

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

**[2022] SGHC 40**

Criminal Case No 32 of 2019

Between

Public Prosecutor

And

- (1) Muhammed Izwan bin Borhan
- (2) Ahmad Suhaimi bin Ismail

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**JUDGMENT**

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

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Public Prosecutor**  
**v**  
**Muhammed Izwan bin Borhan and another**

**[2022] SGHC 40**

General Division of the High Court — Criminal Case No 32 of 2019  
Chua Lee Ming J  
30, 31 March, 1, 6–9, 20–23 April, 18–19, 25 May, 2, 4, 9 June, 24 September  
2021, 25 February 2022

25 February 2022

Judgment reserved.

**Chua Lee Ming J:**

**Introduction**

1 The first accused, Mr Muhammed Izwan bin Borhan (“Izwan”), presently 36 years old (DOB: 17 November 1985), is charged with having committed the following trafficking offences on 29 September 2017 at about 11.50am in the vicinity of 31 Toh Guan East, Singapore:

- (a) having in his possession for the purpose of trafficking, five packets containing not less than 1996.15g of granular/powdery substance found to contain not less than 26.19g of diamorphine, without authorisation, an offence under s 5(1)(a) read with s 5(2) and punishable

under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”);<sup>1</sup> and

(b) having in his possession for the purpose of trafficking, at least one packet containing not less than 372.93g of crystalline substance found to contain not less than 252.04g of methamphetamine, without authorisation, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the MDA.<sup>2</sup>

2 The second accused, Mr Ahmad Suhaimi bin Ismail (“Suhaimi”), presently 29 years old (DOB: 20 May 1992), is charged with having committed the following offences on or before 29 September 2017, in Singapore:

(a) abetting the offence of trafficking by engaging in a conspiracy with Izwan to do a certain thing, namely to traffic in 26.19g of diamorphine, and in pursuance of that conspiracy, and in order to the doing of that thing, an act took place on 29 September 2017 in the vicinity of 31 Toh Guan East, Singapore, where Izwan had in his possession for the purpose of trafficking at least five packets containing not less than 1996.15g of granular/powdery substance found to contain not less than 26.19g of diamorphine, without authorisation, an offence under s 5(1)(a) read with s 12 and punishable under s 33(1) of the MDA;<sup>3</sup> and

(b) abetting the offence of trafficking by engaging in a conspiracy with Izwan to do a certain thing, namely to traffic in 252.04g of

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<sup>1</sup> Exhibit CA1A.

<sup>2</sup> Exhibit CA2.

<sup>3</sup> Exhibit CA3B.

methamphetamine, and in pursuance of that conspiracy, and in order to the doing of that thing, an act took place on 29 September 2017 in the vicinity of 31 Toh Guan East, Singapore, where Izwan had in his possession for the purpose of trafficking at least one packet containing not less than 372.93g of crystalline substance found to contain not less than 252.04g of methamphetamine, without authorisation, an offence under s 5(1)(a) read with s 12 and punishable under s 33(1) of the MDA.<sup>4</sup>

3 Diamorphine and methamphetamine are controlled drugs specified in Class A of the First Schedule to the MDA. Each of the offences in the charges is punishable with death under s 33(1) read with the Second Schedule of the MDA. Alternatively, pursuant to s 33B(1), if the requirements in ss 33B(2) or 33B(3) are met, the accused persons may be sentenced to imprisonment for life and caning of not less than 15 strokes (in the case of s 33B(2)) or imprisonment for life (in the case of s 33B(3)).

4 Both Izwan and Suhaimi claimed trial. The Prosecution applied for a joint trial under s 143(g) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Section 143(g) provides for a person accused of committing an offence and a person accused of abetment of or attempt to commit that offence, to be charged and tried jointly. Izwan and Suhaimi had no objections. I saw no reason why Izwan and Suhaimi should not be tried jointly and accordingly, I ordered a joint trial.

#### **Amendment of first charge against Suhaimi by Prosecution**

5 The first charge against Suhaimi originally referred to *one* packet containing not less than 2270.95g of granular/powdery substance, found to

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<sup>4</sup> Exhibit CA4.

contain not less than 29.63g of diamorphine, whereas the first charge against Izwan referred to *five* packets containing not less than 2270.95g of granular/powdery substance, found to contain not less than 29.63g of diamorphine. On the fourth day of the trial, the Prosecution applied to amend the first charge against Suhaimi so that it referred to five packets instead of one packet. The weights of the granular/powdery substance and the diamorphine remained the same.

6 Suhaimi “formally”<sup>5</sup> objected to the amendment on the ground that the first charge had given him the impression that the diamorphine was contained in one packet.<sup>6</sup> However, he was unable to show what prejudice would be caused to him by the amendment.

7 I agreed with the Prosecution that the amendment would not cause any prejudice to Suhaimi and I therefore allowed the amendment.

### **Amendment of charges by the Court**

8 The first charge against Izwan and the first charge against Suhaimi, as framed by the Prosecution, referred to 2270.95g of granular/powdery substance found to contain not less than 29.63g of diamorphine.<sup>7</sup> After closing submissions and having considered the evidence, I came to the view that the amount of granular/powdery substance and amount of diamorphine stated in the first charge against Izwan and the first charge against Suhaimi ought to exclude

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<sup>5</sup> Notes of Evidence (“NE”), 6 April 2021, at 7:6–15.

<sup>6</sup> NE, 6 April 2021, at 6:9–22.

<sup>7</sup> Exhibits CA1 and CA3A



what was seized in an aluminium tray (marked “A3”).<sup>8</sup> The reasons for this are explained later in this judgment (see [125]–[127] below). Accordingly, pursuant to s 128(1) of the CPC, I amended the first charge against Izwan and the first charge against Suhaimi to reduce the amount of granular/powdery substance from 2270.95g to 1996.15g and the amount of diamorphine from 29.63g to 26.19g.

9 Izwan and Suhaimi claimed trial to the amended charges.<sup>9</sup> As all relevant evidence had been adduced and submissions made, they did not offer any further evidence or submissions.

### Terminology and names

10 It is not disputed that various terms used by Izwan and Suhaimi had the following meanings:

(a) “*Panas*”, “*ubat*” or “heroin” means diamorphine.<sup>10</sup>

(b) One “*batu*” or “*biji*” of heroin means a packet of heroin, which according to Izwan, weighs about 450g.<sup>11</sup> In the course of objecting to the Prosecution’s application to amend the first charge against Suhaimi, his counsel submitted that Suhaimi was under the impression that one “*biji*” of heroin simply meant one packet of heroin.<sup>12</sup> However, it is clear from Suhaimi’s subsequent testimony in court and WhatsApp messages

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<sup>8</sup> A3 was found to contain no less than 274.8g of granular/powdery substance which was found to contain not less than 3.44g of diamorphine (AB 138).

<sup>9</sup> Exhibits CA1A and CA3B.

<sup>10</sup> NE, 18 May 2021, at 21:19, 62:25–26; NE, 2 June 2021, at 4:9.

<sup>11</sup> NE, 18 May 2021, at 26:25; 25 May 2021 at 6:25 and 20:28.

<sup>12</sup> NE, 6 April 2021, at 6:6–22.

involving him that he knew that one “*biji*” referred to a specific amount of heroin. For example, Suhaimi had asked his Malaysian supplier about the price of one “*biji*” of heroin; obviously, the price had to have reference to a specific quantity.<sup>13</sup> In his closing submissions, Suhaimi accepted that one “*biji*” referred to 450g of heroin.<sup>14</sup>

(c) “*Sejuk*”, “*air batu*” or “Ice” means methamphetamine.<sup>15</sup>

(d) Half “*batang*” of Ice means a packet of methamphetamine weighing about 500g.<sup>16</sup>

(e) “Cook” or “cooking” drugs mean pack or packing drugs.<sup>17</sup>

11 The following names/aliases are also not disputed:

(a) Izwan is also known as “Neo”.<sup>18</sup> Izwan is referred to as “Prapa” in the contact list in Suhaimi’s handphone.<sup>19</sup>

(b) Suhaimi is also known as “Hustler”.<sup>20</sup>

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<sup>13</sup> NE, 2 June 2021, at 50:22–26.

<sup>14</sup> Suhaimi’s Defence Submissions, at para 134a.

<sup>15</sup> NE, 19 May 2021, at 19:18–19, 61:9; 2 June 2021, at 68:12–14.

<sup>16</sup> NE, 18 May 2021, at 29:31 and 30:1.

<sup>17</sup> NE, 18 May 2021, at 51:27.

<sup>18</sup> NE, 25 May 2021, at 42:25–28.

<sup>19</sup> NE, 18 May 2021, at 25:13; 25 May 2021, at 43:2–8.

<sup>20</sup> NE, 25 May 2021, at 42:29–30.

(c) One Mr Mohamed Yusof bin Kasim (“Yusof”) is also known as “Kimo”. Yusof is referred to as “Momo” in the contact list in Suhaimi’s handphone.<sup>21</sup>

(d) “Arun” is a drug supplier in Malaysia from whom Suhaimi ordered drugs.<sup>22</sup> Izwan referred to Arun as “Mamak”.<sup>23</sup>

## Facts

### *Izwan, Suhaimi, Yusof and Arun*

12 Izwan first met Suhaimi in 2008. They next met in 2014 at prison school. Izwan was released from prison in 2015 and Suhaimi was released in 2016.

13 Izwan and Suhaimi had separately met Yusof whilst in prison. Both reconnected with Yusof after their respective releases from prison. Both knew that Yusof dealt in drugs (including heroin) that he bought from Arun. Izwan admitted that he had previously bought heroin from Yusof.<sup>24</sup>

14 Izwan also admitted having previously dealt in heroin and Ice.<sup>25</sup> Suhaimi admitted having previously dealt in Ice but denied having dealt in heroin.<sup>26</sup> Suhaimi claimed that he only recommended customers to Izwan for heroin.<sup>27</sup>

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<sup>21</sup> NE, 25 May 2021 at 44:16–18.

<sup>22</sup> NE, 25 May 2021, at 45:17–20.

<sup>23</sup> NE, 19 May 2021, at 19:11–19.

<sup>24</sup> NE, 19 May 2021, at 10:23–25.

<sup>25</sup> NE, 18 May 2021, at 22:7–10; 19 May 2021, at 26:12–13.

<sup>26</sup> NE, 25 May 2021, at 72:3–4; 2 June 2021, at 26:2.

<sup>27</sup> NE, 2 June 2021, at 28:15–20.

Izwan and Suhaimi obtained their drugs from Arun but Suhaimi was the one who communicated with Arun.

***Collection and delivery of drugs on 29 September 2017***

15 On 29 September 2017, Izwan collected five “*biji*” of heroin and one packet of 500g of Ice at about 12.46pm in the vicinity of 31 Toh Guan East. He placed cash in Arun’s runner’s motorcycle basket in exchange for the drugs and then took a Grab taxi back to his home on the 12th floor of Block 27 New Upper Changi Road (“Block 27”).

16 Izwan repacked one “*biji*” of heroin into several smaller packets, marked “A4” (five packets), “B2A1” (five packets) and “B3A” (one packet);<sup>28</sup> the balance was placed in an aluminium tray (A3).<sup>29</sup> As instructed by Suhaimi, Izwan repacked the Ice into four packets of 125g each.<sup>30</sup> At Suhaimi’s request, Izwan placed one of these 125g packets of Ice at the electrical box on the 11th floor of Block 27 for one of Suhaimi’s customers.<sup>31</sup> Izwan repacked the 125g packet that was meant for himself into several smaller packets, marked “A5” (one packet), “B1A1” (seven packets), “B2B1A” (two packets) and “B3B1” (one packet).<sup>32</sup>

17 At some point after 3.00pm, Suhaimi arrived at Block 27 in a black Subaru car, registration number SJJ 5287K (the “Subaru”).<sup>33</sup> Yusof and one Mr

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<sup>28</sup> Exhibits P88, P97 and P99.

<sup>29</sup> Exhibit P87.

<sup>30</sup> NE, 2 June 2021, at 42:21–29.

<sup>31</sup> NE, 2 June 2021, at 43:17 and 79:30–80:4.

<sup>32</sup> Exhibits P88, P96, P98 and P99.

<sup>33</sup> NE, 18 May 2021, at 44:18–22.

Muhammad Zafar bin Ramli (“Zafar”) were with him. Izwan delivered a black plastic bag, containing two 125g packets of Ice, to Suhaimi. Suhaimi, Yusof and Zafar then left. Izwan identified the black plastic bag (marked “F1”) and the two 125g packets of Ice (marked “F1B1”) as the plastic bag and Ice that he handed to Suhaimi.<sup>34</sup> However, Suhaimi claimed that F1 and F1B1 were not what Izwan handed to him. I will deal with Suhaimi’s claim below.

***Izwan’s arrest and seizure from Izwan’s apartment***

18 At about 4.10pm on 29 September 2017, Izwan was arrested by Central Narcotics Bureau (“CNB”) officers at the void deck of Block 27. He was escorted to his apartment. Several drug exhibits were seized from Izwan’s bedroom. The items seized included the following, among other things:

- (a) one unopened taped bundle (marked “A1”) that contained three “*biji*” of heroin (marked “A1A”, “A1B”, and “A1C”);<sup>35</sup>
- (b) one torn taped bundle (marked “A2”) that contained one “*biji*” of heroin (marked “A2A”);<sup>36</sup>
- (c) an aluminium tray containing heroin (A3);<sup>37</sup>
- (d) smaller packets of heroin – A4 (five packets), B2A1 (five packets) and B3A (one packet);<sup>38</sup>

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<sup>34</sup> Exhibits P65 and P67.

