

Public Prosecutor v Amir bin Jubir
[2008] SGHC 80

Case Number : CC 7/2008
Decision Date : 29 May 2008
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Francis Ng and Shawn Ho (Deputy Public Prosecutors) for the prosecution; Johan bin Ismail (Johan Ismail & Co) and Ong Cheong Wei (Ong Cheong Wei & Co) for the accused
Parties : Public Prosecutor — Amir bin Jubir

Criminal Law

29 May 2008

Woo Bih Li J:

Introduction

1 Amir bin Jubir ("the Accused") faced the following charge under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the Act"):

That you, Amir Bin Jubir

On the 31st day of May 2007, at or about 8.00 p.m., in front of Block 546 Bedok North Street 3, 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 76.07 grams of diamorphine in your possession for the purpose of trafficking, 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, Chapter 185.

2 At about 4.30pm of 31 May 2007, officers of the Central Narcotics Bureau ('CNB') attended a briefing to look out for and arrest the Accused who was believed to be collecting a drug consignment from Malaysia and travelling to Singapore the same day in a Proton Wira bearing registration number JGJ 7481 ("the Vehicle").

3 At about 7.15pm, one of the CNB officers reported that he had spotted the Vehicle entering the Woodlands Checkpoint. The Vehicle was tailed by various teams of CNB officers. Eventually, at about 8.05pm, the Vehicle entered the car park of Block 543 to Block 547 Bedok North Street s3. The Accused was observed alighting from the Vehicle carrying a red paper bag ("the red paper bag") and walking towards Block 546. Instructions were then given for his arrest. Various officers then proceeded to arrest the Accused who put up a struggle but was eventually handcuffed and arrested. Thereafter the Accused and the red paper bag were brought to the void deck of Block 543 to await the arrival of CNB officers from the Special Task Force ("STF"). At about 8.20pm, the Accused and the red paper bag and its contents were handed over to STF officers.

4 The Accused was then escorted to one of the second floor staircase landings of Block 543. He was searched and a mobile phone was recovered from one of the pockets of his jeans. Subsequently

a call was received on the Accused's mobile phone from a male Chinese who was later ascertained by CNB officers from the Accused to be "Ah Pui" whose name is Loh King Fong ("Loh"). In the course of this call and other calls between the Accused and Loh, Loh arranged to meet the Accused at the "same place". The Accused informed CNB officers that the "same place" was a reference to the staircase landing next to his residence at Block 546 Bedok North Street 3 #02-1418. At about 9pm, the Accused received a call from his mobile phone from Loh stating that he had arrived. Loh was then arrested.

5 At about 9.15pm, a statement was recorded from the Accused by Senior Staff Sergeant Ng Yeong Kok ("SSSgt Ng") inside CNB vehicle SGE 4965E. The Accused chose to speak in English and his statement was recorded by hand in the pocketbook of SSSgt Ng which the Accused signed. I did not know why the Prosecution and the Defence referred to this statement in submissions as the Accused's oral statement. It was no more oral than his subsequent statements which were typed out. I will refer to this statement as "the first statement". In the first statement, the Accused said that two wrapped bundles in the red paper bag contained medicine.

6 At about 10.15pm, the Accused was escorted to his residence. Inside his apartment, the Accused was asked whether he had anything to declare. He indicated that there were two packets of a granular powdery substance inside a locked drawer in a cupboard in a bedroom and that the drawer could be opened with one of the keys found inside the red paper bag. The CNB officer used one of the keys to open the drawer and seized the two packets. Two notebooks were also seized from a shelf in the cupboard. The CNB party then left with the Accused and arrived at CNB headquarters at about 11pm.

7 At about 12.43am of 1 June 2007, Inspector Lim Wee Beng ("the IO") took over custody of the Accused and the red paper bag which contained the two bundles, cash amounting to S\$800 and a bunch of keys. For the avoidance of confusion, I would mention that the two bundles were not the two packets which were seized from the Accused's residence.

8 At about 1.30am of 1 June 2007, the two bundles and the other contents were removed from the red paper bag in the presence of the Accused. The two bundles were unwrapped and each was found to contain 60 packets of a granular powdery substance. These items, believed to contain controlled drugs ("the drug exhibits"), and the other contents mentioned at [7] above were marked and photographed. The drug exhibits were then locked in a safe in the IO's office.

9 At about 3.20am, the drug exhibits were removed from the safe and weighed in the presence of the Accused. The weight of each packet with its contents was recorded in a record book and the drug exhibits were then locked up again in the IO's safe.

10 At about 5.30am, the IO proceeded to record a cautioned statement from the Accused with the aid of an interpreter in the Malay language as the Accused said he preferred to converse in Malay. A charge of trafficking in a controlled drug, *i.e.* 120 packets of powdery substance weighing 960.29 grams containing diamorphine, and the consequence of capital punishment was read out and explained to the Accused. The usual warning was given to him to say whatever he wanted to say in his defence. He then said:

I admit guilty to the charge. I do not have any drug record and I don't smoke any drugs. This is the first time I am involved in a drug case I regretted [*sic*] what I have done and really hope that I will not be given the death sentence. My family loved [*sic*] me. The driver is not guilty. He doesn't know anything. I hope he will not be involved in this case. He is innocent. That's all.

11 The Accused subsequently made eight long statements to the IO with the aid of an interpreter between 2 June 2007 and 6 June 2007. It was not disputed that he made the first statement, the cautioned statement and the eight long statements voluntarily and I so found.

12 On 7 June 2007, the IO retrieved the drug exhibits from his safe. He re-marked one bundle of 60 packets as "Z" and another bundle of 60 packets as "Y" and thereafter handed them over the Ms Lim Jong Lee Wendy ("Ms Lim"), an analyst with the Health Sciences Authority. Ms Lim gave evidence that one lot of 60 packets (which she received from the IO in a sealed bundle marked "Z") contained not less than 37.77 grams of diamorphine at a confidence level of 99.99999%. Another lot of 60 packets (which she received from the IO in a sealed bundle marked "Y") contained not less than 38.30 grams of diamorphine at a confidence level of 99.99999%.

13 Of the two notebooks seized from a drawer in the Accused's residence, one was a bigger notebook ("the bigger notebook") and the other was a smaller one, red in color, with the numbers "555" on the cover ("the red "555" notebook"). The Accused accepted that he made the handwritten notes in each notebook.

