IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 38

Criminal Appeal No 18 of 2017

Between

ADILI CHIBUIKE EJIKE

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal Law] — [Elements of crime] — [*Mens rea*]
[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Illegal importation of controlled drugs]

Adili Chibuike Ejike
v
Public Prosecutor

[2019] SGCA 38

Court of Appeal — Criminal Appeal No 18 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
18 October 2018

27 May 2019 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Criminal Appeal No 18 of 2017 is brought by Adili Chibuike Ejike ("the Appellant") against his conviction and sentence for importing not less than 1,961g of methamphetamine into Singapore, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA").

2 The Appellant had travelled to Singapore from Nigeria. At Customs, his luggage, specifically, a small suitcase, was examined and found to contain two packages wrapped in tape. These packages were later found to be the methamphetamine which was the subject matter of the charge brought against him. The Appellant contested the charge. At the trial, he did not appear to dispute the fact that he was in possession of the methamphetamine but focused instead on attempting to rebut the presumption of knowledge under s 18(2) of

the MDA. The Appellant claimed that an acquaintance in Nigeria had agreed to give him some financial assistance if he delivered the case together with some money to an unspecified person in Singapore, and he further maintained that at all times, he did not know that the packages of methamphetamine were in the case.

3 After a trial, the High Court judge ("the Judge") convicted the Appellant. As the Public Prosecutor did not issue a Certificate of Substantive Assistance under s 33B(2)(*b*) of the MDA, the Judge imposed the mandatory death sentence: see *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 ("the GD").

4 The principal issues in this case revolve around just what the Appellant did or did not know. The Prosecution relied on the statutory presumptions in ss 18(1) and 18(2) of the MDA. But because of the way in which the Prosecution and the Defence ran their respective cases at the trial, some difficult questions have arisen as to whether there are circumstances in which these presumptions may *not* be invoked, and as to the meaning and operation of the related concept of wilful blindness. In this judgment, we address these issues. Before doing so, we first recount the salient facts.

Facts

Events leading to the Appellant's arrest

5 The Appellant is a Nigerian citizen from the village of Oraifite in Nigeria. He was 28 years old at the time of the offence. Prior to coming to Singapore, he had worked in Nigeria for a supplier of fan belts for motor vehicles. He later set up his own business trading in fan belts in March 2010 but this failed within a year or so, and thereafter, he remained unemployed until the

time of his arrest. His highest education level is Standard 6 at the primary level and he gave all his investigation statements as well as his evidence at the trial in the Ibo language through an interpreter.

6 The broad sequence of events leading to the Appellant's arrest is not disputed. The Appellant applied for a passport for the first time in 2011 and it was issued on 19 April 2011. Sometime in August 2011, while in Nigeria, the Appellant contacted a childhood friend by the name of Chiedu Onwuku ("Chiedu") for financial assistance. Chiedu agreed that he would give the Appellant a sum of between 200,000 and 300,000 naira ("Na") (approximately equivalent to between US$1,324 and US$1,986). Chiedu told the Appellant to contact him in October 2011 to arrange the payment. Sometime between August and October 2011, Chiedu visited the Appellant at his village and asked for and took the Appellant's passport "to do something with", but did not tell him what that was. When the Appellant later called Chiedu in October, Chiedu told the Appellant to meet him in Lagos, Nigeria. The Appellant accordingly travelled to Lagos.

7 There, on 10 November 2011, the Appellant met with another childhood friend, one Izuchukwu Ibekwe ("Izuchukwu") (who, it appears, was also working with Chiedu). Izuchukwu instructed the Appellant to travel to Singapore on 12 November 2011 with a piece of luggage, which he was to hand over to someone in Singapore. On 12 November 2011, the Appellant went to Izuchukwu's home, where Izuchukwu handed the Appellant a brown trolley case, his passport, a set of travel and other documents and US$4,900 in cash. The Appellant was told that the contact details of the person to whom he was to deliver the case were written on the back of his e-Visa. On the reverse side of his e-Visa was written "ESP [XXXXXXXX]". ESP apparently refers to ESP Lines (S) Pte Ltd ("ESP"), a Singapore company run by one Kervinn Leng Seng

Yau ("Kervinn Leng") (the GD at [16]). It seems that unbeknownst to the Appellant, Kervinn Leng had sponsored his e-Visa and [XXXXXXXX] was Kervinn Leng's handphone number.

8 Izuchukwu and Chiedu then drove the Appellant and another male Nigerian, who was not known to the Appellant, to the airport. Izuchukwu and Chiedu dropped the Appellant and the other Nigerian man off at the airport and left. The Appellant and the other Nigerian man then each went their own way in the airport.

9 On 12 November 2011, the Appellant took a flight from Lagos to Singapore via Doha, Qatar. He arrived at Changi Airport Terminal 3 on 13 November 2011 at about 4.25pm. The other Nigerian man evidently also took the same flight and disembarked in Singapore. He is not otherwise relevant to the Appellant's conviction or to the present appeal.

10 After passing through the Immigration checkpoint without incident, the Appellant was stopped at Customs as he was about to exit the Arrival Hall. His case was put through an X-ray machine and an image of darker density was observed on one side of the case. The case was then physically searched but nothing incriminating was found. It was therefore brought to the Immigration and Checkpoints Authority ("ICA") Baggage Office for further inspection. The inner lining of one side of the bag was first cut and a packet wrapped in brown masking tape was found inside; the inner lining of the other side was then cut, revealing another packet wrapped in brown tape. A small cut was made on one of the packets and it was found to contain a white crystalline substance. The Appellant was placed under arrest for importing a controlled drug at about 8.25pm.

11 Among the Appellant's other belongings were found:

(a) two calling cards, one labelled "Ejyke Investment Ltd" and the other, "Ejidon International Ltd", both of which bore the Appellant's name and photograph and purported to identify him as a director; and

(b) a vaccination certificate.

These documents were false: the Appellant had never been involved with either of these companies, and he had also never been vaccinated.

The Appellant's statements

12 The Appellant was subsequently charged with importing two packets containing not less than 1,961g of methamphetamine. His cautioned statement read:

> Somebody gave those substance [*sic*] to me. I did not know what it was. If I knew what they were, I would not have accepted to carry those things.

At first blush, this might seem to imply that the Appellant was aware that the drug packets were concealed within the case since he did not disavow knowledge of the presence of "those substance" in the case, but merely denied knowing precisely what that substance was. However, the contents of the Appellant's cautioned statement – and, in particular, his apparent admission that he knew he had "those substance" in his possession – could not be taken at face value in the light of the evidence given at the trial by the interpreter that the Appellant *did* in fact say that he had no idea what was inside the case. Given that evidence of the interpreter, we do not think that what the Appellant said in his cautioned statement can be taken as an admission that he was aware of the existence of the drugs that were hidden within the suitcase.

13 The Appellant also gave six long statements. All were admitted in evidence without objection. In these statements, consistent with our view on the correct understanding of his cautioned statement, the Appellant said that he did not pack the case himself, did not know what the case contained or why he had to deliver it, did not think about its contents, and had never asked these questions of Chiedu or Izuchukwu. In addition, he also made the following claims:

(a) He did not trust Izuchukwu and Chiedu.

(b) Izuchukwu told him to deliver the case to somebody in Singapore. After clearing Immigration and Customs, he was supposed to take a taxi to his hotel, and the person who was to collect the case would then come to the hotel. He said, "I could not remember which hotel I was supposed to go to. I also did not know how to contact the person. I also did not know the name of the person who would collect the case at the hotel."

(c) The sum of US$4,900 was for him to spend on food, travelling expenses and accommodation during his time in Singapore "as and when necessary". He thought that if there was any remaining balance after his trip, he would have to return it to Chiedu. He expressly denied that this sum of money was to be passed to anybody in Singapore.

The Prosecution's case

14 The Prosecution relied on the presumption of possession under s 18(1) and the presumption of knowledge under s 18(2) of the MDA. It submitted that the Appellant had failed to rebut the presumption of knowledge because he was wilfully blind. In particular, it submitted that:

> i. The [Appellant] does not suffer from mild mental retardation and ought to be assessed as a reasonable person.

> ii. The circumstances surrounding the [Appellant's] task to deliver the luggage were extremely suspicious and the [Appellant] would have been put on notice.
>
> iii. Notwithstanding this, the [Appellant] failed to make enquiries or take reasonable steps to find out what he had been tasked to deliver.

15 At the end of the trial, the Prosecution generally preferred and relied on what was stated in the Appellant's investigation statements rather than the oral evidence he gave at the trial. In particular, it accepted the Appellant's statements that he did not know what the case contained or why he had to deliver it, and had never asked these questions of Chiedu or Izuchukwu. The Prosecution submitted that matters had transpired in this way with the consequence that "[t]he transaction was shrouded with secrecy and the [Appellant] was not given much information of the task because of its illegal nature". The Prosecution's case was that the Appellant did not trust Chiedu and Izuchukwu but nevertheless agreed to carry out the task in order to receive the eventual payment of Na 200,000–300,000.

16 The Prosecution submitted that the circumstances surrounding the entire incident were such as to arouse suspicion that the case which the Appellant was to deliver contained something illegal. These circumstances were as follows:

(a) The Appellant was first told that he would be travelling to Singapore in order to deliver the case to someone on 10 November 2011, merely two days before the actual trip on 12 November 2011. He was told to deliver the case with unspecified contents to an unspecified person who would meet him at his hotel.

(b) Chiedu and Izuchukwu expended money and effort to facilitate the delivery. Their actions included: (i) going to the Appellant's village to collect his passport from him before October 2011; (ii) booking a

return flight for the Appellant; (iii) paying for four nights of accommodation for the Appellant's stay in Singapore; (iv) providing the Appellant with US$4,900 to spend on his trip; and (v) supplying the Appellant with fictitious calling cards and a false vaccination certificate.

(c) The sum of US$4,900 given to the Appellant to spend in Singapore and the sum of Na 200,000–300,000 that he was promised in exchange for making the trip were hefty sums compared to his average daily wage of US$18 as a trader of fan belts.