<sup>35</sup> Exhibits P82–P84.

<sup>36</sup> Exhibits P85–P86.

<sup>37</sup> Exhibit P87.

<sup>38</sup> Exhibits P88, P97 and P99.

- (e) smaller packets of Ice – A5 (one packet), B1A1 (seven packets), B2B1A (two packets) and B3B1 (one packet);<sup>39</sup>
- (f) one torn taped bundle that was empty (marked “A7”);<sup>40</sup>
- (g) a paper fragment and a plastic bag (marked “A8”);<sup>41</sup>
- (h) several black plastic bags (marked “A9A”);<sup>42</sup> and
- (i) Izwan’s handphone (marked “MI-HP1”).<sup>43</sup>

19 The 125g packet of Ice that had been left at the electrical box on the 11th floor was not recovered, and hence does not form part of the charges against Izwan and Suhaimi.

20 Izwan’s wife (Mdm Nurul A’shirin binte Sa’ad), mother (Mdm Halinda binte Ismail) and stepfather (Mr Rashid bin Ahmat ) were in the apartment and they too were arrested.

***Suhaimi’s arrest and seizure from the Subaru***

21 At about 4.15pm on 29 September 2017, Suhaimi, Yusof and Zafar were arrested at an Esso petrol kiosk where they had stopped to refuel. Senior Staff Sergeant Bukhari bin Ahmad (“SSSgt Bukhari”) drove the Subaru (with Zafar and Sergeant Yogaraj s/o Ragunathan Pillay (“Sgt Yogaraj”) in the car) to a multi-storey carpark nearby at Block 2A Bedok South Avenue 1 (the

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<sup>39</sup> Exhibits P88, P96, P98 and P99.

<sup>40</sup> Exhibit P90.

<sup>41</sup> Exhibit P90.

<sup>42</sup> Exhibit P92.

<sup>43</sup> Exhibit P103.

“Carpark”). Yusof and Suhaimi were driven to the Carpark in separate CNB cars.

22 A search was conducted on the Subaru at the Carpark. A packet of Ice was recovered from the centre console of the car. Another packet of Ice was recovered from a compartment at the rear left door of the car. Yusof admitted that both packets belonged to him. These two packets of Ice are not the subject matter of this case.

23 A black plastic bag (F1)<sup>44</sup> was recovered from the bottom compartment of the driver’s door<sup>45</sup> and seized. F1 contained some small ziplock bags (marked “F1A”)<sup>46</sup> and another black plastic bag (marked “F1B”);<sup>47</sup> F1B contained two packets of Ice (F1B1).<sup>48</sup> Suhaimi, Zafar and Yusof disclaimed ownership of F1 and its contents. The CNB officers also seized, among other things, a handphone belonging to Suhaimi (marked “AS-HP1”).<sup>49</sup>

### **Photo-taking and weighing of exhibits**

24 On 30 September 2017, the case exhibits seized from the Subaru were photographed, and the drug exhibits weighed in the presence of Izwan, Suhaimi, Yusof and Zafar, all of whom signed the investigation diary to acknowledge the record of the weights of the drug exhibits.<sup>50</sup> On the same day, the case exhibits

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<sup>44</sup> Exhibit P65.

<sup>45</sup> Marked F in Exhibit P53.

<sup>46</sup> Exhibit P66.

<sup>47</sup> Exhibit P66.

<sup>48</sup> Exhibit P67.

<sup>49</sup> Exhibit P72.

<sup>50</sup> Exhibit P274A at pp 10.

seized from Izwan’s apartment were also photographed, and the drug exhibits weighed in the presence of Izwan, his wife, his mother and his stepfather, all of whom signed the investigation diary to acknowledge the record of the weights of the drug exhibits.<sup>51</sup> During the trial, Izwan and Suhaimi disputed the record in the investigation diary relating to the heroin in the aluminium tray (A3).<sup>52</sup>

### Analysis of the drug exhibits

25 The drug exhibits were sent to the Health Sciences Authority (“HSA”) for analysis. The heroin exhibits<sup>53</sup> were found to contain not less than 29.63g of diamorphine.<sup>54</sup>

<b>Exhibit</b>	<b>Weight of diamorphine</b>
A1A (one packet)	5.39g
A1B (one packet)	6.92g
A1C (one packet)	6.78g
A2A (one packet)	4.77g
A3 (aluminium tray)	3.44g
A4 (five packets)	0.46g
B2A1 (five packets)	0.48g
B3A (one packet)	1.39g
<b>Total</b>	<b>29.63g</b>

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<sup>51</sup> Exhibit P274A at pp 11–15.

<sup>52</sup> Exhibit P274A at p 15.

<sup>53</sup> A1A, A1B, A1C, A2A, A3, A4, B2A1 and B3A.

<sup>54</sup> Exhibits P114–P119, P122 and P123 (AB 134–141).



26 The Ice exhibits<sup>55</sup> were found to contain not less than 252.04g of methamphetamine.

<b>Exhibit</b>	<b>Weight of methamphetamine</b>
A5 (one packet)	3.10g
B1A1 (seven packets)	59.03g
B2B1A (two packets)	16.82g
B3B1 (one packet)	4.29g
F1B1 (two packets)	168.8g
<b>Total</b>	<b>252.04g</b>

#### **Forensic examination of Suhaimi's handphone**

27 The Forensic Response Team ("FORT") of the CNB's Investigation Division examined AS-HP1 and retrieved the relevant phone calls, text messages and WhatsApp text and voice messages.<sup>56</sup>

28 Investigations also revealed the following information:

<b>Phone number</b>	<b>Owner / handphone</b>	<b>Saved in AS-HP1 as</b>
83160757	Suhaimi AS-HP1	-
+65 98642303	Izwan MI-HP1	Prapa

<sup>55</sup> A5, B1A1, B2B1A, B3B1, and F1B1.

<sup>56</sup> Exhibits P273A and P291. The timings in Exhibit P273A reflect UTC time; Singapore time would be + 8 hours. The contents of Exhibit P291 are from Exhibit P273A but arranged in chronological order.

+65 90679918	Zafar MZ-HP1	Hindu Man
90154867	Yusof MY-HP	Momo
+60 182757917	Malaysian number	Not saved
+60 182183821	Malaysian number	Not saved

### DNA evidence

29 The DNA Profiling Laboratory of the HSA obtained Izwan’s deoxyribonucleic acid (“DNA”) profile on some of the items seized from his apartment at Block 27.<sup>57</sup>

30 As for the black plastic bag (F1) that was seized from the Subaru, and its contents (F1A, F1B and F1B1):<sup>58</sup>

- (a) no interpretable DNA profile was obtained from the exterior and interior of the black plastic bag (F1).
- (b) Izwan’s DNA profile and an uninterpretable component were obtained from:
  - (i) the exterior of the small ziplock bags (F1A);
  - (ii) the exterior and interior of the black plastic bag (F1B);
  - and

<sup>57</sup> Exhibit P113 (AB 90–114).

<sup>58</sup> Exhibits P111–P112 (AB 117–124).

(iii) the swabs of the two packets of Ice (F1B1).

Suhaimi’s DNA profile was not obtained from any of these items.

**Statements recorded from Izwan**

31 A total of ten statements recorded from Izwan were adduced in evidence:

(a) On 29 September 2017 at about 5.40pm, Staff Sergeant Muhammad Helmi bin Abdul Jalal (“SSgt Helmi”) recorded a contemporaneous statement from Izwan in his apartment (“Izwan’s First Statement”).<sup>59</sup>

(b) On 30 September 2017, at about 3.30pm, Assistant Superintendent Bong Xiu Feng (“ASP Bong”)<sup>60</sup> recorded a statement under s 23 of the CPC from Izwan in relation to 15g of diamorphine (“Izwan’s Second Statement”).<sup>61</sup>

(c) On 3 October 2017 at about 10.18am, ASP Bong recorded a statement under s 22 of the CPC from Izwan (“Izwan’s Third Statement”).<sup>62</sup>

(d) On the same day (3 October 2017) at about 4.30pm, ASP Bong recorded a statement under s 22 of the CPC from Izwan (“Izwan’s Fourth Statement”).<sup>63</sup>

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<sup>59</sup> Exhibit P160.

<sup>60</sup> Then an Inspector.

<sup>61</sup> Exhibit P164 (AB 367–369).

<sup>62</sup> Exhibit P277.

<sup>63</sup> Exhibit P168.

(e) On 4 October 2017 at about 10.45am, ASP Bong recorded a statement under s 22 of the CPC from Izwan (“Izwan’s Fifth Statement”).<sup>64</sup>

(f) On 13 December 2017 at about 2.24pm, ASP Bong recorded a statement under s 22 of the CPC from Izwan (“Izwan’s Sixth Statement”).<sup>65</sup>

(g) On 24 March 2018 at about 11.30am, Inspector Adam bin Ismail (“Insp Adam”) recorded a statement under s 23 of the CPC from Izwan in relation to 168.8g of methamphetamine (“Izwan’s Seventh Statement”).<sup>66</sup>

(h) On the same day (24 March 2018) at about 11.39am, Insp Adam recorded a statement under s 23 of the CPC from Izwan in relation to 83.24g of methamphetamine (“Izwan’s Eighth Statement”).<sup>67</sup>

(i) On 6 March 2019 at about 10.34am, Inspector Nur Yusyeila binte Yunus (“Insp Nur”) recorded a statement under s 22 of the CPC from Izwan (“Izwan’s Ninth Statement”).<sup>68</sup>

(j) On 20 March 2019 at about 10.55am, Insp Nur recorded a statement under s 23 of the CPC from Izwan in relation to 252.04g of methamphetamine (“Izwan’s Tenth Statement”).<sup>69</sup>

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<sup>64</sup> Exhibit P169.

<sup>65</sup> Exhibit P170.

<sup>66</sup> Exhibit P165 (AB 333–335).

<sup>67</sup> Exhibit P166 (AB 336–338).

<sup>68</sup> Exhibit P179 (AB 477–478).

<sup>69</sup> Exhibit P181 (AB 484–487).

32 All of Izwan’s statements were adduced by the Prosecution. Izwan challenged only his First, Third, Fourth and Fifth Statements. After holding ancillary hearings, I admitted all of them into evidence.

**Statements recorded from Suhaimi**

33 Ten statements recorded from Suhaimi were adduced in evidence:

(a) On 29 September 2017 at about 5.25pm, Staff Sergeant Muhammad Fardlie bin Ramli (“SSgt Fardlie”) recorded a contemporaneous statement from Suhaimi, in a CNB vehicle at the Carpark (“Suhaimi’s First Statement”).<sup>70</sup>

(b) On 30 September 2017 at about 12.09am, Senior Staff Sergeant Huang Weilun (“SSSgt Huang”) recorded a statement under s 23 of the CPC from Suhaimi in relation to less than 167g and not more than 250g of methamphetamine (“Suhaimi’s Second Statement”).<sup>71</sup>

(c) On 2 October 2017 at about 10.19am, ASP Bong recorded a statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Third Statement”).<sup>72</sup>

(d) On the same day (2 October 2017) at about 7.10pm, ASP Bong recorded another statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Fourth Statement”).<sup>73</sup>

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<sup>70</sup> Exhibit P161.

<sup>71</sup> Exhibit P171 (AB 326–328).

<sup>72</sup> Exhibit P173.

<sup>73</sup> Exhibit P174.

(e) On 4 October at about 3.08pm, ASP Bong recorded another statement under s 23 of the CPC from Suhaimi in relation to 15g of diamorphine (“Suhaimi’s Fifth Statement”).<sup>74</sup>

(f) On 7 November 2017 at about 9.33am, ASP Bong recorded another statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Sixth Statement”).<sup>75</sup>

(g) On 13 December 2017 at about 10.18am, ASP Bong recorded another statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Seventh Statement”).<sup>76</sup>

(h) On 18 December 2017 at about 10.30am, ASP Bong recorded another statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Eighth Statement”).<sup>77</sup>

(i) On 18 December 2017 at about 2.45pm, ASP Bong recorded another statement under s 22 of the CPC from Suhaimi (“Suhaimi’s Ninth Statement”).<sup>78</sup>

(j) On 8 March 2019 at about 11.50am, Insp Nur recorded another statement under s 23 of the CPC from Suhaimi in relation to 252.04g of methamphetamine (“Suhaimi’s Tenth Statement”).<sup>79</sup>

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<sup>74</sup> Exhibit P172 (AB 415–417).

<sup>75</sup> Exhibit P175.

<sup>76</sup> Exhibit P176.

<sup>77</sup> Exhibit 1D–3.

<sup>78</sup> Exhibit P178.

<sup>79</sup> Exhibit P180 (AB 479–483).

34 Suhaimi’s Eighth Statement was adduced in evidence by Suhaimi; the rest were adduced by the Prosecution. Suhaimi did not challenge any of his statements.

### **Defence called**

35 At the close of the Prosecution’s case, neither Izwan nor Suhaimi made any submissions. As the Prosecution had adduced evidence which was not inherently incredible and which satisfied each and every element of the charges, I called upon Izwan and Suhaimi to give evidence in their respective defences. Both Izwan and Suhaimi elected to give evidence.

### **Prosecution’s case**

36 The Prosecution alleges that the drugs referred to in the charges were from a joint order by Izwan and Suhaimi for:

- (a) five “*biji*” of heroin, of which two were meant for Izwan to sell to Izwan’s customers and three were meant for Suhaimi to sell to Suhaimi’s customers; and
- (b) 500g of Ice, of which 125g was meant for Izwan to sell to Izwan’s customers and 375g was meant for Suhaimi to sell to Suhaimi’s customers.

