

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

[2023] SGHC 142

Criminal Case No 44 of 2022

Between

Public Prosecutor

And

Mustaqim bin Abdul Kadir

JUDGMENT

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

TABLE OF CONTENTS

INTRODUCTION.....	1
THE FACTS	3
MUSTAQIM’S ARREST	3
POST-ARREST EVENTS AT THE CNB HQ.....	11
<i>Processing of Mustaqim and Zaiman.....</i>	<i>11</i>
<i>Processing of exhibits.....</i>	<i>12</i>
<i>Medical and psychiatric examinations.....</i>	<i>13</i>
<i>DNA sampling</i>	<i>14</i>
STATEMENTS GIVEN BY MUSTAQIM	14
DRUG ANALYSIS.....	16
DNA ANALYSIS.....	19
MOBILE PHONE FORENSIC EXAMINATION	20
THE IN-CAR CAMERA OF THE CAR	21
THE PARTIES’ CASES.....	21
THE PROSECUTION’S CASE	21
MUSTAQIM’S DEFENCE.....	24
ISSUES TO BE DETERMINED	26
MY DECISION	27
ADMISSIBILITY OF MUSTAQIM’S STATEMENTS IN DR KOH’S PSYCHIATRIC REPORT	27
THE FIRST ANCILLARY HEARING – ADMISSIBILITY OF THE FIRST CONTEMPORANEOUS STATEMENT, THE SECOND CONTEMPORANEOUS STATEMENT AND THE 27 JANUARY CAUTIONED STATEMENT	30

<i>Mustaqim's case at the first ancillary hearing</i>	32
(1) The First Contemporaneous Statement	32
(2) The Second Contemporaneous Statement and the 27 January Cautioned Statement.....	35
<i>The Prosecution's case at the first ancillary hearing</i>	36
<i>My decision on the admissibility of the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement at the first ancillary hearing</i>	40
(1) The applicable law	40
(2) My findings on the voluntariness of the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement	41
(A) General observations on the witnesses' testimonies.....	41
(B) The Alleged MDP Notice Representation	43
(C) SSgt Fardlie did not make the Alleged Contemporaneous Statement Representation	50
(D) The Second Contemporaneous Statement was given voluntarily	51
(E) The 27 January Cautioned Statement was given voluntarily	53
(3) Conclusion at the first ancillary hearing	53
THE SECOND ANCILLARY HEARING - ADMISSIBILITY OF THE FOUR LONG STATEMENTS.....	54
<i>Mustaqim's case at the second ancillary hearing</i>	55
(1) The First Long Statement.....	55
(2) The Second Long Statement, the Third Long Statement and the Fourth Long Statement	56
<i>The Prosecution's case at the second ancillary hearing</i>	56
<i>My decision on the admissibility of the Four Long Statements</i>	57
(1) ASP Yang did not make the Alleged Representation	58
(2) Conclusion at the second ancillary hearing.....	59

FINDINGS FOR THE MAIN TRIAL.....59

WHETHER THE ELEMENTS OF THE CHARGE ARE MADE OUT BEYOND A
REASONABLE DOUBT60

The applicable law and presumptions.....60

My findings.....71

(1) Possession of the Drugs71

(2) Knowledge of the nature of the Drugs72

(3) Possession for the purpose of trafficking.....73

(A) *Mustaqim’s account is entirely inconsistent with his
statements to the CNB officers.....79*

(B) *Mustaqim’s defence that he intended to consume a
portion of the drugs.....89*

(C) *Mustaqim’s account that he received the Unwanted
Drugs by mistake is contradicted by the objective
evidence.....92*

(I) The forensic evidence of Mustaqim’s two
mobile phones shows that Mustaqim was
actively trafficking in diamorphine in the
days and hours leading up to his arrest.....92

(II) The forensic evidence of Mustaqim’s two
mobile phones does not show that Mustaqim
had cancelled the order for two bundles of
“panas” from Zack.....99

(D) *Mustaqim’s explanation for leaving the Singapore
Cable Car Building immediately without asking
Munusamy about the Unwanted Drugs in the Hari
Raya Bag is unconvincing.....106*

(E) *Mustaqim’s account of the drugs inside the Hari
Raya Bag when the Hari Raya Bag was returned to
him by Munusamy110*

(I) Exhibit A1A1A111

(II) Exhibit A1B1115

(III) Exhibits A1C1A to A1C1K and A1C2A to
A1C2K.....117

(IV) Exhibit A1D1120

(V) Exhibit A2A1	122
(VI) Other drugs aside from diamorphine which were in the Hari Raya Bag	123
(VII) Conclusion on Mustaqim's conduct of repacking and removing various drugs from the Hari Raya Bag	127
(F) <i>Mustaqim's account of what was inside the Hari Raya Bag at the time he received the Hari Raya Bag from Munusamy is inherently illogical</i>	128
(G) <i>Mustaqim's account of his meeting with Zaiman is contradicted by the objective evidence</i>	128
(H) <i>Conclusion on Mustaqim's defence that he intended to return the Unwanted Drugs</i>	133
(I) <i>The inference to be drawn in light of the large amount of diamorphine found in Mustaqim's possession</i>	134
<i>Conclusion on the elements of the Charge</i>	136
CONCLUSION	138
SENTENCE	139
ANNEX: TABLE SUMMARISING WHAT WAS FOUND IN THE HARI RAYA BAG AT THE TIME OF MUSTAQIM'S ARREST AND MUSTAQIM'S VERSION OF WHAT WAS IN THE HARI RAYA BAG WHEN HE RECEIVED THE HARI RAYA BAG FROM MUNUSAMY	141

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
Mustaqim bin Abdul Kadir

[2023] SGHC 142

General Division of the High Court — Criminal Case No 44 of 2022

Tan Siong Thye J

5–8, 12–14 September, 18 October 2022, 25–27, 30–31 January, 1 February,
8 May 2023

16 May 2023

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The accused is Mustaqim bin Abdul Kadir (“Mustaqim”), a 37-year-old male Singaporean. At the material time, Mustaqim worked as a private-hire car driver for Grab. He faces one capital charge of trafficking in a controlled drug (the “Charge”) under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”). The Charge reads as follows:

That you, **MUSTAQIM BIN ABDUL KADIR**,

on 26 January 2018, at about 3.45pm, at a parking lot in front of Block 1, Spooner Road, Singapore, did traffic in a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, by having in your possession thirty one (31) packets and two (2) straws containing not less than 2154.34g of granular/powdery substance, which were analysed and found to contain not less than 56.8g of diamorphine, for the purpose of trafficking, without

authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 5(1)(a), read with Section 5(2), and punishable under Section 33(1) of the said Act, and further, upon your conviction under Section 5(1)(a) read with Section 5(2) of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

[emphasis in original]

2 At the outset of the trial, the Prosecution indicated that it would be adducing the two contemporaneous statements and the cautioned statement of Mustaqim. Mustaqim alleged that these statements, which he gave one day after his arrest, were given by him involuntarily as there was inducement from a Central Narcotics Bureau (“CNB”) officer, Staff Sergeant Muhammed Fardlie bin Ramlie (“SSgt Fardlie”). It was thus necessary to hold an ancillary hearing or *voir dire* to ascertain whether Mustaqim gave his statements voluntarily to the CNB officers.

3 At the conclusion of the ancillary hearing, I was satisfied beyond a reasonable doubt that Mustaqim gave these statements voluntarily to the respective CNB officers. I shall furnish my findings below at [88]–[121].

4 On the seventh day of the trial, after Mustaqim had given his examination-in-chief, the Prosecution sought to adduce four long statements given by Mustaqim in the course of the CNB investigations. Mustaqim again challenged the admissibility of these statements on the basis that they were given involuntarily as there was inducement from another CNB officer, Assistant Superintendent Yang Weili (“ASP Yang”). At the same time, Mustaqim applied to discharge his defence counsel, Mr Ramesh Tiwary (“Mr Tiwary”), on the basis that Mustaqim no longer had confidence in Mr Tiwary to advance his defence in respect of the admissibility of these four long statements.

5 I granted Mustaqim’s application to discharge Mr Tiwary as the Charge he is facing bears capital punishment. Further, this was his first application to discharge his counsel. A month later, however, Mustaqim applied to re-engage Mr Tiwary as his defence counsel. I granted the application.

6 In view of Mustaqim’s allegation that he gave four long statements involuntarily to ASP Yang, it was necessary to hold a second ancillary hearing to ascertain whether Mustaqim gave his long statements voluntarily to ASP Yang.

7 At the conclusion of the second ancillary hearing, I was satisfied beyond a reasonable doubt that Mustaqim gave these statements voluntarily to ASP Yang. I shall furnish my findings below at [133]–[138].

8 I shall now set out the background facts leading up to the arrest of Mustaqim.

The facts

Mustaqim’s arrest

9 On 26 January 2018, at about 1.00pm, Assistant Superintendent Muhammad Aliff bin Abdul Rahman (“ASP Aliff”) conducted an operational briefing at the CNB’s Special Task Force (“STF”) office. The briefing was attended by a party of CNB officers who were involved in the operation leading up to Mustaqim’s arrest. They included:

- (a) Station Inspector Kua Boon San (“SI Kua”);
- (b) Station Inspector Wong Kah Hong Alwin (“SI Alwin”);
- (c) Station Inspector Eng Chien Loon Eugene (“SI Eugene”);

- (d) Woman Staff Sergeant Nurshila binte Abdullah (“W/SSgt Nurshila”);
- (e) SSgt Fardlie;
- (f) Staff Sergeant Muhammad Helmi bin Abdul Jalal (“SSgt Helmi”); and
- (g) Sergeant Yogaraj Ragunathan Pillay (“Sgt Yoga”).

10 ASP Aliff informed the CNB officers that Mustaqim was involved in drug activities and that he was known to be driving a Honda Civic vehicle bearing the registration number SJD4462J (the “Car”).

11 Following the briefing, the CNB officers departed the STF office in several CNB cars and proceeded to the Harbourfront area where they were deployed to keep a lookout for the Car.

12 At about 1.50pm on the same day, SI Kua and W/SSgt Nurshila spotted the Car along Harbourfront Avenue and turning into an open carpark located in that vicinity. SI Kua positioned his CNB car outside the open carpark and continued to keep a lookout.

13 At about 2.45pm, SI Kua saw the Car moving out from the open carpark to a multi-storey carpark located at Harbourfront Centre (the “Harbourfront Centre Multi-storey Carpark”). SI Kua followed the Car and he stopped along the roadside outside the Harbourfront Centre Multi-storey Carpark. SI Alwin and Sgt Yoga, who were in a separate CNB car, trailed the Car to Deck 5 of the Harbourfront Centre Multi-storey Carpark.¹ ASP Aliff and SI Eugene also

¹ Prosecution’s Opening Statement (“POS”) at para 12.

trailed the Car to the Harbourfront Centre Multi-storey Carpark in their CNB car, although they remained on the ground floor.

14 While at Deck 5 of the Harbourfront Centre Multi-storey Carpark, SI Alwin saw Mustaqim exiting the Car and walking into Harbourfront Centre. SI Alwin subsequently lost sight of Mustaqim. However, he remained in the CNB car to keep a lookout.

15 At about 3.10pm, SI Alwin saw Mustaqim returning to the Car. The Car departed the Harbourfront Centre Multi-storey Carpark and proceeded along Harbourfront Avenue. SI Alwin continued to trail the Car. At around the same time, SI Kua drove his CNB car back to Harbourfront Avenue and parked along the roadside near the open carpark. Mustaqim parked the Car along the roadside a few car-lengths in front of SI Kua's car. Mustaqim alighted from the Car carrying a yellow paper bag with the words "Hari Raya" on it (the "Hari Raya Bag").² He walked towards the Singapore Cable Car Building. Both ASP Aliff and SI Alwin, who had been trailing the Car, alighted from their respective CNB cars and walked to the Singapore Cable Car Building. ASP Aliff followed Mustaqim into the building, and he saw Mustaqim entering a toilet in Tower 2 of the Singapore Cable Car Building.

16 The Closed Circuit Television ("CCTV") camera footage captured Mustaqim entering the Singapore Cable Car Building with the Hari Raya Bag. The CCTV camera footage also captured one Munusamy Ramamurth ("Munusamy") entering the building shortly after Mustaqim. Both Mustaqim and Munusamy proceeded towards the male toilet at the first floor of the Singapore Cable Car Building. ASP Aliff entered the same toilet and saw

² POS at para 12.

Mustaqim leaving the toilet carrying the Hari Raya Bag. Mustaqim returned to the Car and departed Harbourfront Avenue. The CNB officers followed suit in their respective CNB cars.

17 At about 3.45pm, the Car turned into Spooner Road and parked at the carpark in front of Block 1, Spooner Road. SI Alwin followed the Car into the carpark and parked a few lots away. A short while later, one Malay male carrying a black sling bag boarded the Car. The man was later identified to be one Zaiman bin Othman (“Zaiman”). Mustaqim then drove the Car out of the carpark, with the CNB officers trailing behind.

18 At about 3.52pm, when the Car was travelling along Kampong Bahru Road towards the city before the slip road turning into Jalan Bukit Merah, SI Kua gave instructions to intercept the Car and to arrest Mustaqim and Zaiman. SI Kua overtook the Car and stopped his CNB car in front of the Car. Another CNB car driven by SI Eugene stopped directly behind the Car. Therefore, the Car was sandwiched and Mustaqim had no choice but to stop the Car. Sgt Yoga, W/SSgt Nurshila and SSgt Helmi then moved in to arrest Zaiman, who was seated at the front passenger seat of the Car. At the same time, SSgt Fardlie and SI Alwin arrested Mustaqim, who was at the driver’s seat of the Car. ASP Aliff alighted from his CNB car to oversee the arrest.

19 After ascertaining the identities of Mustaqim and Zaiman, the CNB officers brought Mustaqim, Zaiman and the Car to Deck 3A of the multi-storey carpark at Block 113A, Jalan Bukit Merah (the “Bukit Merah Multi-storey Carpark”) to conduct a search.

20 At about 4.05pm, at Deck 3A of the Bukit Merah Multi-storey Carpark, SSgt Fardlie conducted a search of the Car. The search was conducted in the

presence of both Mustaqim and Zaiman. During the search, numerous drugs were seized from four locations at the front passenger and driver's side of the Car. The following drugs, amongst others, were seized by SSgt Fardlie:³

- (a) from the floorboard of the driver's seat ("Location A"):
 - (i) the Hari Raya Bag (marked "A1") with 23 packets of granular/powdery substance:
 - (A) one black plastic bag (marked "A1A") containing one black plastic package with black tape (marked "A1A1") which contained one packet of granular powdery substance (marked "A1A1A");
 - (B) one black plastic bag (marked "A1B") containing one masking-taped bundle of granular/powdery substance (marked "A1B1");
 - (C) one white plastic bag (marked "A1C") with "Disney" on it containing two Ziploc bags (each marked "A1C1" and "A1C2") with 20 individual bags of white granular/powdery substance;
 - (D) one Ziploc bag (marked "A1D") containing one Ziploc bag of granular/powdery substance (marked "A1D1"); and
 - (ii) one green plastic bag (marked "A2") containing one newspaper wrapping (marked "A2A") of one Ziploc bag containing granular/powdery substance (marked "A2A1");

³ POS at para 17.

- (b) from the driver's door ("Location B"), one black plastic bag (marked "B1") containing one Ziploc bag with granular/powdery substance (marked "B1A");
- (c) from the middle drink holder compartment located below the gear level ("Location C"), one black pouch (marked "C1") containing:
 - (i) one packet of granular/powdery substance (marked "C1A");
 - (ii) one packet of granular/powdery substance (marked "C1B");
 - (iii) one packet of granular/powdery substance (marked "C1C");
 - (iv) one packet of granular/powdery substance (marked "C1D");
 - (v) one packet of granular/powdery substance (marked "C1E");
 - (vi) one straw of granular/powdery substance (marked "C1F"); and
 - (vii) one straw of granular/powdery substance (marked "C1G");
- (d) from the front passenger seat ("Location E"), a black sling bag (marked "E1") containing one black plastic bag (marked "E1A") which contained a second black plastic bag (marked "E1A1") which contained a third black plastic bag (marked "E1A1A") which contained one Ziploc bag (marked "E1A1A1") which was

found to contain another Ziploc bag with granular/powdery substance (marked “E1A1A1A”).⁴

21 The abovementioned drug exhibits were suspected to be diamorphine and relevant to the Charge against Mustaqim. However, there were other kinds of controlled drugs, such as methamphetamine (commonly known as “ice”) and Erimin, found in the Car which are not the subject matter of the Charge. The Prosecution has not tendered charges against Mustaqim for possession of those controlled drugs.⁵

22 While SSgt Fardlie conducted the search, Sgt Yoga helped to seal the exhibits by placing each exhibit into a polymer bag. Each exhibit was then placed in a black duffle bag (the “Black Duffle Bag”). At about 4.55pm, the CNB officers completed their search and seizure of the relevant exhibits. Sgt Yoga passed the Black Duffle Bag to SSgt Fardlie.

23 At 5.55pm, SSgt Fardlie commenced the recording of a contemporaneous statement from Mustaqim in the back seat of a CNB car parked at the Bukit Merah Multi-storey Carpark. After recording the contemporaneous statement from Mustaqim, SSgt Fardlie handed the Black Duffle Bag to SI Kua. At around this time, it was reported that Munusamy had been arrested at the cleaners’ room at Tower 2 of the Singapore Cable Car Building.

24 At about 7.00pm on the same day, the CNB officers escorted Mustaqim and Zaiman to Block 1, Spooner Road. A tow truck was activated to tow the Car to Block 1, Spooner Road. Before driving off, SI Kua placed the Black

⁴ POS at para 11.

⁵ 5 September 2022 Transcript at pp 1 (line 24) to 2 (line 7).

Duffel Bag in the boot of his CNB car. The CNB officers, together with Mustaqim and Zaiman, arrived at Block 1, Spooner Road at about 7.12pm. Zaiman was escorted by several CNB officers to his official residential address located at Block 1, Spooner Road, #03-106 (“Zaiman’s Unit”). A search was carried out at Zaiman’s Unit, but nothing incriminating was found. Meanwhile, Mustaqim and the rest of the CNB officers remained at the ground floor carpark of Zaiman’s Unit.

25 At about 7.25pm, the CNB officers with Zaiman left Zaiman’s Unit and returned to the CNB headquarters (“CNB HQ”). SI Kua brought the Black Duffel Bag with him to the CNB HQ. SI Kua handed the Black Duffel Bag to SSgt Fardlie at about 11.15pm at the CNB HQ.

26 Mustaqim was escorted by the remaining CNB officers to his official residential address at Block 916, Hougang Avenue 9 #02-10 (“Mustaqim’s Unit”). The tow truck towing the Car followed. Upon arrival at Mustaqim’s Unit at about 7.46pm, a search was carried out. Nothing incriminating was found at Mustaqim’s Unit. The CNB officers together with Mustaqim left Mustaqim’s Unit at around 7.57pm and arrived at Woodlands Checkpoint at about 9.20pm. The tow truck towing the Car followed suit. At around 9.21pm, a backscatter scan and a K9 search were conducted on the Car in the presence of Mustaqim. Again, nothing incriminating was found.

27 The party escorting Mustaqim left Woodlands Checkpoint at about 9.41pm and returned to the CNB HQ at about 10.05pm. Likewise, the tow truck towing the Car followed suit.

Post-arrest events at the CNB HQ

Processing of Mustaqim and Zaiman

28 On the night of 26 January 2018, at about 7.33pm, Zaiman was escorted to the CNB HQ. At about 11.10pm, Mustaqim and the CNB officers arrived at the CNB HQ. Mustaqim was handed over to ASP Aliff.

29 Later, Mustaqim’s urine samples were procured by Sgt Yoga. The urine samples were then subjected to an instant urine test by SI Alwin. The urine samples were subsequently sealed and submitted to the Analytical Toxicology Laboratory of the Health Sciences Authority (“HSA”) for analysis on 29 January 2018 at about 10.33am.⁶

30 Subsequently, ASP Aliff recorded another contemporaneous statement from Mustaqim. The recording of the contemporaneous statement commenced sometime around 11.20pm and concluded at about 11.35pm.

31 On 27 January 2018, at around 12.38am, SI Alwin took over custody of the Black Duffel Bag containing the drug exhibits from SSgt Fardlie. Mustaqim was escorted to the CNB HQ’s basement carpark to observe the photo-taking of the Car. Several officers from the Forensic Response Team (“FORT”) were present. ASP Yang, who was the first Investigating Officer for the case, instructed the FORT officers to take photographs of the Car.

⁶ Agreed Statement of Facts (“ASOF”) at para 4.

Processing of exhibits

32 At about 1.27am, Mustaqim, Zaiman and Munusamy were escorted to the Exhibit Management Room at the CNB HQ (the “EMR”) along with the seized exhibits contained in the Black Duffel Bag.

33 The photo-taking and swabbing of the exhibits commenced at about 1.57am, with ASP Yang supervising the entire process. With the assistance of the FORT officers, the exhibits were photographed and swabbed individually in the EMR. The sequence for photographing and swabbing each exhibit was as follows:

- (a) SSgt Helmi, who was standing outside the EMR by the door, handed each exhibit sealed in polymer bags to ASP Yang.
- (b) ASP Yang passed the sealed exhibit to Home Team Specialist 14 Gayathre Kalimuthu Mogan (“HTS 14 Gayathre”).
- (c) HTS 14 Gayathre opened each of the polymer bags containing the exhibits and laid out each exhibit on a brown paper.
- (d) ASP Yang labelled each exhibit.
- (e) Home Team Specialist 15 Muhammad Izzat bin Ithnin took photographs of the exhibits.
- (f) Home Team Specialist 15 Lee Jia Ying Cheryl (“HTS 15 Cheryl”) swabbed each exhibit with a dry and wet cotton swab.
- (g) After swabbing each exhibit, HTS 15 Cheryl placed each swab in a separate box and sealed it with paper seals marked

“GOVERNMENT OF THE REPUBLIC OF SINGAPORE”. She then handed the drug exhibits and the sealed swabs to ASP Yang.

34 At all times throughout the photo-taking process, Mustaqim, Zaiman and Munusamy were witnessing the process from an adjacent holding room. They saw the entire process through a window that was connected to the EMR.

35 The photo-taking and swabbing of the exhibits concluded at about 6.09am. The weighing of the exhibits commenced at around 6.11am. The weighing of the exhibits was also conducted in the presence of Mustaqim, Zaiman and Munusamy. ASP Yang placed each exhibit on the weighing scale and recorded the gross weight of each exhibit in his investigation diary. Mustaqim, Zaiman and Munusamy appended their signatures on ASP Yang’s investigation diary to acknowledge the weight of the drug exhibits.

36 At about 6.38am, the weighing of the exhibits concluded. ASP Yang took custody of all the exhibits and placed them in a locked cabinet at the CNB HQ. Thereafter, the officers at the Police Cantonment Complex Lock-Up (the “PCC Lock-Up”) took custody of Mustaqim, Zaiman and Munusamy.

Medical and psychiatric examinations

37 On 27 January 2018, between 5.39pm and 5.50pm, Mustaqim was examined by Dr Lin Hanjie (“Dr Lin”) for a pre-statement medical examination. Later that day, between 9.35pm and 9.45pm, Mustaqim was again examined by Dr Lin for a post-statement medical examination.

38 From 28 January 2018 to 30 January 2018, Mustaqim was transferred to the Complex Medical Centre, Changi Prison. Dr Tan Chong Hun and Dr Sahaya Nathan examined and observed Mustaqim for drug withdrawal symptoms.

DNA sampling

39 On 2 February 2018, at about 2.46pm, at the PCC Lock-Up, Mustaqim’s blood specimen was obtained for DNA profiling and analysed by the HSA.

Statements given by Mustaqim

40 A total of seven statements were recorded from Mustaqim during the course of the investigations:

(a) On 26 January 2018, the day of Mustaqim’s arrest, at about 5.55pm, at the Bukit Merah Multi-storey Carpark, SSgt Fardlie recorded the first contemporaneous statement from Mustaqim under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) (the “First Contemporaneous Statement”). This statement was subsequently translated by Mohammad Faiz bin Mohammad Isa (“Faiz”), a Malay interpreter attached to the CNB, with the translated copy handed over to ASP Yang on 7 August 2018. On 5 August 2021, Investigation Officer Inspector Derek Wong Ruijin (“Insp Wong”) instructed Shaffiq bin Selamat (“Shaffiq”), a freelance interpreter working with the CNB, to prepare another translation of this statement. Shaffiq then prepared and handed over the translation to Insp Wong on the same day.

(b) On 26 January 2018, at about 11.20pm, at the CNB HQ, ASP Aliff recorded a second contemporaneous statement from Mustaqim under s 22 of the CPC (the “Second Contemporaneous Statement”). This statement was subsequently translated by Faiz, with the translated copy handed over to ASP Yang on 4 October 2019. On 5 August 2021, Insp Wong instructed Shaffiq, a freelance interpreter working with the CNB, to prepare another translation of this statement.

Shaffiq then prepared and handed over the translation to Insp Wong on the same day.

(c) On 27 January 2018, from about 5.46pm to 6.27pm in PCC Lock-Up Interview Room 11, ASP Yang recorded a cautioned statement from Mustaqim under s 23 of the CPC (the “27 January Cautioned Statement”). Mustaqim chose to speak in Malay, and Faiz served as the interpreter.

(d) On subsequent occasions, four long statements were given by Mustaqim under s 22 of the CPC (referred to as the “Four Long Statements”) as follows:

- (i) a statement recorded on 30 January 2018 from 8.26pm to 10.58pm in PCC Lock-Up Interview Room 11 by ASP Yang and Faiz was the interpreter (the “First Long Statement”);
- (ii) a statement recorded on 31 January 2018 from 2.43pm to 6.03pm in PCC Lock-Up Interview Room 8 by ASP Yang and Faiz was the interpreter (the “Second Long Statement”);
- (iii) a statement recorded on 1 February 2018 from 8.56pm to 10.39pm in PCC Lock-Up Interview Room 8 by ASP Yang and Faiz was the interpreter (the “Third Long Statement”); and
- (iv) a statement recorded on 2 February 2018 from 3.43pm to 3.57pm in PCC Lock-Up Interview Room 11 by ASP Yang and Faiz was the interpreter (the “Fourth Long Statement”).