(d) Chiedu and Izuchukwu had given the Appellant scant information about his task. In any case, the Appellant did not trust Chiedu and Izuchukwu.

The Prosecution further submitted that the Appellant's nervousness during the immigration checks at Changi Airport showed that his suspicions had in fact been aroused.

17 Despite these suspicious circumstances, the Appellant did not take reasonable steps to ascertain the contents of the case. In particular, the Appellant did not ask Chiedu or Izuchukwu what the case contained and did not physically check the case (which had been left unlocked) despite having multiple opportunities to do so. These suspicions, combined with the Appellant's failure to take reasonable steps, constituted wilful blindness, with the result that the presumption of knowledge remained unrebutted.

18 Finally, in response to the psychological reports tendered by the Defence (see [21] below), the Prosecution tendered reports prepared by Associate Consultant Dr Charles Mak ("Dr Mak") and Senior Clinical Psychologist Mr Goh Zhengqin ("Mr Goh") from the Institute of Mental Health ("IMH"), in

which it was stated that the Appellant was not intellectually disabled. At the trial, the oral evidence led by the Defence from its expert psychologist, Mr James Tan Yen ("Mr Tan"), appeared to be directed to the question of whether, despite his allegedly deficient cognitive ability, the Appellant would subjectively have found the circumstances suspicious. However, none of the reports tendered by the Prosecution or the Defence directly addressed this point; instead, the focus of the reports was simply on ascertaining whether the Appellant suffered from any intellectual disability. Regrettably, therefore, the point could not be and was not fully explored at the trial.

The Appellant's defence

19 The Appellant's testimony at the trial differed in some respects from what he had said in his investigation statements:

(a) As to why he applied for a passport, he testified that he had applied for a passport in or before April 2011 because Izuchukwu had asked him to do so, so that he would be in a position to travel overseas on an errand for him, whereas in his statements, he said that he had done so just because the Nigerian Government had encouraged its citizens to do so.

(b) On whether or not he trusted Chiedu and Izuchukwu, his oral testimony was that he trusted them and that it did not occur to him that the trip might be dangerous, but in his statements, he said that he did not trust them completely.

(c) On whether he had knowledge of the contents of the case, he claimed on the stand that when Izuchukwu passed him the case, Izuchukwu opened the case, and both showed *and* told him that it only

contained clothes and shoes, whereas in his statements, he said that he had no knowledge of the contents of the case.

(d) On what he was to do with the sum of US$4,900 in his possession, the Appellant's oral testimony was that the money was to be handed to someone from ESP, and would be used for three purposes: (i) for ESP to pay for his meals and accommodation; (ii) as part payment for ESP's clearing fee; and (iii) for ESP to buy goods for him to bring back to Nigeria for Izuchukwu to sell. (This was corroborated by two text messages sent to the Appellant's phone after he arrived in Singapore, from a number the Appellant identified as Izuchukwu's, which instructed the Appellant to "cal esp and give him d money that I gave u to give him cus he nid it 2 ship my guds 2mrow" and threatened to arrest the Appellant's brother and parents "until they provide u or my money".) However, in his statements, the Appellant denied that the money was to be passed to anyone.

20 The Defence submitted that the inconsistencies between the Appellant's investigation statements and his evidence at the trial were attributable to a lapse in memory. However, in his oral evidence, the Appellant did not cite a lapse in memory among his various explanations for these inconsistencies. Rather, he attributed these variously to the inaccurate recording of his statements (to explain the inconsistencies regarding why he applied for a passport), fear of reprisal by Izuchukwu (to explain the inconsistency regarding the purpose for which he had the sum of US$4,900) and his feeling fearful and uncomfortable when he gave his statements (to explain the inconsistencies regarding his knowledge of the contents of the case and his trust in Chiedu and Izuchukwu). As regards this last point, we note that the Appellant's allegations that the statements were recorded while he was "very cold", "shivering", "crying and

confused" were not pursued with the statement recorders, and that the Appellant did not object to the statements being admitted. As the Judge noted at [14] of the GD, Defence counsel did not put it either to the interpreter or to the officer recording the statements that these had not been accurately recorded, and the Defence's closing submissions did not contest the accuracy of the statements. In any case, none of these points were pursued by the Appellant on appeal.

21 The Defence also tendered three psychological reports prepared by Mr Tan, who opined that the Appellant was performing in the Mild Mental Retardation range of cognitive ability. The Defence submitted on the basis of these reports that the Appellant was "prone to be made use of" and "manipulated by others … in whom he trusts [*sic*]", "a simpleton and of low intellect" and "had probably been made used [*sic*] of by his 2 Nigerian friends as an unwitting drug courier". The Defence did not submit that the Appellant's mild mental retardation constituted an abnormality of mind for the purposes of s 33B(3)(*b*) of the MDA, or that it rendered him incapable of knowing the nature of the drugs in his possession. Rather, the point being advanced by the Defence, as we have noted above, appeared to be that the Appellant, being mildly retarded, would not naturally have been suspicious of the circumstances in which he took delivery of the case, although this was regrettably not developed or pursued in the course of the evidence.

Decision Below

22 It was not disputed at the trial that the Appellant was in possession of the case containing the methamphetamine, and that he was therefore presumed to be in possession of the methamphetamine pursuant to s 18(1) of the MDA. However, the Defence did not then seek to challenge or rebut the presumption. The trial therefore proceeded on the basis that the Appellant was in possession

of the methamphetamine. At the same time, it appeared to be common ground between the Prosecution and the Defence that the Appellant did not in fact know that the case contained the two bundles of methamphetamine hidden within its inner lining. The legal significance of this fact appeared to have escaped both parties. Because of this, the trial focused on whether the Appellant had been able to rebut the presumption of knowledge under s 18(2).

23 The Judge found the Appellant to be an unreliable witness in the light of the inconsistencies between his oral testimony and his investigation statements set out at [19] above (the GD at [19]–[22] and [35]).

24 In particular, the Judge rejected the Appellant's evidence that he believed that the case contained only clothes and shoes. The Judge's reasons may be summarised as follows (the GD at [11], [34] and [41]):

(a) It was "noteworthy" that the Appellant's reaction, upon being told by the ICA officers of the drugs in the suitcase, was to cry, instead of immediately expressing that he was surprised, that he was unaware of the concealed packets or that he did not know that they were drugs.

(b) The Appellant's reference to a "substance" in his cautioned statement indicated that he knew that the case contained more than just clothes and shoes. We digress to reiterate that having regard to the interpreter's evidence, this conclusion seems to us to have been untenable.

(c) The Judge found that the Appellant did not in fact trust Izuchukwu and Chiedu. Indeed, he had reason not to, as he knew that they had supplied him with false calling cards and a false vaccination

certificate (see [11] above) and this had been done to enable him to make the delivery.

(d) The Appellant had been promised a substantial reward for delivering the case to an unknown person in Singapore.

25 As for the three psychological reports tendered by the Defence, the Judge doubted the soundness of Mr Tan's assessment for the following reasons (the GD at [37]–[39]):

(a) It was limited by the absence of information on the Appellant's adaptive functioning in his hometown, his performance at school and his IQ score before he attained the age of 18.

(b) It was not based on the criteria set out in the Diagnostic and Statistical Manual of Mental Disorders.

(c) The criteria used by Mr Tan to assess the Appellant's cognitive abilities and state were not shown to be used or recognised as adequate by his peers.

(d) Dr Mak and Mr Goh from the IMH had assessed the Appellant and had found that he did not have any intellectual disability.

The Judge therefore found that although the Appellant might be of below-average intelligence, his cognitive functioning was not impaired (the GD at [40]).

26 Having rejected the Appellant's defence, the Judge convicted the Appellant. As the Public Prosecutor did not issue a Certificate of Substantive Assistance, the alternative sentencing regime under s 33B of the MDA was not

an available option. The Judge therefore sentenced the Appellant to the mandatory death penalty.

Issues in the appeal

27 The following elements must be proved by the Prosecution to make out the offence of importation under s 7 of the MDA: (a) the accused person was in possession of the drugs; (b) the accused person had knowledge of the nature of the drugs; and (c) the drugs were intentionally brought into Singapore without prior authorisation.

28 As has been mentioned at [22] above, the parties approached the trial on the basis that the Appellant was presumed to be in possession of the drugs by virtue of s 18(1) of the MDA, and that this, in turn, triggered the presumption that the Appellant knew the nature of the drugs that he was in possession of by virtue of s 18(2) of the MDA. The Judge therefore focused on whether the latter presumption had been rebutted (see the GD at [25], [29] and [31]–[41]). However, we doubted the correctness of this approach for two reasons.

(a) First, the concession by the Defence that the Appellant had been in possession of the drugs appeared to be inconsistent with the case it advanced that the Appellant did not know that the two bundles containing the drugs were hidden in the case. This is a fact of profound legal significance because, as we explain at [34] below, the Appellant must know of the *presence* of a thing before he can be said in a legal sense to "possess" it. If the drugs had been hidden in the case without his knowledge, he could not be said to have been in possession of the drugs even if he was in possession of the case that was later found to contain the drugs. Thus, although the Defence accepted that the Appellant was in possession of the drugs, it had evidently misunderstood

the legal concept of possession as entailing only the fact of physical custody. Possession also entails awareness that the thing (which is subsequently found to be a drug) is in one's possession, custody or control and this was fundamentally inconsistent with the substance of the case that the Defence had advanced at the trial.

(b) Second, the Prosecution itself accepted that the Appellant did not in fact know that the drugs were in his physical custody. In those circumstances, we doubted whether the Prosecution was even able to rely on the presumption of possession in s 18(1) of the MDA at all. When we expressed this concern to the Prosecution at the hearing, the Prosecution stated that its case was that the Appellant had been wilfully blind. As we explain below, that is a separate matter altogether.

29 In the premises, the focus ought really to have been on whether the Appellant was in fact and as a matter of law in possession of the two drug bundles. To that end, at the hearing of this appeal on 18 October 2018, we directed that the parties file further submissions addressing us on the following issues:

(a) Can the Prosecution invoke the presumption of possession in s 18(1) of the MDA when the Prosecution's case has been advanced on the basis that the Appellant did not know that the items found to be drugs were in his possession?

