Public Prosecutor v Chijioke Stephen Obioha
[2008] SGHC 243

Case Number : CC 5/2008

Decision Date : 30 December 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Tan Kiat Pheng, Shawn Ho and Adeline Ee (Attorney-General's Chambers) for the prosecution; B Ganeshamoorthy (Colin Ng & Partners) (assigned) and James Gloria Magdalen (Hoh Law Corporation) (assigned) for the accused

Parties : Public Prosecutor — Chijioke Stephen Obioha

Criminal Law – Statutory offences

30 December 2008 Judgment reserved

Woo Bih Li J:

Introduction

1 Chijioke Stephen Obioha ("the Accused") faced four charges under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the Act"). On the second day of the trial, the Prosecution decided to proceed on one charge ("the present charge") against the Accused and applied for the remaining three charges to be stood down. The present charge read:

> That you, Chijioke Stephen Obioha,
>
> **1ST CHARGE** on or about the 9th day of April 2007, at Block 465 Choa Chu Kang Avenue 4 #08-07, 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 twelve (12) blocks of vegetable matter, which were analysed and found to contain 2,604.56 grams of cannabis, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the Misuse of Drugs Act.

The trafficking of more than 500 grammes of cannabis attracts the mandatory capital punishment (see s 33 read with the Second Schedule of the Act).

2 I now set out the facts. The evidence of the Prosecution witnesses and the Accused differed in many respects and where relevant I set out both the Prosecution's and the Accused's versions. For ease of reference, an index for the rest of the judgment follows:

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The arrest

3 On 9 April 2007, at about 6.00 am, officers of the Intelligence Division ("the ID officers"), Central Narcotics Bureau ("CNB") attended a briefing to look out for the Accused who was believed to be renting a room at Block 465, Choa Chu Kang Avenue 4 ("Block 465") #08-07 ("the flat"). At about 6.50 am, the ID officers began to conduct surveillance of Block 465.

4 At about 10.45 am, the Accused was seen leaving the flat and taking a taxi to Hotel 81 Hollywood along Lorong 8 Geylang. At about 11.10 am, the Accused arrived at Hotel 81 Hollywood and entered the hotel empty-handed. Instructions were then given for his arrest should he leave the hotel carrying any item. At about 11.20 am, the Accused was observed leaving the hotel carrying a black luggage bag. He boarded another taxi ("the taxi") and left Lorong 8 Geylang. The taxi was tailed by various teams of the ID officers until it reached a car park near Block 465 at about 11.35 am.

5 The ID officers' evidence was that, at that point, they moved in to arrest the Accused who was seated in the front of the taxi. Sergeant Leow Yan Sin Alex ("Sgt Leow") testified that he opened the door of the front passenger seat, told the Accused that he was from CNB and told the Accused not to move (NE 190). According to Sgt Leow, the Accused then stepped out of the taxi by himself and tried to move away (NE 190, 195, 196), whereas Station Inspector Goh Teck Hock ("SI Goh") testified that he (Goh) took hold of the Accused's hand to bring him out of the taxi (NE 154). SI M Subramaniam stated that he (Subramaniam) grabbed the Accused's left hand but the Accused evaded his grasp and forced his way out of the taxi (NE 203, 208). SI Goh testified that he (Goh) handcuffed the Accused's right hand immediately after the Accused came out from the taxi (NE 155). According to the ID officers, the Accused put up a violent struggle and resisted arrest, whereupon a few of them pinned him to the ground and handcuffed both his hands using standard issue handcuffs (NE 137, 149, 167–168, 199).

6 The Accused's evidence was that none of the ID officers had identified himself as being from CNB but when he was brought out of the taxi, one of them had said: "You think Singapore police are stupid?" (NE 936). He testified that he did not put up a violent struggle when he was brought out of the taxi. According to him, one of the officers had grabbed his collar in bringing him out of the taxi and when he was brought out from the taxi, the only movement he was making was moving his neck from side to side as it was difficult for him to breathe (NE 805, 938). He testified that, after the ID officers pinned him to the ground, his hands were fastened to the back using a hand restraint (fashioned out of material resembling black belt straps) ("the black hand restraint") (NE 806).

7 At about 11.40 or 11.45 am, a team of Special Task Force ("STF") officers ("the first team of STF officers") led by Station Inspector Sea Hoon Cheng ("SI Sea") arrived at the car park near the flat and took over custody of the Accused. One of the STF officers, Staff Sergeant Tay Chok Chwee ("SSgt Tay"), retrieved a black luggage bag from the boot of the taxi ("the black luggage bag in the taxi") in the presence of the Accused. This black luggage bag was later found to contain 14 blocks of vegetable matter ("the vegetable matter from the black luggage bag in the taxi").

8 At about 11.50 am, the Accused was escorted to the void deck of the block. SI Sea testified that he searched the Accused and took over his personal effects, which included a bunch of nine keys (NE 226); the Accused stated that it was another STF officer, Sergeant Chelliah Vijay ("Sgt Vijay"), who searched him and took his personal effects including the bunch of nine keys (NE 943). The Accused gave a statement, which was recorded by SSgt Tay on pp 13 to 15 of his pocket book but this statement was not tendered in evidence.

The flat

9 At about 12.30 pm, the first team of STF officers, together with another team of STF officers ("the second team of STF officers") who had arrived at the void deck around 12.15 pm, escorted the Accused up to the flat. The officers were let into the flat by its owner, Madam Siti Fazillah binte Jasmani ("Mdm Siti"), who informed them that the Accused was renting the master bedroom of the flat ("the master bedroom").

10 SI Sea testified that he asked the Accused whether the Accused had a key to the door of the master bedroom and the Accused said he did not (NE 216). According to SI Sea, he (Sea) had at that point of time forgotten that he had seized various keys from the Accused at the void deck (NE 242). SI Sea asked Mdm Siti whether she had a key to the master bedroom and she replied that she did. Mdm Siti testified that she then retrieved that key and opened the door to the master bedroom (NE 285).

11 According to the Accused, he had in fact told one of the CNB officers (he could not recall who) at the void deck that the keys he had had with him were his and that one of them was for the master bedroom door (NE 944). He testified that when SI Sea had asked him in the flat whether he had a key to the master bedroom door, he had answered no because the key had been seized from him at the void deck (NE 818). He noticed SI Sea using one of the keys from the bunch of nine keys that was taken from him at the void deck in an attempt to open the master bedroom door. However, as it was difficult to open the master bedroom with that key, Mdm Siti had to help SI Sea open the door, still with that key. (NE 819)

Search in the master bedroom

12 At about 12.40 pm, SI Sea, Sgt Vijay, Sgt Ee Kah Yeow ("Sgt Ee"), SSgt Choo Thiam Hock ("SSgt Choo") and SSgt Tay escorted the Accused into the master bedroom. The Accused sat at the centre of the lengthwise edge of a bed in the room (NE 820).

13 Sgt Ee's evidence was that he recovered the following items from the following places:

(a) from the top left shelf of a cupboard in the master bedroom,

(i) a Fila bag ("the Fila bag") which was found to contain five blocks of vegetable matter;

(ii) an Enzer box ("the Enzer box") (which was found to contain:

(1) a black UBS Warburg bag ("the UBS Warburg bag") containing five blocks of vegetable matter;

(2) a yellow plastic bag ("the yellow plastic bag") containing a block of vegetable matter; and

(3) a light yellow plastic bag ("the light yellow plastic bag") containing a block of vegetable matter;

(b) from the coin pocket of a pair of jeans hanging on the left shelf of the cupboard, a yellow tablet;

(c) from the bottom left of the cupboard, a small block of vegetable matter wrapped in yellow plastic tape;

(d) in the side compartment of a black Briggs & Riley luggage bag found at the top right shelf of the cupboard, a yellow-coloured utensil believed to be used for smoking marijuana;

(e) from above a drawer at the bottom right of the cupboard, a weighing scale;

(f) from the drawer at the bottom right of the cupboard, two separate rolls of yellow tape; and

(g) from a Puma bag hanging on the wall, a small piece of newspaper that contained a blue piece of paper and some loose vegetable matter.

SSgt Choo testified that he found a black Elle bag on the floor of the master bedroom, containing a packet of vegetable matter in its side compartment (NE 310). A black Cosway file folder containing numerous small empty plastic packets ("the small empty plastic packets") was also recovered from the cupboard in the master bedroom (NE 1016).

14 I shall refer to all the items recovered from the master bedroom as "the items from the master bedroom" and all the vegetable matter recovered from the master bedroom as "the vegetable matter from the master bedroom".

15 Sgt Ee testified that when he recovered the Fila bag, it was not locked. He unzipped it and took out the five blocks of vegetable matter therein one by one. He showed them to the Accused, before placing those blocks of vegetable matter in a plastic exhibit bag. Similarly, Sgt Ee had taken out the UBS Warburg bag (from the Enzer box which he had placed on the floor in the master bedroom), unzipped it and shown four blocks of vegetable matter therein to the Accused one by one before placing them in other exhibit bags. One of these blocks was later found to contain two separate blocks and thus the UBS Warburg bag in fact contained five blocks of vegetable matter (see [13(a)(ii)(1)]). Sgt Ee had also shown each block of vegetable matter recovered from the yellow and light yellow plastic bags to the Accused. Sgt Ee testified that he did not communicate with the Accused while showing him the vegetable matter from the master bedroom. The Accused remained silent while being shown the vegetable matter from the master bedroom. (NE 270 *et seq*)

16 SI Sea and Sgt Ee stated that the Accused had not left the master bedroom between the time when he was brought in (*ie*, about 12.40 pm) until the time he was escorted out to the living room (*ie*, about 2.30 pm) (NE 238, 305). The Accused had requested water at about 1.25 pm; Sgt Vijay testified that it was he (Sgt Vijay) who went out of the master bedroom and got water from the kitchen for the Accused who had remained in the bedroom with SI Sea, SSgt Tay and Sgt Ee (NE 346).

17 The Accused testified that the Enzer box was usually kept placed in the top left shelf of the cupboard, with the UBS Warburg bag on top of (not inside) the Enzer box and the Fila bag on top of the UBS Warburg bag (NE 828). His counsel had earlier also said that his instructions were that the two rolls of yellow tape (see para (f) in [13]) were secured together in an unopened plastic packaging and placed in the left hand drawer (NE 240). The defence counsel had also been instructed that the weighing scale (see para (e) in [13]) had all along been kept in the kitchen of the flat (NE 240).

18 The Accused claimed that, to the best of his knowledge, the UBS Warburg bag had been empty and the Enzer box had contained only styrofoam (NE 877, 979). As for the Fila bag, the Accused claimed that it had been given to him in January 2007 by a Senegalese called "John" (NE 830, 980), who had told him that it contained a small Bible, aftershave, cologne and perfume. John was a friend who had come for football training in Singapore. John had given the Accused the Fila bag in January

2007 because he (John) was going to Selangor, Malaysia, for what the Accused called a "football screening" (NE 980). The Fila bag had been locked with a padlock when John gave it to the Accused and John did not give the Accused the key (NE 830, 980).

19 The Accused's version of the events in the master bedroom in his oral testimony was as follows. After he was brought into the master bedroom by several CNB officers and made to sit at the centre of the lengthwise edge of the bed, one of the CNB officers recovered his Briggs & Riley luggage bag from the top right shelf of the cupboard. (NE 820)

20 The officer emptied the contents of the Briggs & Riley luggage bag, which included his pictures and CDs, onto the bed. While the officer was taking out these items and placing them on the bed, the Accused was made to sit in a foldable chair next to the bed. The officers continued to search the room, and after a short while, the Accused asked for water to drink. One of the officers got him tap water from a toilet in the master bedroom but the Accused said that he did not drink water from the tap and requested water from a fridge belonging to him in the kitchen (there were two fridges in the kitchen; one belonged to the Accused and the other belonged to Mdm Siti). Sgt Vijay, together with one of the officers, then brought him from the master bedroom to the entrance of the kitchen in the flat. The other officer got the water from one of the two fridges (the Accused could not see which) for the Accused. Because he was in restraints, Sgt Vijay and this officer had to feed the water to him. Mdm Siti was in the kitchen at this point of time. The other officer proceeded to look around the service balcony and store room next to the kitchen. Then, the Accused was brought back to the master bedroom. (NE 822–25)

21 One of the officers that had been doing the searching (whom the Accused later found out was Sgt Ee) was holding the Fila bag when the Accused re-entered the master bedroom. The Accused was made to sit on the same foldable chair as previously and he was shown a smoking apparatus that was from the Briggs & Riley luggage bag. Then, Sgt Ee stood about four feet in front of the Accused and held out the Fila bag to him, asking: "You know what are these?" The Accused could not see what was inside the Fila bag. The Accused told him he did not know. The Accused asked Sgt Ee how the Fila bag came to be open, since the Fila bag had been padlocked. Sgt Ee replied that he (Sgt Ee himself) had opened it. (NE 825–26, 828–30)

22 The black luggage bag in the taxi had been placed on the floor in front of the foldable chair on which the Accused was then sitting. Sgt Ee also placed the Fila bag, the Enzer box and the UBS Warburg bag in front of the Accused. Then, the CNB officers and the Accused waited for some time before they escorted him out into the living room. (NE 831–33)

Alleged recording of contemporaneous statements in the master bedroom

23 SSgt Tay testified that, in the master bedroom, he recorded a statement from the Accused at 1.00 pm (I will refer to this as "the first contemporaneous statement") and another at 1.09 pm ("the second contemporaneous statement") (NE 451). He recorded the statements on pp 18 to 20 of his pocket book, as follows:

Version No 0: 30 Dec 2008 (00:00 hrs)

1300 I began recording a further statement from ~~Steph~~ (initialled by SSgt Tay) Steven pertaining to the seized Drugs

Q10) ~~The blocks of 'weed' found~~ (initialled by SSgt Tay)

The items founds [*sic*] inside

(Signature 1) (Signature 2)

beidge

and the

~~block~~ 'Fila' bag

the 'Enzer' box /\ recovered from the top left cupboard inside your room belongs to who?

A10) Belongs to 'Florence'

Q11) What is inside the ~~Bla~~ (initialled by SSgt Tay)

~~A11)~~(initialled by SSgt Tay)

'Enzer' box ~~?~~ (initialled by SSgt Tay) and the 'Fila' bag?

A11) Weed.

Q12) What do you intend to do with all these 'Weed'?

A12) 'Charles' will be coming to collect it tomorrow.

