

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2017] SGHC 106**

Criminal Case No. 17 of 2015

Between

Public Prosecutor

And

Adili Chibuike Ejike

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**GROUND OF DECISION**

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] – [Illegally importing controlled drugs]

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**Public Prosecutor**  
**v**  
**Adili Chibuike Ejike**

**[2017] SGHC 106**

High Court — Criminal Case No 17 of 2015

Kan Ting Chiu SJ

3 – 5, 8 – 12, 16 June 2015; 28 – 29 October 2015; 2 November 2015; 30 June 2016; 2 December 2016 and 11 April 2017

11 May 2017

**Kan Ting Chiu SJ:**

1 The charge against Adili Chibuike Ejike (“the Accused”) was that he

on the 13<sup>th</sup> day of November 2011, at or about 8.25 p.m., at Changi Airport Terminal 3, Arrival Hall, Singapore, did import into Singapore a controlled drug specified in Class “A” of the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed)(“the MDA”), *to wit*, two (2) packets containing crystalline substance which was analysed and found to contain not less than 1,961 grams of methamphetamine, without authorisation under the MDA (of) the Regulations made thereunder, and [he had] thereby committed an offence under section 7 and punishable under section 33 of the MDA, or [he] may alternatively be liable to be punished under section 33B of the MDA.

2 The Accused is a citizen of Nigeria, 28 years 10 months of age at the time of the alleged offence. He had arrived at Terminal 3 of Changi Airport Singapore from Lagos, Nigeria via Doha, Qatar. He had an eventful time when

he tried to leave the airport. He was questioned by immigration officers, but had satisfied them that he was in Singapore on business with sufficient funds for his stay here and that he had a valid departure air ticket. As he continued on his way, the luggage bag<sup>1</sup> (which can also be called a suitcase) he was carrying was put through X-ray examination and the contents were checked, but nothing was found. When the luggage bag was examined further and the inner lining of one side of the bag was cut, a packet wrapped in tape was discovered. Another similar packet was recovered when the inner lining on the opposite side of the bag was cut. The Accused was placed under arrest and officers from the Central Narcotics Bureau (“CNB”) arrived and took over investigations. The contents of the two packets were analysed and found to be the methamphetamine on which the charge against the Accused is based.

3 At the trial, the Accused did not dispute the fact that he was in physical possession of the luggage bag and the methamphetamine. It was also common ground between the prosecution and the defence that the Accused was presumed to have knowledge of the methamphetamine under s 18(2) MDA. The principle issue with regard to his innocence or guilt was whether he had rebutted the presumption.

### **The Accused’s statements**

4 After his arrest, a series of statements was recorded from the Accused which were admitted in evidence without objection from him. The first statement was a cautioned statement<sup>2</sup> recorded on 14 November 2011, followed by six investigation statements<sup>3</sup> recorded between 16 November

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<sup>1</sup> PH15 & PH22.

<sup>2</sup> P15.

<sup>3</sup> P16 to P21.

2011 and 22 February 2013. The Accused had elected to make all the statements in his native language Ibo, and an Ibo interpreter was present to assist the Accused and the recording officer during the recording of each statement.

5 In the cautioned statement the Accused stated

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

(It is noteworthy that the Accused did not say that he did not know that some “substance” was concealed in the bag, and had only said that he did not know what the substance was, and would not have carried them if he knew what they were).

6 In the investigation statements, he narrated his background and the circumstances in which he became involved with the drugs that he was carrying. He recounted that he had worked for a dealer in fan belts in his home town Oraifite and the dealer gave him some money in 2010 for him to carry on in the same business on his own. However, the Accused’s business failed and he became unemployed. In August 2011, he called his friend Chiedu Onwuka (“Chiedu”) for financial help for his business. He was able to reach Chiedu with the help of another friend Izuchukwu Ibekwe (“Izuchukwu”). Chiedu promised to give the Accused 200,000 to 300,000 nairas (a naira is a unit of Nigerian currency, and in 2011 the exchange rate was approximately 151 nairas to US\$1) but told him to be patient and to call again in October 2011. When the Accused called Chiedu in October 2011, Chiedu asked him to go to Lagos. Before he went to Lagos, Chiedu went to his village and collected his passport which was issued to him in April 2011, although he claimed he had no thought of travelling out of Nigeria<sup>4</sup> at that time. Before the meeting in

October 2011, Chiedu collected the Accused's passport and said that he wanted to do something with it to help the Accused.

