

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 233

Criminal Case No 53 of 2015

Between

Public Prosecutor

And

- (1) Mohamad Fadzli Bin Ahmad
- (2) Mohamed Affandi Bin Rosli

GROUND OF DECISION

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

CONTENTS

THE ACCUSED PERSONS AND THE CHARGES.....	1
THE AGREED FACTS	5
THE SEIZED SUBSTANCES	9
DNA	10
PACKING	10
THE ACCUSED PERSONS' STATEMENTS	10
THE PROSECUTION'S CASE.....	11
REVIEW OF THE PROSECUTION'S EVIDENCE	15
(I) CHARGE E	15
(II) CHARGE A	16
(III) CHARGE F	16
(IV) CHARGE D	16
(V) CHARGE G	17
(VI) CHARGE B.....	17
CHAIN OF POSSESSION	17
SURVEILLANCE AT THE MBS CARPARK.....	19
AFFANDI'S DEFENCE	20
REVIEW OF AFFANDI'S DEFENCE	24
FADZLI'S DEFENCE	32
REVIEW OF FADZLI'S DEFENCES.....	33
FINDINGS ON THE CHARGES	45

POST-CONVICTION DEVELOPMENTS	46
THE SENTENCES.....	46

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

Public Prosecutor
v
Mohamad Fadzli bin Ahmad and another

[2017] SGHC 233

High Court — Criminal Case No 53 of 2015

Kan Ting Chiu SJ

2-6, 9, 11-13, 16-18 November 2015; 12-14 January 2016; 14-17, 21 February 2017; 31 July 2017; 1 August 2017

27 September 2017

Kan Ting Chiu SJ:

The accused persons and the charges

1 There are two accused persons in this case, Mohamad Fadzli Bin Ahmad (“Fadzli”), and Mohamed Affandi Bin Rosli (“Affandi”). Fadzli faced four charges (**charges A to D**) and Affandi faced three charges (**charges E to G**).

2 The charges are

for Fadzli, that he:

Charge A

on or about 12 July 2013, in Singapore, did abet one Mohamed Affandi Bin Rosli (NRIC No. [xxx]) to traffic in a Class A controlled drug listed in the First Schedule to the

Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act"), to wit, by instigating the said Mohamed Affandi Bin Rosli to be in possession for the purpose of trafficking, eight (8) bundles of granular / powdery substance, which were analysed and found to contain not less than 132.82 grams of Diamorphine, without authorisation under the Act or the Regulations made thereunder, and [he has] thereby committed an offence under section 5(1)(a) read with section 5(2) and section 12, and punishable under section 33(1) of the Act, and further, upon [his] conviction, [he] may alternatively be liable to be punished under section 33B of the Act.

Charge B

on 12 July 2013, at or about 4.00 p.m., whilst in a vehicle bearing registration number SGW 4282Y, at the intersection between Bayfront Avenue and Raffles Avenue, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act") to wit, by having in [his] possession for the purpose of trafficking, four (4) packets containing 49.68 grams of crystalline substances which were analysed and found to contain not less than 38.84 grams of Methamphetamine, without any authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) or the Regulations made thereunder, and [he has] thereby committed an offence under section 5(1)(a) read with section 5(2), and punishable under section 33(1) of the Act.

Charge C

on 12 July 2013, at about 5.45 p.m., at Block [xxx] Tampines Street 45, #[xxx], Singapore, did have in [his] possession a Class C controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act"), to wit, five hundred and sixty (560) tablets each marked "028" on one side and "5" on the other side, which were analysed and found to contain Nimetazepam, without any authorisation under the Act or the Regulations made thereunder, and [he has] thereby committed an offence under section 8(a) and punishable under section 33(1) of the Act.

And further

that [he], before the commission of the said offence, were convicted on 12 July 2011 in the then-Subordinate Courts *vide* DAC 12049/2011, for an offence of possession of a Class C controlled drug, to wit, Methamphetamine, under section 8(a) of the Misuse of Drugs Act (Cap 185, 2001 Rev. Ed.), for which [he was] sentenced to 12 months' imprisonment, which conviction and sentence have not been set aside, and [he]

shall therefore be liable to enhanced punishment under section 33(1) of the Act.

Charge D

on 12 July 2013, in Singapore, did abet one Mohamed Affandi Bin Rosli (NRIC No. [xxx]) to traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act"), to wit, by instigating the said Mohamed Affandi Bin Rosli to be in possession for the purpose of trafficking, four (4) packets containing 10.35 grams of crystalline substance which were analysed and found to contain not less than 8.14 grams of Methamphetamine, without authorisation under the Act or the Regulations made thereunder, and [he had] thereby committed an offence under section 5(l)(a) read with section 5(2) and section 12, and punishable under section 33(1) of the Act.

and for Affandi, that he:

Charge E

on 12 July 2013, at or about 5.30 p.m., inside a vehicle bearing registration number SJW 9386M, at lot 134 of the basement 4M carpark at Marina Bay Sands, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act, (Cap 185, 2008 Rev. Ed.) ("the Act"), to wit, by having in [his] possession for the purpose of trafficking, eight (8) bundles of granular / powdery substance, which were analysed and found to contain not less than 132.82 grams of Diamorphine, without authorisation under the Act or the Regulations made thereunder, and [he has] thereby committed an offence under section 5(l)(a) read with section 5(2) and punishable under section 33(1) of the Act, and further, upon [his] conviction under section 5(1)(a) read with section 5(2) of the Act, [he] may alternatively be liable to be punished under section 33B of the Act.

Charge F

on 12 July 2013, at or about 5.30 p.m., inside a vehicle bearing registration number SJW 9386M, at lot 134 of the basement 4M carpark at Marina Bay Sands, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act") , to wit, by having in [his] possession for the purpose of trafficking, four (4) packets containing 10.35 grams of crystalline substance which were analysed and found to contain not less than 8.14 grams of Methamphetamine, without authorisation under the Act or the Regulations made

thereunder, and [he has] thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the Act.

Charge G

on 12 July 2013, sometime between 3.50 p.m. and 3.55 p.m., in the vicinity of lot 134 of the basement 4M carpark of Marina Bay Sands, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("the Act"), to wit, by passing to one Mohamad Fadzli Bin Ahmad (NRIC No.: [xxx]), four (4) packets containing 49.68 grams of crystalline substances which were analysed and found to contain not less than 38.84 grams of Methamphetamine, without authorisation under the Act or the Regulations made thereunder, and [he has] thereby committed an offence under section 5(1)(a) and punishable under section 33(1) of the Act.

3 Four of the charges are related in that **charges A and D** against Fadzli are for abetting Affandi in **charges E and F**.

4 Fadzli claimed trial on **charges A, B and D** and Affandi claimed trial on **charges E, F and G**. The only uncontested charge is **charge C**, to which Fadzli pleaded guilty.

5 The trial proceeded on all the charges. However, after I convicted the accused persons on **charges A, B, C, E and F**, the prosecution elected to not to carry on with **charges B, C and F**: see [122] and [123] below.

6 I will refer to the trial of all the charges for completeness and to give the basis on which the accused persons were convicted and discharged on five charges on the application of the prosecution.