37 The Prosecution’s case against Izwan is that he:

- (a) had possession of the drugs when he collected them on 29 September 2017;
- (b) had actual knowledge that the drugs contained diamorphine and methamphetamine; and

(c) intended to traffic in the drugs by selling his share to his customers and delivering Suhaimi's share to Suhaimi; alternatively, pursuant to ss 17(c) and 17(h) of the MDA, Izwan is presumed to have possessed the drugs for the purpose of trafficking.

38 The Prosecution's case against Suhaimi is that:

(a) by making the joint order for the drugs with Izwan and coordinating Izwan's collection of the drugs in the vicinity of 31 Toh Guan East on 29 September 2017, Suhaimi had engaged with Izwan in a conspiracy;

(b) the conspiracy was for Izwan to possess the drugs for the purpose of trafficking; and

(c) pursuant to the conspiracy, an unlawful act (*ie*, Izwan's possession of the drugs for the purpose of trafficking) took place.

### **Izwan's defence**

39 Izwan made the following submissions in his defence:

(a) The voluntariness of Izwan's First, Third, Fourth and Fifth Statements should be reconsidered in view of certain evidence that had come up during the course of the trial, after the ancillary hearings had concluded.

(b) There is reasonable doubt in the chain of custody of all of the drugs seized, alternatively, of A3.

(c) Izwan was not in the vicinity of 31 Toh Guan East at about 11.50am, as alleged in the charges against him.



(d) In any event, with respect to the heroin, he should only be charged for trafficking in one “*biji*” of heroin because:

- (i) he had changed his order for five “*biji*” of heroin to one “*biji*” of heroin;
- (ii) five “*biji*” were wrongly delivered to him and he had made arrangements to return the excess four “*biji*” of heroin; and
- (iii) at the time of collection, he did not know that he had collected five “*biji*” of heroin.

Therefore, the charge against him should be amended to one of possession of not more than 5.77g of diamorphine (A3, A4, B2A1 and B3A) for the purpose of trafficking.

(e) As for the Ice,

- (i) with respect to the 125g of Ice that belonged to him, he had intended to keep two packets of Ice from the seven packets found in B1A1 for his own consumption; therefore, the trafficking charge against him should exclude these two packets;
- (ii) with respect to the Ice found in F1B1 (which was recovered from the Subaru), he should be charged only for possession because he was merely a bailee, in that he had merely helped Suhaimi to collect the Ice and was only concerned with handing the Ice back to Suhaimi; and
- (iii) alternatively, since he did not know what Suhaimi intended to do with the Ice in F1B1, the charge against him should be for an offence under s 5(1) read with s 12 of the MDA

for doing an act preparatory to the commission of the offence of trafficking by Suhaimi.

40 In his oral testimony, Izwan said that the heroin in A3 could have included some heroin left over from his previous purchase, although he could not confirm it.<sup>80</sup>

### **Suhaimi’s defence**

41 Suhaimi made the following submissions in his defence:

- (a) The chain of custody had been broken with respect to A3.
- (b) The charge for conspiracy to traffic in heroin is not made out because:
  - (i) he had placed the order on behalf of Izwan; Izwan told him to place an order for heroin “as usual” and he (Suhaimi) did not know what quantity of heroin that referred to; and
  - (ii) he had no knowledge of Izwan’s intention with regards to the heroin.
- (c) In any event, the order for heroin was changed to one “*biji*” but five “*biji*” of heroin were wrongly delivered and collected by Izwan. Thus, Suhaimi was party to an agreement for Izwan to possess no more than one “*biji*” of heroin.

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<sup>80</sup> NE, 19 May 2021, at 34:20–28, 35:31–36:7, and 36:28–32.

(d) The chain of custody had been broken with respect to F1B1. One of Suhaimi's arguments was that F1B1 was not the Ice that Izwan handed to him.

(e) Suhaimi was not party to an agreement for Izwan to order 125g of Ice, because Izwan made the order without any consultation or discussion with Suhaimi.

(f) In any event, Suhaimi did not know what Izwan intended to do with his (Izwan's) 125g of Ice. Thus, Suhaimi had not engaged in any conspiracy to traffic with respect to Izwan's 125g of Ice.

### **The issues**

42 The issues before me are as follows:

- (a) whether Izwan's First, Third, Fourth and Fifth Statements are admissible;
- (b) whether the chain of custody was broken with respect to the drugs, alternatively, A3 and/or F1B1;
- (c) whether F1B1 was the Ice that Izwan handed to Suhaimi;
- (d) whether the charges against Izwan are made out since he was not in the vicinity of 31 Toh Guan East at about 11.50am on 29 September 2017, as alleged in the charges against him;
- (e) whether Izwan and Suhaimi made a joint order for five "*biji*" of heroin, with the knowledge that two "*biji*" were meant for Izwan to sell to his customers and three "*biji*" were meant for Suhaimi to sell to his customers;

- (f) whether the order for heroin was changed from five “*biji*” to one “*biji*”;
- (g) whether the heroin in A3 included heroin from Izwan’s previous purchase;
- (h) whether Izwan and Suhaimi made a joint order for 500g of Ice, with the knowledge that 125g were meant for Izwan to sell to his customers and 375g were meant for Suhaimi to sell to his customers;
- (i) whether Izwan was merely a bailee with respect to the Ice in F1B1; and
- (j) whether the offences in the charges have been proved beyond a reasonable doubt.

**Whether Izwan’s First, Third, Fourth and Fifth Statements are admissible**

***First ancillary hearing***

43 I held a first ancillary hearing to determine the admissibility of Izwan’s Third, Fourth and Fifth Statements, all of which were recorded by ASP Bong in an interview room at the CNB Alpha lock-up.

44 ASP Bong testified, and it was not disputed by Izwan, that:

- (a) Izwan spoke in English but expressed some words in Malay; however, ASP Bong had an interpreter, Mr Shaffiq bin Selamat (“Shaffiq”), to assist her.<sup>81</sup> ASP Bong recorded the statements in English

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<sup>81</sup> NE, 30 March 2021, at 112:21–113:4; NE, 31 March 2021, at 6:1–7:4 and 10:7–11:5.

after which she read the statements to Izwan in English and Shaffiq interpreted the statements to Izwan in Malay.<sup>82</sup>

(b) Izwan signed the statements which also contained a handwritten note to the effect that: (i) the statements were read to him in the Malay language; (ii) he was invited but declined to amend the statements; and (ii) he signed the statements confirming them to be true and given voluntarily.<sup>83</sup>

ASP Bong denied any threat, inducement, promise or oppression by her.<sup>84</sup>

45 Izwan alleged as follows:

(a) On 30 September 2017, after the drug exhibits had been weighed, he had spoken to ASP Bong and asked her to “let go” of his wife. ASP Bong replied: “Look, I have looked through your handphone. You give me Ahmad Suhaimi involvement in this and I will let your wife off.” ASP Bong also told him: “If you play me out, I will pull your wife back.”<sup>85</sup>

(b) Station Inspector Eng Chien Loong Eugene (“SI Eugene”) and Woman Senior Staff Sergeant Norizan binte Merabzul (“W/SSSgt Norizan”) escorted him back to the lock-up. On the way, SI Eugene asked W/SSSgt Norizan who would be “facing the capital charge” the

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<sup>82</sup> NE, 30 March 2021, at 114:1–6; NE, 31 March 2021, at 6:30–7:1, 8:26–31 and 12:11–12.

<sup>83</sup> NE, 30 March 2021, at 114:1–16; NE, 31 March 2021, at 8:31–9:12 and 12:14–15; Exhibit P277 at p 4; Exhibit P168 at p 10; Exhibit P169 at p 13.

<sup>84</sup> NE, 30 March 2021, at 119:9–13; NE, 31 March 2021, at 10:4–6 and 12:16–18.

<sup>85</sup> NE, 31 March 2021, at 35:17–36:3.

next day and W/SSSgt Norizan replied that Izwan and his wife would be facing “the capital charge” the next day. On hearing that, Izwan asked why his wife would face the capital charge when ASP Bong had promised to let her off. W/SSSgt Norizan then made a phone call after which she told Izwan that only Izwan would face the capital charge the next day.<sup>86</sup>

(c) On 3 October 2017, before recording Izwan’s Third Statement, ASP Bong told him: “Look, whatever we have discussed in the exhibit room regarding your wife, just remember that.” During the recording of the statement, ASP Bong would tell him to “[t]hink properly” and “[r]emember your wife” whenever “certain things were not in her favour” during the recording of the statement.<sup>87</sup>

(d) On the same day, before recording Izwan’s Fourth Statement, ASP Bong told him: “Whatever we have discussed in the exhibit room, think about it properly” and “[t]hink of your wife”.<sup>88</sup>

(e) On 4 October 2017, before recording Izwan’s Fifth Statement, ASP Bong told him: “Remember what we have discussed in the exhibit room. Please think properly” and “[a]nd think about your wife”.<sup>89</sup>

(f) On the same day, after his Fifth Statement was recorded, ASP Bong rewarded him with a video call, and he had a video call with his children in the presence of his mother-in-law and sister-in-law.<sup>90</sup>

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<sup>86</sup> NE, 31 March 2021, at 36:10–37:5.

<sup>87</sup> NE, 31 March 2021, at 37:17–26.

<sup>88</sup> NE, 31 March 2021, at 37:37–38:2.

<sup>89</sup> NE, 31 March 2021, at 38:3–9.

<sup>90</sup> NE, 31 March 2021, at 38:14–24.

46 Under cross-examination, ASP Bong denied that Izwan had asked her to let his wife go, or that she told Izwan she would let his wife go if Izwan gave her Suhaimi’s “involvement”.<sup>91</sup> ASP Bong testified that Izwan was allowed to make a phone call, but not a video call, to his next of kin on 4 October 2017.<sup>92</sup>

47 Shaffiq’s evidence corroborated ASP Bong’s evidence.<sup>93</sup> In particular, he testified that: (a) he did not witness any threat, inducement or promise by ASP Bong to Izwan; and (b) he did not hear ASP Bong say to Izwan “remember your wife and think properly”.<sup>94</sup> Shaffiq’s testimony under cross-examination was as follows:<sup>95</sup>

Q: ... And earlier in examination-in-chief, the learned prosecution asked you some questions regarding the recording of the statements. In particular, they asked you, “When the statements were recorded, did you hear Officer Bong tell Izwan, ‘Remember your wife and think properly?’” Do you remember those questions?

A: I remember those question just now asked to me---

Q: Yes.

A: ---but I don’t remember it being asked during the interview.

Q: Okay. So just now you said a definitive “no”, but now you’re saying that you actually cannot remember.

A: If I had remembered, I would say “Yes, I can remember”.

Q: Now, did you take notes during the recording of the statements?

A: Yes, but very little notes. Only if there’s something unusual, then I would note it down.

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<sup>91</sup> NE, 31 March 2021, at 14:2–20, 16:20–23 and 16:30–17:17.

<sup>92</sup> NE, 31 March 2021, at 17:18–18:8.

<sup>93</sup> AB 318–323 at paras 9–17; NE, 31 March 2021, at 23:25–24:2, 25:21–26:5, 26:18–28 and 27:8–11.

<sup>94</sup> AB 318–323 at paras 11, 14 and 17; NE, 31 March 2021, at 25:21–26, 26:18–23 and 27:8–11.

<sup>95</sup> NE, 31 March 2021, at 28:13–29.

Q What do you mean by “something unusual”?

A For example, if there’s a force or threat against the accused, I would note that down.

Shaffiq also noted that Izwan was allowed to make a call on 4 October 2017 but could not remember whether it was a video call.<sup>96</sup>

48 It is well-settled that the test of voluntariness under s 258(3) of the CPC has an objective limb (*ie*, whether there was a relevant threat, inducement or promise having reference to the charge against the accused person) and a subjective limb (*ie*, whether the threat, inducement or promise was such that it would be reasonable for the particular accused person to think that he would gain some advantage or avoid any adverse consequences in relation to the proceedings against him): *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 (“*Kelvin Chai*”) at [53], recently affirmed in *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [39]. It is also indisputable that where the voluntariness of a statement is challenged, the burden is on the Prosecution to prove beyond a reasonable doubt that the accused’s statement was made voluntarily.

49 I found that the Prosecution had proved beyond a reasonable doubt that there was no threat, inducement or promise made to Izwan.

50 First, I accepted ASP Bong’s evidence which was corroborated by Shaffiq’s evidence. Shaffiq was a freelance interpreter who provided interpretation services for CNB. He was an independent witness in that he was not a CNB employee. His evidence was also not shaken during cross-

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<sup>96</sup> NE, 31 March 2021, at 30:1–12.



examination. In my view, Shaffiq was an objective witness, whose evidence deserved to be given considerable weight.

51 Second, ASP Bong’s investigation diary showed that Sergeant Muhammad Hidayat bin Jasni (“Sgt Hidayat”) was present during the weighing of the exhibits.<sup>97</sup> Sgt Hidayat confirmed this.<sup>98</sup> Sgt Hidayat also confirmed that he was one of the officers escorting Izwan and the other accused persons and that nothing occurred between the end of the weighing process and escorting them to the lock-up.<sup>99</sup> I accepted his evidence, which withstood cross-examination.