14 In the bigger notebook, there were various entries with dates, times, names and details. For example, a page of the bigger notebook had the following entries:

16/5/07 (went in Total - 120 + 56 = 176
JB)

* 04 - 30 + \$6000 - \$100 (short of \$100)

* 02 - 2 + \$660 - \$60 (my commission)

* Ah San - 3 fish + \$4500	Total
\$11000	

15 Other pages contained words like "barang", "cold", "panas", "slab", "fish".

16 In the red 555 notebook, there was a page with two headings "Business" and "Sideline". Under "Business", the following words were listed "Asap", "Ikan", "Sayur", "Kunci", "Minyak Wangi", "Ah

Long", "Pompan", "Assasin", "Liquor", "H/P" and "Ubat".

17 Senior Staff Sergeant Mohamed Affendi Bin Ideris ("SSSgt Affendi"), gave evidence on the meaning of some words above. As at the time of the trial, he had had more than 12 years of experience as a CNB officer. He said that:

- (a) "Barang" is a Malay word which literally means "things" but in the context of the drug trade, it refers to "drugs";
- (b) "Cold" is the street jargon for "Ice";
- (c) "Panas" is a Malay word which literally means "hot" but is street jargon for the drug "diamorphine" while the English street jargon for diamorphine is "heroin";
- (d) "Slab" is the street jargon for the drug "Erimin 5" which comes in slabs;
- (e) "Fish" is the street name for the drug "Ecstasy". The Malay street name for "Ecstasy" is "ikan";
- (f) "Sayur" is a Malay word which literally means "vegetable" but is street jargon for the drug "cannabis";
- (g) "Kunci" is a Malay word which literally means "key" but is street jargon for the drug "Erimin 5"; and
- (h) "Ubat" is a Malay word which literally means "medicine" but is street jargon for heroin.

18 SSSgt Affendi also noted that one page in the bigger notebook had the name "Andrew Teo (2 pcks) - \$660". He understood "pcks" to mean "packets". In his experience, one packet of heroin had a street price of between S\$200 and S\$300 per packet. No other drug price was close to such a price.

19 Sergeant Muhammad Fardlie Bin Ramlie ("Sgt Fardlie"), another CNB officer with four and a half years experience as a CNB officer as at the time of the trial, said that the scientific name for "Ice" is "methamphetamine". He corroborated SSSgt Affendi's evidence on the street jargon for "barang", "cold", "panas", "ikan", "sayur", "kunci", "ubat". He said that the street price for two packets of heroin is S\$660. Heroin is sold in straws or packets and each packet contains about 8 grams of heroin. The street jargon had been in use longer than his length of service in the CNB.

Background events according to the Accused

20 I come now to the background as to how the Accused came to be carrying the heroin which was the subject of the charge. The evidence is from his eight long statements and his oral testimony.

21 According to the Accused, he was at a coffeeshop near his residence on 11 April 2007 when an Indian man came to join him and introduced himself as "Maren". They had drinks and spoke in English. The Accused told Maren that he understood he was going to face a fine from the court the next day for offences that he had committed. Maren said he would try to help the Accused. When the Accused eventually left the coffeeshop, after sitting with Maren for about three hours, Maren, whom the Accused thought was drunk, asked for the Accused's telephone number. The Accused gave Maren his mobile telephone number. On 12 April 2007, after a S\$3,000 fine had been imposed on the Accused and he had been sent to the lock-up of the Subordinate Courts, he was informed that he could leave

as someone had paid the fine for him. The Accused then met his brother and friends outside the Subordinate Courts and they told the Accused that an Indian man, who was a friend of the Accused's, had paid the fine and would call the Accused later on. The Accused said he subsequently made a total of nine trips to Malaysia in which he met Maren.

First trip

22 The first trip took place about one and a half months before the Accused gave a statement on 2 June 2007. Maren had called the Accused after 12 April 2007 and asked the Accused to go to Johor Bahru to meet him. The Accused agreed to meet him as he wanted to see Maren face-to-face to find out whether he was the person who had paid the Accused's fine. The Accused subsequently travelled to Johor Bahru and met Maren at a coffeeshop. Maren asked the Accused how he was and about the Accused's fine. The Accused said that it had been paid and asked Maren whether he was the one who had paid the fine. However, Maren merely laughed and dismissed the Accused's question. Maren also told the Accused that he sold medicine "all over". The Accused and Maren then had dinner and went to do some shopping. The Accused was given S\$100 to take a taxi back to Singapore. From this meeting, the Accused was convinced that it was Maren who had paid his fine.

Second trip

23 A week or two after the first meeting in Johor Bahru, Maren called the Accused again and the Accused made a second trip to Johor Bahru where he met Maren. The meeting took place in a terrace house where the Accused saw a Chinese man smoking Shisha using a small vase which contained water. The Accused did not think that there was anything wrong with smoking Shisha as he had seen people doing that along Arab Street in Singapore, although those people were using vases longer than the one used by the Chinese man. He heard Maren speak to the Chinese man in Malay while he (the Accused) was watching television. Subsequently Maren passed the Accused a wrapped bundle to deliver to Maren's friend, Vincent. The bundle looked like the two bundles found in the red paper bag. When the Accused asked Maren why the bundle was wrapped up, Maren explained that this was because it contained medicine that was rare and expensive and which Maren did not want to become spoiled or come into contact with air. The Accused trusted Maren who had helped him by paying his fine. Also, the Accused was thinking that if the substance was illegal Maren would not have handed the bundle to him in a paper bag without asking the Accused to hide the bundle. Maren gave him S\$50 and RM50 and a telephone number to contact Vincent after he returned to Singapore. He returned to Singapore with the bundle and delivered it to Vincent without inspecting its contents. He received a sum of S\$300 from Vincent for delivering the bundle. The Accused said that Maren had called him two minutes after he had delivered the bundle to Vincent and told him that Vincent was his worker and that he had instructed Vincent to give the S\$300 to the Accused for his efforts. When the Accused asked Maren why he was given so much, Maren told him to just take the money since he had no job and came from a poor family.

24 The Accused said about five days after he delivered the bundle to Vincent, he tried to contact Vincent because Maren's previous telephone number was not in use any more. However Vincent had changed his number. The Accused was trying to contact Maren to do further deliveries to earn money.

