

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

[2022] SGHC 27

Criminal Case No 2 of 2020

Between

Public Prosecutor

And

- (1) Kishor Kumar a/l Raguan
- (2) Pung Ah Kiang

GROUND OF DECISION

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

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Public Prosecutor
v
Kishor Kumar a/l Raguan and another

[2022] SGHC 27

General Division of the High Court — Criminal Case No 2 of 2020

Audrey Lim J

3, 5, 10–13, 16 November 2020; 20 January, 1 July, 13–17, 20–24 September,
26–29 October, 20 December 2021; 28 January 2022

4 February 2022

Audrey Lim J:

Introduction

1 On 29 July 2016 at about 8.15pm, the first accused (“Kishor”), a Malaysian, delivered a grey plastic bag (“Grey Bag”) containing four black bundles (“Black Bundles”) to the second accused (“Pung”) near Pung’s home at Le Crescendo Condominium (“the Condo”). The Black Bundles were found to contain not less than 903.50g of granular/powdery substance, analysed and found to contain not less than 36.05g of diamorphine (“the Drugs”).

2 Kishor was charged with trafficking by delivering to Pung the Drugs without authorisation, an offence under s 5(1)(a) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). Pung was charged with having possession of the Drugs for the purposes of trafficking and

without authorisation, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the MDA.

3 Kishor claimed that he believed the Black Bundles contained “stones” but he did not know they were illegal items. Pung claimed that he did not know what the Grey Bag contained and that it was in his possession for temporary safekeeping. I found that the Prosecution had proved beyond a reasonable doubt the charges against Kishor and Pung respectively, and I convicted them on their respective charges.

4 Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the prescribed punishment is death. Pursuant to s 33B(1)(a) of the MDA, the court has a discretion not to impose the death penalty if the requirements set out in s 33B(2) are satisfied. I found that Kishor’s and Pung’s roles were limited to that of a courier. As the Prosecution did not issue Kishor with a certificate of substantive assistance under s 33B(2)(b) of the MDA, I passed the mandatory death sentence on him. I imposed the alternative sentence of life imprisonment on Pung as the Prosecution had issued Pung with a certificate of substantive assistance.

Admissibility of Pung’s statements

5 I begin by dealing with seven of ten statements recorded from Pung which he claimed were made involuntarily or contained inaccuracies, namely:

- (a) a contemporaneous statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) on 29 July 2016 by SSI Chin Chee Hua (“Chin”) (“1st Statement”);

(b) two cautioned statements recorded under s 23 of the CPC by Investigating Officer Yip Lai Peng (“IO Yip”) on 30 July 2016 at about 8.57pm (“2nd Statement”) and 9.38pm (“3rd Statement”);

(c) four investigative statements recorded under s 22 of the CPC by IO Yip on 31 July 2016 (“4th Statement”), 1 August 2016 (“5th Statement”), 2 August 2016 (“6th Statement”) and 4 August 2016 (“7th Statement”).

Prosecution’s case

6 It was undisputed that on 29 July 2016, after Pung received the Grey Bag from Kishor and was walking back to the Condo, he was arrested by officers from the Central Narcotics Bureau (“CNB”), which included Chin, SI Jason Yuen (“Jason”), SSgt Marcus Ee (“Marcus”) and SI Rodney Tan (“Rodney”). I set out their testimony here in some detail, as Pung disputed how certain events transpired and they became relevant to the issues in the main trial.

7 Chin, Marcus and Rodney attested that Pung was arrested after the CNB officers identified themselves. Marcus then seized the Grey Bag from Pung. Chin, Marcus, Jason and Rodney escorted Pung to the fitness corner in the Condo compound. Chin and Marcus remained with Pung whilst Rodney and Jason stood at a distance.¹

8 Chin attested that Marcus held up the Grey Bag without opening it and it was undisputed that Chin asked Pung “What is this?” and Pung replied “bai

¹ Agreed Bundle (“AB”) 431 (Chin’s Statement at [8]–[10]); AB 420 (Marcus’s Statement at [8]–[9]); AB 451 (Rodney’s Statement at [8]–[9]); AB 458 (Jason’s Statement at [9]); 5/11/20 Notes of Evidence (“NE”) 15–16, 47, 101; 11/11/20 NE 4, 20, 54; 12/11/20 NE 54–56.

fen” in Mandarin. It was undisputed that “bai fen” literally means “white powder” but it is also lingo for heroin (or diamorphine). It was also not disputed that Chin then asked Pung “how many” whereupon Pung answered four bundles or four round things. Chin attested that he then asked Pung who they belonged to and Pung said “mine” in Mandarin.² Marcus similarly attested that he held up the Grey Bag to show Pung without opening it, and on Chin’s questioning, Pung replied that it contained four bundles of “bai fen” and they belonged to him.³ When Chin asked Pung if there were any more things at his home, Pung said there were one or two packets of “bai fen”. Marcus similarly attested that Pung had mentioned that there was “bai fen” in his home.⁴

9 Chin, Jason, Rodney and Marcus then escorted Pung to his home at the Condo, with Marcus holding on to the Grey Bag. Chin asked Pung where the things were and Pung led them to the toilet in the bedroom and gestured with his chin towards a pail (“the Pail”) under the sink and said “there”. Chin asked Pung what it was and he replied “peh hoon”. Chin then asked Pung who it belonged to and Pung said “mine”.⁵ Marcus and Jason similarly attested that Pung had at the toilet gestured with his chin towards the Pail and said that there was “peh hoon”.⁶ Another officer, SSSgt Ben Cheng (“Ben”) was in the bedroom at the material time and attested that when Chin asked Pung what was

² AB 431–432 (Chin’s Statement at [11]); 5/11/20 NE 16–17, 37; 11/11/20 NE 59; 12/11/20 NE 59–60.

³ AB 420 (Marcus’s Statement at [10]); 5/11/20 NE 99–103.

⁴ AB 420 (Marcus’s Statement at [11]); AB 432 (Chin’s Statement at [12]); 5/11/20 NE 18.

⁵ AB 432 (Chin’s Statement at [13]); 5/11/20 NE 18, 44.

⁶ AB 420–421 (Marcus’s Statement at [12]); AB 458 (Jason’s Statement at [10]).

in the Pail and who it belonged to, Pung replied it contained “peh hoon” and that it belonged to him.⁷

10 Marcus retrieved the Pail and placed it on the bedroom floor. In Pung’s presence, he retrieved from the Pail a plastic bag which contained a yellow plastic bag which contained a “Kucinta” bag (“Kucinta Bag”). He slit the Kucinta Bag and saw it contained loose granular substances (Exhibit A1A1A1) which were subsequently analysed by the Health Sciences Authority (“HSA”) and found to contain diamorphine. Marcus then placed all the exhibits (including the Grey Bag) into tamper-proof bags.⁸

11 Jason asked Pung whether there were any more drugs in Pung’s home and Pung said no. Marcus and Jason then searched the bedroom and Jason recovered a “Koi Kei” bag (“KK Bag”).⁹ Marcus took out the contents from the KK Bag, which contained a “Purina” bag (“Purina Bag”), a pack of chocolate-flavoured wafer cubes and a pack of milk-flavoured wafer cubes (collectively the “Wafer Bags”). Marcus opened the Wafer Bags and found a packet each of granular substance among the wafer cubes. The two packets (Exhibits B1B1 and B1C1) were subsequently analysed by the HSA and found to contain diamorphine. Marcus made a slit on the Purina Bag and retrieved four packets of granular substances among some dog food. The four packets were subsequently analysed by the HSA and found to contain diamorphine (Exhibits B1A1A2 to B1A1A5).¹⁰ The exhibits were then placed in tamper-proof bags.

⁷ AB 415 (Ben’s Statement at [10]).

⁸ AB 433 (Chin’s Statement at [14]); AB 421 (Marcus’s Statement at [13]); AB 319; AB 458 (Jason’s Statement at [11]); 5/11/20 NE 21, 106.

⁹ AB 433 (Chin’s Statement at [15]); AB 422 (Marcus’s Statement at [16]); AB 459 (Jason’s Statement at [12]).

¹⁰ AB 320–329; 5/11/20 NE 26–29.

Pung told Chin that he did not know what they were. Marcus then handed custody of all the exhibits seized thus far to Jason who handed them to Chin.¹¹

12 Chin then recorded the 1st Statement from Pung in the bedroom.¹² Pung chose to speak in Mandarin. Chin wrote down the questions he posed and Pung’s answers, and he corrected errors along the way. He then read the statement to Pung and asked if he wished to make any amendments and Pung said he did not. Pung then signed on the statement.

13 Thereafter, Pung was escorted to the CNB headquarters (“CNB HQ”) and was brought to the Exhibit Management Room with Kishor where the drug exhibits seized were weighed in their presence.¹³

14 IO Yip then recorded the 2nd to 7th Statements with Mr Ee (“Ee”) as the interpreter. Pung said he wanted to speak in Mandarin, he had no objections to Ee as the interpreter, the statements were read back to Pung in Mandarin after they were recorded, Pung was invited to make amendments, any amendments made were read back to Pung, and Pung then signed on the statements.

Pung’s case

15 Pung’s testimony was as follows.

16 As Pung was walking towards the compound of the Condo, he was arrested by two men and two women. He asked a female officer (who he

¹¹ AB 433–434 (Chin’s Statement at [16]–[18]); AB 421–422 (Marcus’s Statement at [15]–[17]); AB 459 (Jason’s Statement at [14]).

¹² AB 434 (Chin’s Statement at [19]–[20]).

¹³ AB 560 (Yip’s Statement at [21]).

identified as SSgt Rochelle Chia (“Rochelle”)) why he was being arrested, and she replied that he was “drug trafficking” and “in possession of drugs”.¹⁴

17 Thereafter, four CNB officers brought him to the fitness corner. Chin and another officer (who had a tattoo and looked like Jason but was not Marcus) were standing near him. Chin walked away for a while to use his handphone, and Pung asked the tattooed officer why he had been arrested whereupon the officer said that he was drug trafficking and was holding on to “bai fen”. The officer also told him “in a fierce tone” that he must co-operate with the CNB, and it was then that Pung realised the Grey Bag had landed him into trouble.¹⁵

18 Subsequently, Chin returned to where they were. The tattooed officer untied the Grey Bag, placed it in front of Pung and asked Pung to count how many “round things” were inside, whereupon Pung said there were four. The tattooed officer then tied up the Grey Bag and handed it to Chin. Chin then held it up and asked Pung what was inside. Pung replied “bai fen” because the tattooed officer had earlier told him that the Grey Bag contained “bai fen”. Chin asked how many “round things” were in the Grey Bag and who they belonged to and Pung replied “four round things” and “not mine”. Chin then asked if there were “any more things in [Pung’s] house” and Pung said “one packet”.¹⁶

19 Pung then brought the CNB officers to the bedroom toilet at his home and gestured with his chin to inform Chin “over there”. Then Chin brought Pung to the bedroom. A CNB officer asked Pung loudly whether there were any more drugs and Pung replied no. Then the tattooed officer said loudly to Pung that “If

¹⁴ 11/11/20 NE 35–36; 12/11/20 NE 55.

¹⁵ 12/11/20 NE 55–59.

¹⁶ 12/11/20 NE 59–60, 108; 13/11/20 NE 3.

you don't say, then I will search every corner of your house". Rochelle and another female officer searched the bedroom and Rochelle retrieved the KK Bag.¹⁷ The officers then placed the seized exhibits, which included the Grey Bag, Kucinta Bag and Purina Bag, on the bedroom floor. When Chin pointed to the items and asked Pung what they were, Pung said that he did not know.¹⁸

20 Chin then told Pung that he was going to record a statement from him, that the officers had opened the various exhibits and allowed Pung to see the contents therein, and that the contents were "bai fen". Chin said that Pung should co-operate with them so that they could help him with his case.¹⁹ The 1st Statement was then recorded and contained 30 questions (Q1 to Q30) and answers (A1 to A30).

21 Before the 2nd Statement was recorded, Pung informed IO Yip that the CNB officers had previously told him to co-operate so that they could assist him, and IO Yip confirmed that that was the correct procedure. Pung then asked IO Yip whether he had to say "bai fen" again when she recorded his statement whereupon IO Yip said "Yes, must be the same".²⁰ The 2nd Statement was then recorded in which Pung said as follows:

I am merely a safekeeper of the drugs. I did not traffic in the said drugs. I do not have any clients and I was forced to take possession of the said drugs. One Tan Eng Chiang was the one who force me to take the drugs. He also promised me that someone will take delivery of the drugs in 2 days time. And I

¹⁷ 12/11/20 NE 61–65.

¹⁸ 12/11/20 NE 65–66.

¹⁹ 12/11/20 NE 66–69.

²⁰ 12/11/20 NE 73.

was obliged to do so. I was helping a relative as Tan Eng Chiang is the brother of my wife.

22 Pung informed IO Yip that Tan Eng Chiang (“TEC”) had told him that the Grey Bag contained “things”. He asked IO Yip for help and IO Yip said that she could help him if he said “du pin” (or illegal drugs in Mandarin) in the statement. Pung did not say “drugs”, apart from in the second sentence, but had said “dong xi” (Mandarin for “things”) but IO Yip had recorded it as “drugs”.²¹

23 Next, the 3rd Statement recorded by IO Yip was as follows:

The drugs in the house was given to me about 3 days ago. Tan Eng Chiang had asked a Chinese guy to deliver the drugs to me. The Chinese guy drives a Malaysia car. Tan Eng Chiang told me to safekeep the drugs with me first and he would get someone to take it from me 2 days later. I was forced to take possession of the drugs. He insisted that I must safekeep these drugs for him.

24 Pung had said “dong xi” in the 3rd Statement wherever the word “drugs” appeared. He agreed to the word “drugs” being used because IO Yip had already told him (at the recording of the 2nd Statement) to say “du pin” so that she could help him in his case, and hence he used the word “du pin” in his 3rd Statement.²²

25 Next, Pung claimed that certain portions of the 4th to 7th Statements were inaccurately recorded. Before recording each of those statements, IO Yip promised to help him if he co-operated by saying that the items found on him were “bai fen”, and Pung believed her.²³

²¹ 12/11/20 NE 74, 77–79.