52 Third, W/SSSgt Norizan denied having said anything regarding capital charges to any of the accused persons who were being escorted (*ie*, Izwan, his wife, his stepfather and his mother) to the lock-up; at that time she did not know if any of them would be served with capital charges and she also did not remember making any phone call to ASP Bong while the accused persons were being escorted to the lock-up.<sup>100</sup> SI Eugene also denied Izwan’s allegations.<sup>101</sup> I accepted W/SSS Norizan’s and SI Eugene’s evidence. Their evidence withstood cross-examination.

53 Fourth, Izwan’s mother-in-law, Mdm Fauziah bte Abdullah (“Fauziah”) initially testified that Izwan had made a video call after he had been arrested. However, when cross-examined about this, she said she could not remember

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<sup>97</sup> Exhibit P274A at p 15.

<sup>98</sup> NE, 31 March 2021, at 83:6–17 and 84:24–30.

<sup>99</sup> NE, 31 March 2021, at 83:18–19, 27–29 and 84:20–22.

<sup>100</sup> NE, 1 April 2021, at 5:1–9 and 7:23–8:10.

<sup>101</sup> NE, 1 April 2021, at 11:3–11 and 12:12–13:11.

well and that it “could be a normal phone call”.<sup>102</sup> She then agreed with the Prosecution that it was a regular phone call and not a video call, and even went on to explain that she did not think a video call was possible because Izwan was in the police station at Cantonment.<sup>103</sup> It was clear to me that Fauziah did not recall any video call from Izwan after he had been arrested. It was also clear to me from her evidence (that she did not think a video call was possible) that had there been a video call from Izwan when he was at the police station at Cantonment, she would have remembered.

54 Fifth, although Izwan’s wife was ultimately not charged, the reasons as to why she was not charged were not in evidence. However, as the Prosecution submitted, she was not involved in the drugs that formed the subject matter of this trial.<sup>104</sup> In my view, the fact that Izwan’s wife was not charged was equivocal at best.

55 Sixth, I agreed with the Prosecution that Izwan gave his statements because he would have known that the WhatsApp messages between him and Suhaimi would incriminate both of them anyway.

56 For completeness, I should add that Izwan also called his stepfather to testify. However, his stepfather’s testimony was of no assistance. He testified that after the exhibits were weighed, he was asked to leave the room and to go to the interview room; he did not see Izwan and he could not remember who

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<sup>102</sup> NE, 31 March 2021, at 80:6–10.

<sup>103</sup> NE, 31 March 2021, at 80:14–17.

<sup>104</sup> NE, 24 September 2021, at 17:6–9.

else came out of the room with him as he was suffering from withdrawal symptoms then.<sup>105</sup>

57 Taking all of the evidence into consideration, I was left in no doubt that Izwan had given his Third, Fourth and Fifth Statements voluntarily without any threat, promise, inducement or oppression by ASP Bong. Accordingly, I admitted these statements in evidence.

***Second ancillary hearing***

58 I held a second ancillary hearing to determine the voluntariness of Izwan's First Statement, which was the contemporaneous statement recorded in his bedroom at Block 27 on 29 September 2017 by SSgt Helmi.

59 SSgt Helmi testified that he had no difficulty communicating with Izwan, the statement was read back to Izwan, and Izwan was invited to make amendments but he did not wish to make any.<sup>106</sup> SSgt Helmi denied any threat, inducement, promise or oppression in the recording of Izwan's First Statement.<sup>107</sup>

60 Izwan testified as follows:<sup>108</sup>

(a) Before recording his contemporaneous statement, SSgt Helmi asked him whom the items in the bedroom belonged to and he remained silent, after which his wife left the bedroom. SSgt Helmi's tone of voice

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<sup>105</sup> NE, 31 March 2021, at 76:11–23.

<sup>106</sup> NE, 6 April 2021, at 33:31–34:7.

<sup>107</sup> NE, 6 April 2021, at 34:19–21.

<sup>108</sup> NE, 6 April 2021, at 41:20–42:27.

then changed, and he told Izwan that “he doesn’t care and that he will continue to take the statement because it’s [Izwan’s] life”.

(b) SSgt Helmi then took out a small book and asked Izwan questions. When SSgt Helmi asked him whom the items in the bedroom belonged to, he replied: “One *batu*, mine, the Ice in this house, mine, and four *batu* to be returned back.”

(c) SSgt Helmi then said to him: “Okay, make it simple, if you admit that all these items belong to you, I will let go of – I will let go your parents.”

(d) Izwan then replied: “Okay, what about my wife?” and SSgt Helmi asked him to “ask the IO about that”. Izwan replied: “Okay” and SSgt Helmi continued to record his statement.

61 Under cross-examination, SSgt Helmi denied Izwan’s allegations.<sup>109</sup>

62 I did not believe Izwan’s version of what transpired between SSgt Helmi and him. First, there was no reason for SSgt Helmi to start asking him about the items in the bedroom before he commenced recording the contemporaneous statement. Second, according to Izwan, he was induced to give his statement by SSgt Helmi’s promise to let his parents off, without knowing whether his wife would be let off. I agreed with the Prosecution that this was illogical. Third, there was no evidence that Izwan even tried to ask ASP Bong to let his wife off, after ASP Bong arrived at the apartment at Block 27. In my view, Izwan could not say that SSgt Helmi agreed to let his wife off for the purposes of his First Statement because in challenging his Third, Fourth and Fifth Statements during

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<sup>109</sup> NE, 6 April 2021, at 41:23–42:27.

the first ancillary hearing, he had alleged that ASP Bong promised to let his wife off in connection with his Third, Fourth and Fifth Statements.

63 I was satisfied that the Prosecution had proved beyond a reasonable doubt that Izwan's First Statement was made voluntarily, and I admitted the same in evidence.

***Further submissions by Izwan***

64 The court may, after hearing evidence in the main trial, reverse its earlier decision to admit evidence at an ancillary hearing: ss 279(7) and 279(8) of the CPC.

65 As stated in [45] above, during the first ancillary hearing, Izwan claimed that ASP Bong promised to let his wife off if he implicated Suhaimi in his statements. In her testimony during the ancillary hearing, ASP Bong had said that:

- (a) at the time she recorded Izwan's Third Statement, she had not gone through any of the handphones that had been seized;<sup>110</sup> and
- (b) at the time she recorded Izwan's Fourth and Fifth Statement, she had not gone through Izwan's handphone.<sup>111</sup>

66 During the first ancillary hearing, one of the submissions made by the Prosecution was that ASP Bong could not have asked Izwan to incriminate Suhaimi because when she was recording the statements, ASP Bong had not checked Izwan's handphone and did not know that Suhaimi was known as

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<sup>110</sup> NE, 30 March 2021, at 116:5–7.

<sup>111</sup> NE, 31 March 2021, at 7:27–8:2 and 11:6–18.

Hustler.<sup>112</sup> Subsequently, in the course of the main trial, ASP Bong was recalled to the stand and clarified that:<sup>113</sup>

(a) she had gone back and checked the investigation papers concerning Yusof, and realised that Yusof had identified himself as Kimo and Suhaimi as Hustler in his statement recorded on 2 October 2017; and

(b) she did know that Suhaimi was known as Hustler before she recorded Izwan’s Third Statement because she had read Yusof’s statement before that.

67 Izwan seized upon ASP Bong’s subsequent evidence to submit, during closing submissions, that I should review the voluntariness of Izwan’s statements because a “key plank” of the Prosecution’s case during the first ancillary hearing was gone. I disagree with Izwan’s submission. In my view, the fact that ASP Bong did know that Hustler referred to Suhaimi does not affect the reasons set out at [50] to [55] above.

68 In his testimony, Shaffiq had said that it was only if there was “something unusual” that he would note it down (see [47] above). In his closing submissions, Izwan pointed out that when explaining what “something unusual” meant, Shaffiq referred only to “force or threat” and did not mention inducement or promise.<sup>114</sup> Izwan appeared to be making the submission that it was not clear whether Shaffiq had also looked out for “promises” in addition to “force or

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<sup>112</sup> NE, 1 April 2021, at 22:11–23:6.

<sup>113</sup> NE, 23 April 2021, at 6:24–29, 7:15–28 and 8:9–13.

<sup>114</sup> Izwan’s Closing Submissions, at paras 61 and 63.

threat”.<sup>115</sup> In my view, this submission is unmeritorious. Shaffiq mentioned “force or threat” as *examples* of what “something unusual” meant. It was also not put to Shaffiq that his answer meant that he would not have taken note of promises. Further, during re-examination, Shaffiq explained that if he had heard ASP Bong say “Remember what we talked earlier on. Make sure you do it” to Izwan, he would have noted it down because it sounded “like a promise or a threat”.<sup>116</sup> Clearly, Shaffiq had promises in mind as well.

69 I confirm my ruling made during the first ancillary hearing that Izwan’s Third, Fourth and Fifth Statements were given voluntarily and hence are admissible in evidence.

### **Whether the chain of custody of the drugs was broken**

70 Izwan submitted that the chain of custody had been broken with respect to the drugs, and in particular, the heroin in A3 (the aluminium tray).

71 Suhaimi submitted that the chain of custody had been broken with respect to A3 and F1B1.

### ***Chain of custody of the drugs***

72 Staff Sergeant Au Yong Hong Mian (“SSgt Au Yong”) testified that at 2.45am on 30 September 2017, he handed a duffel bag containing the seized case exhibits and Izwan’s personal properties to ASP Bong at the Exhibit Management Room at CNB headquarters.<sup>117</sup> However, the entry made by ASP Bong in her investigation diary stated that she took over the exhibits from SSgt

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<sup>115</sup> Izwan’s Closing Submissions, at para 65.

<sup>116</sup> NE, 31 March 2021, at 31:6–8.

<sup>117</sup> AB 303 at para 7; NE, 7 April 2021, at 79:20–23.

Au Yong at 5.22am.<sup>118</sup> ASP Bong confirmed on the stand that she took over the exhibits at 5.22am.<sup>119</sup>

73 Izwan submitted that the discrepancy in the time at which ASP Bong took over the exhibits from SSgt Au Yong showed a gap in the handling of the drug exhibits. Izwan relied on *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440, in which the Court of Appeal held at [39]:

39 ... It is well established that the Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused. Much of the discussion in this area has been framed in terms of whether such a doubt has been raised as to a possible break in the chain of custody. *But this obscures the fact that it is first incumbent on the Prosecution to establish the chain.* This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis. In the context of the Prosecution establishing the chain of custody, the Defence may also seek to suggest that there is a break in the chain of custody. This refers not necessarily to challenging the Prosecution's overall account but to showing that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. ... 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: *PP v Chen Mingjian* [2009] 4 SLR(R) 946 ("*Chen Mingjian*") at [4]. [emphasis in original]

74 I disagree with Izwan's submission. There was no gap in the chain of custody in that there was no moment during which it was not known who had custody of the exhibits. The fact that SSgt Au Yong took custody of the exhibits from Senior Staff Sergeant Tay Keng Chye, Sunny and that they remained in SSgt Au Yong's custody until he handed them over to ASP Bong, has not been

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<sup>118</sup> Exhibit P274A at p 15.

<sup>119</sup> NE, 23 April 2021, at 3:12–13 and 9:6–8.



challenged. There was no differing account of who held the exhibits before they were handed over to ASP Bong. The discrepancy complained of was simply a discrepancy as to the time at which SSgt Au Yong handed custody of the exhibits over to ASP Bong; it was not a gap in the chain of custody. I find that Izwan has failed to raise a reasonable doubt as to the integrity of the chain of custody of the drugs.

### *Chain of custody of A3*

75 On 30 September 2017, ASP Bong weighed the drug exhibits and recorded the same in her investigation diary.<sup>120</sup> The entry for A3 appears in the investigation diary as follows:

(h) A1B: 471.11g	1 pkt	(h) : 2132.65g
(h) A1C: 472.86g	1 pkt	(i) : 191.19g
(h) A2A: 475.08g	1 pkt	
(h) A4: 48.48g	5 pkt	(h) A3: 286.57g 1 pkt
(h) A5: 13.76g	5 pkt 1 pkt	

As can be seen from the above, the list of exhibits on the left did not include A3 and the entry for A3 was inserted to the right of, and between, A2A and A4. Izwan did not sign against the insertion. The notations “h” and “i” were added by ASP Bong to indicate whether the exhibit related to heroin or Ice. ASP Bong also added the notations in pencil indicating the number of packets for each exhibit.

<sup>120</sup> Exhibit P274A at p 15.

76 Izwan claimed that the contents of A3 were not weighed in his presence and that when he signed the investigation diary to acknowledge the entries showing the weights of the drug exhibits, the entry for A3 was not there.<sup>121</sup> Izwan relied on the following facts:

- (a) the entry for A3 was a subsequent insertion;
- (b) the total weight of the heroin was recorded in the investigation diary as 2,132.65g, which represented the total weight of the heroin exhibits listed in the investigation diary, *excluding A3*; and
- (c) later in the afternoon on 30 September 2017, ASP Bong charged Izwan for trafficking by having in his possession for the purpose of trafficking, 2,132.65g of brown granular/powdery substance believed to contain more than 15g of diamorphine.<sup>122</sup> As stated above, 2,132.65g was the weight of the heroin exhibits listed in the investigation diary, excluding A3.

77 With respect to the insertion of the entry for A3, ASP Bong explained that:<sup>123</sup>

- (a) before starting the weighing session, she wrote all the exhibit numbers in the investigation diary and when weighing started, she filled in the weight of each of the exhibits;

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<sup>121</sup> NE, 18 May 2021, at 55:19–23; NE, 19 May 2021, at 41:23–28.

<sup>122</sup> Exhibit P164 (AB 367).