Third trip

25 A few days later, Maren called the Accused again using a private number as the number did not appear on the caller identification facility of the Accused's mobile phone. Maren asked the Accused to meet him in Johor Bahru as he wanted the Accused's help to deliver more bundles. The Accused

proceeded as requested and met up with Maren at a coffee shop. Thereafter they had dinner at a hawker centre. Maren's Indian friend Guru joined them after dinner and all three thereafter went to a double storey house without furniture. The Accused saw Maren and Guru smoking from vases which looked like those for smoking Shisha. The next morning, Maren, Guru and the Accused went to a big store where Maren bought ziplock bags, straws, gas refillers and other items that he explained to the Accused were needed for his business. Maren passed another wrapped bundle to the Accused, which looked like the first bundle and instructed the Accused to buy a notebook. Maren did not give the Accused any instructions as to who to pass the bundle to, but told the Accused that he would call between 3.00pm to 4.00pm. Thereafter, the Accused returned to Singapore with the bundle and locked the bundle inside his bedroom cupboard. The Accused explained that he was in the habit of locking his cupboard because his younger brother Hamzah often used his clothes without his permission. The Accused then left his residence to purchase a notebook as instructed by Maren. The Accused purchased two small notebooks with "555" on the cover, one with a brown cover ("the brown "555" notebook) and the other was the red "555" notebook.

26 Later that day, Maren called the Accused and, after confirming that the Accused had bought a notebook, told the Accused to write down whatever he said inside the notebook. The Accused then did as he was instructed and copied down some names, numbers and sums of money inside the brown "555" notebook. Thereafter, Maren instructed the Accused to open the bundle that he had been given and to give the small packets inside to persons who would call the Accused. Maren told him that such persons were his employees. From then on, the Accused assumed that the callers were Maren's employees[[note: 1](#)]. The Accused opened the bundle and saw that there were 30 packets of a white granular/powdery substance inside which he assumed to be medicine. He asked Maren what this medicine was and Maren told him it was sulphur. He further asked Maren why it was white in colour when he thought sulphur was yellow and Maren replied that this was "mother of sulphur" and that it could be further processed to make more of it. The Accused said that he believed Maren as he did not have knowledge about medicine whereas Maren was in the business of selling medicine. The Accused subsequently delivered all the packets to persons who called him and collected several thousand dollars in total. He himself was paid S\$450. The Accused said that initially, he had handed over the packets without wrapping them up but was told by the intended recipients of the packets to wrap the packets first. Maren also called the accused and told him to wrap the packets to prevent air from entering the packets.

Fourth trip

27 About four days after the third trip, when all 30 packets had been distributed, Maren called the Accused again and asked the Accused to meet him at 'Today's', a big store in Masai, Johor Bahru, with the money that the Accused had collected. The Accused did as he was told and met up with Maren at a hawker centre. Maren was with three people who left shortly. While waiting for Guru, both of them went shopping and Maren bought the same things as before, via gas refillers, straws, scotch tapes and aluminium foil. Guru subsequently joined them and the three of them continued shopping. Thereafter they proceeded to a house located at Jalan Kanchil. There, Maren took out a bundle wrapped in a black plastic bag and closed the doors of the house, drew the curtains closed and laid newspapers on the floor of the hall[[note: 2](#)]. Maren also took out a weighing machine and small plastic bags that he had bought earlier. Maren then spoke to Guru in Tamil, following which the latter placed the bundle on the newspapers and tore open the black plastic bag, revealing a white plastic material containing a "stone-like yellow brick". Guru then used an empty bottle to smash this stone into powder. The Accused asked Maren what this was. His evidence as to Maren's reply varied. On some occasions, he said Maren told him it was sulphur, and on other occasions, he said Maren told him it was "mother of sulphur". This time the substance was yellow in colour, not white. Maren told him that the white ones were very rare but the yellow ones were good too. When the Accused saw

the yellow colour and heard that the substance was some kind of sulphur, he was more convinced that it was sulphur.

28 The Accused then helped Guru to scoop the powder into small plastic bags. Guru then weighed the small plastic bags containing the powder to make sure that the weight of each was 8 grams after which Maren sealed the packets using a burner. After about 120 packets had been packed in this manner, Maren placed 60 packets inside a bigger plastic bag and used masking tape to wrap the plastic bag into a bundle before doing the same for the remaining 60 packets. The two bundles looked like the ones in the red paper bag. Maren then gave the two bundles to the Accused and asked the Accused to go back to Singapore and wait for calls before giving the packets inside the bundles to those who called the Accused. The Accused brought the two bundles back to Singapore, locked them in his bedroom cupboard, and waited for the calls. One of the calls that the Accused received was from a male Chinese who collected 30 packets and gave the Accused S\$5,000. This person also subsequently collected other packets of substance on other occasions but the Accused was not able to remember his telephone number. The Accused also did not store the number "because these people [would] always change numbers"[\[note: 3\]](#).

Fifth Trip

29 Four days after the Accused collected the two bundles, Maren called and told the Accused to go to Johor Bahru to give him the money that he had collected. The Accused made his fifth trip to Johor Bahru where he met Maren and handed over about S\$10,000 to Maren. The Accused explained that there were times where he collected money in return for the packets he was delivering, and at other times, Maren had asked him just to collect money[\[note: 4\]](#). The S\$10,000 was from both sources.

30 The Accused received S\$300 from Maren for his transport and returned to Singapore where he continued to wait for calls before delivering the packets from the bundles that he had received during the fourth trip.

Sixth Trip

31 Four days after the fifth trip, Maren again called the Accused to go to Johor Bahru to pass him the money that had been collected. The Accused did as instructed and received S\$300 from Maren. He then returned to Singapore and continued delivering the packets inside the bundles that he had received during the fourth trip.

Seventh Trip

32 Three to four days after the sixth trip, Maren called the Accused and asked him to go to Johor Bahru again to pass him the money that had been collected. The Accused made his seventh trip to Johor Bahru where he met Maren in a four room flat and handed over the money collected. He received another \$300 and this time, he also received another wrapped bundle from Maren. Maren also told the Accused that he would call the Accused less frequently as he could see that the Accused was tired and the Accused was to keep the money that the Accused would collect until he called the Accused. After returning to Singapore, the Accused placed the bundle he had collected into his cupboard and locked it. Thereafter, Maren called him and gave him a few telephone numbers to arrange with the persons contacted for the delivery of the packets of substance (from the fourth trip). Maren told the Accused to delete the telephone numbers after the Accused had made contact. The Accused made the telephone calls and made deliveries to about five people at various locations and collected about S\$7,000 in all. Once again, there was no standard price for each packet. After making the deliveries, the Accused went home and opened the bundle he had received on his seventh

trip. There were 60 packets of white substance which looked like powder. He put the packets inside a paper bag and placed the bag in his cupboard and locked it. During the next ten days, the Accused would wait for calls before making deliveries. On one day he spoke to Maren to say it was too tiring to make the deliveries whereupon Maren told him that in future, the persons would come over to the Accused's place to collect the packets from the Accused. When the packets in the bundle were almost completely delivered. Maren told the Accused to collect money since some people had not paid in full for the packets they had received.

