Public Prosecutor v Ng Pen Tine and Another
[2009] SGHC 230

Case Number : CC 20/2009

Decision Date : 14 October 2009

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Tan Kiat Pheng and Ferlin Jayatissa (Attorney-General's Chambers) for the prosecution; Leo Cheng Suan (Infinitus Law Corporation) and Lam Wai Seng (Lam W S & Co) for the 1st accused; Fong Chee Yang (C Y Fong & Co) and John Tay Choon Leng (John Tay & Co) for the 2nd accused

Parties : Public Prosecutor — Ng Pen Tine; Lam Chee Yong

Criminal Law – Statutory offences – Misuse of Drugs Act

14 October 2009 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The present charge against the first accused, Ng Pen Tine ("1st accused"), a Singaporean national, reads:

> That you, Ng Pen Tine,
>
> On the 4th day of October 2007 at about 9.30 a.m. at the pavement in front of Block 55A Commonwealth Drive, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking sixty-one (61) packets of granular/powdery substance containing a total of not less than 34.97 grams of diamorphine without any authorisation under the Misuse of Drugs Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the said Act.

2 The second accused, Lam Chee Yong ("2nd accused"), a Malaysian national, allegedly passed the said 61 packets of heroin to the 1st accused. The charge against him reads:

> That you, Lam Chee Yong,
>
> On the 4th day of October 2007 at about 9.20 a.m. at the car park in front of Block 61 Commonwealth Drive, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by handing over sixty-one (61) packets of granular/powdery substance containing a total of not less than 34.97 grams of diamorphine to one Ng Pen Tine without any authorisation under the Misuse of Drugs Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the said Act.

3 The other charges against the accused persons were stood down.

The factual background

4 On the morning of 4 October 2007 at 7.35am, officers from the Central Narcotics Bureau ("CNB") began to observe the actions of the 1st accused at Block 36 Tanglin Halt Road.

5 At about 8.45am, a Malaysian-registered car bearing the car registration number JFS 1554 ("the Car") was sighted entering Commonwealth Drive. It eventually parked in front of Block 39 Tanglin Halt Road, with its driver, the 2nd accused, sitting at a pavilion beside Block 42 Tanglin Halt Road.

6 Within a short time, the 1st accused was observed meeting the 2nd accused at the pavilion. They conversed with each other as they made their way to the Car. They then boarded the Car and drove off.

7 At about 9.20am, the Car was observed to be parked in front of Block 61 Commonwealth Drive. The 1st and 2nd accused both alighted, empty-handed, and went to the rear of the Car. Subsequently, the former was seen holding a plastic bag. The latter was seen opening the car boot, taking some newspapers and an inflatable wading pool out of the boot, and throwing them on the ground. Both of them were then observed to be meddling with something in the boot.

8 Thereafter, the 1st and 2nd accused took six black bundles out from the boot, four from the right signal light compartment and two from the left signal light compartment and placed them in the plastic bag which the 1st accused brought. The 1st accused took the plastic bag containing the six bundles and left the 2nd accused. He then walked towards Commonwealth Drive with the plastic bag. The 2nd accused went back to the Car and drove away.

9 At about 9.30am, CNB officers arrested the 1st accused in front of Block 55A Commonwealth Drive. The 1st accused put up a violent struggle but was eventually subdued. The plastic bag was seized and was found to contain the six bundles. These were later analysed and found to contain 34.97 grams of diamorphine in 61 packets, 50 slabs of Nimetazepam tablets and 50 tablets of Methylenedioxy phenethylamine in one plastic packet.

10 As for the 2nd accused, he drove off after the transaction with the 1st accused. CNB officers tailed him until he reached Woodlands Centre. At about 9.45am, CNB officers arrested the 2nd accused as he walked towards Block 4A Woodlands Centre Road.

11 After arresting the 1st accused, CNB officers proceeded to raid #01-73 of Block 36, Tanglin Halt Road ("the Flat") where they recovered more controlled drugs from the master bedroom. The Flat was the residence of the 1st accused's girlfriend, one Tay Bee Hoon ("Tay"). After considerable struggle, Tay was placed under arrest.

12 The 1st and 2nd accused were eventually charged for drug trafficking.

Admissibility of the 1st accused's statements

13 The prosecution's case is based, *inter alia*, on the testimonies of the various CNB officers involved in the case including the CNB Investigating Officer, ASP Soh Choon Hock Richard ("ASP Richard Soh"), statements made by the 1st accused and 2nd accused to ASP Richard Soh and the testimonies of the doctors who examined both accused persons in the course of investigations.

14 The prosecution sought to admit the following five statements of the 1st accused recorded by ASP Richard Soh:

(i) First cautioned statement recorded under section 122(6) Criminal Procedure Code ("CPC") on 4 October 2007 between 9.02 p.m. and 9.20 p.m. at CNB Headquarters ("First Cautioned Statement");

(ii) Second cautioned statement recorded under section 122(6) CPC on 4 October 2007 between 9.21 p.m. and 9.28 p.m. at CNB Headquarters ("Second Cautioned Statement");

(iii) First statement recorded under section 121 CPC on 10 October 2007 between 6.54 p.m. and 8.54 p.m at CNB Headquarters ("First Long Statement");

(iv) Second statement recorded under section 121 CPC on 11 October 2007 between 9.30 a.m. and 12.18 p.m. at CNB Headquarters ("Second Long Statement"); and

(v) Third statement recorded under section 121 CPC on 30 November 2007 between 10.05 a.m. and 10.58 a.m. at Queenstown Remand Prison ("Third Long Statement").

15 The 1st accused challenged the admissibility of these five statements, on the ground that his answers found in these statements were involuntary, having been given as a result of a variety of threats, inducements and promises, and otherwise under oppressive conditions when he was suffering from drug withdrawal symptoms, coldness, tiredness, insufficient rest and/or hunger.

16 Counsel submitted that the 1st accused was assaulted at the time of his arrest. His girlfriend, Tay, was also assaulted in the master bedroom of the Flat. The 1st accused was threatened that if he did not cooperate, both he and Tay would be further assaulted. In addition, the following promises and inducements were made by ASP Richard Soh to the 1st accused:

(i) His capital charge would be reduced to one of trafficking in not less than 14.99 grams of diamorphine or to one in which he would be liable for 20 to 30 years' imprisonment;

(ii) Tay would not face the death penalty;

(iii) The 1st accused was offered and allowed to smoke two cigarettes;

(iv) His capital charge would be reduced if he would identify his drug supplier, one "Ah Seng".

17 Counsel produced a table showing what threats, inducements and promises and oppressive conditions operated on the 1st accused in respect of each of the five statements, thereby rendering all of them involuntary.

[LawNet Admin Note: Table is viewable only by LawNet subscribers via the PDF in the Case View Tools.]

The law

18 The law on the operation of threat, inducement, promise and oppression in respect of voluntariness of statements made by accused persons is fairly well settled. First, there must objectively be a threat, inducement or promise and second this subjectively must operate on the mind of the accused: *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25. Any self-perceived inducement will not in

law amount to an inducement or promise*: Lu Lai Heng v PP* [1994] 2 SLR 251. A statement given when the accused exhibited drug withdrawal symptoms would be involuntary if he is in a state of near delirium such that his mind did not go with the statement he was making: *Garnam Singh v PP* [1994] 2 SLR 243.

19 With respect to the issue of oppression, it was held in the seminal case of *R v Priestly* (1966) 50 Cr App R 183 that it must be something which leads to sap or has sapped the accused's free will before a confession is rendered involuntary.

20 In *Yeo See How v PP* [1997] 2 SLR 390, the appellant alleged that (i) he was feeling cold; (ii) he was not given medicine for his gastric pain; and (iii) he was hungry. It was held that there was no necessity for the interrogators to remove all discomfort. On the contrary, some discomfort had to be expected. The issue was whether the discomfort was of such a great extent that it caused the making of an involuntary statement.

21 In *PP v Tan Boon Tat* [1990] SLR 375, it was held that even when an accused person was tired, hungry, and thirsty and under great stress, this was insufficient to amount to oppression unless he was in such a state that he had no will to resist making the statement.

22 In *Ong Seng Hwee v PP* [1999] 4 SLR 181, the appellant alleged that he was given little to eat and laboured under illness and medication at the time the statement was recorded from him. It was held that the relevant inquiry was whether the circumstances prevailing at the time of the recording of the statement were such that the appellant's free will was sapped and he could not resist making the statement. It was held that the evidence as a whole suggested that the appellant was perfectly alert and lucid, albeit tired. The circumstances hardly came close to establishing the requisite weakening of the appellant's free will that would render the statement involuntary.

23 As was set out in *Teo Yeow Chuah v Public Prosecutor* [2004] 2 SLR 564, the court ought to be satisfied beyond reasonable doubt that the statements of the accused sought to be admitted in evidence were given voluntarily without any threat, inducement or promise or any form of oppressive conduct or coercion before admitting them into evidence at the trial. It is trite law that the burden of proof is on the prosecution to establish that statements given were "made freely and voluntarily and not under the influence of improper inducement": *Sparks v R* [1964] 1 AC 964.

Analysis of the evidence

(i) Alleged assault on the 1st accused and Tay, and how these alleged assaults operated on the mind of the 1st accused during the recording of the five statements

24 The 1st accused alleged that he was assaulted by the CNB officers during his arrest on 4 October 2007 at about 9.30 am. The CNB officers however said that necessary force was used to overcome the "violent struggle" by the 1st accused. Counsel submitted that it was unlikely for the 1st accused (of slight build), to have put up a violent struggle when some five officers executing his arrest took him by surprise. It was more likely that he was assaulted during his arrest and this was borne out by the bruises on his face and other parts of his body.

25 Counsel further contended in the alternative, that the CNB officers might have exacted revenge on the 1st accused by assaulting him after one of the CNB officers lost his balance during the arrest and bruised himself.

26 However, this allegation of assault was inconsistent with the evidence of Dr Lim Hock Tai

("Dr Lim"), who examined the 1st accused twice on 4 October 2007 during the pre-statement and post- statement medical examinations. Dr Lim had testified that the 1st accused did not have any punch injury. This was also reflected in Dr Lim's medical reports 1TP68(a), 1TP68(b), 1TP68(d) and 1TP68(e). I accepted the evidence of Dr Lim and I believed that Dr Lim had been thorough in his medical examination of the 1st accused. Counsel also never put nor suggested to any of the arresting officers that one or more of them had punched the 1st accused in order to effect his arrest or that they were exacting revenge on the 1st accused by punching him after one of the CNB officers injured himself during the arrest.