The agreed facts

7 The parties presented a Statement of Agreed Facts (“SAF”). The parts of the statement which describe the arrest and recovery of the drugs merit setting out in full:

- (a) Circumstances of arrest leading to the arrest of the accused persons
- 3. On 12 July 2013, at about 7.00 am, a party of officers from the Central Narcotics Bureau (“CNB”) was despatched to conduct surveillance on Affandi and his vehicle (KIA Sorento) bearing registration number SJW 9386 M (“SJW 9386 M”) in the vicinity of Block [xxx], Pasir Ris Street 11.
- 4. When the CNB officers arrived in the vicinity of Block [xxx], Pasir Ris Street 11, SJW 9386 M was not sighted in the carpark in the vicinity of the said block.
- 5. At about 7.45 am, Affandi was seen walking to the carpark of Block [xxx], Pasir Ris Street 11 where he met up with a male Malay, later identified to be one Mansor Bin Mohamad Yusoff (NRIC No. [xxx]) (“Mansor”). Mansor and Affandi then boarded a motorcycle bearing registration number FBE 2726 E, with Affandi as the pillion rider, and they rode off together. At about 8.10 am, Mansor and Affandi entered the basement carpark at MBS on the said motorcycle.
- 6. At around the same time, it was observed that SJW 9386 M was parked at lot 134 at basement 4M of the MBS carpark. CNB officers positioned themselves in the vicinity and continued their observations.
- 7. Some time past 3 pm on the same day, Fadzli left unit [xxx] of Block [xxx], Tampines Street 45 and drove a vehicle (Honda Civic) bearing registration number SGW 4282 Y (“SGW 4282 Y”) out of the multi-storey carpark at Block [xxx], Tampines Street 45. At about 3.50 pm, Fadzli drove SGW 4282 Y into the MBS carpark and proceeded to basement 4M. Fadzli parked SGW 4282 Y near SJW 9386 M. He then alighted from SGW 4282 Y and met up with Affandi behind SJW 9386 M. Shortly thereafter, Fadzli returned to his vehicle and drove out of the MBS carpark.

In relation to Fadzli

8. At about 4.00 pm, CNB officers intercepted SGW 4282 Y along Bayfront Avenue, Singapore, and Fadzli was placed under arrest. CNB officers then escorted Fadzli and SGW 4282Y to an open space along Republic Boulevard, Singapore.
9. At about 4.22 pm, a search was conducted on SGW 4282 Y and the following items were recovered and seized as case exhibits:
 - a. From the top of the front passenger seat:
 - i. One black sling bag (marked as "D1")¹ containing:
 1. one plastic packet (marked as "D1A") containing:
 - a. one packet of white crystalline substance (marked as "D1A1")²; and
 - b. one plastic packet (marked as "D1A2") containing:
 - i. two packets of crystalline substance (collectively marked as "D1A2A")³.
 - b. From the side compartment of the driver's door:
 - i. One packet of white crystalline substance (marked as "C1")⁴.
 - c. Several plastic bags of groceries from the boot of SGW 4282 Y.
10. The search of the vehicle ended at about 4.45pm.
11. At about 4.50pm, a statement⁵ was recorded from Fadzli by Staff Sergeant Muhammad Fardlie bin Ramlie ("SSgt Fardlie") in a CNB operational vehicle. The recording of the statement ended at about 5pm.
12. At about 5.15pm, Fadzli was escorted to Block [xxx], Tampines Street 45 and arrived at about 5.50 pm. At

¹ P38.

² P39.

³ P39.

⁴ P37.

⁵ P106.

about 5.55 pm, a search was conducted of unit [xxx] of the said block. Fadzli surrendered the following items, which were seized as case exhibits:

- a. From the right pocket of a black jacket (marked as "E1")⁶ inside Fadzli's bedroom wardrobe:
 - i. One packet (marked as "E1A") containing 30 slabs of Erimin-5 tablets (300 tablets, collectively marked as "E1A1")⁷; and
 - ii. One packet (marked as "E1B") containing 26 slabs of Erimin-5 tablets (260 tablets, collectively marked as "E1B1")⁸.
13. The search of unit xxx ended at about 6.25 pm.
14. Fadzli was then escorted to Block [xxx], Tampines Street 83, [xxx]. Whilst in the unit, CNB officers were informed that Fadzli did not stay at the unit.
15. At about 6.50 pm, SSgt Fardlie recorded a further contemporaneous statement from Fadzli in a CNB operation vehicle.⁹ The recording of the statement ended at about 6.55 pm.
16. At about 7.22 pm, Fadzli was escorted to Woodlands Checkpoint where K-9 and backscatter searches were conducted on SGW 4282Y. Nothing incriminating was found.
17. At about 10.35 pm, Fadzli was escorted to the Central Police Division lockup, where he was then handed over to the lock-up officers.

In relation to Affandi

18. At about 4.10 pm, CNB officers arrested Affandi at his workplace at the MBS Fire Command Centre. After his arrest, searches were conducted on his work station, and his two lockers, but nothing incriminating was found.
19. At about 5.18 pm, Affandi was escorted to lot 134 of basement 4M of the MBS carpark where vehicle SJW 9386M was parked. At about 5.32 pm, a search was

⁶ P40.

⁷ P41.

⁸ P42.

⁹ P106.

conducted on the said vehicle and the following items were recovered and seized as case exhibits:

- a. From under the last row of passenger seats:
 - i. Eight bundles wrapped in black tape (marked as "B1" to "B8")¹⁰
 - b. From the middle row of passenger seats:
 - i. One black and red jacket (marked as "A1")¹¹
 - ii. One plastic packet (marked as "A1A") containing 3 packets of white crystalline substance (marked collectively as "A1A1"); and
 - iii. One packet of white crystalline substance (marked as "A1B")¹².
20. At about 6.03pm, Senior Station Inspector David Ng ("SSI David Ng") recorded a statement¹³ from Affandi in a CNB operational vehicle. The recording of the statement ended at about 6.50 pm.
 21. Subsequently, Affandi was escorted to Woodlands Checkpoint where K-9 and backscatter searches were conducted on SJW 9386M. Nothing incriminating was found.
 22. Thereafter, Affandi was escorted from Woodlands Checkpoint to Block [xxx], Pasir Ris Street 11. A search was then conducted on unit [xxx] of the said block, but nothing incriminating was found. At about 10.17pm, CNB officers left the unit with Affandi and returned to the CNB Headquarters ("CNB HQ").
 23. At about 10.56pm, Affandi was brought back to the CNB Supervision 'A' office.
 24. At all material times, Fadzli was in-charge of SGW 4282Y while Affandi was the registered owner of SJW 9386M.

¹⁰ P22.

¹¹ P20.

¹² P21.

¹³ P105.

The seized substances

8 The parties also agreed that the seized substances were sent for analysis by the Health Sciences Authority (“HSA”), which found and certified that:

- (i) The eight exhibits marked B1A, B2A1, B3A, B4A, B5A, B6A, B7A and B8A taken from the eight packets wrapped in black tape recovered from under the last row of seats in Affandi’s vehicle SJW 9386 M¹⁴ contained a total of not less than 132.82 grams of diamorphine (the subject-matter of **charges A and E**).
- (ii) The plastic packets marked A1A1 and A1B recovered from the middle row of seats of SJW 9386 M contained not less than 8.14 grams of methamphetamine (the subject-matter of **charges D and F**).
- (iii) The four plastic packets of crystalline substance marked C1, D1A1 and D1A2A recovered from Fadzli’s vehicle SGW 4282Y contained a total of not less than 38.84 grams of methamphetamine (the subject-matter of **charges B and G**).
- (iv) The two packets of tablets recovered from Fadzli at Block [xxx] Tampines Street 45, unit [xxx] contained 560 tablets (“the Erimin-5 tablets”) which contained nimetazepam (the subject-matter of **charge C**).

¹⁴ SAF para 26, NE 18 November 2015, p 16 line 28 to p 17 line 1.

DNA

9 Examination of a plastic bag¹⁵ recovered from Fadzli's car which held three packets of methamphetamine yielded DNA which matched the DNA profile of Affandi.

Packing

10 The packaging of the drugs recovered from the vehicles of Fadzli and Affandi were examined by the Forensic Chemistry and Physics Laboratory, HSA. One bag¹⁶ recovered from Fadzli's car, and one bag¹⁷, recovered from Affandi's vehicle, were found to have been manufactured by the same machine.

11 I find the evidence on the DNA and the manufacture of the bags containing methamphetamine do not really assist the prosecution or the defence, and I will not refer to that evidence further.