Eighth Trip

33 The Accused had accumulated between S\$16,000 and S\$17,000 after collecting various sums of money. Maren subsequently called the Accused again and instructed him to go to Johor Bahru to collect another bundle but not to bring the money. When the Accused eventually met Maren in the course of this eighth trip, Maren passed two wrapped bundles to the Accused, one of which was smaller than the other. Maren said both bundles contained a total of 80 packets. Maren also handed S\$500 to the Accused as payment for delivering the two bundles to Maren's employees. When the Accused arrived in Singapore he opened both bundles. The powder in the packets was white in colour. He proceeded to wrap the packets with paper. Some of the packets in these two bundles were collected by Loh on the same day on which the Accused returned to Singapore with the two bundles.

Ninth trip

34 On 31 May 2007, about four days after the Accused had collected the two bundles, he received a call from Maren who instructed the Accused to go to Johor Bahru to see him after delivering some packets to another guy. After the delivery, the Accused was left with two packets of white powder. The Accused then went to Johor Bahru bringing with him about S\$36,000, including S\$17,000 he had collected previously, in the red paper bag. When the Accused met Maren in Johor Bahru, he handed over the money. Maren counted the money and handed the Accused S\$500 and two wrapped bundles which the Accused placed into the red paper bag.

35 One Mohamed Nasir then drove the Accused back to Singapore in the Vehicle. He picked up two other passengers along the way and in Singapore he dropped them off at Choa Chu Kang before dropping the Accused near his home. After alighting, the Accused was walking to Block 546 Bedok North Street 3 carrying the red paper bag in his left hand and his mobile phone in his right hand when he saw Sergeant Muhammed Nizammudin Bin Jailani ("Sgt Nizammudin") walking towards him and staring at him as though he wanted to pick a fight with him. Sgt Nizammudin then pushed his shoulder against the Accused's. The Accused then punched Sgt Nizammudin as he thought that the latter wanted to create trouble for him. The Accused was immediately surrounded by a group of people who attacked him. One kicked his right hand and his mobile phone fell to the ground. He was pushed to the ground still holding onto the red paper bag. He was eventually handcuffed, at which point he let go of the red paper bag. The Accused said Sgt Nizammudin did not identify himself as a CNB officer and he had clung onto the red paper bag because he thought he was being attacked by robbers and there was money in the bag. After he had been handcuffed, one of the persons in the group introduced himself or herself as a CNB officer. The Accused said that he had asked "Why?" at some point in time and claimed that he was told "Your game is over". The Accused was escorted to the second level of Block 543 Bedok North Street 3. There, an officer opened the red paper bag and took out two bundles. He asked the Accused what the bundles were and the Accused said that it was medicine. The officer opened one of the bundles and showed the Accused a packet of white powdery substance. He asked the Accused again what that was and the Accused said it was medicine. The officer then asked what medicine it was and the Accused said that it was sulphur. The officer then scolded the Accused and said that sulphur is yellow in colour and the Accused told the officer that he

knew sulphur was yellow but that this one was rare. He then asked the officer what it was and was told "That's heroin". The Accused said that the officer with whom he had been speaking was SSSgt Mohamed Affendi. The Accused also said that at that time he did not know what heroin was. The Accused asked the officer a few times what the item was and was told that it was a (controlled) drug. However, the Accused was not convinced because he believed Maren when Maren told him that it was sulphur.

36 The Accused also saw SSSgt Mohamed Affendi and Sgt Fardlie holding his mobile phone. Loh was making contact with the Accused through his mobile phone and eventually the Accused arranged to meet with Loh at Block 546 Bedok North Street 3.

37 The Accused was subsequently brought to a CNB vehicle where he gave the first statement. He was also escorted to his residence by CNB officers and asked whether there were any more bundles whereupon the Accused disclosed the two packets locked in his bedroom cupboard. The bigger notebook and the red "555" notebook were also seized from the Accused's bedroom wardrobe. The Accused explained that some of the contents of the bigger notebook had originally been copied down inside the brown "555" notebook that he had bought pursuant to Maren's instructions. After some time, the Accused found that he needed more space to record Maren's instructions. The Accused transferred the contents of the brown "555" notebook into the bigger notebook (which he bought later) before throwing the brown "555" notebook away. He had continued copying what Maren told him into the bigger notebook thereafter. He said that, with a few exceptions, everything else in the bigger notebook (including what had been copied over from the brown "555" notebook) had been written down on Maren's instructions. He also said that Maren had told him, when he had asked Maren why he had to write down all these things, that the information was not important to the Accused but was important for him (*ie*, Maren). Maren also told the Accused that he himself had recorded the information somewhere and if he were to lose that information, he could simply ask the Accused for the information. The Accused testified on certain words in the bigger notebook *ie*, "barang", "cold", "panas", "slab" and "fish". He said he did not know what they meant although he guessed that "slab" referred to slabs of panadol. He disagreed that these five words he had written were meant to refer to drugs, Ice, heroin, Eramin 5 or Ecstasy respectively. The Accused also testified as to the meaning of various entries written in the red "555" notebook under the heading "Business" on one of the pages therein. He said that the words "ikan", "sayur" and "kunci" had been written on slips of paper over the years and were later transferred by him into the red "555" notebook, after which he added in the word "ubat". The Accused said that the words "ikan" and "sayur" referred to an incident when a friend of his who sold fruits in the market had suggested that he start a business selling fish and vegetables in the market. He said that he wrote the word "kunci" because a couple, who were friends of his and who were wholesalers for women's accessories, had suggested that the Accused sell key chains together with them. As regards "ubat", the Accused claimed that this referred to the medicine or sulphur that he had been delivering. The Accused denied that "ikan", "sayur" and "kunci" were meant to refer to Ecstasy, cannabis and Erimin 5 respectively.

38 The Accused said that his admission of guilt to the charge in his cautioned statement meant that he was admitting only to the act of trafficking since it was explained to him that trafficking means the giving and receiving of money in return and he had been giving medicine and receiving money in return. The Accused said that when his cautioned statement was being recorded, he had forgotten that SSSgt Affendi had told him that he had been carrying heroin. However, it dawned on him then that they were drugs and not sulphur because the authorities would not spend so much time on sulphur. Also, he had heard CNB officers talking among themselves and saying that the substance was a (controlled) drug and telling the driver of the Vehicle at Police Cantonment Complex that it was a (controlled) drug. Finally, the Accused claimed that he had abhorred drugs since he was young. He felt remorseful and a deep sense of regret upon realising that he had in fact been distributing drugs

instead of medicine. He thus stated in his cautioned statement that he regretted what he had done and hoped he would not be given the death sentence.