(b) If the Prosecution's case is one of wilful blindness, is that a case that can be mounted on the basis of a presumption? In other words, can the Appellant be presumed to be wilfully blind pursuant to s 18 of the MDA?

(c) What are the elements that must be shown in order to establish wilful blindness?

30 Based on the submissions that were filed, we frame the issues in this appeal as follows:

(a) Issue 1: Did the Appellant have the drugs "in his possession" within the meaning of s 18(1) of the MDA? In particular:

(i) Issue 1(a): To establish the *fact* of possession, is it sufficient that: (A) the Appellant knew that the things that turned out to be drugs were in his possession, custody or control; or must it be established that (B) the Appellant also knew the precise nature of those things?

(ii) Issue 1(b): What are the elements of wilful blindness, and can the doctrine of wilful blindness be applied at all in the context of the presumption of possession in s 18(1) of the MDA?

(iii) Issue 1(c): Can the Prosecution rely on the presumption of possession in s 18(1) where it has accepted that the Appellant did not actually know that the bundles of drugs were present in the case? If so, had the presumption of possession been rebutted on the evidence?

(b) Issue 2: If the Prosecution may not rely on the presumption of possession where it has accepted that the Appellant had not actually known that the drugs were in the suitcase, has the Prosecution *proved* possession beyond reasonable doubt by showing that the Appellant was wilfully blind to the presence of the drugs there?

(c) Issue 3: If the Appellant was proved or presumed to possess the drugs, and was presumed to know the nature of the drugs pursuant to s 18(2) of the MDA, had the presumption of knowledge under s 18(2) been rebutted on the evidence?

On the materials before us, it was not necessary for us to consider or deal with the issue of the Appellant's mental state in respect of the matters touched on at [18] and [21] above for reasons that will become evident.

Issue 1(a): Proving the fact of possession

31 The Appellant's contention that he did not even know that the drug bundles were hidden in the case is one that goes ***not*** to whether he knew the nature of the drugs, but to whether he *possessed those drugs*. This is because possession, for the purposes of the MDA, has been interpreted to mean not just physical possession or custody but also to incorporate an element of knowledge (*Sim Teck Ho v Public Prosecutor* [2000] 2 SLR(R) 959 ("*Sim Teck Ho*") at [11]). This raises a question as to the sort of knowledge that would have to be shown in order to sustain a finding that the accused person was in fact in possession of the drugs. In our judgment, all that is required in this context of establishing the fact of possession is that the accused person must know of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug; it is *not* necessary that the accused person also knows that the thing *was in fact* a controlled drug, much less its specific nature. Let us elaborate.

32 As a starting point, it must be emphasised that the elements of "possession" and "knowledge" (as ingredients of the offence of importation) are separate and distinct elements and in analysing each of them, care should be taken to ensure that they are not conflated. When dealing with the element of

knowledge, the inquiry is whether the accused person knew the specific nature of the drugs in question. On the other hand, when dealing with the element of *possession*, there is also embedded within it an inquiry into knowledge but one that is much narrower: it is limited to establishing whether the accused person knew of the existence of the thing in question that turns out to be a drug. We made this clear in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal bin Hamad*") (at [12]):

> … [I]n our judgment … where the Prosecution wishes to prove the fact of possession, it must prove not only that the accused was in possession of the package or the container *but also that the accused knew that it contained something, which may later be established to be the shipment of controlled drugs*. However, in proving possession, *it is not incumbent on the Prosecution to prove that the accused specifically knew that he was in possession of drugs, or even of something that turns out to be contraband*, as long as it proves that he was in possession of something and that thing turns out to be the drugs in question. [emphasis added]

33 The same point had earlier been underscored in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [34], where we expressly disagreed with the view expressed in *Public Prosecutor v Mohsen Bin Na'im* [2016] SGHC 150 (at [115(a)(i)]) that in order to prove the fact of possession, the Prosecution had to "prove beyond a reasonable doubt that the accused person not only had physical control over the item *but also that the accused person knew or was aware that the item was a controlled drug*" [emphasis added]. As we clarified in *Obeng Comfort*, the court, at this stage, is "not concerned with the qualities of the drug" (*Obeng Comfort* at [34]).

34 It therefore follows that when proving the fact of possession as an ingredient of the offence of importation, the Prosecution is not required to prove that the accused person knew the precise nature of the thing in question; all that is required at that stage of the inquiry is proof that the accused person knew that

the thing that turns out to be a controlled drug *was in fact in his possession, custody or control*. Thus, an accused person will not be found to be in possession of drugs (even if they were within his physical custody) if they were planted on him without his knowledge. This was the case in *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*") (see *Zainal bin Hamad* at [14]). The distinction may be expressed in terms of inadvertent possession on the one hand, which would not amount to possession in the legal sense, and knowing possession, which would. At this stage of the inquiry, knowing possession means only knowledge on the part of the accused person that the thing that turns out to be a drug is in his possession, control or custody. Whether the accused person knew that the thing that turns out to be a controlled drug was in fact the specific drug in question is an inquiry which arises when considering the separate question of *knowledge* rather than that of *possession* (*Zainal bin Hamad* at [13]):

> … [T]he question of whether the accused knows that the package or container contains *drugs* is an inquiry that arises when considering the question of *knowledge* rather than that of *possession*. Sequentially, one must first be shown to be in possession and then one must be shown to know the nature of that which one is in possession of. These are separate inquiries. [emphasis in original]

35 We emphasise that the foregoing analysis pertains to establishing the fact of "possession" where that fact is *an ingredient of the offence of importation or trafficking*, as the case may be. When spoken of in this sense, possession may be established either by proof of *knowing* rather than *inadvertent* physical possession of the thing, or by invoking the presumption under s 18(1) which is then not rebutted. A somewhat different analysis would apply when establishing the *mens rea* for the *offence of possession* under s 8(*a*) of the MDA. It is well-established that the *mens rea* for offences under the MDA (such as trafficking under s 5 and importation under s 7) is not just knowledge of the existence of

the thing which is later found to be a drug, but also knowledge of the *specific nature of the drug* (see, for instance, *Zainal bin Hamad* (in the context of trafficking) and *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 (in the context of importation)). In our judgment, the same applies in respect of the *offence* of possession under s 8(*a*) of the MDA. Possession is not a strict liability offence that is established simply by proof of the fact of possession. On the contrary, it too has a *mens rea* element, which is knowledge of the nature of the drugs that the accused person is in possession of. Thus, to make out the offence of possession, the Prosecution would have to establish the fact of possession in the sense we have described above; and in addition, it must establish the *mens rea*, meaning knowledge of the nature of the drugs. As is the case with trafficking or importation, the *mens rea* may either be proved beyond reasonable doubt or be established by invoking the presumption of knowledge under s 18(2) to the extent that this is not successfully rebutted.

36 We note that two decisions of the High Court – *Public Prosecutor v Rozman bin Jusoh* [1994] SGHC 251 ("*Rozman*") and *Shan Kai Weng v Public Prosecutor* [2004] 1 SLR(R) 57 ("*Shan Kai Weng*") – suggest, contrary to what we have just said, that *in relation to the offence of possession under s 8(*a*) of the MDA*, it is *not* necessary that the accused person must know of the specific nature of the drug in question, and that the requisite *mens rea* is only that the accused person is aware of the existence of the thing which later turns out to be the drug.

37 In *Rozman*, the first accused person had been charged with trafficking in cannabis. The Prosecution set out to prove the elements of possession and knowledge, while relying on the presumption of trafficking in s 17 of the MDA to make out its case that he had the drugs in his possession for the purpose of trafficking. The judge found that the s 17 presumption had been rebutted on the

facts, and amended the trafficking charges to charges of possession under s 8(*a*) of the MDA, which the first accused person was then convicted of. Discussing the *mens rea* of the offence of possession under s 8(*a*), the judge referred to the decision of the House of Lords in *Warner*, and observed that while the *offence* of possession did have a *mens rea* component, this was a "minimal" requirement, and that "the scheme of the MDA envisaged that under s 8(*a*), so long as the accused person had known that he was in possession of the proscribed substance, he would be guilty of possession" (*Rozman* at [136]–[139]).

38 In our judgment, *Rozman* is wrong in suggesting that the *mens rea* of the *offence* of possession under s 8(*a*) of the MDA does not require proof that the accused person knew the specific nature of the drug. The error in that case arose from the court there having incorrectly conflated the inquiry into the knowledge that is required in order to establish the *fact of knowing possession* with the *mens rea* of the *offence of possession*. As we have noted above, the *mens rea* of the offence – whether this be an offence of possession, trafficking or importation – is knowledge of the nature of the drug, and this will often be established by invoking the presumption under s 18(2). We note, however, that this error did not ultimately affect the correctness of the judge's decision on the facts since the first accused person there had in fact admitted that he knew the nature of the drugs (*Rozman* at [138]).

39 In *Shan Kai Weng*, the appellant had pleaded guilty to a charge of unlawful possession of one tablet of nimetazepam. The appellant then sought, by way of criminal revision, to retract his plea on the ground, among other things, that he did not understand the nature of his plea because he was unaware that knowledge that the tablet was a controlled drug was an ingredient of the offence. The court rejected this argument, and found that the appellant could not have been unaware that he was pleading guilty to a charge of possession of a

controlled drug because this was set out very clearly in the charge and the statement of facts, which he had indicated he understood. It was clear, on this ground alone, that the appellant had no basis on which to retract his earlier plea of guilt, and the court's decision not to allow the appellant to retract his plea was therefore defensible. However, the court went further, and suggested that yet *another* ground on which the appellant's argument might be rejected was that his supposed lack of knowledge was in any case irrelevant because the *mens rea* of the offence required only that the accused person knew of the existence of the tablet (at [24]):

> The position under our law, therefore, is that possession is proven once the accused knows of the existence of the thing itself. Ignorance or mistake as to its qualities is no excuse. The appellant knew that the tablet was in his car. He believed it to be a sleeping pill, which, like the aspirin of the hypothetical in *Warner* and *Tan Ah Tee*, is a drug. As such, his ignorance as to the qualities of the tablet did not provide him a defence to the charge of possession, and his contention that he did not understand the nature of his plea could not stand.

