷ 7/2/22 NE 10–13.

⁹⁸ 15/2/22 NE 109; 16/2/22 NE 32–33.

asked whether Shaffy could send the drugs to him, to which Shaffy replied “can” at 4.32pm. When Hanafiah asked what time Shaffy would deliver the drugs, Shaffy replied at 5.00pm to say that it would be at about 7.00pm. Shaffy’s replies were *after* he had purportedly discovered (at about 4.00am) the Drugs were heroin. Yet, he did not clarify with Hanafiah the type of drugs that Hanafiah had ordered or inform Hanafiah that he had received the wrong drugs which he intended to exchange for the correct ones before delivering them to Hanafiah. Instead, Shaffy arranged to deliver some of the Drugs to Hanafiah.⁹⁹

105 I found Shaffy’s explanation, that he informed Hanafiah he would deliver a package of drugs to Hanafiah at about 7.00pm to enable him to first meet MB and “quickly do the exchange for [Hanafiah]”,¹⁰⁰ to be an afterthought. Shaffy stated that he went to fetch Umi at about “7.00 plus” before heading to Haig Road for food.¹⁰¹ If Shaffy intended to meet Hanafiah at about 7.00pm, this casts doubts as to why he had purportedly proceeded to meet MB so late in the day. Whether Shaffy left the Unit at about 7.00pm or shortly after 5.00pm (*ie*, after he had informed Hanafiah of the time of delivery of the drugs), it was unclear how he would have been able to first meet Umi, then meet and inform MB of the erroneous packages and wait for MB’s instructions on the arrangements for the exchange, then drive to a yet undetermined location to do the exchange, and finally meet Hanafiah at about 7.00pm. Shaffy did not even know how long the exchange would take as he would still have to wait for the supplier to turn up with the correct drugs.¹⁰² Indeed, there was no certainty that any exchange of drugs would take place on 21 June 2018 itself.

⁹⁹ AB 882–883; 15/2/22 NE 144–45; 16/2/22 NE 8, 10–12.

¹⁰⁰ 16/2/22 NE 9.

¹⁰¹ 16/2/22 NE 11, 36.

¹⁰² 16/2/22 NE 10–12.

106 Even when Shaffy was driving to the eastern part of Singapore (purportedly to meet with MB) at about 7.35pm on 21 June 2018,¹⁰³ he did not see fit to inform Hanafiah that he might be late or to postpone the delivery because he had obtained the wrong drugs which had to be exchanged. I thus found Shaffy's claim that he intended to meet with MB to arrange for the exchange of the Drugs to be a fabrication, to explain why he was traveling in the eastward direction of Singapore (when he was arrested) when he had initially informed Dadly that he wanted to return the Drugs to JBP.

107 It was also illogical for Shaffy to rely on MB to facilitate the exchange of the Drugs between Shaffy and M2 when MB did not supply the Drugs and Shaffy could contact M2, as evidenced by the M2 Messages and the First and Second Calls made on 21 June 2018. Shaffy himself claimed in the 5th Statement that MB had previously instructed him to contact M2 directly.¹⁰⁴

108 In the round, I found that Shaffy never intended to return the Drugs as he knew from the onset that he was to collect heroin. There were no messages between Shaffy and MB or M2 regarding any mistake in the Drugs collected or of an intended exchange to be done. On the contrary, Shaffy's message to Hanafiah, *after he claimed he discovered the Drugs were the wrong type*, showed he intended to deliver some of the Drugs to Hanafiah (see [104] above).

Shaffy's account of events showed up his credibility

109 Finally, Shaffy's account of events across the Statements and in court showed him to be a witness of poor credibility. He was unable to maintain a

¹⁰³ 15/2/22 NE 145; DWS2 at [83].

¹⁰⁴ AB 196 (5th Statement at [19]).

consistent story about what he believed he had ordered from M2 and what he intended to do with the Drugs that he had collected.

110 In the 1st Statement, Shaffy claimed that he ordered ecstasy pills but instead obtained a “powdery substance” and that he intended to deliver the Drugs to someone. In the 2nd Statement, Shaffy maintained that he ordered ecstasy pills. But he then claimed that he assumed the Drugs were heroin as they were brown, he intended to return them to JBP as he had received the wrong parcels, and he would contact M2 after placing the Drugs at JBP. In the 4th Statement, Shaffy suddenly claimed that he did not know what drugs MB had asked him to order, he realised it was heroin only at the Unit, and the only reason he brought the Drugs with him in the Car on 21 June 2018 was because he did not want his mother to know about them. Subsequently, Shaffy told Dr Cheow that he had brought along the Drugs in the Car intending to deliver them.