The submissions

39 The Accused's position was that he had trusted and believed what Maren had said. He thought that he had been carrying sulphur on the various occasions including the occasion on the day of his arrest, *viz*, 31 May 2007. To support his position, he noted that he had not been asked to hide the previous bundles or those bundles he was carrying on 31 May 2007.

40 The Defence submitted that even Loh's evidence was in favour of the Accused's ignorance. Loh said that because the Accused had handed packets (of heroin) to him in public areas like a coffeeshop on some occasions, he thought that the Accused did not know that he (the Accused) was handling controlled drugs. Other locations of delivery included a main road. The packets were at times not wrapped although on other occasions they were.

41 The Defence did not dispute the evidence from the Prosecution that the various words I mentioned above in the bigger notebook and the red "555" notebook were street names for various controlled drugs. However, the Defence submitted that the Accused did not know that these words were street names for controlled drugs.

42 As for the first statement, the Defence pointed out that the Accused had already said that he was carrying medicine and submitted that he did not then say it was sulphur because there was no follow-up question as to what sort of medicine he was carrying.

43 As for the Accused's cautioned statement in which he admitted his guilt to a charge of trafficking in 960.29 gram of diamorphine, the Defence submitted that what the Accused was agreeing to was the act of trafficking. The Defence submitted that even the interpreter Mdm Sofia Binte Sufri ("Mdm Sofia") agreed that the Accused was agreeing to the act of trafficking only. Therefore the Defence submitted that the Accused had merely agreed to the *actus reus* but not to the *mens rea*. The Defence also submitted that the IO recording the cautioned statement should have asked the Accused why he was admitting guilty to the charge when in the first statement (to SSSgt Ng) he had said he was carrying medicine. This point presumed that the IO knew what the Accused had said in the first statement.

44 The Defence also submitted that the evidence of Staff Sergeant Fakhruddin Arrazi Bin Mohd Ismail ("SSgt Fakhruddin") who said he identified himself as a CNB officer should not be accepted as his evidence was unreliable. For example, this officer had said the Accused was not struggling violently whereas other officers said the Accused did do so.

45 The Prosecution submitted that the evidence of SSgt Fakhruddin that he had identified himself as a CNB officer should be accepted and that the Accused's violent struggle during the arrest suggested that he knew he was carrying controlled drugs.

46 The Prosecution submitted that I should not accept the Accused's evidence regarding his reasons for his cautioned statement as his evidence was not credible. First, although the Accused said he had sought an explanation of the word "trafficking" from Mdm Sofia, she said that he had not.

47 Secondly, during cross examination, the Accused suddenly asked what the difference was between diamorphine and heroin because he remembered that SSSgt Affendi had told him that he was carrying heroin whereas the word (in the charge which was the subject of his cautioned statement)

was "diamorphine". Yet, no CNB officer had told him that he was carrying heroin and Mdm Sofia had said she had mentioned that "diamorphine" was heroin to him.

48 Thirdly, the Accused said he had mentioned to Mdm Sofia that he had given medicine when his cautioned statement was being recorded, but then retracted this evidence.

49 Fourthly, the Accused said during cross examination that he was disturbed and could not think straight when his cautioned statement was being recorded but this was in stark contrast to his rehearsed reasons during evidence-in-chief for admitting his guilt.

50 Fifthly, if the Accused only knew after his arrest that he was carrying heroin, he would have stated this in his cautioned statement.

51 Sixthly, if the Accused genuinely abhorred drugs he would have behaved with far greater circumspection instead of simply trusting Maren.

52 As for the entries in the bigger notebook, the Prosecution submitted that it was illogical for Maren to dictate the entries to the Accused just to have backup information for himself when he (Maren) could have easily made a copy for himself and kept it at a different location.

53 Secondly, the Accused did not provide a consistent or logical explanation as to why some names or figures were ticked off with one, two or three ticks, and in some other instances, no ticks. Initially, the Accused said he would make a tick if he was coincidentally holding a pen when Maren spoke to him, but later he changed his evidence to say that a tick was made as a confirmation and no tick was made if Maren's instructions were already clear^[note: 5]. As for the different number of ticks, they represented each instance that Maren repeated what he had said. So, if he repeated what he had said once, there would be one tick, and if twice or thrice, then two or three ticks respectively^[note: 6]. The Prosecution submitted that the entries in the bigger notebook were written by the Accused to serve as his own record of illegal drug activities and that he knew and was applying the words "slab", "fish", "cold" and "panas" as street jargon for various controlled drugs.

54 As for the words in the red '555' notebook the Prosecution submitted that the Accused also knew and applied words like "ikan", "sayur", "kunci" and "ubat" as street jargon for various controlled drugs. Although such words would appear innocuous individually, their appearance in the red '555' notebook was not a mere coincidence

55 As for the Accused's explanation that he thought that what he was carrying was sulphur or "mother of sulphur", the Prosecution submitted that this was not mentioned by the Accused in his first statement on the day of arrest, (when he mentioned "medicine" only), nor in his cautioned statement. It was first mentioned in the statement recorded on 3 June 2007 at 11.03am. Any claim by the Accused that he had already mentioned "sulphur" to CNB officers at the staircase landing on the day of arrest should not be believed. The Accused had mixed up his evidence as to which CNB officer he had said this to, first saying it was SSSgt Affendi and then SSSgt Ng, both of whom denied such an allegation.

56 Alternatively, the Prosecution submitted that the Accused had been wilfully blind in the face of many facts which ought to have prompted the Accused to make further enquiries. The Court of Appeal in *Tan Kiam Peng v PP* [2008] 1 SLR 1 ("*Tan Kiam Peng*") has recently dealt with the concept of wilful blindness as being the legal equivalent of actual knowledge and discussed some aspects of such blindness.

57 Thus, when the Accused first received a bundle to deliver to Vincent, it occurred to him that the bundle might contain "contraband" or "an illegal substance" but he simply trusted Maren's explanation that it was medicine.

58 On the Accused's third trip to Johor Bahru, he saw that the substance was white and not yellow in colour. He knew sulphur was yellow in colour but yet simply accepted Maren's explanation that the white substance was "mother of sulphur". There was no evidence to suggest that the Accused had ever heard of some "mother of sulphur" before (let alone it being white in colour), and yet he was again content to accept Maren's explanation.