Drug analysis

41 The relevant exhibits that were found on Mustaqim at the time of his arrest (see [20] above) were analysed by Koh Hui Boon, an analyst at the Illicit Drugs Laboratory of the HSA. These were 31 packets and 2 straws containing not less than 2154.34g (gross) of granular/powdery substance which was pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 56.8g (net) of diamorphine, as follows:⁷

S/N	Exhibit No	Description	Raw weight of granular/powdery substance (g)	Analysed weight of diamorphine (g)
1.	A1A1A	One packet of granular/powdery substance	456.0	3.60
2.	A1B1	One packet of granular/powdery substance	450.7	3.91
3.	A1C1A	One packet of granular/powdery substance	7.40	0.39
4.	A1C1B	One packet of granular/powdery substance	7.43	0.34
5.	A1C1C	One packet of granular/powdery substance	7.41	0.38
6.	A1C1D	One packet of granular/powdery substance	7.36	0.37

⁷ POS at para 17.

7.	A1C1E	One packet of granular/powdery substance	7.33	0.36
8.	A1C1F	One packet of granular/powdery substance	7.41	0.39
9.	A1C1G	One packet and one straw of granular/powdery substance	7.41	0.37
10.	A1C1H	One packet and one straw of granular/powdery substance	7.43	0.37
11.	A1C1J	One packet and one straw of granular/powdery substance	7.39	0.39
12.	A1C1K	One packet and one straw of granular/powdery substance	7.39	0.37
13.	A1C2A	One packet of granular/powdery substance	7.37	0.37
14.	A1C2B	One packet of granular/powdery substance	7.38	0.40
15.	A1C2C	One packet of granular/powdery substance	7.40	0.33
16.	A1C2D	One packet of granular/powdery substance	7.37	0.37
17.	A1C2E	One packet of granular/powdery substance	7.38	0.38
18.	A1C2F	One packet of granular/powdery substance	7.39	0.38

19.	A1C2G	One packet of granular/powdery substance	7.41	0.38
20.	A1C2H	One packet of granular/powdery substance	7.39	0.37
21.	A1C2J	One packet of granular/powdery substance	7.41	0.36
22.	A1C2K	One packet of granular/powdery substance	7.39	0.33
23.	A1D1	One packet of granular/powdery substance	165.0	6.40
24.	A2A1	One packet of granular/powdery substance	449.2	21.31
25.	B1A	One packet of granular/powdery substance	225.3	10.82
26.	C1A	One packet of granular/powdery substance	16.49	0.80
27.	C1B	One packet of granular/powdery substance	7.35	0.33
28.	C1C	One packet of granular/powdery substance	3.70	0.21
29.	C1D	One packet of granular/powdery substance	3.55	0.13
30.	C1E	One packet of granular/powdery substance	1.99	0.02

31.	C1F	One straw of granular/powdery substance	0.81	Contains diamorphine (unquantified)
32.	C1G	One straw of granular/powdery substance	0.70	0.01
33.	E1A1A1A	One packet of granular/powdery substance	225.7	1.86
Total			2154.34	At least 56.8

42 On 26 January 2018, urine samples were provided by Mustaqim. The analysis of the urine samples by the HSA revealed that Mustaqim's urine contained methamphetamine but tested negative for codeine and morphine.

DNA analysis

43 Fifty exhibits taken from the EMR were analysed by the HSA for DNA. No interpretable DNA profile was obtained from most of the exhibits. Mustaqim's DNA profile was detected on the following exhibits:⁸

S/N	Exhibit No	Description
1.	A1	The Hari Raya Bag
2.	A1A	One black plastic bag
3.	A1A1	One black plastic packaging with black tape
4.	A1C1	One Ziploc bag
5.	A1C2	One Ziploc bag
6.	A1D	One Ziploc bag
7.	A1E	One black plastic bag

⁸ POS at para 22.

8.	A2	One green plastic bag
9.	C1	One black pouch

Mobile phone forensic examination

44 Two mobile phones and three SIM cards were seized from Mustaqim during his arrest. The first mobile phone was a black Samsung Galaxy Note 3 mobile phone. The second mobile phone was a Samsung Galaxy Note 8 S mobile phone. Both mobile phones were submitted to the Technology Crime Forensic Branch (“TCFB”) of the Technology Crime Division of the Criminal Investigation Department (“CID”), for forensic examination. This led to two TCFB reports which contained the analysis of the mobile phone forensic examination conducted in respect of the two mobile phones seized from Mustaqim.

45 The first report detailed the results of an examination by CID’s TCFB in respect of the Samsung Galaxy Note 3 mobile phone (the “Samsung Note 3 Report”). The forensic examination showed that there were numerous WhatsApp messages exchanged between Mustaqim and one individual by the name of “Zack” between 18 January 2018 and 26 January 2018. These messages revealed that Mustaqim and Zack were in discussion about the sale and supply of varying quantities of diamorphine using street names such as “panas” and “heroin”. The forensic examination also showed numerous WhatsApp messages exchanged between Mustaqim and one “Man Lekok” and one “Paul Wland”. The chat history of Mustaqim and these individuals on 26 January 2018 showed various photographs and a video sent by Mustaqim to these individuals.

46 The second report detailed the results of an examination by CID’s TCFB in respect of the Samsung Galaxy Note 8 S mobile phone (the “Samsung

Note 8 S Report”). The forensic examination of this mobile phone revealed that there were various phone conversations recorded.

The in-car camera of the Car

47 One micro-storage device from the in-car camera of the Car was seized from Mustaqim during his arrest. This was handed over to the Forensic Management Team of the CNB. A total of 56 footages were extracted from the storage device.

The parties’ cases

The Prosecution’s case

48 The Prosecution submits that the search of the Car uncovered a total of not less than 56.8g (net) of diamorphine (the “Drugs”).⁹ Mustaqim was the driver of the Car and he was in charge of the Car containing the Drugs at the time of his arrest. Diamorphine is a Class A controlled drug listed in the First Schedule to the MDA.¹⁰ At all material times, Mustaqim was not authorised under the MDA or the Misuse of Drugs Regulations (1999 Rev Ed) to possess diamorphine.

49 The Prosecution’s case against Mustaqim is three-fold. First, Mustaqim is presumed to be in possession of the Drugs. The Prosecution relies on s 21 of the MDA to establish that Mustaqim was in possession of the Drugs by virtue of him being in charge of the Car at the time the Drugs were seized from the Car. Second, Mustaqim is presumed to have had knowledge of the nature of the Drugs. The Prosecution relies on s 18(2) of the MDA to establish this

⁹ POS at para 20.

¹⁰ POS at para 21.

presumption of knowledge on Mustaqim's part. Third, the circumstantial evidence leads to the strong inference that Mustaqim possessed the Drugs for the purpose of trafficking.¹¹

50 To prove all of the above against Mustaqim, the Prosecution relies on the evidence of 49 witnesses adduced by way of their respective conditioned statements pursuant to s 264 of the CPC and supplemented, where necessary, with their oral testimony.¹² The Prosecution also applied to call Munusamy as a rebuttal witness at the close of the Defence's case. This was not objected by the Defence.

51 The Prosecution also relies on the following evidence in support of its case:

- (a) Various statements recorded from Mustaqim:
 - (i) the First Contemporaneous Statement;
 - (ii) the Second Contemporaneous Statement;
 - (iii) the 27 January Cautioned Statement; and
 - (iv) the Four Long Statements.
- (b) Zaiman testified that when he boarded the Car, he noticed a black plastic bag with white polka dots (Exhibit E1A) on the front passenger seat. Mustaqim told him to put the black plastic bag into his black sling bag (Exhibit E1) so that he could sit. Zaiman did as he was told and put

¹¹ POS at paras 7–10 and 24.

¹² POS at para 5.

the black plastic bag into his bag with a view to return it to Mustaqim later.

(c) The Samsung Note 3 Report included various WhatsApp messages between Mustaqim and a person known as Zack. These messages were exchanged between 18 January 2018 and 26 January 2018. The messages disclosed that Zack and Mustaqim were conversing with each other about the supply and sale of various quantities of “panas”, which is the street name for diamorphine. The report also included various photographs and videos sent to some of Mustaqim’s other contacts *via* WhatsApp on 26 January 2018.

(d) The Samsung Note 8 S Report indicated that transcriptions of phone conversations were recorded. The Prosecution submits that the evidence extracted from Mustaqim’s mobile phones are probative of Mustaqim’s knowledge of the nature of the Drugs. The contents of Mustaqim’s mobile phones also reveal his intention to sell and deliver the Drugs to his customers at various locations in Singapore prior to his arrest.¹³

(e) Two HSA analysts state that Mustaqim’s urine samples were found to contain methamphetamine but had tested negative for codeine and morphine. The urine test results show that Mustaqim did not consume diamorphine on the day of his arrest. Hence, Mustaqim could not have had the Drugs in his possession for the purpose of consumption.

¹³ POS at para 14.

(f) The HSA’s analyses show that Mustaqim’s DNA was found on various seized drug exhibits, namely Exhibits A1, A1A, A1A1, A1C1, A1C2, A1D, A1E, A2, and C1.¹⁴

52 The Prosecution also submits that the evidence shows an unbroken chain of custody of the Drugs from the point of seizure to the point when the Drugs were sent to the HSA for analysis. Thereafter, the exhibits were kept in the safe custody of ASP Yang.¹⁵

53 Finally, the Prosecution relies on the evidence of Dr Kenneth Koh (“Dr Koh”) to show that Mustaqim was not of unsound mind at or around the time of the offence, and that he is fit to plead in Court. Dr Koh is a psychiatrist and senior consultant attached to the Forensic Psychiatry Department at the Institute of Mental Health (“IMH”). Dr Koh’s evidence is contained in a psychiatric report dated 26 February 2018 which is annexed to his statement dated 7 October 2019. Dr Koh’s findings were reached following a psychiatric assessment which he conducted on Mustaqim. The psychiatric assessment consisted of three interviews with Mustaqim on 12 February 2018, 15 February 2018 and 26 February 2018. Dr Koh’s findings were that Mustaqim was not intellectually disabled and not of unsound mind at the time of the alleged offence.

Mustaqim’s defence

54 The Defence raises preliminary objections in respect of three categories of Mustaqim’s statements which the Prosecution sought to admit as follows:

¹⁴ POS at para 22.

¹⁵ POS at para 19.

(a) The first category of Mustaqim's statements is in relation to what Mustaqim told Dr Koh in the course of his psychiatric assessments. The Defence is not alleging that what Mustaqim told Dr Koh was involuntary. Mustaqim's grievance is that Dr Koh's clinical notes were not read back to Mustaqim and was not signed by him. I shall address Mustaqim's interview with Dr Koh below at [59]–[65].

(b) The second category of Mustaqim's statements is the First Contemporaneous Statement, the Second Contemporaneous Statement, and the 27 January Cautioned Statement. The Defence's case is that these statements were not given voluntarily by Mustaqim as they were given as a result of SSgt Fardlie's inducement. This inducement operated in Mustaqim's mind from the time the First Contemporaneous Statement was recorded right through the recording of the Second Contemporaneous Statement and the 27 January Cautioned Statement. I shall consider the admissibility of these statements below at [66]–[121].

(c) The third category of Mustaqim's statements is the Four Long Statements he gave to ASP Yang. The Defence's case is that these statements were not voluntarily provided by Mustaqim as they were given as a result of ASP Yang's inducement on 30 January 2018 before the recording of the First Long Statement. This inducement operated in Mustaqim's mind throughout the recording of the Four Long Statements. I shall consider the admissibility of these statements below at [122]–[138].

55 The crux of Mustaqim's defence is that not all the diamorphine seized from him were intended to be trafficked or sold by him. Rather, he alleges as follows:

(a) Only a portion of the diamorphine seized from him was in his possession for the purpose of trafficking. In particular, Exhibits B1A and E1A1A1A, which were analysed and found to contain 12.68g (net) of diamorphine, were in his possession for the purpose of trafficking.

(b) A portion of the diamorphine seized from him was meant for his own consumption. Exhibits C1A to C1G, which were analysed and found to contain 1.50g (net) of diamorphine, were meant for his personal consumption.

(c) The bulk of the diamorphine seized from him was meant to be returned to Mustaqim's supplier, Zack. Mustaqim alleges that the bulk of the diamorphine, which was analysed and found to contain 42.62g (net) of diamorphine, was mistakenly delivered to him by Zack through Munusamy on 26 January 2018 and he intended to return these drugs.

56 Accordingly, the Defence advances the case that Mustaqim could not be said to have been in possession of all the Drugs for the purpose of trafficking, thereby intending to cast reasonable doubt on the Prosecution's case.

Issues to be determined

57 The main issues are as follows:

(a) Whether what Mustaqim told Dr Koh at the psychiatric assessment is admissible.

(b) Whether the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement are admissible.

- (c) Whether the Four Long Statements are admissible.
- (d) Whether the Prosecution has established the elements of the Charge beyond reasonable doubt, in particular:
 - (i) that Mustaqim was in possession of the Drugs;
 - (ii) that Mustaqim had knowledge of the nature of the Drugs;
and
 - (iii) that Mustaqim was in possession of the Drugs for the purpose of trafficking.

My decision

58 I shall first deal with the admissibility of Mustaqim’s statements which were introduced by the Prosecution and objected by the Defence, before addressing the evidence against Mustaqim on the Charge.

Admissibility of Mustaqim’s statements in Dr Koh’s psychiatric report

59 The Prosecution relies on s 258(1) of the CPC in admitting Mustaqim’s statements in Dr Koh’s psychiatric report. This provision reads as follows:

Admissibility of accused’s statements

258.—(1) Subject to subsections (2) and (3), where any person is charged with an offence, any statement made by the person, whether it is oral or in writing, made at any time, whether before or after the person is charged and whether or not in the course of any investigation carried out by any law enforcement agency, is admissible in evidence at the person’s trial; and if that person tenders himself or herself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching that person’s credit.

60 The plain wording of s 258(1) of the CPC is broad enough to encompass any statement made by an accused person, regardless of when that statement is

recorded, regardless of the identity of the person who recorded that statement, and regardless of the purpose for which the statement is given. The only limitation is that the accused person must have given the statement voluntarily as prescribed under s 258(3) of the CPC (see *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 (“*Sulaiman*”) at [36]). Section 258(1) of the CPC has thus been invoked to admit statements recorded by officers from institutions such as the Ministry of Manpower (see *Rajendran s/o Nagarethinam v Public Prosecutor and another appeal* [2022] 3 SLR 689 at [91]), as well as statements made by an accused person that were recorded in a psychiatric report (see *Public Prosecutor v Saridewi bte Djamani and another* [2018] SGHC 204 at [79]).

61 In *Public Prosecutor v Gunasilan Rajenthiran* [2022] 3 SLR 861 (“*Gunasilan Rajenthiran*”) at [81], Valerie Thean J made the following observations:

81 ... Police statements are admissible under s 258 of the CPC because they are recorded in a specific manner provided for under ss 21 and 22 of the CPC. Statements to psychiatrists do not have the same safeguards and are admitted for the specific purpose of obtaining the psychiatrist’s opinion. The details of interviews are important to explain the basis of the psychiatrist’s opinion and should be considered in their proper context. Interviews recorded by way of history by psychiatrists assessing soundness of mind should not carry the same weight and would not be as reliable as admissions made in statements to the police. *Notwithstanding, such statements could be used in cross-examination in the assessment of an accused’s credibility and as a reference point to test the evidence.* ...

[emphasis added]

62 Thean J thus observed in *Gunasilan Rajenthiran* that statements contained in a psychiatric report are admissible for obtaining the psychiatrist’s medical opinion and can be admitted for use in cross-examination in assessing the accused’s credibility and to test the accused’s evidence. In *Gunasilan Rajenthiran*, the prosecution relied on the accused’s admissions recorded in a

psychiatric report to test the accused's evidence-in-chief on his knowledge as to the nature of the drug which was in his possession at the time of his arrest (see *Gunasilan Rajenthiran* at [82], [87] and [88]).

63 In the present case, the Prosecution relies on Mustaqim's statements given to Dr Koh for the purpose of impugning Mustaqim's credibility in respect of his account as to how the First Contemporaneous Statement was recorded by SSgt Fardlie. Accordingly, the admissibility of Dr Koh's psychiatric report is not prohibited under s 258(1) of the CPC. In any case, the parties, and in particular, the Defence, agreed that the governing provision for the admissibility of Dr Koh's psychiatric report is s 258(1) of the CPC.¹⁶ Further, Mustaqim did not allege that he gave his statements to Dr Koh involuntarily. Accordingly, it was not necessary for me to deal directly with the admissibility of Dr Koh's psychiatric report under this provision.

64 The Defence argues that Mustaqim's statements to Dr Koh are inadmissible and the Court should exercise its discretion not to admit them, notwithstanding s 258(1) of the CPC. The Defence submits that Mustaqim's statements to Dr Koh were neither read over to Mustaqim nor signed by him.¹⁷ The Defence refers to ss 22(3) and 22(4) of the CPC, which read as follows:

Power to examine witnesses

...

(3) Subject to subsection (5), a statement made by a person examined under this section must be recorded —

- (a) in writing; or
- (b) in the form of an audiovisual recording.

¹⁶ 6 September 2022 Transcript at pp 24 (lines 15–17) and 27 (lines 26–28).

¹⁷ 6 September 2022 Transcript at pp 25 (line 25) to 26 (line 14).

(4) Where a statement made by a person examined under this section is recorded in writing, the statement must —

- (a) be read over to the person;
- (b) if the person does not understand English, be interpreted for the person in a language that the person understands; and
- (c) be signed by the person.

65 With respect, I am unable to agree with the Defence’s submissions. Section 22 of the CPC is under Part 4 of the CPC, which is titled “Information to Police and Powers of Investigations”. Therefore, s 22 of the CPC applies only in the context of a police investigation. Indeed, a plain reading of the provision shows that it is clearly intended to prescribe the powers of the police and law enforcement officers to gather information and to record statements under that section. Dr Koh, on the other hand, is not a police officer. He is a psychiatrist with the IMH. Subsequently, the Defence, rightly in my view, concedes that s 22 of the CPC applies only to police officers or law enforcement officers acting in the course of their duty.¹⁸ Therefore, the Defence has provided no legal basis to support its position that s 22 of the CPC ought to apply to the psychiatric report in this case. Accordingly, the Court can rely on Mustaqim’s statements to Dr Koh.

The first ancillary hearing – Admissibility of the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement

66 Before the close of the Prosecution’s case, the Prosecution introduced Mustaqim’s First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement. The Defence objected to the admission of these statements on the ground that these statements were

¹⁸ 6 September 2022 Transcript at p 25 (lines 16–18).

given to the CNB officers because Mustaqim was induced into giving these statements by SSgt Fardlie. Therefore, these statements were given involuntarily to the CNB officers. In contrast, the Prosecution submitted that these statements were voluntarily provided by Mustaqim to the CNB officers and hence these statements should be admitted into evidence.

67 Accordingly, I ordered the first ancillary hearing to ascertain the voluntariness of these statements.

68 At the first ancillary hearing, the Defence contended that Mustaqim had given the First Contemporaneous Statement pursuant to two representations made to him by SSgt Fardlie. The Defence asserted that before Mustaqim gave the First Contemporaneous Statement, SSgt Fardlie did not read the Mandatory Death Penalty notice (the “MDP Notice”) *verbatim*. Instead, SSgt Fardlie paraphrased the MDP Notice in the Malay language to Mustaqim. The representation was to the effect that if Mustaqim admitted to being a courier, and if he assisted or co-operated with the CNB, he would receive a certificate of co-operation and he would get life imprisonment as a punishment.¹⁹

69 The second representation was made while SSgt Fardlie was recording the First Contemporaneous Statement. The Defence alleged that SSgt Fardlie had stopped midway through the statement recording after hearing Mustaqim’s response to one of the questions asked. He allegedly informed Mustaqim that Mustaqim’s answers to the questions would not qualify him as a courier. SSgt Fardlie told Mustaqim that he should simply admit to helping Zack to deliver drugs to Zack’s customers.²⁰

¹⁹ 12 September 2022 Transcript at p 71 (lines 10–11).

²⁰ 12 September 2022 Transcript at p 71 (lines 20–24).

70 The Defence submitted that SSgt Fardlie’s two representations had the effect of inducing Mustaqim to give the First Contemporaneous Statement as it would spare him from the gallows. Thus, the Defence submitted that the First Contemporaneous Statement was made involuntarily and hence inadmissible under s 258(3) of the CPC.

71 The Defence further contended that SSgt Fardlie’s representations continued to operate on Mustaqim’s mind, such that the inducement in respect of the First Contemporaneous Statement flowed and tainted the Second Contemporaneous Statement and the 27 January Cautioned Statement.²¹

Mustaqim’s case at the first ancillary hearing

(1) The First Contemporaneous Statement

72 Following the seizure of the various drug exhibits from the Car which ended at around 4.55pm on 26 January 2018 (see [20] above), SSgt Fardlie served a copy of the MDP Notice on Mustaqim at around 5.15pm. This took place at the Bukit Merah Multi-storey Carpark when Mustaqim and SSgt Fardlie were seated in the back seat of a CNB car. Mustaqim alleged that SSgt Fardlie did not read the MDP Notice *verbatim*.²² Instead, Mustaqim alleged that SSgt Fardlie told Mustaqim that “the stuff in the car was above the capital limit and so, if [Mustaqim] had cooperated with [SSgt Fardlie] and [Mustaqim] was found to be a courier, [Mustaqim] could get life imprisonment” (the “Alleged MDP Notice Representation”).²³

²¹ 12 September 2022 Transcript at p 73 (lines 3–11 and 16–23).

²² 12 September 2022 Transcript at pp 12 (lines 14–15) and 27 (lines 26–31).

²³ 12 September 2022 Transcript at pp 11 (lines 6–7), 12 (lines 24–26), and 28 (lines 3–5).

73 At around 5.40pm, after SSgt Fardlie completed reading the MDP Notice, Mustaqim signed on the MDP Notice.²⁴ The Defence alleged that SSgt Fardlie did not leave the CNB car after delivering the MDP Notice and before recording the First Contemporaneous Statement.²⁵ Instead, Mustaqim alleged that SSgt Fardlie remained in the CNB car to ask him questions regarding the activities which Mustaqim was involved in, as well as his involvement with the Drugs. According to Mustaqim, these alleged questions and his responses were never recorded by SSgt Fardlie.²⁶

74 SSgt Fardlie commenced the recording of the First Contemporaneous Statement at around 5.55pm, some 15 minutes after having delivered the MDP Notice to Mustaqim. The recording was conducted in Malay, with SSgt Fardlie reading out the questions and Mustaqim responding verbally. SSgt Fardlie recorded Mustaqim's responses in his field pocketbook in Malay. A total of 22 questions and 22 answers were recorded in SSgt Fardlie's pocketbook. The recording of the First Contemporaneous Statement concluded at around 6.45pm. Mustaqim did not dispute that he had signed at the bottom left corner of every page of the pocketbook which included parts of the First Contemporaneous Statement.²⁷ The penultimate page of the First Contemporaneous Statement also stated:

The above statement consisting of 22 questions / answer were read back to me and I confirm it is my statement. I do not wish to make any amendment to my statement.

²⁴ 12 September 2022 Transcript at p 28 (line 21).

²⁵ 12 September 2022 Transcript at p 10 (lines 20–31).

²⁶ 12 September 2022 Transcript at pp 14 (line 21) to 15 (line 8) and 28 (line 21) to 29 (line 1).

²⁷ 12 September 2022 Transcript at p 30 (lines 20–25).

75 Mustaqim admitted that he signed at the bottom of his statement. Mustaqim also confirmed that there was no threat, inducement or promise by SSgt Fardlie when recording the First Contemporaneous Statement. This was stated on the last page of the First Contemporaneous Statement as follows:

No threat, inducement or promises were made to me before and throughout the recording of my statement.

Mustaqim

[Mustaqim's NRIC number]

[Mustaqim's signature]

76 Mustaqim alleged that SSgt Fardlie had asked him more than 22 questions but these other questions and answers were not recorded in SSgt Fardlie's pocketbook. However, Mustaqim could not remember the unrecorded questions.²⁸ Mustaqim asserted that SSgt Fardlie had said something in Malay to the effect that "[if] it's like this, then it's not considered courier" and that Mustaqim could not get life imprisonment.²⁹ Mustaqim then allegedly responded in Malay that he "did not know what else to say".³⁰ SSgt Fardlie then allegedly told Mustaqim to "[j]ust say that this stuff is to be sent to Zack's customer" (the "Alleged Contemporaneous Statement Representation").³¹ Mustaqim thus informed SSgt Fardlie that he was delivering the Drugs on behalf of Zack. Finally, Mustaqim claimed that although he signed on the pages indicated by SSgt Fardlie, SSgt Fardlie had not read back any part of the First Contemporaneous Statement to Mustaqim.³² The Defence also alleged that

²⁸ 12 September 2022 Transcript at p 29 (lines 9–18).

²⁹ 12 September 2022 Transcript at p 30 (lines 10–11).

³⁰ 12 September 2022 Transcript at p 30 (line 13).

³¹ 12 September 2022 Transcript at p 30 (line 17).

³² 12 September 2022 Transcript at p 30 (lines 26–28).

SSgt Fardlie did not read back to Mustaqim the part indicating that there was no threat, inducement or promise.³³

77 Mustaqim, thus, testified that he made the First Contemporaneous Statement because of SSgt Fardlie’s representations, namely the Alleged MDP Notice Representation and the Alleged Contemporaneous Statement Representation. Mustaqim claimed to have understood these representations as assisting him to be “considered as a courier and get life imprisonment”.³⁴

(2) The Second Contemporaneous Statement and the 27 January Cautioned Statement

78 Mustaqim admitted that there was no threat, inducement or promise from ASP Aliff who recorded his Second Contemporaneous Statement. He further admitted that ASP Aliff had accurately recorded his statement which was read back to him in Malay and that the contents were true and correct.³⁵ Similarly, when ASP Yang recorded the 27 January Cautioned Statement from Mustaqim, there was no threat, inducement or promise by ASP Yang. Mustaqim confirmed that he had appended his signatures on various parts of that statement.³⁶

79 However, Mustaqim alleged that the Second Contemporaneous Statement and the 27 January Cautioned Statement were involuntarily given to the CNB officers as he was still under the influence of SSgt Fardlie’s Alleged MDP Notice Representation and the Alleged Contemporaneous Statement

³³ 12 September 2022 Transcript at p 19 (lines 6–8).

³⁴ 12 September 2022 Transcript at p 31 (lines 1–10).

³⁵ 12 September 2022 Transcript at pp 39 (line 24) to 40 (line 9).