The accused persons' statements

12 In the course of investigations, one contemporaneous statement (in two parts), four cautioned statements, and four investigation statements were recorded from Fadzli, and one contemporaneous statement, four cautioned statements and eight investigation statements were recorded from Affandi. The statements were admitted in evidence without objection.

¹⁵ P154.

¹⁶ P157.

¹⁷ P133.

The Prosecution's case

13 The six contested charges against Fadzli and Affandi (excluding **charge C**) will be dealt with by the drugs involved, i.e. the charges relating to diamorphine, **charges A and E** and the charges relating to methamphetamine, **charges B, D, F and G**. For latter four charges, the 49.68 grams of methamphetamine recovered from Fadzli's vehicle (**charges B and G**) will be dealt with separately from the 8.14 grams of methamphetamine recovered from Affandi's vehicle (**charges D and F**).

14 The prosecution relied substantially on admissions in two statements made by Affandi. The first statement was his contemporaneous statement recorded by SSI David Ng on 12 July 2013 in a series of questions and answers:

- Q1. *The 8 black bundles that you surrendered to the officer found inside your vehicle SJW 9386 M belong to whom?*
- A1. *My friend 'Abut'.*
- Q2. *What is inside the 8 black bundles?*
- A2. *I only know they called it 'Panas'.*
- Q3. *What is 'Panas'?*
- A3. *I only know is 'Panas'.*
- Q4. *Why the 8 black bundles is inside your car?*
- A4. *To be store inside my car.*
- Q5. *When did you collect the 8 black bundles?*
- A5. *Last night.*
- Q6. *From whom?*
- A6. *A male Indian. I don't know him. I called the male Indian handphone number back after a few miss called and he told me to meet him at Kranji after the 10 mile junction big carpark. Then he passed all the drug to me.*

Q7. *Who ask you to go and collect the drug from the male Indian?*

A7. *'Abut'.*

Q8. *What is 'Abut' handphone no?*

A8. *Is inside my phone. (Recorder note : I took out 'Affandi' h/p and he shown it to me 'Abut [xxx])*

Q9. *Did you meet up with 'Abut' earlier?*

A9. *Yes.*

Q10. *Did you pass 'Abut' anything?*

A10. *Yes.*

Q11. *What did you pass to 'Abut'?*

A11. *'Ice'.*

Q12. *Did 'Abut' passed any money to you?*

A12. *Yes. \$1,500/- because I want to borrow from him.*

Q13. *How many packet did you pass it to 'Abut'?*

A13. *A lot but I don't know how many. 'Abut' suppose to take all the Ice but he left some behind. As for 'Panas' 'Abut' did not ask me to take out.*

Q14. *How long have you been doing these for 'Abut'?*

A14. *First time.*

Recorder note : I shown a photo of Mohamad Fadzli Ahmad, NRIC [xxx] and 'Affandi' confirmed it to be 'Abut'.¹⁸

[emphasis added]

15 The second statement was his cautioned statement recorded by Woman Inspector Ng Pei Xin ("W/Insp Ng") under s 23 Criminal Procedure Code on 13 July 2013 in answer to a charge of trafficking eight bundles of diamorphine recovered from his vehicle:

The black thing is only to be stored in my car. As and when Abut wants it, he will come and take it. I will pass to him.

¹⁸ P105.

I did it because I need cash to pay all my debts, because I got divorced because of my debts.

All the black bundles belong to Abut. I was just told to keep them. I did not purchase the black bundles.

I started doing this for Abut for about one month. Sometimes, I collect once a week, sometimes twice a week. Normally, I only collect one or two “panas”, but I don’t know what is “panas”. This is the first time there is so many that is passed to me. *Abut will ask me to collect from someone, store it, and then pass to him.* Abut pays me about \$400 to \$500 for one collection.

From my point of view, Abut also doesn’t know I was passed a big amount of 8 bundles because usually it is one or two.¹⁹

[emphasis added]

16 Even before these two statements were recorded, Affandi had spoken to Staff Sergeant Sanusir Bin Othman (“SSgt Sanusir”) when his locker at his place of work was being searched. Affandi revealed that “dalam kereta ade something”, which meant there is something in the vehicle. Then he went on to say “if I tell you A to Z, what will happen to me as I wanted to know the real picture” but SSgt Sanusir only told him that he had to seek instructions from his superior officers.

17 When Affandi was brought to his vehicle, and before the vehicle was searched, SSgt Sanusir had the following exchange with him (with English translation inserted in parenthesis below the Malay words):

Q: Berapa banyak dalam kereta?

(How many inside the car?)

A: Lapan

(Eight)

Q: Lapan apa?

(Eight what?)

¹⁹

P115.

- A: Lapan packet, besar, panas
(Eight packet, big, “panas”)
- Q: Mana awak taruk?”
(Where you put?)
- A: Under the seat. Ada sejuk kat dalam jacket. Tak tau
berape banyak”
(Under the seat. There’s Ice in the jacket. Don’t know
how many).
- Q: Jacket siapa?
(Whose jacket?)
- A: Saya.
(Mine)

This exchange was recorded in a field book kept for the operation.

18 The prosecution also relied on the findings of the HSA on the DNA on the plastic bag holding the methamphetamine recovered from Fadzli’s vehicle which matched Affandi’s DNA profile, and the finding that the one bag containing methamphetamine recovered from Fadzli’s vehicle and another bag containing methamphetamine recovered from Affandi’s vehicle were manufactured by same machine. These findings were presented to show the connection of Fadzli and Affandi to the methamphetamine that were recovered from the two vehicles.

19 The Misuse of Drugs Act (“MDA”) also assisted the prosecution by raising rebuttable presumptions against Fadzli and Affandi. As Fadzli admitted that he was in charge of SGW 4282 Y, and Affandi admitted that he was the owner of SJW 9386 M, they were presumed under s 21 read with s 18(2) of the MDA, to know of the nature of the drugs recovered from their respective vehicles. The provisions read:

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

18(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

20 Section 17 MDA creates another presumption, that a person who is proved to have in his possession more than 2 grams of diamorphine or 25 grams of methamphetamine shall be presumed to have that drug for the purpose of trafficking.

Review of the Prosecution’s evidence

21 To facilitate easier understanding, the review will be carried out according to the subject matter rather than the alphabetical order of the charges.

(i) Charge E

22 The evidence is that Affandi informed the CNB officers about the eight bundles in his vehicle. He had in his contemporaneous and cautioned statements admitted that he knew them to be “panas” and that “Abut” (who is Fadzli) had instructed him to collect and store them for him to come and take them when he wanted to. By this evidence, Affandi either knew that the eight

bundles were diamorphine (if he knew “panas” was diamorphine), or if he did not know that, he was presumed under s 18(2) to know that they were diamorphine. By storing them for Fadzli’s collection, he had them for the purpose of trafficking.

(ii) Charge A

23 On the basis of Affandi’s admissions, Fadzli had abetted Affandi to have possession of the diamorphine for the purpose of trafficking. It is noted that in his cautioned statement Affandi stated that from his point of view, Abut/Fadzli did not know that he (Affandi) had collected eight bundles because the other transaction involved one or two bundles. However Affandi’s surmise was unfounded because he did not know the arrangement Fadzli had with the supplier for that transaction.

(iii) Charge F

24 Affandi agreed in the SAF that the four packets of white crystalline substance recovered from his vehicle contained not less than 8.14 grams of methamphetamine. There was no agreement or presumption that Affandi had possession of the methamphetamine for the purpose of trafficking.

(iv) Charge D

25 There was no evidence when Fadzli instigated Affandi to be in possession of the methamphetamine. The date in the charge, 12 July 2013, is the date of arrest and recovery of the methamphetamine, not the date of the purported instigation.

(v) **Charge G**

26 Affandi admitted in his contemporaneous statement that he had passed “a lot” of methamphetamine to Fadzli, but he did not clarify what he meant by that, and he made no mention of the weight of the methamphetamine.