27 It was not disputed that Staff Sergeant Fakhruddin Arrazi Bin Mohd Ismail ("SSgt Fakhruddin") was the first CNB officer to reach the 1st accused, identify himself as a CNB officer and commence the arrest. I had no reason to doubt the evidence on the manner of the 1st accused's arrest as given by SSgt Fakhruddin, Woman Staff Sergeant Junainah Bte Mohd Yusof ("W/SSgt Junainah") and SSgt Hoon Tai Peng ("SSgt Hoon"), who were the first three officers to effect the arrest of the 1st accused.

28 In fact, SSgt Hoon testified that as he was trying to arrest the 1st accused by holding onto his arm, the 1st accused swung his arm. SSgt Hoon was flung backwards and he fell to the ground. SSgt Hoon also testified that he suffered an abrasion on his left elbow. The 1st accused continued to resist arrest even after he was brought down by CNB officers to the ground. He was lying face down on the surface of the road. CNB officers had to use necessary force to pin the 1st accused down before Station Inspector Lim Puay Boon could handcuff the hands of the 1st accused behind his back. After he was handcuffed, the 1st accused did not put up any more resistance.

29 I found that the abrasive injuries found on the 1st accused as shown in Dr Lim's medical reports and medical notes were sustained because of contact with the rough surface of the road when he resisted arrest and struggled. I also noted that the 1st accused eventually conceded in cross-examination that he was not assaulted after he was handcuffed and that he was not afraid as there was no assault.[note: 1]

30 The defence's psychiatrist Dr Tommy Tan ("Dr Tan") recorded in his reports and medical notes that the 1st accused had alleged during his interview that he was assaulted by CNB officers in *previous* arrests. It spoke volumes that the 1st accused made no mention during his interview with Dr Tan in March 2009 that he was assaulted by CNB officers during his arrest in the *present* case, if that was in fact the case.

31 I therefore accepted the prosecution's contention that the alleged assault on the 1st accused during his arrest was an afterthought created by the 1st accused in order to retract his confessions.

32 I will now deal with the alleged assault on 4 October 2007 by CNB officers on Tay. The 1st accused and Tay stayed together at the Flat, which was the flat of Tay's mother, Mdm Chew Kim Geok ("Chew"). Tay was sleeping at the master bedroom of the Flat when she was arrested. The CNB officers said that she had put up a "violent struggle". Counsel submitted that the purported violent struggle was unlikely as she would be in a daze having been surprised by the four CNB officers.

33 Tay alleged that an officer used the flat part of a plastic paper file or a clip file to slap her face and hit her on top of her head when she refused to answer the questions posed to her by Sgt Eugene Eng. She described the officer as a male officer with a fair complexion. However, when all the CNB officers who had gone to the Flat on 4 October 2007 presented themselves for identification in court or their photographs were shown to Tay, she was not able to identify anyone of them as the person who had allegedly assaulted her. Counsel submitted that she could easily have fingered any of the

CNB officers to bolster her case, but the fact that she did not, showed that she was genuine in her assertion.

34 When cross-examined by counsel, the CNB officers denied using any plastic paper or clip files to hit Tay. Sgt Eugene Eng claimed that he carried pieces of A4 size paper in a aircraft size cabin bag (together with masking tapes and other things used for CNB's operation), and had placed the paper sheets on the floor instead of using a paper clip file as a backing to write. As Sgt Eugene Eng appears to be of tall physical build, counsel submitted that it would be uncomfortable for Eng to write without a paper clip file whilst seated on the floor. Counsel submitted that Sgt Eugene Eng would have suffered a backache just to record the two statements on the floor of the bedroom. Accordingly, Counsel contended that Tay's version that a plastic paper clip file was used was more likely to be true.

35 When Tay was assaulted, she claimed she shouted "Ma" to call for her mother. CNB officer, Ms Jaslyn Low ("Jaslyn") admitted that Tay called out "Ma", but it was in a normal voice. Counsel argued that there was no good reason for Tay to call to her mother in a normal voice bearing in mind that the master bedroom door was shut at that time. Counsel submitted that the irresistible inference must be that Tay gave a loud call of distress to her mother when she was assaulted. Chew testified that she heard Tay cry and had seen her daughter's injury.

36 In contrast, ASP Sim, Woman Staff Sergeant Low Hui Ching Jasylin ("W/SSgt Low"), Sgt Koh Yew Khoon Christopher ("Sgt Koh") and SSgt Eng Chien Loong Eugene ("SSgt Eng"), who raided the master bedroom of the Flat on 4 October 2007, all testified that no CNB officers had assaulted Tay on that day in the Flat. In addition, both W/SSgt Low and Sgt Koh, who were escorting Tay and the 1st accused respectively in the Flat, testified that Tay and the 1st accused were not allowed to communicate with each other while they were in the Flat or when they were escorted out of the Flat. Thus, I did not believe Tay's evidence that she had spoken to the 1st accused and after finding out from him about the alleged bruise on her face as a result of the alleged assault, she became upset and shouted to CNB officers that they could assault her if they wanted to.

37 Further, Tay's testimony was in certain material respects inconsistent with that of the 1st accused and Chew. First, according to Tay, she had a bruise on her right cheek. Second, according to the 1st accused. Tay had a small and visible blue-black bruise near her left eye. Third, according to Chew, the injury was a black eye and a bruise on her right cheek. These differences were irreconcilable.

38 Subsequently on the same day at about 7.34 pm, when Tay was examined at Alexandria Hospital by the same Dr Lim who examined the 1st accused, Dr Lim did not find any injury on Tay's face. Tay's only injury was a small abrasion on her right knee which she had suffered after her arrest when she fell into a drain that she failed to see when she was walking. According to Dr Lim's medical report dated 23 October 2007, Tay only complained about having a mild headache during the medical examination. There was no complaint by Tay about the alleged injury on her face. Once again, I accepted Dr Lim's evidence. I disbelieved the evidence that Tay was assaulted by the CNB officers with the result that there was a visible bruise on her face. I rejected Counsel's submission that Dr Lim inadvertently missed seeing the alleged dark bruise on Tay's face or that the bruise would have subsided by the time she saw Dr Lim, which was not long after the alleged assault. As the examination by Dr Lim was to specifically examine Tay for any signs of injury, it would not be likely for Dr Lim to miss the dark bruise if indeed it was present.

39 I therefore found that Tay was not assaulted by the CNB officers arresting her. In view of this finding, there was no basis for the 1st accused's allegation that the assault on Tay by the CNB

officers had influenced him to give the five statements in question.

(ii) Threat to further assault the 1st accused and Tay if the 1st accused failed to co-operate

40 I noted that during his examination-in-chief, the 1st accused did not expressly allege that ASP Richard Soh threatened to physically assault him and Tay if he did not cooperate. The 1st accused alleged that ASP Richard Soh told him that if he was cooperative, he would be alright. Subsequently, he alleged that ASP Richard Soh told him that if he did not like his statement, both the 1st accused and Tay would be 'in trouble'.[note: 2]

41 During cross-examination, the 1st accused initially elaborated that by 'trouble', he meant the death penalty. The 1st accused only surfaced his allegation of a threat of physical assault after being questioned specifically about it. Even then, the 1st accused did not mention the time, the place, the manner of the threatened physical assault or how ASP Richard Soh had conveyed that threat. The lack of conviction, vagueness and emptiness of details of the threatened assault made the 1st accused's allegation hard to believe. I therefore accepted the evidence of ASP Richard Soh that he made no threats to assault either the 1st accused or Tay in order to obtain the statements from the 1st accused.

42 If the 1st accused had really been threatened by ASP Richard Soh and was concerned for the safety of himself and Tay, then it was quite inexplicable why, despite the many opportunities to report, he never reported the matter when he was admitted at the CMC and when he was produced at the Subordinate Courts on various occasions for mentions and pre-trial conferences. The 1st accused admitted that he did not report the alleged threat to any doctor or nurse at the CMC or to any judge or court personnel at the Subordinate Courts. This was not the likely normal behaviour of a person who was put in fear by an alleged threat and was in desperate need for help.

43 Indeed, Dr Tan testified that the 1st accused told him: "I said I was scared. People ask me why I so stupid to confess. As the evidence was so overwhelming, I was thinking die already. Family also told me why I so stupid to confess." This was very telling. It was clear that the 1st accused gave his statements not due to any threat, inducement or promise given by ASP Richard Soh to him. Instead, the inculpatory statements were voluntarily given by the 1st accused as there was, in his mind, no escape from the consequences due to the overwhelming evidence against him. He knew at the time of recording of the five statements that he was caught red-handed with the heroin found on him and thus it did not matter whether or not he openly confessed to his acts. Basically, in his mind, it was pointless to deny what had happened. Thus, it was not due to any external threat, inducement or promise from any CNB officer that caused him to give the statements that he did.

44 Dr Tan further testified that during his two meetings with the 1st accused in March 2009, the 1st accused had informed him that he was scared of the CNB officers. However, this was not due to what the CNB officers had done to him in the present case but because he was allegedly assaulted by CNB officers in one of his *previous* arrests. During his interview with Dr Tan, the 1st accused had not made any allegations of assault by any of the present CNB officers. This was obviously another opportunity for the 1st accused to raise any genuine complaints that he was assaulted or threatened with assault by CNB officers in the present case, but he again failed to do so. Instead, he chose to bring out the alleged assaults in *previous* arrests (and not the present arrest) to Dr Tan.

45 I accepted the prosecution's submission that from the totality of the evidence, the 1st accused was merely being disingenuous and dishonest when he claimed that ASP Richard Soh had threatened to assault him and Tay if he did not co-operate in the present case. It was clearly an afterthought, unworthy of belief.

(iii) Promise to reduce the drug trafficking capital charge for the 1st accused to one of trafficking in not less than 14.99 grams of diamorphine, or to one in which he would be liable for 20 to 30 years' imprisonment

46 The 1st accused alleged that ASP Richard Soh promised that if he implicated one "Ah Seng", he (ASP Richard Soh) would make him an offer. Defence counsel submitted that ASP Richard Soh had told the 1st accused that (i) if he co-operated, admitted to the drugs found in Tay's room and confessed, then Tay would not be charged with trafficking and she would not get the death penalty; and (ii) that ASP Richard Soh would also try to get the charge against the 1st accused reduced from a capital case to one where he would only be liable to 20 to 30 years' imprisonment. ASP Richard Soh vehemently denied these allegations. I noted that during the re-examination of the 1st accused, it was unclear when these alleged promises or inducements were made by ASP Richard Soh. The 1st accused claimed a few dates before finally saying that he could not remember.[note: 3]

47 When cross-examined on what he meant by "14.99", the 1st accused replied that if he received "14.99" he would not get the death penalty. When probed further, the 1st accused said that he learnt this from an inmate at Queenstown Remand Prison ("QRP") (and not from ASP Richard Soh). The 1st accused also admitted that he was hoping to get a sentence of 20 to 30 years' imprisonment.