111 In court, Shaffy claimed that he assumed he placed an order of ecstasy pills with M2 not only because MB had previously informed Shaffy that the Stuff he delivered for MB were pills, but also because of the Occasion. Shaffy also claimed to have told Danny in a phone call that he wanted to meet MB to arrange for the exchange of the Drugs, which story was never mentioned in the Statements. Shaffy then claimed he did not contact M2 directly about the wrong drugs because it was his first time receiving a bundle that differed from his expectations and MB was his boss and had a direct connection to M2, and because of the Protocol. That he did not intend to contact M2 but MB differed from what he had stated in the 2nd Statement.

Conclusion on Shaffy’s knowledge of the nature of the Drugs

112 Based on the totality of the evidence, I found the Prosecution had proved beyond a reasonable doubt that Shaffy knew the Drugs were diamorphine.

Alternatively, and for the same reasons, I found that Shaffy had failed to rebut the presumption of knowledge under s 18(2) of the MDA. In short, Shaffy knew the Drugs were diamorphine by the time he placed them in the Car on 21 June 2018. He also did not claim to have believed Exhibits A1A1, A1A2 and A1A3 contained something other than heroin (see *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [58]–[59]).

Colour of the Plastic Bag and the number of bundles collected at JBP

113 At this juncture, I deal with Shaffy’s claim that he was supposed to have collected a red plastic bag containing two bundles of drugs at JBP to support that he had collected the wrong consignment of drugs and intended to return them. Shaffy relied on the WhatsApp messages at 9.36pm on 21 June 2018 (after Shaffy’s arrest) wherein M2 stated, “Bro there are 2 bundle”, “Red plastic”, “U say have extra u put back” and “We see hw” (“M2 Further Messages”).¹⁰⁵ Shaffy also claimed that in the First Call at about 9.26pm, he had informed M2 that he had received a white plastic bag whereupon M2 asked: “It’s not red colour plastic bag” (see [90] above, and which I will call the “Missing Conversation”). I did not find these to support Shaffy’s case that he had obtained the wrong consignment of drugs; this is even if I accepted the Missing Conversation occurred and Dadly had not recorded it.

114 First, there was no evidence to show the colour of the Plastic Bag that Shaffy collected, as he claimed to have disposed of it and placed the Drugs in Exhibit A1A. That the Plastic Bag was white was Shaffy’s bare assertion. Next, despite purportedly having heard M2 mention the plastic bag to be red (in the Missing Conversation), Shaffy did not mention the discrepancy in the colour of

¹⁰⁵ AB 890 (s/n 49–52); 4/2/22 NE 32; DWS1 at [62]–[63].

the Plastic Bag in any of the Statements to support that he had obtained the wrong consignment of drugs. Instead, he told IO Neo that he felt something was wrong with the plastic bag that he collected because it contained the wrong number of bundles and because, unlike in the past, this time two of the bundles were wrapped in black and not blue tape.¹⁰⁶ I therefore disbelieved that Shaffy collected the wrong plastic bag from JBP on the basis of its colour.

115 Second, there was no evidence to show that Shaffy had received three bundles of drugs (as he claimed) instead of two. By his account, Exhibits A1A2 and A1A3 had been unwrapped and he had disposed of the tapes even before the Drugs were seized.¹⁰⁷ It was therefore possible that he had collected only two bundles and that Shaffy had unwrapped one bundle and which could have contained both Exhibits A1A2 and A1A3.

116 In fact, Shaffy informed Dadly even in the 1st Statement that he had *two* parcels in his Gucci bag when Dadly asked him if he had anything to surrender. Shaffy's explanation in court that he said "two parcels" because he did not know what was in Exhibit A1A1 could not be believed.¹⁰⁸ Even before he was arrested, Shaffy knew that he was collecting drugs and he claimed that he was going to meet MB to arrange for the return and exchange of *all* the bundles. He further told IO Neo that he brought all three Exhibits A1A1, A1A2 and A1A3 with him because he did not want his mother to know he was dealing with drugs. Hence when Dadly asked if he had anything to surrender, Shaffy knew that this pertained to the incriminating goods with him (including Exhibit A1A1) and which was why he informed Dadly about the contents in his bag.

¹⁰⁶ AB 193 (4th Statement at [5]).

¹⁰⁷ AB 157 (2nd Statement at A8 to A12); AB 193 (4th Statement at [5]); 15/2/22 NE 64, 67, 89–90.

¹⁰⁸ 15/2/22 NE 4.