27 While Fadzli agreed in the SAF that 38.84 grams of methamphetamine were recovered from his vehicle, he denied that they were passed to him by Affandi.

(vi) **Charge B**

28 By his admission to possession of the 38.84 grams of methamphetamine, Fadzli was presumed to have possession of the drugs for the purpose of trafficking.

Chain of possession

29 Mr Michael Chia, counsel for Affandi, contended in the closing submissions that:

19 From the evidence given at trial, there were at least 2 areas that raised the real possibility of there being a break in the chain of custody of the 8 bundles and the 4 packets (for the 1st and 2nd Charges respectively):-

- (a) The movement of the 8 bundles and 4 packets prior to the handing over to PW38, Inspector Ng Pei Xin who is the investigation officer for the case; and
- (b) The handling of the 8 bundles and 4 packets by PW38 prior to the analysis of the same.

30 Mr Chia expended a lot of time and effort questioning of every officer who had any dealing with the recovered exhibits starting from SSI David Ng to W/Insp Ng who had eventual custody of them before they were sent to the

HSA for analysis. Questions were raised over the time at which the exhibits were handed from one officer to another, the bags in which the exhibits were put into between the time of recovery and the time they were brought back to the CNB offices for marking, photographing and weighing, and manner in which they were stored by W/Insp Ng when they were in her custody.

31 It transpired that the officers did not record their involvement with the exhibits when that took place, and were largely relying on memory when they gave their evidence. There were inconsistencies in their evidence on the time when the exhibits changed hands and the colour of the bags in which the exhibits were held.

32 However it was not established that there was any break in the chain of custody in the sense that the exhibits had left the control of CNB officers and went in the control of unknown parties, or were otherwise unaccounted for. Counsel contended that there was a real possibility of there being a break in the chain of custody without going further, with no indication as to when and how the chain of custody may have been broken.

33 While counsel was seeking to get from the officers a single clear and consistent account of the handing of the exhibits, it must be remembered that the drugs were recovered and retained when the officers were actively carrying out investigations, and took custody of the exhibits as a team.

34 It would take more than to allude to a real possibility of a break of custody by pointing to inconsistencies which do not add up to a break. In this case CNB officers had seized and taken custody of the exhibits, and the same exhibits were sent by them to the HSA for analysis. To support the contention there must something put forward to show that the exhibits have left the

custody of the officers, or that unauthorised parties had access to them at some time during that period, or that the exhibits have been interfered with.

35 As the Court of Appeal in *Lai Kam Loy v PP* [1993] 3 SLR(R) 143 held at [38] (and reaffirmed in *Satli bin Masot v PP* [1999] 1 SLR(R) 931 at [15]):

... it cannot be that in every drug case it lies on the Prosecution to laboriously call every single witness to establish the chain of possession of the seized drugs. The need to do so only arises where a doubt as to the identity of an exhibit has arisen. This may arise for instance where it has been established that there was a shortfall in numbers or a failure to mark the exhibits.

it is not sufficient to contend that there is a break in the chain of possession without pointing to when, where and how the break may have occurred.

36 There was another issue raised with regard to the marked exhibits. This was that while they were in custody of W/Insp Ng, she did not keep them in her office safe because there was no room for them. She kept them overnight on the floor of her office which she would lock. It was not put to W/Insp Ng that the exhibits should not have been stored in that way, or that any person could have gained access to the exhibits without her knowledge or consent. There was no basis for this complaint.

Surveillance at the MBS carpark

37 Mr John Abraham, counsel for Fadzli, was critical over the manner in which the CNB officers kept observation of Fadzli, Affandi and their vehicles in the MBS carpark. The officers' evidence on the positions of the vehicles and the interaction of Fadzli and Affandi when they met and parted was sketchy, particularly in respect of Fadzli's actions as he returned to his vehicle.

38 However they were not prejudiced by that because one officer in the operation, Station Inspector Lim Chin Tat, testified that he observed that after meeting with Affandi, Fadzli returned to his vehicle with his arms by his side and appeared to be carrying something. This was consistent with and corroborated the evidence of Affandi and Fadzli that Fadzli was collecting from Affandi groceries to be donated to an orphanage and had carried two large bottles of cooking oil to his vehicle.

Affandi's defence

39 Affandi retracted his contemporaneous statement and cautioned statement. He did that in the course of the investigations when investigations statements were recorded. In all, he made three cautioned statements²⁰ and twelve investigation statements²¹, and all of them were tendered in evidence without objection.

40 Affandi's defence kept to the narrative in those subsequent statements. However his counsel did not go through each of them with him and have him confirm them although he was referred to parts of them when he was giving his evidence.

41 He started with his account on the eight bundles. In his examination-in-chief on 11 July 2013, he said one Malaysian by the name "Mamak" had asked him to do him a favour as his (Mamak's) car had been broken down, and to meet Mamak's friend at a heavy vehicle carpark at Kranji near the Ten Mile Junction ("the Kranji carpark"). Affandi thought that he was to collect

²⁰ P116 – P118.

²¹ P119 – P130.

money from Mamak's friend to deliver it to Mamak, as he had done on previous occasions.

42 Affandi's evidence was that he did not go directly to the carpark. He first drove to Johor Bahru sometime before midnight and when he returned to Singapore at almost 3 a.m. on 12 July, he went to the Kranji carpark.

43 He entered the carpark, drove one round, and as he was about to exit, a person knocked on the passenger side window of his vehicle, and when he wound down the window the person put a plastic bag into the car. When Affandi asked what were in the bag, the person told him to wait for Mamak's call, and walked away.

44 Affandi then left the carpark and drove to MBS as he wanted to have his pre-dawn meal there before he started work as he was observing the Muslim fasting month. When he reached MBS, he took out eight bundles from the plastic bag but he was not sure what they were and he hid them under the third row of seats in his vehicle. He tried to call Mamak but Mamak's number was not in use.

45 He then realised that he had left his work pass at home, and went back to get it. He had his pre-dawn meal at home and took a lift from a colleague to work at about 8 a.m.

46 Subsequently Mamak called him. However, he was busy working at that time. He told Mamak he was busy, and terminated the call without asking about the bundles.

47 At about 3 p.m., Fadzli telephoned him. Fadzli had asked him two days previously to donate groceries to an orphanage, and called him at that time to

check if the groceries were ready for collection, and they agreed to meet. When they met, and Affandi delivered groceries from his vehicle to Fadzli.

48 This was corroborated by evidence of the CNB officers in the operation that groceries consisting of two bottles cooking oil, two packets coffee powder, a few packets of instant noodles and two packets detergent powder were recovered from Fadzli's vehicle after his arrest.²²

49 After the CNB officers arrested Affandi they searched his locker but recovered nothing. When they brought him down to his vehicle, and he showed them the eight bundles. He did that because he felt that they were the reason for his arrest by the CNB. He told SSgt Sanusir that there were eight bundles in his vehicle. Affandi saw the bundles for the second time when they were recovered from his vehicle and he saw these eight bundles being photographed in the CNB exhibit management room, but he was not sure if they were the bundles recovered from his vehicle.

50 Mr Chia then referred him to an investigation statement he made on 18 July 2013.²³ During the recording of the statement he was shown a photograph of the eight bundles recovered from his vehicle and he confirmed that these were eight bundles he hid in his vehicle. Affandi said that he was not sure whether the eight bundles in the photograph were the eight bundles recovered but:

Because the officer show me this photo. As I---I'm feeling unsure, I just replied, "Okay, yah, yes, these are the eight bundles in my car"²⁴

²² PS24 and PS27.

²³ P126.

²⁴ NE 17 February 2017, p 51 lines 14 – 15.

Counsel then referred to his contemporaneous statement²⁵, where he said that the eight bundles belonged to his friend Abut. He told counsel that he had said that because:

... the officer who took the statement from me by the name of David informed me that Abut has already been arrested and he asked me to just say “Abut. These drugs belongs to Abut”.²⁶

but this was not put to SSI David Ng by his counsel.