59 The Accused also did not query why persons who collected packets he was delivering were prepared to pay so much money for each tiny packet of substance weighing 8 grams. The Accused had not inquired how much ordinary sulphur or any other kind of sulphur would cost.

60 The Accused did not query why Maren was packing medicine in a house rather than a laboratory.

61 The Prosecution also listed suspicious circumstances at [91] of its closing submission as follows:

Apart from what has been discussed above, other suspicious circumstances that were present and regarding which the [A]ccused failed to make sufficient enquiries include: (i) the fact that Maren and the persons who collected packets of the granular/powdery substance from him were frequently changing their numbers;... (ii) the fact that Maren had given the [A]ccused numbers of persons to call to collect the packets of granular/powdery substance but had told the [A]ccused to delete the numbers after he called them; ... (iii) the fact that Maren had told him to write assorted words such as "barang", "cold", "panas", "slab" and "fish" in the big notebook; ... (iv) the fact that Maren asked him to copy down entries in the big notebook yet dismissed the [A]ccused's query about what the entries were with the response "You don't ask me many questions, just write down"; ... (v) the fact that the persons collecting the packets of white or yellow granular/powdery substance from him were paying a large sum of money for such small packets; and (iv) the fact that the persons to whom the [A]ccused had passed the packets, including Loh,... had told him to wrap up the packets...

62 As for the Defence's argument that the Accused had openly passed packets of heroin to others which suggested a lack of actual knowledge on the part of the Accused, the Prosecution submitted that there could have been other reasons for not wrapping the packets first, such as the Accused being in a hurry or being confident of not being caught.

63 The Prosecution also stressed that the Accused did not mention in any of the ten statements that Maren had told him that the persons collecting the packets were Maren's employees. This was only mentioned during the trial in the Accused's oral testimony. Furthermore, the Accused had, in fact, referred to such persons as "customers" in his statement recorded on 6 June 2007 at 10.29am. He could not have considered them as his customers if Maren had told him they were Maren's employees because he too was working for Maren. The reference to such persons being Maren's employees was the Accused's attempt to justify why he did not make further inquiries apart from his token questions to Maren.

64 Accordingly, the Prosecution submitted that the Accused had refrained from making further enquiries and was, at the very least, wilfully blind to the fact that he was carrying and trafficking in heroin.

65 Under s 18(2) of the Act, a person who is proved or presumed to have had a controlled drug in

his possession is presumed to know the nature of that drug until the contrary is proved.

66 The Prosecution also relied on the presumption under s 17(c) of the Act on the purpose of trafficking. That provision states:

Any person who is proved to have had in his possession more than –

...

(c) 2 grammes of diamorphine;

...

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

67 Relying on the Accused's cautioned statement, his activity of making deliveries of heroin to others, the contents of the bigger notebook, and Loh's presence in the vicinity of the Accused's block of flats to purchase heroin on 31 May 2007, the Prosecution submitted that the Accused had failed to rebut the presumption of knowledge as well as the presumption of trafficking. As regards the issue of trafficking, the Prosecution added at [100] and [102] of its closing submission as follows:

100 In addition, it is submitted that the line of reasoning adopted by our courts in cases of trafficking by transporting would also apply in the present case to prove that the accused had the drugs in his possession for the purpose of trafficking. In *Ong Ah Chuan v Public Prosecutor* [1980-1981] SLR 48 ... it was stated by Lord Diplock that:

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

102 The above passage has been cited with approval and applied by the Court of Appeal in cases such as *Cheng Heng Lee & Anor v Public Prosecutor* [1999] 1 SLR 504 (at [41] – [42]) and *Yeo Choon Huat v Public Prosecutor* [1998] 1 SLR 217 (at [34]). In the present case, given the fact that the accused, by his own admission, does not consume heroin, the inference is irresistible that he had possession of the drugs for the purpose of trafficking.

[emphasis in original]

The court's findings and conclusion

68 It is clear that the Accused was in physical possession of the heroin which was in the red paper bag he had been carrying. That is why physical possession was not disputed. Heroin is the subject of the charge he faces. The other two packets of substance found in his bedroom was not the subject of the charge. The Prosecution also had to establish that the Accused was in possession of heroin for the purpose of trafficking. S 5(1)(a) and 5(2) of the Act states:

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;

(b) ...

(c) ...

(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.

69 The concept of legal possession includes knowledge as physical possession without knowledge is not enough. It was assumed by both sides that a higher threshold of knowledge was required, *ie*, that the reference to the knowledge of the “nature of that drug” under s 18(2) requires knowledge of the specific drug, *ie*, heroin in the present case, and not just knowledge that the drug is a controlled drug (for a more detailed discussion about such knowledge, see the judgment in *Tan Kiam Peng*). The dispute centred on the Accused’s knowledge, *ie*, whether he knew he was carrying heroin.

70 There were various ways in which the knowledge of the Accused that he was carrying heroin might have been established:

(a) establishing that he had actual knowledge;

(b) establishing that he was wilfully blind which is the legal equivalent of actual knowledge;

(c) relying on the presumption under s 18(2) of the Act.

71 As mentioned above, the Accused had given eight long statements on the background as to how he had come to know Maren and to deliver packets of substances contained in bundles which Maren had handed to him. He elaborated thereon in his oral testimony. However, his evidence could not be considered in isolation.

72 I started first with the Accused’s response during his arrest. I accepted that the first CNB officer to reach the Accused was SSgt Fakhrudin and not Sgt Nizammudin as the Accused had testified. The evidence of Sgt Nizammudin and some other CNB officers showed that Sgt Nizammudin was not present at the scene of arrest. However, I did not accept that the Prosecution had established that SSgt Fakhrudin had identified himself as a CNB officer when he reached the Accused. The fact of his having identified himself was not mentioned in his statement of 7 January 2007 and none of the other CNB officers who participated in the arrest had heard anyone making such an identification until the Accused was handcuffed. However, I also did not accept the Accused’s evidence that the first CNB officer to reach him had pushed his shoulder against the Accused’s and that while the Accused was on the ground, one of the CNB officers had kicked his hand which was holding his mobile phone and

another was stepping on his other hand which was holding the red paper bag, while yet another officer was trying to pull the bag away from his grasp. I was of the view that such evidence was the Accused's attempt to falsely explain that he had thought that they were robbers and why he was violently struggling during his arrest. Even if no one had identified himself or herself as a CNB officer before the Accused was handcuffed, the CNB officers were moving in to arrest him, not to assault him. I accepted the evidence from various CNB officers that he was trying to bring his hands apart while efforts were being made to bring them together so that his hands could be handcuffed behind him. He must have known from such efforts and also from the absence of blows to his main body and head that they were not robbers but arresting officers. The fact that he was found carrying heroin led to the inference that he was resisting arrest because he knew that he was carrying controlled drugs but not necessarily heroin. Accordingly, his violent struggle during arrest was not critical evidence against him on the question of actual knowledge but was evidence against him on the issue of wilful blindness.