²² 12/11/20 NE 80–82.

²³ 13/11/20 NE 40–41.

Decision

26 The Prosecution submitted that no threat, inducement or promise (“TIP”) was made to Pung in relation to the 1st to 7th Statements. In *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [39], the Court of Appeal reaffirmed the two-stage test for determining the voluntariness of a statement, namely:

- (a) whether objectively there was a TIP made to the accused, and having reference to the charge against him; and
- (b) whether subjectively, the TIP 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.

27 I was satisfied that the Prosecution had proved beyond a reasonable doubt that the 1st to 7th Statements were voluntarily made. I also accepted that they were accurately recorded and rejected Pung’s assertions to the contrary. Before examining the statements, I deal with various assertions Pung made as to what occurred from his arrest until before the 1st Statement was recorded.

At time of arrest

28 First, Pung claimed that he had asked Rochelle the reason for his arrest, and she replied that he was drug trafficking and in possession of drugs. This was to support his claim that that was how he came to know the Grey Bag contained drugs.²⁴ I rejected that the incident occurred. Chin and Ben stated that no female CNB officers were involved in arresting Pung, and Chin further stated that no

²⁴ D2’s Written Submissions for Ancillary Hearing (dated 30 November 2020) (“D2AH”) at [20], [47] and [53].

such conversation took place between a female officer and Pung.²⁵ Pertinently, Rochelle and another female officer SSSgt Lim Siok Ping (“Lim”) attested that they were not involved in Pung’s arrest and did not speak to Pung.²⁶ It was also not disputed that the four CNB officers who brought Pung to the fitness corner after his arrest were Chin, Marcus, Jason and Rodney.

29 Second, Pung claimed that at the fitness corner, a tattooed officer (*ie*, Jason) had told him that he was drug trafficking and he had “bai fen”, and further told him in a fierce tone that he must co-operate with the CNB officers (see [17] above).²⁷ Again, Pung attempted to show that was how he came to know the Grey Bag contained “bai fen”. Likewise, I rejected that this incident occurred. I accepted Jason’s testimony that he was not standing beside Pung but stood at a distance with Rodney, which was corroborated by Chin, Marcus and Rodney (see [7] above). In any event, Pung did not claim that incident had caused him to give any statement involuntarily – he claimed the words “bai fen” appeared in his answers in the 1st Statement only because Chin had told him (prior to recording that statement) to co-operate and say “bai fen”.²⁸

30 Third, Pung claimed that the tattooed officer (Jason) had untied the Grey Bag and asked him to count the number of “round things” inside, and Chin then held up the Grey Bag and asked him what it was and how many “round things” were in it, whereupon Pung replied “bai fen” and “four round things”. Pung claimed he said “bai fen” as Jason had told him the contents were “bai fen”.

²⁵ 5/11/20 NE 15, 40, 43; 10/11/20 NE 37–38.

²⁶ 11/11/20 NE 24, 26, 35–36.

²⁷ D2AH at [25]–[31].

²⁸ 13/11/20 NE 21–22.

31 Again, I rejected Pung’s story above. I accepted Marcus’s evidence that he had all along held on to the Grey Bag after he seized it from Pung on Pung’s arrest and when escorting Pung into the Condo compound; that he raised the Grey Bag (but without opening it) to show Pung whilst Chin asked Pung what it contained; that he did not know what was in it until Pung had answered Chin; and that he then looked inside the bag. Chin likewise stated that Marcus held the Grey Bag and did not open it when Pung was asked what it contained and how many bundles there were.²⁹ Furthermore, I accepted that Jason was not standing beside Pung but further away. Pung was also inconsistent as to who had opened the Grey Bag to show him the contents. Under cross-examination, Pung prevaricated on whether it was Marcus or Jason who had told him to co-operate with the CNB officers, and whether it was before or after Marcus or Jason had opened the Grey Bag.³⁰ I also rejected Pung’s explanation that he said the Grey Bag contained “bai fen” just because Jason had earlier told him so.

32 Fourth, Pung claimed that when Chin asked him who the Grey Bag and contents belonged to, he replied “not mine”. Whilst Chin claimed that Pung had said “mine”, I accepted that there was some doubt as to whether this was the case given that in court, Marcus agreed that Pung had answered “not mine”.³¹ Be that as it may, whether Pung said “mine” or “not mine” was not relied on by him to show any TIP pertaining to the 1st to 7th Statements.

33 Fifth, Pung claimed that when Chin asked him whether there were any more things at his home, Pung replied “one packet” but he did not say that it was “bai fen”. I rejected Pung’s evidence in this regard. I preferred Chin’s

²⁹ 5/11/20 NE 15, 17, 51, 53, 99–103.

³⁰ 12/11/20 NE 104–107.

³¹ 5/11/20 NE 53; 10/11/20 NE 12.

testimony that Pung had replied that there were one or two packets of “bai fen”. Marcus similarly attested that Pung had informed Chin that there was “bai fen” in his home. Likewise, I rejected Pung’s claim that he never told the CNB officers that the Pail contained drugs or told them that the drugs belonged to him as Marcus, Jason and Ben had attested otherwise (see [9] above). There was no reason for them to lie. If Pung had not led them to the toilet and gestured to the Pail, the CNB officers would not have known (prior to searching Pung’s home) that the Pail contained the Kucinta Bag which contained diamorphine.

34 Sixth, Pung claimed that a CNB officer asked him very loudly whether there were any more drugs and that Jason said that if Pung would not talk, they would ransack his home. Again, I accepted Chin, Marcus and Jason’s testimony that this did not happen. In fact, Mr Wong, Pung’s counsel in the ancillary hearing (“AH”), had initially put it to Chin, Marcus and Jason that it was Marcus who told Pung that the officers would ransack his home.³² In any event, Pung did not rely on this to show any TIP pertaining to the 1st to 7th Statements.

35 Seventh, I rejected Pung’s claim that Rochelle and another female officer then searched the bedroom and Rochelle retrieved the KK Bag. Rochelle and Lim attested that they did not enter the bedroom nor perform a search of the premises.³³ Jason and Marcus attested that they did the search and Jason recovered the KK Bag.

36 In the round, there was no evidence to suggest that Pung’s statements, particularly the portions incriminating him in the offence, were influenced by

³² 5/11/20 NE 71–72; 10/11/20 NE 21; 11/11/20 NE 13.

³³ 11/11/20 NE 28–29, 36.

any TIP from the CNB officers' conduct during the arrest up to the time his home was searched and further drugs found.

1st Statement

37 Pung claimed that before recording the 1st Statement, Chin told him to co-operate with them by saying “bai fen” so that they could help his case (“Chin’s TIP”). Hence, “bai fen” was mentioned in that statement and he signed it although it was inaccurate. Pung clarified that Chin’s TIP *was the only inducement* that led him to say “bai fen” and influence his answers to the 1st Statement.³⁴ Pung claimed that: (a) he did not mention in A4 that one Arum had told him to meet an Indian guy to collect “bai fen”, contrary to what was recorded; (b) “bai fen” appeared in his answers because Chin had told him to co-operate and say “bai fen”; and (c) he did not even know what “bai fen” was at that time and thought it was merely white-coloured powder.³⁵

38 I disbelieved that Chin had provided any TIP which caused Pung to accept the statement as recorded or that it was inaccurately recorded. Pung’s explanation was riddled with inconsistencies and was somewhat illogical.

39 First, there was no elaboration as to how Chin would help Pung³⁶ (even if Chin had said he would do so), hence it was unlikely that Pung would have simply agreed to anything that was recorded in the statement based on some vague promise or inducement. Indeed, Pung claimed that when Chin read the statement back to him, he *did not listen and did not know what was written in*

³⁴ 13/11/20 NE 21–22.

³⁵ 12/11/20 NE 69–70; 13/11/20 NE 46–48.

³⁶ 13/11/20 NE 30.

it,³⁷ which claim only arose in cross-examination. This claim was inconsistent with his earlier version that he understood what Chin had read to him before he signed the statement, and was unbelievable. By his account, he knew by then that the Grey Bag had landed him into trouble.

40 Second, Pung claimed that because of Chin's TIP, he told Chin that all the drugs seized were "bai fen". But this was contradicted by A26 of the 1st Statement where Pung had answered "I don't know" when Chin asked what the Purina Bag contained. Pung agreed that A26 was his answer to Chin at the material time. He then claimed that he could not recall how Chin had posed the question to him, which I disbelieved as Q26 was simple and straightforward.³⁸ Moreover, Pung's claim that he only said in A4 "8pm okay or not?" in answer to Q4 ("What was the call [from Arum] about?") and did not say "Arum Boy told me ... to collect 'bai fen' ..." was not put to Chin in cross-examination.³⁹ In fact, Mr Wong had put to Chin that he did not even *ask* Q9 and Q10 in the recording of the 1st Statement,⁴⁰ but this did not come out in Pung's evidence.

41 Third, I disbelieved that Pung did not know what "bai fen" or "peh hoon" was when the 1st Statement was recorded and thought it was merely white-coloured powder. His evidence was inherently inconsistent as he admitted that during his arrest he already knew that "bai fen" or "peh hoon" was a type of illegal drug. He then prevaricated and claimed that he did not know that "bai fen" or "peh hoon" could be an illegal drug and thought that it referred to white-

³⁷ 13/11/20 NE 25, 28.

³⁸ 13/11/20 NE 22–26.

³⁹ 13/11/20 NE 29.

⁴⁰ 5/11/20 NE 81–82.

coloured powder.⁴¹ That Pung thought “bai fen” referred to something innocuous when the 1st Statement was recorded was also internally inconsistent with his version of events at the time of arrest. According to Pung, when he was arrested, the tattooed officer told him he was drug trafficking and holding on to “bai fen” (see [17] above).⁴² On this version (which I had disbelieved), Pung must have known at his arrest that “bai fen” was a type of illegal drug. His attempt to feign ignorance of what he thought “bai fen” to be at the time of arrest was to show (unsuccessfully) that he could not have said those words on his own volition in the 1st Statement (or any statement), especially when Chin asked about the contents of the Black Bundles, Kucinta Bag and Wafer Bags.

42 In the round I was satisfied that the 1st Statement was voluntarily made and that no TIP was provided to Pung before or during its recording, let alone that any such TIP would have caused Pung to think that by making the statement he would gain some advantage or avoid some adverse consequences.

2nd and 3rd Statements

43 I was also satisfied that there was no TIP by IO Yip prior to and during the recording of the 2nd and 3rd Statements and that their contents were provided by Pung, contrary to Pung’s claims otherwise.

44 First, Pung claimed that when he informed IO Yip that the CNB officers had told him to co-operate so that they could assist him, he then asked IO Yip whether this was the correct procedure and she affirmed that was so and further told him to say “bai fen”. Pung claimed that Ee was present during his conversation with IO Yip, which was before the start of recording the 2nd

⁴¹ 12/11/20 NE 76–77, 109; 13/11/20 NE 47; 16/11/20 NE 22–23.

⁴² 12/11/20 NE 57–58.

Statement.⁴³ I accepted IO Yip's evidence that no such conversation took place. Ee likewise testified that there was no such conversation, that he did not hear Pung complain to IO Yip, and that IO Yip did not make any TIP to Pung during the recording of any of the statements.⁴⁴ I found no reason to disbelieve Ee.

45 Next, I rejected Pung's claim that he did not say "drugs" or its equivalent in Mandarin in the 2nd Statement, except in the second sentence, but had said "dong xi" but IO Yip changed it to "drugs". I also rejected Pung's claim that IO Yip said that she could help Pung only if he said "du pin" in his statement. I accepted IO Yip's evidence that the 2nd Statement was a record of what Pung said. This was corroborated by Ee who attested that it was Pung who said "du pin" in the 2nd Statement.⁴⁵

46 In contrast, Pung's evidence was inherently inconsistent and his conduct betrayed his claims of TIP. He claimed he did not utter the first sentence in the 2nd Statement (*ie*, "I am merely a safekeeper of the drugs.") but later claimed that he did except that he said "things" (or in Mandarin, "dong xi").⁴⁶ He also claimed that despite IO Yip telling him to say "drugs" or "du pin" that he *continued to say* "dong xi" where the word "drugs" is found (save for the second sentence), but then claimed in cross-examination that because IO Yip told him to say "du pin" that *he switched to using* the words "du pin".⁴⁷ Pung further claimed that despite IO Yip telling him to say "du pin" or "bai fen" so that she could help him (which I disbelieved), he continued to say "dong xi" when

⁴³ 11/11/20 NE 77–79; 13/11/20 NE 32.

⁴⁴ 11/11/20 NE 43; 12/11/20 NE 22, 37.

⁴⁵ 11/11/20 NE 82; 12/11/20 NE 26, 38.

⁴⁶ 12/11/20 NE 78; 13/11/20 NE 37.

⁴⁷ 12/11/20 NE 77–79; 13/11/20 NE 36.

narrating his version of events in the 2nd Statement. If so, he could not have been induced by IO Yip, as he did not comply with her instructions to him.

47 Finally, I rejected Pung’s claim that he had said “dong xi” in the 3rd Statement but IO Yip told him to say “du pin” and hence he said “du pin”. Despite claiming that he started saying “du pin” in the 3rd Statement, he claimed somewhat contradictorily that he continued to say “dong xi” and that he did not use the word for “drugs” in Mandarin.⁴⁸ Again, despite claiming to have promised IO Yip that he would say “du pin” so that IO Yip would help him, Pung nevertheless claimed to continue saying “dong xi” throughout the statement. I disbelieved Pung’s account as such. I preferred IO Yip’s account that Pung had not made any complaints during the recording of the 3rd Statement, that she did not make any TIP to Pung and that it was Pung who had provided the contents of the statement. This was corroborated by Ee who stated that the words “du pin” were Pung’s words.⁴⁹

48 In the round, I found that Pung’s inability to put up a coherent story to explain why his statements were inaccurately recorded or how the word “drugs” came to be therein was because, contrary to his claim, no TIP was made to Pung.