51 This explanation was at variance with his previous explanations recorded 15 July 2013:

19. I had said earlier that the eight black bundles belonged to Abut and that he asked me to collect them and that he would get them from me when he wanted to. All that is not true. I do not know what I was thinking at that time. *I was confused* and so I said that it is Abut. All the eight bundles actually belonged to Mamak. The eight bundles also do not belong to me.

[emphasis added]

and on the following day:

Q9. You tell me the eight bundles belong to Mamak. Then why did you say earlier that they belonged to Abut?

A9. *I was scared and confused*. The CNB officer was pressurizing me. I didn’t really know what I was thinking that point of time. I was very “gan jiong” [Hokkien for excited].²⁷

....

Q13. If he did not threaten you, why did you say the bundles belong to Abut and that you passed him ice?

A13. I don’t know. *I felt scared and confused* and did not know what to say.

[emphasis added]

²⁵ P105 – see para 9 hereof.

²⁶ NE 17 February 2017, p 52 lines 9 – 12.

²⁷ P125.

with no allegation that he was told to name Abut.

52 In that statement, Affandi had also disclosed that the bundles were “panas” because he heard SSgt Sanusir using the word while talking to his colleagues, and thought the bundles were panas although he did not know what panas was. He was specific that he did not know panas was the street name for heroin.

53 With regard to the four packets of 8.14 grams of methamphetamine recovered from a jacket in his vehicle, Affandi stated in his investigation statement of 18 July 2013²⁸ that he had bought the drugs from a Chinese man in a coffeeshop in Geylang, and he had bought them for his own consumption. This was not disputed by the prosecution in cross-examination.

54 Affandi denied that he had passed four other packets to Fadzli and stated that he had met Fadzli in the carpark and had passed groceries to him.

Review of Affandi’s defence

55 Affandi’s admissions were not confined to the contemporaneous statement he made to SSI David. In his cautioned statement recorded on 13 July 2013, by W/Insp Ng (who was not alleged to have pressurised him or asked him to implicate Abut), he expanded on his dealings with Abut:

I started doing this for Abut about one month. Sometimes, I collect once a week, sometimes twice a week. Normally, I only collect one or two “panas”, but I don’t know what is “panas”. This is the first time there is so many that is passed to me. Abut will ask me to collect from someone, store it, and then pass to him. Abut pays me about \$400 to \$500 for one collection.²⁹

²⁸ P128.

²⁹ P115.

56 Quite surprisingly, Mr Chia did not seek any explanation from Affandi on this statement, but the prosecutor did. She had Affandi affirm that his statement was given by him voluntarily, without inducement, threat or promise. Affandi explained that he said in that statement that Abut would come and collect the “black thing” stored in his vehicle when Abut wants it and he will pass them to Abut because:

... I wrote this to follow what was stated in my contemporaneous statement.

...

Because at that time the words that David told me that I will be facing the death sentence keep on playing in my mind. So if I were to be co-operative and write according to what the contemporaneous statement states, maybe I'll be released.³⁰

57 When the prosecutor pointed it to him that the parts of this statement, such as his storing drugs for Fadzli for about a month, and that it was the first time so much panas was passed to him went beyond his contemporaneous statement, his reply was that:

... I was only thinking of saving myself which is why I wrote as such.³¹

58 When he was cross-examined further he said:

Q Now you said you gave this statement because you wanted to remain co-operative to save yourself, right?

A Yes.

Q Now if that is the case, there's no need for you to provide further details in your contemporaneous statement, isn't it?

A Yes, but on that day *I was just coming out with stories.*

Q *So you were deliberately fabricating lies* to add to this statement.

³⁰ NE 21 February 2017, p 51 line 24 to p 52 line 5.

³¹ NE 21 February 2017, p 52 lines 23 – 24.

A Yes I have to save myself.

Q No. *So why did you think that you needed to fabricate more lies to save yourself?*

A *I don't know.*³²

[emphasis added]

and he confirmed that he had no complaints against W/Insp Ng.

59 Instead of further implicating himself, he could have told W/Insp Ng that his contemporaneous statement was untrue, and tell her the truth, but he did the opposite. Affandi's reasons for renouncing the admissions in his contemporaneous statement and cautioned statement did not stand up to reason.

60 Other aspects of his defence were also unsatisfactory. Even as he gave his account of his dealings with Mamak, he was changing his evidence. In the first investigation statement of 15 July 2013 he did not have Mamak's contact number.³³ In his statement of 18 July 2013 he admitted that he had Mamak's numbers stored in his handphone.³⁴

61 Next he changed his account on his trip to the Kranji carpark where he claimed to have received the eight bundles. In his statement of 15 July 2013 he stated that:

... at about 3 a.m., I left my apartment and drove my car SJW 9386 M to the Mandai heavy vehicle carpark.³⁵

³² NE 21 February 2017, p 55 lines 4 – 14.

³³ P123 para 2.

³⁴ P126 para 41; P127 para 51.

³⁵ P123 para 4

62 He corrected that in his statement of 26 July 2013 and said that he went to Johor Bahru at about 12 a.m. and spent about two hours there before he returned to Singapore at about 3 a.m. (Immigration & Checkpoints Authority records showed that his vehicle re-entered Woodlands checkpoint on 12 July 2013 at 3.30 a.m.³⁶)

63 He added that on returning to Singapore:

I drove down Woodlands Road and made a U-turn at Ten Mile Junction. After the U-turn, I drive into the heavy vehicle carpark next to Ten Mile Junction.³⁷

but the described route was contradicted by independent evidence. CCTV coverage on the junction of Woodlands Road and Bukit Panjang Road where the U-turn was did not capture his vehicle over the period 3.30 a.m. to 5.00 a.m.³⁸, and Affandi had no explanation for that.

64 That raised doubts in his defence whether he drove to the Kranji carpark and received the eight bundles there, or had received them in Johor Bahru before returning to Singapore and proceeding to MBS.

65 Affandi then gave different accounts of what he did with the bundles after he received them. In his statement of 15 July 2013, he stated:³⁹

7. I drove off and wanted to drive home. *On the way home, I took a look at the contents of the plastic bag. I saw black packaging but I did not count how many there was.* I took one black bundle and looked at it. I felt that something was not right and wondering why it was wrapped in tape, concealing the contents. *I was scared and so instead of going home, I drove to Marina Bay Sands and parked my car there.*

³⁶ P193.

³⁷ P128, para 61.

³⁸ P194A and P194B

³⁹ P123.

...

10. ... I thought to myself that if Mamak did not call me by the time I finished work the next day, I would hand over the *eight bundles* to the police. I do not want to get myself involved.

[emphasis added]

66 When he gave his evidence, Affandi said in answer to his counsel:

From the carpark, I drove all the way to MBS. *When I reached MBS, then I realised there were eight bundles in the plastic.*⁴⁰

[emphasis added]

67 When the prosecutor asked Affandi to confirm that he checked the contents of the bag along the way to Marina Bay Sands, he equivocated wildly in his answers:

The truth is I did not check.

....

Maybe I did check or maybe I don't. I can't remember now.

...

*I think I did check.*⁴¹

[emphasis added]

68 Affandi did not disclose in his investigation statements and in his defence the telephone communications between himself, Mamak and Fadzli on the early hours of 12 July 2013 after he had re-entered Singapore from Johor Bahru. There were records of six communications between Affandi and Mamak between 4.14 a.m. and 4.35.50 a.m. consisting two outgoing calls from Affandi, two SMS messages from Affandi and two SMS messages from Mamak.⁴² There were also four calls between Affandi and Fadzli that morning

⁴⁰ NE 17 February 2017, p 40 lines 28 – 29.

⁴¹ NE 21 February 2017, p 9 line 20 to p 10 line 8.