7 In October 2011, the Accused went to Lagos and met up with Chiedu. In November 2011, the Accused and Chiedu met up with Izuchukwu, and Izuchukwu told the Accused that the Accused will be travelling to Singapore with a luggage bag which he was to pass to somebody in Singapore. The Accused agreed to do that in order to receive the promised help from Chiedu.

8 On 12 November 2011, the Accused met up with Izuchukwu who gave him his travel documents including his passport, air ticket, hotel booking and US\$4,900 together with a luggage bag<sup>5</sup> as well as two name cards in his name and a vaccination certificate.<sup>6</sup> The US\$4,900 was allegedly given to him to cover his food, travelling, hotel and other expenses,<sup>7</sup> with any unspent balance to be returned to Chiedu,<sup>8</sup> and he was not instructed by Chiedu or Izuchukwu to pass any money to anybody.<sup>9</sup> The Accused was told that once he had cleared immigration controls in Singapore, he was to get a taxi and instruct the driver to take him to the hotel, and someone would come and collect the luggage bag from him at the hotel.<sup>10</sup> As for the contents of the luggage bag, he added 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".<sup>11</sup>

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<sup>4</sup> P17 para 17.

<sup>5</sup> PH15.

<sup>6</sup> PH33, P32.

<sup>7</sup> P17 para 19 and P21 para 54.

<sup>8</sup> P20 para 51.

<sup>9</sup> P21 para 54.

<sup>10</sup> P16 para 9.

[emphasis added]

9 He described his relationship with Chiedu and Izuchukwu as follows:

12. I knew Chiedu from childhood. Both of us stayed in the same hometown, Oraifite. I knew him very well. I did not trust Chiedu completely. If I had a girlfriend, I would not leave my girlfriend alone with Chiedu. If I own a business, I would not let Chiedu handle my business. I did not trust Chiedu completely because Chiedu is an aggressive person. He is the type of person who will fight with me to snatch my things. I would consider Chiedu as an acquaintance of mine. I knew him since childhood and stayed in the same hometown. However, I only knew him because we stayed in the same hometown. We are not considered as very good friends. We are also not related or in any relationship.

13. I knew Izuchukwu from childhood too. We stayed in the same hometown too. I also did not trust Izuchukwu completely. Izuchukwu is considered quieter as compared to Chiedu. I meant to say that Izuchukwu is less aggressive than Chiedu. I considered Izuchukwu as an acquaintance of mine too. We stayed in the same hometown. We see each other but we are not really good friends and we are not related or in any kind of relationship...

14. Chiedu and Izuchukwu stayed in Lagos. Sometimes, they would travel back to the village. I intend to get some money from Chiedu or Izuchukwu since both of them are well-to-do. That is why I spoke to them about my problem.<sup>12</sup>

10 He also elaborated on the agreement for him to deliver the luggage bag to Singapore:

20. When I took over the luggage from Izuchukwu on 12<sup>th</sup> November 2011, I did not ask Izuchukwu what was inside the luggage. I did not ask Izuchukwu what was inside the luggage because it did not concern me. I was already told before that I had to carry a luggage into Singapore. I did not ask him because I did not believe that it was necessary. In addition, I had instructions given to me by Izuchukwu to deliver the luggage to Singapore .... Since I needed help from Izuchukwu

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<sup>11</sup> P16 para 10.

<sup>12</sup> P17 paras 12–14.

or Chiedu, I believed that by doing this delivery of a luggage to Singapore, the help from Izuchukwu or Chiedu would arrive. Since I asked Izuchukwu or Chiedu for help, I had to obey the instructions given by Izuchukwu to deliver the luggage to Singapore. The help I referred to here in the N200,000 to N300,000 Naira which Chiedu promised to give me when I first contacted him.<sup>13</sup>

11 He then went on his way to deliver the luggage bag in Singapore. He did not check its contents in Lagos, Doha or Singapore because he did not want to and had no opportunity to do so. He only came to know about the drugs when the hidden packets were discovered and tested in Singapore and he was told that they contained drugs. Then, in his words<sup>14</sup>

... I started to cry. The officers told me not to cry ...

(It is noteworthy that his reaction upon being told about the drugs was to cry; he did not say that he was surprised, and he did not inform the officers that he was unaware of the concealed packages and did not know that they were drugs).

12 In the course of giving his evidence, the Accused had sought to explain some inconsistencies by suggesting that the statements did not reflect accurately or completely what he had said.<sup>15</sup> The interpreters for the statements were called as witnesses at the trial. Mr Uchenna Francis Ogakwu (“Mr Ogakwu”) was the interpreter for the cautioned statement. When defence counsel Mr Muzammil asked him for his observations during the recording of the statement, his response was that the Accused had no problem with what was interpreted to him in Ibo, but he had an extreme case of stammering, and

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<sup>13</sup> P17 para 20.