4th to 7th Statements

49 Pung claimed that before the start of recording of each of the 4th to 7th Statements, IO Yip had promised to help him if he co-operated by saying the items found on him were “bai fen” and Pung believed her.

⁴⁸ 12/11/20 NE 80–82; 13/11/20 NE 39.

⁴⁹ 12/11/20 NE 28–29.

50 Again, I was satisfied that no TIP was made and that Pung had given the statements voluntarily. I accepted IO Yip's testimony that she spoke to Pung in English, Pung replied in Mandarin and Ee provided the interpretation; that she did not make any TIP to Pung; and that the words "bai fen" and "hai ruo ying" were placed in inverted commas (such as in the 4th and 5th Statements) because Pung had volunteered and uttered those words. Ee had also attested that the contents of the statements were provided by Pung.⁵⁰

51 In relation to the 4th Statement, Pung claimed that he did not say "bai fen" in paragraphs 9 and 10 but had said "dong xi". In particular:⁵¹

(a) Pung told IO Yip that TEC wanted him to take "dong xi" to safekeep at his home; that TEC had been sending his men to deliver "dong xi" to safekeep; and that he had no choice but to collect the "dong xi". IO Yip wrote "bai fen" as she told Pung to say "bai fen" so that the judge would believe he was an honest person and give him a lighter sentence. Hence, he did not object to the use of "bai fen" as he believed that IO Yip would help him in his case.

(b) Pung did not inform IO Yip (as stated in paragraph 9) that he understood "bai fen" was illegal and that it was called "hai ruo ying" (or heroin) in Mandarin or that it was used for smoking. He told IO Yip that he did not know that "bai fen" was illegal and that he thought "bai fen" was "white-coloured powder". It was IO Yip who said "hai ruo ying", which Ee then conveyed to Pung, and Pung then answered IO Yip that he now knew that "bai fen" was "hai ruo ying".

⁵⁰ 11/11/20 NE 49, 51, 54–59, 93–94, 103, 107; 12/11/20 NE 29–30.

⁵¹ 12/11/20 NE 84–85, 89–90.

52 I disbelieved Pung’s assertions and found them to be unconvincing.

(a) Ee had attested that “bai fen” and “hai ruo ying” were said by Pung, and that IO Yip did not lead Pung say “bai fen”.⁵² I saw no reason to disbelieve Ee.

(b) Next, Mr Wong had put to Ee that originally, Pung had said “dong xi” where “bai fen” was first mentioned in paragraph 9, but thereafter *Pung* decided to say “bai fen” after IO Yip told him the “dong xi” was “bai fen”. But this contradicted Pung’s own testimony that he continued to say “dong xi” wherever “bai fen” appeared, and it was *IO Yip* who changed it to “bai fen”.⁵³

(c) Indeed, Pung’s explanation that he allowed IO Yip to write “bai fen” because he believed her explanation that the judge would believe he was an honest person and give him a lighter sentence, was contradicted by his conduct as he claimed to nevertheless continue saying “dong xi” instead of “bai fen”.⁵⁴

(d) Finally, Pung’s claim that he did not inform IO Yip in paragraph 9 of the 4th Statement that he understood “bai fen” was illegal, and instead had told IO Yip that he thought “bai fen” was white-coloured powder because he did not then know what “bai fen” was, contradicted his earlier claim that even *at the time of his arrest*, he already knew “bai fen” was an illegal drug (see [41] above).

⁵² 12/11/20 NE 29–30, 40.

⁵³ 12/11/20 NE 40–41, 43, 46, 85, 88–89.

⁵⁴ 12/11/20 NE 85–86, 89.

53 As for the 5th Statement, Pung claimed as follows:⁵⁵

(a) He did not mention at paragraph 24 that as he was walking to the Condo, he had opened the Grey Bag to see its contents, or that he saw four black round things which he suspected were “bai fen” because he had seen the same packaging two years ago (“Para 24 Sentences”). Instead, he had told IO Yip that he did not open the Grey Bag and did not suspect that it contained drugs. However, IO Yip insisted that he should say that he opened the Grey Bag and suspected it was “du pin” or “bai fen”, as otherwise the judge would not believe what he said. She also told him to say that he had seen the same packaging before, but Pung insisted that he did not know how to say this whereupon IO Yip became angry and said that she could not help him if he claimed not to know about the contents of the Grey Bag. Pung then told IO Yip to write whatever she thought would benefit him and he would just sign on it.

(b) Paragraph 25 was completely made up by IO Yip.

(c) He did not, in paragraph 27, state that when he opened the Kucinta Bag, he suspected it was “bai fen” or that he had surrendered the Kucinta Bag to the CNB officers because he suspected that it contained “bai fen”. It was IO Yip who told Pung that the contents of the Kucinta Bag did not look like cat food and thus he must have suspected that it was “bai fen”, whereupon Pung agreed.

(d) Pung signed the statement despite knowing that “bai fen” appeared in numerous places because IO Yip told him that it would help his case and he believed her.

⁵⁵ 12/11/20 NE 90–94; 16/11/20 NE 7.

54 Again, I rejected Pung's assertions above, or that there was any TIP from IO Yip let alone that Pung had relied on the TIP. I reiterate my findings at [50] above, and accepted IO Yip's testimony that Pung's assertions about what had occurred during the recording of the 5th Statement were untrue. Ee had also stated that the words "bai fen" in paragraphs 24, 25 and 27 emanated from Pung,⁵⁶ and which I had no reason to disbelieve. I found Pung's explanations as to how various parts of the 5th Statement came to be were unconvincing or contradictory, and showed his assertions of TIP or of IO Yip having fabricated parts of the statement to be unbelievable.

55 Pung's challenge of the accuracy of paragraph 24 of the 5th Statement, an attempt to show that he never opened the Grey Bag (prior to his arrest), was contradicted by what he stated in the first sentence of paragraph 26 that he had opened it to see its contents and then tied it up and walked back to the Condo. IO Yip was not challenged in relation to paragraph 26 and Pung did not attest in his examination-in-chief that any part of it was incorrectly recorded. When pointed to this inconsistency, he then claimed that he did not say the sentence.⁵⁷

56 Indeed, Pung claimed that he had only stated (in paragraph 24) that he had seen the same packaging two years ago (namely the four black round things), because IO Yip became angry and he let her write whatever was beneficial to him. But Pung's assertion that such portions of paragraph 24 were made up could not be true, in light of what he said in paragraph 38 of the 7th Statement which paragraph he did not contest.⁵⁸ At paragraph 38, he stated that he wanted to amend paragraph 24 to say that it was actually four years ago that

⁵⁶ 12/11/20 NE 30.

⁵⁷ 16/11/20 NE 4.

⁵⁸ 16/11/20 NE 5.

he saw TEC with TEC's friend, Beng Hock, packing something at Beng Hock's home at Circuit Road, and that something was "black round things" which were the same as the Black Bundles he had collected from Kishor on 29 July 2016. Pung would not have mentioned the said event at paragraph 38 if, as he claimed, the same event mentioned in paragraph 24 had been fabricated by IO Yip. Additionally, when Pung stated at paragraph 38 that he wished to amend paragraph 24, he did not mention that the Para 24 Sentences were untrue.

57 Next, Pung's explanation as to how paragraph 25 of the 5th Statement came about was inconsistent. He claimed that it was IO Yip who made up the story in paragraph 25. Pung then said that IO Yip had suggested "Circuit Road" as the place where Pung had met TEC and then Pung came up with the name "Beng Hock" (all as reflected in paragraph 25). But in Pung's Case for the Defence and in Mr Wong's cross-examination of IO Yip (before Pung testified), Pung's case was that he had first mentioned "Beng Hock" and then IO Yip asked him to name the place where Beng Hock lived whereupon IO Yip forced Pung to say Circuit Road. In fact, Mr Wong had also put it to IO Yip that Pung had said certain parts of paragraph 25 – this was contrary to Pung's claim that the paragraph was completely fabricated by IO Yip.⁵⁹

58 Turning to the 6th Statement, Pung claimed as follows.⁶⁰ In paragraph 31, he said "dong xi" and not "bai fen". He did not say several sentences in paragraph 31, including that he knew that what he saw in the Kucinta Bag was not cat food but suspected it could be something illegal or "bai fen". He did not

⁵⁹ 11/11/20 NE 94–96; 16/11/20 NE 6–9; D2's Defence Case (Amnd No 1) (dated 28 October 2020) at p 43.

⁶⁰ 12/11/20 NE 94–96.

said in paragraph 33 that he had ever seen TEC and Beng Hock smoke drugs. He signed on the statement because he believed that IO Yip would help him.

59 Again, I rejected Pung's assertions above and found that there was no TIP before or during the recording of the 6th Statement or that it was inaccurately recorded as Pung claimed. I reiterate my findings at [50] above. I also accepted Ee's testimony that it was Pung who said "bai fen" in paragraph 31 of the 6th Statement.⁶¹ Further, Pung's claim that he did not say in paragraph 33 that he had seen TEC and Beng Hock smoke drugs but nevertheless signed on the statement because he believed that IO Yip would help him, was unconvincing. It was unclear how stating that Pung had seen TEC and Beng Hock smoke drugs would help Pung's case, especially when he stated in the very same sentence that he had never consumed any illegal drugs before.

60 As for the 7th Statement, Pung denied saying: (a) that he did not confront TEC about his suspicion that the contents of the Kucinta Bag could be "bai fen" (in paragraph 47); and (b) that the things TEC instructed him to do involved "bai fen" and that it was illegal (in paragraph 49) ("Paras 47 and 49 Sentences").

61 Again, I rejected Pung's assertions. Pung initially claimed on two occasions that he was not challenging the voluntariness of the 7th Statement.⁶² If so, the words "bai fen" in the Paras 47 and 49 Sentences could not have been made involuntarily or emanated from IO Yip. It was only when the Prosecution pointed Pung to the Paras 47 and 49 Sentences in cross-examination that he claimed he did not utter those sentences. I found that having been confronted by the Paras 47 and 49 Sentences which were incriminating, Pung then denied

⁶¹ 12/11/20 NE 31.

⁶² 16/11/20 NE 5, 18–20.

them. The accuracy of the Paras 47 and 49 Sentences was also not put to IO Yip. Pung's claim that he did not say "bai fen" in those paragraphs is to be contrasted with what he had said in paragraph 46 of the same statement that he had opened the Kucinta Bag and saw that it was not cat food which confirmed his suspicion that what TEC wanted him to keep could be "bai fen", and which paragraph was not challenged by Pung.

Conclusion on the recording of the 1st to 7th Statements

62 In the round, I was satisfied that the Prosecution had proved beyond a reasonable doubt that the 1st to 7th Statements were voluntarily made and recorded what Pung had said. Pung could not maintain a consistent story about how portions of the statements came to be. Despite claiming that IO Yip told him to say "bai fen" or "du pin", Pung claimed that he continued to say "dong xi" in the 2nd to 7th Statements.⁶³ This was inconsistent with his account that he agreed to say "bai fen" or "du pin" because he believed this would help his case. I failed to understand how mentioning "bai fen" or "du pin" as opposed to "things" in his statements would assist Pung's case. On the contrary, they would incriminate him as he would essentially be admitting to knowing he was in possession of drugs. I thus allowed the 1st to 7th Statements to be admitted in the trial.

63 I deal here briefly with Mr Wong having put to Dr Charles Mak ("Dr Mak") that Pung had informed Dr Mak that the CNB officers had told him to admit to "bai fen" in his statements and to co-operate with them.⁶⁴ I found this to be made up to bolster Pung's claim of TIP. Dr Mak, who examined Pung on

⁶³ 13/11/20 NE 43.

⁶⁴ 12/11/20 NE 7–9.

three occasions in August 2016, had attested that no such thing occurred, and whose testimony I had no reason to disbelieve.

Prosecution’s case for the main trial

64 The Defence agreed that the evidence elicited at the AH would be admitted for the main trial without the need to recall witnesses to repeat the same.⁶⁵ I thus set out the rest of the Prosecution’s case here (where material) and as referred to in the Statement of Agreed Facts (“ASOF”).

65 It was not disputed that on 29 July 2016, Kishor rode his motorcycle to Singapore and brought the Grey Bag containing the Black Bundles (Exhibits 2A1, 2A2, 2A3 and 2A4) and delivered it to Pung in the vicinity of the Condo and that Pung was arrested with the Grey Bag.⁶⁶ Pung did not dispute that the Black Bundles were found to contain diamorphine, the subject matter of the charges. He also did not dispute that the Kucinta Bag, Purina Bag and Wafer Bags contained a total of seven packets of diamorphine (see [10] to [11] above).⁶⁷ Each of the Black Bundles was made up of a transparent plastic bag which contained the Drugs and the plastic bag was covered and wrapped with black sticky tape (“black tape”).

66 It was also undisputed that Kishor’s DNA was found on: (a) the sticky and non-sticky sides of the black tapes of Exhibit 2A1; (b) the exterior of the taped bundles and the non-sticky side of the black tapes of Exhibits 2A2 and

⁶⁵ 5/11/20 NE 14; 13/9/21 NE 3.

⁶⁶ ASOF at [7]–[11].

⁶⁷ ASOF at [13]–[15], [48]; 29/10/21 NE 43–44.