117 I add that even in the First Call, it was Shaffy who first mentioned to M2 about “the 2 big 1 small” bundles which he claimed were the “wrong stuff”, to which M2 replied that *he did not understand what Shaffy was saying* (see [86] above). M2’s reply in the Second Call pertaining to “all three bundles are not yours or two bundles are yours another one not yours” (see [87] above) was a result of Shaffy having first mentioned three bundles in the First Call. This can be seen from the M2 Further Messages (which was before the Second Call) where M2 said to Shaffy that it was *Shaffy* who claimed there was “extra”.

118 Third, whilst Shaffy claimed that he received two black bundles (Exhibits A1A1 and A1A2) and a blue bundle (Exhibit A1A3), there was likewise no evidence to show the colours of the tape originally wrapped around Exhibits A1A2 and A1A3 (even assuming they were separately wrapped) as he claimed to have discarded the tapes. If Shaffy was relying on the fact that he had received black instead of blue bundles to show that he had obtained the wrong consignment of drugs, this was unsupported by the evidence. No one had informed him that the drugs would be in blue bundles, and he also claimed not to have known the type of drugs MB had asked him to order, such that the colour of the tape would have assumed any significance when he first saw the bundles.

119 In the round, I rejected Shaffy’s claim that he had collected a wrong consignment of drugs at JBP, and I repeat my earlier findings on this matter. Pertinently, whether the plastic bag should have been red, whether Shaffy should have received two instead of three bundles and whether the bundles should have been blue, were not material if it could be shown that even after having purportedly discovered all these discrepancies, Shaffy nevertheless knew what the bundles contained and intended to deliver them onwards. In this regard, I had found that Shaffy knew what Exhibits A1A1, A1A2 and A1A3 were and disbelieved that he intended to arrange for the return of the Drugs.

Possession of the Drugs for the purpose of trafficking

120 Based on the totality of the evidence and my findings above, I was thus also satisfied that the Prosecution had proved beyond a reasonable doubt that Shaffy was in possession of the Drugs for the purpose of trafficking. It was clear from Shaffy’s evidence that the Drugs were not for his consumption. I had also rejected Shaffy’s claim that he had received an erroneous consignment of drugs and that he intended to return them. In particular, the evidence showed that Shaffy had arranged to deliver to Hanafiah some of the Drugs on 21 June 2018 (before he was arrested).

121 Accordingly, I found the Prosecution had proved beyond a reasonable doubt the charge against Shaffy.

Sentence

122 Given the quantity of the Drugs, the prescribed punishment under s 33(1) of the MDA, read with the Second Schedule, is death. Section 33B(1)(a) of the MDA gives the court the discretion to impose a sentence of life imprisonment (with caning), provided the accused satisfies the requirements under s 33B(2)(a) and receives a certificate of substantive assistance (“CSA”) from the Public Prosecutor pursuant to s 33B(2)(b) of the MDA.

123 I agreed with the Prosecution that Shaffy had failed to show, on a balance of probabilities, that his involvement in the offence was restricted to the activities set out in s 33B(2)(a) of the MDA, *ie*, that he was merely a courier. It was not disputed that he had placed an order for drugs (which were the Drugs that he subsequently collected at JBP). I had also accepted Hanafiah’s testimony that he had ordered one “batu” of heroin from Shaffy and which formed part of the drug consignment that Shaffy collected from JBP on 20 June 2018. Hence,

Shaffy's acts were not restricted to transporting, sending or delivering the Drugs, or offering to do any of these matters. They were also not acts that were "preparatory to or for the purpose of" transporting, sending or delivering a controlled drug – which must be limited to facilitative and incidental acts (*Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [91]).

124 Additionally, the Prosecution did not issue Shaffy with a CSA and hence Shaffy could not avail himself of the alternative sentencing regime under s 33B of the MDA (even if Shaffy were found to be a courier). In this regard, Mr Almenoar submitted that Shaffy had substantively assisted the Prosecution and the latter's decision not to issue a CSA was done in bad faith or with malice.¹⁰⁹ But this matter is not an appropriate one for this court to determine. In determining whether it can exercise its discretion to impose a sentence of life imprisonment, the court looks at whether the requirements under s 33B(2) of the MDA have been satisfied. Any challenge pertaining to the Prosecution's decision not to grant a CSA, which lies against the Prosecution (see s 33B(4) of the MDA), should be brought by way of a separate action or proceedings.

125 Likewise, this court is not the appropriate forum for Mr Almenoar to challenge the constitutionality of s 33B of the MDA, which in any event was made without any basis.¹¹⁰

¹⁰⁹ Defence's Written Submissions dated 6 May 2022 ("DWS3") at [5]–[10] of Annex C.

¹¹⁰ DWS3 at [10] of Annex C.

126 I therefore passed the mandatory death sentence on Shaffy.

Audrey Lim
Judge of the High Court

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