³⁶ 12 September 2022 Transcript at p 34 (lines 4–24).

Representation which would spare him from the gallows. Mustaqim further claimed that he “wanted to keep [his answers in the Second Contemporaneous Statement] consistent with [his First Contemporaneous Statement]” as he “believed that [the Second Contemporaneous Statement] would help him get the status of a courier”.³⁷ In other words, Mustaqim claimed that he gave the Second Contemporaneous Statement because he was under the impression that doing so would reinforce the possibility that he would be found to be a courier.

80 Mustaqim claimed that when the interpreter told him that he would get the death sentence if he was convicted of the Charge, he was shocked. He allegedly informed the interpreter what SSgt Fardlie had told him earlier, *ie*, that he could get the status of a courier and life imprisonment.³⁸

The Prosecution’s case at the first ancillary hearing

81 Mustaqim’s version of the events as stated above was rejected by SSgt Fardlie. He denied having made the Alleged MDP Notice Representation when he administered the MDP Notice to Mustaqim. Instead, SSgt Fardlie testified that he had read *verbatim* the entire MDP Notice to Mustaqim in Malay. Mustaqim signed on the MDP Notice to acknowledge that he understood its contents.³⁹ Further, SSgt Fardlie opined that if he were to read the MDP Notice, it was possible that the message would be similar to what was described by Mustaqim, *ie*, that if Mustaqim co-operated and if he was only a courier, then he could get a certificate of assistance and he could get life imprisonment

³⁷ 12 September 2022 Transcript at p 31 (lines 18–24).

³⁸ 12 September 2022 Transcript at p 32 (lines 8–19).

³⁹ 12 September 2022 Transcript at pp 11 (line 11) and 12 (lines 9–17).

instead of the death sentence.⁴⁰ SSgt Fardlie, however, denied that he had summarised or paraphrased the MDP Notice as alleged by Mustaqim.

82 SSgt Fardlie denied having remained in the CNB car to talk to Mustaqim after delivering the MDP Notice to him. Instead, SSgt Fardlie testified that after he had administered the MDP Notice and before he recorded the First Contemporaneous Statement, he left the CNB car. Mustaqim was watched over by other CNB officers.⁴¹

83 SSgt Fardlie also denied having made the Alleged Contemporaneous Statement Representation while recording the First Contemporaneous Statement. SSgt Fardlie explained that it was impossible for him to have told Mustaqim that Mustaqim could not be a courier because he did not know what role Mustaqim had played at that time. The CNB had barely started its investigation when Mustaqim was arrested shortly before the recording of the First Contemporaneous Statement.⁴² SSgt Fardlie also explained that all questions and responses from Mustaqim would have been recorded in his pocketbook. Accordingly, SSgt Fardlie denied having asked Mustaqim additional questions which were not recorded. He also rejected Mustaqim's account as to what was said between the both of them during the recording of the First Contemporaneous Statement.⁴³ SSgt Fardlie also confirmed that while he told Mustaqim to sign at the bottom of every page in the pocketbook which

⁴⁰ 12 September 2022 Transcript at pp 12 (line 24) to 13 (line 5).

⁴¹ 12 September 2022 Transcript at p 14 (lines 23–25).

⁴² 12 September 2022 Transcript at p 17 (lines 13–14).

⁴³ 12 September 2022 Transcript at pp 17 (line 27) to 18 (line 6).

contained the First Contemporaneous Statement, he also read back the entirety of the statement to Mustaqim.⁴⁴

84 As for the Second Contemporaneous Statement and the 27 January Cautioned Statement, Mustaqim admitted that there was no threat, inducement or promise from the recorders of his statements, *ie*, ASP Aliff and ASP Yang, respectively. Accordingly, the Prosecution submitted that any inducement, which is denied, would only have operated subjectively in Mustaqim's mind, which is insufficient to establish the involuntariness of any of the statements given under s 258(3) of the CPC.

85 In relation to the 27 January Cautioned Statement, the Prosecution submitted that Faiz, the Malay interpreter, informed Mustaqim that the penalty for the Charge was death. Mustaqim would have been notified at this stage that the punishment was not life imprisonment. This was clearly conveyed to Mustaqim before he gave the 27 January Cautioned Statement.⁴⁵ Any alleged inducement, promise or misunderstanding which may have operated in Mustaqim's mind that was caused by SSgt Fardlie's alleged representations would thus have been corrected. Accordingly, when Mustaqim gave the 27 January Cautioned Statement, he could not have been operating under the alleged inducement, as it must have been clear to Mustaqim by then that whatever SSgt Fardlie had said to him, if it had indeed been said, was untrue.⁴⁶ The Prosecution also submitted that, if SSgt Fardlie had indeed made the alleged representations to Mustaqim, Mustaqim would have mentioned SSgt Fardlie's inducement in the 27 January Cautioned Statement. Mustaqim was warned in

⁴⁴ 12 September 2022 Transcript at pp 18 (lines 7–15) and 19 (lines 6–11).

⁴⁵ 12 September 2022 Transcript at p 36 (lines 4–8).

⁴⁶ 12 September 2022 Transcript at pp 35 (line 14) to 26 (line 31).

the course of the 27 January Cautioned Statement that “[i]f you keep quiet now about any fact or matter in your defence, and you reveal this fact or matter in your defence only at your trial, the Judge may be less likely to believe you”.⁴⁷

86 The Prosecution referred to Dr Koh’s evidence. Dr Koh testified that Mustaqim did not inform him of any promises made by SSgt Fardlie.⁴⁸ In particular, page 17 of Dr Koh’s clinical notes states that the CNB officers did not make any “unrealistic promises” to Mustaqim.⁴⁹

His statement taking by CNB – was done properly – ie no abuse physically or threats (eg ensure his daughter never gets to see him), *no unrealistic promises*. Not deprived of proper rest, temperature, food, water (was given tea).

[emphasis added]

87 When the Defence queried Dr Koh on what he meant when he used the words “unrealistic promises”, Dr Koh explained that he was referring to a hypothetical situation where the relevant CNB officer recording the statement had promised him anything in return for a quick signing of the statement without looking at it.⁵⁰ In the present case, Dr Koh’s evidence was that Mustaqim did not inform Dr Koh of any promises which the CNB officers or SSgt Fardlie made to him.⁵¹

⁴⁷ 12 September 2022 Transcript at p 37 (lines 7–26).

⁴⁸ 6 September 2022 Transcript at p 44 (line 20).

⁴⁹ Exhibit P112A.

⁵⁰ 6 September 2022 Transcript at p 44 (lines 5–12).

⁵¹ 6 September 2022 Transcript at p 48 (lines 11–14).

My decision on the admissibility of the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement at the first ancillary hearing

(1) The applicable law

88 The starting point is s 258(1) of the CPC, which prescribes that an accused person's statement furnished in the course of investigations is admissible in evidence at his trial. However, s 258(3) of the CPC renders the statement inadmissible if it was made involuntarily:

Admissibility of accused's statements

258.—...

...

(3) The court must refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to the accused reasonable for supposing that by making the statement the accused would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against the accused.

89 In *Sulaiman*, the Court of Appeal (at [39]) reaffirmed that a two-stage inquiry applies to determine whether a statement was made voluntarily under s 258(3) of the CPC:

- (a) whether objectively, there was a threat, inducement or promise made to the accused, having reference to the charge against him; and
- (b) whether subjectively, the threat, inducement or promise was such that it would be reasonable for the accused to think that by making the statement he would gain some advantage or avoid

some adverse consequences in relation to the proceedings against him.

90 It is axiomatic that the burden is on the Prosecution, and not the Defence, to prove beyond a reasonable doubt that the three statements were made voluntarily without any threat, inducement or promise (see *Sulaiman* at [36]).

91 Bearing the legal principles in mind, I shall consider whether Mustaqim had given the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement voluntarily.

(2) My findings on the voluntariness of the First Contemporaneous Statement, the Second Contemporaneous Statement and the 27 January Cautioned Statement

(A) GENERAL OBSERVATIONS ON THE WITNESSES' TESTIMONIES

92 SSgt Fardlie and Mustaqim were the only two persons present in the CNB car at the time the Alleged MDP Notice Representation and the Alleged Contemporaneous Statement Representation were purportedly made. Thus, who was telling the truth? I accepted and believed SSgt Fardlie's account of the events which I shall explain below.

93 Having heard the witnesses' testimonies at the ancillary hearing, I found that SSgt Fardlie was clear and consistent in his account of what transpired when the MDP Notice was administered and during the recording of the First Contemporaneous Statement. He emphasised that he had not made the Alleged MDP Notice Representation and the Alleged Contemporaneous Statement Representation to Mustaqim. SSgt Fardlie's evidence was corroborated by Dr Koh who testified that Mustaqim had not mentioned the representations that was allegedly made by SSgt Fardlie to him. I gave weightage to Dr Koh's

evidence as he was not involved in the investigations of the drug trafficking charge against Mustaqim. Dr Koh's role was merely to assess Mustaqim's mental state. Mustaqim admitted that, during his psychiatric assessment at the IMH, Dr Koh asked him if he was promised anything in return for signing the statements.⁵² Dr Koh's testimony was that he had asked Mustaqim as to whether the CNB officers recording his statements had made any "unrealistic promises" to Mustaqim in exchange for signing the various statements. Mustaqim confirmed that no promises were made. Dr Koh had recorded his interviews with Mustaqim in his clinical notes. There was no mention of SSgt Fardlie anywhere in Dr Koh's clinical notes, nor any alleged representations made by SSgt Fardlie. Indeed, in Mustaqim's cross-examination, he confirmed that he told Dr Koh that the CNB officers did not make any promises.⁵³

94 Further, Mustaqim also did not mention the representations purportedly made by SSgt Fardlie in the Second Contemporaneous Statement and the 27 January Cautioned Statement. I, therefore, found SSgt Fardlie's evidence to be credible and accepted his evidence. His evidence was also supported by the contemporaneous documents such as Dr Koh's clinical notes and the MDP Notice.

95 In contrast, Mustaqim was the only witness who testified in support of his case. His claim of involuntariness, therefore, rested solely upon his own uncorroborated testimony of what had transpired throughout the recording of the First Contemporaneous Statement. Mustaqim's evidence was internally inconsistent with his testimony in Court. It was also externally inconsistent with the evidence of the Prosecution's witnesses and the contemporaneous evidence.

⁵² 12 September 2022 Transcript at p 42 (lines 8–10).

⁵³ 12 September 2022 Transcript at p 42 (lines 1–7).

96 When Mr Tiwary asked Mustaqim whether he had understood what the word “courier” meant prior to his arrest, Mustaqim replied that he did not know what that word meant.⁵⁴ But when I asked Mustaqim this question moments later, Mustaqim changed his answer. He said that he understood what the word “courier” meant and that he did not ask SSgt Fardlie to explain the meaning of the word.⁵⁵ This inconsistency is disturbing, to say the least.

97 I shall now analyse the two representations that were allegedly made by SSgt Fardlie, starting with the Alleged MDP Notice Representation.

(B) THE ALLEGED MDP NOTICE REPRESENTATION

98 On the evidence, SSgt Fardlie did not make the Alleged MDP Notice Representation as alleged by Mustaqim. Even if the Alleged MDP Notice Representation was made to Mustaqim, it was substantively consistent with the MDP Notice which I had accepted that SSgt Fardlie read to him *verbatim*.

99 The English translated version of the MDP Notice reads as follows:⁵⁶

**NOTICE OF REQUIREMENTS THAT WOULD SATISFY
S 33B(2) OF THE MISUSE OF DRUGS ACT**

Your attention is hereby brought to section 33B(2) of the Misuse of Drugs Act.

This provision, read with section 33B(1)(a) Misuse of Drugs Act, gives the courts the discretion to sentence an accused person convicted of trafficking, importing and exporting of controlled drugs to life imprisonment (and caning, for males under 50), instead of death, if both the following conditions are met.

⁵⁴ 12 September 2022 Transcript at p 58 (lines 7–10).

⁵⁵ 12 September 2022 Transcript at p 59 (lines 1–19).

⁵⁶ Exhibit P331A.

First, the accused person's involvement in the offence is restricted to:

- (a) transporting, sending or delivering a controlled drug;
- (b) offering to transport, send or deliver a controlled drug;
- (c) doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
- (d) Any combination of the activities listed in (a), (b) and (c).

AND

Second, the Public Prosecutor certifies to the court that, in his determination, the accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

You are hereby invited to provide information to the Central Narcotics Bureau for the purposes of disrupting drug trafficking activities within or outside Singapore. A delay in providing such information would usually affect its effectiveness in substantively assisting the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. The mere fact that you provide information, however, does not mean that you will eventually be certified as having provided substantive assistance.

This notification is purely for your information, and should not be construed as a threat, inducement or promise for you to give evidence about the involvement of you and any other person in the commission of an offence.

100 In essence, the MDP Notice sets out the requirements for an accused person to satisfy before the Court exercises its discretion to sentence a drug trafficker to life imprisonment rather than death:

- (a) the accused person must be involved in some sort of less culpable activity such as being a courier or doing preparatory work for the

trafficking operation (even if it legally amounts to trafficking);
and

- (b) the accused person must have received a certificate from the Public Prosecutor indicating that the accused person has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

101 This is not much different from what Mustaqim alleged SSgt Fardlie had represented to him, *ie*, that Mustaqim could get life imprisonment if he was a courier and had co-operated with the CNB. In my view, it is entirely possible that when SSgt Fardlie read out the MDP Notice *verbatim* to Mustaqim, Mustaqim could have personally understood it to mean that if he was a courier and had co-operated with the CNB he might be given the life imprisonment instead of the death penalty. In this case, any inducement would have operated solely in Mustaqim’s mind as a result of his subjective perception or understanding of the MDP Notice. This, as the authorities have shown, is insufficient to constitute an objective form of inducement that affects the voluntariness of Mustaqim’s statement.

102 Further, the MDP Notice clearly states that “This notification is purely for your information, and should not be construed as a threat, inducement or promise ...”. Mr Tiwary agreed that the MDP Notice did not amount to a threat, inducement or promise.

103 It is undisputed that the mere reading out of a mandatory death penalty notice to an accused person does not, in and of itself, constitute a threat, inducement or promise. The Court of Appeal in *Jumadi bin Abdullah v Public Prosecutor and other appeals* [2022] 1 SLR 814 (“*Jumadi*”) made the following

observations in relation to the administering of a mandatory death penalty notice (at [39]):

39 Objectively, the MDP Notice is not a promise, inducement or threat within the meaning of s 258(3) of the CPC. It is ultimately an *informational* document intended to give fair notice of the law to accused persons. This much is clear from both the *language* of the MDP Notice and the *circumstances* in which it is administered.

(a) Read in its entirety, the MDP Notice is largely couched in explanatory language. The document itself is titled “Notice of requirements that would satisfy s 33B(2) of the Misuse of Drugs Act”. It begins by bringing s 33B of the MDA to the accused person’s attention, outlining in broad strokes the discretion that it gives to the courts to sentence a drug trafficker to life imprisonment rather than death. The specific requirements are then set out. Namely, the accused person must: (i) be involved in some sort of less culpable activity such as being a courier or doing preparatory work for the trafficking operation (even if it legally amounts to trafficking); and (ii) have received a certificate of substantial assistance from the Public Prosecutor. It is in *that* context that the “offending” invitation is extended: “You are hereby invited to provide information to the Central Narcotics Bureau for the purposes of disrupting drug trafficking activities within or outside Singapore.” If understood in the larger linguistic schema and tone of the MDP Notice, the invitation is really just an extension of the *explanations* which the MDP Notice seeks to provide.

(b) Moreover, the factual context in which the MDP Notice is administered is also important. As alluded to above (at [2]) and explained in *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 (“Abdullah”) at [54], notices such as this are “[as] a matter of practice, [administered] shortly after [the accused person’s] arrest if the offence that he is alleged to have committed carries the death penalty under the MDA”. The MDP Notice, in other words, is intended to give the accused fair notice of the laws which might be at play upon his arrest. In that regard, it again makes sense that the MDP Notice is more informational than invitational, more explanation than exhortation.

[emphasis in original]

104 Even if such a notice would have the effect of inducing an accused person into giving a statement in the hope of escaping the death penalty, the Court of Appeal in *Jumadi* observed at [41] that any such legal effect is neutralised by Explanation 2(aa) of s 258(3) of the CPC (“Explanation 2(aa)”). Explanation 2(aa) reads as follows:

Explanation 2 — If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:

...

(aa) where the accused is informed in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap 185) under which life imprisonment may be imposed in lieu of death;

...

105 Explanation 2(aa), therefore, has the effect of taking such notices outside the scope of s 258(3) of the CPC, such that statements recorded subsequent to the MDP Notice are not inadmissible merely because the accused person, after receiving the information contained in such notices, felt compelled to give these statements.

106 Here, the MDP Notice sets out the circumstances under which life imprisonment may be imposed by the court in lieu of the death penalty. I found that the administration of the MDP Notice falls squarely within Explanation 2(aa). The MDP Notice was purely informative and even contained a disclaimer that it was not to be construed as an inducement, threat or promise (see [99] above). As such, it did not amount to an inducement, threat or promise within the meaning of s 258(3) of the CPC.

107 Further, a summary or paraphrasing of the MDP Notice, as alleged by Mustaqim, would not amount to an inducement, threat or promise. The Defence

argued that if the MDP Notice was not read *verbatim*, ie, the MDP Notice was paraphrased, then whatever was said cannot be brought within Explanation 2(aa). I have stated at [101] above that SSgt Fardlie's alleged paraphrasing of the MDP Notice would have been substantively the same as the information contained in the MDP Notice. This amounted to an invitation to Mustaqim to provide information relating to the drug trafficking activities which he was involved in. What SSgt Fardlie had allegedly told Mustaqim coheres with the very spirit of s 33B of the MDA. As the Court of Appeal in *Jumadi* observed at [43]–[44]:

43 Indeed, s 33B of the MDA is part of a very specific system of incentives designed to promote co-operation with the authorities and at the very minimum, Explanation 2(aa) seeks to maintain that system's efficacy and objective. As stated by this court in [*Muhammad bin Abdullah v Public Prosecutor* [2017] 1 SLR 427] at [60]:

... The Parliamentary debates leading to the enactment of s 33B of the MDA showed that the purpose of the amendments was to give an accused person the incentive to 'come clean' (*PP v Chum Tat Suan* [2015] 1 SLR 834 ('*Chum Tat Suan*') at [81]) at the earliest opportunity **so that the operational effectiveness of the CNB may be enhanced and the accused may thereby 'earn' the Certificate.** [emphasis added in bold]

44 This was not only contemplated but also accepted by Parliament. As Minister K Shanmugam observed in the context of a discussion on s 33B of the MDA, that provision was an incentive to tell the truth.

Asst Prof Eugene Tan asked whether the mechanism creates a risk of self-incrimination? There is that risk. But let me throw back the question: what does that mean? Should we, therefore, not have this exception?

If we believe that the [death penalty] should be abolished, then I can understand Professor Tan's argument. But if that is not argued, and he is not arguing that, then you have to weigh between sticking to the current position – you prove the *actus reus* and the *mens rea*, trafficking in 15 grams or more, and the person faces capital punishment unless he provides

substantial assistance. Should you not give him that option?

I think Asst Prof Tan also makes the point: would CNB officers pressure the accused to self-incriminate? That raises questions outside of issues that we are discussing today, as to whether we should or should not have such an exception.

So, really the question is: if the accused knows something, and has to decide between trying to run a false defence that he knows nothing, and telling the truth and assisting the CNB – **I do not think Members will argue against giving him an incentive to tell the truth, to help us, and to help himself.**

[emphasis in original in bold]

108 The paraphrased version of the MDP Notice which SSgt Fardlie had allegedly administered to Mustaqim was simply the logical consequence of the conditions stipulated in ss 33B(1)(a) and 33B(2) of the MDA. Therefore, SSgt Fardlie’s alleged representations cannot objectively amount to an inducement. In so far as SSgt Fardlie informed Mustaqim that one of the requirements before he could escape the capital punishment was to co-operate with the CNB, that is something which was prospective in nature, which resided exclusively within the accused person’s power. The CNB officers, including SSgt Fardlie, had no control over it. When SSgt Fardlie purportedly informed Mustaqim that the other requirement was for Mustaqim to be a courier, it was a very fact-specific inquiry. As the Court of Appeal emphasised in *Jumadi* (at [46]), the requirement that the accused person was a courier was retrospective, “in that it concerns events that have happened in the past and more specifically, events that only the accused can truly speak to; knowledge of the extent of his/her past involvement in the trafficking operation lies exclusively within the accused person’s mind”.

109 In summary, the Alleged MDP Notice Representation was not made by SSgt Fardlie. However, even if SSgt Fardlie had made the Alleged MDP Notice Representation, this could not objectively be considered an inducement.

(C) SSGT FARDLIE DID NOT MAKE THE ALLEGED CONTEMPORANEOUS STATEMENT REPRESENTATION

110 Regarding the Alleged Contemporaneous Statement Representation, Mustaqim claimed that, in the course of recording the First Contemporaneous Statement, SSgt Fardlie told him that “[i]f it’s like this, then it’s not considered courier” and that Mustaqim could not get life imprisonment, and further that “[j]ust say that this stuff is to be sent to Zack’s customer”.⁵⁷

111 There is no corroborative evidence to support Mustaqim’s bare assertion. Why would SSgt Fardlie assist Mustaqim to avoid the death penalty when the Drugs, which was a large quantity of diamorphine, was found in the Car? From the contents of the First Contemporaneous Statement, it was clear that SSgt Fardlie was investigating Mustaqim for drug trafficking that carries the death penalty. There is no evidence to suggest that SSgt Fardlie induced Mustaqim to confess, and he would get the life imprisonment instead of the death penalty, as suggested by Mr Tiwary.

112 On the other hand, SSgt Fardlie stated that no further questions were asked, or representations made, other than those recorded in the pocketbook. Mustaqim did not dispute that he had appended his signature on SSgt Fardlie’s pocketbook below the sentence “No threat, inducement or promises were made to me before and throughout the recording of my statement” (see [75] above).⁵⁸

⁵⁷ 12 September 2022 Transcript at p 30 (lines 7–17).

⁵⁸ 12 September 2022 Transcript at p 53 (lines 10–21).

Mustaqim further confirmed that he could read and understand English,⁵⁹ and that he could have read this statement if he wanted to.⁶⁰

113 Therefore, the Alleged Contemporaneous Statement Representation was unfounded, and I rejected it. Accordingly, I was satisfied that Mustaqim had given the First Contemporaneous Statement without any inducement to SSgt Fardlie.

114 It thus follows that the remaining two statements, *ie*, the Second Contemporaneous Statement and the 27 January Cautioned Statement, must also have been given voluntarily, given that there was in fact no inducement which operated in Mustaqim's mind at the time he gave those statements. I shall explain further on the admissibility of the Second Contemporaneous Statement and the 27 January Cautioned Statement.

(D) THE SECOND CONTEMPORANEOUS STATEMENT WAS GIVEN VOLUNTARILY

115 In respect of the Second Contemporaneous Statement, Mustaqim admitted during cross-examination that there was no threat, inducement or promise from the recorder, ASP Aliff, before, during or after the Second Contemporaneous Statement was recorded:⁶¹

Q Okay. And ASP Aliff did not give you any threat, inducement or promise either during or after or before the second contemporaneous statement was recorded, correct?

A Yes.

Q Okay. And I put it to you that this statement was given voluntarily by you.

⁵⁹ 12 September 2022 Transcript at p 33 (lines 5–26).

⁶⁰ 12 September 2022 Transcript at p 54 (lines 1–5).

⁶¹ 12 September 2022 Transcript at p 40 (lines 6–7).

116 Further, Mustaqim claimed that he made the Second Contemporaneous Statement because he wanted to keep it consistent with the First Contemporaneous Statement. Mustaqim admitted this during his cross-examination:⁶²

Q ... Now you said you wanted to keep this statement ... consistent with the first statement, right?

A Yes.

Q Nobody was forcing you to make sure that [the Second Contemporaneous Statement] was consistent with [the First Contemporaneous Statement], right?

A Correct.

Q Okay. So you voluntarily wanted to make [the Second Contemporaneous Statement] consistent with [the Second Contemporaneous Statement], right?

A Correct.

Q Okay. And by consistent, you meant that you wanted to portray yourself as a courier?

A Correct.

117 Hence, Mustaqim admitted that nobody had forced him to provide the information contained in the Second Contemporaneous Statement. Accordingly, there was no inducement from ASP Aliff. It was Mustaqim's desire to ensure that he gave a consistent account to the CNB officers. Therefore, I was satisfied that Mustaqim had voluntarily given the information contained in the Second Contemporaneous Statement.

⁶² 12 September 2022 Transcript at p 40 (lines 16–27).

(E) THE 27 JANUARY CAUTIONED STATEMENT WAS GIVEN VOLUNTARILY

118 As for the 27 January Cautioned Statement, Mustaqim admitted, during his cross-examination, that ASP Yang had not made any threat, inducement or promise to him:⁶³

Q Okay. You would agree with me that neither ASP Yang Weili who is the Chinese officer, nor Mr Faiz who is the interpreter had given you any threat, inducement or promise before or during the recording of this cautioned statement?

A Yes.

119 Thus, there was no threat, promise or inducement which operated on Mustaqim’s mind when he gave the 27 January Cautioned Statement. Mustaqim said, “when [he] saw the death penalty, [he] could not think of anything else”.⁶⁴ Accordingly, when Mustaqim gave the 27 January Cautioned Statement, it was certainly not because of any alleged representation made by SSgt Fardlie or ASP Yang.

120 Accordingly, I also found that Mustaqim had given the 27 January Cautioned Statement voluntarily, and the statement is thus admissible in evidence.

(3) Conclusion at the first ancillary hearing

121 Having considered the evidence and the witnesses’ testimonies, I found that the Prosecution had proven beyond a reasonable doubt that SSgt Fardlie had not in fact made the Alleged MDP Notice Representation and the Alleged Contemporaneous Statement Representation. Therefore, there was no

⁶³ 12 September 2022 Transcript at p 38 (lines 5–9).

⁶⁴ 12 September 2022 Transcript at p 38 (lines 15–28).

inducement or promise, expressly or impliedly, made to Mustaqim by SSgt Fardlie. Hence, I was satisfied that Mustaqim gave the First Contemporaneous Statement voluntarily to SSgt Fardlie. Similarly, the Second Contemporaneous Statement and the 27 January Cautioned Statement were also voluntarily given by Mustaqim to ASP Aliff and ASP Yang respectively. These statements were admitted in evidence as part of the Prosecution's case.