<sup>14</sup> P19 para 42.

<sup>15</sup> NE Day 6 pp 34-35.

NE Day 7 pp 12, 81 & 91.

would take a long time to speak.<sup>16</sup> Mr Ogakwu did not note any weak power of comprehension on the part of the Accused.<sup>17</sup>

13 Mr Onwuakpa Anthony Obiora (“Mr Obiora”) acted as the interpreter in the recording of the investigation statements. He remembered that the Accused stammered badly. When he was questioned by defence counsel Mr Muzammil, he said that he had difficulty getting information from the Accused because of the stammering,<sup>18</sup> and the Accused was slow in understanding questions put to him. Mr Obiora rated the Accused’s power of comprehension at 4 on a scale of 1 to 10.<sup>19</sup> On re-examination however he clarified that when he talked about the poor power of comprehension, he was referring to his own difficulty in getting information from the Accused.<sup>20</sup>

14 Mr Muzammil did not put to either interpreter that he had not interpreted what the Accused said in Ibo into English properly, or that he had not interpreted into Ibo the questions asked by the recording officer in English, or that he had not read each recorded statement to the Accused in Ibo before the Accused signed it. It was also not put to ASP Royce Chua Zhi Wei who recorded all the statements that he had not properly recorded what the Accused had said in Ibo and interpreted to him in English by the interpreters. This was re-affirmed by the closing submissions which did not raise any issue on the accuracy of the statements.

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<sup>16</sup> NE Day 5 p 23.

<sup>17</sup> NE Day 5 pp 24-25.

<sup>18</sup> NE Day 4 pp 102-103.

<sup>19</sup> NE Day 4 p 104.

<sup>20</sup> NE Day 4 pp 116-117.



**The Accused's defence**

15 The Accused made his defence in Ibo through an Ibo-English interpreter. He had a significant speech impediment in that he stammers. His evidence from the witness stand was generally as set out in his statements—that he was delivering the luggage bag for his friend and did not know of the drugs hidden in the bag. He went into greater detail for some matters that were already covered in his statements.

16 The Accused is from a humble background. He received primary-level schooling but was a weak student, and started work as an apprentice to a dealer in motor fan belts. Upon completing his apprenticeship in or around March 2010 he received a sum of money which he used to start his own business selling fan belts, but the business failed about a year later and he became unemployed. In August 2011, he approached his friend Chiedu for help, and Chiedu promised to give him 200,000 to 300,000 nairas. However it was Izuchukwu who directed the Accused to apply for a passport so that he could an errand for Izuchukwu in Singapore.<sup>21</sup> Izuchukwu wanted him to deliver a bag and some money to someone in Singapore, but the Accused was not told about the trip till he went to Lagos to start his journey in October 2011<sup>22</sup> with his passport which was issued in April 2011. The US\$4,900 recovered from him was to be given to the person whose particulars were written on the reverse side of his e-Visa as “ESP 98165684”<sup>23</sup> to pay for his food and hotel accommodation, to clear goods for Izuchukwu and to buy goods for the Accused to take back to Nigeria.<sup>24</sup> It was accepted by both the prosecution and

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<sup>21</sup> NE Day 5 p 58.

<sup>22</sup> NE Day 6 p 12.

<sup>23</sup> P35 reverse side.

<sup>24</sup> NE Day 5 p 59.

the defence that “ESP” referred to ESP Lines (S) Pte Ltd (“ESP”), a Singapore company run by Kervinn Leng Seng Yau (“Kervinn Leng”) which assisted in obtaining a visa for the Accused to visit Singapore.

17 Izuchukwu had also arranged for two name cards bearing the Accused’s name and photograph, with one describing him as a director of Ejoyke Investment Ltd and the other describing him as a director of Ejidon International Ltd.<sup>25</sup> These cards were printed to show that the Accused is a businessman when he travelled, but the companies are in fact phantom companies which were never registered.<sup>26</sup> It was also Izuchukwu who handed the luggage bag to the Accused. Izuchukwu had opened the bag, and the Accused saw clothes inside. The Accused did not check the contents of the luggage bag himself and did not suspect that there was anything hidden in the bag.<sup>27</sup>

18 There was independent evidence on the intended purpose of the money. After the Accused was arrested and in the custody of the CNB officers in the airport, messages were sent to his mobile phone but he did not read them at that time and only came to know of them later on in the course of investigations, prior to the trial. One message was sent from telephone number +2348030418529. This number was recognised by the Accused as Izuchukwu’s number<sup>28</sup> and by Kervinn Leng as the number of a Nigerian he knew as “Stev” who had telephoned him to enlist his help when the Accused was being questioned by the immigration authorities.<sup>29</sup> The message reads:

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<sup>25</sup> PH34.