73 Some reliance was placed by the Prosecution and the Defence on the point as to whether the Accused had asked questions like "Why?" or had remained silent after his arrest and before any statement was recorded. In my view, whether the Accused had remained silent or not was immaterial in the totality of the evidence and I need not make any finding thereon.

74 I did not accept the Accused's evidence that when he was brought to a staircase landing after his arrest, SSSgt Affendi had told him that he was carrying heroin. If SSSgt Affendi had told him this, it would have come as a shock to him since, based on his evidence, he had thought he was carrying non-controlled substances, viz, sulphur. He would not then have forgotten this when his cautioned statement was being recorded, as he sought to suggest belatedly only during cross examination. This was in the context of the Accused's asking whether there was a difference between heroin and diamorphine, when he was being cross examined, a point mentioned in the Prosecution's submission (see [47] above).

75 It was clear to me that there was no confusion on the part of the Accused as regards the words "diamorphine" and "heroin". When I asked him whether he understood the charge (that was read to him for the purpose of his cautioned statement), he said that it was a charge for trafficking in heroin[[note: 7](#)]. Mdm Sofia said she explained "diamorphine" as "heroin" to him[[note: 8](#)]. Furthermore, it was not suggested by the Defence that the Accused would not have admitted to the charge then if the word "diamorphine" had been orally used instead of "heroin". So this question of his being uncertain whether there was a difference between diamorphine and heroin was in any event irrelevant.

76 I come now to the Accused's cautioned statement which is the most critical piece of evidence against him in so far as actual knowledge was concerned.

77 As regards the Defence's submission that Mdm Sofia had agreed that the Accused was admitting only to the act of trafficking, I was of the view that this submission had taken Mdm Sofia's evidence out of context.

78 When Mdm Sofia first gave her oral testimony, the Defence did not suggest to her that the Accused's admission of guilt was only in relation to the act of trafficking and not in relation to the goods which were being trafficked. Indeed, she was not cross examined at all then.

79 It was when the Accused was being cross examined that he suggested that his admission of guilt was confined to the act of trafficking but not in respect of the heroin in question. He said that he had read the English word "trafficking" and asked Mdm Sofia what it meant. She said it was "mengedar" in

Malay and he asked her to explain "mengedar" which she did. She said "to give and collect money". So, as he did give and collect money, he admitted guilty to the charge[\[note: 9\]](#).

80 Mdm Sofia was re-called to the stand. She reiterated that she had proceeded to interpret the charge to the Accused and had explained the meaning of "trafficking" to him as being "to give or to sell". However, she also said that the Accused did not ask her any question about the meaning of the word "trafficking" in the charge[\[note: 10\]](#). Significantly, when she was cross examined, the Defence did not seek to establish that the Accused had asked her any question about the word "trafficking" or the word "mengedar". What the Defence did instead was to focus on the fact that she did explain the meaning of the word "trafficking" which she confirmed she did. That explanation, in the course of interpretation, was of course different from the slant the Accused had given, *ie*, that he had first asked her to explain "trafficking" and then to explain "mengedar". When the Defence asked Mdm Sofia whether she had explained the act of trafficking, she agreed she did. When the Defence suggested that the Accused was therefore agreeing to the act (of trafficking) and nothing further, Mdm Sofia also agreed[\[note: 11\]](#). It was in this context that Mdm Sofia agreed. Indeed, the Defence avoided asking Mdm Sofia directly whether the Accused had admitted to having trafficked in heroin or not.

81 I was of the view that Mdm Sofia's evidence did not mean that the Accused's admission did not extend to the heroin in question. The focus of the question to her was on the act and not on the goods and so Mdm Sofia confirmed that he was admitting to the act of trafficking as opposed to some other act. It was clear to me from her entire evidence that, as far as she was concerned, the Accused knew the nature of and was admitting to the charge in its totality.

82 I would also add that the Accused's fluency and command of the English language was not as poor as the Defence sought to portray. When he first met Maren in Singapore, he was speaking to Maren in English. Before his first statement was recorded, he was asked and he said that he preferred to speak in English. In the course of the trial, I also noted that at times he was able to correct the interpreter when he thought the interpreter might not have captured his evidence accurately[\[note: 12\]](#).

83 In any event, I was satisfied from the evidence-in-chief of the Accused that he understood that the charge being read to him for the purpose of recording his cautioned statement was in respect of the trafficking of 960.29 grams of heroin which carried a capital sentence. Indeed, he confirmed in cross examination that after Mdm Sofia had interpreted the charge to him, he understood it and that is why she was not challenged in court during her initial testimony[\[note: 13\]](#).

84 The points made by the Prosecution about the Accused's evidence in respect of his cautioned statement were well-taken and I do not propose to reiterate them. However, there were two other more significant points.

85 First, in his cautioned statement, the Accused had taken the trouble to exonerate the driver of the Vehicle by stating "The driver is not guilty. He doesn't know anything ...". Since he was prepared to make it clear that the driver did not know anything, it would only have been natural for him to also say that he did not know that he was carrying heroin if he was truly ignorant of that fact. At least that would have been consistent with his first statement that the two bundles in the red paper bag contained medicine. Instead, he was admitting that he was carrying heroin by his admission of guilt.

86 Secondly, if he truly abhorred drugs, then he would have distanced himself from the charge by stressing in his cautioned statement that all along he had thought or had been informed that he was carrying sulphur. Yet his cautioned statement did not mention this.

87 Accordingly, the Accused's admission of guilt to the charge with full comprehension of the charge, the additional points I have mentioned, and the arguments of the Prosecution in respect of his cautioned statement, led me to conclude that he had actual knowledge that what he was carrying was heroin.

88 There was no submission by the Defence on wilful blindness. As I have mentioned, the Court of Appeal had said in *Tan Kiam Peng* that wilful blindness is treated in law as being the equivalent of actual knowledge. In the judgment of Andrew Phang Boon Leong JA, it was stated at [125] that:

The second central principle is that *suspicion* is legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye...