⁴² NE 21 February 2017, p 19 lines 12 to p 20 line 25 and Agreed Bundle p 257.

at 3.38.55 a.m., 5.37.19 a.m., 6.21.17 a.m. and 6.23.52 a.m. consisting of two outgoing and two incoming calls.⁴³

69 These messages and calls revealed a high level of communication between Affandi and Mamak and between Affandi and Fadzli after Affandi returned from Johor Bahru. That showed that something was going on between them which required them to stay up in the early hours of the morning and communicate with one another.

70 I find that Affandi's contemporaneous statement and cautioned statement were voluntary and true statements, untainted by pressure or suggestion as he alleged. These statements should be viewed together with his conversations with SSgt Sanusir⁴⁴. Affandi was at the time of arrest and not long before making of the statements in a co-operative frame of mind, telling the officers searching his locker that there was something in his vehicle, and offering to tell them "A to Z".

71 I find that Affandi had gone to Johor Bahru in the early hours of 12 July 2013 and returned to Singapore at 3.30 a.m., but he did not drive to the Kranji carpark. Instead, he went to the MBS carpark directly, hid the eight bundles between a row of seats, left the vehicle there, and went home. He returned to MBS later in the morning when he met Fadzli at his vehicle, and Fadzli collected something from him and drove off.

72 Did Affandi know that the bundles were diamorphine? There was no direct evidence that he knew the eight bundles stored in his vehicle were diamorphine. He knew them to be "panas" but did not know what panas was,

⁴³ Agreed Bundle p 257.

⁴⁴ See paras 12 and 13

and that was not contradicted by any evidence. He may have not known that the bundles were diamorphine.

73 Nevertheless, he was presumed to have knowledge of the diamorphine. The question was whether he had rebutted the presumption. To rebut the presumption, Affandi had to show positively that he did not know that the bundles were diamorphine, but Affandi could only say that he thought the bundles were panas, which he suspected to be something illegal, but he did not enquire about them or examine them. The confusion, equivocation and falsehood in his evidence undermined his creditability and his effort to rebut the presumption.

74 We can now examine his position on each of the charges he faced. With reference to **charge E**, Affandi's Closing Submissions states that:

8. The 2nd Accused (Affandi) humbly submits there is a reasonable doubt cast on the Prosecution's case as to whether the 8 bundles of powdery/granular substances seized from the 2nd Accused's vehicle bearing registration SJW9368 M ("SUV") seized were the same as the 8 bundles analysed by the Health Sciences Authority to contain not less than 132.82 grams of diamorphine and produced in Court marked as P135 – P151.

on the basis that there was a break in the chain of possession of the eight bundles recovered from Affandi's vehicle. I have dealt with this submission and had rejected it.

75 The undisputed fact is that Affandi was in possession of the eight bundles. He was presumed under s 18(2) to know that they contained diamorphine, and by his admission that he had collected the bundles and was keeping them for Fadzli, he had them for the purpose of trafficking.

76 The onus was on him to rebut the presumption by presenting credible evidence and showing on a balance probabilities that he did not have the knowledge, and he failed to do that. In the circumstances he is guilty on this charge.

77 With regard to **charge F**, it was undisputed that Affandi had the four packets of methamphetamine in his possession. He knew that the packets were “ice” which is the street name for methamphetamine, and said he had it for his own consumption.

78 In this case, Affandi’s possession of the 8.14 grams of methamphetamine did not raise the presumption under s 17 that he had them for the purpose of trafficking, and the prosecution did not present any evidence of such a purpose. To the contrary, when a cautioned statement was recorded from Affandi in relation to this charge, he stated:

The ice that is found with me is for my own consume, not for trafficking.⁴⁵

and he expanded on that in his investigation statement of 18 July 2013 that:

54 ... All the ice belongs to me. They are all for me to play around. By play around, I mean to smoke ...⁴⁶

and that was not refuted by the prosecution. In the circumstances the offence of trafficking was not proved.

79 However by being in possession of the drugs, Affandi had committed an offence under s 8 MDA punishable under s 33 MDA, and I find him guilty of possession.

⁴⁵ P117.

⁴⁶ P128.

80 With regard to **charge G**, Affandi admitted in his contemporaneous statement⁴⁷ that he had passed “a lot” of ice to Fadzli, but he was not explain what he meant by that, and there was no evidence of the amount of methamphetamine involved.

81 The prosecution had not proved beyond a reasonable doubt that Affandi had passed the four packets containing 38.84 grams of methamphetamine to Fadzli, and I acquit Affandi on this charge.

Fadzli’s defence

82 Fadzli’s defence was that he did not abet Affandi to traffic the eight bundles of diamorphine or the four packets of methamphetamine in Affandi’s vehicle. He had driven to the MBS carpark and met Affandi to collect from Affandi groceries which were to be donated to the Darul Ma’wa orphanage at Still Road.

83 Except for admitting **charge C** for the possession of 560 tablets, Fadzli denied the other charges against him.

84 Unlike Affandi, Fadzli did not make any admissions on the three disputed charges throughout the investigations. His defence to **charge A** was a total denial of any knowledge or involvement with the eight bundles of diamorphine recovered from Affandi’s vehicle with Mamak who Affandi had dealt with.

85 On **charge B** for trafficking the four packets of methamphetamine recovered from his vehicle, Fadzli admitted to possession of the drugs, but claimed that he had obtained them together with the Erimin-5 tablets from one

⁴⁷ P105.

“Man Topak” in lieu of \$2,500 that Man Topak owed him after losing a bet with him. He paid Man Topak a \$320 top-up for the drugs and had intended them for his own consumption.

86 Fadzli absolutely denied any involvement with the methamphetamine recovered from Affandi’s vehicle referred to in **charge D**.

Review of Fadzli’s defences

87 The first matter for consideration is the effect of Affandi’s contemporaneous statement and cautioned statement on Fadzli. Affandi had tried to retract both statements. If he had succeeded to show that he was not speaking the truth when he made them, then he and Fadzli would not to be troubled by them. However I have found that Affandi was not confused, scared or pressurized and was not lying when he made the admissions.

88 Affandi’s admissions may be used against Fadzli under s 258(5) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”):

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.

Explanation – “Offence” as used in this section includes the abetment of or attempt to commit the offence.

89 This provision was in our laws as s 30 of the Evidence Act (Cap 97, 1997 Rev Ed) before it was re-enacted as s 258(5) CPC on 2 January 2011. Its effect has been explained in two seminal decisions. In *Chin Seow Noi and others v PP* [1993] 3 SLR (R) 566 the Court of Criminal Appeal held at [84]:

... the plain and literal meaning of s 30, read together with *illus (a)*, is that the confession of a co-accused may be made

part of the substantive evidence against the accused in the same manner it forms part of the evidence against the confessing co-accused. It is trite law that an accused person may be convicted solely on the basis of his confession. There is nothing in the section or in the Act itself which would point ineluctably to the conclusion that there must exist “independent” evidence against the co-accused before the confession of his co-accused can be used against him. The natural interpretation of s 30 is that it allows the conviction of an accused person to be sustained solely on the basis of a confession by his co-accused, provided, of course, that the evidence emanating from that confession satisfies the court beyond reasonable doubt of the accused’s guilt. A narrower construction would emasculate s 30.

90 In *Goh Joon Tong and another v PP* [1995] 3 SLR (R) 90, the Court of Appeal reviewed the effect of the Explanation to s 30. It referred to the Indian Evidence Act which has an identical s 30 and Explanation as s 30 of our Evidence Act (before it became s 258(5) CPC) and held at [41]:

As is stated in Woodroffe and Amir Ali’s *Law of Evidence* (15th Ed) at p 1005:

... Prior to the insertion of the Explanation to this section, the commission of an offence and the commission of its abetment were held to be different offences. Thus, it had been held that, upon the trial of A for murder, and of B for abetment thereof, a confession by A implicating B could not be taken into consideration against B under this section. Act III of 1891 has, however, by the insertion of the explanation to this section, altered the law in this respect. But this Explanation applies only to cases where one person is charged with an offence, and another is actually charged with and tried for, abetment of it, or attempt to commit it.