~~The above statement was read back to accused in English~~ (initialled by SSgt Tay)

(Signature 3) (Signature 4)

(Signature 5)	(Signature 6)	20
		~~Accused was invited~~ (initialled by SSgt Tay)
1307		The above statement was read back to accused and he was invited to make any alteration but he declined to.
1309 Q~~A~~13)		I asked him what do he meant by 'weed'?
A13)		It mean 'grass'
Q14)		Do you know 'grass' is illegal in Singapore?
A15)		Yes.
(Signature 7)		(Signature 8)

24 During the trial, two analysts with the Health Sciences Authority (HSA), Ms Merula Mangudi ("Ms Mangudi") and Dr Yap Tiong Whei Angeline ("Dr Yap"), stated that according to the literature on drugs that they had to read in the course of their work, "grass" and "weed" are common street names for cannabis. (NE 94, 96, 105, 106).

25 SSgt Tay testified that during the recording of the two contemporaneous statements, only he and Sgt Vijay remained in the master bedroom with the Accused (NE 449). The Accused chose to give both statements in English. After the first contemporaneous statement, he was invited to make any amendment to his statement and he declined.

26 SSgt Tay testified that he saw the Accused sign on his pocket book (NE 450). SSgt Tay was standing in front of the Accused while the Accused was sitting on the bed and he had to bend down to let the Accused sign as the Accused's hands were handcuffed behind his back (NE 475). SSgt Tay testified that Signatures 2, 4 and 6 were the Accused's (NE 441–42, 447). As for the second contemporaneous statement (found on p 20 of Sgt Tay's pocket book), SSgt Tay had read it over to the Accused who affirmed it to be true and correct, signing Signature 8 in a similar manner as for the first contemporaneous statement (NE 452, 455). Sgt Tay testified that Signatures 1, 5 and 7 were his own (NE 441, 446, 452). Sgt Tay was not asked about Signature 3, but from the similarity and context it can be concluded that Signature 3 was his as well. The Accused disputed that he had given either of the contemporaneous statements and that Signatures 2, 4, 6 and 8 were his.

27 The Prosecution requested Dr Yang Chiew Yung ("Dr Yang"), a forensic scientist with the HSA since 2002, to examine the undisputed signatures of the Accused on pp 13 to 15 of SSgt Tay's

pocket book, P130 and P131 ("the undisputed signatures") and to determine if the writer of the undisputed signatures could have written Signatures 2, 4, 6 and 8 on pp 18 to 20 of SSgt Tay's pocket book ("the disputed signatures"). Dr Yang testified that, in her expert opinion, "the evidence [was] consistent with the writer of [the undisputed signatures] having written [Signatures 4 and 8]" and "the possibility of the writer of [the undisputed signatures] having written [Signatures 2 and 6] cannot be ruled out" (NE 763-64). She explained that, in her view, these results meant that although there was a possibility that someone else could have signed the disputed signatures, it was more likely than not that the Accused had signed the disputed signatures (NE 772).

28 It appears that Sgt Ee and SI Sea returned to the master bedroom after the recording of the contemporaneous statements and together with SSgt Tay and Sgt Vijay waited with the Accused for more CNB officers to arrive (NE 300). At about 1.56 pm, Special Investigation Team ("SIT") officers from the CNB led by Assistant Superintendant Soh Choon Hock ("ASP Soh") arrived at the flat. At about 2.28 pm, officers from the Forensic Management Branch ("FMB"), Criminal Investigation Department, arrived at the flat. The evidence of the four officers who had stayed in the master bedroom with the Accused was that at about 2.30 pm the Accused was escorted to the living room together with the items from the master bedroom. According to the Accused, no contemporaneous statements were recorded from him.

The photograph-taking in the living room

29 According to ASP Soh's conditioned statement, he had directed SI Yeo See Leang from FMB to take photographs of the items from the master bedroom at about 3.13 pm. SSgt Lim Wan Hsing ("SSgt Lim") stated that he (SSgt Lim) had assisted in the photograph-taking by removing the various wrappings from around the vegetable matter from the master bedroom and arranging the items from the master bedroom on the floor of the living room (NE 370). SSgt Lim said that the items were arranged and photographed in the centre of the living room. He was unable to be certain where the Accused sat as this was going on, although he stated that it was about one or two metres from the photograph-taking, and somewhere near a dining table in the corner of the living room (NE 370–71).

30 The Accused said that he had been brought to the living room and made to sit on a chair at the dining room table such that he was not directly facing the photograph-taking. Rather, the photograph-taking took place somewhere on his left (he could not say exactly where in the living room). The Accused stated that Sgt Vijay was standing on his left-hand side (NE 834). The Accused said that he was aware of flashes of light from cameras and movement in the living room but could not tell what exactly was going on because there were a lot of people where the photograph-taking was going on. At first he seemed reluctant to say that these people blocked his view but later stated that they did (NE 1051-53). The Accused testified that ASP Soh did not speak to him in the living room that day (NE 1197).

31 At about 7.00 pm, the taking of photographs ended. SI Sea handed the items from the master bedroom to ASP Soh.

The weighing of vegetable matter in the Exhibit Management Room

32 SI Sea, Sgt Vijay, SSgt Tay and Sgt Ee said that they escorted the Accused to the CNB headquarters in Police Cantonment Complex ("PCC") at around 7.00 pm (although the Accused could not be sure this was the time) (NE 1043). There, the Accused was brought to the Exhibit Management Room. ASP Soh stated that in the Exhibit Management Room, he told the Accused that the vegetable matter from the master bedroom was going to be weighed first (NE 631). After this was done, he then said they would proceed to weigh the vegetable matter found in a "Cellini" luggage

bag. I will elaborate later on this "Cellini" luggage bag (see [98]). According to ASP Soh, there were two other officers helping out with the weighing process: Sgt Yap Tain Cheng ("Sgt Yap") and SSS Shadikin Abdullah. The actual weighing of the vegetable matter from the master bedroom was done by Sgt Yap. Then, ASP Soh told the Accused that the officers would proceed to weigh the vegetable matter from the black luggage bag in the taxi (NE 631). ASP Soh stated that the Accused was able to see the weighing of all the vegetable matter (NE 631-32) and remained quiet throughout the weighing process (NE 631-32).

33 According to the Accused, there were two officers in the Exhibit Management Room but he could not be sure whether one of them was ASP Soh (NE 1066). In the room, one of the officers told him that there would be weighing of vegetable matter but he was not told where the vegetable matter was from. He saw a carton box next to a weighing scale on a table. However, he did not see any vegetable matter being brought into the room with him nor did he see any vegetable matter in the room (NE 1071–75). The Accused said he could not see exactly what the officers were weighing and how they were weighing it. He stated that he did not try to see what was being weighed as he thought they were weighing the vegetable matter from the black luggage bag in the taxi (NE 1076).

34 The weighing of all the vegetable matter ended at about 8.16 pm. ASP Soh kept all the vegetable matter in a safe in his office and locked the safe. At about 9.53 pm to 9.59 pm, SI Sea handed over the personal property of the Accused to ASP Soh in ASP Soh's office.

35 The Accused's urine samples were taken, marked and sealed in his presence. Then, he was escorted to his pre-statement medical examination, which was carried out by Dr Chong Seik Ein ("Dr Chong"). He was taken back to PCC and referred to ASP Soh in his office just before midnight of 9 April 2007.

Around midnight of 9 April 2007 to the early hours of 10 April 2007

36 ASP Soh's evidence was that in the early hours of 10 April 2007 (*ie*, just past midnight), he recorded a cautioned statement from the Accused. Later, in his rebuttal evidence, ASP Soh clarified that this cautioned statement was given in respect of a typewritten trafficking charge regarding the vegetable matter from the black luggage bag in the taxi ("the typewritten taxi trafficking charge") (NE 1279–80). The typewritten taxi trafficking charge was subsequently tendered in evidence as P265. It stated:

> You, Chijioke Stephen Obioha…
>
> are charged that you, on the 09th April 2007, between 11.10 am to 11.40 am, in Singapore, did traffic in a controlled drug specified in a Class A Controlled Drug listed in The First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by transporting **fourteen (14) blocks of vegetable matter, weighing about 14 015.70 grams of cannabis,** [original emphasis] in a taxi bearing registration number [xxx], from Hotel 81 Hollywood, No 61, Geylang Lorong 8 to Blk 465, Choa Chu Kang Ave 4, without any authorisation under the said Act made thereunder and you have thereby committed an offence under Section 5(1)(a) and punishable under Section 33 of the Misuse of Drugs Act Chapter 185.

The Accused then went for his post-statement medical examination with Dr Chong.

37 The Accused denied ASP Soh's version and testified that ASP Soh did not record any statement from him before he (the Accused) went for his post-statement medical examination (NE 1207). In any event this alleged cautioned statement was not tendered in evidence.

38 According to the Accused, when he met ASP Soh in ASP Soh's office around midnight of 9 April 2007, ASP Soh had identified himself to the Accused as being the second in command of the police. Seeing an injury on the Accused's left cheek, ASP Soh had asked the Accused what had happened to his left cheek and the Accused told him that he had been manhandled by the other CNB officers. ASP Soh then told the Accused that he (Soh) was a religious man and would be treating the Accused differently (NE 839).

39 According to the Accused, ASP Soh went through the Accused's personal effects which were contained in an exhibit bag. He took out the Accused's wallet in which there were photographs of the Accused's girlfriend, Oh Chiew Ghim (also known as Samantha), and the Accused's mother. ASP Soh asked the Accused about his mother and the Accused started crying. ASP Soh then gave the Accused a sheet of paper to write on and the Accused wrote on the paper, stating how his mother had died of cardiac arrest when his younger brother had been brutally injured in school. ASP Soh took this sheet out of the office (NE 839–40).

40 ASP Soh came back after some time and told the Accused that he (Soh) had shown that sheet of paper to his (Soh's) boss. ASP Soh then asked if the Accused had anything else to say. The Accused then wrote on another sheet of paper, pleading to whosoever that is in charge that: "I don't know what is in the bag till the police opened it, and I ask to be understood and forgiven." (NE 674). ASP Soh then walked out a second time with the second sheet of paper (NE 840).

41 The Accused said that when ASP Soh returned to the office, he asked the Accused to sign the second sheet of paper, which the Accused did. ASP Soh then told the Accused that he would be brought for a post-statement medical examination. ASP Soh told the Accused not to mention the manhandling by the CNB officers during the medical examination (NE 841).

42 The Accused underwent his post-statement medical examination around 12.26 am on 10 April 2007, after which he was brought back to the PCC lock-up.

43 ASP Soh stated he had opened the exhibit bag containing the Accused's personal belongings on 12 April 2007 and not 10 April 2007 (NE 671). He said that it was also on 12 April 2007 that the Accused had cried when ASP Soh mentioned his mother (NE 672). This contradicted his earlier evidence that the Accused broke down and cried when giving a statement (admitted and marked as P130) on the afternoon of 10 April 2007, as recorded in P130 itself. He further stated that the note that the Accused had claimed he had written on the first sheet of paper (pertaining to the Accused's mother's cardiac arrest) was actually written by the Accused on 11 April 2007 in the lock-up (NE 673). ASP Soh stated that he had not given any sheet of paper to the Accused to write on on 10 April 2007 (NE 673-74), although he did record a statement (P130) from the Accused later on 10 April 2007. I will now come to that statement.

The afternoon of 10 April 2007 (P130)

44 At the trial, the Prosecution tendered a 4-page typewritten long statement allegedly recorded from the Accused on 10 April 2007 at 2.47 pm. This was the statement marked as P130 and I shall refer to it as such. Paragraphs 9 to 17 of P130 were material and I set them out below:

> 9 I knew this Senegalese man whom I called "John". He was my secondary schoolmate in Ghana. About 2 months back, he called me and said he got a friend coming to Singapore and asked me to welcome his friend known as "James" to Singapore. He also asked me to find a hotel for "James".

10 "John" also offered me S$500 to take a luggage from an Arab man who was staying at Shing Hotel, Kitchener Road and then passed [*sic*] the luggage to "James". "John" did not tell me what was inside the luggage. I could not remember which room the Arab man stayed [in]. I waited for the Arab man to call me.

11 Around 5 pm, the Arab man called me on my hand phone [xxx] and asked me whether "John" tell me anything. I said I was supposed to wait for someone. He said he was the one I was supposed to wait [for]. He told me to take the luggage from him at the Shing Hotel.

12 I took a bus to Shing Hotel. When I met the Arab man at the hotel lobby, he told me to take the luggage back and to wait for a call. He did not say who would call me. I left the hotel.

13 I brought the luggage to my rented room at Blk 465, Choa Chu Kang Ave 5, #08-07. I did not open the luggage bag as it was locked. I tried to open it but it was locked. I wanted to find out what was inside the luggage bag.

14 The day after I met the Arab man, "James" called me on my hand phone …. He said he arrived at Singapore and was supposed to take a bag from me. I told him I had the bag and was supposed to give it to someone. He said he was the one. We eventually met in a coffeeshop at Geylang Lorong 6. I gave him the luggage bag in the coffeeshop.

15 On the next day, "James" called me again and asked me to go over to his hotel room number 609 at Frangrance [*sic*] Hotel at Geylang Lorong 6. When I entered his room, he was transferring newspaper bundles from the luggage bag I gave him yesterday into another small luggage bag. He complained that there were too many newspaper bundles and kept 6 newspaper bundle [*sic*] in the luggage bag. He then asked me to take the luggage bag back. He did not open the newspaper [bundles] in my presence or tell me what was inside. He told me to buy a lock for the bag and kept [*sic*] it safe. He said when he came to Singapore, he would call me and I have to bring the luggage bag to him. He then told me to leave.

16 I called "John" after I delivered the luggage bag to "James". He said o.k. and asked me to wait for some time for the money to deliver to me. I finally got the $500 in 2 weeks' time through Western Union money transfer.

17 When I brought the luggage bag back to my rented room, I opened the newspaper bundles and I saw marijuana which I saw [*sic*] and cooked before in Ghana. I called "John" about this. He said since I was being paid, it did not matter.

45 At this point, it is relevant to note that the two HSA analysts, Ms Mangudi and Dr Yap, also gave evidence during the trial that "marijuana" is a common street name for cannabis (based on the literature they had read in the course of their work) (NE 94, 96, 105, 106).