<sup>26</sup> NE Day 7 pp 69 & 70.

<sup>27</sup> NE Day 6 p 19.

<sup>28</sup> NE Day 7 p 8.

<sup>29</sup> PS 20 para 4.

Why u dnt want to pik my cal? Are u stil in nigeria or u hve travel to Singapore? Pls if ur in Singapore cal esp and give him d money that I gave u to give him cus he nid it 2 ship my guds 2mrow ... or send me ur hotel adres let me send someone 2 come and colet d money and give 2 esp.<sup>30</sup>

### Examination of the defence

19 There were areas of inconsistency between the Accused's statements and his evidence. We can start with his reason for applying for a passport. In his statements the Accused stated that he had no plans to travel out of Nigeria when his passport was issued to him in April 2011. However, his evidence in court was that Izuchukwu directed him to get the passport so that he can go to Singapore. The latter version was more credible because there was really no reason for the Accused to get a passport when he had no plans or means to travel. The question which arises is why he said what he did in his statement? It cannot be that he was confused or had forgotten the real reason for applying for a passport since he was quite clear on it when he gave his evidence. The reasonable inference is that when he was making his statements, he did not want to disclose that he had agreed with Izuchukwu and Chiedu to deliver the bag before he applied for the passport.

20 The Accused also gave contradictory descriptions of his relationship with Izuchukwu and Chiedu. In his statements he went on at some length to state that he did not trust them completely, and gave reasons for that. In his defence he said that he trusted them completely.<sup>31</sup> His position may have changed because his defence was that he agreed to carry the bag to Singapore for them because he trusted them completely.<sup>32</sup>

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<sup>30</sup> P13, Agreed Bundle p 110-111.

<sup>31</sup> NE Day 8 pp 41 & 45.

<sup>32</sup> Written Submissions on behalf of the Accused para 195 m.

21 The Accused was also inconsistent on his knowledge of the contents of the luggage bag. In his statements he said that he did not know what was in the bag. When he made his defence, his evidence was that Izuchukwu opened the bag and told him that the clothes and shoes were in it.<sup>33</sup> This change in position on the simple question about his knowledge of the contents of the bag did not reflect well on his veracity.

22 The prosecution in its submissions drew attention to the variations in the Accused's account on the purpose for which Izuchukwu handed the US\$4,900 to him. This went from the account in his statement that it was a payment to him to spend for his travel, accommodation and food and was not to be paid to anybody, to his evidence in court that it was intended to be paid to ESP for payment of those expenses and also for the payment of ESP's clearance fees and for the purchase of goods. The telephone message from the telephone number of Izuchukwu (according to the Accused)<sup>34</sup> or "Stev" (according to Kervinn Leng)<sup>35</sup> supported the account that the money was intended to be paid to ESP. Instead of disclosing that, the Accused said in his statement<sup>36</sup> that:

... neither Chiedu nor Izuchukwu had asked me to pass any money to anybody. The USD 4,900 given to me in Lagos was for my travelling expenses.

This showed that the Accused was slow to speak the truth as revealed in the text message from Izuchukwu. In the final analysis, the Accused did not show himself to be a reliable witness.

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<sup>33</sup> NE Day 7 p 83.

<sup>34</sup> NE Day 7 p 8 and Day 8 p 53.

<sup>35</sup> PS 20 para 4.

<sup>36</sup> P 21 para 54.

### The issue

23 The critical issue is the knowledge of the drugs that were in the luggage bag. The prosecution's case was not that the Accused knew that there was methamphetamine in the bag but that he had not rebutted the presumption of knowledge in s 18(2) MDA. The prosecution submitted that<sup>37</sup>

46 ... *the accused has failed to rebut the presumption of knowledge* under s 18(2) of the MDA, and is guilty of an offence under s 7 of the MDA, for the following reasons:

a) In respect of the disputed factual issues as regards the circumstances in which the accused was tasked to bring the luggage from Nigeria to Singapore, the Prosecution's case ought to be preferred over the Defence's case.