89 Phang JA further stated (at [129] and [130]):

129 ...Indeed, if an accused is told that the package contains counterfeit currency and the package is then opened to reveal that it contains packets of what are obviously drugs, that ought then to prompt the accused to make further inquiries. And, where, in fact, only token efforts are made to investigate one's suspicions, this would be insufficient. But might it not be argued that the accused in the example just given (relating to a wrapped packaged) has done all that could reasonably have been done to investigate further? Much will, of course, depend on the precise facts before the court but it would appear, in principle, that merely asking and receiving answers in situations such as that presently considered would be insufficient simply because the accused concerned would certainly be given false answers and assurances ...

130 Situations such as that which exists on the facts of the present appeal underscore this point since the accused already knows that he or she is carrying controlled drugs and surely cannot rely merely on the fact that he or she had asked for assurances that the controlled drugs concerned were not of a nature which carried the death penalty. If the accused chooses to take an enormous (indeed, deadly) risk and proceed without establishing the true nature of the drugs he or she is carrying, that constitutes, in our view, wilful blindness. To say that this is unfair to the accused concerned is rather disingenuous, particularly in light of the fact that the countenancing of false answers and assurances would be precisely to constitute a drug pedlar's charter, for accused persons who are willing to risk imprisonment but not death ... - thus undermining (in a crucial manner) the policy of the Act itself. It is also clear that the accused has a real choice to decide not to proceed if satisfactory answers are not forthcoming, especially where liberty or even life is at stake.

90 According to the Accused, if the items he carried were illegal contraband, then he would have expected Maren to have asked him to hide them but Maren did not do so. However, there were other facts on the other side of the fence.

91 First was the fact that here was a complete stranger who was prepared to pay a S\$3,000 fine for him.

92 Secondly, he was collecting large sums of money in exchange for the packets he was delivering. On this point, it was the evidence of the IO that he had attempted to buy 8 grams of sulphur but he was told by Teck Sum Medical Hall that the minimum they sold was 100 grams. He bought 100 grams of sulphur for 60 cents[[note: 14](#)]. This evidence was not challenged by the Defence. The Accused agreed that if he had wanted to, he would have found out the price of sulphur[[note: 15](#)]. I would add that he could also have easily found out whether there was such a thing as "mother of sulphur" and

its price.

93 Thirdly, the Accused was being paid quite well for his services.

94 At this point, I would address the evidence of Loh who said that the Accused had delivered packets of heroin in public areas which led Loh to think that the Accused did not know that he was handling illegal contraband. Yet Loh did not suggest that he too was unaware of what he was buying or collecting. It was clear to me that Loh knew that he was receiving not just illegal contraband but heroin in such public areas. The same point applied to the question whether the packets were wrapped when they were delivered. In other words, even if they were not wrapped and delivery had taken place in public areas, such evidence was neither here nor there. It did not suggest to me that the Accused was unaware that he was carrying illegal contraband. In any event, even if delivery had taken place in public areas without any wrapping of the packets, it was obvious to me that the handing over would have been done more discreetly than Loh was suggesting as he would not want to be caught. It was clear to me that Loh's evidence on what he thought about the Accused's knowledge was his attempt to try and help the Accused evade the consequences of his actions.

95 Fourthly, at times the persons who collected the packets were not contactable because their telephone number kept changing and the Accused was also told to delete their numbers after calling them.

96 Fifthly, the Accused could not have genuinely believed that these persons were employees of Maren who were in turn delivering the sulphur to medical halls. If the transactions were above board, Maren would simply have asked him to make his deliveries to the medical halls. Alternatively, the same employee would have been used and there was no need for the Accused to have to meet so many different employees at different and changing locations. He himself had referred to them as "customers" in one of his long statements as the Prosecution pointed out. His many long statements did not mention that he was told or that he believed they were Maren's employees.

97 Sixthly, the substance was not being packed in a laboratory or a clinic and on one occasion it was packed in a house with curtains drawn.

98 In view of the above circumstances and taking into account also the reasons advocated by the Prosecution, I did not accept the Accused's evidence that it was Maren who told him what to write down in the brown '555' notebook which was later transferred to the bigger notebook. In my view, the Accused had made the entries as his own record of controlled drug transactions and lied about them. He knew what the entries meant.

99 I also concluded that certain entries in the red '555' notebook which were street names for various controlled drugs, including heroin, were written by the Accused to refer to those drugs. They were not innocuous entries. There was no independent evidence to support his assertion that he was thinking of going into various businesses.

100 I would add that the violent struggle which the Accused put up during his arrest suggested that he knew that he was carrying controlled drugs. Even if I were to disregard the violent struggle, I was of the view that the other evidence I have alluded to established that the Accused knew that he was carrying controlled drugs on the day of his arrest, if he did not know that he was carrying heroin. His alleged inquiries of Maren were at best token and clearly inadequate. Accordingly, even if he did not have actual knowledge, I found that the Prosecution had established his knowledge because of his wilful blindness, without the aid of any statutory presumption.

101 I come now to the presumption of knowledge under the Act. As I mentioned, s 18(2) provides that any person who is proved or presumed to have had a controlled drug in his possession shall be presumed to have known the nature of that drug, until the contrary is proved.

102 The Prosecution had established that the Accused had the heroin in his physical possession. I need not repeat what I said about the evidence in the context of actual knowledge and wilful blindness. The Accused would also have failed to rebut the presumption under s 18(2) of the Act.

103 As for the purpose of trafficking, the Defence submitted that even if the Accused had been trafficking in controlled drugs in the past, this did not mean that he was trafficking in heroin at the time of his arrest. However, he had admitted to the act of trafficking. In any event, it was clear from the evidence and, accordingly, I found that the purpose of trafficking was also established, even without the aid of the presumption under s 17(c) of the Act. That presumption would in any event not have been rebutted.

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

[\[note: 1\]](#)NE 444

[\[note: 2\]](#)NE 429

[\[note: 3\]](#)Agreed bundle p 181

[\[note: 4\]](#)NE 432-3

[\[note: 5\]](#)NE 548-9, 552-3

[\[note: 6\]](#)NE 552-3

[\[note: 7\]](#)NE 473

[\[note: 8\]](#)NE 581

[\[note: 9\]](#)NE 513

[\[note: 10\]](#)NE 579

[\[note: 11\]](#)NE 581

[\[note: 12\]](#)NE 514

[\[note: 13\]](#)NE 515-6

[\[note: 14\]](#)NE 383

[\[note: 15\]](#)NE 502-3