2A3; and (c) the exterior of the taped bundle, and the sticky and non-sticky sides of the black tapes of Exhibit 2A4.⁶⁸

67 Next, the following statements were recorded from Kishor:⁶⁹

- (a) a contemporaneous statement recorded under s 22 of the CPC on 29 July 2016 by Sgt Dadly bin Osman (“Dadly”) (“D1 1st Statement”);
- (b) a cautioned statement recorded under s 23 of the CPC on 30 July 2016 by SI Quah Yong Sen (“Quah”) (“D1 2nd Statement”);
- (c) four investigative statements recorded under s 22 of the CPC by IO Yip on 3 August 2016 (“D1 3rd Statement”), 6 August 2016 (“D1 4th Statement”), 7 August 2016 (“D1 5th Statement”) and 11 January 2017 (“D1 6th Statement”).

Kishor did not challenge the voluntariness of the statements, save that he claimed some parts were not accurately recorded. I will return to this later.

68 In addition to the 1st to 7th Statements, three further statements were recorded by IO Yip from Pung, under s 22 of the CPC, and which Pung did not challenge for involuntariness.⁷⁰

69 The Prosecution claimed that Kishor and Pung had actual possession of the Drugs and actual knowledge of the nature of the Drugs. It further relied on the presumption of knowledge under s 18(2) of the MDA which provides that any person who is proved or presumed to have had a controlled drug in his

⁶⁸ ASOF at [60]; AB 347–349; 16/9/21 NE 6–8 and 12.

⁶⁹ AB 533–535; AB 550–551; AB 622–627; AB 640–647; AB 648–666; AB 667–669.

⁷⁰ AB 670–674; Supplementary Agreed Bundle (“2AB”) 791–794; 2AB 795–798.

possession is presumed to have known the nature of that drug. Further, where Pung is found to have had actual knowledge of the nature of the Drugs, the Prosecution relied on the presumption under s 17(c) of the MDA that Pung is presumed to have had the Drugs in his possession for the purpose of trafficking.

70 Kishor knew he was delivering “kallu” to Pung and was told to collect some \$6,000 from Pung. A CNB officer had attested that “kallu” was the lingo for heroin. Kishor had partially unwrapped the black tapes on the Black Bundles as he suspected they could be drugs and saw something brown in colour and like small stones. He had also acted as a middleman for drug transactions and was no stranger to illegal drugs.⁷¹ As for Pung, he admitted in the 1st Statement that the Black Bundles contained “bai fen” and admitted that the Kucinta Bag, Purina Bag and Wafer Bags contained “bai fen”.⁷²

Kishor’s case

71 Kishor attested as follows. Around 29 June 2016, he was at a pub belonging to Chandru when Suresh asked him to deliver something to Singapore and for which he would be paid RM500. Suresh told Kishor that the item was “like a stone”. Kishor asked what “like a stone” meant, to which Suresh replied that the name of the item was “stone”. Kishor did not ask further, but he thought that “stone” was either shiny crystals or stones set on rings to be worn or precious stones (“decorative stones”). “Stone” could also be rocks or pebbles but as Kishor was then intoxicated, he did not think much about it.⁷³

⁷¹ AB 535 (D1 2nd Statement); AB 640–647 (D1 4th Statement at [17] and [26]–[27]); AB 652 – 653 (D1 5th Statement at [45]); AB 667–669 (D1 6th Statement); 14/9/21 NE 76.

⁷² AB 438–448 (1st Statement at A10, A18, A22); AB 583 (2nd Statement); AB 587 (3rd Statement).

⁷³ AB 640 (D1 4th Statement at [16]); 26/10/21 NE 3, 9–16.

72 On 30 June 2016, Suresh handed Kishor a plastic bag containing the Black Bundles. Kishor informed Suresh that he would deliver the items when he entered Singapore in the next two days to look for a job.⁷⁴ Although Kishor entered Singapore on 1, 2, 4 and 5 July 2016, he did not deliver the items.⁷⁵ Around 5 July 2016, Kishor met with a road accident and was hospitalised for a few days. After his discharge from the hospital, Suresh threatened to take back the Black Bundles if Kishor did not deliver them soon. The Immigration and Checkpoint Authorities' records showed Kishor had entered Singapore on numerous occasions from 10 to 29 July 2016 (the day of his arrest).

73 On 29 July 2016, Kishor told Suresh that he would deliver the stones. Whilst at home, he opened the plastic bag that Suresh had passed to him. He saw the Black Bundles and became suspicious as he had previously seen bundles and “ice” (an illegal drug) wrapped in that manner. Hence, he unravelled the black tape of all the Black Bundles because he suspected they contained “ice”, whereupon he saw brown coloured things inside which looked like what was in Exhibit 2A1A. He did not know what they were, and he called Suresh to ask him if he had been given “ice”. Suresh said “no” and said that it was “an important thing” which belonged to a Chinese man and told him to pass it to the Chinese man in Singapore. Kishor believed Suresh because Suresh had told him it was “stone”, which Kishor thought meant a decorative stone or shiny crystal. Kishor knew that “ice” was white in colour.⁷⁶

74 Kishor then wrapped the black tape back on the Black Bundles, transferred them to the Grey Bag and placed the Grey Bag in his motorcycle.

⁷⁴ AB 640–641 (D1 4th Statement at [17]–[18]); 23/9/21 NE 27; 26/10/21 NE 22.

⁷⁵ 26/10/21 NE 23; 2AB 770.

⁷⁶ AB 643–644 (D1 4th Statement at [26]–[27]); 23/9/21 NE 30–31; 26/10/21 NE 24–26.

When he was entering Singapore, he was checked by a customs officer who opened the Grey Bag, took out one of the Black Bundles and asked him what it was, whereupon Kishor said it was “a stone” or “an important thing”. The customs officer then placed the bundle back into the Grey Bag and let Kishor through. By this, Kishor thought that he was not carrying an illegal substance because the customs officer had checked it and let him through.⁷⁷

75 Kishor then called Suresh to ask him where to deliver the Black Bundles and subsequently proceeded to Circuit Road. He called Pung to say that he had arrived and, after that call, made another call to Suresh’s handphone and spoke to Chandru to confirm if Pung was the person he was to deliver the Black Bundles to.⁷⁸ Whilst talking to Chandru on the phone, Kishor met Pung. When Kishor handed the Grey Bag to Pung, he accidentally dropped his handphone and, as he picked it up, Pung handed him a white envelope (“White Envelope”). Kishor took the White Envelope but he did not know what it contained. As he was still on the phone with Chandru, the latter then told him that Pung would hand to him \$6,000 which he was to pass to Chandru when he returned to Malaysia. However, he did not know what the money was for. When Kishor passed the Grey Bag to Pung, he did not tell Pung what it contained. Kishor then returned to his motorcycle where he was arrested.⁷⁹

Pung’s case

76 Pung’s testimony was as follows. TEC was the brother of Pung’s wife (“Tan”). Since December 2014, TEC would inform Tan that his friends would deliver cat food as a gift for him as they helped TEC to collect debts. TEC asked

⁷⁷ 23/9/21 NE 32–33; 26/10/21 NE 32.

⁷⁸ AB 645–646 (D1 4th Statement at [30]); 26/10/21 NE 38–40.

⁷⁹ 23/9/21 NE 36–39; 26/10/21 NE 17–20, 43, 52–53.

Tan to collect the items and Pung agreed to do so. TEC would call Tan who would then inform Pung to meet the person (delivering the items) near the Condo, and sometimes TEC would use Arum's handphone to call Pung.⁸⁰

77 Since end-2014 until his arrest in 2016, TEC had been sending dog food, cat food, biscuits and Chinese medicine (collectively "the Items") to Pung through intermediaries. TEC would inform Tan which of the Items were for his friends or for Pung's family. Where the Items were for TEC's friends, Pung felt compelled and "forced" to take and store them temporarily at his home until TEC's friends came to collect them. If he did not agree to do so, TEC would complain to Tan and "pressurise" her. Tan would then "submit" to TEC and ask Pung to do TEC's bidding. Pung did not want his relationship with Tan to be strained as they quarrelled often regarding TEC. Hence, he agreed to help TEC safekeep items to maintain harmony in the home. Pung was also afraid of TEC because he had a very bad temper.⁸¹

78 About six months before Pung's arrest, TEC called Pung to say that it was inconvenient for him to schedule delivery and collection of goods and TEC introduced Arum to Pung for this purpose. TEC gave Pung a three-step instruction. First, when Arum called Pung, Pung would have to ask Arum "one or two". Second, if Arum said "one", Pung would prepare \$3,200 for Arum, and if Arum said "two", Pung would prepare \$6,400. If Arum asked for more money, Pung would give him more money. Third, Pung was to arrange with Arum to collect the goods. However, he did not know whether the person he collected the goods from was Arum. Arum would communicate with Pung to

⁸⁰ 27/10/21 NE 5.

⁸¹ 27/10/21 NE 2, 6–8, 15; 28/10/21 NE 16–20; AB 630–631 (7th Statement at [47]–[48]).

deliver items to Pung about once a month or every two months. The moneys that Pung passed to Arum were debts that Pung collected on TEC's behalf.⁸²

79 On 29 July 2016, Arum called Pung to arrange a time to collect an item. Pung brought along the White Envelope to pass to Arum. It contained \$6,400 which Arum had arranged with Pung on 26 July 2016 when he told Pung that Pung was taking "2 portions". Pung also added \$100 to that sum. When Pung met up with Kishor, Kishor handed him the Grey Bag and he passed the White Envelope to Kishor. The Grey Bag was tied up and Pung thought it contained cat or dog food.⁸³ He was arrested whilst walking home.

80 Pung claimed that TEC had forced him to take possession of the Grey Bag and items therein, as well as the Kucinta Bag, Purina Bag and Wafer Bags, for the reasons as stated at [77] above, and that he stored them temporarily as TEC had told him that someone would collect them subsequently.⁸⁴

Elements of the charge

81 For the offence of trafficking in a controlled drug under s 5(1)(a) of the MDA to be made out, the Prosecution must prove the act of trafficking in a controlled drug without any authorisation, and knowledge of the nature of the controlled drug (*Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 at [185]). For the offence of possession of a controlled drug for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA, the Prosecution must prove possession of the controlled drug, knowledge of the

⁸² 27/10/21 NE 5–7, 24–26; 28/10/21 NE 45.

⁸³ AB 594 and 597 (5th Statement at [16] and [24]); 27/10/21 NE 14, 17; 28/10/21 NE 25–26, 28.

⁸⁴ AB 583 (2nd Statement); AB 587 (3rd Statement); AB 629–631 (7th Statement at [44]–[49]); 28/10/21 NE 16–19.

nature of the drug, and that possession of the drug was for the purpose of trafficking which was not authorised (*Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 (“*Ramesh*”) at [63]).

Decision on charge against Kishor

Integrity of the chain of custody of the Drugs and trafficking

82 I deal first with the integrity of the chain of custody, as Mr Allagarsamy (Kishor’s counsel) had in closing submissions submitted that the chain of custody of the Drugs was not established.⁸⁵ I was satisfied that the Prosecution had established beyond a reasonable doubt the chain of custody of the Black Bundles, which were subsequently found to contain the Drugs. The ASOF set out how the Grey Bag and Black Bundles were seized after Pung’s arrest and was in Marcus’s custody and how it was handed from one CNB officer to another until they ended up with IO Yip.⁸⁶ Even putting aside what was agreed in the ASOF, I found the chain of custody was established on the evidence.

83 Kishor admitted in court and in the D1 1st and 5th Statements that he had delivered the Black Bundles in the Grey Bag to Pung.⁸⁷ Before delivering the Black Bundles, he had unwrapped the black tapes and saw brown coloured things which looked like the contents in Exhibit 2A1A, and it was not disputed that his DNA was found on the black tapes (see [66] above). Pertinently, Pung did not dispute that he received the Grey Bag with the Black Bundles from Kishor or the integrity of the chain of custody of these items.⁸⁸ I had also

⁸⁵ D1’s Closing Submissions dated 13 December 2021 (“D1CS”) at [15].

⁸⁶ ASOF at [11], [12], [14], [16], [17], [20]–[24].

⁸⁷ 23/9/21 NE 43; D1 1st Statement at A4 and A5; D1 5th Statement at [46].

⁸⁸ 29/10/21 NE 43–44.

accepted that Marcus was holding the Grey Bag when it was seized from Pung on his arrest and even when the CNB officers went to Pung's home, as attested to by Chin, Marcus and Jason and which I had no reason to doubt.⁸⁹

84 After the Kucinta Bag, Purina Bag and Wafer Bags (collectively “the Packages”) were retrieved and placed in Pung's room, Marcus attested that he had opened the Packages and placed the exhibits in tamper-proof bags (see [10] and [11] above). Contrary to Mr Allagarsamy's suggestion, I accepted that Marcus did not open the Black Bundles as he had received instructions from his supervisor not to do so.⁹⁰ As IO Yip explained, it was not in every case that every package had to be opened at the point of seizure to ascertain its contents, as they could be ascertained later when they were processed at CNB's office.⁹¹

85 Pertinently, Pung did not claim that he had seen anyone open the Black Bundles at his home. Chin and Ben had attested to Marcus opening only the Packages.⁹² That Marcus then placed the Grey Bag and Black Bundles into a tamper-proof bag whilst at Pung's bedroom was not challenged by Pung's counsel.⁹³ Whilst Jason had stated, at the AH, that Marcus had used a “disposal scraper” [*sic*] to open the black tape of the Black Bundles, he corrected himself at the main trial and stated that the Black Bundles were not slit.⁹⁴

⁸⁹ 5/11/20 NE 18, 44, 101; AB 420 (Marcus's Statement at [12]); AB 432 (Chin's Statement at [13]); AB 458 (Jason's Statement at [10]).

⁹⁰ 14/9/21 NE 32–34, 38.

⁹¹ 21/9/21 NE 57–59.

⁹² AB 433–434 (Chin's Statement at [14] and [16]); AB 415–416 (Ben's Statement at [11] and [13]).

⁹³ 5/11/20 NE 70; 10/11/20 NE 18–19.

⁹⁴ 11/11/20 NE 10, 22; 14/9/21 NE 44.