46 ASP Soh gave evidence on the recording of P130. He said that he recorded P130 from the Accused on 10 April 2007 in his office. The recording started at 2.47 pm and ended at 4.45 pm. During the recording, only he and the Accused were in the office. Once it was completed, the Accused read through P130. ASP Soh invited him to make any necessary amendments (NE 585–88). As the Accused read through P130, the Accused made or caused to be made three amendments. First, he disagreed with the designation of his nationality under the particulars on the front page as "Singaporean". ASP Soh thus cancelled that word and wrote "Ghanaian" next to it because on 9 April 2007, the Accused had told him that the Accused was Ghanaian. When ASP Soh made that amendment however, the Accused told him that the Accused wanted to be known as Nigerian as well because his late mother

was Nigerian. So ASP Soh put "& Nigerian" below the word "Ghanaian" and the Accused signed above the amendment (NE 651–53). The Accused made two other minor amendments on the first and second pages of P130 respectively and signed next to those amendments. Then, he was asked one more time whether he wished to make any further amendment and he declined. After he declined to make any further amendment, he wrote his name and signed each page of the statement. ASP Soh wrote on the last page: "The statement was recorded in English. He confirmed it to be true and correct. There was no threat, inducement or promise made in the recording of the statement. ('the P130 handwritten confirmation')". The Accused wrote his name and signed at the bottom of this. ASP Soh then wrote below: "Statement finished recording at about 1645 hours. ('the P130 statement of timing')" and wrote his name and signed to the right of it (NE 655).

47 The Accused's version of the events of the afternoon of 10 April 2007 was as follows. The Accused was brought before ASP Soh in his office. ASP Soh showed him a table setting out the sentences for offences involving various quantities of cannabis. Next to the quantity 500 grammes and above, ASP Soh wrote the word "death". ASP Soh explained to the Accused that he faced two charges, one a trafficking charge and the second, a possession charge. He told the Accused that the transportation of the black luggage bag in the taxi which had been found to contain controlled drugs from Hotel 81 Hollywood to Block 465 constituted trafficking, while possession meant possession of the drugs at the point of arrest (NE 847). ASP Soh gave the Accused a trafficking charge in respect of the vegetable matter from the black luggage bag in the taxi in handwritten form and told the Accused that he would bring a typed copy of the taxi trafficking charge later on. He also said that he would give the Accused the second charge (for possession) later. The Accused gave no cautioned statement for the handwritten taxi trafficking charge (NE 1186).

48 ASP Soh then had a discussion with the Accused, in the course of which ASP Soh talked about his (Soh's) own family, his (Soh's) interest in football and the fact that he (Soh) would be going for a course in May 2007. ASP Soh and the Accused talked about Nigeria and Ghana; the Accused told him that the Accused's father was Nigerian and the Accused's mother was Ghanaian. By the end of the discussion, ASP Soh had typed out six sheets ("the 10 April 2007 statement"), which he printed out and handed to the Accused to read. The Accused pointed out that ASP Soh had made references to Ghana on the front page although the Accused had actually mentioned Nigeria, but ASP Soh told him not to worry about it. The Accused testified that apart from that, the rest of the 10 April 2007 statement was accurate (NE 850–51). However, no signing took place on 10 April 2007. On that day, ASP Soh had taken the 10 April 2007 statement back and the Accused was then brought to the lock-up (NE 852–54). As is set out below (at [53]), the Accused said that it was only on 12 April 2007 that ASP Soh asked him to sign six sheets of paper which ASP Soh told him was the 10 April 2007 statement. The Accused could not say whether P130 was part of these six sheets he signed on 12 April 2007 but accepted that the signatures on P130 which were supposed to be his were in fact his signatures. The Accused stated that the contents of the 10 April 2007 statement were "absolutely different" from P130 (NE 1079).

49 ASP Soh stated that he had shown a typewritten schedule of punishment for offences involving controlled drugs but denied that he had written the word "death" next to the quantity 500 grammes and above. His evidence was that the word "death" was already typewritten in the schedule (NE 658). ASP Soh also stated that he had explained to the Accused what trafficking and possession of drugs meant (NE 658). He had told the Accused that, apart from transporting drugs from one place to another, selling controlled drugs and keeping massive amounts of drugs also constituted trafficking (NE 659). However, he denied that he had recorded a six-page 10 April 2007 statement from the Accused or that it was signed on 12 April 2007. According to ASP Soh, the only statement that was recorded on 10 April 2007 was P130 and that was signed by the Accused on 10 April 2007 itself (NE 647).

11 April 2007 (vegetable matter sent for HSA analysis)

50 On 11 April 2007, ASP Soh retrieved the vegetable matter from the master bedroom from his safe. He sealed and marked the blocks of vegetable matter from the master bedroom as follows: "A1A1", "A1B1", "A1C1", "A1D1", "A1E1", "A2A1A1", "A2A1B1", "A2A2A1", "A2A3A1A", "A2A4A1", "A2B1A" and "A2B2A1" ("the exhibits"), and handed them over to Dr Yap. Dr Yap subsequently handed the exhibits over to Ms Mangudi on 12 April 2007 for analysis. The Prosecution tendered HSA lab certificates signed by Dr Yap and Ms Mangudi showing that the exhibits contained the following amounts of cannabis:

Exhibit No	**Amount of cannabis**
A1A1	190.70 g
A1B1	86.95 g
A1C1	53.19 g
A1D1	2.01 g
A1E1	2.09 g
A2B1A	94.42 g
A2B2A1	197.80 g
A2A1A1	392.50 g
A2A1B1	415.70 g
A2A2A1	417.30 g
A2A3A1A	365.70 g
A2A4A1	386.20 g
	2,604.56 g

12 April 2007 (P131)

51 At the trial, the Prosecution also tendered a four-page typewritten long statement allegedly recorded from the Accused on 12 April 2007 at 2.41 pm. This was admitted and marked as P131. The material paragraphs of P131 are as follows:

> 19 After I brought the bag to my room and I opened the bag and wanted to find out what was inside. (Recorder note: Accused was shown a black coloured bag "UBS Warburg" marked as

Exhibit A2A and he identified it as the one he collected from "James" in the Fragrance Hotel.) I saw big blocks covered with brown coloured scotch tape and newspapers. There were about 4 big blocks. There were also 6 blocks of different sizes wrapped in brown coloured scotch tape inside the bag. I peeled of[f] the newspaper and some brown scotch tape of one of the big block [*sic*], I saw "grass" which also meant marijuana to me. I was shocked because "John" told me before the delivery that the items inside the bag were precious stones. "John" told me since I was paid; [*sic*] I have to do the job. He admitted lying to me and tried to console me. He kept telling me his friend is coming to collect the marijuana from me and reminded me not to throw it away. After that, I kept calling him several times on his hand phone but he would either not listen to my calls or he said he was busy and would call me later but he would never call me. If "John" was in Singapore, I would return it to him. But "John" was in Senegal.

20 I took out blocks of marijuana of various sizes from the bag. I left four big blocks inside the bag after I removed the newspapers. (Recorder note: Accused was shown a photograph of four blocks wrapped in brown coloured scotch tape marked as Exhibit A2A1, A2A2, A2A3 and A2A4 and he identified them as the ones inside the bag marked as Exhibit A2A.) There were 6 blocks of various sizes left. I put five of them in an Enzer box. (Recorded note: Accused was shown photographs of five blocks wrapped in brown coloured scotch tape marked as Exhibit A1A, A1B, A1C, A1D and A1E and an Enzer box marked as A2 which he identified as the ones he put inside the Enzer box.) After that, I placed the bag into the Enzer box and then put the five blocks on top of the bag. I then put the Enzer box on the top cabinet. (Recorder note: Accused was shown a photograph of his cupboard in his rented room and he identified as A where he put the Enzer box.)

52 ASP Soh's evidence on the recording of P131 was as follows. He recorded P131 from the Accused on 12 April 2007 in his office. Before ASP Soh recorded P131, ASP Soh gave P130 to the Accused to read one more time. After the Accused read P130, he told ASP Soh that P130 was true and correct and he did not wish to make any amendment. ASP Soh started recording P131 at 2.41 pm and completed the recording at 6.00 pm. Throughout this recording, only ASP Soh and the Accused were in the office. After the recording of the statement, the Accused read through P131. As he read, ASP Soh noticed that some of the paragraph numbers were wrong. ASP Soh therefore cancelled the wrong paragraph numbers and wrote the correct numbers, after which the Accused signed next to each of the amendments. The Accused was then invited again to make any further amendment. He declined. The Accused went on to write his name and signed at the bottom of each page of the statement. On the last page, the Accused wrote: "I read my statements". The Accused wrote his name directly below that sentence and signed to the right of his name. ASP Soh then wrote below the Accused's written name and signature: "I invited the accused to make any amendments, correction or deletion to his report but he declined. There is no threat, inducement or promise made in the recording of this statement. ['the P131 handwritten confirmation']" The Accused signed and wrote his name at the bottom left corner of the last page. ASP Soh wrote "Statement finished recording at about 1800 hrs. ['the P131 statement of timing']" and signed at the bottom right corner. The Accused was brought back to the lock-up at about 6.00 pm and he was not brought up again on that day (NE 592–97, 650–51).

53 The Accused's version of the events on 12 April 2007 was as follows. On that afternoon, ASP Soh had asked the Accused to sign six sheets of paper, which ASP Soh had told the Accused was the 10 April 2007 statement. The Accused did not read the six sheets because ASP Soh had told him that there was no need to do so as the Accused had already read it on 10 April 2007. The Accused then signed at the bottom of all six sheets. (NE 855) The P130 handwritten confirmation was not present when the Accused signed the six sheets (which he believed to be the 10 April 2007 statement) on 12 April 2007. The Accused could not say whether the four-page P130 was part of the six sheets he

signed on 12 April 2007 but accepted that the signatures on P130 which were supposed to be his were in fact his signatures (NE 1113–15).

54 ASP Soh then went on to record a second statement from the Accused on 12 April 2007, which also consisted of six sheets ("the 12 April 2007 statement"). The Accused was told to read the 12 April 2007 statement and he confirmed it to be correct. The Accused was first brought back to the lock-up (at first the Accused could not be sure what time he was brought back but later he gave the time as 5.00 pm). He was then brought out from the lock-up again to see ASP Soh. The Accused could not be sure what time he was brought up. ASP Soh then gave the Accused six sheets of paper which ASP Soh told the Accused was the 12 April 2007 statement he had given earlier that day. ASP Soh reminded the Accused that he had read the 12 April 2007 statement earlier and asked if the Accused wanted to make any amendment to the six sheets. The Accused relied on the fact that he had read the 12 April 2007 statement earlier and did not make any amendment. He wrote his name and it was then that he signed at the bottom of each page of the six sheets. On the last sheet, he wrote the words "I read my statements." He was then brought back to the lock-up. The Accused could not say whether the four-page P131 was part of the six sheets that he had signed but accepted that the signatures on P131 which were supposed to be his were in fact his signatures (NE 1114). The Accused stated that the contents of the 12 April 2007 statement were different from P131.

13 April 2007 (P258)

55 The Prosecution tendered a typewritten charge ("the typewritten charge"), which stated:

[Handwritten] Charge

was served to

the

accused at about

1818

(signed) ~~1805~~

hrs in B0312A

CNB SIT office.

SECOND CHARGE

You, Chijioke Stephen Obioha…

are charged that you, on 9th April 2007, in the Master Bedroom of Blk 465, Choa Chu Kang Ave 4, in Singapore, did traffic in a controlled drug specified in a Class A Controlled Drug listed in The First Schedule to the Misuse of Drugs Act (Cap 185) to wit, by having in your possession **fourteen (14) blocks of vegetable matter, weighing about 6,581.10 grams of cannabis** [original emphasis]**,** without any authorisation under the said Act made thereunder and you have thereby committed an offence under Section 5(1)(a) and punishable under Section 33 of the Misuse of Drugs Act Chapter 185.

(signed) (signed)
chijioke s obioha

ASP RICHARD SOH CHOON HOCK
Special Investigation Team
Central Narcotics Bureau

[Handwritten] The nature of the charge and the consequences of the charge was explained to the accused in English. He confirmed that he understood the charge and the consequences of the charge.

(signed) (signed) chijioke
stephen obioha
ASP Richard Soh

56 ASP Soh's evidence was that at 6.18 pm on 13 April 2007, he served the typewritten charge on the Accused. ASP Soh's evidence was that the typewritten charge had referred to 14 blocks of vegetable matter because 14 blocks of vegetable had been recovered from the master bedroom. These were the 12 blocks [referred to at 13(a)], one small block [referred to at 13(c)] and the loose vegetable matter which was an even smaller block [referred to at 13(g)] (see Sgt Ee's evidence at NE 251–68). However, when these 14 blocks of vegetable matter were sent to HSA for analysis (see [50]), the results released in August 2007 showed that the two smaller blocks only contained cannabis mixture. Thus, according to the Prosecution, it decided to charge the Accused in respect of the remaining 12 blocks in the present charge before me ("the cannabis in the master bedroom") (NE 600–02, 627).

57 ASP Soh stated that the signatures next to the name of the Accused on the typewritten charge were the Accused's. (NE 600) He stated that the signature next to the handwritten lines at the top right hand of the typewritten charge was also the Accused's (NE 602).

58 The Prosecution also tendered a handwritten notice of warning ("the handwritten notice"). The handwritten notice began with a handwritten charge ("the handwritten charge"):

Notice of warning under section 122(6), CPC, Cap 68.

SECOND CHARGE

You, Chijioke Stephen Obioha…

in the master

are charged that you, on 9th April 2007, ~~between~~ (signed)
Bedroom at Blk 465 Choa Chu Kang Ave 4

(signed) ~~11.10 am to 11.40 am~~, in Singapore, did traffic in a controlled drug specified in a Class A Controlled Drug listed in The First Schedule to the Misuse of Drugs Act (Cap 185) to wit, by having in your possession fourteen (14) blocks of vegetable matter, weighing about 6,581.10 grams of cannabis, without any authorisation under the said Act made thereunder and you have thereby committed an offence under sec 5(1)(a) and punishable under Section 33 of the Misuse of Drugs Act Chapter 185.

(signed) (signed) chijioke
stephen obioha
ASP Richard Soh

[Handwritten] The nature of the charge and the consequences of the charge was explained to the accused in English. He confirmed he understood the charge and the consequences of the charge.

(signed)
ASP Richard Soh I acknowledge a copy of the (signed)

receipt of the charge.