48 The evidence of the 1st accused with regards to the person initiating the alleged promise was self-contradictory and incongruent. At one point, the 1st accused alleged that ASP Richard Soh promised to reduce the charge to one of trafficking in not less than 14.99 grams of diamorphine or to one which he would be liable to 20 to 30 years' imprisonment if the 1st accused identified his 'boss' in court. However, the 1st accused later testified in these unequivocal words: 'Your Honour, I asked Richard Soh to give me offer first then I would identify the boss, but he was unhappy.'[note: 4] The 1st accused gave similar admissions a number of times throughout his testimony. The 1st accused admitted that 'as far as I am concerned, I do not want to have capital punishment. I told Richard Soh, if you give me 14.99 and 20 to 30 years, I will point out Ah Seng.'[note: 5]

49 It was clear from these admissions that what actually transpired was the reverse of what the 1st accused had alleged. It was the 1st accused who actively asked ASP Richard Soh to make him an offer. At no point did ASP Richard Soh initiate such an offer. Instead, the 1st accused admitted that when he asked for this offer, ASP Richard Soh appeared to be unhappy.

50 I therefore accepted the evidence of ASP Richard Soh that he did not make nor initiate any promise to the 1st accused to reduce the drug trafficking capital charge to one that was non-capital in nature provided the 1st accused cooperated and identified or implicated one "Ah Seng".

(iv) Offer of cigarettes to the 1st accused

51 The 1st accused alleged that ASP Richard Soh had offered cigarettes to him to induce him to give the statements either on 4 or 10 October 2007 after the recording of the Second Cautioned Statement or the First Long Statement. ASP Richard Soh testified to the contrary that it was the 1st accused who had asked for a cigarette from him. ASP Richard Soh rejected the request and informed the 1st accused that smoking was not permitted in the premises of CNB.

52 The 1st accused admitted in examination-in-chief that he was the one who asked ASP Richard Soh for a cigarette.[note: 6] According to him, ASP Richard Soh then brought many left-over cigarettes to him and he only took two sticks of Marlboro menthol cigarettes. The 1st accused claimed that ASP Richard Soh then brought him to a CNB toilet, released one of his hands from the

handcuffs, lighted the cigarettes for him and allowed him to smoke. ASP Richard Soh testified on the other hand that smoking in CNB headquarters was strictly prohibited and that accused persons were not allowed to smoke within the CNB building.[note: 7]

53 Crucially, by the 1st accused's own testimony, this alleged offer of cigarettes took place after the interpreter, Wu, had left ASP Richard Soh's room and it was late at night. The 1st accused was brought straight back to the lock-up after he finished smoking and thereafter he was not brought out of the lock-up for the recording of any statement again that evening. Thus, even if I were to accept the 1st accused's evidence as true, the accused's request for the cigarettes and the unconditional giving of the cigarettes by ASP Richard Soh all took place after the recording of statements were already completed for that day. Under these circumstances, it could not have amounted to an inducement or promise which would render the previously recorded statement inadmissible in evidence.

(v) The 1st accused alleged that he was not able to give his statements voluntarily due to the cold temperature, insufficient rest, lack of meals and his drug withdrawal

54 From the evidence, it was clear to me that the 1st accused only started to exhibit physical drug withdrawal symptoms on 5 October 2007, a day after his arrest. He was then admitted to the Changi Medical Centre ("CMC") for treatment that same day.

55 According to Dr Choo Shiao Hoe ("Dr Choo"), the medical officer attached to the CMC, the 1st accused's drug withdrawal symptoms peaked on 6 and 7 October 2007, and thereafter he gradually recovered. Dr Choo testified that by 8 October 2007, the 1st accused was coherent and alert. By 10 October 2007, the 1st accused was well and he did not have any piloerection and tremor. He was assessed to have recovered from his drug withdrawal and was discharged by the CMC. Dr Choo opined that the 1st accused was suffering from mild drug withdrawal.

56 Associate Professor Dr Munidasa Winslow ("Dr Winslow"), who is a specialist in addiction medicine, agreed with Dr Choo's opinion. Dr Winslow referred to the medical notes of Dr Lim, which showed that during the pre-statement and post-statement medical examinations on 4 October 2007, the 1st accused had normal pupil size and he was fully alert. This observation meant that the 1st accused's physiological drug withdrawal symptoms had yet to set in during the two medical examinations on 4 October 2007, and consequently, the 1st accused was not suffering from physiological drug withdrawal symptoms during the recording of the First and Second Cautioned Statements on 4 October 2007.

57 I therefore found that the 1st accused was not suffering from any drug withdrawal symptoms when his two cautioned statements were recorded the day before on the 4 October 2007. I rejected the submission of counsel that the 1st accused was in no condition to answer questions on 4 October 2007 because he was suffering from heroin withdrawal on that day.

58 I will now deal with the alleged drug withdrawal effects on the voluntariness of the 1st accused's three long statements taken on 10 and 11 October 2007 and 30 November 2007.

59 Dr Tan gave evidence on behalf of the 1st accused that he (the 1st accused) was still in a withdrawal state on 10 and 11 October 2007 and had dependence syndrome. Dr Tan said that the 1st accused was feeling very uncomfortable on the inside as he was craving for heroin. However, Dr Tan classified the 1st accused's condition as an uncomplicated state which did not involve any complicated sign of severe drug withdrawal condition such as delirium, hallucination or coma. Dr Tan agreed that this state was a far cry from the state of delirium. Dr Tan confirmed at cross-examination

that the 1st accused would be coherent throughout the recording of the statements and that he was able to give his statements voluntarily on 10 and 11 October 2007, and 30 November 2007. In fact, the 1st accused had admitted that on 30 November 2007, he was not suffering from drug withdrawal symptoms when the Third Long Statement was recorded.[note: 8] Dr Winslow and Dr Tan had both confirmed this as well.

60 I noted that Dr Tan only interviewed the 1st accused twice in March 2009, which was about one and a half years after his arrest. Dr Tan's report was based solely on what the 1st accused told him. Hence, Dr Tan rightly conceded that what the 1st accused said during the interview (such as his alleged drug withdrawal, extreme discomfort, and the threats and promises from ASP Richard Soh during the recording of his statements) could be self-serving.

61 Dr Winslow, who testified for the prosecution, opined that after the 1st accused's discharge from the CMC following his recovery from the physiological symptoms of drug withdrawal, the 1st accused would be alert, able to communicate with the recorder and speak coherently. The physiological symptoms of drug withdrawal would not come back suddenly even with physical exertion such as walking as was claimed by the 1st accused.

62 I observed that Dr Tan is not a specialist in addiction medicine, unlike Dr Winslow. During his cross-examination, Dr Tan agreed with Dr Choo that the 1st accused only had mild drug withdrawal symptoms and that he had fully recovered from the physical symptoms of drug withdrawal when he was discharged from the CMC on 10 October 2007. The 1st accused also conceded in cross-examination that he had recovered from drug withdrawal when he was released from the CMC on 10 October 2007.[note: 9]

63 Hence, after a careful evaluation of all the relevant evidence adduced during the trial-within-a-trial with regards to the three long statements recorded from the 1st accused on 10 October 2007, 11 October 2007 and 30 November 2007, I did not believe the claims of the 1st accused that he was suffering from drug withdrawal when his three long statements were taken to the extent that I should regard his three long statements given after his release from the CMC as having been involuntarily taken. Although the 1st accused might still have craving for heroin, internal tension, general discomfort and restlessness after his discharge from the CMC, his condition could not be said to be anywhere near a state of delirium for his will to be sapped and for him to have given his statements involuntarily.

64 I would deal next with the 1st accused's claim that he was feeling cold when the 1st and 2nd cautioned statements were recorded from him on 4 October 2007. The 1st accused however testified that ASP Richard Soh had given him a jacket to wear before the recording of the two cautioned statements. Thereafter, he was able to carry on with the recording of the two cautioned statements.[note: 10] He also confirmed that ASP Richard Soh gave him a jacket to wear before the recording of the First and Second Long Statements.[note: 11] Hence, the 1st accused felt better and was 'quite alright'. The 1st accused also admitted that he understood and could communicate well with ASP Richard Soh and Wu for the recording of the long statements.

65 ASP Richard Soh gave evidence that the temperature in his office where the First and Second Cautioned Statements, and the First and Second Long Statements were recorded was about 25 degrees Celsius. The 1st accused did not complain to him that it was cold in his office. Neither was the 1st accused shivering.[note: 12]

66 With the jacket to wear and the temperature set at 25 degrees Celsius, I believed that the 1st

accused should be fairly comfortable during the recording of the statements in the office of ASP Richard Soh. I did not believe the 1st accused's evidence that after putting on the jacket, he still felt cold under these conditions.

67 Next was the 1st accused's allegation that he did not give his statements voluntarily as he was subjected to the cold temperature in the Central Police Division lock-up and did not have sufficient rest and sleep. Ms Ng Wei Ting ("Ms Ng WT"), who worked for the company servicing the air-conditioning system, testified that the air-conditioning in the lock-up was always set at 27 degrees Celsius in October 2007. In fact, after complaints were received that the previous temperature setting at 24.5 degree Celsius was too cold for inmates at the lock-up, Ms Ng WT said that the temperature was thereafter re-set higher at 27 degree Celsius in 2006 to make it more comfortable for the inmates. A regulator keeps the temperature in the lock-up constant within a range of plus and minus one degree Celsius. The temperature setting cannot be changed by the prison lock-up officers. In fact, Ms Ng WT testified that some of the lock-up officers had even complained to her that the lock-up was warm after the temperature was set at 27 degree Celsius. She did not receive any complaint that the temperature in the lock-up was cold. Ms Ng WT confirmed that regardless of the ambient temperature outside the building, the temperature in the basement lock-up would always be maintained at 27 degree Celsius plus or minus one degree Celsius.

68 In addition, Ms Ng WT testified that the lock-up had undergone some renovations which were completed in March 2006. The renovated cells in the lock-up now have a sleeping area with elevated platforms covered by 4.5 millimetres thick of rubberised floor material. Based on Ms Ng WT's testimony, it would appear that when the human body comes into contact with this material, the body heat generated would be trapped and not dissipated easily to give an insulating effect. Ms Ng WT's evidence was corroborated by the evidence of SI Tan Kok Ann ("SI Tan"), the officer in charge of the lock-up in October 2007. SI Tan also gave evidence that the material used for the elevated platforms in the lock-up cells was not cold to the touch. This evidence meant that accused persons in the lock-up were not exactly made to sleep uncomfortably on cold concrete floors at the basement lock-up.