86 Further, IO Yip attested that it was only during the processing of the exhibits, which included the Black Bundles, at the Exhibit Management Room at CNB HQ that the tamper-proof bags of the exhibits were cut open, marked and photographed, with the exhibit processing done in the presence of Kishor and Pung. In particular, three CNB officers (Bessy, Mogan and Haifaa) had slit open the Black Bundles and poured out the contents into ziplock bags which were subsequently marked as Exhibits 2A1A, 2A2A, 2A3A and 2A4A. This was confirmed by Bessy, Mogan and Haifaa.⁹⁵

87 It should be noted that Marcus had stated (at the AH) that, whilst at Pung's home, he had placed the Grey Bag in one tamper-proof bag and the Black Bundles in another; however, IO Yip stated that they were in one tamper-proof bag when she received them. At the main trial, Marcus clarified that they were placed in the same tamper-proof bag.⁹⁶ Regardless, this discrepancy did not affect the integrity of the chain of custody of the Black Bundles or the Drugs. There were no other bundles seized from Pung which could have been confused with the Black Bundles nor was there evidence that their contents had been tampered with. As Chin and/or Marcus explained, a sealed tamper-proof bag was difficult to open and any tampering with a sealed bag would be noticeable.⁹⁷

88 Marcus stated that after he placed the Grey Bag, the Black Bundles and the Packages into tamper-proof bags, he handed them to Jason, who handed them to Chin. This was corroborated by Jason and Chin. Chin also stated that when they were going to CNB HQ, he had custody of all the case exhibits, and at CNB HQ, he handed them to Marcus for the latter to lodge a police report,

⁹⁵ AB 219, 222, 228; AB 556–560 (IO Yip's Statement at [15]–[19]); 11/11/20 NE 60–62; 15/9/21 NE 7–8, 10–11; 21/9/21 NE 16–17, 19, 58–59.

⁹⁶ 5/11/20 NE 106; 10/11/20 NE 19; 11/11/20 NE 60; 14/9/21 NE 31.

⁹⁷ 5/11/20 NE 71; 10/11/20 NE 19.

and Marcus returned the exhibits to Chin after he had done so. This was corroborated by Marcus.⁹⁸ Chin then handed the exhibits to SI Eugene Eng, who handed them to IO Yip.⁹⁹ There was no evidence to suggest the account by the CNB officers of the movement of the exhibits was unreliable or inaccurate.

89 As for Mr Allagarsamy's submission that the exhibits recovered from Pung were not catalogued properly at the material time and there thus was a possibility of contamination,¹⁰⁰ this is but a mere assertion. The Black Bundles were only opened at CNB HQ and the relevant CNB officers had given their respective accounts, which I found to be consistent, of the exhibits being transported to CNB HQ. Further, both IO Yip and Quah attested to the weighing of the Drugs and other drugs found in the Packages in Pung and Kishor's presence with IO Yip recording the gross weight of the drugs in the field diary.¹⁰¹ Whilst the gross weight measured was greater than the weight subsequently measured by HSA,¹⁰² this did not affect the integrity of the chain of custody. Quah and IO Yip explained that they weighed the drugs in the respective tamper-proof bags that the drugs were placed in (and in some instances with a ziplock bag) and with the label with which the exhibits were marked.¹⁰³ One Tan Ying Ying ("Ying Ying") from HSA, who analysed the drugs, explained that

⁹⁸ AB 436 (Chin's Statement at [18], [25]–[27]); AB 422–423 (Marcus's Statement at [17], [22]–[23]); AB 459 (Jason's Statement at [14]); 10/11/20 NE 32.

⁹⁹ AB 436 (Chin's Statement at [27]); AB 484 (Eng's Statement at [13]–[14]); AB 555 (IO Yip's Statement at [14]).

¹⁰⁰ D1CS at [15(f)].

¹⁰¹ AB 531 (Quah's Statement at [12]); AB 560 (IO Yip's Statement at [21]–[22]); 13/9/21 NE 10–11; 21/9/21 NE 20–21.

¹⁰² Prosecution's Bundle ("PB") 6; AB 313–329.

¹⁰³ 13/9/21 NE 12–16; 21/9/21 NE 20–21, 52–53.

the weight of the granular/powdery substance as reflected in the HSA certificates was the weight without its packaging material.¹⁰⁴

90 IO Yip further attested that after weighing the drug exhibits, she took custody of them (as corroborated by Quah) and placed them in a locked cabinet at CNB HQ of which only she had the keys to. She subsequently retrieved the drug exhibits and sent them to Ying Ying for analysis on 1 August 2016, as confirmed by Ying Ying.¹⁰⁵

91 I deal with a matter which might have raised a reasonable doubt on whether the chain of custody of the Drugs might have been broken. Pung and Kishor were arrested around the same time on 29 July 2016 but separately, and the Black Bundles were seized from Pung and held by a CNB officer who was with Pung. However, in the D1 1st Statement, Dadly had asked Kishor “What is this?” and noted that Kishor “was shown a grey color plastic bag containing 04 black bundle retrieved from one Pung ...”. Nevertheless, I did not find this to affect the integrity of the chain of custody of the Grey Bag or Black Bundles. I accepted Dadly’s clarification that Kishor was shown a photo of the items, and the photo had been taken by another officer after Pung was arrested and which was sent by WhatsApp to Dadly’s handphone.¹⁰⁶

92 In the round, I was satisfied that the Prosecution had accounted for the movement of the Drugs (and the drugs in the Packages) from the point of seizure to analysis and established a complete chain of custody of all the drugs.

¹⁰⁴ 15/9/21 NE 3–5.

¹⁰⁵ AB 531 (Quah’s Statement at [12]); AB 313 (Ying Ying’s Statement at [2]); AB 560, 564 (IO Yip’s Statement at [22] and [33]).

¹⁰⁶ 14/9/21 NE 55–56.

93 The element of trafficking of the Drugs was also made out. As Kishor admitted to having the Black Bundles before handing them to Pung, Kishor had committed an act of trafficking (as defined under s 2 of the MDA) by delivering the Black Bundles which contained the Drugs to Pung.

Knowledge of the nature of the Drugs

94 Kishor’s defence was that he thought the Black Bundles contained “ice” which he knew to be an illegal drug or contained “stone” which he thought were shiny crystals or decorative stones.¹⁰⁷ I found that Kishor knew the Black Bundles contained heroin or diamorphine; alternatively, he failed to rebut the presumption of knowledge under s 18(2) of the MDA. I based my findings on the following matters.

Kishor’s dealings in drugs and his knowledge of various drugs

95 Kishor knew that “ice” and “chocolate” were illegal drugs, even if he claimed not to know the actual names of the drugs. He also knew that “ice” was white and not brown in colour.¹⁰⁸ Mohamad Khairul bin Mohamad (“Khairul”), an officer with CNB for 14 years, attested that “chocolate” is a lingo for heroin (or diamorphine) as it is brown. Likewise, “kallu” is also a lingo for heroin. Whilst “kallu” literally means “stone”, it could mean “pounds”. At the wholesale level, heroin is packed in cubes and by the pound or in stones (in weight) – hence the word “kallu” is associated with heroin. Khairul also attested that “ice” refers to methamphetamine, appears in crystal form and looks like

¹⁰⁷ 23/9/21 NE 43–44; 26/10/21 NE 13; AB 550 (D1 1st Statement at A5); AB 653 (D1 5th Statement at [46]).

¹⁰⁸ 23/9/21 NE 47–49; 26/10/21 NE 26.

coarse sugar or coarse salt.¹⁰⁹ IO Yip had also attested that “kallu” refers to a type of drug.¹¹⁰ All of these were not disputed.

96 Kishor admitted to having been involved in drug activities. He knew one Boy Kejr (“Kejr”) who dealt in illegal drugs such as “ice”, “chocolate” and in pill form (“pills”) and, since December 2015, he had contacted Kejr pertaining to drug transactions. Kishor also knew one Botak who was selling “ice” and “pills” but claimed that Botak did not sell “chocolate” and that he had never seen “chocolate”. He introduced Botak to Kejr and acted as a middleman. He helped Kejr obtain drugs from Botak to pass to Kejr for Kejr’s friends and collected payment from the friends. In return, Kishor was paid a commission.¹¹¹

97 Kishor claimed that after he introduced Botak to Kejr (which was before 5 July 2016), they dealt directly with each other and he ceased to have any drug related dealings with either of them.¹¹² I disbelieved Kishor and found that he continued to be involved in drug transactions even thereafter.

(a) Kishor stated that all his interactions with Kejr were only about illegal drugs. The records of Kishor’s handphone showed messages between them even from 10 to 29 July 2016, which must thus relate to drug transactions.¹¹³

(b) The phone messages showed Kishor sending addresses to Kejr (even after 5 July 2016), which Kishor stated were for Kejr to arrange

¹⁰⁹ 14/9/21 NE 76–77, 81, 86.

¹¹⁰ 21/9/21 NE 62.

¹¹¹ 23/9/21 NE 47–51; 24/9/21 NE 3, 12; 26/10/21 NE 46.

¹¹² 24/9/21 NE 6–7, 11–13.

¹¹³ 23/9/21 NE 48; 24/9/21 NE 6; PB 11–13.

with Kejr's friends to meet Kishor at specified locations. Kishor stated that he would then collect money from Kejr's friends *to pay for drugs* and pass the money to Kejr in return for RM50 for his expenses.¹¹⁴

(c) I agreed with the Prosecution that the conversation between Kishor and Botak on 20 July 2016 (which included "I give you another 6000 take one more 125 ok va"; "Ok I pay cash for one how about you deal one more o"; "So want 1 only lah"; "2 laaa"; and "Don't misunderstand. Because some people angt (?) 1g") related to drug activities. This is taking into account that Kishor stated that all his interactions with Botak were only about illegal drugs. I disbelieved Kishor that he could not recall what that conversation was about.¹¹⁵

98 Indeed, on 20 July 2016, Kejr had informed Kishor "13.200 , push for ubat2 money 1,,800. Push 2,400 . T" to which Kishor replied "Ok".¹¹⁶ I found that the messages related to drug activities and showed that Kishor was still dealing in drugs. The original words for "push for ubat2 money 1,,800" in Malay were "tolak duit ubatuk 1,,800". Khairul had attested that "ubat" (literally, "medicine") is a lingo for heroin; that "tolak" can mean trafficking/selling drugs or deduct; and that "tolak duit ubatuk 1,,800" can mean to deduct from the price of the heroin. Further, "ubt" is an abbreviation for "ubat".¹¹⁷ Khairul's testimony was not disputed.

99 I disbelieved Kishor that "ubatuk" was cough mixture; that he had bought cough mixture for Kejr on Kejr's request; that "13.200", "1,,800" and

¹¹⁴ 24/9/21 NE 12–13; PB 12 (S/N 111, 115, 116, 117).

¹¹⁵ 23/9/21 NE 48; 24/9/21 NE 13–14; PB 13 (S/N 3–9).

¹¹⁶ PB 12 (S/N 108–109).

¹¹⁷ 14/9/21 NE 82–83.

“2,400” were serials number for three colours or kinds of cough mixtures (red, chocolate and near black); and that Kejr had asked Kishor to deduct the price of the cough mixtures from the moneys that Kishor was holding on for Kejr.¹¹⁸

(a) It did not make sense for Kejr to ask Kishor to buy three different types of cough mixture. The words “tolak duit ubatuk 1,,800” or “push for ubat2 money 1,,800”, and “[t]olak 2,400” (or “[p]ush 2,400”), would suggest the numbers referred to money. Even if “tolak” meant deduct, it did not make sense to deduct a serial number of a cough mixture.

(b) Kishor claimed that the moneys he held on to for Kejr (and from which he would deduct his expenses of the cough mixtures) were collected from Kejr’s friends *for ordering “ice” or “pills” from Kejr* and for these transactions.¹¹⁹ His explanation and the messages showed that he was, even at 20 July 2016, involved in drug activities.

100 Next, I found that Kishor had dealt with heroin (or diamorphine), and that he knew “chocolate”, “ubatuk”, “ubat” and “ubt” referred to heroin. He admitted that “chocolate” was an illegal drug. Conveniently, he claimed never to have seen “chocolate” and that Botak did not sell “chocolate” although Kejr’s friends had ordered it.¹²⁰ I disbelieved Kishor and found that he knew “chocolate” was a street lingo for heroin and that he was feigning ignorance about “chocolate” (although he had dealt with other drugs) because he wanted to dissociate himself from the knowledge of the contents of the Black Bundle.

¹¹⁸ 24/9/21 NE 4–6, 11.

¹¹⁹ 26/10/21 NE 50–51.

¹²⁰ 23/9/21 NE 47–51.

(a) On 17 July 2016, Kejr had messaged Kishor to say “Bos , chocolate is expensive not 6000 ...” and “How bos , want or not ...”.¹²¹ I disbelieved Kishor that the messages were meant for Botak which Kejr wrongly sent them to him, and that he did not know what they meant.¹²² When queried in court as to why he did not tell Kejr that Kejr had wrongly sent the messages to him, Kishor then claimed that he had called Kejr to tell him this on the same or the next day, which I disbelieved. There was no evidence of such a call (or message). Kishor claimed to have used another handphone to call Kejr to inform him, because after the road accident (on 5 July 2016) the handphone which contained the above messages was damaged. This could not be true. The messages were sent by Kejr to Kishor on the handphone (that was purportedly damaged) on 17 July, *after* Kishor’s accident, with further communications using that handphone.¹²³

(b) Likewise, the message from Kejr to Kishor of 20 July 2016 to say “tolak duit ubatuk” showed that they were talking about heroin (see [98] to [99] above).

(c) Additionally, Kishor had on 3 July 2016, communicated with someone else who had asked him about “ubt” and said “abg want ubt or not”.¹²⁴ Kishor stated that “ubt” was “ubat” or medicine and that “ubt” here referred to “pills”. I disbelieved Kishor. He claimed that, in the same series of conversation, the word “bijik” also meant “pills”, and hence “bijik” was synonymous with “ubt” or “ubat”. This was

¹²¹ PB 12 (S/N 95–96).