[handwritten]

59 ASP Soh stated that he had written out the handwritten charge after the Accused signed the typewritten charge. At first, he had written "between 11.10 am to 11.40 am" but upon realising that the typewritten charge stated "in the master bedroom of Blk 465 Choa Chu Kang Ave 4", he cancelled the former words and wrote "in the master Bedroom of Blk 465 Choa Chu Kang Ave 4" above that. ASP Soh stated that the Accused signed twice next to the amendment. The Accused signed and wrote his name below the main body of the handwritten charge. ASP Soh then wrote the paragraph beginning "The nature of the charge…" and the Accused signed below. ASP Soh then wrote: "I acknowledge a copy of the receipt of the charge" for the Accused to sign to acknowledge receipt. However, it appeared that the Accused did not sign below the acknowledgment. ASP Soh stated that he served a copy of the handwritten charge on the Accused (NE 602–05).

60 The handwritten notice itself read:

Do you wish to say anything in answer to the charge?

If there is any fact in [*sic*] which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now and you would like to write it down, this will be done.

(signed) chijioke stephen obioha (signed)
ASP
Richard Soh

The above notice was read and explained to the accused in English. The accused said he understood the charge and warning. I then served him a copy of the notice on 13/04/07 at about

(signed) chijioke stephen obioha (signed)
ASP
Richard Soh

I acknowledge a receipt of a copy of my statement.

(signed)

61 ASP Soh stated that he had written the text of the handwritten notice and that the signatures next to the Accused's name were the Accused's. He had read out the text of the handwritten notice and served a copy thereof on the Accused (although he forgot to fill in the time the copy of the notice was served on the Accused). The signature below the line "I acknowledge a receipt of a copy of my statement" was the Accused's (NE 605).

62 The Prosecution tendered a handwritten statement that was made in answer to the handwritten charge and handwritten notice ("the cautioned statement"):

Statement of Chijioke Stephen Obioha…recorded under section 122(6) of the CPC, Cap 68 by ASP Richard Soh Choon Hock on 13/04/07 at about 1821 hrs in Rm B0312A. The accused chose to write his own statement.

The accused wrote:

I wish to plea to who so ever that is in charge that I came to have these things with me due to someone asking me to help him keep a luggage which at first I didn't know what was in it. I really which [*sic*] to have a second chance, not death? If at first I knew it was drugs I won't have been involved. Helping people sometimes means killing yourself. I really plea for a bit of mercy, all these are not intentional. I know the law still remains the law but mercy is of GOD.

Accused wrote his own statement. I invited the accused to make any amendment to his statement but he declined. There is no threat, inducement or promise made in the recording of this statement.

(signed) chijioke stephen obioha (signed)
ASP
Richard Soh

(signed) Statement finished recording at about 1832 hrs

I acknowledge a receipt of a copy of my statement.

63 ASP Soh stated that throughout the recording of the cautioned statement, he and the Accused were the only ones in his office (NE 599). The signature next to the Accused's name was the Accused's. The signature next to the lines "Statement finished recording, etc" at the bottom was also the Accused's (NE 608–09).

64 The typewritten charge, the handwritten notice (including the handwritten charge) and the cautioned statement were collectively tendered by the Prosecution and admitted as P258.

65 The Accused's evidence pertaining to the events of 13 April 2007 was as follows. On that day, ASP Soh told the Accused that he (Soh) would be giving the Accused the second charge which was a possession charge (as ASP Soh had mentioned on 10 April 2007 (see [47])). ASP Soh then handed the

handwritten charge (which was part of P258), *sans* the amendment "in the master Bedroom of Blk 465 Choa Chu Kang Ave 4", to the Accused. Because ASP Soh had on 10 April 2007 told the Accused that the transportation of the black luggage bag in the taxi which had been found to contain controlled drugs from Hotel 81 Hollywood to Block 465 constituted trafficking, while possession meant possession of the drugs at the point of arrest, the Accused understood this unamended handwritten charge to be a possession charge in respect of the 14 blocks of vegetable matter from the black luggage bag in the taxi (NE 1146). The Accused wrote his name and signed below the main body of the handwritten charge, and another time at the bottom right corner of the page. He said that ASP Soh's signatures, the paragraph beginning "The nature of the charge…" and the line "I acknowledge a copy of the receipt of the charge" were not present when he signed (NE 856–59).

66 The Accused stated that he had signed below the first paragraph of the handwritten notice but when he signed, ASP Soh's signatures, the paragraph beginning "The above notice…" and the line "I acknowledge a receipt of a copy of my statement" were not there (NE 858).

67 The Accused handed back both the handwritten charge and the handwritten notice to ASP Soh, who typed and printed out what ASP Soh called the statement for the second charge and then left the office (NE 861). After ASP Soh came back, he told the Accused that he had made a mistake in the handwritten charge. That was when ASP Soh cancelled the phrase "between 11.10 am to 11.40 am", *without adding the phrase "in the master Bedroom of Blk 465 Choa Chu Kang Ave 4"*, and asked the Accused to sign near the cancellation, which the Accused did. ASP Soh then asked the Accused to sign at the bottom corner of the handwritten charge. He also asked the Accused to sign a second time on the handwritten notice further down on the page, "for reference". ASP Soh's signatures, the paragraph beginning "The above notice…" and the line "I acknowledge a receipt etc" were still not there (NE 863–64, 866).

68 ASP Soh then gave the typewritten charge (which was also part of P258) to the Accused with the handwritten words "Charge was served…" at the top right hand corner. ASP Soh told the Accused that the typewritten charge was a transcript of the earlier handwritten charge. He then cancelled "1805", wrote "1818" and asked the Accused to sign next to the amendment, which the Accused did. ASP Soh also asked the Accused to sign below the typewritten charge and once more further down, which the Accused did without reading the typewritten charge. The paragraph beginning "The nature of the charge…" was not there when the Accused signed both signatures (NE 864–66).

69 Finally, ASP Soh gave the Accused a plain sheet of paper and invited him to write a statement on it. ASP Soh told the Accused that he wanted to show it to his boss and that the Accused might be pardoned. The Accused thus wrote the main text of his cautioned statement, *ie*, beginning with "I wish to plea" and ending "God" (see [62]) on the plain sheet. ASP Soh told him to sign and write his name below the text but to leave a space between his statement and his signature in case the Accused had other sentences to add in later. ASP Soh also told the Accused to sign further down the page for reference (NE 867–69).

70 According to the Accused, he was never served a copy of the typewritten charge, the handwritten charge, the handwritten notice or the cautioned statement in P258. The first time he saw the following:

(i) the handwritten paragraph beginning "The nature of the charge…" on the typewritten charge;

(ii) the handwritten paragraph beginning "The nature of the charge…" and the line "I acknowledge a copy etc" on the handwritten charge;

(iii) the handwritten paragraph beginning "The above notice…" and the line "I acknowledge a receipt etc" on the handwritten notice; and

(iv) the words other than the main body of the cautioned statement,

was when his former counsel showed him the PI bundle (*ie*, the bundle for the preliminary inquiry) one week before the PI, which was held on 6 December 2007 (*ie*, he was shown the PI bundle in late November 2007) (NE 869–70). The Accused stated that that meeting with his former counsel was the first time that he read through P130, P131, P258, as well as pp 18 to 20 of SSgt Tay's pocket book (NE 871, 1080–81, 1023–24). That was also the first time he saw (in photos in the PI bundle) the vegetable matter from the master bedroom, the yellow plastic bag and the light yellow plastic bag (NE 999).

71 The Accused stated that when he read through pp 18 to 20 of SSgt Tay's pocket book, the only meaning of "weed" that he knew was the one he had used in agricultural science, to refer to plants that disturb the growth of crops (NE 1026). He was confused as to what the "weed" and "grass" in pp 18 to 20 of SSgt Tay's pocket book referred to (NE 1029–31).

16 April 2007 (amendments and re-numbering)

72 According to the Accused, ASP Soh next met the Accused on 16 April 2007. ASP Soh had a bundle of papers with him. The Accused was shown two sheets from this bundle which he understood to be part of the 10 April 2007 statement (but turned out to be part of P130). On one of these sheets, the particulars of the Accused were set out and under the heading "Nationality", the Accused saw that the word "Singapore" was cancelled and the word "Ghanaian" was already written there. He then informed ASP Soh that he was not Ghanaian but Nigerian. ASP Soh told him to write the word "Nigerian" and the Accused did so (the Accused did not cancel the word "Ghanaian", thinking that ASP Soh would do so). Two other minor amendments were made by ASP Soh and the Accused signed next to the amendments (NE 873–74).

73 According to the Accused, ASP Soh also re-numbered the paragraph numbers on sheets of paper which he understood to be part of the 12 April 2007 statement (but turned out to be part of P131), and got the Accused to sign next to these amendments. According to the Accused, ASP Soh told the Accused to sign "for reference" further down on the last page of these sheets of paper, which the Accused did. There were no handwritten words on the last page of these sheets when the Accused signed on 16 April 2007 (NE 874–76).

Background events

74 I now turn to the evidence as to how the Accused came to Singapore and how he came to rent the flat. Except where otherwise specified, the evidence is from his oral testimony.

75 The Accused first testified that he had graduated with a second class (upper) Bachelor of Science degree from the medical science department of the University of Benin in 2003. However, he later gave evidence that his course of study in the University of Benin was industrial chemistry (NE 901). After graduating from university, the Accused served national service until 2004 (NE 786). From 2004 to 2005, he helped out with his elder brother's electronics business in Alaba International Market, Lagos, Nigeria (NE 789). In 2005, the Accused saw an internet advertisement for the football club "Sporting Afrique" in Singapore. He flew to Singapore in November 2005 to try out for the football club (NE 785). The screening started in January 2006. The Accused did not get a place and he joined the fan club instead.

76 In May 2006, the Accused contacted his elder brother ("Toochukwu Colinus Obioha") with a business suggestion, which was for Toochukwu Colinus Obioha to send the Accused money to purchase second-hand electronic goods in Singapore which the Accused would then send back to Nigeria (NE 791). The Accused also earned commission by acting as a middleman between traders from all over the world who came to Singapore to buy second-hand electronic goods and businesses in Singapore who sold such goods. Money was in fact sent from the Accused to Toochukwu Colinus Obioha and vice versa on various occasions (NE 794).

77 The Accused's immigration pass expired in January 2007, so from then until his arrest on 9 April 2007, he was illegally overstaying in Singapore (NE 794).

78 Prior to February 2007, the Accused had been staying in a flat near the Yew Tee MRT station (NE 797). In February 2007, the Accused began looking for new accommodation. The Accused stated that on 20 March 2007, he and Oh Chiew Ghim viewed the flat together with their housing agent. They were given the choice of two rooms by Mdm Siti and her husband, one of which was the master bedroom. The Accused told the housing agent that he was interested in renting the master bedroom (NE 905).

79 On 21 March 2007, the housing agent contacted Oh Chiew Ghim and informed her that the signing of the rental agreement for the flat was to take place that evening. The Accused testified that he had planned to rent the master bedroom together with a Cameroonian who played football for Home United. The plan had been for the Cameroonian to present his employment pass and sign the rental agreement as the Accused, being an illegal overstayer, had no valid documentation. However, the Cameroonian was unable to be present at the proposed signing. Eventually, Oh Chiew Ghim signed the rental agreement on behalf of the Accused instead (NE 906–08).

80 The Accused shifted his belongings, including a refrigerator, a bed and the Enzer box containing a home theatre set, into the flat on 26 March 2007. Mdm Siti gave him three keys on 26 March 2007: for the metal grille door; the wooden front door and the master bedroom of the flat. After placing some of his belongings into the master bedroom, he locked the master bedroom door (NE 923). He himself did not move in until 29 March 2007 (NE 880).

81 Apart from the Accused, Mdm Siti, her husband, her son and two Bangladeshis stayed in the flat. Oh Chiew Ghim's evidence was that she had only visited the Accused on three or four previous occasions and each time only stayed in the master bedroom for a short while before leaving the flat. She had never stayed overnight in the master bedroom nor had she had a key to the master bedroom. In other words, Oh Chiew Ghim was not occupying the master bedroom. (PS46, statement of Oh Chiew Ghim, at [5]). The Accused met the two Bangladeshis in the flat on 30 March 2007 and they told him that they were staying in one of the rooms. He claimed that even after 30 March 2007, he saw them from time to time, usually in the evenings, in the flat. The last day he saw one of them was 8 April 2007 in the afternoon (NE 881–82).

82 According to Mdm Siti, she knew the Accused as "Mr Wilson". The Accused testified that he had given a copy of an NUS student pass for one Anosike Wilson to Mdm Siti on 5 or 6 April 2007 (NE 913) (though later he stated that he gave it to her husband (NE 914)). He claimed that he had come into possession of a copy of the NUS student pass on 3 April 2007 in Boon Wah Hotel at Upper Weld Road. The Accused had gone there to meet a Nigerian trader. In the hotel room occupied by the Nigerian trader, he saw a copy of the NUS student pass together with an Ameertech Remittance and Exchange receipt bearing the name "Anosike Wilson" on a table and the Nigerian trader had told him that he (the Nigerian trader) had found the copy of the pass in the table drawer. The Accused testified that he had kept the copy of the pass because he was curious to find out who this Nigerian,

who was studying at NUS, was. He went to an African restaurant near to Mustafa Centre (a shopping centre in Little India) to enquire if anyone knew Anosike Wilson but no one did (NE 910–13). The Accused originally stated that this African restaurant was the only place he went to find out about Anosike Wilson, but later he stated that he had also gone to 6A Verdun Road (the address stated on the NUS student pass) to inquire about Anosike Wilson (NE 918).

83 The Accused stated that Mdm Siti and her husband had never asked him for any documentation. However, he made another copy of the copy of Anosike Wilson's student pass and gave it to either Mdm Siti or her husband, in order to "replace the gap of having valid documents" but it was not to make them think that he was Anosike Wilson (NE 914).

84 The Accused's evidence was that he did not know how the vegetable matter came to be in the master bedroom. He stated that he did not know that vegetable matter, apart from the vegetable matter from the black luggage bag in the taxi, had been recovered from the master bedroom until November 2007. The Accused stated that he did not know what cannabis was prior to his arrest (NE 940). He had only heard of "cannabis ativa" from his studies. He explained it was a plant that grows in swampy areas (NE 1158). At the time of his arrest, he also did not know that cannabis is also known as "marijuana", "grass" or "weed" (NE 1026, 1170).

The rebuttal evidence

85 After the Defence closed its case, the Prosecution applied to adduce rebuttal evidence on the following issues:

(a) whether the Accused knew of the drug cannabis prior to his arrest; and

(b) whether the Accused, when he gave the cautioned statement in P258, had thought that the 14 blocks of vegetable matter referred to in the handwritten charge were the 14 blocks of vegetable matter from the black luggage bag in the taxi (which were the subject matter of the typewritten taxi trafficking charge).