This second, *additional* ground for denying the retraction of the appellant's plea runs contrary to what we have stated above, which is that the *mens rea* of the *offence* of possession requires knowledge of the specific nature of the drug, unlike the position where one is concerned only with establishing the *fact* of possession, and we overrule *Shan Kai Weng* to the extent that it suggests otherwise.

40 To summarise, while there is an element of knowledge that is embedded within the *fact* of possession under the MDA, this is distinct from the *mens rea* of the *offence* of possession under s 8(*a*) of the MDA. The former requires only that the Prosecution establish that the accused person knew that he had physical possession, custody or control of the thing that later turned out to be a drug. This is a necessary part of proving the fact of possession because, as a matter of law,

a person who does not even know that the thing in question, whatever its nature might eventually turn out to be, is within his possession, control or custody cannot be said to be in possession of it. This fact may be proved beyond reasonable doubt on the evidence, or presumed pursuant to s 18(1) of the MDA. Section 18(1), which is the presumption of possession, is but an evidential tool which has the effect of reversing the burden of proof such that where it is relied on, it becomes the *accused person* who must establish that he was not in possession of the drugs, either by establishing that in truth, he was never in possession of or never had custody of or control over the container, keys or document referred to in s 18(1); or by establishing that he was never aware that the thing which was later found to be a drug was in his custody: see *Sim Teck Ho* at [13], *Zainal bin Hamad* at [11]–[12] and [21] and *Obeng Comfort* at [34]–[35]. If the Prosecution does not invoke the presumption of possession, then it must prove that the accused person knew that he was in possession of the thing that turned out to be a drug. It is only *after* the fact of possession is proved (or presumed and unrebutted) that the element of knowledge becomes relevant – an inquiry which, as discussed above, is an entirely separate inquiry focused on whether the accused person knew the specific nature of the drug.

Issue 1(b): Elements of wilful blindness; wilful blindness and the s 18(1) presumption

41 Having clarified that the fact of possession under the MDA requires that the accused person not only be in possession, custody or control of the thing in question but also know that he is, we turn to consider what is meant by "knowledge" in this context. The starting point is the ordinary meaning of knowledge – which is *actual* knowledge. However, as we noted in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*"), the courts have also recognised that the requirement of knowledge may be satisfied where

it is proved that the accused person had been wilfully blind to the fact in question, wilful blindness being the *legal equivalent* of actual knowledge (at [104]–[106]). We therefore begin by clarifying just what the doctrine of wilful blindness entails, and whether and how it features in the analysis of the statutory presumptions.

42 We preface this discussion by observing that the analysis of these two questions – that is, the operation of the doctrine of wilful blindness, and the interplay between wilful blindness and the rebuttal of the statutory presumptions – may be different where the fact in question is *knowing possession* or knowledge of the existence of the thing in one's possession, control or custody (which may be presumed under s 18(1)) and where the fact in question is knowledge of the nature of the drug (which may be presumed under s 18(2)). The latter question only arises after it has been established that the accused person has possession of the thing, and knows this. This seems to us to be a material and significant difference which might well have a bearing on the way in which the issues that we will deal with here are resolved when dealing with each of these elements of possession and of knowledge of the nature of the drugs. We emphasise that because of the view which we take on the merits of the appeal on the question of possession, this judgment is concerned only with the element of *knowing possession*, and that our holdings on the operation of the doctrine of wilful blindness and its interaction with the statutory presumptions are confined to that context. We are cognisant that these issues have previously arisen in the context of the element of *knowledge of the nature of the drug* (see, for example, *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 ("*Masoud*") and *Tan Kiam Peng*). As we elaborate at [67]–[69] below, to the extent that our holdings in the present appeal in relation to the element of knowing possession and s 18(1) of the MDA might appear to vary from what was said on these issues in the context of s 18(2) of the MDA

in *Masoud* and *Tan Kiam Peng*, we note that those observations were made in relation to a different question. We accordingly leave open the question whether there is in fact any inconsistency between what we hold here in this context (meaning in the context of possession and the presumption under s 18(1) of the MDA) and what we have said previously in a slightly different context (meaning in the context of the element of knowledge and the presumption under s 18(2)) for resolution in a subsequent case when the issue is centrally raised in the latter context and it can then be resolved in the light of the present judgment.

43 We turn to consider and discuss the substantive issues in the light of these prefatory observations.

The doctrine of wilful blindness

44 A survey of the case law on wilful blindness demonstrates that the term "wilful blindness" has been used in two distinct senses. Both of these senses rest on the premise that the accused person *subjectively* suspects something and then deliberately chooses not to make further inquiries that would prove that which is suspected. But, beyond this, there are subtle, albeit important differences between them.

45 The first may be described as the **evidential** sense of the term. In this sense, the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all the other relevant evidence, might sustain a factual finding or inference that the accused person had *actual knowledge* of the fact in question. When wilful blindness is referred to in this sense, it is in truth nothing more than a convenient shorthand for an inference that the accused person *actually knew* that which he is accused of knowing. Thus, in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [30] (which was cited in the GD at [26]), wilful blindness was described as

"lawyer-speak" for "*actual knowledge* that is *inferred* from the circumstances of the case" because "the inference of knowledge is irresistible and is the *only rational inference* available *on the facts*" [emphasis in original] (see also *Public Prosecutor v Mas Swan bin Adnan and another* [2011] SGHC 107 at [55]; *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [76]; *Obeng Comfort* at [41]; and *Public Prosecutor v Zainudin bin Mohamed and another* [2017] 3 SLR 317 at [93]). What all these cases have in common is that they treat the accused person's deliberate refusal to investigate a suspicious state of affairs as evidence that he did not merely suspect, but *actually knew* the truth of the matter. As we explained in *Iwuchukwu Amara Tochi and another v Public Prosecutor* [2006] 2 SLR(R) 503 at [6] (cited in *Tan Kiam Peng* at [123]):

> … There could be various reasons why a court might not believe the accused person, or find that he had not rebutted the presumption. The fact that he made no attempt to check what he was carrying could be one such reason. Whether the court would believe a denial of knowledge … would depend on the circumstances of the individual case. … [U]ltimately, a failure to inspect may strongly disincline a court from believing an "absence of knowledge" defence. …

46 On this view, the circumstances will have been so suspicious that it would have been natural for any innocent person in the accused person's position to take steps to investigate the true position. The failure to do so in the light of all the circumstances might persuade a court that the accused person actually *did know* the truth, and deliberately avoided investigating in order to maintain a façade of ignorance.

47 Secondly, the language of wilful blindness has also been used to describe a mental state which falls short of actual knowledge, but nevertheless is held to satisfy the *mens rea* of knowledge because it is the *legal* equivalent of actual knowledge (see, for example, *Public Prosecutor v Iwuchukwu Amara*

Tochi and another [2005] SGHC 233 at [48]; *Tan Kiam Peng* at [124], [127], [129] and [157]; and *Public Prosecutor v Lim Boon Hiong and another* [2010] 4 SLR 696 at [66]–[67]). We describe this as the **extended** conception of wilful blindness because it extends (albeit, for reasons we shall come to very shortly, in a *very limited* sense) the *mens rea* of knowledge beyond actual knowledge *simpliciter*. Therefore, an accused person who does not in fact know the true position but sufficiently suspects what it is and deliberately refuses to investigate in order to avoid confirmation of his own suspicions should, in certain circumstances, be treated *as though* he did know. This is because wilful blindness, in these circumstances, is treated as the *legal equivalent* of actual knowledge.

48 We elaborate. An accused person may be said to be wilfully blind in this extended sense to the existence (in his possession, control or custody) of the thing later discovered to be a drug if, even though he might not have known with certainty that the thing existed, he nonetheless harboured a suspicion that he did have the thing in his physical possession, and yet deliberately refused to inquire because he did not want to have his suspicions confirmed (*Public Prosecutor v Hla Win* [1995] 2 SLR(R) 104 at [14]). The reason why this may, in law, be treated as the legal equivalent of actual knowledge is that the fact in question was not brought home to the accused person due to his own deliberate decision to turn a blind eye or to look away so as to avoid having actual knowledge and that he did this for the purpose of avoiding the legal consequences of such actual knowledge.

49 The doctrine of wilful blindness in this sense exists as a *very narrow qualification* to the requirement of actual knowledge, a qualification necessitated by the need to deal with accused persons who attempt to avoid liability by carefully skirting actual knowledge. Such attempts must be defeated

because they undermine the administration of justice, and the most effective way to frustrate, discourage and penalise such attempts is to affix the accused person with the very knowledge that he has sought deliberately to avoid. The very limited and circumscribed nature of the doctrine of wilful blindness was succinctly explained in the following terms by Prof Glanville Williams in *Criminal Law: The General Part* (London: Sweet & Maxwell, 1961) at p 159:

> The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. *This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge.* [emphasis added]

50 The distinction between the two senses of wilful blindness is that in the former, the court is satisfied that on the whole, the accused person *did* in fact know; whereas in the latter, the court considers, in Prof Williams' words, that "it can *almost* be said" [emphasis added] that the accused person actually knew the fact in question. For the rest of this discussion, we use the term "wilful blindness" to denote only the *extended* conception. The *evidential* conception is, as discussed, more accurately described simply as a finding or inference of actual knowledge *simpliciter* rather than as a finding that the accused person had been wilfully blind; the court's finding or inference in such situations is that the accused person *actually knew* the truth of the matter, and *not* that he was *blind* to it. In this regard, it is important to bear in mind that just because the accused person did not look (or "turned a blind eye") does not necessarily mean therefore that he did not actually know and may therefore be said to be wilfully "blind". On the contrary, it could very well be that he did not look precisely

because he already knew (in his "secret mind", by other means) and therefore did not need to look. If this is what is meant – that the accused person *actually knew* despite not having looked – describing such an accused person as wilfully blind would be apt to confuse since, as was discussed above, wilful blindness in its true, extended sense refers to a state of knowledge which falls short of actual knowledge *simpliciter*. We therefore encourage prosecutors, Defence counsel and the courts not to use the term "wilful blindness" unless they mean a state of knowledge falling *short of* actual knowledge.