<sup>123</sup> NE, 1 April 2021, at 43:15–20.

(b) during the weighing of A3, she realised that she had missed out A3 when writing down the exhibit numbers and therefore she inserted A3 on the right side.

78 With respect to the total weight recorded in the investigation diary and the weight stated in the charge against Izwan on 30 September 2017, ASP Bong explained that she could have made a calculation error.<sup>124</sup>

79 On the evidence before me, I find that there is reasonable doubt as to whether the contents of A3 were weighed in Izwan's presence. However, that does not mean that there was therefore a break in the chain of custody of A3. The Prosecution confirmed that it is CNB's protocol, at least for capital cases, for the weighing to be done in the accused's presence.<sup>125</sup> Whilst this may be prudent practice, it should not be conflated with the issue of chain of custody.

80 The evidence is that the seized exhibits, including A3, were in the duffel bag that was handed over to ASP Bong by SSgt Au Yong. Before the exhibits were weighed, they were laid out and photographed in Izwan's presence; the investigation diary clearly shows that the exhibits included A3.<sup>126</sup> This was not challenged by Izwan. It is clear that A3 was in ASP Bong's custody, even if she may not have weighed it in Izwan's presence.

81 I therefore find that Izwan has failed to raise a reasonable doubt as to the chain of custody of A3. However, for other reasons set out later in this judgment,

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<sup>124</sup> NE, 1 April 2021, at 48:15–17.

<sup>125</sup> NE, 24 September 2021, at 14:1–2.

<sup>126</sup> Exhibit P274A at pp 10–11 (at 0245 hours).

the contents of A3 are to be excluded from the relevant charges against Izwan and Suhaimi.

***Chain of custody of F1B1***

82 F1B1 are two packets of crystalline substances that were found inside a black plastic bag (F1B), which was itself inside another black plastic bag (F1) that was seized from the bottom compartment of the driver's door of the Subaru (see [23] above). Suhaimi submitted that there was a break in the chain of custody of F1B1.

83 First, Suhaimi argued that:

- (a) he did not put the black plastic bag that he received from Izwan in the bottom compartment of the driver's door of the Subaru; instead, he had placed it on the centre console between the driver's seat and the front passenger seat;
- (b) his DNA was not found on F1 or its contents; and
- (c) the weight of F1B1 differed from the weight of the two packets of Ice that Izwan had passed to Suhaimi.

84 I reject Suhaimi's first argument. Suhaimi's argument is simply that F1B1 was not his; it is not about the chain of custody. F1 (together with its contents, including F1BI) came into the CNB's custody only after it was seized, at the Carpark, from the bottom compartment of the driver's door. From then on, there was an unbroken chain of custody.

85 Second, Suhaimi argued that the chain of custody of F1B1 had been broken because there were contradictory accounts as to how F1B1 was handled at the Carpark:

(a) Station Inspector Tay Cher Yeen, Jason (“SI Jason”) testified that he weighed F1B1 at the Carpark in front of Suhaimi, Zafar and Yusof;<sup>127</sup> however, Yusof testified that an Indian officer weighed the drugs at the Carpark,<sup>128</sup> and Sgt Yogaraj testified that he did not see SI Jason weighing or handling the drug exhibits;<sup>129</sup> and

(b) Suhaimi testified that SSgt Fardlie showed F1B1 to him during the recording of Suhaimi’s First Statement in a CNB car at the Carpark;<sup>130</sup> Zafar claimed that SSSgt Bukhari showed him F1B1 when SSSgt Bukhari recorded his statement,<sup>131</sup> but there was no evidence that SSgt Fardlie had handed F1B1 to SSSgt Bukhari.

86 I reject Suhaimi’s second argument. With respect to the weighing of the drugs, it was not Sgt Yogaraj’s evidence that he weighed the drugs at the Carpark. It was also not put to either SI Jason or Sgt Yogaraj that it was the latter who weighed the drugs at the Carpark. Suhaimi had also ignored Yusof’s evidence during re-examination when he explained that a Chinese officer took out the weighing scale, an Indian officer placed the drug exhibits on the weighing scale and the Chinese officer recorded the weight.<sup>132</sup> This explanation

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<sup>127</sup> NE, 9 April 2021, at 92:3–10 and 93:6–7.

<sup>128</sup> NE, 9 June 2021, at 53:23–28.

<sup>129</sup> NE, 20 April 2021, at 4:27–30 and 23:30–31.

<sup>130</sup> NE, 2 June 2021, at 13:2–8.

<sup>131</sup> NE, 9 June 2021, at 28:14–22.

<sup>132</sup> NE, 9 June 2021, at 57:27–58:14.

is consistent with SI Jason being the officer who weighed the drug exhibits. Suhaimi also ignored Sgt Yogaraj's evidence that he did not see SI Jason weighing or handling the drugs because he was searching the car and did not pay attention to what the other officers were doing.<sup>133</sup> Sgt Yogaraj did not say that SI Jason was not the officer who weighed the drug exhibits.

87 With respect to the recording of Zafar's statement at the Carpark, SSSgt Bukhari testified that he asked Zafar about certain exhibits seized from the left pocket of Zafar's pants, but he did not show Zafar the drug exhibits that were seized from the Subaru.<sup>134</sup> I accept SSSgt Bukhari's evidence, which was given after he had refreshed his memory with his pocketbook. His evidence was not shaken during cross-examination.

88 I find that Suhaimi has failed to raise a reasonable doubt as to the chain of custody of F1B1.

### **Whether F1B1 was the Ice that Izwan handed to Suhaimi**

89 In any event, I reject Suhaimi's claim that F1B1 was not the Ice that Izwan handed to him; Suhaimi's claim is incredulous.

90 First, it is not disputed that Suhaimi went to collect his 250g of Ice from Izwan and Izwan handed a black plastic bag to him when he was seated inside the Subaru. Izwan identified F1 and its contents as the items that he handed to Suhaimi. There was no other black plastic bag containing 250g of Ice found inside the Subaru. More importantly, Izwan's DNA profile was found on the contents of F1, *ie*, F1A, F1B and F1B1 (see [30] above). The fact that Suhaimi's

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<sup>133</sup> NE, 20 April 2021, at 4:27–30 and 23:25–27.

<sup>134</sup> NE, 22 April 2021, at 3:1–17.

DNA was not found on F1 or its contents, is not sufficient to displace the evidence that showed clearly that Izwan had handed F1 to Suhaimi. Suhaimi's claim that F1B1 was not the Ice that Izwan handed to him is simply unbelievable.

91 Second, Suhaimi's Second Statement was recorded after he was charged with trafficking not less than 167g and not more than 250g of methamphetamine. Suhaimi testified that he had assumed that the Ice reflected in the charge referred to F1B1.<sup>135</sup> Yet, in his Second Statement, he did not deny ownership of F1B1. Instead, he said "I admit my mistake and I am very sorry about it. I am asking for a lighter sentence."<sup>136</sup>

92 Third, in Suhaimi's Fourth Statement, he identified F1B1 as the Ice that he had "ordered" from Izwan earlier on the date of his arrest.<sup>137</sup>

93 Fourth, on 8 March 2019, Suhaimi was charged with engaging in a conspiracy with Izwan to traffic in 252.04g of methamphetamine, and his Ninth Statement was recorded. Yet, all that Suhaimi said in his statement was: "To refer to my previous charge form for the 2 packets before the weight was put together."<sup>138</sup>

94 Fifth, the two black plastic bags that were seized from the Subaru (F1 and F1B)<sup>139</sup> were identical in appearance to the black plastic bags seized from

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<sup>135</sup> NE, 2 June 2021, at 59:15–22.

<sup>136</sup> Exhibit P171 (AB 326–328).

<sup>137</sup> Exhibit P174 at para 20.

<sup>138</sup> Exhibit P180 (AB 479–483, at AB 483).

<sup>139</sup> Exhibit P65 and P66.

Izwan's apartment (A9A).<sup>140</sup> Forensic examination of the plastic bags (F1, F1B and A9A) by the HSA Forensic Chemistry and Physics Laboratory established that:

- (a) based on physical fitting and the examination of printing, the plastic bags were very likely to have been printed using the same printing plate;<sup>141</sup> and
- (b) based on physical fitting and the comparison of physical characteristics, printing, appearance of heat seals and cut edge of punched out handles of the plastic bags,
  - (i) F1B and eight bags in A9A were consecutively manufactured; and
  - (ii) F1 and nine bags in A9A were consecutively manufactured.<sup>142</sup>

95 Sixth, Suhaimi pointed out that ASP Bong weighed F1B1 (including the packaging) at 265.66g and HSA weighed the contents of F1B1 (*ie*, the crystalline substance) at 249.5g.<sup>143</sup> According to Izwan, he handed to Suhaimi a plastic bag containing two packets of Ice weighing 125g each (including the packaging).<sup>144</sup> Suhaimi argued that since Izwan weighed the two packets at a total of 250g, F1B1 could not have been the same two packets that Izwan handed

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<sup>140</sup> Exhibit P92.

<sup>141</sup> Exhibit P148 (AB 187–194) at para 22.

<sup>142</sup> Exhibit P148 (AB 187–194) at para 23(a)(ii) and (b).

<sup>143</sup> Exhibit P274A at p 10; AB 131.

<sup>144</sup> NE, 19 May 2021, at 37:1–6, 51:16–21.



to him. I reject Suhaimi's argument. For the reasons set out above, it is clear that F1B1 was the Ice that Izwan handed to Suhaimi.

96 I also find Izwan's claim that the two packets weighed 125g each *including the packaging* to be questionable. It is more logical that Izwan would have weighed 250g of the *crystalline substance* to hand over to Suhaimi. The fact that HSA weighed the crystalline substance in F1B1 at 249.5g is strong evidence that Izwan did so. Further, even if Izwan did weigh each packet with the packaging, Suhaimi's argument simply *assumed* that Izwan's weighing process was accurate. However, he did not adduce any evidence of the accuracy of the weighing scale used by Izwan. Suhaimi's allegation was premised on Izwan's weighing process being accurate; the burden of proof was on him.

**Whether the charges against Izwan are proven since he was not in the vicinity of 31 Toh Guan East at 11.50am on 29 September 2017**

97 The charges against Izwan allege that he committed the trafficking offences on 29 September 2017 at about 11.50am in the vicinity of 31 Toh Guan East. The evidence shows that on 29 September 2017, Izwan left his residence at about 11.38am and that at 12.04pm, he was still in a taxi, stuck in a traffic jam.<sup>145</sup> Izwan arrived at Toh Guan East at about 12.22pm.<sup>146</sup> Izwan submitted that therefore the charges cannot be established beyond a reasonable doubt since he was not in the vicinity of 31 Toh Guan East at about 11.50am on 29 September 2017.

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<sup>145</sup> NE, 18 May 2021, at 34:15–35:8; Exhibit P273A at p 28 (s/n 153) and p 27 (s/n 147–148).

<sup>146</sup> NE, 18 May 2021, at 35:9–14; Exhibit P273A at pp 26–27 (s/n 144).

98 In my view, there is no merit in Izwan’s submission. The charges against him allege that the offences took place *at about* 11.50am. The evidence shows that Izwan collected the drugs at about 12.46pm.<sup>147</sup> Section 124(1) of the CPC requires the charge to contain details of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of what he is charged with. Clearly, Izwan knew what he was charged with.

**Whether there was a joint order by Izwan and Suhaimi for the heroin and whether the order for heroin was reduced to one “*biji*”**

99 As stated earlier, the Prosecution alleged that Izwan and Suhaimi made a joint order for five “*biji*” of heroin, two of which were meant for Izwan to sell to Izwan’s customers and three were meant for Suhaimi to sell to Suhaimi’s customers.

100 The Prosecution relied on the following evidence:

(a) Shortly after midnight on 29 September 2017, Suhaimi received two photographs of one packet of Ice and one photograph of five “*biji*” of heroin from Arun, via WhatsApp.<sup>148</sup> Suhaimi forwarded the photographs to Izwan at about 12.44am on 29 September 2017.<sup>149</sup> Izwan was unable to view the photographs; Suhaimi re-sent the photographs and Izwan had sight of the photographs at about 10.29am on 29 September 2017.<sup>150</sup>

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<sup>147</sup> NE, 18 May 2021, at 35:31–36:7; Exhibit P273A at p 20 (s/n 109).

<sup>148</sup> Exhibit P273A at pp 40–41 (s/n 223–225).

<sup>149</sup> Exhibit P273A at pp 39–40 (s/n 219–221).

<sup>150</sup> Exhibit P273A at pp 34–35 (s/n 190–195).

(b) Izwan's Third Statement, in which he said:<sup>151</sup>

5 On 29/09/17 at around 11 plus in the day, [Suhaimi] whatsapp me to asked me to go the 31 Toh Guan East for the pickup ... When I reached, I informed [Suhaimi] ... [Suhaimi] did informed me that a bike would park around the area ... Then I was supposed to pick up the 5 biji and ½ batang from the bike ...

...

7 ... Prior to the pickup, I was informed by [Suhaimi] that 125g of [Ice] will be for me to sell to my own customer. The rest of the [Ice] will be for [Suhaimi's] own customers. As for the [heroin], 2 biji were for me to sell and the other 3 biji were for [Suhaimi's] own customers. ...

8 ... One [sic] I reached home, I went straight to my room and repack the [Ice]. I took out the contents inside the purple plastic bag, there were 3 black taped bundles inside the plastic bag. One long one which I know contains 3 biji, one shorter one which I know contains 2 biji and one smaller one which I know contains the ½ batang of [Ice]. ...