¹²² 24/9/21 NE 4, 7.

¹²³ 24/9/21 NE 7–10.

¹²⁴ PB 14 (S/N 12 and 14).

unconvincing because he admitted that “bijik” referred to something in the form of a tablet or seed, whereas “ubt” or “ubat” was more general in nature.¹²⁵ Be that as it may, it was clear that Kishor was using the words “ubat” and “ubt” inter-changeably to refer to illegal drugs, and which I found referred specifically to heroin.

101 The above showed that Kishor was not only involved in drug activities with Botak and Kejr, but also with others. They included one Abang DJ (“DJ”). On 5 February 2016, Kishor messaged DJ to state: “125g 9800.00” and “250g 18700.00”, which I found was a message relating to drug activities.¹²⁶

102 Kishor claimed that DJ was not involved in drug activities and they never spoke about drugs; that “125g” and “250g” referred to the serial numbers of electronic devices that Kishor played online games on; and that “9800.00” and “18700.00” referred to the points earned on the games. Kishor claimed to have sent the message to inform DJ of the points he had earned so that DJ could convert them into money, and that this was because he had borrowed the devices from DJ to play the games.¹²⁷

103 Kishor’s assertions were unbelievable and illogical. When asked repeatedly what games he had played, Kishor claimed that “there [were] a lot of online games”, then claimed that “[y]ou have to use money to play these games” and finally said that he could not recall what games they were. Khairul had attested that the message was most likely about “ice” which is normally packed by weight of 125g and 250g at the wholesale level, although he was unable to

¹²⁵ 24/9/21 NE 14–17.

¹²⁶ PB 18.

¹²⁷ 24/9/21 NE 18–19.

comment on the figures “9800.00” and “18700.00” which he thought were quite high for wholesale prices of “ice” if the figures referred to price.¹²⁸

Knowledge of the contents of the Black Bundles

104 Next, I found that Kishor was told that the items to be delivered were “kallu” and that he knew this to be drugs and specifically heroin. I disbelieved that Suresh had told him that the item was “like a stone” or its name was “stone”, that Suresh never said “kallu”, and that he thought these “stones” were shiny crystals or decorative stones.¹²⁹

105 First, if Kishor thought the Black Bundles contained shiny crystals or decorative stones, he failed to mention as such in his contemporaneous statement (D1 1st Statement). When Dadly asked him what was in the Grey Bag, D1 had merely said “I do not know”. Again, Kishor failed to mention what he thought was in the Grey Bag after he had been read a charge of drug trafficking in the D1 2nd Statement. I disbelieved that he was so shocked and confused at that time, given that he could narrate a story therein about how he had come to collect the Grey Bag, deliver it and collect money in return. I accepted the Prosecution’s contention that if Kishor had the presence of mind to tell a deliberate lie in A6 of the D1 1st Statement, he would have had the presence of mind to explain what he thought the Grey Bag contained.¹³⁰ Likewise, Kishor did not mention in the D1 3rd to 6th Statements that he thought the Black Bundles contained shiny crystals or decorative stones. In the D1 4th Statement, Kishor merely stated that Suresh would give him “something like stone” without explaining what he thought they were. As such, I found Kishor’s

¹²⁸ 14/9/21 NE 75, 94.

¹²⁹ 23/9/21 NE 42–43; 26/10/21 NE 12–13, 45.

¹³⁰ 26/10/21 NE 8.

claim that he thought the Black Bundles contained shiny crystals or decorative stones to be an afterthought.

106 Kishor’s explanation that he thought the items were shiny crystals or decorative stones because Suresh had said “stone” instead of “kallu” was also unconvincing. He claimed that if Suresh had said “kallu”, this would mean stones such as rocks, pebbles and the like, and he would have asked further, but since Suresh said “stone”, he did not ask any further because he thought “stone” referred to shiny crystals or decorative stones. This did not make sense. As Kishor admitted, “stone” could also mean rocks and pebbles. Kishor then attempted to explain unconvincingly, that he was intoxicated when he had this conversation with Suresh and hence did not ask further what “stone” was. It was unclear how his intoxication prevented him from probing further or how he thought that it meant shiny crystals or decorative stones when he claimed that Suresh told him the *name* of the item was “stone”.

107 Second, in the D1 4th Statement, Kishor stated that Suresh had informed him that the item was “kallu”.¹³¹ Kishor claimed that he did not say “kallu” wherever it appeared in that statement; that he said “stone” in English but IO Yip had asked him what “stone” was in Tamil to which he said “kallu”; and that Malliga (the interpreter for the statement) then told him that he should say “kallu” and Malliga would interpret it to IO Yip as “stone”.¹³² I found his evidence to be unbelievable.

108 There was no reason why Malliga (or for that matter, IO Yip) would ask Kishor to say “kallu” for Malliga to interpret to IO Yip as “stone”, and only for

¹³¹ AB 640–641 (D1 4th Statement at [17] and [20]).

¹³² 21/9/21 NE 61; 26/10/21 NE 14–15, 19.

IO Yip to then record it as “kallu”. I accepted Malliga and IO Yip’s testimony that Kishor had said “kallu” and when he was asked what it meant, he said “stone” in English (hence the additional sentence in paragraph 17 of the D1 4th Statement where Kishor said “‘Kallu’ in Tamil means stones”). I also accepted Malliga’s explanation that if Kishor had indeed said “stone” in English, she would not have told IO Yip “kallu” in Tamil, because IO Yip could understand English.¹³³ It would have been strange if Malliga had interpreted what Kishor said *in English into Tamil*, when she was supposed to interpret what Kishor said *in Tamil into English*, for IO Yip.

109 Third, Kishor had unravelled the black tape of the Black Bundles “halfway” or “midway” to see their contents as he claimed to have seen bundles, particularly “ice”, wrapped in that manner and he suspected that the Black Bundles contained “ice” and that Suresh had asked him to deliver drugs. Further, when he unravelled the black tape, he saw “brown colour inside”.¹³⁴

(a) I disbelieved Kishor that he thought the Black Bundles contained “ice”. He knew “ice” was white in colour. Pertinently, he initially claimed (in the D1 4th Statement) that he did not see what was in the Black Bundles as they were wrapped in black tape. In the D1 5th Statement, he stated that he did not think about checking the contents of the Black Bundles. It was only when he was confronted with his DNA being found on the sticky side of some of the Black Bundles that he stated (in the D1 6th Statement) that he had unravelled the black tape and saw “some brown thing, which I do not know what it was”. Even at this stage and after his lie of not having checked the contents of the Black

¹³³ 15/9/21 NE 18, 29; 21/9/21 NE 25, 60–61, 63.

¹³⁴ 23/9/21 NE 30; AB 643–644 (D1 4th Statement at [26]–[27]).

Bundles was exposed, Kishor did not say that he believed them to contain shiny crystals or decorative stones, but merely stated that he saw some brown thing and *he did not know what they were*. The defence of shiny crystals or decorative stones only emerged at trial. I agreed with the Prosecution that Kishor kept changing his story of his knowledge of the contents of the Black Bundles because he was lying.¹³⁵ If he believed the Black Bundles to contain shiny crystals or decorative stones, there was no reason why he could not have said so at the onset, or certainly by the time of the D1 6th Statement.

(b) I also rejected Kishor's explanation that after Suresh told him it was not "ice" but some "important thing", Kishor nevertheless believed that it was a shiny crystal or decorative stone. In the D1 5th Statement Kishor stated that he "did not think much about what important thing it could be" after Suresh purportedly told him as such.¹³⁶ In any event, Kishor admitted subsequently that what he saw in the Black Bundles looked like the contents of Exhibit 2A1A and they were brown. If so, it was unclear how Kishor could equate what he saw with decorative stones or shiny crystals. By his own account, he claimed to have called Suresh to find out what was in the Black Bundles because *what he saw did not look like decorative stones or shiny crystals*.¹³⁷

110 Kishor's conduct – of unravelling the black tapes because he thought the Black Bundles might contain drugs and claiming to have then called Suresh to verify with him – showed that he was suspicious about their contents. Further,

¹³⁵ AB 643–644 (D1 4th Statement at [26]–[27]); AB 654 (D1 5th Statement at [53]); AB 667 (D1 6th Statement); 26/10/21 NE 27–28.

¹³⁶ 23/9/21 NE 31; AB 654 (D1 5th Statement at [53]).

¹³⁷ 26/10/21 NE 30–31.

whilst he had informed Suresh that he would deliver the Black Bundles within the next two days of receiving them from Suresh, he did not do so, despite having entered Singapore on numerous occasions thereafter (see [72] above). I agreed with the Prosecution that Kishor had delayed delivering the Black Bundles, despite needing the RM500 promised to him for making the delivery, because he knew he was to deliver a large quantity of drugs.¹³⁸ Specifically, I found that Kishor knew the drugs in the Black Bundles were heroin as Suresh had told him it was “kallu” (which Khairul had explained was lingo for heroin).

111 Fourth, that Kishor was offered RM500 to deliver the Black Bundles, which was not insignificant, and told beforehand to also collect \$6,000 from Pung, further supported that he knew that he was carrying a contraband item. In this regard, I disbelieved that Kishor only knew about having to collect a sum of money from Pung *after* he had handed Pung the Grey Bag.

112 In the D1 2nd Statement, Kishor stated that Suresh had told him to pass the Black Bundles to a “Chinese man” and that the Chinese man would hand to him “around S\$6,000” which he was forward to Suresh and then he would receive a monetary reward. In court, Kishor claimed that on 29 July 2016, whilst talking to Chandru on the handphone, he passed the Grey Bag to Pung, then dropped his handphone, and as he picked it up, Pung handed him the White Envelope which he took. After that, he continued his conversation with Chandru whereupon Chandru told him that Pung would hand him \$6,000 which he was to forward to Chandru. Kishor claimed that although he was not expecting to receive anything from Pung, he took the White Envelope without question because Pung had handed it to him.¹³⁹ If this were true, it begs the question why

¹³⁸ 26/10/21 NE 24–25.

¹³⁹ 26/10/21 NE 53.

Kishor had accepted the White Envelope when he claimed he was not expecting anything from Pung and did not know what the White Envelope contained or was for. I found that Kishor had known beforehand that he would receive money in exchange for the Black Bundles, and which was why he took the White Envelope from Pung without question.

113 At this juncture, I deal with Kishor’s claim that his belief that he was not carrying anything illegal was reinforced because he had cleared customs checks when he was entering Singapore (see [74] above). There was no evidence to show that a customs officer had taken out a Black Bundle from the Grey Bag and queried Kishor on it, and any such event did not support Kishor’s subjective state of mind that he thought he was carrying something innocuous. The customs officer did not unwrap the Black Bundles to check their contents (even if such an event occurred). As such, Kishor could not have believed that by the customs officer performing a superficial check of the Black Bundles and letting him pass, they must have contained something that was not contraband. Indeed, Kishor stated that he formed this belief only *after he was arrested*.¹⁴⁰

Conclusion on the charge against Kishor

114 On the totality of the evidence, I found that Kishor knew the nature of the Drugs in the Black Bundles. Alternatively, he failed to rebut the presumption of knowledge under s 18(2) of the MDA. He admitted that he had seen drugs (namely “ice”) wrapped in black tape before. He failed to show that he genuinely believed the Black Bundles contained something innocuous (given that he thought they might be “ice”). There was also no basis for his belief that they contained “ice” as the contents were brown and he knew that “ice” was

¹⁴⁰ 26/10/21 NE 37.

white, or that they were crystals or decorative stones as he admitted that what he saw (upon unravelling the black tapes) did not look like such items. I was thus not satisfied that Kishor had adduced sufficient evidence disclosing the basis on which he claimed to have arrived at his subjective state of mind (see *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 at [58]–[59]).

115 Accordingly, I found the Prosecution had proved beyond a reasonable doubt the charge against Kishor.

Decision on the charge against Pung

116 Whilst Mr Chung had in closing submissions submitted that Pung was not in actual possession of the Drugs as well as the drugs found in the Packages (the “Other Drugs”), because he did not have physical control *and* knowledge of the nature of the items,¹⁴¹ his submission was misconceived. All that is required to prove the element of possession is that the accused person must know of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug, and it is not necessary that he also knows that the thing was in fact a controlled drug much less its specific nature (*Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [31]).

117 Pung was clearly in possession of the Drugs, as he collected the Grey Bag (with the Black Bundles) from Kishor. Mr Chung also confirmed at the close of the Defence case that Pung was not disputing that he was in actual possession of the Grey Bag and Black Bundles or the integrity of the chain of custody of them.¹⁴² Pung’s defence was essentially one of knowledge, *ie*, he did

¹⁴¹ D2’s Closing Submissions dated 10 December 2021 (“D2CS”) at [19]–[22], [101].

¹⁴² 29/10/21 NE 43–44.

not know the Black Bundles (and Packages) contained drugs.¹⁴³ He claimed that TEC had arranged for all these to be delivered to him for temporary safekeeping.

118 I found that Pung knew the Black Bundles contained heroin (or diamorphine). Alternatively, he failed to rebut the presumption of knowledge under s 18(2) of the MDA. I based my findings on the following matters.

Pung’s conduct at arrest and his knowledge of “bai fen” or “peh hoon”

119 First, at the fitness corner in the Condo compound after his arrest, Pung told Chin the Grey Bag contained “bai fen”. I had accepted Chin and Marcus’s testimony in this regard and disbelieved that Pung said “bai fen” because he had been told by a CNB officer at his arrest that he was trafficking in drugs and carrying “bai fen” (see [28]–[31] above). Pung admitted that at the time of his arrest he already knew that “bai fen” or “peh hoon” was an illegal drug (see [41] above). Pertinently, I found that he had told IO Yip during the recording of the 4th Statement that “bai fen” was “hai ruo ying”. IO Yip and Khairul had also attested that “bai fen” was a lingo for heroin.¹⁴⁴

Pung’s statements

120 Next, Pung’s statements showed that he knew he was taking delivery of “bai fen” on 29 July 2016.

121 In the 1st Statement, Pung said that he was told to meet “an Indian guy” to collect “bai fen” on the day of his arrest; that the Grey Bag contained four black bundles with “bai fen”; and that the item in the Pail (*ie*, the Kucinta Bag)

¹⁴³ 29/10/21 NE 44; D2CS at [8]–[10].