Elements of wilful blindness

51 Bearing the foregoing in mind, and especially having regard to Prof Williams' salutary reminder of the need to carefully circumscribe the doctrine of wilful blindness lest it tread impermissibly into the potentially much wider realm of *constructive* knowledge, we hold that for an accused person to be found to be wilfully blind, the following requirements must be proved:

(a) the accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind;

(b) there must have been reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the truth, at least in the context of the fact of possession; and

(c) the accused person must have deliberately refused to pursue the reasonable means of inquiry available so as to avoid such negative legal consequences as might arise in connection with his knowing that fact.

52 We discuss each element in turn. Before we do so, we observe that the first and third elements have been quite extensively dealt with in the case law, although these bear emphasising and restating, which we do here. However, it

is the contours of the second element which are raised for our consideration for the first time in this appeal. We reiterate here a point that may be especially relevant to this second element of the doctrine of wilful blindness: the concept of *wilful blindness* can only be applied in the context of the accused person's *knowledge* of a specific fact, whether that be knowledge as to the existence, within his possession, custody or control, of the thing which is later found to be a drug, or knowledge of the nature of the drug. The knowledge in question in each of these instances is different. In this case, we are dealing with knowledge in the context of proving the fact of possession. It seems to us that the test for wilful blindness, in particular, the second element that we have referred to at [51(b)] above, might vary if the specific fact in issue were different, meaning if the fact in question were knowledge of the nature of the drug. We elaborate on this below.

Clear, grounded and targeted suspicion

53 We deal first with the requirement of suspicion. In *Tan Kiam Peng*, we stated at [125] that suspicion is a "central as well as integral part of the entire doctrine of wilful blindness". Two points are pertinent. First, the accused person must have *personally* suspected the fact in question. This serves to distinguish the wilfully blind accused person from the negligent accused person, who might subjectively have thought nothing of circumstances that a reasonable person would have found suspicious. Wilful blindness, therefore, is concerned with the accused person's *subjective* state of mind. It does not refer simply to him failing to investigate in circumstances where a reasonable person would have; rather, he must have *personally* suspected the truth and (as shall be seen below) *deliberately* chosen not to investigate his suspicions. Any reference to what a reasonable person would have done would be relevant only as "one of the

evidential tools for the court to assess the accused person's subjective state of mind" (see *Masoud* at [56]–[59]).

54 The second point concerns the degree of suspicion required. In *Tan Kiam Peng*, we held that the suspicion must be "firmly grounded and targeted on specific facts"; mere "untargeted or speculative suspicion" is insufficient. These were phrases borrowed from the judgment of Lord Scott in *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469 ("*Manifest Shipping*") at [116] (cited in *Tan Kiam Peng* at [113]), whose words of caution against unduly lowering the threshold for a finding of wilful blindness are worth setting out in full:

> In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. *But a warning should be sounded.* Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, *the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe.* To allow blind-eye knowledge to be constituted by a decision not to enquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding of privity. [emphasis added]

55 Ultimately, in our judgment, it is essential that the level of suspicion must have been such as to lead *the accused person* to investigate further, and this would necessarily entail that the facts in question must be facts "in whose existence the individual has *good reason to believe*" [emphasis added]. This, of course, is a matter which would depend heavily on the precise facts before the court (*Tan Kiam Peng* at [125]).

Availability of reasonable means of inquiry

56 The next requirement is that there must have been reasonable and efficacious means of inquiry available to the accused person. This, in a sense, is allied to the third element (namely, a *deliberate* refusal to inquire) since the accused person's failure to inquire should not be held against him if there were no such means of inquiry available to him. For this reason, it must, in our view, be established that: (a) there were means of inquiry *reasonably* available to the accused person; and (b) if taken, those means of inquiry would have led him to the truth he sought to avoid, at least in relation to the fact of possession.

57 The first point is that the means of inquiry must have been *reasonably* available. Whether or not a particular means of inquiry was reasonably available to the accused person is a fact-sensitive question to be determined by the court on the facts of each case. In this regard, we would observe that the means of inquiry that the accused person is expected to take should generally be reliable, appropriate in the circumstances (including the extent to which his suspicions had been raised) and capable of leading him to the truth within a reasonable period of time.

58 The second point is that it must be shown that the means of inquiry that the court thinks should have been pursued in the circumstances would, if taken, have led the accused person to discover the truth. As we have noted, the doctrine of wilful blindness requires that the *essential* reason the accused person did not end up with actual knowledge was that he chose to look away. In other words, the true facts must have been readily available to anyone disposed to discover them. This must entail that had the accused person looked, he would have uncovered those facts. We do not think it right to impute to an accused person, by reason of his refusal to inquire, knowledge of things that would *not* have

been evident even to one who *had* undertaken those inquiries – one cannot be said to be *wilfully blind* to a fact when that fact was, in the circumstances, not reasonably discoverable.

Deliberate refusal to inquire to avoid legal liability

59 The final element is that the accused person must deliberately have refused to inquire (despite having ready and effective means to do so) in order to avoid legal liability. The requirement for a *deliberate* refusal to inquire is what distinguishes wilful blindness from recklessness, which also involves the conscious disregard of a known risk. As was stated in *Tan Kiam Peng* at [127], "wilful blindness necessarily entails an element of *deliberate* action" in that the accused person "has a *clear suspicion* that something is amiss but then embarks on a deliberate decision not to make further inquiries ***in order to avoid confirming what the actual situation is***" [emphasis added in bold italics]. The accused person's *motivation* behind his failure to inquire is key. His refusal to inquire must have been motivated by a desire to deliberately avoid inculpatory knowledge, and this, in our view, is what distinguishes wilful blindness from recklessness, as we have already noted, and, for that matter, from negligence: see the judgment of Lord Hobhouse in *Manifest Shipping* (albeit in the context of marine insurance), referring to the decision of the English Court of Appeal in *Compania Maritima San Basilo S A v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1977] QB 49 at [25]; cited in *Tan Kiam Peng* at [112]:

> … [P]erhaps the most helpful guide is to be found in what was said by Roskill LJ and Geoffrey Lane LJ about the reason for refraining from inquiry – "in the hope that by his lack of inquiry he will not know for certain" – "in order to avoid obtaining certain knowledge of the truth". … *The illuminating question therefore becomes "why did he not inquire?"*. If the judge is satisfied that it was because he did not want to know for certain, then a finding of privity should be made. If, on the other

> hand, he did not enquire because he was too lazy or he was grossly negligent or believed that there was nothing wrong, then privity has not been made out. … [emphasis added]

60 In other words, the court must be satisfied that the refusal to inquire was borne out of a motive to avoid the legal liability which attaches to knowledge of the fact that the accused person blinded himself to, and not out of, for instance, indolence, negligence or embarrassment. On this point, given the difficulty of proving an accused person's mental state, the inquiry into whether he deliberately refused to inquire *so as to avoid knowledge* will frequently be a matter of inference (see *Tan Kiam Peng* at [126]).

61 In some cases, an accused person may have taken *some* steps to investigate the nature of the item in his possession. Whether he may nonetheless be said to have been wilfully blind depends on the reasonableness and adequacy of the steps taken. As observed in *Tan Kiam Peng* at [129], the accused person may rebut a finding of wilful blindness "by demonstrating that he or she took reasonable steps to investigate by making further inquiries that were appropriate to the circumstances". Where the accused person is given a wrapped package, for example, and is told that it contains counterfeit currency, he should usually at least ask to view the contents of the package. "Even a query by the accused person coupled with a false assurance would … be generally insufficient to obviate a finding of wilful blindness" (at [129]). Whether the steps taken are reasonable and adequate will, we reiterate, depend on all the relevant facts of each case.

62 Last, we return to a point that we have already alluded to. The doctrine may apply slightly differently ***in practice*** depending on whether one is dealing with the question of the fact of possession or of the fact of knowledge of the nature of the drugs. When dealing with the fact and element of *possession*, the

fact in question is typically knowledge that the thing (which turns out to be a drug) is within the possession, custody or control of the accused person. However, where the question of *knowledge* is concerned, the fact in question is knowledge of the precise nature of that thing. By this latter stage of the analysis, the accused person will already have been found, either as a matter of the evidence or as a result of an unrebutted presumption, to be in possession, custody or control of the thing in question and to know that he is in possession of it. As such, when dealing with the element of *knowledge* (as opposed to possession), it would generally not be sufficient for the accused person simply to say that he did not know what he was carrying, or worse, that he had been *indifferent* to what he was carrying. It seems to us that this is a material difference. We have said at [42] above that we leave this question open because it is not necessary for us to arrive at a conclusive view on this to resolve the present appeal. However, at least provisionally, it seems to us that the accused person will likely be found to have been wilfully blind to the nature of the drug if his suspicions were aroused but he nonetheless deliberately decided not to check. The question whether the accused person had the means to scientifically verify the precise scientific name or formulation of the particular drug simply should not arise because, as we have said, by the time this stage of the inquiry is reached, the accused person will already be found to know that he is in possession of the thing that turns out to be a drug. In such circumstances, provided his suspicions are sufficiently aroused, it seems to us that the accused person may be found to be wilfully blind to the nature of the drug if the court is satisfied that he did not make further inquiries because he either did not want to know the truth or was indifferent to the true nature of what he was in possession of. We leave it at that for now pending detailed analysis on a future occasion.

Wilful blindness and the s 18(1) presumption

63 Having set out the elements of wilful blindness, we turn to consider whether and how the doctrine of wilful blindness may be applied in the analysis of the statutory presumptions under s 18 of the MDA.

