



**Public Prosecutor**

**AND**

**Teo Boo Min**

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**(High Court of Brunei Darussalam)  
(Criminal Trial No. 12 of 2012)**

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**Steven Chong, J. and Hairol Arni Majid, J.  
20 August 2014**

Criminal law – Sentence – Possession for the purpose of trafficking of MDMA – Possession of MDA – Possession of ketamine – Consuming MDMA and methylamphetamine.

DPP Pg Nina Jasmine PLKDR Pg Hj Bahrin for the Public Prosecutor.  
Mr Roy Prabhakaran (M/S Sankaran Halim) for the Defendant.

**Steven Chong, J.:**

Teo Boo Min, the defendant, faced the following charges:

1<sup>st</sup> Amended Charge: Possession for the purpose of trafficking of tablets weighing 92.9047 grams containing 40.6666 grams of N, a-dimethyl-3, 4-(methylenedioxy) phenethylamine (MDMA) contrary to section 3A of the Misuse of Drugs Act.

1<sup>st</sup> Alternative Charge: Possession for the purpose of trafficking of tablets weighing 92.9047 grams containing 4 grams of N, a-dimethyl-3, 4-(methylenedioxy) phenethylamine (MDMA) contrary to section 3A of the Misuse of Drugs Act.

2<sup>nd</sup> Amended Charge: Possession for the purpose of trafficking of 20 tablets weighing 5.4941 grams containing 0.7703 grams of a-methyl-3, 4-(methylenedioxy) phenethylamine (MDA) contrary to section 6(a) of the Misuse of Drugs Act.

2<sup>nd</sup> Alternative Charge: Possession of 20 tablets weighing 5.4941 grams containing 0.7703 grams of a-methyl-3, 4-(methylenedioxy) phenethylamine (MDA) contrary to section 6(a) of the Misuse of Drugs Act.



3<sup>rd</sup> Charge: Consuming MDMA contrary to section 6(b) of the Misuse of Drugs Act.

4<sup>th</sup> Charge: Consuming methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act.

5<sup>th</sup> Amended Charge: Possession of 58.6988 grams of crystalline substances containing ketamine contrary to section 9(1)(b) of the Poisons Act.

The defendant pleaded guilty to the 1<sup>st</sup> and 2<sup>nd</sup> Alternative Charges and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Charges. He pleaded not guilty to the 1<sup>st</sup> and 2<sup>nd</sup> Amended Charges.

In a *"Statement of Agreed Facts"* it is admitted by the defendant that:

- "1. On 3<sup>rd</sup> November, 2011, at around 1723 hours, officers from the Narcotics Control Bureau ("NCB") led by CNO Abu Nor Ali Shamsul conducted an arrest on the Defendant whilst he was in the driver seat of a parked car, a white Nissan Cefiro bearing registration BAC 5500 in front of Centerpoint Hotel, Gadong in Brunei Darussalam. The Defendant identified himself when asked by NCB officers.*
- 2. Pictures of the arrest and the photographs of the Exhibits seized are marked as "Appendix 1".*
- 3. Before a body search was conducted on the Defendant, ANO Pg Shahroll asked the Defendant if he had anything to hand over any item relating to drugs?, to which the Defendant replied "Have, Eramin 5 inside left trouser pocket".*
- 4. A body search was then conducted on the Defendant by ANO Anuar Haji Abdul Razak, who found the following:-*  
  
*E1 - One red/silver plastic sachet labeled "5" with seven tablets.*  
  
*E2 - A clear sealed plastic packet which contained one sealed clear plastic packet containing crystalline substances.*
- 5. Before the search was conducted on the motor vehicle Nissan Cefiro BAC 5500, the Defendant was asked if there was anything he wanted to hand over in relation to drugs, to which the Defendant replied "Inside the envelope". ANO Ak Shahroll asked the Defendant "Do you know the contents of the envelope?", to which the Defendant replied "Ketamin and Erimin 5".*