¹⁴⁴ 11/11/20 NE 59; 14/9/21 NE 77.

and the Wafer Bags contained “bai fen”.¹⁴⁵ The Black Bundles had not been opened by the CNB officers when this statement was recorded, yet Pung could say what they contained.

122 At the main trial, Pung made further assertions regarding the recording of the 1st Statement. He claimed that when Chin asked him what was in the Black Bundles, he said he did not know (in A10) and he did not say “bai fen”. He also did not answer “bai fen” in A18 when asked what was in the Pail.¹⁴⁶ When confronted in court with his answer in A30, he also claimed that he did not say that Arum would pay him \$150 for every person he delivered items to but had merely said that he had received \$150 on only one occasion.¹⁴⁷ I rejected Pung’s assertions. They were never raised at the AH. In particular, that he *never said* “bai fen” ran contrary to his case in the AH that he *had said* “bai fen” in the 1st Statement because Chin had induced him to do so. Pung’s claim in court that he had received \$150 only once was also inconsistent with what he said in the 7th Statement that TEC had given him around \$150 on three to four occasions.¹⁴⁸ Pung’s inconsistent version of events showed his lack of credibility.

123 In the 4th Statement, Pung stated that on 28 July 2016, TEC had called Tan because he wanted Pung “to take ‘bai fen’ to safe keep at [his] house”, and that he knew “bai fen” was illegal and called “hai ruo ying” in Mandarin. He stated at paragraphs 11 and 12 of that statement (and which he did not challenge) that on 29 July 2016 (which he subsequently corrected in the 5th Statement as

¹⁴⁵ AB 438–442 (1st Statement at A4, A9, A10, A18 and A22).

¹⁴⁶ 14/9/21 NE 19, 23.

¹⁴⁷ 27/10/21 NE 26.

¹⁴⁸ AB 629 (7th Statement at [43]).

26 July), Arum called him “to prepare to pay for 2 portions each consisting of \$3200 and an additional \$50 for each portion” and he then placed \$6,500 in the White Envelope which he passed to Kishor after taking the Grey Bag from him. This showed that Pung was giving Kishor \$6,500 for “2 portions”.

124 In the 5th Statement, Pung stated (at paragraph 16) that on 26 July 2016, Tan asked him if he had called Arum, which Pung understood to be a request for him to arrange with Arum to collect “bai fen”. He then called and asked Arum “when take” and “take how many” to which Arum replied “2”. Pung further narrated (at paragraph 24) that on 29 July 2016, he prepared the money based on his conversation with Arum on 26 July 2016 when Arum had told him that he was taking “2 portions” but that he did not know what “2 portions” meant or how heavy each portion was.

125 The above showed that Pung knew he was to collect “bai fen” and take “2 portions”. Even if Pung had claimed that “bai fen” appeared in paragraph 16 only because IO Yip had promised to help him (which claim I had rejected), it was strange that Pung would take delivery of “2 portions” of something for \$3,200 per portion. As Pung admitted in the 7th Statement (at paragraph 45), what he accepted from TEC was usually in “food stuff packaging” and Pung knew it did not make sense for such food stuff to cost thousands of dollars. As Pung stated in court, the items he collected from TEC (through TEC’s agents) were either dog food, cat food, biscuits or Chinese medicine and when he collected the Grey Bag he thought it contained dog food or cat food.

126 Finally, in the 7th Statement, Pung stated (at paragraph 49) that the things TEC instructed him to do involved “bai fen” which was illegal.

Pung's assertion that he held items for TEC for temporary safekeeping

127 I turn to Pung's claim of TEC's involvement in the Black Bundles and the Other Drugs in the Packages. Although TEC has drug antecedents, I disbelieved Pung's claim that TEC had arranged for the Black Bundles and Packages to be delivered to Pung for temporary safekeeping. I found that Pung had made up TEC's involvement in the Drugs and Other Drugs. I agreed with the Prosecution that Pung's implication of TEC in the offence was an afterthought, and that the collection of the Black Bundles and the Packages were arranged with Arum and not TEC.¹⁴⁹ The evidence pointed to Pung having direct dealings with Arum pertaining to the Drugs and Other Drugs, and not that Arum was acting as TEC's intermediary.

Pung's reasons for collecting and safekeeping items on TEC's behalf

128 Pung stated that he had collected the Kucinta Bag around May 2016 and collected the Purina Bag and Wafer Bags on 26 July 2016.¹⁵⁰ He claimed that the items TEC delivered to him (through intermediaries) were dog food, cat food, biscuits or Chinese medicine. I disbelieved that Pung was forced to safekeep items for TEC because he wanted to maintain harmony with his wife.

129 First, Tan had stated something else. She said that whilst TEC had arranged for the Items to be sent to Pung's home, this *did not happen in 2016* (but only prior to that) and she did not know if TEC had asked Pung to do so in 2016.¹⁵¹ Pertinently, Tan had told TEC in 2014 or 2015 to stop sending items to her home as it was troublesome to safekeep and pass them on to TEC's friends.

¹⁴⁹ 28/10/21 NE 23; Prosecution's Closing Submissions dated 30 November 2021 ("PCS") at [129].

¹⁵⁰ AB 594–599 (5th Statement at [17]–[20], [27]); 28/10/21 NE 1, 9, 12–14.

¹⁵¹ 17/9/21 NE 19–20.

She did not speak to TEC in 2016 and stopped communicating with TEC because he kept pestering her for money. By then, their relationship was strained. She had also complained to Pung regarding TEC pestering her for money and stated that she would never scold Pung for not helping TEC to safekeep or deliver items. Indeed, she had refused to help TEC even when he told her that he was dying, had no money and was being chased by gangsters.¹⁵² Hence, there was no reason for Pung to be compelled to take anything from TEC, particularly in 2016, to maintain harmony with his wife. Tan herself had stopped communicating with and was avoiding TEC.

130 Second, TEC stated that he did not ask Pung or Tan to hold on to items for subsequent delivery to persons who were not his family members. He had fallen out with Pung after their partnership in a business failed in 2015, and although he tried to contact Pung thereafter because he needed money, he could not get in touch with Pung.¹⁵³

131 Tan and TEC's testimony thus showed that TEC did not, in 2016, send items to Pung for temporary safekeeping, much less that Pung was forced to do so for any reason. Pung's claim that if he did not help TEC, TEC would complain to Tan and this would strain his relationship with Tan as she would "submit" to TEC's wishes, was not supported by Tan's testimony.

132 I also disbelieved that Pung was forced to safekeep items for TEC because he was afraid of TEC who had a very bad temper. Pung knew at that time that TEC was a fugitive living in Malaysia (as he had run away from the

¹⁵² 17/9/21 NE 23–25, 37–40.

¹⁵³ 16/9/21 NE 32–34, 36.

law in Singapore)¹⁵⁴ and thus there was nothing for Pung to be afraid of given that TEC would not enter Singapore.

Pung's reason for dealing with Arum instead of TEC directly

133 Next, I disbelieved Pung's explanation of how Arum came to be an intermediary for TEC. Pung claimed that, about six months before his arrest, TEC had informed Pung that it was inconvenient to schedule delivery and collection of goods because he wanted to "avoid the midnight timings and timings very late at night" and hence he told Pung to liaise directly with Arum to arrange the time of delivery and collection. Pung's explanation did not make sense. There was no reason why he could not *communicate* with TEC in the daytime to schedule other timings for delivery and collection.

134 Interestingly, there was no evidence of phone calls between Pung and TEC although Pung claimed to have communicated with TEC on various occasions. In contrast, there was evidence of phone calls between Pung and Arum.¹⁵⁵ I disbelieved Pung's claim that TEC had told him to call Arum's handphone if he wanted to communicate with TEC. There was no reason why Pung could not call TEC directly. He claimed that TEC had left a Nokia handphone with him to use whenever TEC needed him to. Pung was unable to identify any phone numbers belonging to TEC, conveniently claiming that TEC would change his phone number almost every month.¹⁵⁶

¹⁵⁴ 28/10/21 NE 11.

¹⁵⁵ AB 298–300; AB 590 (4th Statement at [8]); AB 594 (5th Statement at [16]); 27/10/21 NE 16–17 and 27–28.

¹⁵⁶ 27/10/21 NE 5–6; AB 590 (4th Statement at [8]); 2AB 798 at [65]).

Pung's 1st Statement

135 Additionally, TEC did not feature in Pung's 1st Statement, which was recorded shortly after his arrest, in relation to the Black Bundles or Packages. On the contrary, when Pung was asked about the Grey Bag, he stated that it was Arum who had told him to collect "bai fen", that the Black Bundles contained "bai fen", and that he was bringing the Black Bundles home to keep until he received instructions from Arum. He also stated that the Kucinta Bag and Wafer Bags contained "bai fen" which belonged to Arum and he would follow Arum's instructions on what to do with them.¹⁵⁷

136 I found Pung's explanation,¹⁵⁸ that he had mentioned that all the drugs belonged to Arum because he did not wish to get TEC involved and did not know that he was facing the death penalty at that time, to be unconvincing. Even if Pung did not, at his arrest, know he might face the death penalty, he had, by his own testimony, known that the Grey Bag had landed him into trouble.

TEC's purported admission

137 At this juncture I deal with Pung's claim that whilst in remand and sharing a prison cell with TEC, TEC had informed Pung that the Drugs and Other Drugs were his and he would admit that all the drugs belonged to him if Pung were acquitted.¹⁵⁹ I found that Pung had not, on balance, proved this assertion. Whilst Pung claimed that this conversation took place in the presence of two other inmates in the same cell, his story was not supported by the inmates

¹⁵⁷ AB 438–444 (1st Statement at A4, A9–A11, A18, A20, A21–A25).

¹⁵⁸ 27/10/21 NE 24.

¹⁵⁹ 27/10/21 NE 20–21.

nor by TEC. In any event, I found Pung's claim that TEC would admit to the drugs being his if Pung were acquitted to be unbelievable.

Manner of communication with Arum and payment for items collected

138 Next, it was clear from Pung's own evidence that the manner of communicating with Arum to collect goods, via a three-step instruction, coupled with an exchange of money for them (see [78] above) showed that Pung could not have believed he was merely collecting any of the Items. Instead, this showed that Pung knew he was dealing with illegal items, specifically drugs.

139 It was strange that Pung did not find out what "one" or "two" referred to when he asked Arum the quantity of the goods or when Arum replied him. In the 5th Statement, Pung stated in relation to the Black Bundles that Arum had called him to take "2 portions" and that he knew "one portion cost \$3200". Pung admitted that he had informed IO Yip as such in the 5th Statement.¹⁶⁰ This showed that there was an exchange of goods for money (*ie*, a specific sum for each "portion"), which cast doubt on Pung's claim that he was keeping the goods temporarily for TEC's friends to collect later.

140 Additionally, Pung admitted in the 7th Statement that it did not make sense for such food stuff to cost thousands of dollars. Khairul had attested that diamorphine was packed in pounds and the price of two pounds of diamorphine in 2016 was around \$6,400 to \$7,000.¹⁶¹ This would correspond with Pung having collected two portions on 29 July 2016 (*ie*, the Black Bundles), which weighed about 903.50 grams (or about two pounds).

¹⁶⁰ AB 597 (5th Statement at [24]); 28/10/21 NE 45.

¹⁶¹ 14/9/21 NE 74.

141 Indeed, Pung’s testimony was inherently inconsistent. In court, he claimed that the source of the moneys prepared for Arum (namely \$3,200 for “one” or \$6,400 for “two”) came from debts owed to TEC. Whenever TEC’s friends came to collect any of the Items from Pung, they would pass money (collected on TEC’s behalf) to Pung, and Pung would pass it to Arum when he collected goods from Arum. In other words, the \$3,200 or \$6,400 was unrelated to the goods that Arum handed to Pung.¹⁶²

142 However, Pung stated in his statements to the contrary. In the 4th Statement, he stated, in relation to the Black Bundles, that Arum told him to “*pay for 2 portions each consisting of \$3,200...*” [emphasis added]. In the 5th Statement, Pung stated that “one portion *cost \$3200*” [emphasis added] and he had prepared \$6,400 because Arum told him he was taking two portions and he added another \$100 on Arum’s instructions.¹⁶³ This showed that Pung would give Arum money in exchange for the “portions” received from Arum, which included the Black Bundles.

143 In fact, Pung then claimed that whenever he collected goods from Arum (or whoever Arum arranged to send the goods to Pung), it was *not* any of the Items, and it was “something in black”, in a “special kind of packaging” and looked like the Black Bundles.¹⁶⁴ Pung’s admission showed that he could not have believed that the delivery of items to him (via an arrangement with Arum) could have been any of the Items. As claimed in the 5th Statement (at paragraph 25), Pung had once seen TEC and Beng Hock packing black round things which he suspected contained “bai fen”. Pung’s admission also showed that the items

¹⁶² 27/10/21 NE 6–7; 28/10/21 NE 20–21.

¹⁶³ AB 591 (4th Statement at [11]); AB 594, 597 (5th Statement at [16], [24]).

¹⁶⁴ 28/10/21 NE 42–44, 46.