The second ancillary hearing - Admissibility of the Four Long Statements

122 Following Mustaqim's examination-in-chief as part of the Defence's case, the Prosecution sought to introduce the Four Long Statements given by Mustaqim in the course of the CNB investigations. The Defence objected to the admission of the Four Long Statements on the ground that Mustaqim was induced into giving these statements by ASP Yang. Therefore, Mustaqim alleged that these statements were given involuntarily by him to ASP Yang. On the other hand, the Prosecution submitted that these statements were voluntarily provided by Mustaqim to ASP Yang and hence should be admitted into evidence.

123 Accordingly, I ordered the second ancillary hearing to ascertain the voluntariness of these statements.

Mustaqim's case at the second ancillary hearing

(1) The First Long Statement

124 Mustaqim alleged that when he first entered the PCC Lock-Up Interview Room on 30 January 2018, he spoke to Faiz, the Malay language officer, and said the following in Malay:⁶⁵

A ... “The other day, there was an officer who informed me that if I were to be found to be a courier and had provided information, that I could get life imprisonment. So can I get that?”

125 Mustaqim claimed that ASP Yang asked Faiz what Mustaqim had said.⁶⁶ Faiz allegedly told ASP Yang what Mustaqim had said in English.⁶⁷ Thereafter, ASP Yang purportedly replied in English that he knew that Mustaqim had co-operated, but that ASP Yang needed to take the statement on 30 January 2018 to know whether Mustaqim was truly a courier and whether Mustaqim would provide information or not (“ASP Yang’s Alleged Representation”).⁶⁸ This was translated by Faiz to Mustaqim in Malay.⁶⁹

126 ASP Yang thereafter commenced the statement recording at 8.31pm. Mustaqim alleged that, based on ASP Yang’s Alleged Representation as well as the Alleged Contemporaneous Statement Representation by SSgt Fardlie on 26 January 2018, he gave the First Long Statement to ASP Yang so as to “get the role of the courier”.⁷⁰

⁶⁵ 25 January 2023 Transcript at p 41 (lines 2–4).

⁶⁶ 25 January 2023 Transcript at p 41 (lines 8–12).

⁶⁷ 25 January 2023 Transcript at p 41 (lines 13–14).

⁶⁸ 25 January 2023 Transcript at p 41 (lines 15–26).

⁶⁹ 25 January 2023 Transcript at p 41 (lines 27–28).

⁷⁰ 25 January 2023 Transcript at p 42 (lines 5–13).

127 Mustaqim also admitted that ASP Yang had not told him that he would qualify for life imprisonment if he stated certain things in the First Long Statement.⁷¹

(2) The Second Long Statement, the Third Long Statement and the Fourth Long Statement

128 Mustaqim admitted that there was no threat, inducement or promise given by ASP Yang or Faiz during the recording of the Second Long Statement, the Third Long Statement and the Fourth Long Statement.⁷² Rather, Mustaqim's case was simply that ASP Yang's Alleged Representation prior to the recording of the First Long Statement on 30 January 2018 continued to operate on his mind.⁷³

The Prosecution's case at the second ancillary hearing

129 Mustaqim's version of the events as stated above was rejected by ASP Yang. ASP Yang testified that the statement recording process for the First Long Statement commenced immediately on 30 January 2018 at 8.31pm when Mustaqim entered the PCC Lock-Up Interview Room. ASP Yang denied having any conversation with Mustaqim before that.⁷⁴ ASP Yang denied giving any threat, inducement or promise before, during or after the recording of the First Long Statement.⁷⁵ All the questions posed by ASP Yang were interpreted to Mustaqim by Faiz in Malay. Thereafter, Mustaqim provided his responses in

⁷¹ 25 January 2023 Transcript at p 52 (lines 25–31).

⁷² 25 January 2023 Transcript at p 43 (lines 10–14).

⁷³ 25 January 2023 Transcript at p 55 (lines 7–13).

⁷⁴ 25 January 2023 Transcript at p 13 (lines 19–24).

⁷⁵ 25 January 2023 Transcript at p 14 (lines 22–27).

Malay to Faiz which were interpreted back to ASP Yang.⁷⁶ According to ASP Yang, after Mustaqim had provided his answers to the questions, the First Long Statement was printed out and given to Faiz to be interpreted to Mustaqim.⁷⁷ Mustaqim was invited to make amendments.⁷⁸ Thereafter, ASP Yang, Mustaqim and Faiz signed at the bottom of each page of the First Long Statement.⁷⁹

130 In relation to the Second Long Statement, the Third Long Statement and the Fourth Long Statement, Mustaqim did not allege that there was any threat, inducement or promise given by ASP Yang or Faiz immediately before, during and after the recording of these statements.

131 Due to the passage of time, Faiz was unable to recall at the ancillary hearing whether the conversation Mustaqim alleged to have occurred had indeed taken place before the recording of the First Long Statement.⁸⁰

132 Based on the above, the Prosecution submitted that there was no threat, inducement or promise given by ASP Yang. In relation to Faiz's evidence, the Prosecution submitted that this should be treated as neutral evidence.⁸¹

My decision on the admissibility of the Four Long Statements

133 The Defence's case on the involuntariness of the Four Long Statements was premised on inducement as a result of ASP Yang's Alleged Representation

⁷⁶ 25 January 2023 Transcript at p 14 (lines 1–7).

⁷⁷ 25 January 2023 Transcript at p 14 (lines 8–12).

⁷⁸ 25 January 2023 Transcript at p 14 (lines 14–21).

⁷⁹ 25 January 2023 Transcript at pp 16 (line 31) to 17 (line 10).

⁸⁰ 25 January 2023 Transcript at pp 29 (line 31) to 30 (line 8).

⁸¹ 25 January 2023 Transcript at pp 56 (line 32) to 57 (line 2).

as well as SSgt Fardlie's Alleged Contemporaneous Statement Representation. At the second ancillary hearing, Mr Tiwary informed the Court that it was not necessary to recall SSgt Fardlie for cross-examination as he had no further questions for SSgt Fardlie. Mr Tiwary further added that the Defence would rely on the evidence adduced at the first ancillary hearing. I have explained above at [110]–[113] that SSgt Fardlie did not make the Alleged Contemporaneous Statement Representation. Therefore, I only had to consider whether ASP Yang made any representation which had the effect of inducing Mustaqim to give the Four Long Statements.

(1) ASP Yang did not make the Alleged Representation

134 To determine whether there was any truth to Mustaqim's claim of ASP Yang's Alleged Representation, I had to consider the testimonies of Mustaqim and ASP Yang. The interpreter, Faiz, however, was unable to recall Mustaqim's claim of ASP Yang's Alleged Representation before the recording of the First Long Statement as it took place five years ago.

135 ASP Yang was a credible witness. He was clear and consistent when he gave evidence pertaining to how he recorded the Four Long Statements from Mustaqim. He also emphasised that it was not his practice to make references to the MDP Notice or its contents, or to mention the possibility of life imprisonment in some cases.⁸² ASP Yang said the purpose of recording Mustaqim's First Long Statement was to gather information about Mustaqim's personal background as well as to ask him about the events on the day of the arrest.⁸³ ASP Yang had no motive to lie about the events relating to the recording of the First Long Statement.

⁸² 25 January 2023 Transcript at p 27 (lines 3–18).

⁸³ 25 January 2023 Transcript at p 13 (lines 15–18).

136 Mustaqim's bare assertion regarding ASP Yang's Alleged Representation was unfounded. Mustaqim's account was also not corroborated. Even if what Mustaqim had said about ASP Yang's Alleged Representation were true, it could hardly be an inducement or promise. ASP Yang wanted to know more information regarding the Drugs found in the Car on the day of his arrest and Mustaqim's involvement in the Drugs.

137 For the above reasons, Mustaqim's assertion in relation to ASP Yang's Alleged Representation could not be believed. If Mustaqim thought that he could avoid the capital punishment by playing the role of a courier, this self-perceived belief would not have rendered the statements involuntary.

(2) Conclusion at the second ancillary hearing

138 Having considered the evidence, I found that the Prosecution had proven beyond a reasonable doubt that ASP Yang had not in fact made any representation to Mustaqim before the recording of the First Long Statement on 30 January 2018. Therefore, there was no threat, inducement or promise made to Mustaqim by ASP Yang. I was satisfied that Mustaqim gave the First Long Statement voluntarily to ASP Yang. Similarly, the Second Long Statement, the Third Long Statement and the Fourth Long Statement were also voluntarily given by Mustaqim to ASP Yang. Accordingly, these statements were admitted into evidence.

Findings for the main trial

139 I shall now proceed to give my findings for the Charge against Mustaqim.

Whether the elements of the Charge are made out beyond a reasonable doubt

The applicable law and presumptions

140 I shall first consider the applicable law and presumptions that go towards determining whether the elements of the Charge are made out beyond a reasonable doubt.

141 Section 5 of the MDA, which the Charge relates to, provides as follows:

Trafficking in controlled drugs

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

- (a) to traffic in a controlled drug;
- (b) to offer to traffic in a controlled drug; or
- (c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

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

142 In order to make out an offence of trafficking in a controlled drug under s 5(1)(a) read with s 5(2) of the MDA, the Prosecution must prove three elements (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

- (a) the accused had possession of a controlled drug (which may be proved or presumed under, amongst others, s 21 of the MDA);
- (b) the accused had knowledge of the nature of the drug (which may be proved or presumed under s 18(2) of the MDA); and

- (c) the accused's possession of the controlled drug was for the purpose of trafficking which was not authorised.

143 In relation to the first element of possession, apart from proving actual possession, I am mindful of the presumption of possession in s 21 of the MDA, which reads as follows:

Presumption relating to vehicle.

21. If any controlled drug is found in any vehicle, it is presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

144 Section 21 of the MDA thus states that a person is presumed to be in possession of a controlled drug if: (a) that drug is found in any vehicle; and (b) that person is either (i) the owner of the vehicle; or (ii) in-charge of the vehicle for the time being.

145 The presumption of possession under s 21 of the MDA may be rebutted if the accused person successfully proves that the controlled drugs are planted in his vehicle without his knowledge, such that he does not know that he is trafficking in drugs. The burden of proof is on the accused person to establish, on a balance of probabilities, that he has no knowledge of the controlled drugs (see *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [21], affirmed in *Mohammad Reduan bin Mustaffar v Public Prosecutor and another appeal and another matter* [2021] SGCA 64 at [63]–[65]).

146 In relation to the second element of knowledge, apart from proving actual knowledge, there is also the presumption of knowledge as set out in s 18(2) of the MDA, which reads as follows:

Presumption of possession and knowledge of controlled drugs

...

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

147 Section 18(2) of the MDA thus states that where it is proven or presumed that a person has possession of a controlled drug, it is presumed that the person has knowledge of the nature of that drug. This is subject to evidence which proves to the contrary.

148 The Court of Appeal in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [36] explained the presumption under s 18(2) of the MDA as follows:

36 ... However, if an accused is either (a) proved to have had the controlled drug in his possession; or (b) presumed ... to have had the controlled drug in his possession and the contrary is not proved, the presumption under s 18(2) that he has knowledge of the nature of the drug would be invoked. This follows because an accused person, who, it has been established, was in possession of the controlled drug should be taken to know the nature of that drug unless he can demonstrate otherwise. To rebut the presumption in s 18(2), the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug (in effect, that he did not have the *mens rea* of the offence). In *Dinesh Pillai a/l K Raja Retnam v PP* [2012] 2 SLR 903 (“*Dinesh Pillai*”), this court observed (at [18]) that the accused can do so by showing that “he did not know or could not reasonably be expected to have known the nature of the controlled drug”.

[emphasis added]

149 To rebut the presumption of knowledge under s 18(2) of the MDA, therefore, the accused person can show that “he did not know or could not reasonably be expected to have known” the nature of the drug. Alternatively, the accused person may show that he genuinely believed that he was in

possession of something innocuous or of some contraband item or uncontrolled drug other than the specific drug in his possession. However, the accused person must adduce sufficient evidence which discloses the basis upon which he arrived at that subjective state of mind (see *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [58]–[59]).

150 In relation to the third element concerning possession for the purpose of trafficking, s 2 of the MDA defines trafficking as follows:

Interpretation

2. In this Act, unless the context otherwise requires —

...

“traffic” means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning; ...

151 In respect of the third element, therefore, it must be shown that the accused person has possession of a controlled drug for the purposes of either selling, giving, administering, transporting, sending, delivering or distributing that controlled drug, or to offer to do anything to the effect, and where no authority is given for such purposes.

152 I should also add that the Prosecution, rightly in my view, is not relying on the presumption of trafficking set out in s 17(c) of the MDA. That provision reads as follows:

Presumption concerning trafficking

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

...

(c) 2 grammes of diamorphine;

...

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

153 Section 17(c) of the MDA thus states that where the accused has more than two grammes of diamorphine in his possession, the accused is presumed to have had that drug in his possession for the purpose of trafficking. The language of s 17(c) thus suggests that, in order to engage the presumption therein, it is necessary for the prosecution to *prove* the fact of possession, and not merely to rely on the *presumption* of possession.

154 This distinction between *proving* and *presuming* the elements of an offence of trafficking was considered by the Court of Appeal in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 (“*Zainal*”). There, the Court of Appeal held that the presumptions under ss 17 and 18(1) of the MDA, *ie*, the presumption of trafficking under s 17 of the MDA and the presumption of possession under s 18 of the MDA, cannot possibly operate together in the same case. This is because s 17 of the MDA only applies where possession is *proved*, whereas the effect of s 18 of the MDA would be to give rise to a *presumption* of the fact of possession, and not *proof* (*Zainal* at [38]). Similarly, the Court of Appeal also held that where the presumptions under ss 18(1) and 18(2) of the MDA are relied upon, the prosecution cannot also rely on the presumption of trafficking under s 17 of the MDA. In concluding as such, the Court of Appeal in *Zainal* held that there is a distinction between the nature and purpose of ss 17 and 18 of the MDA, and that it is crucial to recognise that both provisions are self-standing and are meant to deal with different issues in relation to the offence of drug trafficking (at [46]–[49]):

46 We emphasise, in particular, the fact that the statutory scheme of the MDA makes clear that s 18(2) is to operate as an ancillary provision to s 18(1), in the sense that where an accused is in physical control of an object, the Prosecution may rely on s 18 as a whole to invoke a presumption of possession and also of knowledge of what it is that the accused is in possession of. Further, s 18, as a whole, stands apart from s 17 in the sense that it is an entirely separate section and deals with the distinct issue of *knowing possession*. We add that Parliament has framed s 18(2) in terms that it may be invoked whether the fact of possession is proved or presumed.

47 Section 17 on the other hand is a distinct provision that is concerned with the question of the *purpose* for which the accused has possession of the item in question. In this context, it seems to us plain given Parliament's explicit intention that the presumption in s 17 may only be invoked where the fact of possession is proved (see [38] above), that this should also be the position in relation to the fact of *knowledge* of the nature of the item that is in the possession of the accused. It is helpful here to return to the language to s 17, the relevant part of which we reproduce here, once again, for convenience:

Presumption concerning trafficking

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

...

(c) 2 grammes of diamorphine;

...

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

[emphasis added]

48 This contemplates that if it is *proved* that a person had in his possession more than 2g of diamorphine, then:

(a) that person will be presumed to have that drug in his possession *for the purpose of trafficking*,

(b) unless it is proved that such possession was not for the purpose of trafficking.

49 In our judgment, it is relevant in this context to examine just what is contemplated by the premise upon which the

presumption under s 17 may be invoked, namely, if **possession** is proved. Does that mean proof of the fact of physical possession in the sense that we have described at [11]–[12] above and which could otherwise be established by recourse to the presumption in s 18(1)? Or does the reference in s 17 to possession that is proved go further and entail proof of both the fact of physical possession and of the fact of knowledge of what was possessed, being what we have described above at [46] as *knowing* possession, which could otherwise be established by recourse to the presumptions provided in ss 18(1) and 18(2)? In our judgment, it cannot as a matter of statutory interpretation be the former and must be the latter. We say this because the presumption under s 17 is self-standing in the sense that once the premise is proved, the presumption may be invoked. That premise is stated simply in terms that the person “is *proved to have had in his possession*” the requisite quantity of diamorphine. Once this is proved, the presumption may apply and that presumption is that the person in question had such possession for the purpose of trafficking. But it is clear that one cannot be found to be trafficking without knowledge of the nature of the drugs in question. And s 17 does not contemplate proof of other elements before the presumption may be invoked. It would follow from this that the premise in s 17 should extend to both the fact of physical possession and the element of knowledge, or collectively, what we have referred to as knowing possession. Hence, when this premise is proved, then the purpose of trafficking may be presumed.

[emphasis in original in italics and bold]

155 Accordingly, the reference to “possession” in s 17 of the MDA entails proof of both the *fact* of possession and the knowledge of what is being possessed. Thus, where the prosecution intends to rely on the presumption of trafficking in s 17 of the MDA, it has to prove that the accused possesses the controlled drug and he knew the nature of the controlled drug. If the prosecution intends to rely on either or both presumptions under s 18 of the MDA, it must prove the fact of trafficking (see *Zainal* at [52]).

156 In the present case, the Prosecution is relying on the presumption of possession under s 21 of the MDA and the presumption of knowledge under

s 18(2) of the MDA. It cannot, therefore, at the same time rely on the presumption of trafficking under s 17 of the MDA (see *Zainal* at [52]).

157 A final matter relates to the question of whether an accused who takes custody of the drugs can be said to be trafficking such drugs, if his intention was to return the drugs to the person who initially entrusted him with the drugs. This issue arises because one of Mustaqim’s key defences in relation to the Charge is that a large portion of the diamorphine found in his possession was intended to be returned to Zack (see [55(c)] above).

158 There are several authorities from the Court of Appeal that have suggested that the act of returning drugs that were in an accused person’s custody amounts to the trafficking of such drugs (see *Public Prosecutor v Goh Hock Huat* [1994] 3 SLR(R) 375; *Lee Yuan Kwang v Public Prosecutor* [1995] 1 SLR(R) 778; *Jingga bin Md Selamat alias Kwan Ah Chiam v Public Prosecutor* [2001] SGCA 32). These authorities were, however, revisited by the Court of Appeal most recently in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh*”).

159 In that case, the accused, R, received a bag containing four bundles of diamorphine from the co-accused, C. R was arrested shortly after by officers from the CNB. The CNB officers searched the second lorry he was driving and found the bag containing the bundles of diamorphine. R was accordingly charged for possession of the bundles of diamorphine for the purpose of trafficking. At the trial, one of R’s defences was that C had told R that he would take the bag of diamorphine back from R on the same day R had received them and would bring the bag back to Malaysia. The trial judge convicted R on the charge of trafficking in diamorphine. However, the trial judge found R to be a courier, and the prosecution had issued R a certificate of substantive assistance.

Hence, the trial judge sentenced R to life imprisonment and caning. R appealed against both his conviction and sentence.

160 On appeal, the Court of Appeal had to consider the issue of whether an accused who took custody of the drugs trafficked in such drugs if he intended to and in fact returned them to the person who initially entrusted him with the drugs (see *Ramesh* at [100]). The Court of Appeal held that this question should be answered in the negative, *ie*, that a person who intended to and in fact returned the drugs to the person who initially entrusted him with the drugs could not be said to be trafficking in such drugs (see *Ramesh* at [101]).

161 In arriving at the decision, the Court of Appeal considered the definition of “traffic” under s 2 of the MDA, which includes the word “deliver” (at [103]). The Court of Appeal opined that it was unclear from the natural and ordinary meaning of the word “deliver” as to whether Parliament intended to include the act of returning drugs to a person originally in possession of them within the definition of “traffic” in s 2 of the MDA (at [105]). With regard to the legislative policy underlying the MDA, the Court of Appeal observed as follows (at [108]–[110]):

108 It is clear that Parliament’s intention was to target those involved in the *supply and distribution* of drugs within society. This is evident from the remarks of the then-Minister for Health and Home Affairs, Chua Sian Chin, who moved the Second Reading of the Misuse of Drugs Bill (*Singapore Parliamentary Debates, Official Report* (16 February 1973) vol 32 at cols 415–417):

The ill-gotten gains of the drug traffic are huge. The key men operating behind the scene are ruthless and cunning and possess ample funds. They do their utmost *to push drugs through*. Though we may not have drug-trafficking and drug addiction to the same degree as, for instance, in the United States, we have some quite big-time traffickers and their pedlars moving around the Republic, *selling their evil goods and corrupting the lives of all those who succumb to them*.

...

The young person falls under the influence of such a drug in a variety of ways. ... The danger is that when he finds that the effects of such a drug are not too upsetting but rather pleasant in the transient light-headed feeling it induces, he continues to take it.

After this, he so very easily progresses to more potent drugs that will give him that same feeling of euphoria after failing to get it with those drugs which he first used, even in increasing quantities. Once he becomes 'hooked' on a hard drug, e.g. morphine or heroin, his path to ruination and disaster is certain ... It is known that once a person is hooked to a hard drug, he will lie, cheat, steal or even kill just to get the drugs. *Thus, a drug trafficker is the most abominable of human beings if he can be deemed 'human'. He is a merchant of 'living death' which he brings to a fellow human being. He, therefore, deserves the maximum punishment.*

[emphasis added]

109 The above remarks demonstrate 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 end-users*. More recently, the following remarks of then-Deputy Prime Minister and Minister for Home Affairs Mr Teo Chee Hean, who moved the Second Reading of the Misuse of Drugs Amendment Bill (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89) show that the key policy objective of the MDA continues to be the disruption of supply and distribution of drugs to end-users, and that the harsh penalties provided for trafficking are a key part of this objective:

Mr Speaker, Sir, the threat posed by organised drug syndicates is a very serious one. The global drug situation is worsening, with the number of drug users across the world increasing from 180 million to some 210 million over the last decade. Within our own region, the drug problem has become worse. Illicit drugs draw thousands of people every year into a web of addiction and despair. Their family members and the rest of society also pay a heavy price.

Those who trade in illegal drugs are still attracted by the huge financial gains to be made, and deterring them requires the strictest enforcement coupled with the severest of penalties.

110 The implications of this legislative policy on the interpretation of the MDA are demonstrated in the decision of the Privy Council in [*Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710], where Lord Diplock construed the word “transport” in s 3 of the 1973 MDA to mean moving drugs from one person to another (at [10]), rather than simply from one place to another. Lord Diplock noted that apart from the statutory definition of the term “trafficking”, the ordinary meaning of the verb “traffic” imports the existence of a *supplier* and a person to *whom the goods are to be supplied* (at [10]). He noted, further, that six of the seven verbs used to describe the various acts which constitute trafficking (*ie*, sell, give, administer, send, deliver and distribute) refer to various ways in which a *supplier or distributor*, who has drugs in his possession, may transfer possession of them to some other person. It followed that the term “transport” was not used in the sense of merely conveying or carrying or moving from one place to another, but in the sense of *promoting the distribution of the drug to another* (at [10]). He thus concluded that supplying or distributing addictive drugs to others is the evil against which s 3 (the provision in the 1973 MDA which created the offence of trafficking) was directed. ...

[emphasis in original]

162 Having examined the legislative policy underlying the MDA, the Court of Appeal concluded that the crux of Parliament’s intention was to target individuals who played a part in disseminating drugs, or those who moved the drugs from one person to another, anywhere along the supply or distribution chain, in order to facilitate the movement of drugs towards their ultimate consumers. Accordingly, where a person returned drugs to the person who originally deposited those drugs with him, that person would not ordinarily come within the definition of “trafficking”. Similarly, the Court of Appeal held that where a person held on to a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him, that person could not be said to fall within the definition of possession of those drugs “for the purpose of trafficking” (*Ramesh* at [110]).

163 On the facts of *Ramesh*, the Court of Appeal found that there was no evidence to show that, by taking possession of the bundle of diamorphine, R had enabled, assisted or facilitated any act of trafficking of the drugs. Accordingly, the Court of Appeal concluded that the prosecution had not proven beyond a reasonable doubt that R was in possession of the drugs for the purpose of trafficking (*Ramesh* at [116] and [118]). However, the Court of Appeal held that the appropriate course of action was to amend the charge against R to a charge for possession simpliciter under s 8(a) of the MDA (*Ramesh* at [117]).

164 I shall now set out my findings on whether the Prosecution has proven the elements of the Charge beyond a reasonable doubt.

My findings

165 Having considered the evidence at the conclusion of the trial, I am satisfied that the elements of the Charge are made out beyond a reasonable doubt. My reasons are set out below.

(1) Possession of the Drugs

166 It is not disputed that the Drugs were found in the Car which Mustaqim was driving at the time of his arrest. It is also not disputed that Mustaqim was in charge and in control of the Car at the time of his arrest, in so far as he was the driver and hence the person in charge of the Car. Mustaqim does not dispute that he was aware of the Drugs found in the Car. He also does not dispute that he was in possession of the Drugs found in the Car, although he alleges that a large portion of the Drugs was given to him by mistake, and he wanted to return them to Zack. The evidence reveals that Mustaqim was in possession of the Drugs found in the Car. Hence, it is unnecessary to invoke s 21 of the MDA to show that Mustaqim was in possession of the Drugs when he was arrested on

26 January 2018. Nevertheless, s 21 of the MDA presumed that Mustaqim was in possession of the Drugs which were seized from the Car.

(2) Knowledge of the nature of the Drugs

167 It is undisputed that Mustaqim was arrested together with the Drugs found in the Car. Mustaqim also admitted that the Drugs found in the car were diamorphine, heroin or he called it colloquially “panas”. Thus, it is not necessary to invoke the presumption under s 18(2) of the MDA that Mustaqim is presumed to have knowledge of the nature of the Drugs that he possessed.

168 It is clear that Mustaqim’s testimony in Court was that he knew diamorphine or “panas” was found in the Car at the time of his arrest. The First Contemporaneous Statement shows that Mustaqim was able to identify the drugs stored in the various plastic or Ziploc bags as “heroin” when asked by SSgt Fardlie:⁸⁴

Q3) Do you know what is in the yellow paper bag?

A3) There are Erimin, Ice and heroin.

...

Q7) Pointing to two yellow bundles found at the driver door, “what is this?”

A7) Ice. The storeman said that.

...

Q10) Pointing to a black pouch recovered from the centre compartment, “whose is this?”

A 10) Mine.

Q11) What is inside?

A11) There are heroin, Erimin, Vallum, Epam and ecstasy. Actually the bag is from them too.