64 As we have noted, the following must be established to make out the offence of importation under s 7 of the MDA: (a) possession of the drugs; (b) knowledge of the nature of the drugs; and (c) intentional bringing of the drugs into Singapore without prior authorisation. For present purposes, it is elements (a) and (b) which are in issue, although we observe that where an accused person is able to show that he did not even know he had custody or possession of the drugs, element (c) would also not be made out inasmuch as it cannot then be said that the drugs were *intentionally* brought into Singapore. Element (a) requires that the accused person must have *known* of the existence, within his possession, control or custody, of the thing which is later found to be a drug, and element (b) requires that the accused person must have *known* the precise nature of the drug. These two aspects of knowledge may be proved beyond reasonable doubt on the evidence, or established by recourse to the presumptions under s 18(1) and s 18(2) of the MDA to the extent that the presumptions are not successfully rebutted. If the Prosecution does not wish to rely on the presumptions, it may set out to prove either actual possession and knowledge or the legal equivalent thereof (meaning wilful blindness as set out at [47]–[51] above), and it must do so beyond reasonable doubt. At the trial below, the Prosecution's case was mounted on the basis of the presumptions, and it is to this and their interaction with the doctrine of wilful blindness that we now turn.

The presumptions in s 18

65 Section 18 provides as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> (*b*) the keys of anything containing a controlled drug;
>
> (*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; or
>
> (*d*) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.
>
> (3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.
>
> (4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

66 The s 18 presumptions, in common with other such presumptions in the MDA, are evidential tools – meaning they are presumptions of *fact* – and are designed to mitigate the practical difficulty faced by the Prosecution in proving possession and knowledge on the part of the accused person (*Tan Kiam Peng* at [55]). What is presumed under s 18(1) is the *fact* that the accused person was knowingly in possession of the thing that turns out to be a drug. In our judgment, it would therefore seem inappropriate to speak of a presumption that the accused person had been *wilfully blind*. This is because wilful blindness is not a discrete state of mind that can be proved or disproved as a matter of *fact*. Rather, as we

have explained, the doctrine of wilful blindness is a *legal concept or construct* which exists as a limited extension of the legal requirement of actual knowledge in circumstances where the accused person has deliberately refused to make inquiries in the face of suspicion in order to cheat the administration of justice. This being the case, whether or not an accused person was wilfully blind is not a mere question of fact that lends itself to being made the subject of a presumption, but a question of *mixed law and fact* which involves an intensely and inevitably fact-sensitive inquiry covering a range of diverse considerations. Such a question cannot ordinarily be the subject of an *evidential* presumption. Further, as we have already noted, wilful blindness is a state falling a little short of actual knowledge. The presumption, on the other hand, where it addresses any aspect of knowledge, is concerned with actual knowledge. A presumption cannot, as a matter of logic, be invoked to establish a fact which is accepted not to be true.

67 We accordingly hold that the knowledge presumed under s 18(1) refers exclusively to *actual knowledge* and does not encompass knowledge which the accused person is said to be wilfully blind to. As we have noted at [42] above, we recognise that this conclusion might appear to vary from our prior observations in *Tan Kiam Peng* and *Masoud* where we suggested that the *s 18(2)* presumption does encompass the doctrine of wilful blindness:

Tan Kiam Peng at [139]:

> Thirdly, whilst the concept of knowledge in s 18(2) of the [MDA] entails actual knowledge, the doctrine of wilful blindness should also be emphasised and is also included within the concept of knowledge in s 18(2) simply because wilful blindness is the legal equivalent of actual knowledge. …

Masoud at [50] and [55]:

> 50 Much ink has been spilt over this presumption … In rejecting his defence, this court held [in *Tan Kiam Peng*] that apart from actual knowledge, s 18(2) of the MDA also encompassed the doctrine of wilful blindness – the appropriate level of suspicion that led to a refusal to investigate further – which was the legal equivalent of actual knowledge (at [139]). …
>
> …
>
> 55 What emerges from the above is a clear and coherent picture of how the courts have approached the s 18(2) presumption. First, the knowledge referred to in s 18(2) encompasses both actual knowledge and wilful blindness, which is the legal equivalent of actual knowledge. Wilful blindness is established when the accused had the appropriate level of suspicion and he refused to investigate further. … [T]he concepts of actual knowledge and wilful blindness recede into the background where the s 18(2) presumption has been triggered. This is because s 18(2) of the MDA presumes such knowledge and consequently obviates the need for the Prosecution to prove the same. Conversely, where actual knowledge or wilful blindness – the legal equivalent of actual knowledge – has been established, it would logically follow that an accused would not be able to rebut the s 18(2) presumption ….

68 It might be possible to reconcile these passages with the analysis at [66] above on the basis of the common thread running through them: that is, the doctrine of wilful blindness may still be relevant, *at least in the context of the presumption of knowledge under s 18(2)*, in analysing whether the presumptions have been *rebutted*. This would be so on the basis that wilful blindness is the *legal equivalent* of actual knowledge. That being the case, it would follow that an accused person would be unable to rebut the presumption of actual knowledge of a particular fact if he can be shown to have been wilfully blind to that fact since he would have been affixed with the legal equivalent of actual knowledge. On that view, it would be open to the Prosecution, where it has invoked the presumptions (whether of possession or of knowledge), to rely on facts that establish wilful blindness to maintain that even if the accused person

were able to establish that he did not actually know the relevant fact in question, the presumptions should not be found, in the circumstances, to have been rebutted because otherwise, it would enable him to cheat the due administration of justice.

69 We think there may well be difficulties even with this view and it may be that a reconsideration of these passages from *Tan Kiam Peng* and *Masoud* (which we have quoted at [67] above) would be necessary. That having been said, however, it is not necessary for us to deal with this issue in the context of the s 18(2) presumption definitively in the light of our findings that first, it is not open to the Prosecution to invoke the s 18(1) presumption at all in the present case (see [81] below), and second, there is no basis on the facts to find that the Appellant had been wilfully blind (at [91] below). We therefore leave this question to be considered in an appropriate case.

70 To summarise, we hold that the Prosecution may rely on the doctrine of wilful blindness to *prove* an element of knowledge – either of the existence of the drug or of the nature of the drug. This must be proved beyond reasonable doubt.

71 As to the question of whether the doctrine of wilful blindness may be relevant in the analysis of the s 18 presumptions, we hold that the Prosecution may not rely on the presumption under s 18(1) to presume that the accused person was wilfully blind to the presence of the drug within his possession, custody or control. Nor in our judgment, does the doctrine of wilful blindness have any relevance in the analysis of whether the presumption under s 18(1) has been rebutted. Rather, when dealing with the fact of possession, the Prosecution may rely on the presumption or seek to prove that the accused person had actual knowledge that the thing which turns out to be a controlled drug was within his

possession, custody or control; or it may seek, in the alternative, to prove beyond reasonable doubt that the accused person was wilfully blind to this fact and so should be taken to have had actual knowledge of it. If the Prosecution relies on the s 18(1) presumption, the accused person may rebut the presumption by establishing the contrary of that which is presumed against him, that is, by showing that he did not *actually know* that the drugs were in his possession. He might do so by, for example, persuading the court that the drugs were slipped into his bag or planted in his house without his knowledge (see *Obeng Comfort* at [35]), or that he was wholly unaware that the vehicle he was driving had been pre-packed with drugs (see *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499, albeit in the closely analogous context of the presumption under s 21 of the MDA).

72 As already mentioned, we confine these holdings to the context of the s 18(1) presumption of knowing possession. As to the interaction of the doctrine of wilful blindness with the presumption under s 18(2), we leave this question to be reconsidered in an appropriate case.

Issue 1(c): Whether the Prosecution could rely on the presumption in s 18(1) and, if so, whether it was rebutted

Whether the Prosecution could rely on the presumption

73 As we have noted above at [28], it became apparent to us that the focus in this case, given the way both the Prosecution and the Defence approached the matter, ought not to have been on the element of knowledge (of the nature of the drugs), but rather, on the anterior element of possession. Therefore, the key question in the appeal is whether the Appellant was in knowing possession of the drugs, and in this regard, the Prosecution seeks to rely on the statutory

presumption in s 18(1) to presume that fact – in other words, that the Appellant knew of the existence of the bundles in the case.

74 However, and as was noted at [28(b)] above, we doubted whether the Prosecution could seek to presume the fact that the Appellant *actually knew* of the existence of the bundles when its case, both below and on appeal, appears to have been that the Appellant *did not actually know*. In this regard, the Prosecution clarified in its further submissions in this appeal that its case was that the Appellant had been *wilfully blind* to the existence of the drugs in the case. This is crucial because, as the Prosecution itself explained, this implicitly entails that the Appellant *did not actually know of the existence of the drugs in the case* (meaning that the Appellant did not have actual knowledge of the presence of the drugs in the case):

> 57 This distinction is critical because wilful blindness is meant *precisely* for situations when an accused does not have actual knowledge *simpliciter*. However, it can be inferred from the circumstances that, *deep down* (or "in his secret mind", to use the words of Lord Blackburn), the accused did "know" because he had a clear suspicion but chose not to check or ask for fear of confirming that suspicion.
>
> 58 Indeed, it is evident from the following *dicta* affirmed in *Tan Kiam Peng* that, while actual knowledge and wilful blindness are constructed to be equal in law, they are – in practice – different …
>
> 59 The [Appellant's] *formal* lack of knowledge of the contents of the receptacle is thus not mutually exclusive with the Prosecution's case that the [Appellant] was wilfully blind. It is then for the Prosecution to submit that the law may impute "actual knowledge" on the [Appellant] by virtue of his wilful blindness.
>
> [emphasis in original]

75 This was consistent with the Prosecution's position at the trial below, which was that the Appellant "*did not know what the luggage contained*, or why

he had to deliver the luggage" [emphasis added]. It relied in particular on his statement that:

> I did not pack the luggage myself. I also did not know what was inside the luggage bag. I had never thought of what would be inside the luggage bag.