(c) Izwan's Sixth Statement (which was unchallenged), in which he confirmed that he received the photographs of the one packet of Ice and five "biji" of heroin from Suhaimi.<sup>152</sup> Izwan also said:<sup>153</sup>

49 I am now shown 1 photograph of a walkway ... This is the place I collected the drugs ... I saw the maroon bike passed by and stopped further up the bus stop at this walkway, I then walked towards the bike and stopped at the walk way to collect the 5 biji of [heroin] and ½ batang of [Ice] ...

...

52 I am now shown 1 photograph of 5 packets of [heroin]. ... This is the photo I received from [Suhaimi] the night before my arrest. [Suhaimi] informed me to

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<sup>151</sup> Exhibit P277 at p 3.

<sup>152</sup> Exhibit P170 at paras 50–52.

<sup>153</sup> Exhibit P170.

collect 5 biji of [heroin] together with the ½ batang of [Ice] ... on the day of my arrest ...

...

Q6: Who was the one who ordered the 5 biji of [heroin]?

A6: I remembered I was informed by [Suhaimi] to collect the ½ batang of [Ice]. In the whatsapp conversation, I casually asked [Suhaimi] if he ordered [heroin], [Suhaimi] then asked me if I wanted to order. I told [Suhaimi] my stock of [heroin] was running low and that we could order the [heroin]. [Suhaimi] agreed. The usual amount for each order from [Arun] is 5 biji of [heroin]. The initial agreement was to have 2 biji of [heroin] for me and to safekeep the other 3 biji of [heroin] under [Suhaimi's] instructions. ...

101 Izwan's and Suhaimi's defences at the trial were as follows:

- (a) The order for five “*biji*” of heroin was not a joint order; the order was made by Suhaimi on behalf of Izwan.
- (b) Izwan subsequently reduced the order to one “*biji*” of heroin but five “*biji*” were delivered by mistake. When he collected the drugs on 29 September 2017, Izwan did not know that the bag contained five “*biji*” of heroin in addition to the 500g of Ice.
- (c) Suhaimi did not know what Izwan intended to do with his one “*biji*” of heroin.

***Whether the order for five “biji” of heroin was for Izwan alone***

102 Izwan and Suhaimi claimed that:

- (a) On 26 September 2017, Izwan told Suhaimi that he wanted to place an order for heroin “*macam biasa*” (which means “as usual”),

without stating the actual quantity.<sup>154</sup> Suhaimi placed the order on Izwan's behalf by telling Arun, "Izwan order as usual"; according to Suhaimi, he placed the order on 27 September 2017.<sup>155</sup>

(b) Suhaimi said that he did not know what "as usual" meant.<sup>156</sup> Izwan said that he did not know whether Suhaimi knew what "as usual" meant.<sup>157</sup> Suhaimi also claimed that he did not know much about heroin and had never packed heroin before.<sup>158</sup>

103 I reject Izwan's and Suhaimi's claim that Suhaimi had merely placed an order for heroin "as usual" on behalf of Izwan without knowing what the quantity was. I find that Izwan and Suhaimi made a joint order for the five "*biji*" of heroin, two of which were meant for Izwan to sell and three were meant for Suhaimi to sell.

104 First, Izwan's and Suhaimi's claim is contradicted by Izwan's Third Statement and Izwan's Sixth Statement. In his Third Statement (see [100(b)] above), Izwan clearly said that he was "supposed to pick up the 5 *biji* and ½ batang" and that two of the five "*biji*" of heroin were for him to sell and three were for Suhaimi's own customers. In his Sixth Statement (see [100(c)] above), Izwan said that the initial agreement was that two "*biji*" were for him and he would safekeep the other three "*biji*" under Suhaimi's instructions.

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<sup>154</sup> NE, 19 May 2021, at 30:23–32; NE, 25 May 2021, at 64:3–7.

<sup>155</sup> NE, 18 May 2021, at 29:6–8; NE, 25 May 2021, at 67:13–19.

<sup>156</sup> NE, 25 May 2021, at 64:17–18.

<sup>157</sup> NE, 19 May 2021, at 31:13–18.

<sup>158</sup> NE, 25 May 2021, at 72:3–4.

105 Second, on 27 September 2017 at about 9.54pm, Suhaimi told Arun (via WhatsApp) that *his* heroin was finishing soon.<sup>159</sup> This showed that Suhaimi was also ordering heroin for himself. Suhaimi claimed that he was “actually referring to Izwan’s heroin”.<sup>160</sup> I agree with the Prosecution that Suhaimi was referring to his own supply of heroin. If Suhaimi meant to refer to Izwan’s heroin, he could have simply said so.

106 Third, in support of his claim that he merely placed the order on behalf of Izwan, Suhaimi claimed that he did not traffic in heroin. I reject Suhaimi’s claim.

(a) It is clear from Izwan’s Fourth Statement that Suhaimi did traffic in heroin. Izwan said:<sup>161</sup>

29 ... About 2.5 months ago, I asked [Suhaimi] if [Yusof] sells drugs ... The next day, [Suhaimi] ... asked me if I wanted to buy drugs from him instead. I agreed on the spot ...

30 ... From then, I started taking ½ biji of [heroin] from [Suhaimi] at [sic] a daily basis ...

31 About three weeks before my arrest, [Suhaimi] asked me to help him pick up 4 biji of [heroin] ... I then agreed without much hesitation as I needed money ...

...

33 The next night, I headed to 31 Toh Guan East ... a Malaysian registered, maroon colored bike rode in and stopped near me. The rider ... passed me a plastic bag.

34 This is the first time I pick up drugs for [Suhaimi]. When I reached home, [Suhaimi] instructed me to repack the [heroin]. I remembered I was told to deliver the packed [heroin] to [Suhaimi’s] customers the next day and also to collect the money from his

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<sup>159</sup> Exhibit P273A at p 75 (s/n 415).

<sup>160</sup> NE, 2 June 2021, at 48:15–21.

<sup>161</sup> Exhibit P168 at pp 8–10.

customers. ... I remembered I delivered to more than 1 customer the next day. For this 4 biji of [heroin], I took 1.5 biji for my own customers ... The remaining 2.4 (*sic*) biji were all delivered to [Suhaimi's] customers. ...

35 For the second time, it is the same thing. I was informed by [Suhaimi] to pick up 5 biji of [heroin] in the afternoon the next day ... For this second time, [Suhaimi] said he would shadow me for the pickup. ... Along 31 Toh Guan East ... [Suhaimi] asked me to alight the car and pick up the drugs from the Indian man which I did. ... After picking up, I went back into the car. ...

36 Like the first time, I repacked the 5 biji and repacked according to [Suhaimi's] instructions. For this 5 biji, I took 2 biji for my own customers and delivered the remaining 3 bijis to [Suhaimi's] customers. I remembered I delivered to more than 1 [Suhaimi's] customers.

Izwan's statement that Suhaimi asked him to repack the four "*biji*" of heroin that he collected the first time (on 18 September 2017), is also supported by Suhaimi's WhatsApp message to Izwan on 18 September 2017, in which Suhaimi asked Izwan to "cook" (*ie*, repack) the heroin.<sup>162</sup> Suhaimi had no credible explanation for these messages and simply denied that he was giving Izwan instructions on how to repack the heroin.<sup>163</sup>

(b) It is also clear from Suhaimi's other WhatsApp messages to Izwan that Suhaimi did traffic in heroin. Suhaimi sent the following three messages to Izwan on 19 September 2017 (between 12.00am and 12.03am):

I order half stone for tomorrow. No need to cook.<sup>164</sup>

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<sup>162</sup> Exhibit P291 at p 99 (s/n 1187).

<sup>163</sup> NE, 4 June 2021, at 10:4–20.

<sup>164</sup> Exhibit P291 at p 101 (s/n 1211).

No need to cook the half stone. I advice you right, 1 piece 1 stone, you cook 30 bag first. Then the balance, you send the half stone. No need to cook.<sup>165</sup>

Okay okay okay. Now I am, the half stone that is uncooked, the one that do need to cook. For tomorrow, he wants it in the morning but I do not know what time he wakes up tomorrow.<sup>166</sup>

It is not disputed that the messages referred to heroin and that “cook” meant repack. Izwan claimed that Suhaimi recommended customers to buy heroin from him and Suhaimi was merely telling him the customers’ preference.<sup>167</sup> Izwan also claimed that Suhaimi was ordering the “half stone” on behalf of these customers.<sup>168</sup> Suhaimi claimed that he was giving instructions to Izwan for a customer whom he recommended to Izwan.<sup>169</sup> I reject Izwan’s and Suhaimi’s claims; the messages speak for themselves.

(c) Suhaimi’s messages to Arun also show that he was trafficking in heroin.

(i) On 21 September 2017 (Thursday), he told Arun that he would finish all the heroin by Sunday and asked Arun to deliver five pieces of heroin and 500g of Ice.<sup>170</sup>

(ii) On 22 September 2017 (Friday), he told Arun that *his* customer wanted one piece of heroin on Sunday.<sup>171</sup>

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<sup>165</sup> Exhibit P291 at p 101 (s/n 1212).

<sup>166</sup> Exhibit P291 at p 101 (s/n 1217).

<sup>167</sup> NE, 25 May 2021, at 8:15–18.

<sup>168</sup> NE, 25 May 2021, at 9:27–10:1.

<sup>169</sup> NE, 4 June 2021, at 10:21–11:9.

<sup>170</sup> Exhibit P291 at p 157 (s/n 1910); NE, 4 June 2021, at 7:25–8:20.

<sup>171</sup> Exhibit P291 at p 169 (s/n 2048).



(iii) On 29 September 2017 at about 11.25am, he confirmed to Arun that he could finish the heroin in a week.<sup>172</sup>

Again, Suhaimi had no credible explanations for these messages and merely disagreed that the messages showed that he trafficked in heroin.<sup>173</sup>

***Whether there was a reduction in the order for heroin to one “biji”***

107 Izwan and Suhaimi claimed that:

(a) In the early hours of 29 September 2017, Izwan and Suhaimi were talking in Suhaimi’s car and Izwan told Suhaimi that he wanted to reduce his order of heroin to one “*biji*”.<sup>174</sup> Izwan said that Suhaimi had not brought his handphone with him and he used Izwan’s handphone to call Arun; Suhaimi said that Izwan called Arun but he (Suhaimi) was the one who spoke to Arun first.<sup>175</sup> Suhaimi told Arun that Izwan wanted to change his order of five “*biji*” of heroin to one “*biji*”.<sup>176</sup> Arun was unhappy and Izwan took the phone from Suhaimi and spoke to Arun; Arun finally reluctantly agreed to reduce Suhaimi’s order to one “*biji*” of heroin.<sup>177</sup>

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<sup>172</sup> Exhibit P273A at p 29 (s/n 159).

<sup>173</sup> NE, 4 June 2021, at 8:21–22, 9:8–10 and 10:1–2.

<sup>174</sup> NE, 18 May 2021, at 30:8–31:7; NE, 25 May 2021, at 74:31–75:4.

<sup>175</sup> NE, 18 May 2021, at 31:16–17; NE, 25 May 2021, at 75:6–7.

<sup>176</sup> NE, 18 May 2021, at 31:19–20; NE, 25 May 2021, at 75:11.

<sup>177</sup> NE, 18 May 2021, at 31:22–32:6; NE, 25 May 2021, at 75:18–76:9.

(b) When Izwan collected the drugs in the vicinity of 31 Toh Guan East on 29 September 2017, he did not know that there were five “*biji*” of heroin in the plastic bag.

108 I reject Izwan’s and Suhaimi’s claims. The evidence shows that the order of heroin remained at five “*biji*” at all material times.

109 First, there is no record in Izwan’s handphone of the call to Arun. Izwan claimed that because he frequently quarrelled with his wife over his drug activities, he would delete the call log after “any call with regards to drug activity of the Malaysian boss”; similarly, he deleted the call log after the call to Arun in the early morning on 29 September 2017.<sup>178</sup> I do not believe Izwan’s explanation. It is clear that Izwan did not hide his drug activities from his wife; he repacked the drugs in his bedroom and the drugs were left in plain sight. Further, since Arun’s phone number was not saved as a contact in Izwan’s handphone, the call log would have simply showed a call to a Malaysian phone number. There is no evidence that Izwan’s wife even knew what Arun’s phone number was. More importantly, the WhatsApp messages in Izwan’s handphone show his drug activities in far greater detail than a mere call log; yet, Izwan did not delete those messages.

110 Second, Izwan’s Third and Sixth Statements show that he did not order five “*biji*” of heroin for himself. His order was for two “*biji*”; three “*biji*” were for Suhaimi (see [100(b)] and [100(c)] above). Izwan could not have decided on his own to reduce the order to one “*biji*” of heroin.

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<sup>178</sup> NE, 18 May 2021, at 32:18–25.

111 Third, ten statements were recorded from Izwan between 29 September 2017 and 20 March 2019. Yet none of these statements mentioned any reduction in the order of five “*biji*” of heroin or that he had collected an excess of four “*biji*” of heroin. Instead,

(a) in Izwan’s First Statement, he said that he collected five “*biji*” of heroin and 500g of Ice;<sup>179</sup>

(b) in Izwan’s Second Statement (recorded after he was charged for trafficking in more than 15g of diamorphine), he merely pleaded for leniency;<sup>180</sup>

(c) in Izwan’s Third Statement, he said that on 29 September 2017, he went to 31 Toh Guan East where he was “supposed to pick up the 5 *biji* and ½ batang”;<sup>181</sup> and

(d) in Izwan’s Sixth Statement (which was unchallenged), he said that Suhaimi informed him “to collect 5 *biji* of [heroin] together with the ½ batang of [Ice] ... on the day of [his] arrest ...”<sup>182</sup>

Again, Izwan offered no satisfactory or credible explanation as to why he did not mention the alleged reduction in the order for heroin in his statements, nor why he made the above assertions in his First, Second, Third and Sixth Statements.