86 The Prosecution originally sought to call two chemists from the HSA for the purpose of giving evidence on the first issue:

(a) Ms Moy Hooi Yan ("Ms Moy"); and

(b) Ms Lim Cheng Min ("Ms Lim").

The Prosecution also sought to tender two HSA certificates, showing that a chemical compound, 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid ("the chemical compound"), had been found in urine samples of the Accused taken on 9 April 2007 (see [35]) and submitted to the HSA for analysis on 10 April 2007. Ms Moy Hooi Yan had signed the certificate Lab No N2-2007-06554-002 and Ms Lim Cheng Min had signed Lab No N2-2007-06554-007. After the Prosecution had made its submissions on rebuttal evidence, however, Ms Moy and Ms Lim consulted with their supervisor and informed the Prosecution that they might not be the best people to comment on the existence of "cannabis ativa" which was relevant to the first issue. Thus, the Prosecution also applied for Ms Mangudi (see [24]) to give rebuttal evidence on the first issue.

87 The Prosecution sought to recall ASP Soh to give evidence on the second issue.

88 The Defence objected to the Prosecution's application for several reasons. In respect of the

rebuttal evidence on the first issue, Dr Yap and Ms Mangudi had already testified on the meaning of and common street names for cannabis in court and calling further witnesses from the HSA would not assist the court any further. Furthermore, the existence of the chemical compound in the Accused's urine could not help the Prosecution prove the Accused's knowledge of cannabis beyond reasonable doubt. According to the Defence, it was a great leap to conclude from the evidence pertaining to the urine samples that the Accused knew what cannabis is. Thirdly, the Accused had in his evidence stated that he did not know of cannabis, but only knew of "cannabis sativa". Fourthly, the evidence was similar fact evidence and its probative value did not outweigh its prejudicial effect.

89 In respect of rebuttal evidence on the second issue, the Defence submitted that the Prosecution should not be allowed to call ASP Soh for several reasons. First, ASP Soh had been present for part of the time when the Accused gave his evidence in court. Secondly, the Accused had given detailed testimony in his evidence and on cross-examination and the Prosecution could not claim any element of surprise. Thirdly, it was foreseeable to expect that the Accused's version would be different from the evidence of the prosecution witnesses. Fourthly, evidence in rebuttal is not allowed to merely confirm the Prosecution's case. The rebuttal evidence from ASP Soh would at most merely prove that he had showed and adequately explained the distinction between the two sets of vegetable matter to the Accused.

90 I allowed the rebuttal evidence to be adduced. The key principle is that generally, leave will be granted to adduce rebuttal evidence where the adducing party has been taken by surprise: see *Zainal bin Kuning & Ors v Chan Sin Mian* [1996] 3 SLR 121 ("*Zainal bin Kuning*"), affirmed in *PP v Bridges Christopher* [1998] 1 SLR 162. This has also been framed as the principle that such evidence will be allowed only in the case of a matter arising *ex improviso*, *ie* one which the prosecution could not reasonably have foreseen: see *PP v Bridges Christopher* at [51].

91 I accepted the Prosecution's submissions that it had not been put to any of the prosecution witnesses that the Accused had no knowledge of the drug cannabis prior to his arrest. This position was only made clear by the Accused in his cross-examination and thus could not have been reasonably foreseen by the Prosecution. Although the Accused's knowledge of cannabis would not of itself establish the charge against him, it was not immaterial to his credibility. Also, although the defence counsel had cross-examined ASP Soh about the addition of the words "in the master Bedroom of Blk 465 Choa Chu Kang Ave 4", it had not been explicitly put to the prosecution witnesses (in particular ASP Soh) that the Accused had thought that the 14 blocks of vegetable matter referred to in the handwritten charge were the 14 blocks of vegetable matter from the black luggage bag in the taxi (which were the subject matter of the typewritten taxi trafficking charge).

92 The Defence's submissions in respect of the rebuttal evidence on the first issue could not stand. The Prosecution did not intend to call the rebuttal witnesses to testify on the meaning of and common street names for cannabis. Rather, evidence was to be given on the Accused's urine samples and such evidence was clearly relevant to the question of whether the Accused knew what cannabis is. Another purpose of the rebuttal evidence was precisely to show that there is no such plant as "cannabis ativa", contrary to the Accused's claim. If such rebuttal evidence was upheld it would have a bearing on the Accused's credibility. The evidence from the HSA chemists was being adduced to establish the Accused's knowledge of cannabis and not directly prove his guilt for the trafficking offence and thus was not similar fact evidence at all.

93 The Defence's submissions in respect of rebuttal evidence on the second issue also could not stand. ASP Soh had left the court by the time the Accused gave his evidence on whether and why he thought that the handwritten charge pertained to the vegetable matter from the black luggage bag in the taxi. In any case, even if ASP Soh had remained in the courtroom when the relevant evidence

was being given, that was not necessarily a ground for refusing to allow his evidence as the point that the Accused had thought that the handwritten charge pertained to the vegetable matter from the black luggage bag in the taxi was a new one. It was up to me to decide what weight to place on ASP Soh's rebuttal evidence: see *Mohamed Nor v Public Prosecutor* [1939] 1 MLJ 305.

94 Accordingly, I allowed the Prosecution's application and the witnesses listed in [86] and [87] gave their evidence.

95 Ms Moy had been working in HSA for six and a half years at the time of trial while Ms Lim had worked in the HSA since June 2003. They described their scope of work as supervising the analysis of controlled substances in urine. Both analysts stated that the detection of the chemical compound in urine was consistent with the consumption of cannabis. Ms Moy testified that the cannabis plant, which is *cannabis sativa* L., contains tetrahydrocannabinol ("THC") and that consumption of *cannabis sativa* L. will give rise to the metabolite of THC, which is the chemical compound, in the urine. Ms Moy stated that THC is unique to *cannabis sativa* L. but there is also a synthetic form of THC known as "Marinol" which if consumed would also give rise to the chemical compound. However, she stated that Marinol is not available in Singapore (NE 1250).

96 Ms Mangudi had a masters degree in analytical chemistry and had been working in HSA since 2000. She testified that *cannabis sativa* L. is the only species in the genus *cannabis*. She relied on a book, *Terminology and Information on Drugs*, published by the United Nations. (NE 1270) She had never heard of the term "cannabis ativa" (NE 1271).

97 ASP Soh testified that when the photo-taking in the living room took place on the afternoon of 9 April 2007 (see [29]–[31]), he had told the Accused that photographs of the vegetable matter from the master bedroom would be taken first followed by the vegetable matter from the black luggage bag in the taxi (NE 1278). Both the vegetable matter from the master bedroom and the vegetable matter from the black luggage bag in the taxi were photographed and the Accused could see the photographs of all those blocks of vegetable matter being taken. (NE 1277)

98 ASP Soh further stated that in the Exhibit Management Room, he had told the Accused that he (Soh) would start weighing the vegetable matter from the master bedroom, followed by the vegetable matter in the black luggage bag from the taxi. ASP Soh stated that he had used the brand name of the black luggage bag from the taxi, "Cellini", when he told the Accused this (NE 1278-79).

99 ASP Soh also stated that on 10 April 2007, he had explained the typewritten taxi trafficking charge to the Accused and recorded a cautioned statement from the Accused for that charge (NE 1281).

100 He also stated that on 12 April 2007 he had shown the Accused printouts of digital photographs of the vegetable matter from the master bedroom and physical exhibits such as the UBS Warburg bag while recording P131 (NE 1282–84, 1286–90). The fact that he had shown these items to the Accused was recorded in P131 itself.

101 Finally, he testified that when he recorded the cautioned statement on 13 April 2007, he had shown the Accused printouts of photographs of the vegetable matter from the master bedroom and explained to the Accused that the cautioned statement pertained to the vegetable matter found in the master bedroom (NE 1284–85).

The submissions

102 The Defence submitted that there were material inconsistencies in the evidence from the CNB officers giving rise to reasonable doubt about the Prosecution's case. First, none of the prosecution witnesses were able to state clearly or even approximately how many officers were deployed to arrest the Accused.

103 Secondly, in relation to the arrest, one of the ID officers, Yeo Shuan Chew, had stated that the Accused was walking away at the time of the arrest (contradicting the evidence of other ID officers that he was seated in the taxi). Furthermore, SI Sea had stated that he saw the Accused resisting arrest when in fact at the time of his arrival at the carpark of Block 465 (see [7]), the Accused must already have been arrested and handcuffed. The Accused's position was that in actual fact, he had not resisted arrest but was forcibly hauled out of the taxi and pushed to the ground resulting in a bruised left cheek.

104 Thirdly, the CNB officers were unable to confirm whether handcuffs were used on both hands and feet, or only the hands of the Accused.

105 The Defence submitted that the evidence of SI Sea and the other officers who had escorted the Accused to the flat, that the Accused had said (in response to SI Sea's question) that he (the Accused) did not have the key to the master bedroom created the false impression that the Accused was refusing to cooperate with the CNB officers. The Defence stated that the reason why the Accused said then that he did not have the key to the master bedroom was because it had already been seized from him at the void deck of the flat and not because he was refusing to cooperate with the CNB officers.

106 The Accused's position was that Mdm Siti had in fact used one of the nine keys seized from the Accused to open the master bedroom.

107 The Defence pointed out that Sgt Ee had not included his evidence that he had shown the vegetable matter from the master bedroom one block at a time to the Accused in his conditioned statement, although he had himself agreed during cross-examination that it was an important enough event to be included in his conditioned statement.

108 The Defence submitted that when the Accused was escorted out to the kitchen by Sgt Vijay after the Accused had asked for water, Sgt Ee tampered with some of the evidence, namely, by breaking the lock on the Fila bag. It reiterated the Accused's position that the Enzer box had been empty and that the UBS Warburg bag was kept on top of the Enzer box, and the Fila bag on top of the UBS Warburg bag.

109 The Defence submitted that the lack of response from the Accused when he was shown the vegetable matter from the master bedroom was only because the blocks of vegetable matter were never in fact shown to him one block at a time. It further submitted that the Accused was not expected to make any response even if they had been shown to him.

110 The Defence submitted that the small empty plastic packets, the yellow-coloured utensil, the weighing scale and the two rolls of yellow tape (see [13]) were circumstantial evidence that did not show the Accused's involvement in drug trafficking. It maintained that, before such evidence could be relied upon, the Prosecution had to prove beyond a reasonable doubt that the Accused was in possession of the paraphernalia.

111 The Defence submitted that the evidence of SSgt Tay, ASP Soh and Sgt Yap as to the location where the Accused sat and the site of the photo-taking in the living room on 9 April 2007 was

conflicting. In their respective markings (which they had made in court) on copies of a sketch plan of the living room, the three witnesses had indicated different positions of the Accused at or near a table in the living room and of the site where the items were placed for photo-taking. Furthermore, the Defence pointed out that none of the prosecution witnesses had stated that they had actually seen the Accused observing the photo-taking from where he had been seated in the living room.

112 The Defence submitted that there was reasonable doubt as to whether the Accused knew what the contents of the blocks of vegetable matter from the master bedroom were even if they had been recovered from the master bedroom. It relied on SSgt Lim's evidence that the vegetable matter had been double-wrapped with brown tape and plastic and SSgt Lim was not able to tell what was inside just by looking at the items.

113 As for the recording of the Accused's contemporaneous statements allegedly recorded by SSgt Tay in the master bedroom, the Defence submitted that there was reasonable doubt as to whether the recording of the contemporaneous statements had in fact taken place. The Accused's position was that Signatures 2, 4, 6 and 8 on pp 18 to 20 of SSgt Tay's pocket book were not his.

114 The Defence also submitted that Dr Yang's evidence did not prove beyond reasonable doubt that the disputed signatures on those pages were the Accused's since her conclusion was based on levels 3 and 4 of certainty with level 1 being the best and highest, and level 8 being the lowest. The Defence submitted that the opinion that "The possibility of the writer of this having written that cannot be ruled out" is used when there is reason to believe that there is disguise in the specimen handwriting. It also pointed out that Dr Yang had given evidence that her conclusion did not rule out the possibility that someone else could have signed the disputed signatures. It further submitted that it would be dangerous to make allowances for the evidence that the Accused had signed the contemporaneous statements while handcuffed, as this would encourage the practice of having accused persons sign statements while handcuffed, a practice which the Defence submitted should be frowned upon.

115 The Defence also referred to the evidence of another officer Sgt Yap (see [32]) regarding his entries in his own pocket book to suggest that the entries made by SSgt Tay should be treated with suspicion. In the context of some entries made by Sgt Yap in his own pocket book, Sgt Yap had said that the entries from 2 to 6 February 2007 were written elsewhere on a piece of paper or in an exercise book while he was waiting to be issued a new pocket book as there was no more space in his existing one. When Sgt Yap was issued the new pocket book on 7 February 2007, he transferred the entries into the new pocket book. The Defence used this evidence to submit that it was highly unreliable to rely on the pocket book evidence of any CNB officer.

116 As for access to the master bedroom, the Defence submitted that the Accused was not the only person who could have had access to the master bedroom. Two Bangladeshis had been staying in one of the bedrooms of the flat during the period that the Accused was staying in the master bedroom. Furthermore, Mdm Siti and her husband also had a key to the master bedroom. Also, the window of the master bedroom and the window of the kitchen were close to each other.

117 The Defence relied on *Lee Lum Shuen v PP* [1994] 2 SLR 497 ("*Lee Lum Shuen*"), in which the court had opined that (at [21]): "In a situation like the present where controlled drugs had been found on premises rented by an accused, it is possible to cast doubt on a prosecution case by showing that there were other occupants of the premises."

118 The Defence also referred to *Poon Soh Har & anor v Public Prosecutor* [1975-1977] SLR 245 ("*Poon Soh Har*"), where an accused's appeal against conviction was allowed even though he was in

possession of three keys, one fitting a letter box, another fitting the entrance door of an apartment and another fitting a cupboard in the apartment. Drugs had been found in the letter box and apartment.

119 As for the statements P130 and P131, the Defence stated that it would appear that ASP Soh had doctored P130 and P131 so as to be able to close the case against the Accused. The Accused's position was that P130 and P131 were not the statements he had made to ASP Soh, although he had signed P130 and P131 voluntarily. He had signed them without reading them, as he believed that they were statements he had earlier given but had not yet signed. The Defence submitted that the Prosecution was unable, despite stringent cross-examination, to show any inconsistencies in the Accused's account of how those statements were signed.