6. *Upon search of the Nissan Cefiro bearing registration BAC 5500, the following items were found:-*
  - E3 - one white paper envelope found on the passenger seat of the car with four clear zip-lock plastic packets containing clear crystalline substances.*
  - E4 - Found in the central compartment between the front passenger and driver seat containing three (3) clear zip-lock plastic packets all containing clear crystalline substances.*
  - E5 - One bundle tied with two orange rubber bands and labeled E5 which was found inside a lower compartment in the middle between the front passenger's and driver's seat at the front of the car.*
  - E6 - One black laptop bag "ideapad" brand which was found marked E6am inside found E6a)(i) being one bundle of wrapping material consisting of white toilet paper, blue carbon paper and aluminium foil tapped together with clear cello tape, inside containing Exhibits E6a)(i) to E6a)(m).*
7. *The Defendant was taken to his home for a further search by NCB officers, but nothing was found in relation to drugs.*
8. *After completion of the search, the Defendant was taken to the NCB office in Jalan Tungku for further investigations.*
9. *Upon further investigation, it was revealed that the Defendant had received on 3<sup>rd</sup> November 2011 at around 2pm a parcel via Nationwide Express containing E6.*
10. *As part of the further investigations, the Defendant's urine sample was taken at about 2343 hours on 3<sup>rd</sup> November 2011 at the NCB toilet.*
11. *All the Exhibits Seized being E1-E6 as well as the urine sample of the Defendant was sent by NO Maswemah POKJAID DP Awang Hj Mashor to the Department of Scientific Services, Ministry of Health on 5<sup>th</sup> November 2011 at 1130 hours.*



12. *The result of the analysis conducted on the crystalline substances are set out in the analyst certificate dated 23<sup>rd</sup> December 2011 with reference KMN/198/11 marked Appendix 2. An Addendum to the Analyst Certificate is dated 7<sup>th</sup> August 2011 marked Appendix 3.*
13. *The Defendant agrees that 4g of MDMA seized was for the purposes of trafficking, as stated in the 1<sup>st</sup> Alternative Charge.*
14. *The Defendant agrees to possession of E6A)(i)k) being 0.7703 of MDA, being the subject matter of the 2<sup>nd</sup> Alternative Charge.*
15. *According to the Analyst Certificate reference BSB/BKN/IP/176/2011 marked Appendix 4, the Defendant's urine was positive for the presence of MDMA being the subject matter of the 3<sup>rd</sup> Charge and Methylamphetamine, being the subject matter of the 4<sup>th</sup> Charge.*
16. *The Defendant agrees to possession of E2, E3a, E6b)i), E6b)ii) and E6b)(iii) which all contain Ketamine, being the subject matter of the 5<sup>th</sup> Charge.*
17. *The Defendant admits to consuming MDMA and Methylamphetamine prior to his arrest.*
18. *The Defendant has no previous convictions under the Misuse of Drugs Act."*

The defendant is aged 34 and was unemployed at the time of his arrest and lived with his parents who are retired. He received his education in England and Canada.

Having regard to the defendant's guilty plea, clear record, lengthy period in remand and the quantity of drugs involved in the section 3A and section 6(a) offences, the sentences shall be as follows:-

1<sup>st</sup> Alternative Charge: 5 years and 5 strokes.

2<sup>nd</sup> Alternative Charge: 1 year.

3<sup>rd</sup> Charge: 1 month.

4<sup>th</sup> Charge: 1 month.

5<sup>th</sup> Charge: 1 month.



Considering the overall criminality of the offences the sentences on the 1<sup>st</sup> Alternative Charge and 2<sup>nd</sup> Alternative Charge are to be consecutive but concurrent to the sentences on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Charges resulting in a total sentence of 6 years and 5 strokes.

Mr. Prabhakaran urged the court not to impose whipping as the defendant says he suffers from high blood pressure.

We cannot accede to that plea. The sentence of whipping of a minimum of 5 strokes is mandatory upon conviction under section 3A where the quantity of MDMA involved is less than 20 grams.

The defendant's anxiety about his fitness to undergo corporal punishment may be allayed by the following requirement under section 259 of the Criminal Procedure Code:

- “(1) The punishment of whipping shall not to be inflicted unless a medical officer or hospital assistant is present and certifies that the offender is in a fit state of health to undergo such punishment.*
- (2) If, during the execution of a sentence of whipping, a medical officer or hospital assistant certifies that the offender is not in a fit state of health to undergo the remainder of the sentence the whipping shall finally be stopped.”*

**DATO PADUKA STEVEN CHONG**  
Judge, High Court

**DATO PADUKA HAIROL ARNI MAJID**  
Judge, High Court