69 With regards to the welfare of the inmates, SI Tan testified that the lock-up officers patrolled the cells regularly at intervals of about five to ten minutes to check on the inmates. If the inmates required any meal or blanket, they could easily ask the lock-up officers on patrol. Alternatively, the inmates could easily call out to lock-up officers who are stationed about ten metres away in their office which does not have a door between the office and the lock-up area. SI Tan gave evidence that based on the lock-up diary, the 1st accused did not ask for meals or a blanket on the night of 4 October 2007 after he was informed of his entitlements. In fact, according to SI Tan, the 1st accused also did not make any complaint when he was brought to the lock-up on 4 October 2007. Neither did he ask for any meal or blanket at any time subsequently on 10 and 11 October 2007.

70 I accepted the evidence of Ms Ng WT and SI Tan that it was not so cold in the lock-up as claimed by the 1st accused, which explained why he never requested for a blanket. I accepted the prosecution's submission that when the 1st accused was brought back to the lock-up on 10 October 2007 at about 9.15 pm, the environment in the lock-up allowed him to have sufficient rest and sleep until the next morning on 11 October 2007 when he had breakfast in the lock-up at about 6 to 7 am, and before the recording of the Second Long Statement at about 9.30 am.

71 Consequently, I did not believe that the 1st accused was feeling unwell or was so tired due to insufficient rest in the lock-up (or for that matter due to his alleged drug withdrawal) such that his will was sapped to the extent that his statements on 4, 10 and 11 October 2007 were rendered involuntary.

72 As regards food, SSgt Eng testified that on 4 October 2007, at about 7.30 pm, he had bought bread and a hot drink for the 1st accused to consume at Alexandra Hospital when he escorted the 1st accused there for the pre-statement medical examination. As for 10 October 2007, ASP Richard Soh testified that he had asked one of his officers to buy a packet of rice with egg, chicken meat and vegetables for the 1st accused's dinner. The 1st accused finished his dinner at about 6.48 pm and thereafter he requested for a toilet break before the First Long Statement of the 1st accused was recorded.[note: 13] ASP Richard Soh further testified that on 11 October 2007, halfway through recording the 1st accused's Second Long Statement, the 1st accused told him that he (the 1st accused) felt hungry. ASP Richard Soh then asked one of his officers to buy lunch for the 1st accused. When lunch arrived, ASP Richard Soh stopped the recording at about 11.04 am and the 1st accused was allowed to consume his lunch. The recording of the Second Long Statement resumed at about 11.16 am.[note: 14] As for the Third Long Statement, the 1st accused never complained that he did not have his meal before the statement was recorded on 30 November 2007 at about 10.05 am at QRP. In fact, he confirmed that he had taken breakfast and had sufficient rest before the Third Long Statement was recorded.[note: 15]

73 I had no reasonable doubt that the 1st accused had sufficient rest and was alert and lucid for the recording of the five statements. He did not suffer from physiological drug withdrawal symptoms on 4, 10, 11 October 2007 and 30 November 2007 when the five statements were recorded. At no point was he in such a condition that his mental state could be said to be one of delirium or near delirium. Neither was there any oppressive condition present that would sap his will causing him to make the five statements involuntarily. Instead, from the totality of the evidence, I found beyond reasonable doubt that the 1st accused had sufficient rest, meals and drinks before and during the recording of the five statements. Therefore, I rejected the allegations of the 1st accused that he was unable to give his statements voluntarily due to the denial of food, cold temperature, insufficient rest in the lock-up and his drug withdrawal symptoms. In my view, these allegations sounded more like afterthoughts made up by the 1st accused in order to retract the five statements that he had voluntarily given.

Finding

74 After a careful consideration of all the evidence adduced in the *voir dire*, I found that all the five statements were voluntarily given by the 1st accused and I accordingly admitted them into evidence at the main trial.

75 I turn now to consider the substance of the statements made by the 1st accused.

Statements made by the 1st accused

Cautioned Statements

76 In the first cautioned statement, the 1st accused claimed that the 61 packets of diamorphine were "meant for selling and consumption".

First Long Statement dated 10 October 2007

77 In this statement, the 1st accused admitted that he worked for Ah Seng on three to four occasions. The first occasion was in late August 2007 involving 50 packets of heroin, Ecstasy pills, "Ice" and Erimin-5 pills. The drugs were delivered to the 1st accused, who then delivered the drugs onwards to Ah Seng's respective customers. Subsequently in late September 2007, he stated that

the 2nd accused delivered 40 packets of heroin, Ermin-5, and Ice in a large packet of crackers ("*keropok*") to him, which he then passed on to Ah Seng's customers as before.

Second Long Statement dated 11 October 2007

78 In this statement, the 1st accused said that his job was to deliver drugs to Ah Seng's customers, collect payment from the said customers and pass the monies on to one of Ah Seng's men. He also admitted that he smoked about half a small packet of heroin everyday and that his supply of heroin came from Ah Seng. He would pay Ah Seng for the amount he took, together with the drug proceeds collected from Ah Seng's customers.

79 With respect to the consignment of drugs on 4 October 2007, the 1st accused stated that "Xiao Di" (the 2nd accused) delivered the drugs to him. After the six bundles had been pulled out from the rear signal compartments, the 1st accused then asked the 2nd accused whether it was six bundles and the 2nd accused replied in the affirmative. The 1st accused also confirmed that he gave the 2nd accused $20 and said that like the 2nd accused, he was "not the boss, [merely] a worker just like him".

80 This was then followed by contradictory statements made by the 1st accused. At [23], it was first recorded that "all the heroin were meant for [the 1st accused's] personal consumption and bought from Ah Seng". Immediately thereafter however, it was recorded in handwriting that the 4 October 2007 delivery did not include the 1st accused's personal order and was not for his consumption. The 1st accused later attempted to resolve this contradiction by testifying that 40 out of the 61 packets of heroin were for his own consumption. The 1st accused also stated that even though Ah Seng did not tell him the amount of drugs in the six bundles, and that he did not know the actual amount of drugs in this particular delivery, he knew that they contained heroin, Erimin-5 and Ecstasy as before.

Statements made by the 2nd accused

81 The 2nd accused made several statements, the admissibility of which were not challenged by his counsel.

Oral Statements

82 On 4 October 2007, three oral statements were recorded from the 2nd accused at various times of the day, pursuant to s 121 CPC. In the third statement, the 2nd accused stated that he was instructed by one "Ah Heng" and one "Ah Xiong" to pass "something" to someone. He claimed that he did not know who he had to pass that thing to. He called Ah Xiong who gave him a number to contact. That person turned out to be the 1st accused. He also claimed that he did not know what it was that he had to pass on, save that it was in six bundled packets packed in black tape. However during cross-examination, the 2nd accused clarified that he knew that it was six bundles packed in black tape only after the event. Ah Xiong told him over the phone that the black bundles were kept in the car boot. The 2nd accused stated that when he met the 1st accused, he opened a compartment near the car signal lights in the boot where he took out four black bundles on his right. The 1st accused took out two black bundles from a similar compartment on the left. The 2nd accused handed the four black bundles he had to the 1st accused. Officers then asked the 2nd accused about the contents of the black bundles, in particular, whether he knew that they were illegal. The 2nd accused replied – "Yes, I think so".

Cautioned Statement dated 4 October 2007

83 In the cautioned statement, the 2nd accused stated that he thought the 61 packets of diamorphine found in the six black bundles was "Ice" and that it was only when the six packets were opened did he realise that it was "bai fen" (heroin in Mandarin).

First Long Statement dated 5 October 2007

84 In this statement, the 2nd accused stated that he was introduced to Ah Xiong who in turn introduced him to Ah Heng. He claimed that Ah Xiong told him that he (Ah Xiong) obtained his drug supplies from Ah Heng. He also stated that Ah Xiong helped him resolve a matter with one "Wei Ting", another drug supplier/gangster in Johor, that Ah Xiong gave him free "Ice" to smoke, and that he owed Ah Xiong but not Ah Heng some money.

85 The 2nd accused then recounted a trip which Ah Xiong and Ah Heng directed him to make into Singapore on 24 September 2007. On that day, the 2nd accused claimed that Ah Xiong and Ah Heng asked him to collect money from a Chinese man, who turned out to be the 1st accused, in Singapore. Ah Xiong gave the 2nd accused the 1st accused's contact number over the phone after the 2nd accused had entered Singapore. After meeting the 1st accused however, Ah Xiong then told the 2nd accused that he need not collect money from the 1st accused but was to pass the 1st accused a bottle of engine oil from the boot instead. That bottle felt heavier than normal. The 1st accused gave the 2nd accused $10 "coffee money". The 2nd accused then drove back to Malaysia.

86 From this incident, it would appear that trickery was practised by Ah Xiong on the 2nd accused. It might well be that Ah Xiong, as a seasoned principal drug supplier, was using the 2nd accused, as an unsuspecting courier and he fooled the 2nd accused into carrying and distributing heroin for him. Therefore the 2nd accused was given little reason to suspect that he was in fact transporting heroin (as opposed to other drugs like "Ice") for Ah Xiong and to Ah Xiong's sub-distributors or customers.

Second Long Statement dated 7 October 2007

87 In this statement, the 2nd accused first stated that he queried Ah Xiong about the contents of the bottle of engine oil which Ah Xiong had instructed him to deliver to the 1st accused and why he had to deliver it to "Uncle" (the 1st accused) personally. Ah Xiong asked him not to ask so many questions. This aroused the 2nd accused's suspicions.

88 The 2nd accused then proceeded to recount the second and third trips which he made into Singapore. The second trip took place on 25 September 2007. After smoking "Ice" with one "Ah Zhong", the 2nd accused was instructed by Ah Xiong to drive to Geylang, Singapore. The 2nd accused specifically stated that he checked his car and boot before leaving for Singapore because he was afraid that Ah Xiong would conceal drugs in his car like he did on the previous occasion. He did not find anything. He said that had he found any drugs in the car, he would return to Ah Xiong and not enter Singapore. The 2nd accused's car was then singled out for inspection at the Checkpoint. This worried the 2nd accused, who called Ah Xiong after he passed the Checkpoint. Ah Xiong instructed him to return to Ah Zhong's house immediately.