120 The Defence submitted that the Prosecution also could not shake the testimony of the Accused in respect of his position that he had given the cautioned statement in P258 while under the impression that the handwritten charge referred to the vegetable matter from the black luggage bag in the taxi and not from the master bedroom.

121 I now turn to the Prosecution's submissions. The Prosecution submitted that it could be presumed under ss 18(1)(a) and (1)(c) of the Act that the Accused was in possession of the vegetable matter from the master bedroom because the Accused had possession, custody or control of the key of the master bedroom where the vegetable matter was found and of the containers of the vegetable matter.

122 It submitted that under s 18(2) of the Act, when the Accused is proved or presumed to be in possession of the vegetable matter from the master bedroom, it could be presumed that the Accused knew that the vegetable matter from the master bedroom contained cannabis.

123 The Prosecution submitted that, although there was sufficient evidence to trigger the presumptions under ss 18(1)(a), 18(1)(c) and 18(2) of the Act, it was not necessary to rely on them, because there was sufficient evidence of the Accused's physical control of the vegetable matter from the master bedroom and his knowledge that they contained cannabis.

124 The Prosecution submitted that the Accused had exclusive possession and control of the master bedroom. First, it was undisputed that the Accused had rented the master bedroom for himself only, albeit with the assistance of Oh Chiew Ghim, and that Mdm Siti had given him a duplicate of the key to the master bedroom.

125 Secondly, while Mdm Siti had a key to the master bedroom, she and her husband did not enter the master bedroom when the Accused was staying there (NE 50). Furthermore, that key was kept in a locked cupboard in Mdm Siti's bedroom which would be locked whenever she and her family left the flat (NE 37, 54). That key was never missing during the time when the Accused was staying in the master bedroom (NE 38).

126 Thirdly, Mdm Siti testified that the two Bangladeshis who were renting another bedroom in the flat did not have a key to the door of the master bedroom (NE 290). Mdm Siti and her husband both testified that they did not see the two Bangladeshis entering the master bedroom when the Accused was staying there (NE 38, 56). Mdm Siti testified that the Bangladeshis had terminated their tenancy and left two days before the Accused was arrested (on 9 April 2007).

127 Fourthly, Mdm Siti testified that the Accused had never complained to her that someone had entered the master bedroom (NE 56). The Accused also testified that he did not have any suspicion

that somebody had entered the master bedroom when he was staying there (NE 934).

128 Fifthly, the Accused always locked his bedroom door whenever he left the flat because he did not want anyone to enter the master bedroom without his knowledge or permission.

129 The Prosecution submitted that the Accused wanted to control entry to the master bedroom because it was the place where he stayed and kept the vegetable matter which was eventually found there.

130 The Prosecution submitted that the Accused had exclusive possession and control of the Enzer box, the Fila bag and the UBS Warburg bag before his arrest because these containers were kept in the cupboard in the master bedroom of which the Accused had exclusive possession and control.

131 The Prosecution contended that *Poon Soh Har* was inapplicable because in that case, three other persons had access to the letter box and apartment in which the drugs were found.

132 The Prosecution submitted that the Accused's behaviour during and after his arrest showed that he had actual knowledge at the time of his arrest that he was in possession of cannabis. First, he had violently resisted arrest. This was not because of his fear of being apprehended for illegally overstaying in Singapore, since Sgt Leow had testified that he (Leow) had identified himself as a CNB officer.

133 Secondly, he remained silent throughout his arrest even though he said he had heard some officers mention drugs found in the boot of the taxi.

134 Thirdly, he remained silent on three occasions: (a) when Sgt Ee showed the vegetable matter from the master bedroom one at a time to him in the master bedroom; (b) when the vegetable matter was unwrapped and photographs thereof were taken in front of the Accused in the living room; and (c) when the vegetable matter was weighed in front of him in the Exhibit Management Room.

135 Fourthly, the Prosecution contended that the Accused was lying when he said that he did not see ASP Soh at any time in the flat and the Exhibit Management Room. It was submitted that the Accused had lied because he "wanted to distance himself from the 12 Blocks of Vegetable Matter" (Prosecution's closing submissions at [123]).

136 Fifthly, the Prosecution submitted that the Accused had not cooperated when SI Sea asked him (when they first entered the flat) whether he had the key to the master bedroom because he was trying to prevent or delay the CNB officers from discovering the cannabis in the master bedroom.

137 The Prosecution also submitted that the contemporaneous statements did emanate from the Accused and they showed that the Accused had actual knowledge of his possession of cannabis at the time of his arrest.

138 The Prosecution also submitted that the Accused was able to sign the contemporaneous statements because he was handcuffed with standard issue handcuffs and his hands were not so tightly bound behind his back by hand restraints so as to preclude him from signing such statements as the Accused had initially suggested. First, SSgt Tay had testified that when he was recording the statements from the Accused, the Accused's hands were handcuffed with standard issue handcuffs behind his back (NE 473).

139 Secondly, SSgt Tay had also testified that the black hand restraint would seldom be used to

restrain an accused person's hands behind his back. Usually, the accused person's hands would be restrained to his side, to facilitate the Accused's hand movements, *eg*, for the collection of urine samples (NE 498, 504).

140 Thirdly, Mdm Siti said that when the Accused was brought to the flat after his arrest on 9 April 2007, there was no black hand restraint on his hands (NE 283–84).

141 The Prosecution submitted that I should also accept Dr Yang's unchallenged testimony that while it was possible that someone else signed the contemporaneous statements, it was more likely than not that the Accused was the writer of Signatures 2, 4, 6 and 8 in the contemporaneous statements.

142 The Prosecution submitted that P130 and P131 showed that the Accused himself admitted to having had possession of ten blocks of the vegetable matter from the master bedroom.

143 It also submitted that the Accused's position that ASP Soh had only let him sign P130 and P131 on 12 April 2007 and that he had not read through the statements before signing was against both logic and the weight of evidence. First, the Accused, being a university graduate, conversant in the English language and aware that he faced a capital charge of trafficking, must have read through P130 and P131 before he signed them.

144 Secondly, it was highly unlikely that the Accused would sign P130 and P131 after an interval without reading them first when he was facing a capital charge.

145 Thirdly, ASP Soh denied that he stepped out of the office (where the interview was conducted) at any time during the recording of P130 and P131. It was unlikely that he would do so, leaving the Accused, who was facing a capital charge, alone.

146 Fourthly, the lock-up diaries and ASP Soh's investigation diary showed that the Accused was brought down only once to the lock-up on 12 April 2007. In other words, the Accused's version that he was brought to the lock-up after he had given a statement to ASP Soh on 12 April 2007, and then brought back up again on the same day before ASP Soh when he signed P131 thinking that it was the statement he had given earlier that day, was untrue.

147 The Prosecution submitted that ASP Soh had recorded P130 and P131 from the Accused accurately.

148 The Prosecution submitted that the Accused's confession in the cautioned statement in P258 showed that the Accused had actual knowledge of his possession of cannabis at the time of his arrest.

149 The Prosecution pointed out that the Accused could not have thought that the charges in P258 were for possession as the word "traffic" was clearly used in the charges.

150 The Prosecution submitted that the Accused had clearly written "help *him* keep a luggage [emphasis added]" in his cautioned statement and the Accused was therefore lying when he maintained that the luggage he was referring to in the cautioned statement was from an African girl, in order to substantiate his allegation that the luggage he was referring to in the cautioned statement was the black luggage bag in the taxi (NE 1154).

151 The Prosecution submitted that when the handwritten charge in P258 was shown and read to the Accused, he knew that it referred to the vegetable matter from the master bedroom and not the

vegetable matter from the black luggage bag in the taxi. First, the Prosecution relied on the rebuttal evidence from ASP Soh regarding the photograph-taking in the living room. It contended that the discrepancies in the evidence of SSgt Tay, ASP Soh and Sgt Yap on the location where the Accused was sitting in the living room and the location of the items from the master bedroom when being photographed in the living room were not material in view of the lapse of time. What was consistent in the testimony of those witnesses was that the distance between the items being photographed and the Accused was about two metres. The Accused's claim that he did not see what was going on even though he was in the living room for two to three hours was incredible.

152 Secondly, the Prosecution relied on the rebuttal evidence from ASP Soh regarding the weighing of vegetable matter in the Exhibit Management Room and submitted that the Accused's claims that he did not see vegetable matter being weighed in the Exhibit Management Room, that he could not recall seeing ASP Soh in the room and that his view of the weighing process was blocked by two officers were lies.

153 Thirdly, the Prosecution relied on ASP Soh's rebuttal evidence that he had explained the typewritten taxi trafficking charge to the Accused and had also shown digital photographs of the vegetable matter from the master bedroom to the Accused when recording P131 and the cautioned statement in P258. (NE 1281–90)

154 Finally, the Prosecution submitted that the Accused's account of how the cautioned statement was recorded was incredible. For example, there was no reason for ASP Soh to tell the Accused to start writing his cautioned statement in the middle of the page as claimed by the Accused. It was difficult to believe that the Accused would do so out of blind trust in ASP Soh, considering the gravity of the death penalty, the Accused's education level and the fact that the CNB officers were from the same organisation as ASP Soh.

155 The Prosecution contended that the attempted retraction by the Accused of the two contemporaneous statements, P130, P131 and P258 did not prevent them from being relied upon as evidence. It maintained that all these statements were reliable and should be given due weight.

156 The Prosecution submitted that the Accused was lying when he claimed that he did not know the terms "cannabis", "marijuana" or "weed" and when he said that he had only heard of "cannabis ativa". First, during cross-examination, when it was put to the Accused that he had consumed cannabis, he gave the ambivalent reply that he could have consumed the drug before his arrest (NE 1170).

157 Secondly, there is no plant known as "cannabis ativa" (and the Defence was unable to produce any literature or evidence to prove otherwise). Ms Mangudi had testified that according to the literature *cannabis sativa* L. is a single plant species (see [96]).

158 Thirdly, it was difficult to believe the Accused's lack of knowledge about *cannabis sativa* L. given that he admitted that he had knowledge of agricultural sciences and studied industrial chemistry in university (NE 901), and considering the similar spelling of both "cannabis sativa" and "cannabis ativa".

159 The Prosecution submitted that the Accused's lies in his testimony satisfied the four criteria in *Sharom bin Ahmad* [2000] 3 SLR 565 at 583 which must be satisfied before they could corroborate his guilt of possessing the vegetable matter from the master bedroom (*viz*, the lie must be deliberate; material; motivated by a realisation of guilt and a fear of the truth; and shown to be a lie by admission or independent witnesses). It is unnecessary for me to elaborate on this part of its

submission.

160 The Prosecution submitted that, even without relying on the statutory presumption in s 18(2) of the Act, a strong inference that the Accused knew that he was in possession of cannabis arose from his having physical control of the cannabis (citing *Tan Ah Tee v Public Prosecutor* [1978-1979] SLR 211 at [19]-[20]). The Accused had not disputed that he had possession of the Enzer box, the Fila bag and the UBS Warburg bag which contained ten blocks of the cannabis in the master bedroom. The Prosecution submitted that the Accused also had physical control of the block of vegetable matter in the yellow plastic bag and the block of vegetable matter in the light yellow plastic bag, because the two plastic bags were found in the Enzer box. The Accused's lies and incredible claims, *eg*, about the recording of his statements, created the inference of his knowledge, which was not rebutted in view of his confessions in the two contemporaneous statements, P130, P131 and the cautioned statement in P258.

161 Alternatively, the Prosecution submitted that even by the Accused's oral account of how he had obtained the Fila bag, he had been wilfully blind to the contents of the Fila bag which is the legal equivalent of actual knowledge for the purposes of establishing possession (citing *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR 1at [125], [129] and [130]). It did not make sense for anyone to padlock a bag containing only a Bible, cologne, aftershave and perfume.

162 On the issue of whether the Accused possessed the cannabis for the purpose of trafficking, the Prosecution submitted that under s 17(d) of the Act, it could be presumed that the Accused had possession of the cannabis in the master bedroom for the purpose of trafficking because the weight of the cannabis exceeded 15 grammes.

163 It further submitted that the presumption under s 17(d) of the Act had not been rebutted by the Accused in view of his confessions in the two contemporaneous statements, P130, P131 and the cautioned statement in P258, as well as his failure to explain the presence of so much cannabis (2,604.56 grammes) in his room.

164 The Prosecution submitted that even without the presumption, the Prosecution had proved beyond reasonable doubt that the Accused had possession of the cannabis in the master bedroom for the purpose of trafficking. First, the sheer quantity of the cannabis created the inference that possession of it was for the purpose of trafficking (the amount of cannabis which triggers mandatory capital punishment is 500 grammes (see [1]).

165 Secondly, the weighing scale and small empty plastic packets, both found in the cupboard of the master bedroom, were drug trafficking paraphernalia.

166 Thirdly, during the trial, the Accused had denied knowledge of the packet of vegetable matter from the Elle bag found by SSgt Choo in the master bedroom (see [13]) (NE 1017). However, in P131, the Accused had apparently admitted to putting some loose marijuana in the Elle bag and it was also recorded that he had identified the packet of vegetable matter from the Elle bag. The Accused's lie corroborated his guilt and led to the reasonable inference that he was going to use the small empty plastic bags to pack the vegetable matter from the master bedroom for trafficking.

167 Fourthly, the Accused had lied about the location of the weighing scale, as revealed by Mdm Siti's independent evidence that the weighing scale was not placed in the kitchen (NE 281). This led to the reasonable inference that he had used the weighing scale when he was packing vegetable matter into the small empty plastic bags for trafficking, and that he was going to do the same for the vegetable matter from the master bedroom.

168 In its reply to the Prosecution's closing submissions, the Defence did not make any material new argument. It referred me to *Zainal bin Kuning* (cited in [90]) as an example of a case in which the arresting officers and investigating officer had claimed that statements were that of the accused when they had not in fact been made by the accused. I can dispose of this argument immediately. *Zainal bin Kuning* was a claim for malicious prosecution. It did not involve statements that had been fabricated or doctored by the relevant officers. Rather, the accused persons had made the statements and the issue was whether they had done so voluntarily. Furthermore, the High Court in *Zainal bin Kuning* had dismissed the accused persons' claims that their statements had been given involuntarily and this decision was upheld by the Court of Appeal. In any case, simply because there are cases in which arresting or investigating officers have resorted to underhand methods during an investigation does not mean that they in fact did so in the present case. The court has to look at the facts and circumstances of each case to determine if any evidence has been fabricated or doctored or if there is evidence suggesting that the prosecution has not proved its case beyond reasonable doubt.