⁸⁴ Exhibit P113 (The “First Contemporaneous Statement”).

...

169 Further, Mustaqim stated in the Second Contemporaneous Statement that he knew he was collecting Drugs from Munusamy at the Singapore Cable Car Building:⁸⁵

Q5) What did Zack tell you to do?

A5) Zack will tell to collect heroin from an Indian man near harbourfront. ...

Q6) What do you usually collect?

A6) Heroin 2 stones. Ice 250 gram.

170 Mustaqim was thus able to identify the nature of the drugs that were handed over to him, as well as the nature of the drugs that were found in various locations inside the Car at the time of his arrest. Thus, it is undisputed that Mustaqim had actual knowledge of the nature of the Drugs that were found in his possession in the Car.

(3) Possession for the purpose of trafficking

171 The Prosecution submits that Mustaqim was in possession of the Drugs for the purpose of trafficking. Mustaqim was found in possession of a large quantity of diamorphine in the Car at the time of his arrest. Thus, the inference is that the Drugs were for the purpose of trafficking. There was about 56.8g (net) of diamorphine found in different packages in the Car that were in Mustaqim's possession. This quantity was more than triple the quantity that attracted the capital punishment, which is 15g (see paragraph 4 of the Second Schedule to the MDA). The Prosecution also relies on the fact that Mustaqim's urine samples show that there were no traces of codeine and morphine. This means that Mustaqim was not a heroin abuser at the material time. Finally, the

⁸⁵ Exhibit P114 (The "Second Contemporaneous Statement").

Prosecution relies on objective evidence, including text messages and call logs from Mustaqim's two mobile phones, which I shall refer to below.

172 Mustaqim's defence is that not all of the diamorphine found in his possession were for the purpose of trafficking. Mustaqim admits that the following drugs, which form part of the subject matter of the Charge and which amounted to 14.18g of diamorphine, were in his possession prior to meeting Munusamy:⁸⁶

- (a) one black plastic bag (Exhibit B1) containing a Ziploc bag of diamorphine (Exhibit B1A);
- (b) five packets of diamorphine (Exhibits C1A, C1B, C1C, C1D and C1E);
- (c) two straws of diamorphine (Exhibits C1F and C1G); and
- (d) one Ziploc bag of diamorphine (Exhibit E1A1A1A).

173 Of the drugs listed above which were purportedly in his possession prior to meeting Munusamy, Mustaqim admits that Exhibits B1A and E1A1A1A, which were analysed and found to contain 12.68g (net) of diamorphine, were in his possession for the purpose of trafficking.⁸⁷ Mustaqim alleges that the balance of the drugs listed above, *ie*, items (b) and (c), which were analysed and found to contain 1.50g (net) of diamorphine, were for his own personal consumption⁸⁸. Therefore, Mustaqim admits to trafficking only 12.68g (net) of diamorphine.

⁸⁶ 13 September 2022 Transcript at pp 66 (line 26) to 68 (line 12).

⁸⁷ 1 February 2023 Transcript at p 29 (lines 10–24).

⁸⁸ 1 February 2023 Transcript at p 29 (lines 26–29).

174 Mustaqim claims that the remaining drugs, which form the rest of the subject matter of the Charge and which amount to 42.62g (net) of diamorphine, were meant to be returned to Zack (the “Unwanted Drugs”):

- (a) one packet of diamorphine (Exhibit A1A1A);
- (b) one masking-taped bundle of diamorphine (Exhibit A1B1);
- (c) ten Ziploc bags containing diamorphine (Exhibits A1C1A to A1C1K);
- (d) ten Ziploc bags containing diamorphine (Exhibits A1C2A to A1C2K);
- (e) one Ziploc bag containing diamorphine (Exhibit A1D1); and
- (f) one Ziploc bag containing diamorphine (Exhibit A2A1).

175 Mustaqim claims that he had ordered two bundles of “panas” (the street name for diamorphine) and 125g of methamphetamine from Zack on the morning of 26 January 2018 (day of arrest).⁸⁹ Mustaqim further alleges that he had helped his “friend” to order the two bundles of diamorphine from Zack. The 125g of methamphetamine was for his own consumption. Mustaqim claims that his “friend” had cancelled the order for the two bundles of diamorphine on the same day and Zack was informed accordingly. Thus, he was only expected to collect 125g of methamphetamine from Munusamy.⁹⁰ When Mustaqim met Munusamy to collect his order in the toilet of the Singapore Cable Car Building on 26 January 2018, Mustaqim passed Munusamy the Hari Raya Bag.⁹¹ Munusamy placed Mustaqim’s purported order of 125g of methamphetamine,

⁸⁹ 13 September 2022 Transcript at pp 56 (lines 32–34) and 60 (lines 1–4)

⁹⁰ 13 September 2022 Transcript at pp 57 (line 28) to 60 (line 19).

⁹¹ 13 September 2022 Transcript at p 60 (lines 20–32).

the Unwanted Drugs and other controlled drugs into the Hari Raya Bag. Mustaqim claims that as he was walking back to the Car, he “felt that [the Hari Raya Bag] was heavy”.⁹² However, he did not check the contents inside the Hari Raya Bag until he was in the Car. He then realised that the Hari Raya Bag contained the Unwanted Drugs, as well as other drugs such as methamphetamine and Erimin. Mustaqim made several calls to Zack and to Munusamy informing them that he wanted to return the Unwanted Drugs to Zack. These calls took place shortly before Mustaqim was arrested. Thus, Mustaqim could not return the Unwanted Drugs.

176 The only factual issue before the Court in relation to the Charge, therefore, is whether the Drugs in Mustaqim’s possession was for the purpose of trafficking. Mustaqim’s defence in relation to the element of trafficking is that he did not order the Unwanted Drugs, but they were, nevertheless, mistakenly given to him. He had intended to return them to Zack before he was arrested. Mustaqim’s defence is that he would, at best, be guilty of trafficking only 12.68g (net) of diamorphine, which is below the limit that would attract the capital punishment if he were convicted (see paragraph 4 of the Second Schedule to the MDA). Accordingly, the question is whether the evidence reveals that Mustaqim had intended to return the Unwanted Drugs to Zack, thereby bringing him outside of the scope of a trafficker for the Unwanted Drugs as defined under s 2 of the MDA.

177 I note from the outset that Mustaqim’s defence in Court was not disclosed in any of his statements to the CNB officers. Besides the objective evidence adduced by the Prosecution, the only other witness that could testify about the interaction between Mustaqim and Munusamy at the Singapore Cable

⁹² 13 September 2022 Transcript at p 61 (line 15).

Car Building was Munusamy. In Court, Munusamy denied that he had handed any drugs to Mustaqim. Instead, he claimed that he was instructed to collect \$8,000 from Mustaqim on that day. He further claimed that Mustaqim only handed him a bundle of money at the toilet area:⁹³

- Q Okay. Tell us what happened at this meeting that you had with Mr Mustaqim outside the toilet area.
- A He handed me a *bungkus* of money, Your Honour.
- Q Okay. What is a *bungkus*? What does it mean in English?
- A One packet, one bundle of money, Your Honour.
- Q Okay, and where did he take this packet of money from?
- A The bag that he is carrying, the yellow bag, he took it from it, Your Honour.
- Q Okay, and when he---after he handed it over to you, did you count the money?
- A No, Your Honour.
- Q Okay, but did you know how much money it was?
- A I was told 8,000, Your Honour.
- Q Okay.
- Court: Told by whom?
- Witness: Malaysia Saravanan, Your Honour.

178 The Defence, however, adduced Munusamy's contemporaneous statement recorded on 26 January 2018 to contradict Munusamy's evidence on the stand.⁹⁴ In Munusamy's contemporaneous statement, Munusamy stated that

⁹³ 1 February 2023 Transcript at pp 44 (line 24) to 45 (line 5).

⁹⁴ Exhibit D2.

he had handed a “package” to Mustaqim on 26 January 2018 before Mustaqim handed him \$8,000:⁹⁵

Q1 Before you were arrested earlier, what were you doing?

A1 Today, in the evening, I met with a Malay man who I called ‘abang’. ‘Abang’ called me using the number ‘82535802’, instructed me to bring the package and meet him near the men toilet at tower two. There, I give the package to ‘abang’ and ‘abang’ place the package in a yellow bag. After that, he walked out.

...

Q4 How many times have you given ‘abang’ the package and did ‘abang’ give you anything today?

A4 It has been 2-3 times. Earlier, after I gave ‘abang’ the package, he gave me S\$8,000/-/ After that, the Malaysian man took the money outside of the tower 2 toilet. (‘Abang’ is established to be Mustaqim Bin Abdul Kadir, S[xxxx]005J).

179 Munusamy disputes the accuracy of this contemporaneous statement. He said he had not said this to the recording officer.⁹⁶ The effect of this serious contradiction is that Munusamy is not a credible witness who could be relied on to provide a truthful account of what took place between Mustaqim and Munusamy at the Singapore Cable Car Building on 26 January 2018. Hence, his evidence has to be treated with extreme caution unless his evidence is supported by reliable corroborative evidence.

180 Mustaqim’s pivotal defence, *ie*, that the Unwanted Drugs were mistakenly given to him and he intended to return them to Zack, is not supported by the evidence before this Court. This crucial defence was raised for the first time in Court. Further, Mustaqim’s narrative is internally inconsistent and illogical. It is also externally inconsistent with the objective evidence adduced

⁹⁵ Answer 1 to Question 1 and Answer 4 to Question 4 of Exhibit D2.

⁹⁶ 1 February 2023 Transcript at pp 56 (line 5) to 57 (line 24).

by the Prosecution. The evidence, as a whole, demonstrates that Mustaqim's defence that he wanted to return the Unwanted Drugs is not true. It was raised in Court because he knew that the return of drugs is not trafficking under the law.

(A) MUSTAQIM'S ACCOUNT IS ENTIRELY INCONSISTENT WITH HIS STATEMENTS TO THE CNB OFFICERS

181 Mustaqim's defence that he intended to return the Unwanted Drugs to Zack was raised belatedly. The first time Mustaqim claimed that he intended to return the Unwanted Drugs to Zack was when he gave his account in Court in his evidence-in-chief. Nowhere in his statements to the CNB officers and Dr Koh did Mustaqim mention that the Unwanted Drugs were to be returned to Zack. Further, Mustaqim's defence at the trial is entirely inconsistent with his statements to the CNB officers in which he basically said he was assisting Zack to repack the heroin for delivery to Zack's customers. Mustaqim now says that the version of the events in his statements to the CNB officers is false.

182 Turning to the First Contemporaneous Statement, Mustaqim claimed that "everything in [the Car]", which referred to the Drugs, belonged to Zack and Munusamy, including the Unwanted Drugs. Further, Mustaqim claimed that he worked for Zack. When questioned by SSgt Fardlie on what Zack intended to do with the Drugs, Mustaqim gave the following answers:⁹⁷

Q 12) What are you going to do with all of these drugs that was found in the car?

A 12) They teach me to pack and I will send to their customer upon [Zack's] instructions.

Q 13) How does [Zack] instruct you?

⁹⁷ Exhibits P113 and P113A.

A 13) [Zack] will call or the customer will call the hp. This hp belong to them.

...

Q 15) Did you meet the storeman today?

A 15) Yes before I was arrested earlier. That was when I took the yellow paper bag from him. For the other things, before that, I took it a few days ago. Some has to be given back but not yet confirm.

...

Q 20) You said that you work with Zack, how much is your salary?

A 20) One day 500/600 hundred.

Q 21) How long have you been working with him?

A 21) Recently, about a month.

183 From the First Contemporaneous Statement, Mustaqim went into some details as to how he procured the drugs from Munusamy for the purpose of trafficking. Mustaqim stated in the First Contemporaneous Statement that he was responsible for packing the drugs and sending them to Zack's customers. He also stated that he had been working for Zack. He had been doing this for about a month. Mustaqim would then receive payment from Zack for assisting with the delivery of the drugs.

184 Mustaqim's account regarding his role of repacking and then delivering the drugs to Zack's customers was once again stated in the Second Contemporaneous Statement, *albeit* in greater detail:⁹⁸

Q1 The drugs in your car earlier, who is it for?

A1 Wait for Zack to call me and tell me who to give.

...

Q4 How many times have you done this work for Zack?

⁹⁸ Exhibits P114 and P114A.

- A4 It has been a month. Will do everyday.
- Q5 What did Zack tell you to do?
- A5 Zack will tell to collect heroin from an Indian man near harbourfront. After collect, Zack will tell me to send to his customer. Sometimes, his customer will call me.
- ...
- Q7 Have you pack back the heroin and ice?
- A7 Yes. Usually Zack will tell me to break it and pack back into smaller packers [*sic*] to give to his customers.
- Q8 How many customers usually in a day?
- A8 4 or 5.
- Q9 Do you have the customer number?
- A9 No. Zack will tell me where to meet the customer.
- ...

185 Mustaqim alleges that these parts of the First Contemporaneous Statement and the Second Contemporaneous Statement were lies in response to what SSgt Fardlie had told him so that he could qualify as a courier.⁹⁹ In particular, Mustaqim claims that he had informed SSgt Fardlie that he wanted to return “the heroin on the floorboard, as well as [the drugs] by the driver’s compartment” to Zack during SSgt Fardlie’s recording of the First Contemporaneous Statement.¹⁰⁰ Upon hearing his response, however, SSgt Fardlie allegedly informed Mustaqim that “[i]f that’s the case, then you can’t get courier and you can’t get life imprisonment”, and that Mustaqim should instead say he was “to deliver the items to Zack’s customers”.¹⁰¹ Accordingly, Mustaqim allegedly did as he was told, and that was why SSgt Fardlie had recorded Mustaqim’s response to SSgt Fardlie’s 12th question

⁹⁹ 13 September 2022 Transcript at p 73 (lines 22–23).

¹⁰⁰ 13 September 2022 Transcript at p 73 (lines 22–23).

¹⁰¹ 13 September 2022 Transcript at p 76 (lines 4–21).

as “[t]hey teach me to pack and I will send to their customer upon [Zack’s] instructions”.

186 Mustaqim alleges that SSgt Fardlie had spoon-fed Mustaqim to state that he was to deliver the drugs to Zack’s customers. Certainly, SSgt Fardlie did not instruct Mustaqim to also state that Zack had taught Mustaqim how to pack the drugs. Neither did SSgt Fardlie instruct Mustaqim to elaborate on the instructions that Zack had provided to Mustaqim in relation to the delivery of drugs to Zack’s customers, or the duration that Mustaqim had worked for Zack and the payment that Mustaqim received. At that time, Mustaqim was just arrested and thus investigation had only just commenced. SSgt Fardlie would not have known anything about the Drugs found in the Car and Mustaqim’s involvement with the Drugs. That was why he had to record the First Contemporaneous Statement from Mustaqim to find out more information. Therefore, SSgt Fardlie would not have known all the information which Mustaqim alleged SSgt Fardlie told him to say as SSgt Fardlie would not have known about Zack and Mustaqim’s involvement with Zack. Mustaqim’s allegation is, therefore, illogical. The information in the First Contemporaneous Statement could only have come from Mustaqim who told SSgt Fardlie on his own accord. Whether the First Contemporaneous Statement is the truth or a lie is another matter altogether.

187 Indeed, as evident in the Second Contemporaneous Statement, Mustaqim went further to elaborate on his purported *modus operandi* in relation to the delivery of drugs to Zack’s customers. This was despite the fact that SSgt Fardlie was not the recorder of Mustaqim’s Second Contemporaneous Statement. Again, such information could only have come from Mustaqim who furnished all the details. Accordingly, I find it implausible on the evidence that

SSgt Fardlie had spoon-fed Mustaqim the answers in the First Contemporaneous Statement.

188 After providing his version of the events in the First Contemporaneous Statement and the Second Contemporaneous Statement, Mustaqim went further in the Four Long Statements to elaborate that he worked for Zack.

189 In the First Long Statement, Mustaqim gave a detailed account about how Zack had informed him there was a “job” on 26 January 2018 which Mustaqim needed to carry out. Mustaqim also went into elaborate details about how he became acquainted with Zack and what working for Zack entailed. An excerpt of this is seen below:¹⁰²

4. ... I knew “Zack” through a group chat in Whatsapp, called “Road Block 42”. ...

5. I joined this “Road Block 42” group chat around March to May 2017, last year. In the “Road Block 42” group chat, people will share information such as road blocks, SSB raids, CNB raids. I will give a “thumbs up” emoticon in the chat to acknowledge. After some time, there is this person called “Jay” texted me and asked me if I am “Wan Bedok”. I responded to the message saying that I am not “Wan Bedok”. After a few Whatsapp messages, I asked “Jay” how he got my number. “Jay” sent me a screenshot of the “Road Block 42” group chat with me sending “thumbs up” emoticon. “Jay” then started to offer me different types of drugs, such as ‘ice’, ‘cannabis’, ‘heroin’. I rejected “Jay”’s offer. After I rejected, other person, “Anthony”, also contacted me to offer me different types of drugs at a cheaper price than “Jay”. However, I also rejected “Anthony”’s offer. Then “Zack” also contacted me and offered me different kind of drugs to which I also rejected. “Zack” then told me that if I do not want drugs I can just collect money for “Zack”.

6. I asked “Zack” how much I would get for collecting money for him. “Zack” told me that I will get about SGD\$500 to SGD\$1000 for every collection. For every collection, I will collect from about 2 to 3 people and the collection point depends on where the people want them to be. “Zack” will either give their

¹⁰² Exhibit P120.

numbers to me or my number to them. Thereafter, we will contact each other. I started to collect money for “Zack” for about 2 to 3 days, since end of November. After that, I also started to collect rejected “drugs” from “Zack”’s customers. These rejected “drugs” are then brought to Tuas or Harbourfront to pass it to a motorcyclist with an orange helmet. I only knew that what I was collecting was rejected “drugs” because “Zack” told me on the phone “to collect the rejected ‘ice’”. This was about early December 2017. This motorcyclist with an orange helmet is a skinny Indian Malaysian guy. I know he is Malaysian because the motorcycle plate number is a Malaysian registered number. This was on going from December 2017 until about 2 weeks before I was arrested. For this collection of rejected “drugs” from “Zack”’s customers, I was paid the same, about SGD\$500 to SGD\$1000 per collection. Sometimes when I collect the rejected “drugs” from “Zack”’s customers, they also give money to me to pass to the motorcyclist with an orange helmet. From the money which I get from “Zack”’s customers, “Zack” will tell me to take the SGD\$500 to SGD\$1000 from it.

...

190 Mustaqim then proceeded to give an account in the First Long Statement where he framed himself as a courier who was working for Zack on 26 January 2018. In this account, Mustaqim stated that the drugs found in the Car belonged to Zack. He was merely working for Zack and delivering the drugs as instructed by Zack. This continued in the Second Long Statement, where Mustaqim gave a detailed account of how he received the drugs containing diamorphine on 26 January 2018 and proceeded to repack some of the diamorphine into smaller packets based on Zack’s instructions.¹⁰³ In this account, Mustaqim provided granular details on how he used a weighing scale to weigh the diamorphine as well as the final approximate weight of each repacked diamorphine. Mustaqim also provided details in the Second Long Statement of what Zack’s instructions were, if any, in relation to each set of drugs found in the Car.

¹⁰³ Exhibit P121 at para 22.

191 In Court, Mustaqim stated that the details of the account he had provided in the Four Long Statements were lies. He claims that he lied in his statements to the CNB officers because he wanted to be classified as a courier so as to avoid the capital punishment. However, this does not explain why there was a need for Mustaqim, when he was lying, to go into such granular details of how he received the Drugs, how he repacked the Drugs into smaller packets, what the final approximate weight of each repacked diamorphine was, and what Zack's instructions were for each set of drugs found in the Car. These lies affect his credibility. Mustaqim has mixed lies with the truth. It is for the Court to carefully discern the truth from the lies. The contemporaneous call logs from Mustaqim's mobile phones are where the truth is. The contents of the many calls extracted from his mobile phones before and on the day of Mustaqim's arrest reveal that he was indeed an active drug trafficker.

192 Further, Mustaqim stated that, as a result of what SSgt Fardlie had told him on 26 January 2018, he was prevented from stating in the statements to the CNB officers that he wished to return the Unwanted Drugs and that he intended to consume some of the diamorphine. However, this did not prevent Mustaqim from stating in various parts of his statements to the CNB officers that he either intended to return some drugs or consume some drugs, though this was not in relation to the Unwanted Drugs:

- (a) In the First Contemporaneous Statement at answer 15, when Mustaqim was asked whether he had met Munusamy on the day of his arrest, Mustaqim stated that he had taken the Hari Raya Bag from Munusamy on the day of his arrest. He further added that "[f]or the other things, before that, I took it a few days ago. Some has to be given back

but not yet confirm”.¹⁰⁴ During cross-examination, Mustaqim conceded that he had stated in the First Contemporaneous Statement that he wanted to return some drugs, *ie*, drugs (including heroin) which were not in the Hari Raya Bag, to Zack through Munusamy.¹⁰⁵ If Mustaqim was able to provide an account in the First Contemporaneous Statement that he wanted to return certain drugs (including heroin) to Zack, he could have stated his defence given in Court in the First Contemporaneous Statement, *ie*, about the return of the Unwanted Drugs.

(b) In the Second Long Statement at paragraph 27, Mustaqim stated that he had collected a packet of diamorphine, Exhibit A2A1, from “two old Chinese guys” who told him that “this packet of ‘heroin’ is to be given back”.¹⁰⁶ Mustaqim referred to these drugs as “rejected drugs” which were to be given back to Zack.¹⁰⁷ At the trial, Mustaqim alleged that this was a lie.¹⁰⁸ However, if Mustaqim was willing and able to lie in the Second Long Statement that Exhibit A2A1 was rejected drugs meant to be returned to Zack, why could he not state his defence about the return of the Unwanted Drugs in the Second Long Statement? However, Mustaqim alleges that he viewed this act of returning rejected drugs to Zack as an act which fell within the scope of a courier.¹⁰⁹ It is difficult to believe Mustaqim’s confessed lies.

¹⁰⁴ Exhibit P113 at A15.

¹⁰⁵ 30 January 2023 Transcript at p 36 (lines 21–24).

¹⁰⁶ Exhibit P121 at para 27.

¹⁰⁷ Exhibit P121 at para 27.

¹⁰⁸ 31 January 2023 Transcript at p 50 (lines 19–22).

¹⁰⁹ 26 January 2023 Transcript at pp 50 (line 19) to 51 (line 2).

(c) In both the First Long Statement and the Second Long Statement, Mustaqim stated that some of the drugs were meant for his personal consumption. In the Second Long Statement, for example, Mustaqim stated that the Erimin which was seized from the Car was for his personal consumption.¹¹⁰ Why, then, could he not state in his defence that Exhibits C1A to C1G were meant for his personal consumption?

193 Therefore, Mustaqim was not prevented from setting out his defence given in Court in his statements to the CNB officers if it was the truth. However, at the time of the recording of his statements, Mustaqim did not know that returning the drugs would not constitute trafficking. He admitted in Court that, if he had known that returning the drugs would not constitute trafficking, he would have mentioned it to the CNB officers.¹¹¹ At the time he gave his statements to the CNB officers, he knew that if he was a courier, he could get life imprisonment instead of the capital punishment. That was why, in all his statements to the CNB officers, Mustaqim alleged that he was assisting Zack in trafficking the Drugs which he now said in Court were all lies:¹¹²

Q Okay. Now, you lied, okay, in P120A that you were a courier for Zack instead of a drug trafficker who was selling to your own clients because you wanted to be classified as a courier, to get life imprisonment?

A Yes.

194 Further, Mustaqim admitted at the trial that he also lied at many parts of the Four Long Statements either to distance himself from Munusamy whom he knew was arrested and found with a large quantity of diamorphine or to give the

¹¹⁰ Exhibit P121 at para 25.

¹¹¹ 1 February 2023 Transcript at pp 36 (line 29) to 37 (line 1).

¹¹² 31 January 2023 Transcript at p 19 (lines 3–6).

impression that he was co-operating with the CNB by giving detailed information. This can be seen in at least two instances:

(a) When asked why he had lied in the Fourth Long Statement that the Hari Raya Bag was empty after he had met Munusamy in the toilet of the Singapore Cable Car Building, Mustaqim stated:¹¹³

A Yes, because at that time, I had lied just so that I could distance myself from Munusamy who had in his possession the 14 *batu* when he was arrested. So I lied at the point when I gave this statement simply because I wanted to distance myself from him.

(b) When asked why he had lied in the Second Long Statement about packing the diamorphine into smaller packets as seen in Exhibits A1C1A to A1C1K and A1C2A to A1C2K, Mustaqim stated:¹¹⁴

A I did this because I wanted to show to the IO that I was giving information, I was cooperating well, by giving information.

195 Mustaqim admitted in Court that he had lied on numerous occasions in his statements to the CNB officers. Thus, Mustaqim was economical with the truth in his statements to the CNB officers because he was seeking to avoid the capital punishment by lying that he was a courier.

196 Mustaqim has admitted at the trial that he subsequently learnt sometime in 2018, *ie*, before this trial, that returning drugs would not constitute trafficking under the law:¹¹⁵

¹¹³ 31 January 2023 Transcript at p 58 (lines 18–21).

¹¹⁴ 27 January 2023 Transcript at p 75 (lines 26–27).

¹¹⁵ 1 February 2023 Transcript at p 27 (lines 7–21).

Court: So how did you come to know, in a few months when you were in remand, that you came to know that returning the drug is not trafficking?

Witness: I had read some precedents.

...

Court: Past cases. And when was that, in 2018?

Witness: I'm not sure. Sometime in 2018, and it was before the CH, committal hearing.

197 It seems that Mustaqim has now tailored his defence in Court in order to avoid the capital punishment. Using his newfound knowledge that returning the Unwanted Drugs would not constitute trafficking under the law, he hopes that he can escape the capital punishment. Mustaqim had admitted to massive lies in his statements to the CNB officers. Thus, his account in Court is materially different from his statements to the CNB officers. Basically, Mustaqim was lying to avoid the capital punishment. This does not mean that I should jettison the entire testimony of Mustaqim. On the contrary, I have to scrutinise his evidence with extreme caution and sift the truth from the falsehoods.

198 Before considering Mustaqim's defence in relation to the Unwanted Drugs, I shall deal briefly with Mustaqim's defence that Exhibits C1A to C1G, which were analysed and found to contain 1.50g of diamorphine, were meant for his personal consumption.