89 The third trip took place on 3 October 2007. The 2nd accused said that he was summoned to Ah Zhong's house where he witnessed a quarrel and an injured Ah Zhong. Ah Xiong then prohibited the 2nd accused from leaving and insisted that he entered Singapore in place of Ah Zhong on 4 October 2007, the day the 2nd accused was apprehended. The 2nd accused alleged that Ah Xiong implied that he could hire a killer easily. This put the 2nd accused in fear of his and his family's lives. The 2nd accused also claimed that his car was taken away and only returned to Ah Zhong's house at about 5.00 am on 4 October 2007. The 2nd accused was then ordered to drive his car into Singapore

and to await further instructions upon arrival. On his way out of Malaysia, the 2nd accused claimed that a motorcyclist and a car with three men followed him. The 2nd accused stated that he suspected that Ah Xiong had placed drugs in his car but he neither knew the type of drugs nor their location of concealment in his car. However in cross-examination, the second accused clarified that his suspicions arose only when he was at the petrol station just before entering Singapore and in so far as the nature of the drugs was concerned, he only suspected that they could have been "Ice".

90 The 2nd accused then narrated in his second long statement what happened after he entered Singapore. According to the 2nd accused, Ah Xiong told him to make a call to a particular number, which the 2nd accused subsequently recognised to be that of the 1st accused's. This narration was continued in the 2nd accused's third long statement.

Third Long Statement dated 8 October 2007

91 In this statement, the 2nd accused stated that he knew that Ah Heng sold a variety of drugs, including heroin, but he did not know whether Ah Xiong sold heroin. He maintained that Ah Heng never asked him to sell heroin for him (Ah Heng).

92 The 2nd accused continued to narrate what happened after he entered Singapore on 4 October 2007. According to the 2nd accused, both of them met after they communicated over the phone. When they met, the 2nd accused claimed that the 1st accused asked him where the "thing" was but he did not know. As a result, the 1st accused asked the 2nd accused to call Ah Xiong to find out where the "thing" was hidden. Ah Xiong directed them to the two rear signal compartments in the boot. Both of them proceeded to the boot. The 2nd accused claimed that he extracted one bundle from the right compartment but had difficulty extracting the other. The 1st accused therefore gave him a helping hand. The 1st accused also extracted two more bundles from the left compartment thereafter and placed all the bundles into a plastic bag. The 2nd accused stated that the 1st accused gave him $20 as "coffee money" and asked him to leave.

93 Upon leaving the carpark, the 2nd accused called Ah Xiong to inform him that he had delivered the "thing" to the 1st accused. Ah Xiong's next instructions were to return to Ah Zhong's place without delay. While driving, the 2nd accused suspected that he was being followed. Ah Xiong's instructions, in response to this, were to return to Ah Zhong's place immediately. Further, the 2nd accused claimed that Ah Xiong instructed him to say that he was in Singapore for a job interview should he be stopped along the way or arrested.

94 After the 2nd accused was arrested, the 2nd accused recounted that CNB officers repeatedly asked him whether there were any more "things" in the car. The 2nd accused replied that he did not know what "thing" they were referring to. The 2nd accused also said that he did not tell CNB officers the delivery he had just made to the 1st accused because he was afraid that Ah Xiong would hurt himself and his family had he told them what actually transpired.

The law

95 Having set out a brief overview of the case before me, I now consider the applicable legal principles.

Misuse of Drugs Act

96 Section 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2004 Rev Ed) ("the Act") provides that:

Trafficking in controlled drugs

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

(a) to traffic in a controlled drug;

…

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

The possession and trafficking of more than 15 grams of diamorphine attracts the mandatory capital punishment (see s 33 of the Act, read with the Second Schedule of the Act).

97 The prosecution must prove, beyond a reasonable doubt, three elements before an offence of drug trafficking against the 1st and 2nd accused can be made out. This was made clear by the Court of Appeal in *Wong Soon Lee v Public Prosecutor* [1999] SGCA 42 ("*Wong Soon Lee*"):

27 In order to make out the offence of drug trafficking, the prosecution bears the burden of proving beyond a reasonable doubt that, first, the appellant was in possession of a controlled drug; second, he was in possession of a controlled drug for the purposes of trafficking and third, he had knowledge of the nature of the drugs. If the prosecution fails to prove any one of the elements necessary to constitute the offence of drug trafficking, the appellant will have to be acquitted: *Tan Ah Tee & Anor v. PP* [1980] 1 MLJ 49.

98 Thus, the prosecution must establish the following three elements:

(a) There was possession of a controlled drug;

(b) There was possession of that drug for the purpose of trafficking; and

(c) There was knowledge of the nature of the drug that was possessed.

Statutory presumptions

99 The prosecution is aided by several statutory provisions found in the Act, namely (i) the s 17(c) presumption concerning trafficking; (ii) the s 18 presumption of possession and knowledge of the nature of the controlled drugs; and (iii) the s 21 presumption relating to vehicle. These were introduced to mitigate the practical difficulty of proving possession and knowledge of the specific nature of the drug (and in this case, it would be knowledge that the drug was in fact heroin and not "Ice" or some other illicit drug):

Presumption concerning trafficking

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

…

(c) 2 grammes of diamorphine;

…

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

Presumption of possession and knowledge of controlled drugs

18. —(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

…

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(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. [emphasis added]

…

Presumption relating to vehicle

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.

100 The ss 18(1) and 18(2) presumptions are only triggered if the conditions therein have been strictly satisfied. The accused must be "proved to have had in his possession or custody or under his control" any one of the following:

(a) anything containing a controlled drug;

(b) the keys of anything containing a controlled drug;

(c) the keys of any place or premises or any part thereof in which a controlled drug is found; or

(d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug".

101 Due to the language as well as logic of ss 18(1) and 18(2), it must be that the operation of the

latter is conditional upon the former operating. Not only does the heading of s 18 read: "Presumption of possession and knowledge of controlled drugs", if the accused was not proved to have possession in the first instance, it would also be illogical to consider whether he had knowledge of the nature of the thing possessed. Put simply, should the accused succeed in rebutting the presumption in s 18(1), the presumption under s 18(2) pertaining to knowledge of the thing possessed would not arise at all (*Tan Kiam Peng v PP* [2008] 1 SLR 1 ("*Tan Kiam Peng*") at [54], [55], [60] and [61]). If, however, the prosecution actually established that the accused was in fact in actual possession of a controlled drug, there is simply no need to invoke the s 18(1) presumption, though the s 18(2) presumption would continue to operate (unless, of course, the accused also had actual knowledge of the nature of the drug, in which case there would also be no need to invoke the s 18(2) presumption either).

102 Where the presumptions operate, the burden is on the accused to disprove the presumptions on a balance of probability. In other words, the presumptions are not irrebuttable. This was made clear by the Court of Appeal in *Wong Soon Lee* ([97] *supra*) at [31]-[32]:

> 31 These presumptions are however not irrebuttable. In *Van Damme Johannes v PP* [1994] 1 SLR 246, the Court of Appeal stated that
>
> > It is accepted that the onus is always on the prosecution to prove its case beyond a reasonable doubt but, in the context of the [Misuse of Drugs Act], the law has provided the prosecution with presumptions and the court must have regard to them. Once the presumptions were triggered in this case the onus was on the accused to discharge the presumptions. It would then be up to the court to decide whether or not to believe him; to assess his credibility and veracity; to observe his demeanour; to listen to what he had to say; to go through the evidence and determine whether his story was consistent; and finally to make a judicial decision.
>
> 32 Hence, once these presumptions are brought into play, the burden is on the appellant to show on a balance of probabilities that he is not in possession or ***he has no knowledge of the nature of the drugs*** or he is not in possession of controlled drugs for the purposes of trafficking.
>
> [Emphasis added]

Whether or not the presumptions are rebutted is entirely a question of fact: *Tan Boon Tat v PP* [1992] 2 SLR 1). The accused, when charged for trafficking in heroin, may thus be able to rebut the s 18(2) presumption by showing on a balance of probability that he had no knowledge that the specific nature of the drugs was in fact heroin but that he had genuinely believed (albeit erroneously) that the nature of the drugs was "Ice" or some other illicit drugs (other than heroin) or that he had genuinely thought (albeit mistakenly) that those items in his possession were some other innocent items or substance (like milk powder or sulphur). Whether he had the opportunity to examine the nature of the substances that he was carrying or was in his possession, why he did not or could not examine the nature of the substances to determine their true nature and how the accused came to his mistaken belief will be part of the overall factual circumstances which the trial judge will have to consider in determining whether or not the accused will succeed in rebutting the s 18(2) presumption.

Possession

103 A person is said to be in "possession" for the purpose of the Act if he was knowingly in control of something. He would not be regarded as having "possession" of something if he did not know that he was in control or possession of that thing.

104 In *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*"), adopted locally in *Tan Ah Tee v PP* [1978-1979] SLR 211 ("*Tan Ah Tee*") and followed by various other Singapore decisions, such as *Lim Beng Soon v Public Prosecutor* [2000] 4 SLR 589, the House of Lords said that an accused person would not be regarded as being in unlawful possession of drugs, contrary to s 1 of the Drugs (Prevention of Misuse) Act 1964 ("the 1964 UK Act"), if he genuinely believed that the parcel he was in possession contained an innocent substance and had no reasonable opportunity of examining the contents of that parcel. This was notwithstanding the fact that s 1 of the 1964 UK Act created an absolute offence. As Lord Pearce observed at 305-306:

> The situation with regard to containers presents further problems. ***If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents***. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been "planted" in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. ***Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter)*** either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) ***that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents***. For a man takes over a package or suitcase [stands] at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal. [original emphasis in italics; emphasis added in bold italics]

105 Prior to *Warner* ([103] *supra*), Lord Parker CJ in the English Court of Appeal decision of *Lockyer v Gibb* [1967] 2 QB 243 also expounded a similar position at 248:

> (I)t is quite clear that a person cannot be said to be in possession of some article which he or she does not realise is, for example, in her handbag, in her room, or in some other place over which she has control. That I should have thought is elementary; if something were slipped into your basket and you had not the vaguest notion it was there at all, you could not possibly be said to be in possession of it. [Emphasis added.]

106 The *Warner* position on the general concept of possession has since been applied in *Tan Ah Tee* ([103] *supra*) and considered more recently in *Tan Kiam Peng* ([101] *supra*). In the latter, the Court of Appeal considered two possible interpretations of "knowledge" of the nature of the drug concerned under s 18(2). First, knowledge could mean knowledge that the drug in question was a controlled drug. Second, knowledge could mean knowledge on the part of the accused that the drug in question was not only a controlled drug but also the specific drug which he was found to be in possession (in this case, heroin).

107 At [95], the Court of Appeal appeared to favour in principle the second interpretation over the first, notwithstanding the greater degree of consistency of the first interpretation with the general policy underlying the Act. Not only was the second interpretation felt to be more consistent with the specific language of s 18(2), it appeared that there had not been any local case which had adopted the first interpretation. Also, the Court of Appeal felt that because the Act imposed harsh penalties (including the death penalty) on the accused, any ambiguities (if at all) should be resolved in favour

of him. However, the Court of Appeal did not express any concluded view because the issue was not argued fully before the court.