The applicable law

169 Sections 5(1)(a) and 5(2) of the Act state:

> **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.

170 Section 2 of the Act sets out the acts which constitute trafficking. It states:

> "[T]raffic" means —
>
> (a) to sell, give, administer, transport, send, deliver or distribute; or
>
> (b) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning;

171 The concept of legal possession includes knowledge as physical possession without knowledge is not enough. It has generally been assumed in cases that the type of knowledge required is knowledge that the Accused was in physical possession of the specific drug, *ie*, cannabis in the present case (and not just knowledge that the drug is a controlled drug). In the present case, the Defence did not argue that while the Accused knew he was in possession of a controlled drug, he did not know it was cannabis. His position was simply that he was unaware of any vegetable matter from the master bedroom.

The court's findings

172 I first deal with the question of whether the contemporaneous statements, P130 and P131 were indeed made by the Accused.

173 In respect of the contemporaneous statements allegedly recorded by SSgt Tay, I was of the

view that the Accused was able to sign them because he was in standard issue handcuffs and not the black hand restraint at the relevant time. SSgt Tay's evidence that the Accused was in standard issue handcuffs when he signed the statements was corroborated by Sgt Vijay (NE 540). I also accept the Prosecution's submissions on this issue (at [138]–[140]) and will not repeat them here.

174 Sgt Vijay was allegedly the only officer who remained in the master bedroom with SSgt Tay so I examined his evidence to see if it was consistent with SSgt Tay's.

175 I accepted the Prosecution's explanation during the trial that no evidence on the recording of the contemporaneous statements had been led initially from Sgt Vijay during his examination because the Prosecution had initially thought there would be a *voir dire* on those statements and therefore anything pertaining to the recording of those statements was removed from Sgt Vijay's conditioned statement (NE 487).

176 Sgt Vijay's later evidence when he was recalled before the close of the Prosecution's case was different from SSgt Tay's in two respects. First, in respect of *how* the contemporaneous statements were signed, SSgt Tay had testified that the Accused signed the contemporaneous statements while sitting on the bed with his hands handcuffed behind his back, and that he (Tay) stood in front of the Accused and bent down so that the Accused could reach the pocket book (NE 475). When first asked to demonstrate how the Accused signed the pocket book, however, Sgt Vijay testified that it was the *Accused* who stood up to sign the contemporaneous statements (he later said that SSgt Tay also stood up when the Accused was signing the statements) (NE 540, 545).

177 Secondly, Sgt Vijay stated that only one statement had been taken and that the Accused signed many signatures on SSgt Tay's pocket book at one time. Later, after he was informed that there had in fact been two separate contemporaneous statements, he said he "[could] not recall" (NE 551) whether the Accused stood up once or twice to sign the pocket book. Sgt Vijay's explanation was that he was focused on guarding the Accused. It seemed to me that these differences in evidence were explicable by the fact that Sgt Vijay was not paying particular attention to the recording of the contemporaneous statements. He was not the recorder. However, he should have been more candid and said that he could not remember instead of attempting to give evidence on matters which he could not recall.

178 Dr Yang's evidence was inconclusive. Although it suggested the possibility of the Accused having written the disputed signatures, her evidence alone did not establish beyond a reasonable doubt that the Accused had done so. I also did not think it safe to rely on her evidence even as corroborative evidence.

179 As for the Defence's submission that making allowances for the evidence that the Accused had signed the contemporaneous statements while handcuffed would encourage the practice of having accused persons sign statements while handcuffed, this had no bearing on whether the Accused did *in fact* sign the contemporaneous statements while handcuffed in this case.

180 Furthermore, the fact that Sgt Yap had not updated his pocket book on a daily basis for a few days in February 2007 until he received a new pocket book was also irrelevant. Sgt Yap was not the recorder and the Defence's submission about his pocket book was a distraction on this point. The Accused's position was not that SSgt Tay had not updated his pocket book on the day of taking the contemporaneous statements from the Accused. Rather, it was that the Accused had not signed or given those contemporaneous statements at all even if they were written by SSgt Tay at that time.

181 It seemed to me that either SSgt Tay had fabricated the statements and the Accused's

signatures or he had not. The Accused was, generally speaking, not credible whereas SSgt Tay was. I concluded that the contemporaneous statements were made by the Accused.

182 As for P130 and P131, I did not believe the Accused's version of how they came about. First, I found that the Accused was brought back to the lock-up only once on 12 April 2007, at around 6.00 pm. I based my finding on the master lock-up diary which showed that the Accused was brought back to the lock-up once on that day at 6.00 pm. Although another diary, *ie*, the male lock-up diary, showed that he was brought back on that day at 6.20 pm (NE 684), the difference in time is explicable by ASP Soh's undisputed evidence that when an accused person is first brought to the lock-up office (where the lock-up diaries are maintained), his arrival is first entered in the master lock-up diary. An entry is only made in the male lock-up diary after the accused has been searched and when he is transferred to his cell (NE 685). In any event, neither of these two diaries showed that the Accused had been brought out of or returned to the lock-up twice that day.

183 During the trial, the Defence had highlighted that Sgt Yap's conditioned statement said that he had escorted the Accused back to the lock-up at about 5.00 pm on 12 April 2007 but Sgt Yap had testified that this was a mistake as this escort event in fact took place on 10 April 2007 (NE 703). This was consistent with his own pocket book which showed that on 12 April 2007, he was attending a Preliminary Inquiry at the High Court from 1.50 pm to 5.30 pm. On further questioning it was revealed that Sgt Yap had on a previous occasion updated entries for several days in his pocket book at one go, causing the Defence to cast doubt on the accuracy of his pocket book. I have already referred to that occasion at [115]. According to Sgt Yap, that previous occasion was in respect of entries made for the period 2 to 6 February 2007. When it was suggested to him that the period extended up to 12 April 2007, he denied this (NE 732). In any event, I reiterate that the lock-up diaries showed that the Accused was brought up or returned only once to the lock-up and ASP Soh's investigation diary showed that the Accused was brought down once to the lock-up room on 12 April 2007 (see [146]).

184 I digress to mention two points. First, in *PP v Dahalan Bin Ladaewa* [1995] SGCA 87, the Court of Appeal had expressed its concern about recording notes in one medium and then transferring the notes to the pocket book instead of writing the notes directly in the pocket book. In that case, the officer who did so had expanded on what was recorded originally when he was transferring the notes onto his pocket book. Accordingly, it is not a good excuse for an officer to say that he had to write his entries elsewhere for the time being because there was no new pocket book to be issued to him at the material time. There must always be an adequate supply of such pocket books and officers must always be on the alert to obtain a new pocket book to write their entries at the time of occurrence or as soon as possible after that. Officers should not treat the temporary absence of a pocket book lightly. Secondly, officers who are to sign conditioned statements prepared by someone else, usually the investigation officer, should be given time to check and should in fact check the accuracy of all details in the conditioned statement instead of treating it as an annoyance or a routine to be undertaken with minimum attention and time.

185 It seemed to me that the Accused had claimed that he had been brought back to the lock-up at 5.00 pm on 12 April 2007 and then brought back up to see ASP Soh again later on the same day because the Accused had relied on Sgt Yap's conditioned statement (referring to 5.00 pm of 12 April 2007) and P131 (which stated that the recording finished at about 6.00 pm on 12 April 2007). That was why the Accused came up with the evidence that the 12 April 2007 statement was first taken from him before 5.00 pm and he was then tricked into signing P131 later the same day when he was allegedly brought up to see ASP Soh again. Unfortunately for the Accused, the date in Sgt Yap's conditioned statement was wrong, as I have said, and the other evidence belied the Accused's version about having been brought out twice that day.

186 Secondly, on the Accused's own evidence, he knew after 10 April 2007 that he was facing capital charges. Even if he had trusted ASP Soh (as he claimed), the gravity of the charges against him made it unlikely that he did not read, even cursorily, through the sheets he first signed purportedly on 12 April 2007 and allegedly thinking that that was the six-page 10 April 2007 statement. The same reasoning applied for the second set of sheets he was given to sign on 12 April 2007. I also accepted the Prosecution's submission that ASP Soh was unlikely to have stepped out of the office as alleged by the Accused.

187 I now turn to the two Ameertech Remittance and Exchange receipts for a total value of US$800 bearing the name Anosike Wilson. At this juncture it is apposite to remind counsel to always consider who best to call for evidence on a given issue. The Prosecution did not adduce evidence from SI Sea that the two Ameertech Remittance and Exchange receipts were amongst the personal effects that SI Sea took from the Accused, although SI Sea had stated that he seized the Accused's personal effects from him at the void deck (NE 226). Instead, the Prosecution relied on the evidence in ASP Soh's conditioned statement that SI Sea had handed him the Accused's personal effects, which included the two Ameertech Remittance and Exchange receipts. This did not necessarily mean that SI Sea had found those receipts on the Accused when the Accused was searched at the void deck. Thus, the Prosecution could not rely on these two Ameertech Remittance and Exchange receipts as corroborative evidence for P130 and P131.

188 Finally, if I accepted the Accused's evidence about P130 and P131 it would mean that ASP Soh had fabricated P130 and P131 and tricked him into signing each of them. This would be in addition to the insinuation that the vegetable matter from the master bedroom was planted by CNB officers or someone else and the suggestion that SSgt Yap had fabricated the contemporaneous statements. There were some inconsistencies in ASP Soh's evidence. For example, he stated that the Accused only broke down and cried on 12 April 2007 when P130 shows that this was during the recording of P130 on 10 April 2007. On the whole, however, I found ASP Soh to be a steady and reliable witness whereas the Accused was not a credible witness. Indeed, I found the Accused to be an intelligent and cunning person. I have mentioned some instances when he lied. There were others. For example, I did not accept the Accused's evidence as to why he kept Anosike Wilson's student pass. Even if he had come across the pass in the circumstances he described (see [82]), I was of the view that he was keeping it to pass off as Anosike Wilson and not because he was trying to locate that person as a fellow Nigerian. He did not even ask anyone from the hotel, where the pass was allegedly found, about Anosike Wilson's particulars.

189 I concluded that P130 and P131 were indeed the long statements given by the Accused. I found that the Accused's possession of the vegetable matter from the master bedroom and his knowledge that it was cannabis were proved because of the contemporaneous statements, P130 and P131. P131 clearly described how the Accused had taken out the blocks of vegetable matter which had originally been kept in the black UBS Warburg bag and placed them in the master bedroom (see [51]). Paragraph 19 of P131 (see [51]) and para 17 of P130 (see [44]) showed that he knew that the vegetable matter was marijuana, which Ms Mangudi and Dr Yap had testified was cannabis (see [45]). The second contemporaneous statement (see [23]) also showed that the Accused knew that the vegetable matter from the master bedroom was "grass" or "weed", which Ms Mangudi and Dr Yap had testified were common street names for cannabis (see [24]). Thus, I found that the cannabis in the master bedroom was brought and left there by the Accused, knowing that it was cannabis.

190 The Accused's evidence that he had no knowledge of the vegetable matter from the master bedroom until late November 2007 was clearly intended to bolster his position that he had thought that the handwritten charge was for the possession of the vegetable matter from the black luggage bag in the taxi (although the Defence never explicitly suggested this to any prosecution witness).

However, I have already found that the vegetable matter from the master bedroom was placed there by the Accused. This was a crucial finding. It meant that, even if the Accused did not see the vegetable matter from the master bedroom being photographed in the living room or being weighed in the Exhibit Management Room, he could not claim that he did not know that blocks of vegetable matter, apart from the vegetable matter from the black luggage bag in the taxi, had been recovered from the master bedroom.

191 I also found that, contrary to the Accused's assertion, the Accused had seen the items from the master bedroom, including the blocks of vegetable matter from the master bedroom, when they were recovered by Sgt Ee. Sgt Ee said he had shown the blocks of vegetable matter to the Accused one by one (see [15]). The Accused's version of how Sgt Ee showed him the Fila bag in the master bedroom was not believable. It did not make sense for the Accused to reply to Sgt Ee's question "You know what are these?" by saying that he did not know, if he could not see what was inside the Fila bag in the first place. The more believable response would have been to say that he could not see what Sgt Ee was referring to, or to mention the Bible, aftershave, cologne and perfume since that was what his friend John had allegedly told him was inside the Fila bag. It was true that Sgt Ee had accepted that the details of how he showed the items from the master bedroom to the Accused were important and should have been stated in his conditioned statement (instead, he had said generally that the items were recovered "in the presence of" the Accused). However, on the whole I found Sgt Ee a steady and reliable witness and accepted his oral evidence that he had showed various blocks of vegetable matter from the master bedroom to the Accused as he had described (see [15]) and that the Accused had remained silent throughout. The Accused's silence when he was being shown the items was further evidence that he knowingly possessed the vegetable matter from the master bedroom. Although Sgt Ee mentioned that he did not expect the Accused to say anything when he (Ee) had shown the blocks to him (the Accused), this might have been because Sgt Ee had treated the Accused as a suspect who would not want to volunteer evidence. I would have expected that if the Accused were ignorant of the blocks or vegetable matter from the master bedroom, he would have expressed some surprise or make some inquiry when the blocks were shown to him.

192 It was possible that the Accused might not have seen what was being photographed in the living room because there were many people in the living room and they might have blocked his view. However, ASP Soh said he had told the Accused that day that the FMB officers would first start taking photographs of the vegetable matter from the master bedroom followed by photographs of the vegetable matter from the black luggage bag in the taxi. I accepted ASP Soh's evidence on this.

193 Also, I did not believe the Accused's evidence that he was unable to see what was being weighed in the Exhibit Management Room. It had not been suggested to ASP Soh or Sgt Yap (who had helped to weigh the exhibits) that the Accused could not see or was not interested in seeing what was being weighed. Furthermore, the Accused was evasive in his testimony. At first, he claimed that the reason he did not see what was being weighed was that he only "sometimes" focused on the weighing (NE 1064). Later, however, he stated that the reason was that the two officers doing the weighing were standing in between him and the table and their bodies were blocking his view (NE 1065). I found that the Accused was in fact able to see the vegetable matter from the master bedroom when it was weighed in the Exhibit Management Room.