(B) MUSTAQIM'S DEFENCE THAT HE INTENDED TO CONSUME A PORTION OF THE DRUGS

199 Mustaqim alleges that Exhibits C1A to C1G were meant for his personal consumption. However, this must be viewed against the HSA's analysis of Mustaqim's urine samples which revealed that Mustaqim's urine only contained methamphetamine but tested negative for codeine and morphine. In addition, when Mustaqim was admitted to the Complex Medical Centre, Changi Prison,

from 20 January 2018 to 30 January 2018 and observed for drug withdrawal symptoms, Mustaqim had only stated that he had consumed “ice” and benzodiazepine.¹¹⁶ Similarly, in his account to Dr Koh on 12 February 2018, Mustaqim had only stated that he had consumed “ice” and Erimin, but not diamorphine.

200 At the trial, Mustaqim admitted that he had not consumed diamorphine on the day of his arrest on 26 January 2018.¹¹⁷ Mustaqim also admitted that he had only consumed methamphetamine, and not diamorphine, in the week leading up to his arrest on 26 January 2018.¹¹⁸

201 What the Court is left with then is Mustaqim’s bare assertion at the trial that he had consumed diamorphine sporadically in the month of January 2018 and earlier.¹¹⁹ However, this bare assertion has to be treated with caution given that it is inconsistent with Mustaqim’s earlier statements to the CNB officers. In particular, when asked about Exhibits C1A to C1G in the Second Long Statement which was recorded on 31 January 2018, Mustaqim’s response was that Exhibits C1A to C1G were five packets and two straws of heroin which were left over after he had finished packing other packets of heroin which were meant for trafficking:¹²⁰

30. ... For Photo 40, the packets of ‘heroin’ with marking C1A, C1B, C1D, C1D, C1E and straws of ‘heroin’ with marking C1F and C1G, they are all left over from the same batch as those packets of ‘heroin’ in Photo 26 and Photo 27. **There are no particular purpose for the packets of ‘heroin’**, it is just that I packed too many, which is why I kept them in the black pouch

¹¹⁶ Exhibit P111 at para 3.

¹¹⁷ 26 January 2023 Transcript at p 5 (lines 22–25).

¹¹⁸ 26 January 2023 Transcript at p 5 (lines 29–31).

¹¹⁹ 26 January 2023 Transcript at p 5 (lines 22–28).

¹²⁰ Exhibit P121 at para 30.

with marking C1, to separate from the rest that needs to be given away.

[emphasis added in bold]

202 Notably, what is clear from the above is that Mustaqim did not state in the Second Long Statement that Exhibits C1A to C1G were meant for his personal consumption. At the trial, Mustaqim underlined various parts of the Four Long Statements to indicate the parts in the statements where he claims to have lied. This included the part of the Second Long Statement which I have emphasised in bold above. Based on what Mustaqim had stated at the trial, his primary reason for lying in the Four Long Statements was because of the Alleged Contemporaneous Statement Representation made by SSgt Fardlie. However, Mustaqim could have stated that Exhibits C1A to C1G were meant for his personal consumption. In fairness, Mustaqim had stated in the First Long Statement recorded on 30 January 2018 that some of the drugs were for his personal consumption although he did not identify them:¹²¹

11. ... For the drugs that were found in my car, some of the drugs found in the car are for my own consumption. ...

203 From the totality of the evidence, it is difficult to believe that Exhibits C1A to C1G were meant for his personal consumption. In any case, given that Exhibits C1A to C1G were analysed and found to contain 1.50g (net) of diamorphine, this was ultimately a relatively small amount of diamorphine compared to the diamorphine found in the Unwanted Drugs which was the crux of Mustaqim's defence. Even if it were true that the 1.50g (net) of diamorphine was meant for Mustaqim's consumption, it would not make a difference to the capital charge which has a net weight of 56.8g (net) of diamorphine. The critical

¹²¹ Exhibit P120 at para 11.

issue is whether Mustaqim intended to return the Unwanted Drugs. I shall now examine this key aspect of Mustaqim's defence.

(C) MUSTAQIM'S ACCOUNT THAT HE RECEIVED THE UNWANTED DRUGS BY MISTAKE IS CONTRADICTED BY THE OBJECTIVE EVIDENCE

204 Mustaqim alleges that he did not order the Unwanted Drugs, but they were nevertheless mistakenly given to him by Munusamy on 26 January 2018. According to Mustaqim, he had initially ordered two bundles of "panas" and 125g of methamphetamine from Zack on 26 January 2018. Later the same day, Mustaqim cancelled the order for two bundles of "panas". Thus, Mustaqim was only supposed to receive 125g of methamphetamine from Munusamy.

205 However, Mustaqim's version of the events is undermined by the mobile forensic evidence from Mustaqim's two mobile phones which reveals communications over WhatsApp between Mustaqim and various persons.

(I) THE FORENSIC EVIDENCE OF MUSTAQIM'S TWO MOBILE PHONES SHOWS THAT MUSTAQIM WAS ACTIVELY TRAFFICKING IN DIAMORPHINE IN THE DAYS AND HOURS LEADING UP TO HIS ARREST

206 First, the evidence shows that Mustaqim had been communicating with Zack to purchase "panas" (the street name for diamorphine) from as early as 18 January 2018:¹²²

Date	Approximate Actual Time	From	Message / Transcribed Audio
18/1/2018	5:47:33 PM	Zack	What time arrive?
18/1/2018	5:50:37 PM	Mustaqim	Said can be long. OK, OK wait. One 'panas' cancel
18/1/2018	5:51:51 PM	Zack	Bro, now you want to take two 'Panas', 250g
¹²² 18/1/2018	5:52:02 PM	Zack (RAM-2)	It already send to you. It already send to you.

207 Mustaqim admits that he had been ordering “panas” from Zack from as early as 18 January 2018.¹²³ According to Mustaqim, “one panas” meant one “batu” of “panas”, *ie*, a packet of diamorphine with a gross weight of approximately 450g.¹²⁴ This “panas” was meant for Mustaqim to sell to his own customers.¹²⁵

208 The WhatsApp messages also show that Mustaqim had been communicating with Zack about “panas” and ordering “panas” numerous times from Zack before 26 January 2018. Excerpts of some of the conversations between Zack and Mustaqim are shown below:¹²⁶

Date	Approximate Actual Time	From	Message / Transcribed Audio
19/1/2018	1:00:50 AM	Zack	Bro, tomorrow how many ‘Panas’?
19/1/2018	1:01:21 AM	Mustaqim	Maybe three or four with book.
...			
20/1/2018	12:51:22 PM	Mustaqim	Bro, two ‘Panas’ confirm but another one standby, 250g standby
20/1/2018	12:57:01 PM	Mustaqim	Seju 125g left 3, how much best can you give with 2 or maybe 3 ‘Panas’
...			
22/1/2018	2:01:01 PM	Mustaqim	1 ‘Panas’ how much? 375g how much?
22/1/2018	2:08:24 PM	Zack	1 ‘Panas’ 2600, ‘Seju’ 375... \$8500
¹²³ 27 January 2023 Transcript at pp 11 (line 31) to 12 (line 1).			
¹²⁴ 27 January 2023 Transcript at p 11 (lines 27–30).			
¹²⁵ 27 January 2023 Transcript at p 12 (lines 2–3).			
23/1/2018	1:15:36 AM	Zack	Bro
¹²⁶ PAM-2 at pp 2 (S/N 2933) to 3 (S/N 2934), 4 (S/N 2992 to 2993), 6 (S/N 3077 to 3078), 7 (S/N 3104) to 8 (S/N 3116), 10 (S/N 3170 to 3177).			
23/1/2018	1:15:43 AM	Zack	What tomorrow order?

23/1/2018	1:37:40 AM	Mustaqim	Have 1 'Panas'
23/1/2018	2:11:35 AM	Zack	Bro why 'Panas' is less
23/1/2018	2:12:08 AM	Mustaqim	Suspect many got arrested
23/1/2018	2:12:22 AM	Mustaqim	Now, island wide operation
23/1/2018	2:13:32 AM	Zack	Bro, look for 'Panas' 'la'. Because one day two or three
23/1/2018	2:13:34 AM	Mustaqim	Wland 4.5kilo
23/1/2018	2:14:04 AM	Mustaqim	Can boss
...			
23/1/2018	11:16:44 PM	Zack	Bro
23/1/2018	11:16:55 PM	Zack	Busy is it
23/1/2018	11:17:12 PM	Zack	What is the order for tomorrow?
24/1/2018	12:02:49 AM	Zack	Cannot hear at all
24/1/2018	12:03:06 AM	Mustaqim	Have, have
24/1/2018	12:03:21 AM	Mustaqim	'Panas', 'Seju' and 5 if there is

209 Further, even between 24 January 2018 and 25 January 2018, Mustaqim was actively engaged in conversations with Zack about him buying “panas” from Zack:¹²⁷

Date	Approximate Actual Time	From	Message / Transcribed Audio
24/1/2018	11:43:47 PM	Zack	'Panas' take 1 tablet 2600... 2 tablets 5100, 3 tablets 7500 if 4 tablets 9800
24/1/2018	11:46:10 PM	Mustaqim	Ok
24/1/2018	11:46:31 PM	Zack	Ice. . 125g 2900...250g 5700g ...375 8500...

¹²⁷ PAM-2 at pp 12 (S/N 3207) to 13 (S/N 3219).

24/1/2018	11:47:14 PM	Mustaqim	The price looks the same
...			
24/1/2018	11:57:30 PM	Zack	OK bro, this price
24/1/2018	11:57:31 PM	Zack	Bro, support me a little. Thanks
25/1/2018	12:06:25 AM	Zack	OK or not 'Panas' today?
25/1/2018	12:06:49 AM	Mustaqim	No complain yet
25/1/2018	12:07:00 AM	Mustaqim	Maintain the white one, bro.

210 The messages above make clear that Mustaqim had been ordering “panas” from Zack on multiple occasions and subsequently sold the “panas” to his own customers. This was not denied by Mustaqim at the trial. Mustaqim, therefore, admits that he was actively selling “panas” to his customers in the days leading up to his arrest.

211 In fact, besides the Drugs seized from the Car, the CNB officers also seized several peripherals that supported the Charge that Mustaqim had possessed the Drugs for the purpose of trafficking. These include a weighing scale, empty cut straws and plastic bags that could be used for weighing and packing the drugs for sale and distribution. At the trial, Mustaqim admitted that he had asked Zack for the plastic bags and weighing scale to facilitate the weighing and packing of the drugs for sale and distribution:¹²⁸

Q Okay. So would you agree with me that Munusamy hands you over all these Ziploc bags so that you can pack drugs like heroin from a bigger amount?

A On the 25th of January, I did ask Zack if he had some extra plastic bags as well as a weighing scale. So he had sent them through Munusamy. I had stated this in my

¹²⁸ 26 January 2023 Transcript at p 61 (lines 1–6).

statement, but I did not state it was Samy in the statement. This is on---this is in paragraph 37.

212 These mobile phone messages show that Mustaqim was actively and directly involved in the trafficking of drugs.

213 In fact, even on the day of his arrest, Mustaqim was actively selling diamorphine and intending to sell diamorphine. There are three pieces of contemporaneous evidence which show Mustaqim’s drug trafficking activities:

- (a) First, other than the mobile forensic evidence, the in-car camera footage retrieved from the Car shows that Mustaqim had driven to Lorong 34 Geylang on 26 January 2018 at about 1.00pm. When asked about this at the trial, Mustaqim admitted that he had performed a delivery of “one set” containing ten small packets of diamorphine, with an approximate total gross weight of 70g, to a customer.¹²⁹
- (b) Second, the mobile forensic evidence shows that a call took place between Mustaqim and one Bambam on 26 January 2018 at 12.04.57pm. A translation and transcription of this call was adduced as evidence by the Prosecution. At the trial, Mustaqim acknowledged that Bambam was a customer who had indicated his interest during the call at 12.04.57pm to purchase one “batu” of diamorphine, *ie*, a packet of diamorphine with the gross weight of approximately 450g. According to Mustaqim, he had told Bambam during this call that the price of half a “batu” of diamorphine had gone up to \$1,900, but that he could sell one

¹²⁹ 27 January 2023 Transcript at pp 61 (line 24) to 63 (line 1).

“batu” of diamorphine to Bambam at \$3,500.¹³⁰ Mustaqim agreed at the trial that Bambam had stated that he did not have money to pay for one “batu” of heroin.¹³¹ Mustaqim, however, tried to persuade him that this was a good price and that diamorphine would not be available in the next seven days in an attempt to convince Bambam to agree to purchase diamorphine from Mustaqim.¹³² Mustaqim explained to Bambam on the call that this was due to “jockeys” or couriers being unavailable to bring in the drugs due to the Thaipusam festival.¹³³ What is clear from this call is that Mustaqim was actively trying to sell diamorphine to his customers even at 12.04.57pm on 26 January 2018. This gravely undermines Mustaqim’s defence that the Unwanted Drugs were mistakenly given to him by Munusamy from Zack on 26 January 2018. On the contrary, Mustaqim appeared to have been making active efforts to sell diamorphine to his customers on the day and hours prior to his arrest.

- (c) Third, the mobile forensic evidence shows that another call took place between Mustaqim and Bambam on 26 January 2018 at about 3.22.40pm.¹³⁴ Mustaqim admitted at the trial that this call took place at around the time he had entered the Singapore Cable Car Building with the Hari Raya Bag to meet Munusamy to collect drugs.¹³⁵ Mustaqim also admitted that Bambam had called

¹³⁰ 27 January 2023 Transcript at pp 56 (line 23) to 58 (line 4).

¹³¹ 27 January 2023 Transcript at p 59 (lines 13–15).

¹³² 27 January 2023 Transcript at p 59 (lines 16–19).

¹³³ 27 January 2023 Transcript at p 59 (lines 16–19).

¹³⁴ Prosecution’s *Aide Memoire* 4 (PAM-4).

¹³⁵ 31 January 2023 Transcript at p 12 (lines 21–26).

Mustaqim at 3.22.40pm to ask about Bambam's order of diamorphine.¹³⁶ In response to this, the audio translation shows that Mustaqim said "wait, wait, wait. Am still loading here. Three rounds". Given Bambam's reason for calling Mustaqim was to buy diamorphine and that this was the time when Mustaqim was meeting Munusamy to collect drugs, the plain meaning of Mustaqim's words must be that Mustaqim was telling Bambam that he was collecting three bundles of diamorphine when he stated that he was "loading", "Three rounds". However, Mustaqim denies this. Instead, Mustaqim stated at the trial that what he meant by "loading" was that he was consuming drugs, namely, "ice".¹³⁷ How could Mustaqim state that he was consuming "ice" when he was out walking to meet Munusamy to collect drugs at the time? Mustaqim's account did not make sense and completely ignored the context of the conversation or what Mustaqim was even doing at that time. This is another instance in which Mustaqim was lying to avoid the capital punishment.

214 What this means is that Mustaqim was busy trafficking in diamorphine even on the day of his arrest, and he was making preparation to deliver diamorphine to his customers in the hours before his arrest.

¹³⁶ 31 January 2023 Transcript at p 13 (lines 16–21).

¹³⁷ 31 January 2023 Transcript at p 13 (lines 11–15).

(II) *THE FORENSIC EVIDENCE OF MUSTAQIM’S TWO MOBILE PHONES DOES NOT SHOW THAT MUSTAQIM HAD CANCELLED THE ORDER FOR TWO BUNDLES OF “PANAS” FROM ZACK*

215 More crucially, the evidence retrieved from Mustaqim’s mobile phones concerning calls and messages on 26 January 2018 does not support Mustaqim’s claim that he had cancelled the order for two bundles of “panas”.

216 Mustaqim points to a voice message which he sent to Zack on 26 January 2018 at 9.55.20am which he claims was an indication to Zack that the order for two bundles of “panas” was cancelled:¹³⁸

Date	Approximate Actual Time	From	Message / Transcribed Audio
26/1/2018	09:55:20 AM	Mustaqim	Bro, you say 10 o’clock ‘la’, 9 o’clock, I came there’s no body. Now one customer urgent wants at 10 o’clock ‘eh’ 10:30. He has taken back the money, I went to the office, not even 1 of your workers is there.

217 There is nothing in the voice message above which states directly that the order for two bundles of “panas” was cancelled. Mustaqim, however, alleges that once he stated that his customer had “taken back the money” in the voice message, Zack would have understood this to mean that the order for two bundles of “panas” was cancelled.¹³⁹ When cross-examined about how Zack knew this to be the case, Mustaqim stated that Zack knew that “the 125 is mine”, *ie*, the order for 125g of methamphetamine was meant for Mustaqim, while the order for two bundles of “panas” was for Mustaqim’s customers.¹⁴⁰ Yet,

¹³⁸ PAM-2 at p 16 (S/N 3262).

¹³⁹ 27 January 2023 Transcript at p 25 (lines 21–26).

¹⁴⁰ 27 January 2023 Transcript at pp 25 (line 29) to 26 (line 5).

subsequently, Mustaqim contradicted himself at the trial when he stated that the order for 125g of methamphetamine was meant for his “budak”, *ie*, Mustaqim’s customer.¹⁴¹ Mustaqim’s version at the trial was inconsistent and, therefore, could not be relied on. I, therefore, had to determine the truth based on the objective evidence, namely, the messages. On the face of the voice message above, there is nothing to support Mustaqim’s claim that the order for two bundles of “panas” was cancelled.

218 On the contrary, there is evidence of subsequent conversations between Mustaqim and Munusamy as well as Mustaqim and Zack which suggests that the order had not been cancelled.

219 First, evidence was adduced of a call between Mustaqim and Munusamy on 26 January 2018 at about 11.38am. As can be seen in an excerpt of the transcription and translation of the call below, when asked by Munusamy what “stuff” Mustaqim wished to take, Mustaqim did not state that the order for “panas” had been cancelled. Rather, he only stated that he needed to call his customers to confirm the orders he would be placing on 26 January 2018:¹⁴²

Date	Approximate Actual Time	From	Message / Transcribed Audio
26/1/2018	11:38 AM	Call from Munusamy to Mustaqim	... Munusamy (“B”): After that what, want to take what stuff? Mustaqim (“A”): Now ah, want to take ah, this 125 kid ah. Really ah, really 6 pieces with 375 or 250, you know. Once he’s late ah, done, everyone runs away.
¹⁴¹ 27 January 2023 Transcript	at p 26 (lines 12–20).		
¹⁴² Prosecution’s <i>Aide Memoire</i>	8A (PAM-8A) at pp 11 to 12, S/N 638.		

			A: Ah... ok, let me call them first, see how many confirmed. If I can pull them back. B: Ah you ask at one go, take back, later easier can get at one go. A: Ah, that's why ah. But they all don't believe anymore ah. B: Oh. A: Ah, just now we spoke already, they all already... They're disappointed, disappointed. B: Oh just now you [inaudible] because he said at 12 o'clock, right? I also wait ah. He said at 9 ah? A: Ah. Wait, wait. Ah, bro. Ok, later after I've eaten, I'll be quick. I'll eat while calling them. B: Ok, ok, can. A: Ok, bro.
--	--	--	--

220 When asked about this conversation with Munusamy, Mustaqim admitted at the trial that there was an understanding between him and

Munusamy at 11.38am on 26 January 2018 that he might be collecting more than just 125g of “ice”:¹⁴³

Q Okay. So actually, what you were telling Munusamy was that maybe you can still pull your customers back and maybe you would still take more than just 125 grams of ice?

A Yes, probably, that’s right.

Q Okay. So would you agree with me at really 11.38am, by then, the understanding between Munusamy and you is that you may be collecting more than just 125 grams of ice?

A Yes.

221 This directly contradicts Mustaqim’s account that the order had been cancelled as of 9.55.20am.

222 Further, the messages between Mustaqim and Zack on 26 January 2018 show that even at 11.54am on 26 January 2018, Mustaqim intended to purchase three bundles of “panas” for \$7,500 from Zack through Munusamy:¹⁴⁴

Date	Approximate Actual Time	From	Message / Transcribed Audio
26/1/2018	9:43:59 AM	Mustaqim	Brother you ask to come early in the morning. I have arrived but your boys is not around. ‘Ah’ and you are not answering your phone. I have an urgent one. How like this?
26/1/2018	9:47:33 AM	Mustaqim	Helloooo...

¹⁴³ 27 January 2023 Transcript at pp 40 (line 32) to 41 (line 7).

¹⁴⁴ PAM-2 at pp 15 (S/N 3258) to 17 (S/N 3284).

26/1/2018	9:55:20 AM	Mustaqim	Bro, you say 10 o'clock 'la' 9, o'clock, I came there's no body. Now one customer urgent wants at 10 o'clock 'eh' 10:30. He has taken back the money. I went to the office, not even 1 of your workers is there.
26/1/2018	11:24:49 AM	Mustaqim	Now, voice note bro, voice note bro. Battery almost flat.
26/1/2018	11:52:27 AM	Zack	Has Bota arrive
26/1/2018	11:52:38 AM	Zack	Arrive
26/1/2018	11:52:39AM	Mustaqim	Now on the way
26/1/2018	11:52:44 AM	Zack	Ok
26/1/2018	11:52:54 AM	Zack	125 how?
26/1/2018	11:54:15 AM	Mustaqim	Never mind, settle 'Panas' 3 tablets 7500. Come back later OK.
26/1/2018	11:54:22 AM	Mustaqim	Can?
26/1/2018	11:58:48 AM	Zack	Ok

223 Mustaqim agreed in Court that Zack had previously communicated to him on 24 January 2018 at 11.43.47pm that the price of three bundles of “panas” was \$7,500.¹⁴⁵ Mustaqim also admitted that Zack’s message asking Mustaqim “125 how?” on 26 January 2018 at 11.52.54am was a question by Zack asking about the order of 125g of methamphetamine which Mustaqim had placed for collection on 26 January 2018.¹⁴⁶ What follows then is that Mustaqim’s reply to Zack immediately after to “settle ‘Panas’ 3 tablets 7500” must mean that he wished to purchase three bundles of “panas” at \$7,500 from Zack.

¹⁴⁵ 27 January 2023 Transcript at pp 43 (line 31) to 44 (line 3).

¹⁴⁶ 27 January 2023 Transcript at p 43 (lines 18–20).

224 However, at the trial, Mustaqim offered his version of what the messages above mean:¹⁴⁷

- Q: Okay, why did you even type “*panas* three tablets, 7,500”? What is the meaning of that?
- A: This is to tell him that I still owed him this three *biji* which is \$7,500 worth which I had collected some days ago.
- Court: So this is what you’re telling him? It is not that the three *batu* cost \$7,500?
- Witness: I mean, I have---I had collected three *biji* from him some days before that, so I had not paid him yet. So that \$7,500 is what I owed him which is the price of the three *biji* I had collected some days ago.
- Court: So this message is not that you want another three *batu*?
- Witness: No.

225 According to Mustaqim, his reply to Zack to “settle ‘Panas’ 3 tablets 7500” was merely to state that he wished to settle an outstanding amount he owed Zack for “*panas*” which he had purchased a few days prior to 26 January 2018. This version of the events does not, however, cohere with the messages sent by Zack before Mustaqim’s reply. Zack had messaged Mustaqim to ask whether Munusamy (referred to as “Bota” in the messages) had arrived to meet Mustaqim on 26 January 2018. It was in this context that Zack asked about the status of Mustaqim’s order for 125g of methamphetamine. Therefore, when Mustaqim replied, “Never mind, settle ‘Panas’ 3 tablets 7500”, the plain meaning of this must be that Mustaqim was instead asking Zack to hand over three bundles of “*panas*” for a price of \$7,500. I, therefore, find Mustaqim’s explanation of the messages unbelievable.

¹⁴⁷ 27 January 2023 Transcript at p 55 (lines 11–22).

226 In the Defence’s submission, it is alleged that Mustaqim had cancelled the order for two bundles of “panas” from Zack. This is also undermined by the forensic evidence highlighted above at [206]–[214] which shows that he was actively trafficking in diamorphine and preparing to sell diamorphine in the hours leading up to his arrest. Mustaqim had a thriving business selling diamorphine and was busy delivering diamorphine to his customers on 26 January 2018. Thus, Mustaqim would not have cancelled the order for two bundles of “panas” from Zack, his supplier of diamorphine. The evidence shows that Mustaqim was making active efforts to sell diamorphine even on the day of his arrest and would have needed diamorphine from Zack in order to deliver diamorphine to his customers. This was why he sent Zack the message “settle ‘Panas’ 3 tablets 7500”, as he intended to purchase three bundles of “panas” from Zack on 26 January 2018 to deliver to his own customers. In fact, the objective evidence of the text messages shows that Mustaqim withdrew \$5,000 on 26 January 2018 at 3.01pm, which was just before he met Munusamy from whom he collected the Drugs found in the Hari Raya Bag.¹⁴⁸ Mustaqim admitted in Court that he withdrew \$5,000 just before meeting Munusamy,¹⁴⁹ and thereafter handed \$8,000 to Munusamy before he received the Drugs in the Hari Raya Bag from Munusamy.¹⁵⁰ This payment made by Mustaqim to Munusamy supports the overall evidence that Mustaqim intended to purchase three bundles of “panas” from Zack on 26 January 2018 for a sum of \$7,500, along with the 125g of methamphetamine which he admitted he ordered from Zack. While Mustaqim alleges that \$7,500 out of the \$8,000 paid to Munusamy was to settle an outstanding amount he owed Zack for “panas” which he had purchased a few

¹⁴⁸ Prosecution’s *Aide Memoire* 7 (“PAM-7”) at p 3 (S/N 1771).

¹⁴⁹ 27 January 2023 Transcript at pp 78 (line 19) to 79 (line 3).

¹⁵⁰ 30 January 2023 Transcript at pp 7 (line 32) to 8 (line 15).

days prior to 26 January 2018,¹⁵¹ this allegation simply does not cohere with the text messages which I have mentioned above.

227 Therefore, Mustaqim's account that he did not expect to receive diamorphine and that he did not order the Unwanted Drugs, but they were nevertheless mistakenly given to him by Munusamy on 26 January 2018, is unbelievable.