91 The Court then went on to find at [43] that s 30 applied in that case in which the first accused was charged with abetting murder and the second and third accused were charged with murder, because:

... the explanation to s 30 extends its operation to the confession of a co-accused charged with the particular offence

where the other co-accused is charged with abetment of or attempt to commit that offence, or *vice versa*.

92 The law applicable to the present case, as established in these two cases is that:

- (i) when two or more persons are tried jointly for the same offence, the confession of one accused may be substantive evidence against his co-accused, and
- (ii) when the accused persons are charged with:
 - (i) an offence (“the principal offence”), and
 - (ii) the abetment or attempt of the principal offence (“the associated offence”),

the principal offence and the associated offence are treated as the same offence.

93 Accordingly, Affandi’s confessions are admissible evidence against Fadzli, and that leads to two questions:

- (i) Are the admissions in Affandi’s contemporaneous statement and cautioned statement confessions? and if they are,
- (ii) What weight is to be placed on them?

94 Affandi’s statements set out in [9] and [10] are confessions. He admitted that he had possession of the eight bundles and that he was keeping them for Fadzli. Although he claimed that he did not know they contained diamorphine, he was presumed to have known that, and he failed to rebut the presumption (see [75] and [76] above).

95 It hardly needs reminding that admissibility does not imply weight. As Professor Jeffrey Pinsler cautioned in *Evidence and the Litigation Process* (4th Ed, LexisNexis 2013) at para 5.076:

Despite the Court of Appeal's assurance in *Chin Siew Noi* that the courts are to exercise caution in admitting evidence under the former s 30, real concerns remain about the potential injustice which may result. There is a real likelihood that the maker of the statement might falsely incriminate his accomplice so as to preserve his chance of acquittal or to minimise the significance of his role in the crime. Such a consequence is all the more likely in the course of interrogation as the maker is strongly encouraged to give information concerning the crime. Furthermore, if the maker does not testify, he cannot be cross-examined by his accomplice or the prosecution. Consequently, the court would be entitled to assess potentially false evidence against an accused who has had no opportunity to challenge it. ...

96 As to the weight of the confessions, I have found that they are Affandi's voluntary and true statements (see [70] above). When he made his defence Affandi did not explain why he made the contemporaneous statement, beyond an oblique reference that the recording officer told him that he was facing the death sentence (see [56] above). He did not say the effect that had on him, or that he had falsely incriminated Fadzli to preserve his chance of acquittal or to minimise the significance of his role in the crime. There was no reason for Affandi to falsely incriminate his friend Fadzli when he could have said that he had collected and held the bundles for Mamak, if that were true.

97 With regard to his cautioned statement, his explanation was that it was made to accord with his contemporaneous statement, and that he was making up more lies to save himself although he could not say why he needed to do that (see [58] and [59] above). I found Affandi's reasons for retracting the confessions in the contemporaneous statement and the cautioned statement unworthy of belief.

98 But these statements did not stand alone. There were other facts:

- (i) Fadzli and Affandi made two calls each to the other in the morning of 12 July 2013 when the eight bundles were delivered to Affandi (see [68] and [69]),
- (ii) Fadzli’s failure to recognise Affandi by his photograph, and
- (iii) his denial that he was “Abut”, the name by which Affandi knew him (see [107] and [108] below)

which indicated that there was something going on between him and Affandi in connection to their arrests which he was trying to conceal (see [108]).

99 Great care should be exercised before deciding to use the confession of an accused person against his co-accused. I reviewed the matters referred in the foregoing paragraphs before concluding that Affandi’s confessions should stand as substantive evidence against Fadzli as I found that Affandi was telling the truth on how he came into possession of the eight bundles and who they belonged to when he made the confessions.

100 Did Fadzli commit the offence in **Charge A** by issuing the instructions to Affandi? This brings on the question of his (Fadzli’s) knowledge of the contents of the bundles. This calls for an examination of the facts. Fadzli wanted Affandi to collect the bundles in the darkness of night, shrouded in stealth. Fadzli arranged for the bundles to be delivered and kept by Affandi, because he (Fadzli) was the owner of the bundles.

101 Fadzli must know what was to be collected and kept for him – he cannot possibly be ignorant of or indifferent to that. There was also no

likelihood that he had intended for something else other than diamorphine to be collected and kept. Bulk transactions of drugs are serious and risky undertakings carried out with care and planning. When diamorphine is intended, diamorphine will be delivered; it is inconceivable for diamorphine to be delivered by mistake. The irresistible inference is that Fadzli knew the bundles were diamorphine.

102 Fadzli's defence, however, should not be disregarded. His defence as that he had nothing to do with the eight bundles, and he denied that he had instructed Affandi to collect and store the bundles which belonged to him.

103 Fadzli's denial of any involvement with Affandi and the eight bundle must be viewed against his conduct after his arrest. Following Fadzli's arrest, Staff Sergeant Muhammad Fardlie bin Ramlie ("SSgt Fardlie") recorded a contemporaneous statement from him. The statement read:

- Q1. Pointing to the packet containing where crystalline substances recovered from the back sling bag,
"Apa ini?"
(What is this?)
- A1. "Ice"
(Ice.)
- Q2. "Siapa punya?"
(Whose is it?)
- A2. "Saya punya."
(It is mine.)
- Q3. "Untuk apa?"
(What is it for?)
- A3. "Semua untuk hisap."
(All for smoking.)

- Q4. Pointing to the packet of crystalline substances which was recovered at the driver's side door.
"Apa ini?"
(What is this?)
- A4. "Ice"
(Ice.)
- Q5. "Siapa punya?"
(Whose is it?)
- A5. "Saya"
(It is mine.)
- Q6. "Untuk apa?"
(What is it for?)
- A6. "Untuk hisap."
(For smoking.)
- Q7. *Pointing to the accused a digital photo of one male Malay.*
"Awak kenal dia siapa?"
(Do you know who he is?)
- A7. "Tak kenal."
(I do not know.)
(Recorder's note: Photo is one Mohamed Affandi Bin Rosli I/C [xxx])
- Q8. Accused was shown another digital photo of a male Malay.
"Awak kenal ni siapa?"
(Do you know who this is?)
- A8. "Tak kenal."
(I do not know.)
(Recorder's note: Photo shown is one Mansor Bin Mohamed Yusoff, S [xxx])
- Q9. "Awak ada jumpa mereka berdua tak?"
(Did you meet the both of them?)

A9. “Tak.”

(No.)⁴⁸

[emphasis added. The words in parenthesis are the English translations of the original statement in Malay.]

104 Fadzli disputed the accuracy of the statement. Mr Abraham put to SSgt Fardlie:

Now, I’m instructed by my client that you, Officer Fardlie, did not show my client any photographs on your phone in the car.⁴⁹

although Fadzli had in his investigation statement of 17 July 2013 confirmed that:

7. About half an hour after my arrest at the open carpark, an officer recorded my statement in a notebook and showed the two photographs on whatsapp.⁵⁰

105 Mr Abraham also put to SSgt Fardlie that a Chinese officer who Fadzli did not identify had shown Fadzli two photographs outside the car, and Fadzli could not recognise the person in the photographs because of the glare, and his response was communicated by the Chinese officer to SSgt Fardlie. SSgt Fardlie reiterated that he showed the photographs to Fadzli himself and Fadzli professed not to recognise them.⁵¹

106 Fadzli’s explanation for his failure to identify Affandi from the photograph was unsatisfactory. There was no reason for SSgt Fardlie not to show the photographs to Fadzli as he had the photographs on his telephone, and did not have to rely on anyone to do that and to report the response to him. Secondly, it was clear in the form of the contemporaneous statement that the

⁴⁸ P106.