Knowledge

108 The prosecution may establish "knowledge" in one of three ways:

(1) By establishing that the accused had actual knowledge of possession of the particular drug in question;

(2) By establishing that the accused was wilfully blind to the fact that he may have been in possession of the particular drug in question; and

(3) By relying on the presumption set out in s 18(2), *ie*, the accused is presumed by law to have known of the nature of the particular drug in question which is proved or presumed to be in his possession.

Actual Knowledge

109 The accused is said to have actual knowledge of possession of the drug in question if he is aware that such possession exists or is almost certain that it exists or will exist or occur. As Yong Pung How CJ said in *PP v Koo Pui Fong* [1996] 2 SLR 266 ("*Koo Pui Fong*") at [17], "knowledge entails a high degree of certainty".

Wilful Blindness

110 The concept of knowledge in s 18(2) not only entails actual knowledge, it also includes wilful blindness because the law regards wilful blindness to be the legal equivalent of actual knowledge: *Koo Pui Fong* ([109] *supra*) at [17]; *Tan Kiam Peng* ([101] *supra*) at [104], [106] and [122].

111 In order for the prosecution to establish wilful blindness, it must establish the key mental state of "suspicion". This suspicion must be firmly grounded on the facts and of a sufficient level to result in a finding that the reason why the accused did not make inquiries was because he made a deliberate decision to turn a blind eye to the obvious. Failure to cross that threshold of suspicion would only suffice to find negligence, perhaps gross negligence, but not wilful blindness. As Andrew Phang JA made it clear in *Tan Kiam Peng* ([101] *supra*) at [125] – [126]:

125 … It is equally – if not more – important to emphasise that the Judge was therefore not stating that suspicion per se would not be sufficient to ground a finding of wilful blindness. On the contrary, suspicion is a central as well as integral part of the entire doctrine of wilful blindness. However, the caveat is that a low level of suspicion premised on a factual matrix that would not lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries. What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the precise facts before the court. It is equally important to note that in order for wilful blindness to be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion must then lead to a refusal to investigate further, thus resulting in "blind eye knowledge"…

126 That having been said, the requirement of suspicion is nevertheless a vital (and, indeed, threshold) one. So, for example, if the accused makes merely token inquiries because he suspects that making more substantive inquiries might lead him to the truth which he does not want to know, that is wilful blindness. If the factual matrix was such that the accused ought to have been suspicious, the court must then consider the accused's reasons for not making further inquiries. We will come to this point below but it suffices to state at this juncture that a court would be well justified in thinking that the reason why an accused refused to make further inquiries may be because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed. In such a situation, the level of suspicion is, in fact, quite the opposite of the very first scenario referred to (in the preceding paragraph), and is one where a person in the accused's shoes ought to make further inquiries and the failure to do so would therefore constitute wilful blindness. As already emphasised above, what is token and what is substantive (in so far as the making of further inquiries is concerned) is, of course, a matter of fact. [emphasis added]

112 The appropriate level of suspicion required is ultimately dependent on the factual matrix of each case, of which a myriad of permutations of the facts are possible. There is, however, no requirement that the threshold level of suspicion be that of virtual certainty. Instead, wilful blindness is situated somewhere lower in the spectrum than "virtual certainty" (*Tan Kiam Peng* ([101] *supra*) at [127]). In other words, wilful blindness could be triggered by suspicion which exceeded a particular threshold, but not necessarily that of virtual certainty, provided it results in the deliberate act of refusing to make inquiries.

113 Where the controlled drugs were slipped into the accused's bag without his knowledge, it is clear that he would not be regarded as being wilfully blind and will therefore be able to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) on a balance of probabilities. In *Tan Kiam Peng* ([101] *supra*), the Court of Appeal gave the following example of controlled drugs being slipped into a package given to the accused without his knowledge. A close family member of the accused gives the accused a box wrapped up in ribbons. The accused then delivers that box to another family member, in the belief that it contained a cake: *Tan Kiam Peng* ([101] *supra*) at [132]. In such an instance, the accused would not be wilfully blind. Similarly, where the accused truly did not know the nature of the controlled drug in his possession, he would not be regarded as being wilfully blind either.

114 Where however the accused already knew that he was carrying controlled drugs, making token

efforts to investigate one's suspicions, such as merely inquiring about the nature of the drugs (for example, that they were not of a nature which carried the death penalty) would not be sufficient to establish that he was not wilfully blind. The Court of Appeal established in *Tan Kiam Peng* ([101] *supra*) at [130] that where the accused opted to take such an enormous risk of trafficking drugs "without establishing the true nature of the drugs he or she is carrying, that constitutes… wilful blindness".

115 Having set out the relevant legal principles, I now turn to apply them to the case before me.

Decision of the court with respect to the 1st accused

116 Insofar as the 1st accused is concerned, the case against the 1st accused would be made out if the prosecution proved beyond reasonable doubt that (i) the 1st accused was in possession of the 61 packets of heroin; (ii) the 1st accused knew that he had heroin in his possession; and (iii) the 1st accused possessed the 61 packets of heroin for the purpose of trafficking.

117 It is clear to me that the 1st accused did have in his possession the heroin in question. He certainly had physical control of the heroin. He was arrested at the road pavement in front of Block 55A Commonwealth Drive and found to be in possession of the six black bundles. In his statements to the CNB officers and his evidence before this court, the 1st accused never denied that he was in possession of the six bundles. In fact, he always maintained that he had obtained the bundles from the 2nd accused. He also admitted in his first cautioned statement that the heroin was meant for both sale and consumption. Both admissions suggested that the 1st accused did not dispute that he was in fact in possession of the bundles.

118 The 1st accused also had actual knowledge that the six black bundles contained heroin. Upon his arrest, he admitted in his first oral statement that the drugs were heroin obtained from a Malaysian known as "Xiao Di", whom he subsequently identified to be the 2nd accused. Later in his second long statement, he also stated that even though he did not know the actual amount of drugs in the bundles, he knew that they contained heroin, Erimin-5 and Ecstasy as before. Prior to the events on 4 October 2007, the 1st accused had delivered various drugs, including heroin to Ah Seng's customers. Finally, the 1st accused's evidence before this court also suggested that he actually knew that the six black bundles contained heroin. He specifically admitted that he knew the contents of the bundles to be heroin even before they were opened.

119 Due to the presumption set out in s 17(c) of the Act, the burden therefore fell on the 1st accused to prove, on a balance of probabilities, that he did not possess the heroin in question for the purpose of drug trafficking.

120 The 1st accused's case was that 40 out of the 61 packets of heroin was intended for his own consumption. This argument, if successful, would mean that the 1st accused would have only trafficked approximately 12 grams of heroin (*ie* less than 15 grams) out of the 34.97 grams of diamorphine found in his possession. Accordingly, he would not face the mandatory death penalty.

121 In order for the 1st accused to succeed in his argument that part of the drugs in his possession was for his own consumption, he must furnish evidence to that effect – a bare assertion at trial of an intention to consume simply would not suffice. In *Khalid Bin Abdul Rashid v PP* [2000] SGCA 64 ("*Khalid*") the Court of Appeal stated at [18] that:

> [A]n accused had to adduce credible evidence to show that part of the offending substance was intended for self-consumption and in this regard a mere casual declaration by the accused would not suffice. He would have to, in addition to the history of his addiction and consumption habits, also satisfy the trial court of the rates of his consumption. If all that the accused could conjure up was a bare allegation bereft of details, the trial judge would be well entitled to reject his evidence as unworthy of belief and an appellate court would be most reluctant to disturb any such finding: *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 3 SLR 29 at 39; *Fung Choon Kay v Public Prosecutor* [1997] 3 SLR 564 at 572. Another factor which would weigh in the mind of the court is the financial means or the ability of the accused to pay for the drugs: *Public Prosecutor v Dahalan bin Ladaewa* [1996] 1 SLR 783 at 814.

122 Further, *Ong Ah Chuan v PP* [1980-1981] SLR 48 is authority that the larger the quantity of drugs involved, the stronger was the inference that the bearer of those drugs did not intend to consume them personally and hence the more convincing the evidence needed to rebut the presumption of trafficking:

> 14 Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible — even if there were no statutory presumption such as is contained in s 15 of the Drugs Act.
>
> 15 As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it.

123 Turning to the evidence, I am not satisfied on a balance of probability that that the 1st accused did intend to retain 40 out of the 61 packets of heroin for his consumption and only 21 packets of heroin were for trafficking.

Intention to kick the habit of heroin consumption

124 Counsel for the 1st accused explained the 1st accused's purchase of the 40 packets by reference to his alleged determination to kick his habit of heroin consumption. He argued, *inter alia*, that the heroin consumption was to be reduced gradually over a period of time, and that there was a real danger that the 1st accused's cheap source of heroin supply may be terminated because the 1st accused had allegedly told Ah Seng that he did not want to work for him anymore.

125 I do not think that the 1st accused really intended to wean himself off his heroin addiction. To my mind, that was merely an excuse which the 1st accused conjured as an afterthought. The 1st accused never raised this reason in any of the statements taken from him, despite many chances to do so. It only surfaced during the trial itself. More importantly, expert witness Dr Winslow, an expert on heroin addiction, testified that he had never encountered any addict who ordered more heroin with the aim of kicking that habit. I therefore disbelieved that the 1st accused had decided not to work

anymore for Ah Seng and that was why he purchased 40 packets to ensure that he had sufficient heroin supply in the meantime to last for the period needed to wean himself from heroin consumption.

Ability to consume 40 packets of heroin

126 Counsel for the 1st accused also supported the 1st accused's testimony that the 40 packets were for his own consumption by evidence that the 1st accused was a heavy addict. He argued that based on the 1st accused's high heroin consumption rate of between half and one packet a day (and more than one packet of heroin per day on days that he remained in his flat), the stock of 40 packets would only last for approximately one month. Thus, it was perfectly logical to stock such a large quantity of heroin.

127 The prosecution, on the other hand, submitted that the consumption rates as claimed by the 1st accused should be rejected, and that the 1st accused was in fact a mild addict. It relied on Dr Choo's medical report at the CMC which stated that the 1st accused told Dr Mohd Emran of the CMC that he smoked half a packet of heroin everyday. It also relied on Dr Winslow's testimony that the 1st accused did not display any withdrawal symptoms at his pre-statement and post-statement medical examinations on 4 October 2007, and that Dr Choo's observations of the 1st accused at the CMC between 4 October 2007 and his discharge from the CMC on 10 October 2007 showed that the 1st accused only displayed mild withdrawal symptoms. Because of his mild withdrawal symptoms, the 1st accused could not have been a severe addict. The prosecution also relied on *Fung Choon Kay v PP* [1997] 3 SLR 564 as authority that the fact that an accused person was an addict was not itself conclusive evidence of the defence of consumption.