(D) MUSTAQIM'S EXPLANATION FOR LEAVING THE SINGAPORE CABLE CAR BUILDING IMMEDIATELY WITHOUT ASKING MUNUSAMY ABOUT THE UNWANTED DRUGS IN THE HARI RAYA BAG IS UNCONVINCING

228 Mustaqim testified that once he received the Hari Raya Bag from Munusamy, he immediately walked away to the Car. Based on Mustaqim's own testimony, he realised after taking "two to three steps" that the Hari Raya Bag was heavier than expected as he expected to collect only 125g of methamphetamine.¹⁵²

229 Yet, Mustaqim did not immediately stop to ask Munusamy about the contents in the Hari Raya Bag. Instead, he claims that he left the Singapore Cable Car Building immediately because it was a public area with many people around as it was the weekend at that time. In fact, 26 January 2018 was not a weekend but a working day, *ie*, Friday. Mustaqim again lied. As he was dealing with illegal substances, he chose to instead call Munusamy:¹⁵³

Court:	If you need to confirm, right, when you received the Hari Raya bag from Mr Munusamy, you told us that you know that the bags were---the Hari Raya bag containing so many item was heavy,
--------	--

¹⁵¹ 27 January 2023 Transcript at p 80 (lines 25–27).

¹⁵² 1 February 2023 Transcript at p 37 (lines 8–21).

¹⁵³ 1 February 2023 Transcript at pp 32 (line 29) to 33 (line 20), 34 (lines 3–8).

- right? Because you're only supposed to collect 125 grams of Ice.
- Witness: Yes.
- Court: You could have straightaway tell Munusamy, pull him one side where there are no people and ask him, "Why so many things here? It's not meant for me." Why didn't you do that?
- Witness: If I had dilly-dallied there in a public area, I would be seen as suspicious. So I had gone off first, and in the meantime, I called him. And in any case, he had continued to his work. I don't know where he went.
- Court: You see---
- Witness: So I called him when I was going off.
- Court: ---Mr Mustaqim, I know what you told us; because there are many people there, you will be suspicious. My question to you is not that you do it in the presence of many people. You could have pulled him aside to where there are no people and ask him, "Why are all this thing here? I only ordered 125 grams of Ice." Why didn't you do that?
- Witness: Once I got it, I quickly went off. I did not want to dilly-dally in a public area. At that that place, there were just a lot of people. I would not be able to find a place where there was no people. In---plus, it was a weekend.
- ...
- Court: So, Mr Mustaqim, are you trying to tell me that it's so, so crowded that you cannot find a place where you can ask him, "Why are all---why you give me all this, give so many drugs, so many heroin?"
- Witness: I have a habit of trying to deal with things quickly because I knew that I was carrying something illegal.

230 However, the independent evidence in the form of the CCTV camera footage from the Singapore Cable Car Building shows that the lobby area which was not far from the meeting place with Munusamy was not crowded at the

material time. When this was pointed out to Mustaqim, Mustaqim instead focused on the fact that it was his habit to immediately leave after collecting drugs as he was afraid to remain around:¹⁵⁴

- Court: It's okay.
- You see, Mr Mustaqim, can you look at the--- your AB bundle at page 469. It's towards the end.
- Tiwary: Sorry, Your Honour?
- Court: 469. Alright? This is a footage---CCTV footage of you arriving at the cable car main lobby. Alright?
- Witness: Yes.
- Court: And that is why I'm saying that there were not many people. Now, you take a look at 470. That is there Munusamy when he arrived at cable car main lobby. Again, [there] were not many people. Now, you look at 471, when you are leaving the cable car main lobby. There's only one people--- there's only one person there. And if you look at the 472, Mr Munusamy leaving cable car main lobby. There were three people. So my point to you is when you received the Hari Raya bag, which is quite heavy, you could have easily pulled him to one corner and asked him, "Why are you sending me all these when I only ordered 125 grams of Ice?"
- Witness: Like I said, I have a habit of I take and I go off. I was afraid to be around over there.
- Court: So when you took the Hari Raya bag, you knew that there were more than [125] grams of Ice.
- Witness: Yes, I think so.
- Court: But you---because of your habit, you just took it and you just left. Is that what you're saying?
- Witness: Yes.

¹⁵⁴ 1 February 2023 Transcript at pp 35 (line 19) to 36 (line 12).

231 I find Mustaqim's explanation unconvincing. Mustaqim must have known almost immediately after taking the Hari Raya Bag from Munusamy that it was much heavier than expected, *ie*, 2,041.75g (based on Mustaqim's account of what was in the Hari Raya Bag at the time Munusamy passed the Hari Raya Bag to Mustaqim)¹⁵⁵ as opposed to the 125g of methamphetamine which Mustaqim stated was the only item he was supposed to receive from Munusamy. Despite the Unwanted Drugs weighing more than 16 times the amount of methamphetamine he had expected to collect from Munusamy (*ie*, 125g of methamphetamine), Mustaqim did not stop to ask Munusamy what was inside the Hari Raya Bag or why it was so heavy. While Mustaqim initially claimed that there were many people around at the area which prevented him from speaking to Munusamy, the CCTV camera footage of the lobby area which was near the toilet showed that the area was not crowded at all. When this was pointed out to him, he instead said that it was his habit to leave the place immediately because of his fear of carrying illegal drugs. Mustaqim clearly had the opportunity to speak to Munusamy, but he chose not to. What stopped him from speaking to Munusamy? He did not question Munusamy because the Unwanted Drugs were not mistakenly delivered to him.

232 Mustaqim did not provide a satisfactory explanation to account for his conduct. Instead, he pointed to two telephone calls he made to Munusamy shortly after their meeting at the Singapore Cable Car Building, as well as a call made to Zack. Mustaqim alleges that when he returned to the Car, he discovered the Unwanted Drugs and called Munusamy to inform him that he did not order the Unwanted Drugs and wanted to return them. Munusamy allegedly told

¹⁵⁵ Prosecution's Closing Submissions dated 15 February 2023 ("Prosecution's Closing Submissions") at para 48.

Mustaqim that Mustaqim would have to check with Zack on this matter.¹⁵⁶ Mustaqim then called Zack and informed Zack that he did not order the Unwanted Drugs and wanted to return them. Zack allegedly told Mustaqim to return the Unwanted Drugs to Munusamy.¹⁵⁷ Mustaqim then called Munusamy again to inform him of Zack's instructions, but Munusamy replied that he would call Mustaqim subsequently to arrange for Mustaqim to return the Unwanted Drugs.¹⁵⁸

233 Mustaqim referred to the two telephone calls he made to Munusamy shortly after their meeting at the Singapore Cable Car Building, as well as a call made to Zack to support his account of the mistaken delivery of the Unwanted Drugs. However, there is no evidence apart from Mustaqim's own assertions to shed light on the contents of these calls. Mustaqim's account that the Unwanted Drugs were mistakenly delivered to him and that he intended to return them to Zack cannot be true in the light of the other evidence notwithstanding these three calls.

(E) MUSTAQIM'S ACCOUNT OF THE DRUGS INSIDE THE HARI RAYA BAG WHEN THE HARI RAYA BAG WAS RETURNED TO HIM BY MUNUSAMY

234 Next, I shall consider Mustaqim's account of what were inside the Hari Raya Bag when Munusamy returned the Hari Raya Bag to him at the Singapore Cable Car Building. According to Mustaqim, the Unwanted Drugs were all placed by Munusamy in the Hari Raya Bag and handed over to Mustaqim.

¹⁵⁶ 13 September 2022 Transcript at pp 68 (lines 13–15) and 69 (line 30) to 70 (line 2).

¹⁵⁷ 13 September 2022 Transcript at pp 68 (lines 19–26) and 70 (lines 6–9).

¹⁵⁸ 13 September 2022 Transcript at p 70 (lines 11–18).

235 After Mustaqim left the Singapore Cable Car Building, he immediately went to meet Zaiman at Spooner Road. Soon after, the Car was stopped by the CNB. The items in the Hari Raya Bag were seized and accounted for. The items found in the Hari Raya Bag were materially different from Mustaqim's account of the Unwanted Drugs that he alleged were in the Hari Raya Bag when he took the Hari Raya Bag from Munusamy.

236 A table showing the items found in the Hari Raya Bag at the time of Mustaqim's arrest and Mustaqim's version of what was found in the Hari Raya Bag when he received the Hari Raya Bag from Munusamy is in the Annex attached to this judgment. This table was prepared by the Prosecution with inputs from Mr Tiwary. It is important to examine in detail the two different versions of the items in the Hari Raya Bag.

(I) EXHIBIT A1A1A

237 According to Mustaqim, at the time he received the Hari Raya Bag from Munusamy, Exhibit A1A1A was a packet of diamorphine which was inside a black plastic package with black tape marked Exhibit A1A1 in the Hari Raya Bag. However, at the time of Mustaqim's arrest, Exhibit A1A1 containing Exhibit A1A1A was found inside a black plastic bag marked Exhibit A1A which was inside the Hari Raya Bag. For easy reference, Exhibits P18 and P19 below are photographs of the exhibits mentioned:



Exhibit P18



Exhibit P19

238 Mustaqim stated at the trial that, upon receiving the Hari Raya Bag from Munusamy, he placed Exhibit A1A1 which contained Exhibit A1A1A into the black plastic bag, Exhibit A1A. When asked why he did this when the bundle of diamorphine was to be returned to Zack, Mustaqim's response was that he did not know if he was going to return the Unwanted Drugs in the Hari Raya Bag. He therefore placed Exhibit A1A1 containing Exhibit A1A1A inside the black plastic bag, Exhibit A1A, for convenience and so that it would not be visible to others:¹⁵⁹

Court: Now, A1A has got a bundle, you look at P18, A1A1.

Witness: Yes.

Court: So in other words, the one *batu* of heroin A1A1 was found inside A1A at the time of your arrest?

Witness: Yes.

Court: Now, as far as your evidence is concerned, you look at PAM5. You say that this black pas--- plastic bag A1A, it wasn't in the Hari Raya bag when you received all the drugs from Mr Munusamy.

Witness: Yes.

Court: So in other words, when you received your Hari Raya bag from Mr Munusamy, what is inside the Hari Raya bag was only A1A1.

Witness: Yes.

Court: So someone must have put A1A1 into the black plastic bag.

Witness: I was the one who put it.

Court: You put it inside. Now, why do you want to put A1A1A in the black plastic bag when you want to return all these drugs to Zack through Munusamy?

Witness: Because when I had wanted to return it, I did not know if I was going to return it in the Hari Raya

¹⁵⁹ 1 February 2023 Transcript at pp 30 (line 10) to 31 (line 5).

paper bag. So it would be more convenient for me to put it in a bag and in a manner that would not be visible to others.

Court: Yes, mi---but, Mr Mustaqim, all the heroin inside the Hari Raya bag was meant to return to Zack. So why you pack it into the black plastic bag?

Witness: So that even if I were to return them in the paper bag, it would be concealed.

239 If Mustaqim was planning to return Exhibit A1A1 containing Exhibit A1A1A from the moment he received the Unwanted Drugs from Munusamy, there would have been no need to further conceal Exhibit A1A1A. Exhibit A1A1A was already concealed in Exhibit A1A1 which was a black plastic package with black tape. This bundle of diamorphine is one “batu”, *ie*, about 450g of diamorphine (gross weight). It does not make sense for Mustaqim to take one black plastic bag from the stack of black plastic bags, marked Exhibit F3, in the glove compartment of the Car to put in the wrapped bundle of diamorphine A1A1A and A1A1 and then placed it back into the Hari Raya Bag.

240 If Mustaqim had intended to return the Unwanted Drugs, he would have left the wrapped bundle of diamorphine alone in the Hari Raya Bag unless he intended to deliver or hand the one “batu” of wrapped bundle of diamorphine to his customer. Mustaqim’s act of placing Exhibit A1A1 containing Exhibit A1A1A into a black plastic bag marked Exhibit A1A, was akin to what he had done with other bundles of diamorphine that did not form part of the Unwanted Drugs but were found in the Car. During cross-examination, Mustaqim stated that he had placed two wrapped bundles of diamorphine, Exhibit B1A and Exhibit E1A1A1A, into black plastic bags so that they were “ready” for delivery:¹⁶⁰

¹⁶⁰ 26 January 2023 Transcript at pp 20 (line 11) to 21 (line 7).

Q Okay. Let's leave E1A1 aside. Okay, now, would you agree with me, after E1A1A1A, okay, had been placed into this black bag with silver stars, right, they were ready to be delivered?

A Yes.

...

Q Okay. Okay, now the fact that you had put B1A into B1, and then put the whole thing at the side door, I suggest to you, shows that you had intended to traffic in this bundle.

A Yes, that's true.

241 Therefore, Mustaqim's claim that he placed Exhibit A1A1 containing Exhibit A1A1A inside the black plastic bag, Exhibit A1A, for convenience and that it would not be visible to others cannot be believed. Mustaqim was preparing to traffic the drugs in Exhibit A1A1A when he placed it in the black plastic bag, Exhibit A1A, akin to how he had prepared to traffic the drugs in Exhibit B1A and Exhibit E1A1A1A.

(II) EXHIBIT A1B1

242 Mustaqim testified that when he received the Hari Raya Bag from Munusamy, Exhibit A1B1, which was a masking-taped bundle containing one "batu" of diamorphine, was inside the Hari Raya Bag. Yet, at the time of Mustaqim's arrest, Exhibit A1B1 was found inside another black plastic bag marked Exhibit A1B and these were in the Hari Raya Bag. For easy reference, Exhibit P18 below is a photograph of the exhibits mentioned:



Exhibit P18

243 Mustaqim stated that he was the one who placed Exhibit A1B1 in Exhibit A1B before placing it back in the Hari Raya Bag. His explanation for doing so was the same as regards his explanation for Exhibit A1A1A:¹⁶¹

Court: You see, similarly, in relation to A1B, another black plastic bag, the other *batu*, you also put it in a black plastic bag.

Witness: Yes.

Court: And your explanation is going to be the same.

Witness: Yes.

¹⁶¹ 1 February 2023 Transcript at p 31 (lines 6–10).

244 Similarly, Mustaqim’s explanation is illogical since the diamorphine in Exhibit A1B1 was already concealed as it was a masking-taped bundle. There was no need to further place Exhibit A1B1 inside a black plastic bag, Exhibit A1B, obtained from the glove compartment of the Car when he intended to return this one “batu” of diamorphine to Zack.

245 As I have mentioned above in relation to Exhibit A1A1A, Mustaqim’s conduct of placing Exhibit A1B1 inside another black plastic bag, Exhibit A1B, was akin to what he had done with other bundles of diamorphine that did not form part of the Unwanted Drugs but were found in the Car, *ie*, he prepared the bundle of diamorphine so that it would be “ready” for delivery to his customers.

(III) EXHIBITS A1C1A TO A1C1K AND A1C2A TO A1C2K

246 Mustaqim testified that when he received the Hari Raya Bag from Munusamy, Exhibits A1C1A to A1C1K, which were small Ziploc bags containing diamorphine, were inside the Hari Raya Bag in a larger Ziploc bag marked Exhibit A1C1. Similarly, Exhibits A1C2A to A1C2K, which were small Ziploc bags containing diamorphine, were inside the Hari Raya Bag in a larger Ziploc bag marked Exhibit A1C2. However, at the time of Mustaqim’s arrest, Exhibit A1C1 (containing Exhibits A1C1A to A1C1K) and Exhibit A1C2 (containing Exhibits A1C2A to A1C2K) were found inside another white plastic bag with “Disney” on it marked Exhibit A1C in the Hari Raya Bag. For easy reference, Exhibits P20 to P23 below are photographs of the exhibits mentioned:



Exhibit P20



Exhibit P21



Exhibit P22

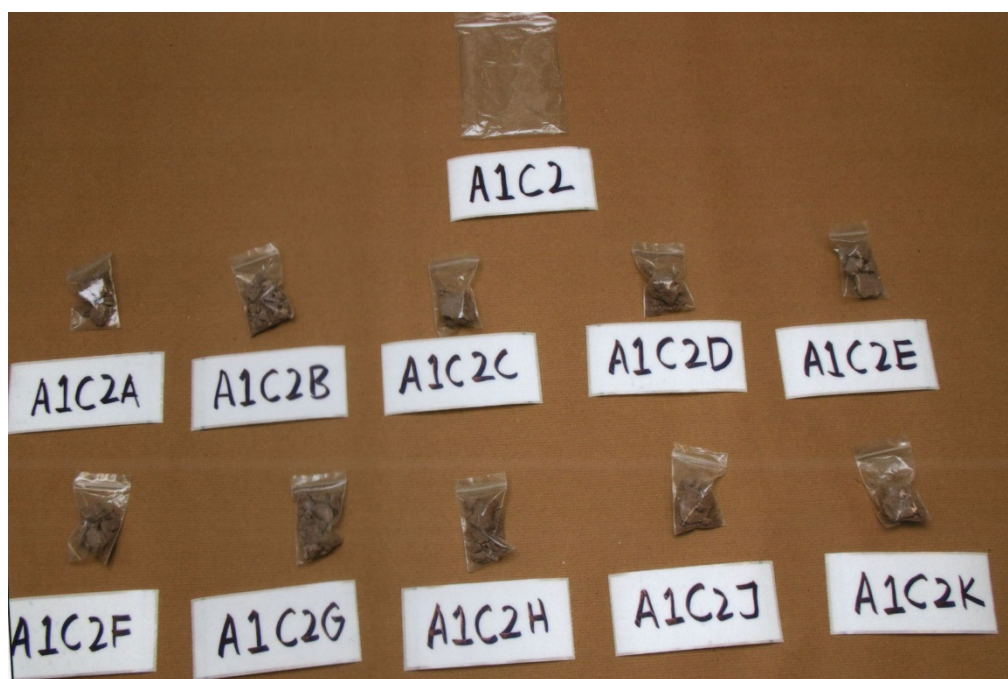


Exhibit P23

247 Mustaqim’s explanation for this was that he wanted to conceal the diamorphine since he would be returning it in a public area:¹⁶²

Court:	If you look at A1C which is the Disney bag, and in the Disney bag, you have two other bundles of heroin.
Witness:	Yes.
Court:	And you put it in the Disneyland bag.
Witness:	Yes.
Court:	And again, I don’t understand why you need to do it when you---all these drugs, according to you, are to be returned to Zack.
Witness:	Because I did not want to return the drugs in a manner where they would be easily visible to others, because I had wanted to---the place where I had wanted to return it to is a public area.

248 If Mustaqim’s intention was to return these two sets of ten smaller packets of diamorphine to Zack, why did he separate them and put them in the white “Disney” plastic bag and place them in the Hari Raya Bag again? Mustaqim’s explanation is once again illogical, unless he had no intention to return the two sets of ten smaller packets of diamorphine to Zack as they were not delivered wrongly to Mustaqim.

(IV) *EXHIBIT A1D1*

249 Mustaqim testified that at the time he received the Hari Raya Bag from Munusamy, Exhibit A1D1, which was a Ziploc bag containing diamorphine, was inside the Hari Raya Bag. Yet, at the time of Mustaqim’s arrest, Exhibit A1D1 was found inside another Ziploc bag marked Exhibit A1D in the Hari Raya Bag. The CNB also found a packet of empty Ziploc bags marked Exhibit

¹⁶² 1 February 2023 Transcript at p 31 (lines 11–21).

A1D2 inside the Hari Raya Bags at the time of seizure. For easy reference, Exhibit P24 below is a photograph of the exhibits mentioned:



Exhibit P24

250 Why was there a need to place Exhibit A1D1 into another transparent Ziploc bag, Exhibit A1D, when it was meant to be returned to Zack? No explanation was provided by Mustaqim for this.

(V) EXHIBIT A2A1

251 Mustaqim testified that at the time he received the Hari Raya Bag from Munusamy, Exhibit A2, which was a green plastic bag containing a newspaper marked Exhibit A2A wrapped around a Ziploc bag containing one “batu” of diamorphine marked Exhibit A2A1, was inside the Hari Raya Bag. However, at the time of Mustaqim’s arrest, Exhibit A2 containing Exhibits A2A and A2A1 was not found in the Hari Raya Bag. Instead, Exhibit A2 containing Exhibits A2A and A2A1 was found next to the Hari Raya Bag at the floorboard of the driver’s seat of the Car.

252 Mustaqim’s explanation for removing Exhibit A2 with its contents from the Hari Raya Bag was that he took out the green plastic bag (*ie*, Exhibit A2) with its contents and placed it by the side of the Hari Raya Bag:¹⁶³

Court: You see, if you look at P28, photograph P28. Have you got photograph P28? And if you look at your PAM5, this green plastic bag with the heroin, one *batu* of heroin, at the time of your arrest, it wasn’t found in the Hari Raya bag.

Witness: Yes.

Court: It was found on your driver’s side floor mat.

Witness: Yes.

Court: So why did you take it out from the Hari Raya bag and put it on the floor mat when this is to be returned to Zack, according to you?

Witness: Initially, I took it out and put it by the side, because these were already concealed, so I put them aside first. I took it out from the bag and put it by the side, just by the side of the bag.

253 Again, this explanation makes no sense if Mustaqim intended to return the Unwanted Drugs in the Hari Raya Bag to Zack. If all the Unwanted Drugs

¹⁶³ 1 February 2023 Transcript at pp 31 (line 22) to 32 (line 3).

were indeed meant to be returned to Zack, there should have been no need to remove the drugs which were already concealed and repack the drugs into other Ziploc bags, or place them in black plastic bags. Mustaqim's conduct following the receipt of the Unwanted Drugs betrays his defence that he intended to return the Unwanted Drugs to Zack. If his intention was to return the Unwanted Drugs, he could have simply left the drugs as he had found them in the Hari Raya Bag.

(VI) *OTHER DRUGS ASIDE FROM DIAMORPHINE WHICH WERE IN THE HARI RAYA BAG*

254 Mustaqim further alleges that two yellow bundles in cling wrap containing methamphetamine, *ie*, Exhibit B2, were in the Hari Raya Bag when it was handed to him by Munusamy. For easy reference, Exhibit P31 below is a photograph of the exhibit mentioned:

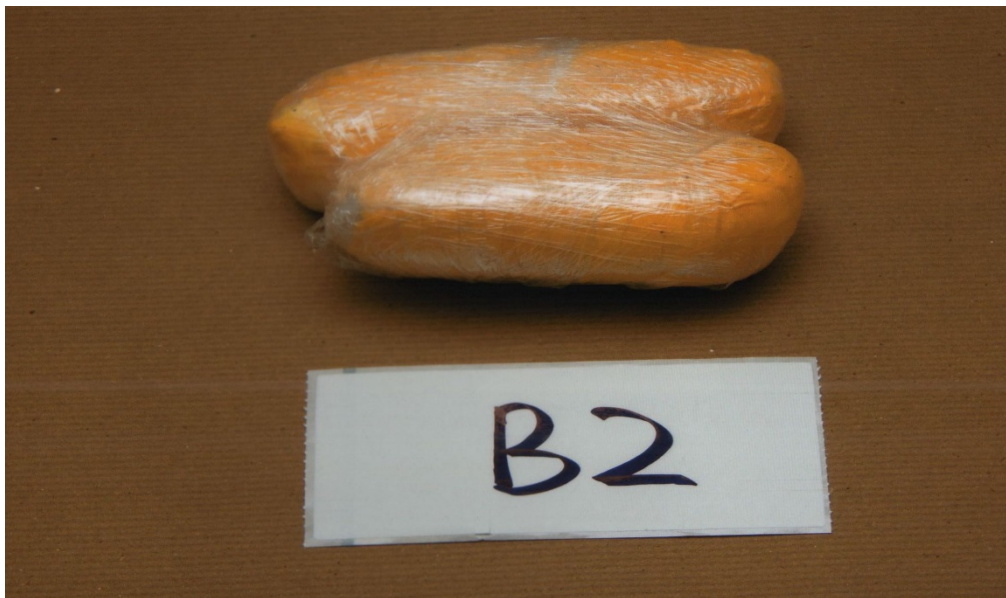


Exhibit P31

255 Mustaqim testified that these two bundles were unwanted methamphetamine meant to be returned to Zack as well. However, at the time of Mustaqim's arrest, Exhibit B2 was not found in the Hari Raya Bag but instead

was found at the driver's door compartment of the Car. Mustaqim's explanation for this was that he wanted to confirm what were the items inside before returning the drugs to Zack, and so he put them aside because the Car was already messy:¹⁶⁴

- Court: This was yours? You look at your PAM5. Oh, sorry, sorry. No, no, it's not B1. It's B2. Sorry, it's B2. B2 are your---the two yellow bundle of Ice, also in a Hari Raya bag.
- Witness: Yes.
- Court: But you took it out and you put it on the driver's side.
- Witness: Yes.
- Court: Why you do that? The whole---your---everything in the Hari Raya bag was meant to be returned to Zack, but why you took out the green plastic bag? The Ice also meant to be returned to Zack, but you also took it out, and you put on the driver's side.
- Witness: Yes, I want---I took them out to take a look first. And my area there was already messy, so I put them aside, and I would put them back in later.
- Court: Yes, but if your area is messy, you should leave everything in the Hari Raya bag, because it's meant to be returned to Zack.
- Witness: I wanted to check how many of the items were mistaken before I returned them to Zack so that there would be no miscommunication.

256 Why did Mustaqim take out these bundles from the Hari Raya Bag and place them at the compartment of the driver's door when these bundles were intended to be returned to Zack? Mustaqim's conduct of removing these bundles from the Hari Raya Bag meant that he had no intention to return them to Zack. Why was it necessary to remove the two bundles from the Hari Raya Bag to check if it was truly Mustaqim's intention to return them to Zack? Furthermore,

¹⁶⁴ 1 February 2023 Transcript at p 32 (lines 6–23).

instead of putting them back into the Hari Raya Bag after checking, Mustaqim kept them at the compartment of the driver's door. His explanation was that the Car was messy. If the Car was truly messy, he should not have removed the drugs from the Hari Raya Bag and place them at different places. The Car was already full of the Drugs and other types of controlled drugs belonging to him. By removing some of the Unwanted Drugs and methamphetamine from the Hari Raya Bag, he would be mixing them with other drugs in the Car. Thus, Mustaqim would not know which were the drugs that he had purportedly wanted to return to Zack.

257 Finally, Mustaqim stated that when he received the Hari Raya Bag from Munusamy, Exhibit A1E2, which was a Ziploc bag containing methamphetamine, was in the Hari Raya Bag. Mustaqim states that Exhibit A1E2 was the 125g of methamphetamine which he received from Munusamy on 26 January 2018. However, at the time of Mustaqim's arrest, Exhibit A1E2 was found inside a black plastic bag, Exhibit A1E, together with Exhibit A1E1, another Ziploc bag of methamphetamine, inside the Hari Raya Bag. For easy reference, Exhibit P25 below is a photograph of the exhibits mentioned:



Exhibit P25

258 Mustaqim states that Exhibit A1E1 was already in his possession prior to 26 January 2018. Why then did he place it together with Exhibit A1E2 in a black plastic bag, Exhibit A1E, before placing it in the Hari Raya Bag? Further, according to Mustaqim, both Exhibits A1E1 and A1E2 were not meant to be returned to Zack. Why were Exhibits A1E1 and A1E2 then placed together with some of the Unwanted Drugs which he meant to return to Zack in the Hari Raya Bag? There appeared to be no logical explanation for Mustaqim's conduct of repacking the various drugs and moving them in and out of the Hari Raya Bag. Further, this undermined his defence that he intended to return the Unwanted Drugs since Mustaqim was essentially placing drugs which were meant to be returned in the same bag with the drugs which were not meant to be returned.