76 During cross-examination, the Prosecution also ***put*** it to the Appellant that Izuchukwu had not told him what the contents of the case were; that Izuchukwu had not opened the case in his presence to show him its contents; and that he *in fact did not know what was inside the case*. The Prosecution submitted that the Appellant did not ask Chiedu or Izuchukwu about the contents of the case not because he was "[naïve] as to the illicit nature of the transaction", but "because he was motivated by the financial reward of N200,000 – 300,000". The Prosecution also pointed out that the Appellant did not attempt to physically inspect the contents of the case despite having multiple opportunities to do so and despite the fact that the case was unlocked:

1	Q: Now I put it to you that Izuchukwu … did not tell you what the contents of the luggage or the bag was. …
2	Q: … And I also put it to you that Izuchukwu did not open up the luggage in your presence to show you the contents of the luggage.
3	Q: And I also put it to you that you did not mention to the IO that Izuchukwu had told you they were clothes and shoes, and have opened up the bag to show you that they were bags and shoes.
4	Q: And I put it to you … that because Izuchukwu did not open up the bag to show you the bag, and Izuchukwu did not … tell you what was inside the bag, that is why you told the IO at paragraph 10 that you do not know what was inside the bag.

77 On its part, the Prosecution denied that the put questions were meant to be a statement of its case, and submitted that those questions only went to establishing the inconsistencies in the Appellant's evidence as to the contents of the suitcase. It is true that immediately prior to the put questions, the cross-examination explored inconsistencies in the Appellant's evidence. However, having looked at the put questions that followed, we are satisfied that the Prosecution's case as put to the Appellant was that *he did not know the contents of the suitcase*. If all that the Prosecution was trying to establish was inconsistency between what the Appellant had said in his statements and what he had said on the stand, the four questions set out above would not have been necessary; and what should have been put to the Appellant was not the truth of those statements, but merely the fact that he had said them, and had then said something contradictory later on. This is also apparent from the Prosecution's written submissions to the Judge, in which it was submitted not just that the Appellant's accounts in his statements and his oral testimony were inconsistent, but that as between those inconsistent accounts, the former, in which the Appellant maintained that he did not know what the suitcase contained, should be preferred as the truth:

> 47 There is a sharp divergence in the Prosecution's case (based on the [Appellant's] statements to the CNB) and the Defence's case (based on the [Appellant's] court testimony) in respect of the circumstances in which the [Appellant] was tasked to bring the luggage from Nigeria to Singapore.
>
> 48 It is submitted that the Prosecution's case ought to be preferred over the Defence's case …

78 We note that in its submissions *on appeal*, the Prosecution did raise the point that the fact that the Appellant's reaction was to break down and cry when the drugs were discovered suggested that "he was not ignorant of the presence of drugs in the Luggage". Two points might be made in relation to this. First, this point was raised for the first time on appeal, whereas we are concerned here

with the Prosecution's case against the Appellant as it was run *at the trial*. Crucially, this point was never put to the Appellant at the trial, nor was it made in the Prosecution's closing submissions before the Judge. Second, even in the Prosecution's submissions on appeal, the point was raised only in passing, and must be read with the Prosecution's overall case on wilful blindness, which was premised not on the Appellant's *knowledge* of the contents of the case, but on his *suspicions* as to what could be in the case, coupled with his alleged failure to investigate.

79 It was therefore clear to us that the Prosecution's case was that the Appellant *did not actually know* what the contents of the case were. This indeed was also the Appellant's evidence. It follows from this that we must proceed on the basis that the Appellant *did not actually know* that the two drug bundles were in the case. In truth, the Prosecution's case was that the Appellant had been wilfully blind *in the extended sense* to the existence of the two drug bundles in the case; on its case, the Appellant had not in fact taken any steps to find out what he had been tasked to deliver:

> 102 Chiedu and Izuchukwu did not tell the [Appellant] what was inside the luggage. …
>
> 103 … [T]he [Appellant] had refused to find out more or confirm his suspicions because he was motivated by the financial reward of N200,000 – 300,000 promised by Chiedu. …
>
> …
>
> 105 For these reasons, it is submitted that the [Appellant] had failed to make enquiries or take reasonable steps to find out what he had been tasked to deliver, notwithstanding the suspicious circumstances surrounding the transaction. … [B]ecause of the above, the [Appellant] was wilfully blind …

It is evident from this that the Prosecution's case on wilful blindness was that given the suspicious circumstances, the Appellant should have taken reasonable steps to ascertain the contents of the case. But that, as we have already

emphasised, necessarily entails accepting that the Appellant, in the first place, did not actually know that the drug bundles were hidden in the case.

80 We pause to note that the Judge, in finding that the Appellant *actually knew* of the existence of the drugs, seemed to have misunderstood the Prosecution's case as one of wilful blindness in the *evidential* sense, that is, as an inference of actual knowledge (the GD at [28]). Had the Judge been alive to the distinction between the two senses in which the doctrine of wilful blindness had been invoked, he might have realised that the Prosecution's case on wilful blindness had in fact been that the Appellant *did not actually know of the existence of the drugs*. Had that been the case, he might have reached the conclusion, as we have, that it is then not even open to the Prosecution to invoke the s 18(1) presumption in the first place. As we have pointed out, the presumption of possession is a presumption that the accused person *in fact* knew that the item in question was within his possession, custody or control; and if the Prosecution has advanced its case on the basis that the accused person did not *in fact* know this, it cannot, as a matter of principle, be allowed to invoke the presumption to presume the existence of a fact which it has accepted does not exist. This point of principle was, in our view, quite rightly conceded by the Prosecution; instead, the Prosecution took issue only with the characterisation of its case, which, for the reasons given above, we resolved against the Prosecution.

81 Therefore, in conclusion, the Prosecution could not invoke the s 18(1) presumption. In the premises, it is no longer necessary for us to consider whether the presumption has been rebutted on the evidence.

Issue 2: Whether wilful blindness was proved beyond reasonable doubt

82 Since we have found that because of the way the Prosecution ran its case at the trial as explained at [76]–[79] above, the fact of possession cannot be presumed under s 18(1) of the MDA, the next question is whether that fact has been proved beyond reasonable doubt. This may be done by proving either that the Appellant *actually knew* of the existence of the drugs hidden in the case, or that he had been wilfully blind to the same. Since, as was explained above, the Prosecution's case was run on the basis that the Appellant *did not have actual knowledge of the existence of the drug bundles in the case*, the former course is foreclosed to it, and what is left is that the Prosecution must prove beyond reasonable doubt that the Appellant had been wilfully blind to the existence of the drugs hidden in the case.

83 As we have also explained, the Prosecution must prove beyond reasonable doubt that:

(a) the Appellant had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind;

(b) there were reasonable means of inquiry available to the Appellant, which, if taken, would have led him to discover the truth; and

(c) the Appellant deliberately refused to pursue those reasonable means of inquiry that were available in order to avoid such adverse consequences as might arise in connection with his knowing the true state of affairs.

The reasonably available means of inquiry would not have led the Appellant to discovery of the truth

84 The element on which the Prosecution's case falls is the second element, which, as noted, requires that the reasonably available means of inquiry, if taken, would have led the Appellant to discover the truth – meaning that the suitcase contained the drug bundles. The Prosecution submits that there were at least two ways for the Appellant to investigate his suspicions about the contents of the case. First, the Appellant could have checked the unlocked case. However, it is clear to us that a person opening the case and checking through its contents would not have been able to discover the drug bundles, which were eventually found hidden within its inner lining. Indeed, even after all of the items in the case had been removed by the ICA officers, and it had once again been physically examined, nothing incriminating was found. Checkpoint Inspector Aliice d/o Anthony Muthu testified that she could not find anything incriminating even after she had *checked the lining of the case*:

> Q: … When you open the bag to inspect, what did you see in the bag?
>
> A: Clothings.
>
> Q: Are you telling us that you took out the clothes, put them aside until the bag was empty for you to check or you merely rummaged through the bag and rummaged the clothes to see whether there was anything incriminating?
>
> A: *I went along the lining*. I just went through the---er, the clothes step by step, how we are taught to check a bag. I went through the procedure. *I couldn't find anything*, so I took out his clothing, put on the checking bay and… scanned the bag one more time.
>
> [emphasis added]

85 It was only after the case had been screened by the X-ray screening machine that the ICA officers noticed that the darker density items on the display were concealed within its inner lining. The ICA officers then attempted

to unscrew the side panel of the case to access the inner lining, but because "progress was slow", the inner lining of the case was cut open and the drug bundles were then discovered and recovered. It is clear in the circumstances that the Appellant would not have discovered the drug bundles in the inner lining of the case even if he had, as the Prosecution says he ought to have done, opened and checked the case.

86 Second, the Prosecution submits that the Appellant could also have inquired of Chiedu and Izuchukwu. The question then is whether Chiedu and Izuchukwu would have told the Appellant the truth. In our judgment, given that the Prosecution accepts that the Appellant was not even told of the existence of the drugs hidden in the case, it seems an obvious inference that Chiedu and Izuchukwu were intent on keeping the truth of the matter from the Appellant, and would not have told him about the hidden drug bundles even if he had asked.

87 In our judgment, it follows from the foregoing that there were no reasonably available means for the Appellant to have discovered that there were drug bundles hidden in the inner lining of the case. Wilful blindness, as we have explained, obtains where the accused person had wilfully shut his eyes to the truth, and this entails that *had he opened his eyes, he would have seen it*. On the present facts, we were satisfied that it would have been impossible for the Appellant to have discovered the drug bundles even if he had made the requisite inquiries.

88 For this reason, we do not think it may be found that the Appellant was wilfully blind to the existence of the drugs in the case. As we have explained, the three requirements that must be established in order to make good a finding of wilful blindness are cumulative in nature. As such, the Prosecution's failure to establish that there were reasonably available means for the Appellant to have

discovered the hidden drug bundles is, on its own, dispositive of this issue. Further, because of the way the Prosecution ran its case, it was not open to us to consider whether, on the totality of the evidence, having regard to other admittedly suspicious circumstances, the Appellant should have been found to have *actually known* of those drug bundles. The Judge appeared to have made such a finding, but, as we have noted above, he came to this conclusion evidently having misunderstood the true nature of the Prosecution's case, which was that the Appellant was wilfully blind in the extended sense, and not that he actually knew of the drugs hidden in the case. Actual knowledge simply was not the case the Appellant was faced with at the trial and so it could not be found against him and cannot be raised against him now.