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<sup>179</sup> Exhibit P160 at answer to Q13.

<sup>180</sup> Exhibit P164 (AB 367–369, at AB 369).

<sup>181</sup> Exhibit P277 at para 5.

<sup>182</sup> Exhibit P170 at para 52.

112 Fourth, Suhaimi forwarded the three photographs of the five “*biji*” of heroin and 500g of Ice to Izwan at about 12.44am on 29 September 2017. At about 10.14am, Izwan informed Suhaimi that he could not open the image files. Suhaimi re-sent the photographs at about 10.29am. The photograph of the heroin showed five packets of heroin; Izwan did not ask why it was five instead of one. In his oral testimony, Izwan explained that he did not do so as he was merely concerned with seeing whether the heroin would be brown in colour and also because he had already informed Suhaimi of his reduction in the order of heroin.<sup>183</sup> I do not believe Izwan’s explanation.

113 Arun had sent the photographs of the heroin *and* the Ice to Suhaimi at about 12.22am on 29 September 2017.<sup>184</sup> Suhaimi replied to Arun asking if it was confirmed; he also forwarded the photographs to Izwan at about 12.44am.<sup>185</sup> In his reply to Arun, Suhaimi was clearly asking whether it was confirmed that the five packets of heroin and the one packet of Ice would be delivered. There was also no message from Izwan to Suhaimi asking to see the colour of the heroin. Clearly, the photographs were sent to Suhaimi who then sent them to Izwan (at 12.44am and at 10.29am) in order to show that five packets of heroin and one packet of Ice would be delivered. Besides, if Izwan merely wanted to see the colour of the heroin, there would have been no need for Suhaimi to also send the photographs of the Ice to him.

114 Fifth, at 12:59:36pm on 29 September 2017, Arun sent Suhaimi an image of a calculator showing the computation “9,150 + 14,250 + 11,500” and

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<sup>183</sup> NE, 18 May 2021, at 34:1–5; NE, 25 May 2021, at 15:1–14.

<sup>184</sup> Exhibit P273A at pp 40–41 (s/n 223–225).

<sup>185</sup> Exhibit P273A at pp 38–40 (s/n 218–222).

the result “34,900”.<sup>186</sup> Suhaimi agreed that the figure “11,500” in the computation referred to the price of the 500g of Ice that he had ordered.<sup>187</sup> However, he claimed not to know what the figures “9,150” and “14,250” referred to.<sup>188</sup>

115 I do not believe Suhaimi’s claim that he did not know what these two figures referred to.

116 The following WhatsApp messages were exchanged between Arun and Suhaimi on 29 September 2017:

(a) Immediately after sending the message showing the computation (at 12:59:36pm), Arun sent another message at 12:59:41pm asking Suhaimi to check whether it was correct.<sup>189</sup>

(b) At 12:59:50pm, Suhaimi asked Arun “[h]ow much is [Ice]” and at 12:59:56pm, Suhaimi asked Arun “[heroin] 2800?”<sup>190</sup> In his oral testimony, Suhaimi confirmed that in his second message, he was asking about the price of one “*biji*” of heroin.<sup>191</sup>

(c) At 1:00:17pm, Arun replied “11500 [Ice] 2850 [heroin]”.<sup>192</sup> In his testimony, Suhaimi confirmed that “11500” referred to the price of

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<sup>186</sup> Exhibit P273A at p 15 (s/n 80).

<sup>187</sup> NE, 2 June 2021, at 51:7–14.

<sup>188</sup> NE, 2 June 2021, at 51:18–21.

<sup>189</sup> Exhibit P273A at p 14 (s/n 79).

<sup>190</sup> Exhibit P273A at p 14 (s/n 77–78).

<sup>191</sup> NE, 2 June 2021, at 50:22–26.

<sup>192</sup> Exhibit P273A at p 14 (s/n 76).

one packet of 500g of Ice and “2850” referred to the price of one “*biji*” of heroin.<sup>193</sup>

(d) Then followed an exchange of messages in which Suhaimi tried unsuccessfully to negotiate the price of heroin down to \$2,800.<sup>194</sup>

(e) At 1:02:51pm, Arun again asked Suhaimi “is the balance correct?”<sup>195</sup>

(f) At 1:02:56pm, Suhaimi replied that it was correct<sup>196</sup> and at 1:03:03pm, Arun replied “[o]k tq”.<sup>197</sup>

(g) This was quickly followed by another message at 1:03:17pm in which Arun asked Suhaimi how much Suhaimi could pay that night.<sup>198</sup>

117 Suhaimi must have known what he was confirming to be correct. It is no mere coincidence that the total price of five “*biji*” of heroin at \$2,850 per “*biji*” is exactly \$14,250. Suhaimi’s bare denial lacks credibility. The fact that Arun asked Suhaimi how much he could pay also shows that the order for five “*biji*” of heroin and 500g of Ice had been delivered. As for the figure “9,150”, it was Suhaimi’s own case that there was a running account with Arun. That figure likely related to some previous orders; in any event, it is not relevant to the present case.

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<sup>193</sup> NE, 2 June 2021, at 50:25–31.

<sup>194</sup> Exhibit P273A at pp 13–14 (s/n 69–75).

<sup>195</sup> Exhibit P273A at p 13 (s/n 67).

<sup>196</sup> Exhibit P273A at pp 102 (s/n 34) and 558 (s/n 34).

<sup>197</sup> Exhibit P273A at p 13 (s/n 66).

<sup>198</sup> Exhibit P273A at p 13 (s/n 65).

118 Suhaimi claimed that he understood Arun’s question – “is the balance correct” – to refer to Arun’s earlier message that said “11500 [Ice] 2850 [heroin]”.<sup>199</sup> I reject Suhaimi’s claim. It is simply incredulous. Arun’s earlier message was in reply to Suhaimi’s questions as to the price of Ice and heroin (see [116(b)] above) and merely stated the price for one packet of 500g of Ice and one “*biji*” of heroin; there was no “balance” in Arun’s earlier message that required confirmation. The “balance” could only have referred to the figure of “34,900” in the image of the calculator. This is also consistent with Suhaimi’s Seventh Statement, in which he confirmed that the image was “the calculation of debt needed to be paid”.<sup>200</sup>

119 Sixth, at about 1.58pm on 29 September 2017, Suhaimi messaged Izwan and asked Izwan to “[c]heck if everything is enough”.<sup>201</sup> Izwan’s reply was: “Enough boss. If not enough, you know my mouth later.”<sup>202</sup> According to Izwan’s own evidence, by that time, he knew that he had received an excess of four “*biji*” of heroin.<sup>203</sup> Yet, Izwan’s reply to Suhaimi did not mention the alleged excess heroin. Izwan explained that: (a) when he replied “enough” to Suhaimi, he was referring to the one “*biji*” of heroin and 500g of Ice;<sup>204</sup> and (b) he did not see any reason to inform Suhaimi about the excess four “*biji*” of heroin because he had already spoken to Arun about the excess heroin.<sup>205</sup> I find it unbelievable that having been asked to check if the drugs were “enough”,

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<sup>199</sup> NE, 4 June 2021, at 20:19–25.

<sup>200</sup> Exhibit P176 at para 32.

<sup>201</sup> Exhibit P273A at p 12 (s/n 60).

<sup>202</sup> Exhibit P273A at p 11 (s/n 59).

<sup>203</sup> NE, 25 May 2021, at 19:1–3.

<sup>204</sup> NE, 25 May 2021, at 17:27–18:3.

<sup>205</sup> NE, 25 May 2021, at 19:4–8.

Izwan would have answered the way he did without mentioning the excess heroin, if indeed there had been excess heroin delivered.

120 Seventh, Izwan relied on three messages that Arun sent to Suhaimi on 29 September 2017 between 8.25pm and 8.41pm, which showed that Arun was trying to contact Suhaimi because “[his] man was waiting”.<sup>206</sup> Izwan submitted that these messages supported his claim that arrangements were made to return the alleged excess heroin. I disagree with Izwan’s submission. Suhaimi’s explanation for these messages was “[i]t could be two reasons: Firstly, it’s about money. Second would be because he wanted to collect the excess drugs...”<sup>207</sup> Suhaimi’s first reason (“about money”) is consistent with the fact that Suhaimi was expected to make some payment to Arun that night (see [116(g)] above). I am not persuaded by Suhaimi’s second reason (“to collect the excess drugs”). For the reasons set out earlier, it is clear to me that there was no reduction in the order for five “*biji*” of heroin.

121 Eighth, it is true that in the afternoon on 29 September 2017, Suhaimi went to collect only the 250g of Ice from Izwan. However, as Izwan said in his Sixth Statement, he was safekeeping the three “*biji*” of heroin under Suhaimi’s instructions. The evidence also shows that Izwan has repacked heroin for Suhaimi in the past. In my view, the fact that Suhaimi did not collect the three “*biji*” of heroin does not mean that the three “*biji*” were not his and is not sufficient to give rise to a reasonable doubt as to whether they were his.

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<sup>206</sup> Exhibit P273A at pp 767–768 (s/n 2–4).

<sup>207</sup> NE, 2 June 2021, at 46:9–11.



***Whether Izwan and Suhaimi knew each other's intention to traffic in his share of the heroin***

122 Izwan admitted that he intended to sell his one “*biji*” of heroin; his defence (which I have rejected) is that he had reduced his order for five “*biji*” to one “*biji*”. Suhaimi claimed that he did not know what Izwan intended to do with his one “*biji*” of heroin.<sup>208</sup> However, for the reasons set out above, I have found that there was a joint order for five “*biji*” of heroin, two of which were meant for Izwan to sell and three were meant for Suhaimi to sell.

123 I find that Izwan and Suhaimi each knew that the other intended to traffic in his share of the heroin. It is clear from Izwan’s Third Statement that the arrangement between Izwan and Suhaimi was that two “*biji*” of heroin were for Izwan to sell and three were for Suhaimi to sell (see [100(b)] above). Moreover, Suhaimi knew that Izwan trafficked in heroin. Izwan’s Fourth Statement (see [106(a)] above) shows that Izwan knew that Suhaimi trafficked in heroin. Given the quantity of heroin involved, it is unbelievable that each of them did not know that the other intended to traffic in his share of the heroin.

***Conclusion on the joint order of heroin***

124 I find that Izwan and Suhaimi made a joint order for five “*biji*” of heroin, with the knowledge that two “*biji*” of the heroin were meant for Izwan to sell and the remaining three were meant for Suhaimi to sell. I also find that there was no reduction in the order as alleged by Izwan and Suhaimi. However, the heroin in A3 ought to be excluded from the charges against Izwan and Suhaimi.

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<sup>208</sup> NE, 2 June 2021, at 3:20.

**Whether the heroin in A3 included heroin from Izwan’s previous purchase**

125 In his closing submissions, Izwan complained that A3 was not weighed in his presence but did not raise the point that A3 may have included heroin from his previous purchase. Nevertheless, I could not ignore Izwan’s evidence that the heroin in A3 could have included some heroin left over from his previous purchase, although he could not confirm it.<sup>209</sup>

126 Izwan’s evidence that A3 could have included heroin from his previous purchase was supported by the fact that on 27 September 2017, Izwan sent to Suhaimi a photograph of an aluminium tray containing some brown granular substance, with the message: “Boss, I am just left with this.”<sup>210</sup> It appears that the aluminium tray in the photograph is the same aluminium tray in A3.

127 In my view, there was a reasonable doubt as to whether the heroin in A3 was solely from the heroin that Izwan collected on 29 September 2017 or whether it included heroin from his previous purchase. The Prosecution accepted that it was unable to state whether or not A3 might have included heroin from an earlier collection.<sup>211</sup> In the circumstances, in my view, A3 ought to be excluded from the relevant charges against Izwan and Suhaimi.

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<sup>209</sup> NE, 19 May 2021, at 34:20–28, 35:31–36:7 and 36:28–32.

<sup>210</sup> Exhibit P273A at p 76 (s/n 418).

<sup>211</sup> NE, 24 September 2021, at 5:21–26.

**Whether there was a joint order by Izwan and Suhaimi for the Ice**

128 The Prosecution alleged that Izwan and Suhaimi made a joint order for 500g of Ice, of which 125g was meant for Izwan to sell to Izwan's customers and 375g was meant for Suhaimi to sell to Suhaimi's customers. The Prosecution relied on the same evidence set out in [100] above.

129 As noted earlier, the charges relate only to Izwan's 125g and the 250g in F1B1. The 125g that Izwan had (on Suhaimi's instructions) left at the electrical box on the 11th floor of Block 27 was not recovered and does not form part of the charges against Izwan and Suhaimi (see [19] above).

130 Izwan did not dispute that the order for the 500g of Ice was a joint order. His defence was that:

- (a) the trafficking charge against him should exclude: (i) two of the seven packets of Ice found in B1A1 as the two packets (of about 12.5g each) were for his own consumption, and (ii) the Ice in F1B1 because he was merely a bailee for Suhaimi; and
- (b) in the alternative, he did not know what Suhaimi intended to do with the Ice in F1B1.