(VII) *CONCLUSION ON MUSTAQIM'S CONDUCT OF REPACKING AND REMOVING
VARIOUS DRUGS FROM THE HARI RAYA BAG*

259 When Mustaqim's explanation is viewed in its entirety, his conduct of repacking and removing various drugs from the Hari Raya Bag clearly shows that there was really no intention on his part to return the Unwanted Drugs to Zack. Mustaqim raised this defence of wanting to return the Unwanted Drugs so that he could avoid the capital punishment as he had learnt that it was not trafficking if he intended to return the Unwanted Drugs. Mustaqim's conduct and the evidence reveal that the Unwanted Drugs were also for the purpose of trafficking. He took steps to distribute the various packages of the Unwanted Drugs to his customers. Why did Mustaqim state that the green plastic bag, Exhibit A2, containing one batu of diamorphine, Exhibit A2A1, was in the Hari Raya Bag when this batu of diamorphine was not in the Hari Raya Bag at the time of his arrest? Mustaqim knew that if he were to only allege that all the drugs found in the Hari Raya Bag at the time of his arrest were meant to be returned to Zack, he would still face the capital punishment as the rest of the diamorphine found in the Car would have been 35.49g (net). This would have exceeded 15g of diamorphine and he would still face the capital punishment. In order to avert the capital punishment, Mustaqim had to allege that the one "batu" of diamorphine in the green plastic bag found outside the Hari Raya Bag was also meant to be returned to Zack. By doing so, the net weight of the remaining diamorphine found in the Car would only be 14.18g. This weight would be below the capital threshold of 15g of diamorphine and Mustaqim would not have to face the capital punishment.

- (F) MUSTAQIM’S ACCOUNT OF WHAT WAS INSIDE THE HARI RAYA BAG AT THE TIME HE RECEIVED THE HARI RAYA BAG FROM MUNUSAMY IS INHERENTLY ILLOGICAL

260 Next, Mustaqim’s defence on what was inside the Hari Raya Bag at the time he received the Hari Raya Bag from Munusamy is inherently illogical.

261 In the Defence’s submission, Mustaqim alleges that he initially ordered two bundles of “panas” and 125g of methamphetamine from Zack on 26 January 2018. Later the same day, Mustaqim proceeded to cancel the order for two bundles of “panas”. Thus, Mustaqim was only supposed to receive 125g of methamphetamine from Munusamy.

262 Based on this version, there should only be two bundles of diamorphine in the Hari Raya Bag which Mustaqim alleged was mistakenly delivered to him. This is completely different from Mustaqim’s testimony in Court where he testified that there were four large packets of diamorphine (Exhibits A1A1A, A1B1, A1D1 and A2A1), 20 small Ziploc bags of diamorphine (Exhibits A1C1A to A1C1K and A1C2A to A1C2K), the 125g packet of methamphetamine (Exhibit A1E2), and two bundles of methamphetamine (Exhibit B2). Mustaqim’s defence of mistaken delivery of the Unwanted Drugs is fundamentally flawed as there are serious material internal contradictions in his narrative which completely defies belief.

- (G) MUSTAQIM’S ACCOUNT OF HIS MEETING WITH ZAIMAN IS CONTRADICTED BY THE OBJECTIVE EVIDENCE

263 Finally, Mustaqim’s account of his meeting with Zaiman is also contradicted by the objective evidence.

264 Mustaqim claimed that he met Zaiman on 26 January 2018 to “collect cigarettes”.¹⁶⁵ However, the WhatsApp text messages and voice messages exchanged between Mustaqim and Zaiman at the material time show that they were instead conversing about diamorphine, such as the price and exchange of diamorphine:¹⁶⁶

Date	Approximate Actual Time	From	Message / Transcribed Audio
26/1/2018	3:06:40 PM	Mustaqim	Man, Thaipusam ‘barang’ Milo ‘ah’ Man. (00:05) “words not clear”... ‘ah’
26/1/2018	3:06:50 PM	Mustaqim	That is why expensive, really bad luck.
...			
26/1/2018	3:12:25 PM	Zaiman	How, if that half ‘uh’ the one you say the Milo how? Can change or not, the one with me this half ‘eh’ can or not?
26/1/2018	3:14:26 PM	Zaiman	You are at which house?
26/1/2018	3:14:55 PM	Zaiman	Can or not?
...			
26/1/2018	3:18:48 PM	Zaiman	Between, how many people?
...			
26/1/2018	3:25:31 PM	Zaiman	Why so quite?
...			

¹⁶⁵ 13 September 2022 Transcript at p 70 (lines 28–29).

¹⁶⁶ Prosecution’s *Aide Memoire* 8 (PAM-8) at pp 6 (S/N 1306) to 8 (S/N 1312), 11 (S/N 1314–1315), 12 (S/N 1316) to 16 (S/N 1328).

26/1/2018	3:28:57 PM	Zaiman	Never mind you just grab only. (00:00) “words not clear”... you know, push ‘uh’ push, if shortage of ‘barang’ they are sue to take one. Furthermore you says Milo ‘barang’ right, ‘ah’ confirm for sure people will buy, they will grab one. How, the one that I asked, can or not?
26/1/2018	3:29:35 PM	Zaiman	You need to fix an assistant ‘ah’. Because ‘Pendek’ always follow you what. He is not following you anymore or what, ‘Pendek’?
...			
26/1/2018	3:32:09 PM	Mustaqim	‘Pendek’ follow. ‘Uh’ I am about to make a move ‘ah’. I am tired. Today 3 rounds.
...			
26/1/2018	3:34:42 PM	Zaiman	You want to follow, you want me to follow you or not? I am not working today. ‘Eh’, what do you think? If you want, pick me up over there ‘ah’. Pity you, it worry me when I heard my boss is like this. Blood up only. You want me to activate or not?
26/1/2018	3:36:06 PM	Mustaqim	OK also ‘ah’ Man, at least got a bit of a company right.
26/1/2018	3:36:14 PM	Mustaqim	‘Eh’, cancel, cancel. You will finish up the property ‘ah’
26/1/2018	3:36:54 PM	Zaiman	I won’t ask for anything ‘ah’. You want to give, how much you want to give me what. Idiot, you have the heart to say I will finish the property? Sad you know, I am dishearten. ‘Uh’ Just keep you company only ‘la’.
...			

26/1/2018	3:37:12 PM	Zaiman	Sword don't forget, sword 'eh' not sword. Samurai don't forget, long beans 'ah' you already promise, 'eh'.
26/1/2018	3:39:45 PM	Mustaqim	[Sends Picture]
26/1/2018	3:39:60 PM	Mustaqim	Sword don't have, Man. Dildo have, Dildo.
26/1/2018	3:40:16 PM	Zaiman	Dildo I also have, with skeleton chop some more. How, can or not change Milo?
26/1/2018	3:40:40 PM	Mustaqim	Man, come down Man, come down. Come Down.
26/1/2018	3:41:01 PM	Zaiman	Idiot, wait, wait, wait.
26/1/2018	3:41:13 PM	Mustaqim	Bring along some biscuits or what or anything.
26/1/2018	3:43:54 PM	Mustaqim	Man, hurry up.

265 When confronted at the trial, Mustaqim admitted that he had informed Zaiman on 26 January 2018 that the price of diamorphine, referred to as 'Milo' in the messages, would increase as Thaipusam was approaching.¹⁶⁷ Mustaqim also conceded that Zaiman was unhappy with the quality of the half "batu" of diamorphine which was in Zaiman's possession and had asked Mustaqim in the messages to exchange this for another half "batu" of diamorphine.¹⁶⁸ Mustaqim, however, claimed that he did not promise Zaiman that he would accede to Zaiman's request to exchange the half "batu" of diamorphine.¹⁶⁹ However, the objective evidence shows that Zaiman was indeed found with a packet of

¹⁶⁷ 31 January 2023 Transcript p 9 (lines 19–32).

¹⁶⁸ 31 January 2023 Transcript p 11 (lines 14–17).

¹⁶⁹ 31 January 2023 Transcript p 11 (lines 19–20).

diamorphine in his bag during Mustaqim’s arrest. This was approximately half a “batu” of diamorphine.

266 What is noticeably absent from the transcripts of Mustaqim’s mobile phones is any reference to Zaiman and Mustaqim meeting to “collect cigarettes”. Instead, from the transcripts of the messages between Zaiman and Mustaqim shortly before the arrest, it appeared that Zaiman offered to follow Mustaqim as Mustaqim was about to make his “rounds” trafficking in drugs. Therefore, Mustaqim was untruthful about his interactions with Zaiman.

267 As was set out above at [206]–[214], the objective evidence in the form of the call logs shows that Mustaqim was actively involved in drug trafficking activities on the day of, and even in the hours leading up to, his arrest by the CNB officers. The call logs also show that Zaiman was seeking to exchange his half “batu” of diamorphine. Thus, it is difficult to believe Mustaqim’s account that he was meeting Zaiman to collect cigarettes. This is one of the many instances that points to Mustaqim being untruthful.

268 Ultimately, the inconsistencies in relation to Mustaqim’s interactions with Zaiman do not have a direct bearing on Mustaqim’s defence in relation to the Unwanted Drugs since Mustaqim accepts that the drugs in Exhibit E1A1A1A which were found in Zaiman’s bag were in Mustaqim’s possession for the purpose of trafficking. However, the internal inconsistencies even in relation to Mustaqim’s dealings with Zaiman make Mustaqim a generally highly unreliable witness whose evidence simply cannot be relied upon.

(H) CONCLUSION ON MUSTAQIM'S DEFENCE THAT HE INTENDED TO RETURN THE UNWANTED DRUGS

269 Mustaqim's main defence that he intended to return the Unwanted Drugs to Zack was never disclosed in any of his statements to the CNB officers. Mustaqim's allegation that he stated his defence to SSgt Fardlie who advised him against stating that he wished to return the Unwanted Drugs as he would not qualify as a courier cannot be believed. As I have found earlier, Mustaqim had simply made up the allegation so as to avoid the capital punishment. Furthermore, the defence that he wanted to return the Unwanted Drugs to Zack is unsupported by the objective evidence.

270 Mustaqim's defence that he received the Unwanted Drugs by mistake and intended to return them to Zack is contradicted by independent evidence, including messages and calls extracted from Mustaqim's mobile phones. Unlike what Mustaqim claims, the evidence shows that Mustaqim continued to have an intention to purchase diamorphine from Zack even at 11.54am on 26 January 2018. The evidence also shows that Mustaqim was actively trafficking in diamorphine and making plans to sell diamorphine to his customers even on 26 January 2018.

271 Mustaqim's conduct of repacking the Unwanted Drugs and removing some drugs from the Hari Raya Bag soon after receiving the purported Unwanted Drugs in the Hari Raya Bag seriously undermines his defence that he intended to return all the Unwanted Drugs. If Mustaqim's intention was truly to return all the drugs in the Hari Raya Bag except for the 125g of methamphetamine, there would have been no need to repack the Unwanted Drugs or remove drugs from the Hari Raya Bag and place them at other locations inside the Car.

272 When Mustaqim's defence of his intention to return the Unwanted Drugs to Zack is viewed against the other evidence, it clearly reveals that Mustaqim is parsimonious with the truth. Mustaqim sought to present himself as a courier working for Zack in his statements to the CNB officers because he thought he could avoid the capital punishment by doing so. Later, when he learnt that the intention to return the Unwanted Drugs would not be considered trafficking, he abandoned his account to the CNB officers in his statements that he was a courier working for Zack. With the newly acquired knowledge, Mustaqim came up with a new defence and informed the Court that he had the intention to return the Unwanted Drugs to Zack. Mustaqim's latest narrative about his intention to return the Unwanted Drugs was concocted by him to avoid the capital punishment.

(I) THE INFERENCE TO BE DRAWN IN LIGHT OF THE LARGE AMOUNT OF DIAMORPHINE FOUND IN MUSTAQIM'S POSSESSION

273 When the Court rejects Mustaqim's latest defence that he intended to return the Unwanted Drugs, this means that a very large amount of diamorphine was found in Mustaqim's possession when he was arrested.

274 The Prosecution submits that the inference that should be drawn from the large quantity of diamorphine found in Mustaqim's possession is that the Drugs were all in his possession for the purpose of trafficking.¹⁷⁰ It is undeniable that the amount of diamorphine found in Mustaqim's possession, *ie*, 56.8g (net) of diamorphine, is more than triple the amount of 15g that would attract the capital punishment.

¹⁷⁰ Prosecution's Closing Submissions at paras 28 and 82.

275 In *Yeo Choon Huat v Public Prosecutor* [1997] 3 SLR(R) 450, the Court of Appeal stated that in a case where the quantity of diamorphine found in an accused's possession is much larger than what he needs for his own consumption and there is a lack of plausible explanation for him being in possession of a large quantity, the court may draw an irresistible inference that the accused intended to traffic in all the diamorphine that was found in his possession (at [34]):

Nonetheless, the trial judge had no hesitation in finding that the appellant's ultimate intention was to traffic in the drugs. We were in total agreement with the trial judge. In *Ong Ah Chuan v PP* [1979–1980] SLR(R) 710, Lord Diplock, delivering the opinion of the Privy Council, said at [14]–[15] that:

Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, *in the absence of any plausible explanation by him*, be irresistible – even if there were no statutory presumption such as is contained in s 15 [now s 17] of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it.

[emphasis in original]

In the instant case, the gross weight of the drugs transported was 6,882g, containing a total of 81.89g of diamorphine. The quantity transported was very much larger than was likely to be needed for the appellant's own consumption and the inference was irresistible that he was transporting the diamorphine for the purpose of trafficking in them. The appellant had not offered any explanation for the transportation of such a large quantity of heroin. There was no evidence that

the appellant was an addict. Neither had he made any assertion that the heroin was for his own consumption. Furthermore, the appellant had actually gone on to deliver five packets of heroin to Koh. Therefore, even without resorting to the presumption contained in s 17 of the Misuse of Drugs Act, there was ample evidence to substantiate the trial judge's finding that the appellant's ultimate intention was to traffic in the drugs. This, coupled with the fact that the appellant had failed to rebut the presumptions under ss 21 and 18(2) of the Misuse of Drugs Act meant that the offence of trafficking by transportation had been fully made out.

276 There is copious evidence which shows that Mustaqim was a drug trafficker. Mustaqim admits to being a drug trafficker, although he alleges that he wanted to return the Unwanted Drugs. Therefore, it is unnecessary to rely on the inference to make out the Charge against Mustaqim.

277 Further, Mustaqim has admitted that he was selling diamorphine to his customers before 26 January 2018 as well as on 26 January 2018. Finally, there is also the objective contemporaneous evidence in the form of text messages and calls as set out above at [206]–[233] which shows that Mustaqim was actively trafficking in diamorphine and preparing to deliver diamorphine to his customers in the hours leading up to his arrest. Therefore, Mustaqim is faced with an avalanche of evidence that he was trafficking in diamorphine. The irresistible inference to be drawn from the large quantity of diamorphine, *ie*, 56.8g (net) of diamorphine, found in Mustaqim's possession further worsens his case.

Conclusion on the elements of the Charge

278 In summary, I make the following findings:

- (a) The Prosecution has established beyond a reasonable doubt that the first element of the Charge is made out, *ie*, that Mustaqim had possession of the Drugs, without the need to rely on the presumption

under s 21 of the MDA. Mustaqim does not dispute that the Drugs found in the Car were in his possession.

(b) The Prosecution has also established beyond a reasonable doubt that the second element of the Charge is also made out, *ie*, that Mustaqim had knowledge as to the nature of the Drugs, without the need to rely on the presumption of knowledge under s 18(2) of the MDA. Mustaqim also does not dispute that he was aware the Drugs found in the Car were diamorphine.

(c) Mustaqim had possessed the Drugs found in the Car for the purpose of trafficking. I reject Mustaqim's allegation that he only intended to traffic in 14.18g (net) of the amount of diamorphine in his possession at the time of his arrest.

(d) I also reject Mustaqim's defence that he intended to return the Unwanted Drugs, constituting 42.62g (net) of diamorphine, to Zack. Mustaqim's defence in relation to the Unwanted Drugs is not only a mere afterthought, but a concoction to avoid the capital punishment. Mustaqim's defence that he intended to return the Unwanted Drugs was also severely contradicted by cogent evidence. This defence was not mentioned in Mustaqim's statements to the CNB officers and it was completely inconsistent with his statements to the CNB officers. Mustaqim admitted that if he had known that the returning of the drugs would not be trafficking, he would have mentioned it in his statements to the CNB officers. However, at the time when he gave his statements to the CNB officers, he knew that if he were found to be a courier, he could avoid the capital punishment. Thus, he told the CNB officers in his statements that he was assisting Zack in the latter's drug trafficking activities. Mustaqim admitted in Court that what he said in his

statements to the CNB officers that he was assisting Zack were lies. In fact, he testified that he was a drug trafficker selling drugs to his customers, except for the Unwanted Drugs which he intended to return to Zack. He claimed that a small portion of the diamorphine found in the Car was for his personal consumption. Mustaqim's new narrative in Court has been shown to be lies as well. The corollary is that Mustaqim's defence is full of holes like a sieve that cannot hold even a grain of truth. His integrity as a witness is shattered to smithereens. Mustaqim's defence in Court is deliberately shaped to fit his newfound knowledge that to return the drugs would not constitute trafficking. This is akin to what he did when he gave his statements to the CNB officers, where he engineered a detailed account that he was a courier working for Zack so that he could avoid the capital punishment.

(e) The evidence, particularly the contemporaneous call logs from Mustaqim's mobile phones, unmistakably and conclusively shows that, just before his arrest, he indulged in drug trafficking activities.

279 Therefore, I find that all three elements of the Charge are made out beyond a reasonable doubt.

Conclusion

280 The evidence of trafficking in 56.8g (net) of diamorphine against Mustaqim is indeed overwhelming when he was arrested and found to possess a huge quantity of diamorphine in the Car. In addition, other paraphernalia of drug trafficking such as a digital weighing scale, empty cut straws, quantities of plastic bags, etc. were also found in his possession. He knew the Drugs were diamorphine which he called "panas". Even without leveraging on the

presumptions in the MDA, the evidence could easily have made out a case of trafficking in diamorphine against Mustaqim.

281 Mustaqim really has no defence to the Charge. In view of the colossal evidence against Mustaqim, he is like a proverbial drowning man who will clutch at any straw hoping he can escape the capital punishment. This explains his change of defence strategy from claiming in his statements to the CNB officers that he was a courier working for Zack to stating at the trial that he had the intention to return the Unwanted Drugs to Zack.

282 In conclusion, I find that the Prosecution has proven the Charge against Mustaqim beyond a reasonable doubt. I, therefore, convict Mustaqim of the Charge.

Sentence

283 Section 33(1) of the MDA read with the Second Schedule to the MDA prescribes that an offence under s 5(1) involving more than 15g of diamorphine is punishable by death.

284 There is, however, an alternative sentencing regime under s 33B(1)(a) of the MDA if Mustaqim can satisfy the conditions therein. Section 33B(2)(a) of the MDA provides that the accused person has to prove, on a balance of probabilities, that his involvement in the offence is restricted to the following acts, which are commonly described as acts of a courier:

- (a) transporting, sending or delivering a controlled drug;
- (b) offering to transport, send or deliver a controlled drug;
- (c) doing or offering to do any act preparatory or for the purposes of transporting, sending or delivering a controlled drug; or

(d) any combination of the above.

285 In addition to the above requirements, s 33B(2)(b) of the MDA also stipulates that the Public Prosecutor must provide a certificate of substantive assistance certifying that the accused person has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

286 In the instant case, the evidence is clear that Mustaqim was not a courier and he indulged actively in buying diamorphine from Zack to sell it to his customers for profit.

287 Accordingly, Mustaqim is sentenced to death as mandated by s 33(1) of the MDA read with the Second Schedule to the MDA.

Tan Siong Thye
Judge of the High Court

Claire Poh, Chong Yong and Benedict Chan Wei Qi (Attorney-
General's Chambers) for the Prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Si Hoe Tat Chong
(Acacia Legal LLC) for the Accused.

ANNEX: Table summarising what was found in the Hari Raya Bag at the time of Mustaqim's arrest and Mustaqim's version of what was in the Hari Raya Bag when he received the Hari Raya Bag from Munusamy

S/N	Marking	Exhibit description	Found in the Hari Raya bag at the time of the Accused's arrest.	Accused's version ¹ (When he collected the Hari Raya bag from Munusamy)	Photo reference
1.	A1A	One (1) black plastic bag containing:	Yes	Not in the Hari Raya bag.	P17, P18
2.	A1A1	One (1) black plastic packaging with black tape containing:	Yes	In the Hari Raya bag.	P18, P19
3.	A1A1A	One (1) packet containing granular/powdery substance (3.60g diamorphine).	Yes	(Contained in A1A1)	P19
4.	A1B	One (1) black plastic bag containing:	Yes	Not in the Hari Raya bag.	P17, P18
5.	A1B1	One (1) masking-taped bundle containing granular/powdery substance (3.91g diamorphine).	Yes	In the Hari Raya bag.	P18
6.	A1C	One (1) white plastic bag containing:	Yes	Not in the Hari Raya bag.	P20
7.	A1C1	One (1) ziploc bag containing:	Yes	In the Hari Raya bag.	P21, P22
8.	A1C1A	One (1) ziploc bag containing granular/powdery	Yes	(Contained in A1C1)	P22

¹ Based on the Examination in chief of DW1 Mustaqim bin Abdul Kadir on 13 September 2022.

		substance (0.39g diamorphine),			
9.	A1C1B	One (1) ziploc bag containing granular/powdery substance (0.34g diamorphine),	Yes	(Contained in A1C1)	P22
10.	A1C1C	One (1) ziploc bag containing granular/powdery substance (0.38g diamorphine),	Yes	(Contained in A1C1)	P22
11.	A1C1D	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C1)	P22
12.	A1C1E	One (1) ziploc bag containing granular/powdery substance (0.36g diamorphine),	Yes	(Contained in A1C1)	P22
13.	A1C1F	One (1) ziploc bag containing granular/powdery substance (0.39g diamorphine),	Yes	(Contained in A1C1)	P22
14.	A1C1G	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C1)	P22
15.	A1C1H	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C1)	P22
16.	A1C1J	One (1) ziploc bag containing granular/powdery	Yes	(Contained in A1C1)	P22

		substance (0.39g diamorphine), and			
17.	A1C1K	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine).	Yes	(Contained in A1C1)	P22
18.	A1C2	One (1) ziploc bag containing:	Yes	In the Hari Raya bag.	P21, P23
19.	A1C2A	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C2)	P23
20.	A1C2B	One (1) ziploc bag containing granular/powdery substance (0.40g diamorphine),	Yes	(Contained in A1C2)	P23
21.	A1C2C	One (1) ziploc bag containing granular/powdery substance (0.33g diamorphine),	Yes	(Contained in A1C2)	P23
22.	A1C2D	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C2)	P23
23.	A1C2E	One (1) ziploc bag containing granular/powdery substance (0.38g diamorphine),	Yes	(Contained in A1C2)	P23
24.	A1C2F	One (1) ziploc bag containing granular/powdery substance (0.38g diamorphine),	Yes	(Contained in A1C2)	P23
25.	A1C2G	One (1) ziploc bag	Yes	(Contained in A1C2)	P23

		containing granular/powdery substance (0.38g diamorphine),			
26.	A1C2H	One (1) ziploc bag containing granular/powdery substance (0.37g diamorphine),	Yes	(Contained in A1C2)	P23
27.	A1C2J	One (1) ziploc bag containing granular/powdery substance (0.36g diamorphine), and	Yes	(Contained in A1C2)	P23
28.	A1C2K	One (1) ziploc bag containing granular/powdery substance (0.33g diamorphine).	Yes	(Contained in A1C2)	P23
29.	A1D	One (1) ziploc bag containing:	Yes	Not in the Hari Raya bag.	P24
30.	A1D1	One (1) ziploc bag containing granular/powdery substance (6.40g diamorphine), and	Yes	In the Hari Raya bag.	P24
31.	A1D2	One (1) Ziploc bag containing numerous empty ziploc bags.	Yes	Did not testify on A1D2.	P24
32.	A1E	One (1) black plastic bag containing:	Yes	Not in the Hari Raya bag.	P25
33.	A1E1	One (1) ziploc bag containing crystalline substance (methamphetamine); and	Yes	Not in the Hari Raya bag.	P25
34.	A1E2	One (1) ziploc bag containing crystalline substance (methamphetamine).	Yes	In the Hari Raya bag.	P25

35.	A1F	Six (6) slabs of a total of sixty (60) Erimin 5 tablets and one (1) rubber band.	Yes	In the Hari Raya bag.	P26
36.	A1G	One (1) gold packet containing several cut straws.	Yes	In the Hari Raya bag.	P27
37.	A1H	Two (2) ziploc bags containing several empty ziploc bags.	Yes	Cannot remember if this was in the Hari Raya bag.	P27
38.	A1J	Two (2) markers, one (1) lighter, one (1) battery and one (1) Starhub card.	Yes	In the Hari Raya bag.	P27
39.	A2	One (1) green plastic bag containing:	No	In the Hari Raya bag.	P28
40.	A2A	One (1) newspaper wrapper containing:	No	In the Hari Raya bag.	P28, P29
41.	A2A1	One (1) ziploc bag containing granular/powdery substance (21.31g diamorphine).	No	In the Hari Raya bag.	P28
42.	B2	One (1) cling wrap containing:	No	In the Hari Raya bag.	P31, P32
43.	B2A	One (1) yellow bundle containing:	No	In the Hari Raya bag.	P32, P33
44.	B2A1	One (1) white plastic containing crystalline substance (methamphetamine).	No	In the Hari Raya bag.	P33
45.	B2B	One (1) yellow bundle containing:	No	In the Hari Raya bag.	P32, P33
46.	B2B1	One (1) white plastic containing crystalline substance (methamphetamine).	No	In the Hari Raya bag.	P33