Conclusion on Issue 2

89 Before concluding, we make a brief observation on the Prosecution's case as to the first requirement – that the accused person had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind – and the grave importance of ensuring that the Prosecution's case on this point is properly developed and then fairly and precisely put to the accused person. The Prosecution's case on this point, as put to the Appellant, was as follows:

> Q: … And I put it to you that given the circumstances, you had reasons to suspect that there was something illegal inside the bag or the luggage you were told to carry to Singapore.

90 As we have previously explained, this element should in fact focus on the accused person's *subjective* apprehension of the allegedly suspicious circumstances. That being the case, it is not enough to suggest to the accused person that the circumstances were suspicious; it must be put to him that he had *in fact* suspected the truth of *the particular material fact* at *the material time*.

To require anything less would result in the doctrine of wilful blindness shading impermissibly into the realm of mere negligence or recklessness.

91 For these reasons, we find that the Prosecution has not discharged its burden of proving beyond reasonable doubt that the Appellant had been wilfully blind to the existence of the drugs in the case.

Issue 3: Whether the s 18(2) presumption was rebutted on the evidence

92 Since the Prosecution has failed to prove that the Appellant was in possession of the bundles containing the drugs, there is no need for us to determine the issue of whether the Appellant had knowledge of the nature of the drugs.

Coda: a brief summary of the principles set out

93 Over the years, much ink has indeed been spilt over the doctrine of wilful blindness and how it features in the analysis of whether an accused person can be said to have been in possession of the drugs in question and to have known of their nature. It is of the first importance in such cases to be very clear about what exactly one means when the doctrine of wilful blindness is invoked. The doctrine of wilful blindness is closely tied to the concept of actual knowledge, and yet owes its existence precisely to the fact that the two are separate and distinct; the line between wilful blindness and actual knowledge must therefore be clearly drawn. In this connection, the first point we wish to emphasise is that, rightly, wilful blindness is a factual state of *ignorance*. It describes a situation where the accused person does not *actually know* the true state of affairs. He does not have actual knowledge *simpliciter*. It may well be that in some cases where the accused person "turns a blind eye" or "shuts his eyes" to the obvious truth, the facts in question, in the context of all the

circumstances, may sustain an *inferential finding of fact* that the accused person actually knew the truth, notwithstanding that he did not independently verify this. If this is what is meant – that the accused person knew or subjectively believed in his "secret mind" the truth of the state of affairs – it would be more appropriate to describe this as actual knowledge *simpliciter*, and not as "wilful blindness". In our judgment, "wilful blindness" is a term that, used correctly, describes situations falling short of actual knowledge – in other words, where the accused person does not *actually know*, but is "blind" to the truth. However, it is treated as the legal equivalent of actual knowledge because it is a highly culpable state of ignorance where the court is "almost" but not quite certain that the accused person did in fact know the fact in question and where that state is contrived in order to cheat the proper administration of justice.

94 An accused person may be said to have been wilfully blind to the *existence of something within his possession, custody or control which later turns out to be a drug* only where the following three requirements are satisfied. First, the accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind. Importantly, the focus is on the accused person's *subjective* state of mind. This serves to distinguish the wilfully blind accused person from the negligent accused person, who, for reasons personal and peculiar to him or his circumstances, might not have suspected that fact where a reasonable person would have. Second, there must have been reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the thing found to be a drug. This ensures that the accused person is not, by reason of his failure to inquire, affixed with knowledge of things that would not have been evident even if he had inquired. Finally, the accused person must have deliberately refused to inquire. Here, the focus is on the accused person's reasons for his refusal to inquire; in particular, his refusal must have been borne of a deliberate desire to avoid legal

liability, and not merely out of indolence, negligence or embarrassment. This is what distinguishes wilful blindness from recklessness or negligence.

95 These are the essential ingredients of a finding of wilful blindness as to *possession* of a drug. As was mentioned, the way in which these three requirements operate in practice where the fact in question is the accused person's *knowledge* of the nature of the drug may be different, and we leave that point to be revisited in an appropriate case.

96 The next point concerns how the doctrine of wilful blindness features in the analysis of the offences of possession, trafficking and importation under the MDA. What is common to all these offences are the requirements that the accused person be proved to be in *knowing possession* of the thing which is later found to be a drug, and separately, that the accused person be proved to know the specific nature of that drug. These are the elements of "possession" and "knowledge". The offences of trafficking and importation each have a third element pertaining to the accused person's purpose: he must also have *intended* to traffic in the drugs or to bring the drugs into Singapore. Our concern here is with the two aforementioned elements – possession and knowledge. The elements of possession and knowledge each entail consideration of different aspects of knowledge. In relation to the element of *possession*, it must be established that the accused person knew of the existence, within his possession, custody or control, of the thing which is later found to be a drug. It is *not*, at this stage, necessary to establish that the accused person also knew the true nature of that thing. However, in relation to the element of *knowledge*, it must be established that the accused person knew of the specific nature of the drug specified in the charges; thus, for example, it may have to be shown that he knew that what he was carrying was methamphetamine.

97 Both of these elements may be established either by proof beyond reasonable doubt or by unrebutted presumption. We begin with establishment by proof. If the Prosecution wishes to establish possession and knowledge by proof, it must prove beyond reasonable doubt that the accused person *knew* that he had the thing (which is later found to be a drug) in his possession, custody or control and that he knew the specific nature of the drug. There are two possibilities here. The Prosecution may prove that the accused person *actually knew* (meaning that he had actual knowledge *simpliciter* of those matters), or the Prosecution may in the alternative show that although the accused person did not actually know that fact, he was *wilfully blind* to the truth in the manner described at [94]–[95] above.

98 We turn to the situation where the Prosecution seeks to establish its case by invoking the s 18 presumptions which are then not rebutted. The statutory presumptions under s 18(1) and s 18(2) of the MDA are *evidential* presumptions which operate to presume specific facts. Section 18(1) operates to presume the fact of knowing possession of the thing that is later found to be a drug. Section 18(2) operates to presume the fact of knowledge of the specific nature of the drug. As we have mentioned, insofar as the elements of possession and knowledge are concerned, the s 18 presumptions are presumptions that the accused person *actually knew* (of the existence of the thing or the nature of the drug, as the case may be). If we accept that these are evidential presumptions of a specific fact (here, the fact that the accused person had a certain state of mind – actual knowledge), then it seems wrong to speak of a presumption that the accused person had been wilfully blind. Wilful blindness is not a discrete state of mind. It is a legal concept or label for what is, at law, the *legal equivalent* of actual knowledge. The doctrine of wilful blindness may be invoked upon the proof of certain facts (suspicion, availability of reasonable means of inquiry and deliberate refusal to pursue those means), but it is not in itself a factual state of

mind. Therefore, it does not seem to lend itself to being the subject of an *evidential* presumption. We have held here that this is the position in relation to the presumption under s 18(1), and while we presently think the same could be true even in the context of the presumption under s 18(2), we leave this question open, to be reconsidered in an appropriate case. We also leave open the question of whether wilful blindness may be considered in assessing whether the presumption under s 18(2) has been rebutted. However, we are satisfied that wilful blindness is not relevant in considering whether the presumption under s 18(1) has been rebutted.

99 The statutory presumptions operate to presume certain facts that would otherwise have to be proved by the Prosecution; the legal effect of these presumptions of fact is to reverse the burden of proof such that it falls on the accused person to displace what has been presumed against him. In the context of s 18(1), he may rebut the presumption by showing, for example, that he did not know of the existence of the thing that was later found to be a drug, perhaps because it had been slipped without his knowledge into the thing that was proved to be in his possession. We do not deal with the question of how the presumption under s 18(2) may be rebutted in this judgment.

100 Our final point concerns the anterior question of the circumstances under which the presumptions may be invoked. This point had a significant bearing on the present case, and the Prosecution would do well to be clear on how its case is run so as not to unwittingly foreclose recourse to the presumptions. The s 18 presumptions are presumptions of the fact of *actual knowledge*: they presume that the accused person actually knew the fact alleged against him. It stands to reason that the Prosecution may not invoke a statutory presumption as to the existence of a fact that it has, elsewhere, conceded does not exist. In short, the Prosecution will not be allowed to invoke the presumption under s 18(1) if

it has run its case on the basis that the accused person did not *actually know* the fact in question. This would be so, for example, where the Prosecution's case proceeds *solely* on the basis that the accused person had been wilfully blind (as was the case in the present appeal). For the same reason, the Prosecution should exercise particular care when putting its case to the accused person. If the point sought to be made is simply that the accused person had taken internally inconsistent positions in his evidence, care should be taken to ensure that the truth or falsity of a particular position is not put to the accused person.

101 We trust the foregoing will serve as a useful guide to both the Prosecution and the criminal Bar on what is, admittedly, a rather vexed (and yet critical) area of our criminal law.

Conclusion

102 This appeal highlights how important it is that the Prosecution and the Defence (and, indeed, the courts) remain alert to the precise effect and implications of conceding particular facts as to what the accused person did or did not know. We appreciate that this is by no means an easy and straightforward matter, and, in fairness to the Judge, he was not helped in the discharge of this difficult task by the fact that the Defence misunderstood the requirements of the element of possession and therefore wrongly conceded the fact of possession; while the Prosecution proceeded on the basis that the Appellant did not actually know of the existence of the drugs, before then seeking to have that very fact presumed to be true. Had the parties properly set out their respective cases at the trial below, it would have been clear that what was in issue was the *fact* of possession, and that given the Prosecution's concession that the Appellant did not *actually know* of that fact, that fact could

only be established by proof beyond reasonable doubt that the Appellant had been wilfully blind to the existence of the drugs.

103 In all the circumstances, and for the reasons given above, we find that the Prosecution has failed to establish a key element of the offence of importation, namely, that the Appellant knew that the bundles of drugs in the suitcase were in his possession.

104 Accordingly, we allow the appeal against conviction and acquit the Appellant of the charge against him.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Mohamed Muzammil bin Mohamed (Muzammil & Company) and Lam Wai Seng (Lam W S & Co) for the appellant;
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