131 Suhaimi's defence was that:

- (a) the order for 500g of Ice was not a joint order; he was not party to an agreement for Izwan to order 125g of Ice because Izwan made the order without any consultation or discussion with Suhaimi; and
- (b) in any event, he did not know what Izwan intended to do with his 125g of Ice.

***Whether the second charge against Izwan should exclude two of the seven packets of Ice in B1A1***

132 In my judgment, there is no reason to exclude two of the packets of Ice in B1A1 from the second charge against Izwan.

133 First, for purposes of the second charge against Izwan, the question as to whether he intended any part of the Ice for his own consumption is to be tested as of the time when he had possession of the Ice on *29 September 2017 in the vicinity of 31 Toh Guan East* (as alleged in the second charge against him). At that time, the seven packets of Ice in B1A1 did not exist because he had not repacked any of the Ice. Izwan repacked the Ice only after he went home to his apartment at Block 27. There is no evidence as to how Izwan intended to repack his 125g of Ice, much less that *at that point in time*, he intended to repack part of the Ice into seven packets of 12.5g each and to keep two packets for his own consumption. To the extent that Izwan may have formed the intention to keep two packets for his own consumption, after he had repacked the seven packets in B1A1, such intention would be irrelevant for purposes of the second charge against him.

134 Second, in his Fourth Statement, Izwan specifically referred to B1A1 and said that no one had made any order for the Ice in B1A1 yet; Izwan said nothing about keeping two packets for his own consumption.<sup>212</sup> Izwan’s only explanation for the omission was that he had “missed out” stating that two packets were for his own consumption.<sup>213</sup> I do not believe his bare assertion.

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<sup>212</sup> Exhibit P168 at para 23.

<sup>213</sup> NE, 19 May 2021, at 8:30–32.

135 Third, as Izwan also conceded, there is no mention in any of Izwan's Statements that any part of the Ice was for his own consumption.<sup>214</sup> Izwan explained that he did not mention it because his "thoughts at that point of time was to let [his] wife off..."<sup>215</sup> I do not accept Izwan's explanation. Stating that he intended part of the Ice for his own consumption would not have implicated his wife. I note as well that Izwan had no problem telling ASP Bong about drugs that were for his own consumption, in his Fourth Statement.<sup>216</sup>

136 Fourth, Izwan again stated in his Case for the Defence that he intended to sell the 125g of Ice.<sup>217</sup> Izwan's explanation was another bare assertion that he had "missed out" on informing his counsel.<sup>218</sup> Again, I do not believe his explanation. His Case for the Defence was dated 26 March 2020, almost two and a half years after his arrest. He had time to think about his defence. Moreover, he would have had legal advice as well.

137 In my view, Izwan intended to sell his 125g of Ice at the time when he was in possession of the same in the vicinity of 31 Toh Guan East on 29 September 2017. His claim that he intended to keep two of the packets in B1A1 for his own consumption was nothing more than an afterthought.

***Whether Izwan was a mere bailee of the Ice in F1B1 for Suhaimi***

138 The Prosecution's case is that Izwan intended to traffic in Suhaimi's share of the Ice (which included F1B1) by delivering the same to Suhaimi.

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<sup>214</sup> NE, 25 May 2021, at 26:3–6.

<sup>215</sup> NE, 25 May 2021, at 25:30–26:2.

<sup>216</sup> Exhibit P168 at para 24.

<sup>217</sup> Exhibit E at paras 2(b) and 3(b).

<sup>218</sup> NE, 25 May 2021, at 28:29–30.

139 Izwan relied on *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh*”). In that case, the Court of Appeal concluded that “Parliament’s intention was to target those involved in the *supply and distribution* of drugs within society” (at [108]) and that “in enacting the MDA and legislating for harsh penalties to be imposed in respect of trafficking offences, Parliament was not simply concerned with addressing the *movement* of drugs *per se*, but the movement of drugs *along the supply chain towards the end-users*” (at [109]). The court then held (at [114]) that “a person who merely holds the drugs as ‘bailee’ with a view to returning them to the ‘bailor’ who entrusted him with the drugs in the first place ... cannot, *without more*, be liable for trafficking because the act of returning the drugs is not *part of* the process of supply or distribution of drugs.” [emphasis in original].

140 Izwan submitted that he was merely a bailee as he was helping Suhaimi to collect Suhaimi’s share of the Ice, with the intention to hand the Ice back to Suhaimi. Izwan submitted that there was no movement of the Ice along the supply chain towards the end-users.

141 However, Izwan conceded that he would not be a “bailee” (in the *Ramesh* sense) if he knew that Suhaimi intended to traffic in his share of the Ice since he would have “become a cog in the wheel of trafficking along the supply chain”.<sup>219</sup> This is consistent with the clarification by the Court of Appeal in *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2021] SGCA 103 at [116] that “[a] ‘bailee’ who engages in a ‘bailment’ arrangement *knowing or intending* that the ‘bailment’ would be part of this process of supply and distribution falls within the class of person targeted by [the legislative policy behind the MDA].” [emphasis in original].

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<sup>219</sup> Izwan’s Closing Submissions at para 179.

142 Izwan knew that Suhaimi intended to traffic in his share of the Ice in F1B1 (see [143] below). In the circumstances, Izwan was not a mere bailee in the *Ramesh* sense. Instead, he was a part of the process of supply and distribution. Izwan's delivery of Suhaimi's share of the Ice (in F1B1) to Suhaimi would amount to trafficking.

***Whether Izwan knew that Suhaimi intended to traffic in his share of the Ice in F1B1***

143 I find that Izwan knew that Suhaimi intended to traffic in his share of the Ice in F1B1. I reject Izwan's claim that he did not know what Suhaimi intended to do with his share of the Ice. It is contradicted by Izwan's Third Statement (see [100(b)] above). Further, Izwan knew that Suhaimi trafficked in Ice. Given the quantity of Ice involved, it is unbelievable that he did not know that Suhaimi intended to traffic in his share of the Ice in F1B1.

***Whether Suhaimi was party to an agreement for Izwan to order 125g of Ice***

144 I find that the order for 500g of Ice was a joint order by Izwan and Suhaimi. I reject Suhaimi's claim that he was not a party to an agreement for Izwan to order 125g of Ice. Suhaimi has not given any rational explanation in support of his contention. The evidence shows that the order for 500g of Ice was a joint order by Izwan and Suhaimi.

- (a) There is no dispute that Suhaimi had ordered 500g of Ice from Arun.<sup>220</sup> Suhaimi said he would have been "okay with 250 gram [*sic*]" but Arun had suggested 500g.<sup>221</sup> Suhaimi submitted that he had to

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<sup>220</sup> NE, 18 May 2021, at 29:4–5; NE, 25 May 2021, at 65:1–2.

<sup>221</sup> NE, 25 May 2021, at 76:25–28.

acquiesce to Arun's decision. However, this does not change the fact that Suhaimi agreed to order 500g of Ice.

(b) There is no dispute that the agreement (before Izwan collected the drugs) was that of the 500g of Ice, 125g was for Izwan and 375g (which includes F1B1) was for Suhaimi. Suhaimi himself testified that Izwan wanted 125g from him.<sup>222</sup> Izwan also conceded that Suhaimi and him agreed to split the order for 500g of Ice.<sup>223</sup>

(c) Izwan stated in his Third Statement that prior to the collection of the drugs, he was informed by Suhaimi that 125g of Ice would be for Izwan to sell to his customers and the rest would be for Suhaimi's own customers (see [100(b)] above).

(d) There was no reason for Suhaimi to forward to Izwan the photographs of the Ice (see [100(a)] above) if the Ice was not part of their joint order.

***Whether Suhaimi knew that Izwan intended to traffic in his share of the Ice***

145 I find that Suhaimi knew that Izwan intended to traffic in his 125g of Ice. Suhaimi's claim that he did not know what Izwan intended to do with his 125g of Ice is contradicted by Izwan's Third Statement (see [100(b)] above). Further, Suhaimi knew that Izwan trafficked in Ice. Given the quantity of Ice involved, it is unbelievable that he did not know that Izwan intended to traffic in his 125g of Ice.

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<sup>222</sup> NE, 25 May 2021, at 65:3–4.

<sup>223</sup> NE, 25 May 2021, at 31:2–4.



***Conclusion on the joint order of Ice***

146 I find that Izwan and Suhaimi made a joint order for 500g of Ice with the knowledge that 125g were meant for Izwan to sell to his customers and 375g (including F1B1) were meant for Suhaimi to sell to his customers.

**Summary of findings**

147 In summary, I find as follows:

- (a) There is no reason to reverse my earlier decision to admit Izwan’s Third, Fourth and Fifth Statements at the first ancillary hearing (see [67] above).
- (b) There was no break in the chain of custody of the drugs or A3 or F1B1 (see [74], [81] and [88] above).
- (c) Izwan handed F1B (which contained, among other things, F1B1) to Suhaimi on 29 September 2017 (see [89] above).
- (d) The charges against Izwan contain details of the time and place of the alleged offences as are reasonably sufficient to given Izwan notice of what he has been charged with (see [98] above).
- (e) Izwan and Suhaimi made a joint order for five “*biji*” of heroin, with the knowledge that two “*biji*” of the heroin were meant for Izwan to sell and the remaining three were meant for Suhaimi to sell; there was no reduction in the order (see [124] above).
- (f) There was a reasonable doubt as to whether the heroin in A3 included heroin from Izwan’s previous purchase; A3 ought to be excluded from the charges relating to heroin (see [127] above).

(g) Izwan and Suhaimi made a joint order for 500g of Ice, with the knowledge that 125g were meant for Izwan to sell to his customers and 375g (including F1B1) were meant for Suhaimi to sell to his customers (see [146]) above).

### **Whether the charges have been proved beyond a reasonable doubt**

#### ***Charges against Izwan***

148 The charges against Izwan are under s 5(1)(a) read with s 5(2) of the MDA. The elements of the offence are: (a) possession of the controlled drug; (b) knowledge of the nature of the drug; and (c) possession of the drug for the purpose of trafficking which was not authorised (see *Ramesh* at [63] and *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28]).

149 The Prosecution has proved beyond a reasonable doubt that Izwan:

- (a) had possession of not less than 26.19g of diamorphine and not less than 252.04g of methamphetamine when he collected the drugs on 29 September 2017;
- (b) had knowledge that the drugs that he collected contained diamorphine and methamphetamine; and
- (c) intended to traffic in the drugs by selling his share to his customers and delivering Suhaimi's share to Suhaimi, for Suhaimi's sale to his own customers. It is not disputed that Izwan is not authorised to traffic in the drugs.

150 I also agree with the Prosecution that as an alternative to (c) above, Izwan is presumed (pursuant to ss 17(c) and 17(h) of the MDA) to have possessed the drugs for the purpose of trafficking, and that Izwan has not rebutted the presumption.

151 I am therefore satisfied that the charges against Izwan have been proved beyond a reasonable doubt and accordingly, I convict Izwan on both charges.

### ***Charges against Suhaimi***

152 The charges against Suhaimi are for abetting the offence of trafficking by engaging in a conspiracy with Izwan to traffic in not less than 26.19g of diamorphine and not less than 252.04g of methamphetamine. Under s 12 of the MDA, any person who abets the commission of any offence under the MDA is guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

153 In *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18, the Court of Appeal observed at [33], that the word “abet” in s 12 of the MDA should bear the same meaning as it does in s 107 of the Penal Code 1871 (2020 Rev Ed) (“Penal Code”). Section 107(1)(b) of the Penal Code provides as follows:

#### **Abetment of the doing of a thing**

**107.—**(1) A person abets the doing of a thing who —

...

(b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;

...

154 Thus, the elements of abetment by conspiracy are: (a) the person abetting must engage with one or more other persons in a conspiracy; (b) the conspiracy must be for the doing of the thing abetted; and (c) an act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing: *Kelvin Chai* at [76].

155 The *mens rea* for abetment by conspiracy is that the abettor must have: (a) intended to be party to an agreement to do an unlawful act; and (b) known the general purpose of the common design and the fact that the act agreed to be committed is unlawful: *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 at [34]. It is not necessary that all the co-conspirators should be equally informed as to the details of the common design; knowledge of the general purpose of the plot and that the plot is unlawful, is sufficient: *Nomura Taiji & Ors v Public Prosecutor* [1998] 1 SLR(R) 259 at [110]. Additionally, the abettor must also have had the knowledge of the nature of the drugs trafficked: *Chandroo Subramaniam v Public Prosecutor and other appeals* [2021] SGCA 110 at [35].

156 The Prosecution has proved beyond a reasonable doubt that:

- (a) by making the joint order for the drugs with Izwan and coordinating Izwan's collection of the drugs in the vicinity of 31 Toh Guan East on 29 September 2017, Suhaimi had engaged with Izwan in a conspiracy;
- (b) the conspiracy was for Izwan to possess the drugs for the purpose of trafficking;

- (c) pursuant to the conspiracy, an unlawful act (*ie*, Izwan's possession of the drugs for the purpose of trafficking) took place;
- (d) Suhaimi intended to be a party to the conspiracy to do the unlawful act, and he knew the purpose of the common design and that the act agreed to be committed was unlawful; and
- (e) Suhaimi had actual knowledge that the drugs Izwan collected contained diamorphine and methamphetamine.

157 The charges against Suhaimi have therefore been proved beyond a reasonable doubt and accordingly, I convict Suhaimi on both charges.

### **Conclusion**

158 For the reasons stated above, I convict Izwan and Suhaimi on the charges against them.

159 As parties have asked for time to peruse my judgment before addressing me on sentence, the hearing on sentencing is adjourned.

Chua Lee Ming  
Judge of the High Court

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