194 I was also of the view that ASP Soh had informed the Accused in the Exhibit Management Room that he would first weigh the vegetable matter from the master bedroom, then the vegetable matter from the black luggage bag in the taxi, and that he had used the word "Cellini" (the brand of the black luggage bag in the taxi) to describe the black luggage bag in the taxi. ASP Soh's rebuttal evidence on this point was consistent with his earlier testimony.

195 The next question was whether the Accused knew that the subject of the handwritten charge in P258 was the vegetable matter from the master bedroom, and not the vegetable matter from the black luggage bag in the taxi. I found that the Accused knew that the 14 blocks of vegetable matter referred to in the handwritten charge were not the 14 blocks of vegetable matter from the black luggage bag in the taxi. First, the Accused had said that the black luggage bag in the taxi was collected from an African woman (NE 809). Thus, if he had given the cautioned statement in P258 thinking that it was in respect of the vegetable matter from the black luggage bag in the taxi, he would have stated that he was helping "her" keep the luggage, instead of "him". It was unlikely that the use of the word "him" was a mere mistake, given that it was consistent with P130 (which stated that one James had asked the Accused to keep a luggage bag, later identified as the UBS Warburg bag in P131, for him) and P131 (which stated that one John had reminded the Accused to keep the UBS Warburg bag safe for his friend James).

196 Secondly, I accepted ASP Soh's evidence that he had added the words "in the master bedroom of Blk 465, Choa Chu Kang Ave 4" to the handwritten charge in the presence of the Accused and got the Accused to sign next to the amendment before the Accused gave the cautioned statement in P258. This meant that the Accused intended to refer to the vegetable matter from the master bedroom.

197 Thirdly, the weight of the drugs in the handwritten charge, *ie*, 6,581.10 grammes (see [58]) was very different from that in the typewritten taxi trafficking charge, *ie*, 14,015.70 grammes (see [36]). That ought to have alerted the Accused that the charges pertained to two different sets of vegetable matter. Even if I were to leave aside the evidence from Sgt Ee as to how he had produced each block of vegetable matter to the Accused in the master bedroom and the evidence of ASP Soh as to his telling the Accused that the different sets of vegetable matter would be photographed (in the living room of the flat) and weighed (in the Exhibit Management Room), the contemporaneous statements, P130, P131 and the cautioned statement in P258 considered together, showed that the Accused knew he was in possession of cannabis. Indeed, they also showed that he was trafficking in cannabis.

198 As the Accused alleged that he did not know that the handwritten charge in P258 was for trafficking, and not possession, of the vegetable matter from the master bedroom, I will elaborate further on this point. He claimed that he had thought that the handwritten charge was for possession of the vegetable matter from the black luggage bag in the taxi because, when serving him the typewritten taxi trafficking charge on 10 April 2007, ASP Soh had told him that he faced a trafficking and a possession charge and that the transportation of the vegetable matter from the black luggage bag in the taxi from Hotel 81 to Block 465 constituted trafficking while possession meant possession of the drugs at the point of arrest.

199 However, the handwritten charge in P258 clearly stated that: "You… are charged that you… *did traffic* in a controlled drug…*by* having in your *possession* fourteen (14) blocks of vegetable matter, weighing about 6,581.10 grams of cannabis…". I also noted that during the trial, when the Accused was asked to explain how the charge in P258 differed from the typewritten taxi trafficking charge, the Accused appeared at one point to deliberately skip over the word "traffic" in the charge in P258 (NE 1144–45), suggesting that he himself knew that this word undermined his evidence that he thought that it was a charge for possession only.

200 There was also other evidence showing that the Accused was in possession of the cannabis for the purpose of trafficking.

201 The sheer quantity of the cannabis in the master bedroom (2,604.56 grammes - see [50])

suggested that the Accused did not have possession of it for personal consumption. The weighing scale and the small empty plastic packets were drug trafficking paraphernalia (see *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR 550 at [7], [32] and [48] and *Ong Ah Chuan v Public Prosecutor* [1980-1981] SLR 48 at 59C).

202 I accepted the Prosecution witnesses' evidence on how the items from the master bedroom were recovered, including the drug trafficking paraphernalia (see [13]). Also, Mdm Siti had testified and I accepted that the weighing scale was not kept in the kitchen (NE 281). I found that the Accused had deliberately lied about the location of the weighing scale as he knew that it would implicate him in the trafficking of controlled drugs.

203 Thus, since it was proved that the Accused had in his possession cannabis in the master bedroom for the purpose of trafficking, the Accused had committed an offence under s 5(1)(a) read with s 5(2) of the Act (see [169]–[171]).

204 Alternatively, since the Prosecution had proved (without the aid of the presumptions in s 18) that the Accused was in possession of more than 15 grammes of cannabis, the presumption under s 17(d) of the Act applied. Section 17(d) states:

> **17.** Any person who is proved to have had in his possession more than —
>
> …
>
> (d) 15 grammes of cannabis;
>
> …
>
> 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.

The Accused was not able to rebut that presumption. He made no suggestion that the cannabis in the master bedroom was for personal consumption or any purpose other than trafficking. In the light of the large amount of the cannabis and the drug trafficking paraphernalia, he would not have succeeded even if he had tried to make such an argument (see [201]).

205 Furthermore, even if I did not rely upon the Accused's statements (*ie*, the contemporaneous statements, P130, P131 and the cautioned statement in P258) his possession of the vegetable matter from the master bedroom would be presumed under s 18(1)(c) of the Act, which reads:

> **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 —
>
> …
>
> (c) the keys of any place or premises or any part thereof in which a controlled drug is found; …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.

206 The Accused possessed the key to the master bedroom (of which he was the sole occupant)

where the cannabis was found and thus was presumed to have had the cannabis in his possession. He was unable to rebut the presumption. Through the Accused's evidence that he had been brought out of the master bedroom at one point during the search (of the master bedroom) to get a drink of water, the Defence left dangling in the air the possibility that Sgt Ee had planted the vegetable matter from the master bedroom. However, the Defence stopped short of suggesting this to Sgt Ee. I found the Prosecution witnesses' evidence as to how the vegetable matter and items from the master bedroom were recovered to be reliable and had no hesitation in accepting their evidence.

207 I also did not accept the Accused's evidence that he was brought out of the master bedroom to the kitchen during the search. Aside from the evidence of SI Sea, Sgt Ee, Sgt Vijay and SSgt Tay that the Accused did not leave the master bedroom during the relevant time (see [16]), there was still the independent testimony of Mdm Siti that she had not seen the Accused leave the master bedroom from the time he was brought in to at least about two hours afterwards. (NE 289)

208 Furthermore, the credibility of the Accused's evidence as to how he had been brought out of the master bedroom for a drink was doubtful. The fact that he demonstrated with such confidence and conviction at least four times in court how he had used his left hand to point out the direction of the kitchen to the CNB officers (to get water) (NE 957–60), when the undisputed evidence was that his hands were bound behind his back (whether by handcuffs or hand restraints) in the master bedroom cast serious doubt on the veracity of his testimony.

209 I found that the Accused was not brought out of the master bedroom to drink water and thus there was no time at which the CNB officers could have planted the cannabis in the master bedroom. I also rejected the Defence's submission that Sgt Ee had tampered with evidence in the master bedroom by breaking a lock on the Fila bag. No broken lock was identified by anyone.

210 The next question was whether someone else (apart from the CNB officers) might have put the vegetable matter in the master bedroom. In the present case, the Defence did not challenge the evidence of Mdm Siti and her husband that they did not use the spare key to enter the master bedroom for the period between 26 March 2007 and 9 April 2007. In any event, I found that they did not do so.

211 As for the two Bangladeshis, the Accused's evidence that he last saw one of the Bangladeshis in the afternoon of 8 April 2007 was contradicted by Mdm Siti's evidence that the two Bangladeshis had moved out on 7 April 2007 (NE 54, 281). Mdm Siti was a steady witness and I accepted her evidence on this point. The two Bangladeshis could not be examined as, according to ASP Soh who had checked with the Immigration Authority, one of them had left Singapore on 30 January 2008 while he was unable to trace the other as that person's Foreign Identification Number was invalid (NE 637). In any case, they did not have a key to the master bedroom, even when they were still residing in the flat.

212 The possibility of either the Bangladeshis or someone else entering the master bedroom through the kitchen window was speculative. Significantly, there was no reason for anyone to leave controlled drugs in a room occupied by someone else, especially when the drugs were not concealed in a hidden space. Anyone else leaving the drugs in the master bedroom where they were found would know that it would be likely for the Accused to find them.

213 I agreed with the Prosecution (see [131]) that the facts of the present case were distinguishable from that of *Poon Soh Har*. As for *Lee Lum Shuen*, the controlled drugs in that case were found in the bottom drawer of a hi-fi cabinet in the dining room. It was in this context that the Court of Appeal said that where controlled drugs are found in premises rented by an accused, it is

possible to cast doubt on a prosecution case by showing that there were other occupants of the premises. In the case before me, the cannabis was found in the master bedroom and the Accused was the sole occupier thereof.

214 In the circumstances, I concluded that, even if I were not to rely on any of the Accused's statements, the Accused had not rebutted the presumption of physical possession of the cannabis under s 18(1)(c) of the Act. In light of that presumption, he would also be presumed under s 18(2) of the Act to have known the nature of the controlled drug unless the contrary was proved. There was no evidence to show the contrary. His evidence that he thought the contents in the Fila bag (allegedly locked) were something else was patently false.

215 Where the presumptions in s 18 have been relied upon to establish physical possession and knowledge of the nature of the controlled drug, the court cannot rely on the presumption in s 17(d) that possession was for the purpose of trafficking (see *Mohd Halmi bin Hamid v Public Prosecutor* [2006] 1 SLR 548 at [7]; see also *Teo Yeow Chuah v PP* [2004] 2 SLR 575 at [34]). The burden would then be on the prosecution to prove that the possession of the controlled drug was for the purpose of trafficking in the controlled drug (see *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR 550 at [35]). In the present case, in view of the large quantity of cannabis and the drug trafficking paraphernalia, I would have concluded that the Prosecution had proved beyond reasonable doubt that the Accused had possession of the cannabis in the master bedroom for the purpose of trafficking (see again the cases cited in [201]).

216 For completeness, I would like to deal with some other points.

217 I now turn to the rebuttal evidence of the HSA analysts. Based on the scientific evidence on the Accused's urine samples, I was of the view that the Accused had been knowingly abusing cannabis. The Accused could not explain how else the chemical compound could have gotten into his body. I agreed with the Prosecution that his ambivalent testimony on his consumption of cannabis indicated that he had in fact knowingly consumed cannabis. If he had not, he would have at least expressed shock that the chemical compound had been found in his urine samples (but he did not).

218 Furthermore, I found that there is no such plant as "cannabis ativa". I concluded that the Accused knew about *cannabis sativa* when he was arrested on 9 April 2007. He had tried to be clever by referring to "cannabis ativa" and refusing to acknowledge that what he was in fact referring to was *cannabis sativa*. I was also of the view that he knew about "cannabis" and "marijuana", and what "weed" or "grass" meant in the drug trade before his arrest on 9 April 2007.

219 I shall also deal briefly with the Accused's conduct during his arrest and in the flat.

220 Most of the inconsistencies pointed out by the Defence in the prosecution witnesses' accounts of the arrest were not material: for example, how many officers were deployed to arrest the Accused and whether handcuffs were used on the legs of the Accused in addition to his hands. A certain number of discrepancies in the accounts of the arrest was understandable, given the circumstances in which the arrest took place.

221 In respect of whether the Accused had put up a violent struggle and resisted arrest, I accepted the evidence of the ID officers and placed little weight on the evidence of the STF officers who arrived later. For example, SSgt Choo of STF had said in his conditioned statement that when the first team of STF officers arrived at the car park near to Block 465 on 9 April 2007, he saw the ID officers arresting the Accused and claimed that the Accused resisted arrest. However, he then stated on cross-examination that he "won't know" whether the Accused was resisting or not (NE 316).

SSgt Tay of STF had also testified on re-examination that he "could not see" the Accused resisting arrest or being violent (NE 514). However, the ID officers' evidence was basically consistent and I found that the Accused had put up a violent struggle when he was arrested.

222 I was of the view that the Accused could not have been resisting arrest due to his fear of being caught as an illegal overstayer. Sgt Leow's testimony that he had identified himself as a CNB officer was corroborated by the evidence of SI Goh (NE 160) and Senior SSgt Yeo Shuan Chew (NE 173). In contrast, none of the officers involved in the arrest testified that they heard any of the officers identify himself as being from the Singapore Police (NE 145, 160, 173, 195). While SI M Subramaniam testified that it was possible that someone had said "Singapore police" that day, his evidence was still that he did not hear anyone say it (NE 209). Thus, I was of the view that the Accused knew that the officers were from CNB and not the Singapore Police. His violent resistance to arrest by CNB officers was evidence that he was involved in the possession or trafficking of controlled drugs (although by itself it would have been insufficient to prove the present charge beyond reasonable doubt).

223 As for the Accused's alleged non-cooperation with SI Sea (in that he did not tell SI Sea that he (the Accused) had the key to the master bedroom), I accepted SI Sea's evidence on this but I did not place any weight on the Accused's omission as there could have been many reasons why he had remained silent. It was also not material whether the key finally used to open the master bedroom was in fact the Accused's key or Mdm Siti's key, since the Accused did not deny that one of the bunch of nine keys seized from him at the void deck could be and had been used by him previously to open the master bedroom door.

Summary

224 Based on my findings above, I concluded that the Prosecution had proved that the Accused was in possession of the vegetable matter from the master bedroom and that he knew that the vegetable matter was cannabis. The Prosecution had also proved that the Accused had possessed the cannabis for the purpose of trafficking. Alternatively, the presumption in s 17(d) that he was in possession of the cannabis for the purpose of trafficking applied and the Accused failed to rebut this presumption.

225 Even if the Accused's statements (*viz*, the contemporaneous statements, P130, P131 and the cautioned statement in P258) could not be relied upon, I would have concluded that by virtue of the Accused's possession of the key to the master bedroom, he was presumed to possess the cannabis in the master bedroom under s 18(1)(c) of the Act and he was not able to rebut that presumption. Since the Accused had been proved or presumed to have the cannabis in the master bedroom in his possession, he was presumed under s 18(2) to have known the nature of the vegetable matter, *ie*, cannabis. The Accused was also not able to rebut the presumption in s 18(2). In addition, the Prosecution did prove that he was in possession of the cannabis in the master bedroom for the purpose of trafficking.

226 I found that the Prosecution had established the present charge against the Accused beyond a reasonable doubt. I therefore convicted and sentenced him according to the law.

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