⁴⁹ NE 17 November 2015, p 39 lines 1 - 2.

⁵⁰ P120.

⁵¹ NE 17 November 2015, p 43 lines 6 – 8.

photographs were shown to him by SSgt Fardlie when he was questioned and gave his answer. I find that SSgt Fardlie had shown Fadzli the photographs of Affandi and Mansor, and Fadzli had replied that he did not know them.

107 Fadzli also lied in his investigation statement on 16 July 2013 that:

I was not known as Abut to anyone⁵²

During the trial Fadzli admitted that it was wrong and that his pet name to his family members is Abut and Affandi knew him by that name.⁵³

108 Fadzli's denial that he had identified Affandi from his photograph and the lie that he was not known as Abut show that he sought to distance himself from Affandi. He had no reason to do that if he had nothing to hide, but he would do that if he was involved with some activities with Affandi for which they were arrested. Those lies acted against him. While they were not evidence of guilt, they damaged his credibility and his defence.

109 I reject Fadzli's defence and find him guilty on **charge A**.

110 With regard to **charge B**, as Fadzli admitted that he was in possession of the 38.84 grams of methamphetamine, he was presumed to have them in his possession for the purpose of trafficking.

111 His defence was that the methamphetamine was for his own consumption although he did not set out to acquire them. The methamphetamine was supplied to him by Man Topak who had supplied him with drugs on previous occasions⁵⁴. They had been betting against one another

⁵² P119 para 1.

⁵³ NE 15 February 2017, p 19 line 26 to p 20 line 1.

⁵⁴ P121 para 23.

on horses. They had a wager which Man Topak lost, and owed him \$2,500 which he was unable to pay. Instead he offered to supply Fadzli with drugs, with a top-up of \$320 to Man Topak. In his investigation statement of 18 July 2013 Fadzli said:⁵⁵

... He told me he had no money, and if I wanted he could give me drugs in exchange for money. I needed to top up \$320. I agreed. ...

112 It is noteworthy that in his statement, the value, quantity and type of drugs were not mentioned. When he was questioned about that by the court he said:

I was informed by Man Topak that the value of the drug is equivalent to the amount that he owed me.⁵⁶

which did not explain the top-up or refer to the quantity and type of drugs.

113 On Man Topak's request for the \$320 top-up, his explanation that:

... maybe on that day to Man Topak's understanding the amount will be 2820, which is why he asked me to top up 320.⁵⁷

indicating that he was not informed and had not asked about it. It went against common sense for Fadzli to forego repayment of \$2,500 without knowing how much and what drugs he was getting or why he had to pay the additional \$320.

114 There is another point of interest. By Fadzli's account, he received the methamphetamine together with the Erimin-5 tablets, and he kept the Erimin-5 tablets which were to be consumed by him in his bedroom wardrobe.

⁵⁵ P123 para 24.

⁵⁶ NE 16 February 2017, p 53 lines 3 - 4.

⁵⁷ NE 16 February 2017, p 53 lines 19 – 21.

115 The methamphetamine, however, was kept separately from the Erimin-5 tablets. The methamphetamine was in three packets. Two packets were kept in Fadzli's sling bag in the front passenger seat of his vehicle and one packet was kept in the side compartment of the driver's door of the vehicle.

116 Although Fadzli has a history of methamphetamine consumption, it was not his case that he carried his methamphetamine with him as he went about. His evidence was that he was not a constant or heavy consumer, and consumed two packets of methamphetamine a week⁵⁸. He did not consume methamphetamine daily and scheduled his methamphetamine consumption to avoid detection when he had to undergo urine tests on Fridays. He would start consuming methamphetamine on Friday night after the urine test, and continue consuming till Monday morning, and then stop to clear his urine of the drugs for the urine test on Friday⁵⁹. In other words, he did not consume methamphetamine between Monday morning and Friday night. As 12 July 2013 (the day of arrest) fell on a Friday, Fadzli would not need any methamphetamine before the night. There was no reason for him to take the risk of having all the methamphetamine with him rather than carrying just what he needed. This cast serious doubts whether the methamphetamine was for his own consumption.

117 Another point of note was Fadzli's non-disclosure of Man Topak's telephone number. Fadzli said that Man Topak had given him his handphone number, and he had entered and saved the number in his handphone without Man Topak's name. He had called Man Topak on the number in March 2013 after he won the bet, but subsequently Man Topak's handphone was switched off and he did not have contact with Man Topak until he ran into him by

⁵⁸ NE 16 February 2017, p 22 lines 12 – 14.

⁵⁹ NE 15 February 2017, p 10 lines 7 – 16.

chance in July 2013, when the repayment with drugs proposal was made⁶⁰. However he did not give the investigators the telephone number although it was in his interest to do that so that Man Topak's existence can be verified.

118 Fadzli's account of how he came by the methamphetamine, his keeping the methamphetamine separately from the Erimin-5 tablets and his failure to provide Man Topak's telephone number damaged the credibility of his claim that the methamphetamine was intended for his own consumption. I find that he had not rebutted the presumption that he had them for the purpose of trafficking, and was guilty on **charge B**.

119 That leaves **charge D**. There are difficulties with this charge:

- (i) It was not clear where the methamphetamine had come from. Affandi's contemporaneous statement indicated that Fadzli had left some methamphetamine with him, but it did not state that the 8.14 grams of methamphetamine was from Fadzli,
- (ii) Affandi's statement that he had bought methamphetamine from a Chinese man in Geylang was not seriously challenged by the prosecution, leaving a reasonable doubt whether the methamphetamine recovered from Affandi originated from Fadzli, and
- (iii) Even if the methamphetamine had originated from Fadzli, there was no evidence that he had instigated Affandi to have possession of it for the purpose of trafficking.

⁶⁰ P121 para 24.

120 The case against Fadzli on **charge D** was not proved, and he was acquitted.

Findings on the charges

121 To sum up, I found

for Fadzli –

Charge A – guilty and convicted.

Charge B – guilty and convicted.

Charge C – guilty and convicted.

Charge D – not guilty, acquitted.

for Affandi –

Charge E – guilty and convicted.

Charge F – guilty and convicted on the reduced charge of possession of the methamphetamine.

Charge G – not guilty, acquitted.

Post-conviction developments

122 When I informed the parties on my findings and convicted the accused persons on the respective charges, a development I had not anticipated took place. The prosecution invoked s 232(1)(b) of the CPC to take no further

action on the non-capital charges and applied that orders of discharge not amounting to acquittal.

123 I acceded to that and made the orders in respect of **charges B, C and F** (as amended).

The sentences

124 Under s 33B, MDA, there is a discretion not to impose the death sentence in **charges A and E** on the accused persons if (i) their involvement was restricted to being couriers, (ii) the Public Prosecutor certifies that they had given substitutive assistance to the CNB in disrupting drug trafficking activities within or outside Singapore and (iii) they suffered from abnormality of mind.

125 On the facts, neither of them satisfied criteria (i). Fadzli was the owner of the eight bundles of diamorphine and he instigated Affandi to take possession of them and to hold them for him. He was not a courier. Affandi took possession of the eight bundles and stored them for Fadzli, and was more than a courier. They also did not come within criteria (ii) as the Public Prosecutor reported they had not offered substantive assistance, and criteria (iii) did not apply to them.

126 In the circumstances there was no discretion not to impose the death sentence, and the sentence was imposed on them.

Kan Ting Chiu
Senior Judge

Tan Wen Hsien and Terence Szetoh (Attorney-General's Chambers)
for the Prosecution;
John Abraham (Crossborders LLC) and Ramachandran Shiever
Subramaniam (Grays LLC) for the First Accused;
Chia Soo Michael and Hany Soh Hui Bin (MSC Law Corporation)
and Sankar s/o Kailasa Thevar Saminathan (Sterling Law
Corporation) for the Second Accused.