Arum had arranged to deliver to Pung did not emanate from TEC, because Pung claimed that whenever TEC arranged to send the Items to him, they would be in a packaging that described the contents, and it was not Pung's case that TEC would send items other than cat food, dog food, biscuits or Chinese medicine.¹⁶⁵

Pung saw the contents of the Grey Bag

144 I also found that prior to his arrest, Pung had opened the Grey Bag and seen the Black Bundles, contrary to his claim that he could not open the Grey Bag which was knotted.¹⁶⁶

145 In the 5th Statement, Pung stated that he opened the Grey Bag and saw “4 black round things, each like the size of [his] fist”; that when he saw the packaging, he suspected that it was drugs and “bai fen”; and that he tied up the Grey Bag after that. In the 7th Statement, he stated that whilst walking home, he held up the Grey Bag and saw that it contained “black round things” similar to Exhibits 2A1 to 2A4 (the Black Bundles).¹⁶⁷ Having seen the Black Bundles prior to his arrest, Pung thus knew that they were not dog food, cat food, biscuits or Chinese medicine – as he stated, any of the Items would be in a packaging describing the item as such. Additionally, when questioned by Chin in the Condo compound about the contents of the Grey Bag, Pung could say that it contained four bundles which were “bai fen”, although the CNB officers had not then revealed the contents of the Grey Bag to him.

146 Thus, Pung's claim that he thought the Grey Bag contained cat food or dog food (at the time of his arrest) was clearly made up and an afterthought and

¹⁶⁵ 27/10/21 NE 8; 28/10/21 NE 39–40.

¹⁶⁶ 28/10/21 NE 30.

¹⁶⁷ AB 597 (5th Statement at [24], [26]); AB 631–632 (7th Statement at [52]).

I found that he knew what its contents were. I had found that when Chin asked Pung (after his arrest) whether there were any more things at his home, Pung had answered that there was “bai fen” and had led the CNB officers to the Pail telling them that there was “peh hoon”. By Pung’s own account, he knew that he was being arrested for drug trafficking. Given his knowledge as such, he would not have informed Chin that there were more drugs in his home or led the CNB officers to the Pail unless he knew that he had drugs in his home.

147 Pung’s claim that he could not see what was in the Grey Bag was an attempt to dissociate himself from its contents. Having looked into the Grey Bag, he would have seen black bundles that did not look like the packaging of dog food, cat food, biscuits or Chinese medicine. In fact, Pung’s claim that he thought (at the time of arrest) that the Black Bundles contained dog food or cat food only emerged at the trial.

The Packages in Pung’s home

148 Following from the above, the Packages recovered in Pung’s home showed that he had previous dealings in drugs, specifically with Arum for diamorphine, and this contradicted Pung’s claim that he was not involved in illegal drugs and did not know what they looked like.¹⁶⁸

149 I deal first with the Kucinta Bag, which Pung said he received around May 2016. I disbelieved that prior to Pung’s arrest he did not know its contents.¹⁶⁹ As I had earlier found, Pung had at his arrest informed the CNB officers that he had one or two more packets of “bai fen” at his home, led them to the Pail, and told them that it contained “peh hoon” which belonged to him.

¹⁶⁸ 27/10/21 NE 21.

¹⁶⁹ 27/10/21 NE 31; 28/10/21 NE 9.

In the 1st Statement, Pung admitted that the Kucinta bag contained “bai fen”, he had stored it for Arum and he was waiting for Arum’s instructions on onwards delivery of the drugs.

150 Although in subsequent statements Pung claimed that the drugs in the Kucinta Bag (and Packages) belonged to TEC (which I had rejected), the fact remained that his statements showed he knew what the Kucinta Bag contained. In this regard, Pung’s evidence as to his knowledge of its contents was riddled with inconsistencies and his explanation did not make sense.

(a) In paragraph 27 of the 5th Statement, Pung claimed to have slit open the Kucinta Bag because *he* was “curious to see what was inside”. However, at the AH (and the main trial), he challenged the accuracy of that paragraph and claimed that it was *TEC* who asked him to look into the Kucinta Bag and tell TEC the colour of its contents.¹⁷⁰ I had found that the 5th Statement was accurately recorded. Either way, Pung’s reason for checking the contents of the Kucinta Bag was unconvincing. It begs the question why Pung was curious as to its contents if he claimed to have been receiving cat food (and other food items) from TEC since 2014 and it was clear that the Kucinta Bag was a cat food packaging. Pung also could not explain why TEC would ask him to check the colour of its contents, saying that he “merely followed [TEC’s] instructions”.¹⁷¹

(b) Next, Pung claimed that upon seeing the contents of the Kucinta Bag, he told TEC that it was grey and in powdery form whereupon TEC said it was spoilt but asked him to keep it and not to ask questions.¹⁷² I

¹⁷⁰ 12/11/20 NE 92; 28/10/21 NE 3.

¹⁷¹ 28/10/21 NE 3.

¹⁷² 12/11/20 NE 92–93; 28/10/21 NE 3, 9.

found that Pung had made this story up. It made no sense for TEC to tell him to keep the Kucinta Bag and or for him to do so if the contents were spoilt. In fact, Pung took the effort to seal the Kucinta Bag properly using a heat sealer (which he again claimed was done on TEC's instructions). I disbelieved that Pung did not find TEC's instructions strange because he did not dare to antagonise or provoke TEC given TEC's very bad temper and I repeat my findings at [129] to [132] above.¹⁷³ Pung further claimed that the contents looked like cement or could be cement,¹⁷⁴ which was unconvincing given that what was in the Kucinta Bag was not grey in colour and did not look like cement.

151 In the round, I inferred that Pung checked the contents of the Kucinta Bag to ensure that he had obtained a delivery of drugs, and that he kept the Kucinta Bag, sealing it back in the process, not because TEC had told him to, but because he knew it contained drugs which he had received from Arum and for which he was to deliver onwards. As Pung stated in the 5th and 6th Statements, when he looked inside the Kucinta Bag, the contents did not look like cat food and he suspected that it was "bai fen" and that was why he surrendered it to the CNB officers after his arrest.¹⁷⁵

152 Turning to the Wafer Bags, Pung similarly admitted in the 1st Statement that they contained "bai fen", which Arum had arranged for an Indian man to pass to him two days prior to his arrest and which he was waiting for Arum's instructions on what to do with them. Pung also stated that the Purina Bag was handed to him with the Wafer Bags and that he was waiting for Arum's

¹⁷³ 28/10/21 NE 9–11; AB 599 (5th Statement at [27]).

¹⁷⁴ AB 614 (6th Statement at [31]); 28/10/21 NE 7.

¹⁷⁵ AB 442 (1st Statement at A20, A21); AB 599 (5th Statement at [27]); AB 614 (6th Statement at [31]).

instructions on it. Pung stated that when he received the Purina Bag and Wafer Bags, he gave the man \$3,000.¹⁷⁶ There was no reason to hand the man such a large sum of money if Pung thought that he was merely receiving food items, knowing that it made no sense for such food items to cost thousands of dollars.

153 Again, I disbelieved that Pung had collected the Purina Bag and Wafer Bags pursuant to TEC's instructions and I found instead that this was an arrangement with Arum without TEC's involvement.

154 Pung claimed that on 26 July 2016, Tan received a phone call which he surmised was from TEC and Tan then told Pung to prepare \$3,000 for TEC. Pung claimed that TEC called Tan again on the same day, whereupon Tan then told Pung that someone was already waiting at the Condo. Pung prepared the \$3,000, collected the Purina Bag and Wafer Bags from the person and handed \$3,000 to him.¹⁷⁷ Pung also stated that whenever TEC wanted to deliver something to Pung's home, TEC would call Tan directly to get Pung to turn on his handphone, and thereafter Arum would call Pung's handphone to inform Pung to collect the goods – Pung claimed this happened even on the occasion of 29 July 2016.¹⁷⁸ But Pung's story was contradicted by Tan's testimony that she had stopped communicating with TEC in 2016 and was in fact avoiding TEC's calls, and by TEC's testimony that he could not get in touch with Pung.

155 Indeed, and I reiterate, Pung's attempt to implicate TEC in the matter was showed up by his inconsistent story. He initially claimed that what TEC forced him to collect were the Items and that TEC subsequently arranged for

¹⁷⁶ AB 442–444 (1st Statement at A22–A28); AB 594–596 (5th Statement at [17]–[20]); 28/10/21 NE 12–14.

¹⁷⁷ AB 594–596 (5th Statement at [17]–[20]); 28/10/21 NE 15.

¹⁷⁸ AB 629 (7th Statement at [41]).

Arum to liaise with Pung for this purpose. But he changed his story to say that what he collected when he liaised with Arum was not any of the Items but something in black wrapped like the Black Bundles (see [143] above). Pung's claim that the moneys he passed to TEC's intermediaries (to hand to TEC) were debts that were owed by others to TEC was plainly inconsistent with his admission that he would prepare a specified sum of money as payment for the portions that he collected (see [141]–[142] above). I found that Pung was attempting, without success, to reconcile his contradictory evidence that he was merely safekeeping innocuous goods (the Items) for TEC without payment against the three-step instruction to collect what were black bundles (that were arranged via Arum) which were not any of the Items and in exchange for money.

156 Finally, that Pung knew he was collecting “bai fen” which was “hai ruo ying” was borne out by his own statements (see [123] and [124] above).

Arum and Suresh

157 At this juncture, I mention briefly my observation that Arum and Suresh were likely the same person. Kishor claimed that the phone number +601 6612 8804 was Suresh's or Chandru's number, whilst Pung had stated that it was Arum's number.¹⁷⁹ In this regard, I accepted Kishor's testimony that he had called Pung's handphone number on 21 June and 1 July 2016, and that sometime in June 2016 he met Pung to collect money on Suresh's behalf. Kishor also stated that when he met Pung then, he had asked Pung whether Pung was *Suresh's* friend whereupon Pung said yes and handed Kishor an envelope.¹⁸⁰

¹⁷⁹ 24/9/21 NE 28; 26/10/21 NE 51; 27/10/21 NE 27–28; AB 440 (1st Statement at A12).

¹⁸⁰ 24/9/21 NE 22–24, 26–28; AB 299; AB 650–651 (D1 5th Statement at [41]); AB 729.

Summary on defence of knowledge

158 Based on the totality of the evidence, I was satisfied that Pung knew the Grey Bag contained the Black Bundles which he knew contained diamorphine. Alternatively, Pung had failed to rebut the presumption of knowledge under s 18(2) of the MDA. In particular, Pung had admitted at the time of arrest and in the 1st Statement that the Black Bundles contained “bai fen”, and in subsequent statements that he knew he was collecting “bai fen”; that he prepared money to pay for the “portions” that he was collecting; and that when he opened the Grey Bag (before he was arrested) he saw black round things which he suspected to be “bai fen”. Pung’s defence that he thought the Grey Bag or Black Bundles were cat food or dog food was, as I had found, an afterthought.

Possession of the Drugs for the purpose of trafficking

159 I was also satisfied that the Prosecution had proved beyond a reasonable doubt that Pung was in possession of the Drugs for the purpose of trafficking. Given that I had found that Pung had actual possession of the Drugs and knowledge of the nature of the Drugs, the Prosecution could also rely on the presumption of trafficking under s 17(c) of the MDA. In this regard, I was satisfied that Pung had failed to rebut this presumption.

160 I had rejected Pung’s claim that he was keeping the Black Bundles temporarily for TEC, as I had found no evidence to link TEC’s involvement to the Black Bundles. Even if Arum was TEC’s agent or intermediary (which I had rejected), the evidence did not show that Pung was holding on to the Drugs as a “bailee” in the sense that he did not have in his possession the Drugs for the purpose of trafficking (as in *Ramesh*).

161 The sheer amount of diamorphine (in the Black Bundles) could not possibly have been for Pung's consumption, who in any event said that he did not consume drugs.¹⁸¹ More importantly, Pung stated in the 1st Statement that he intended to keep the Black Bundles of "bai fen" until he received instructions from Arum. I add that in this statement, Pung also said that he was holding on to the "bai fen" in the Kucinta Bag to wait for Arum's instructions to send to the people that Arum would arrange with, and that he was holding on to the Wafer Bags to wait for Arum's instructions. Pung further said that Arum would pay him \$150 for every person he made a delivery to. Pung had not stated categorically that he was holding on to the Drugs or Other Drugs with the intention of returning them to Arum (or TEC). In fact, Pung had stated in the 4th Statement that he was paying Arum for what was eventually the Black Bundles (see [142] above). Even if I had accepted that TEC was involved in the Drugs, Pung had stated (in the 2nd Statement) that TEC told him that someone else would take delivery of the Drugs in two days. Hence, Pung's act in relation to the Drugs was part of the process of moving them along a chain in which they would eventually be distributed to the final customer (see *Ramesh* at [110]).

Conclusion on the charge against Pung

162 I thus found that the Prosecution had proved beyond a reasonable doubt the charge against Pung.

Sentence

163 Given the quantity of drugs, the prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. Section 33B of the MDA gives the court the discretion to impose a sentence of life

¹⁸¹ 27/10/21 NE 21.

imprisonment (with caning), provided the accused satisfies the requirements under s 33B(2)(a) of the MDA and receives a certificate of substantive assistance from the Public Prosecutor.

164 The Prosecution accepted that Kishor and Pung's involvement in the Drugs was limited to the activities set out under s 33B(2)(a) of the MDA, *ie*, that they were couriers. I was also satisfied that this was the case. However, the Prosecution did not issue Kishor with a certificate of substantive assistance. As such Kishor could not avail himself of the alternative sentencing regime under s 33B of the MDA and I thus passed the mandatory death sentence on him. As for Pung, the Prosecution had issued a certificate of substantive assistance. I found no reason to impose the death penalty on Pung, nor did the Prosecution submit that there was any such reason. Accordingly, I imposed the sentence of life imprisonment on Pung.

Audrey Lim
Judge of the High Court

Lim Jian Yi, Paul Chia Kim Huat and Kevin Ho Hin Tat (Attorney-General's Chambers) for the Prosecution;
Allagarsamy s/o Palaniyappan (Allagarsamy & Co) and Dhanaraj James Selvaraj (James Selvaraj LLC) for the first accused;
Chung Ting Fai (Chung Ting Fai & Co) and Ryan David Lim Jiayong (I.R.B Law LLP) for the second accused.