128 Even if I did agree with the 1st accused that he was indeed a heavy abuser of heroin, Dr Winslow testified he had rarely encountered addicts who kept more than two weeks' supply for their own personal consumption at any one time. Unless they suffered from some disease which caused them to hoard drugs, the usual practice was to only keep enough heroin to feed their addiction.

129 In the present case, I note that the 1st accused already had 11 packets and nine straws of heroin in his flat which he shared with Tay. At the rate the 1st accused was consuming heroin, this would have lasted him at least two weeks.

130 Additionally, the 1st accused testified that between late August and 4 October 2007, he delivered drugs for Ah Seng on three occasions. On the first occasion, he delivered 20 packets of heroin and kept 30 packets for himself. On the second occasion, he delivered 20 packets of heroin and kept another 20 for himself. On the third occasion, which is the occasion in question, he received 61 packets of heroin, out of which 40 were allegedly for himself. Collectively, this meant that the 1st accused would have ordered 90 packets for his own consumption over a period of one month. I find it hard to believe that all 90 packets were intended for the 1st accused's own consumption. First, he would have to be consuming about three packets daily for him to consume 90 packets in the span of one month. Second, the 1st accused had a ready supply of heroin from Ah Seng (as I did not believe that he intended to stop working for Ah Seng) and there was accordingly no need to stock pile heroin of this quantity. The 1st accused had testified before this court that he would be able to obtain heroin as soon as one day after he had placed his order. This was very quick delivery. Third, the 1st accused did not get a better rate for buying in bulk, as he had claimed in court. In his testimony, he conceded that Ah Seng charged him $160 per packet, regardless of whether he bought 10, 20, 30, 40 or even 100 packets of heroin.

Financial means to purchase 40 packets of heroin

131 Counsel for the 1st accused also submitted that the 1st accused's finances could support his habit. He presented evidence that the 1st accused had more than $18,000 available to purchase heroin. This included money earned from three previous drug runs the 1st accused had made for Ah Seng. The 1st accused also testified that his bookie activities brought him several thousand dollars which he could use to finance his heroin addiction.

132 However, I note that the 1st accused also testified that he would not use particular sums of money to pay Ah Seng for the heroin, either because they had been set aside for his bookie business or because they did not belong to him. These sums of money were substantial. Accordingly, I do not see how the 1st accused could have had the means to afford 90 packets of heroin within a short span of a month or so. Each packet of heroin would set the 1st accused back by $160. This meant that the 1st accused would have had to pay Ah Seng more than $14,000 in total for the 90 packets. The 1st accused testified that Ah Seng operated a flexible credit scheme which allowed him to make payment whenever he was able. I find the possibility of such a scheme incredulous, if as alleged by the 1st accused, he had told Ah Seng that he would no longer work for him in future.

133 For these reasons, I am not satisfied that the 1st accused had rebutted, on a balance of probabilities, the presumption that all the 61 packets of heroin in his possession was for the purpose of trafficking.

Decision of the court with respect to the 2nd accused

134 Insofar as the 2nd accused is concerned, the case against the 2nd accused would be made out if the prosecution proved beyond reasonable doubt that (i) the 2nd accused was in possession of the 61 packets of heroin; (ii) the 2nd accused knew that he had specifically heroin in his possession; and (iii) the 2nd accused had trafficked the 61 packets of heroin to the 1st accused.

135 To my mind, the 2nd accused had clearly committed the actus reus of trafficking in heroin. Transporting in his vehicle and subsequently handing the six black bundles over to the 1st accused fell within the phrase "sell, give, administer, transport, send, deliver or distribute" pursuant to s 2 of the Act.

136 Accordingly, the pertinent question is whether the 2nd accused knew that he had in his possession heroin and had knowingly delivered that heroin to the 1st accused. I am inclined towards the Court of Appeal's second interpretation in *Tan Kiam Peng* ([101] *supra*) that the 2nd accused must be shown to have knowledge that the drug in question was not only a controlled drug but also the specific drug which he was found to be in possession (in this case, heroin).

137 Counsel for the 2nd accused submitted that the 2nd accused had no knowledge that he was carrying anything, let alone heroin, into Singapore. The prosecution however submitted that the 2nd accused did have this knowledge.

138 Based on the evidence before me, I am satisfied on a balance of probability that the 2nd accused did not have any knowledge that the car he drove to Singapore contained heroin. He did not have actual knowledge that there was heroin in his car. Neither did he have actual knowledge that the six black bundles contained heroin when he first saw those bundles. The 2nd accused was also not wilfully blind to the fact that he could have been carrying heroin in his car. Neither was he wilfully blind to the fact that the six black bundles contained heroin when he first saw those bundles. I find support for this conclusion in *Tan Kiam Peng* ([101] *supra*), where the Court of Appeal said:

> 140 … [W]e have also demonstrated that in situations where the accused truly does not know the nature of the controlled drug in his or her possession, it is clear that the accused will be able to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) on a balance of probabilities. This will be the situation where, for example, the controlled drugs in question were slipped into a package the accused was carrying without his or her knowledge (see also above at [132]), or where the accused is otherwise devoid of actual knowledge and finds himself or herself in a situation in which the facts and circumstances do not give rise to that level of suspicion that would entail further investigation lest a finding of wilful blindness results. All this, again, is consistent with the underlying policy of the Act. [emphasis added]

Actual knowledge

139 The 2nd accused had physical possession of the six black bundles only because he was driving his car in which the bundles were hidden without his knowledge in the rear signal compartments of his car by Ah Xiong and his gang. Clearly, he did not have "possession" of the bundles for the purpose of the Act. Not only did he not have "possession" of the contents of the bundles, he did not even have actual knowledge of the bundles' existence to begin with.

140 In his various statements, supported by evidence in court, the 2nd accused's position was that he did not know what was inside his car, whether there was anything inside his car at all, and why he was asked to go to Singapore.

141 I am persuaded that this was indeed what happened.

142 Under cross-examination, the 2nd accused said that he did not know why Ah Xiong had asked him to go to Singapore on 4 October 2007 as Ah Xiong did not ask him to deliver anything. When his car was removed whilst he was at Ah Zhong's house, he was not told that anything was placed in his car either. Even at the time he left Ah Zhong's house, neither Ah Zhong, nor Ah Xiong, nor Ah Heng told the 2nd accused anything. Hence, the 2nd accused did not have actual knowledge that he was carrying anything in his car. In fact, the 2nd accused was totally unaware as to what he was supposed to do until he met the 1st accused, who asked him where the "thing" was. It was only after he called Ah Xiong, who told him where the "thing" was hidden, did he *first* know that there were things hidden in his car.

143 Hence, the first time the 2nd accused knew of the existence of the six black bundles was when he opened the boot and the bundles were taken away by the 1st accused. The first time the 2nd accused caught sight of the contents of the six black bundles was at the 1st accused's flat where the bundles were opened by the CNB officers. At that point, I am also persuaded that the 2nd accused still did not know that the bundles contained heroin. To my mind, the 2nd accused knew that the black bundles contained heroin only when he was informed by CNB officers at the weighing of the drugs. That was the first time the 2nd accused had actual knowledge that the six black bundles contained heroin. In both his statements and testimony before this court, the 2nd accused had stated on several occasions that he, at the weighing of the drugs, only recognised the tablets in red and silver wrappings but not the packets containing granular substances. Further, the 1st accused also gave evidence before this court that the 2nd accused was ignorant of the contents of the bundles and only he (the 1st accused) knew that the bundles contained heroin.

144 Accordingly, I am of the view that on the balance of probabilities, the 2nd accused had no actual knowledge that he was carrying anything into Singapore, let alone heroin, until his arrival here,

whereupon he was asked about them and Ah Xiong had supplied him with relevant information as to their hidden location in his car. Neither did he know that he was carrying heroin until CNB officers informed him as such.

Wilful blindness

145 I am also of the opinion that the 2nd accused was not wilfully blind to the fact that he could have been carrying heroin into Singapore as he did not suspect that he was carrying the same. I am convinced that each time the 2nd accused was asked to come into Singapore, he would take steps where possible to ensure that he was not carrying anything illegal with him. This was evidenced by the 2nd accused's actions in relation to two trips he made into Singapore, prior to the one he was arrested for.

146 In his statements supported by evidence before this court, the 2nd accused stated that in relation to the first trip he made to Singapore on 24 September 2007, he specifically questioned Ah Xiong about the contents of a bottle of engine oil which he (Ah Xiong) had asked him to deliver to the 1st accused, after he had made that delivery. He also enquired why he had to personally deliver it to "Uncle" (the 1st accused). His suspicions were aroused when Ah Xiong refused to answer.

147 In relation to the second trip he made to Singapore on 25 September 2007, the 2nd accused emphasised that because Ah Xiong had hidden a bottle of engine oil in his car without telling him on the previous occasion, he deliberately checked his car before entering Singapore. He was afraid that there could be drugs concealed in his car. When asked what type of drugs Ah Xiong could have placed in his car, he said that he would not have known. In any case, he did not find anything. When asked further whether he would have taken out the drugs had he found something, the 2nd accused said that he would "look for Ah Xiong" and tell him that he would not go to Singapore, even if the drugs were only Erimin-5. Subsequently, the 2nd accused reconfirmed before this court that had he found illegal drugs, including Erimin-5 and Ice, in his car, he would have not come into Singapore, even if he was not sure whether both drugs were prohibited in Singapore.

148 As for the fateful trip he made to Singapore on 4 October 2007, the 2nd accused said that he did not suspect that Ah Xiong had placed anything in his car, notwithstanding his knowledge that his car was driven away. The 2nd accused also admitted that unlike the previous occasion, he did not check his car before entering Singapore this time, as he had no opportunity to do so. In any event, I do not think that even if Ah Xiong and his gang had allowed the 2nd accused to check his car before driving away from Ah Zhong's house, the 2nd accused would have discovered the six bundles hidden in the car signal compartment in the boot of his car and therefore, he would have the opportunity of ascertaining the true contents of the six bundles for himself. I accept the 2nd accused's evidence that he was not a mechanic and he did not even know of the existence of the rear signal light compartments, let alone how to open them until he was subsequently told by Ah Xiong where to find the items.

149 I am also of the view that even if the 2nd accused did suspect that Ah Xiong placed something in his car at that point, the 2nd accused's failure to check his car was not indicative of a deliberate decision to turn a blind eye. Ah Xiong's men were watching him the moment he left Ah Zhong's house, all the way into Singapore. They never let him out of their sight. Accordingly, I am of the view that this close watch truly left him with no reasonable opportunity to check his car.

150 In any case, the 2nd accused would not have suspected that Ah Xiong had placed *heroin* in particular into his car. While the 2nd accused admitted that he began to think that "something" might be placed in his car only at the petrol station just before entering Singapore, this thought had not yet

occurred to him at the time he was driving off from Ah Zhong's house. When the 2nd accused was asked a hypothetical question what he would have suspected he was carrying had he suspected he was carrying something illegal, his answer was "Ice". In other words, if he had at all suspected that he was carrying something illegal, he would only have suspected that he was carrying Ice (and not heroin). I found this answer credible for several reasons. First, the 2nd accused had mentioned very early on in his cautioned statement dated 4 October 2007 the following in his own defence:

> I thought the thing that I brought in was 'ice'. After my arrest, when the 6 packets were opened, I then realised the packets contained 'bai fen'.

This made his defence more likely to be believed than had he not stated this defence when he was first cautioned. Second, the 2nd accused did not know that Ah Xiong sold any heroin. Third, the 2nd accused had testified that even though he had heard of heroin, he had never seen, consumed or come into contact with it before. This was supported by evidence that the 2nd accused could only recognise the tablets in red and silver wrappings to be Erimin-5 when the drugs were weighed. He could not recognise heroin, which he referred to as "those plastic packets of granular substance". He only knew that the "thing" which he carried to Singapore was heroin when CNB officers told him so. Accordingly, after carefully considering all the relevant evidence, I am of the opinion that the 2nd accused was not wilfully blind to the fact that the six black bundles had in reality contained heroin (and not Ice) when he first saw those wrapped bundles at the time of his delivery of the unopened bundles to the 1st accused at the carpark in front of Block 61 Commonwealth Drive.

151 From the 2nd accused's statements and the other evidence before me, I accepted the testimony of the 2nd accused that each time he was asked to come into Singapore, he would take steps, whenever he was able, to investigate his suspicions that Ah Xiong was using him to carry prohibited substances into Singapore. He had been careful to make sure that he was not carrying anything illegal, and had he discovered that he was indeed carrying drugs, he would have declined to enter Singapore, even if he was not sure whether those drugs were prohibited here. Accordingly, I do not find that the 2nd accused was on this occasion wilfully blind to the fact that he was importing heroin into Singapore, transporting that heroin in his car and finally delivering it to the 1st accused. On the contrary, this was a man who had exercised some care not to be in violation of the law here where possible.

Duress

152 With regards to the defence of duress, the 2nd accused testified that he was forced by Ah Xiong to drive his car to Singapore with the six black bundles hidden without his knowledge inside the rear signal compartments of the car boot.

153 The defence of duress is provided for under s 94 PC, which states:

> Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person or any other person will otherwise be the consequence:
>
> Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

154 Accordingly, the following requirements must be satisfied before the 2nd accused's plea of

duress may be successful: (i) the harm that the accused was threatened with was death; (ii) the threat was directed at the accused or other persons which would include any of his family members; (iii) the threat was of "instant" death; (iv) the accused reasonably apprehended that the threat will be carried out; and (v) the accused had not, voluntarily or from a reasonable apprehension of harm to himself short of instant death, placed himself in that situation.

1 5 5 *PP v Goh Hock Huat* [1995] 1 SLR 274 ("*Goh Hock Huat*"), *Wong Yoke Wah v PP* [1996] 1 SLR 246, and *Shaiful Edham bin Adam v PP* [1999] 2 SLR 57 have further interpreted "instant" to mean "imminent, persistent and extreme". The word "imminent" suggests that the threatened harm need not be carried out immediately or within a very short time span. Instead, there could be a time lapse between the accused's refusal to break the law and the coercer's execution of the threat.

156 In the present instance, I am satisfied that the 2nd accused was indeed threatened with "instant" death within the meaning of s 94. Whilst the 2nd accused was at Ah Zhong's house, Ah Xiong had implicitly threatened the 2nd accused with the remark that he could easily use $3000 to "buy [the 2nd accused's] life and the lives of [his] family members". This struck fear in the 2nd accused. It led the 2nd accused to believe that if he did not follow Ah Xiong's instructions, Ah Xiong would kill him and his family members.

157 The prosecution contended that there was no imminent threat of death because Ah Xiong did not himself do or say anything that made it clear that he (Ah Xiong) was going to kill the 2nd accused on the night of 3 October 2007 or the morning of 4 October 2007. I am of the view that the law allows a time lapse (between the accused's refusal to break the law and the coercer's execution of the threat) greater than that which the prosecution has submitted. This, coupled with the fact that Ah Xiong had conveyed to the 2nd accused the relative ease at which he would be able to hire a killer, suggested that the 2nd accused was faced with a threat within the meaning of s 94.

158 The prosecution also relied on *Goh Hock Huat* to the extent that the defence of duress was found not to be established because there was no imminent threat of instant death to the accused once the coercer had left the flat. In the case before me however, even though Ah Xiong was not present when the 2nd accused was driving to Singapore, his men were watching the 2nd accused very closely, from the very moment he left Ah Zhong's house till he entered Singapore. Hence, Ah Xiong's threat of death, far from being removed from the 2nd accused's mind, continued to operate on him. In fact, the 2nd accused was in such fear that he did not even dare to check his car when he stopped at the petrol station. It was for this reason that I also find that the 2nd accused's belief that Ah Xiong would carry out his threat was reanably held.

159 The prosecution contended that the 2nd accused ought to have escaped where a reasonable opportunity presented itself. The prosecution submitted that the 2nd accused could have had recourse to the shield of the law at several points in time. First, he could have sought relief or help at the petrol station where he stopped to refuel. Second, he could have enlisted the help of the Malaysian Police and Immigration personnel or the Singapore Customs and Immigration Checkpoints Authority ("ICA") officers at the respective checkpoints. Third, he had two mobile phones with him when he was driving to Singapore and could accordingly have called either the Malaysian or Singaporean Police en route to Singapore. Fourth, he could have driven away or used his mobile phones to seek help when he realised that Ah Xiong's men were no longer following him at Tanglin Halt.

160 While I accept that these were possible actions which the 2nd accused could have taken, I am of the view that these actions would in reality not have been available to the 2nd accused. The test

for whether there was a reasonable opportunity to escape is a subjective one, *ie*, it was the 2nd accused's reasonable belief which mattered. The 2nd accused believed Ah Xiong to be a "very influential and powerful" gangster in Malaysia. He was able to resolve some trouble the 2nd accused had with another gangster, Wei Ting. He had a team of men working under his charge, and whom he instructed to keep watch over the 2nd accused as he made his way to Singapore. As such, I believe that the 2nd accused feared the consequences that would flow should he have alerted the respective authorities. Alerting them would not only have been ineffective in dissipating any threat on the lives of both the 2nd accused and his family in Johore, it could even have compounded matters. As a general rule, there could be situations where no amount of police protection would be effective to counter the threats levied at the accused and the accused's family members. Viewing the facts in their totality, I am of the opinion that the present case was one such instance.

161 As for the requirement that the 2nd accused did not voluntarily "place himself in the situation by which he became the subject" of threats, it is my view that the present situation was one whereby the 2nd accused was forced into joining Ah Xiong and his group at Ah Zhong's house. I believe that the 2nd accused was compelled by his surrounding circumstances to continue associating with Ah Xiong because he had gotten into some trouble with Wei Ting and Ah Xiong had helped him out of that difficult situation. After Ah Xiong resolved the matter with Wei Ting, the 2nd accused knew that he owed Ah Xiong a favour. However, he was only willing to repay that favour where the acts required of him were not illegal. Subsequently, the 2nd accused intentionally made attempts to stay away from Ah Xiong by escaping to Pahang. This was after the incident on 25 September 2007 where his car was checked at the Checkpoint. It was only when Ah Xiong threatened his family did he return to Johor Bahru. And it was also for this reason that the 2nd accused came to be at Ah Zhong's house – Ah Xiong had summoned him to be there. The 2nd accused was apprehensive of and understood the consequences that could follow if he failed to show up at Ah Zhong's house as instructed.

162 All in all, it is clear to me that the 2nd accused was forced by Ah Xiong to drive the car into Singapore and to meet up with the 1st accused, only to be told upon arrival that he was supposed to hand over six bundles hidden in the rear signal compartment in his car to the 1st accused. The 2nd accused had no alternative but to do what he did because he was labouring under a reasonable and genuine fear for his and his family's safety.

163 I find that the 2nd accused had been an honest, truthful and credible witness before this court. Accordingly I believed his account of events set out above and find that he has shown on a balance of probabilities that (i) he did not know or suspect that there was any controlled drug in his car when he drove into Singapore to meet the 1st accused; (ii) even if he did, he did not know or suspect that there was heroin in his car or that the six unopened black bundles that the 1st accused eventually took away from his car contained heroin; and (iii) he was acting under duress at all material times. Each of these three alternative reasons is sufficient to acquit the 2nd accused.

Conclusion

164 I find that on the totality of the evidence, the prosecution has only proved its case beyond a reasonable doubt against the 1st accused but not the 2nd accused. I therefore convict the 1st accused on the charge against him and sentence him according to the law. I acquit the 2nd accused of the charge for which he was tried before me.

[note: 1] NE, Day 6, page 59.

[note: 2]NE, Day 6 page 48.

[note: 3]NE Day 7, pages 64, 70 and 71.

[note: 4]NE, Day 7, page 58.

[note: 5]NE, Day 7, pages 67 and 68.

[note: 6]NE, Day 5, page 91.

[note: 7]NE, Day 5, pages 46 and 81.

[note: 8]NE, Day 7, page 13.

[note: 9]NE, Day 7, page 4.

[note: 10]NE, Day 6, pages 71 and 72.

[note: 11]NE, Day 6, page 48.

[note: 12]NE, Day 5, page 48.

[note: 13]NE, Day 5 page 28.

[note: 14]NE, Day 5 page 28.

[note: 15]NE, Day 5 page 28.

Date of Statement	**Drug Withdrawal Symptoms**	**Meals**	**Cold**	**Lack of Rest/Tired-ness**	**Threat (Assault on Arrest and on Tay)**	**Induce-ment (free Tay/no death penalty)**	**Cigarettes**	**Promise (14.99 gm, 20 to 30 years jail)**	**Offer (to implicate one "Ah Seng", his supplier)**
4 Oct 2007 (Two state-ments)	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No
10 Oct 2007	Yes	No	Yes	Yes	Yes	Yes	Not sure	Yes	Yes
11 Oct 2007	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
30 Nov 2007	No	Yes	No	No	No	Yes	No	Yes	Yes