(b) Based on the Prosecution's case, *the accused was wilfully blind* because:

- i The accused does not suffer from mild mental retardation and ought to be assessed as a reasonable person.
- ii. The circumstances surrounding the accused's task to deliver the luggage were extremely suspicious and the accused would have been put on notice.
- iii. Notwithstanding this, the accused failed to make enquiries or take reasonable steps to find out what he had been tasked to deliver.

[emphasis added]

24 In a situation where there is no evidence of *actual knowledge* of the methamphetamine such as an admission of knowledge or clear evidence of knowledge, the prosecution may invoke the presumptions in s 18 MDA that

(1) Any person who is proved to have in his possession or custody or under his control –

(a) anything containing a controlled drug:

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<sup>37</sup> Prosecution's Closing Submissions para 46.

shall, until the contrary is proved, be presumed to have had the 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 the drug.

25 On the facts, there was no dispute that the Accused was in possession of the luggage bag containing the methamphetamine, and was thereby presumed to have the drug in his possession under s 18(1) MDA, and was in turn presumed under s 18(2) MDA to have known that the drug was methamphetamine. He was therefore presumed to have knowledge of the drug, that being presumed knowledge. However the presumptions are not absolute, and may be rebutted by the Accused on a balance of probabilities. If he fails to rebut the presumption, then he would be guilty on the basis of his presumed knowledge, but if he succeeds in rebutting the presumption, and in the absence of proof of actual knowledge, he would be acquitted.

26 Against that background, the prosecution’s attempt to rely on wilful blindness to counter the Accused’s effort to rebut the presumption is misconceived, and suggests that wilful blindness was not fully understood. In *Nagaenthran a/l K Dharmalingam v PP* (“*Nagaenthran*”) [2011] 4 SLR 1156, wilful blindness was explained in clear and plain terms (at [30]):

... Wilful blindness (or “Nelsonian blindness”) is merely “lawyer-speak” for *actual knowledge* that is *inferred* from the circumstances of the case. It is an ***indirect way to prove actual knowledge***; ie. actual knowledge is proved because the inference of knowledge is *irresistible* and is the *only rational inference available on the facts* ...

[emphasis in original in italics; emphasis added in bold italics]

and in *Tan Kiam Peng v PP* (“*Tan Kiam Peng*”) [2008] 1 SLR(R) 1 it was explained (at [127]) that:

... wilful blindness necessarily entails an element of *deliberate* action inasmuch as to the extent that the person concerned 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 in original]

In other words, where there is a deliberate decision not to enquire in the face of clear suspicion, an inference can be drawn that there was actual knowledge.

27 Following from this, there are two forms of knowledge, actual knowledge and presumed knowledge. Actual knowledge can be established through the statements of the person concerned or direct evidence of his knowledge, or by inference where a person who has clear suspicions, and who consciously abstains taking any action so that the suspicious are not confirmed. When wilful blindness in the face of suspicion is established, actual knowledge may be inferred. Presumed knowledge, on the other hand, is established when the conditions of s 18 MDA are satisfied.

28 The effect of wilful blindness is that it may lead to an inference of actual knowledge. As explained in *Nagaenathan* and *Tan Kiam Peng*, it is not a third form of knowledge distinct from actual knowledge and presumed knowledge. It is a means by which actual knowledge is established by inference and it does not help to establish presumed knowledge. As such, if the prosecution takes the position that there is wilful blindness in the proper sense, it should put its case on the basis of actual knowledge. Where the prosecution's case is founded on presumed knowledge, it should not seek the assistance of wilful blindness.

29 On the basis of the foregoing analysis, the true issues are

(a) Whether there was a presumption of knowledge, and

- (b) If the presumption applied, whether it was rebutted.

On issue (a), as the Accused's possession of the methamphetamine is presumed to be in his possession by virtue of his possession of the luggage bag, the Accused's knowledge of the nature of those drugs is also presumed. This is acknowledged in the Accused's closing submissions (at paragraphs 14 to 18). The critical issue is issue (b), whether the presumption that he knew he was carrying methamphetamine is rebutted.

30 When the presumption in s 18(2) MDA comes into operation, an accused person who seeks to rebut it has the burden of showing on the balance of probabilities that he does not have knowledge of the nature of the drug. It was submitted on the authority of *Dinesh Pillai a/l K Raja Retnam v PP* [2012] 2 SLR 903 (at [18]) that the burden on the accused person is to prove that he "did not know or *could not reasonably be expected to have known*" the nature of drug. The phrase in italics merits examination. As only knowledge of the nature of the drug is presumed, the presumption would be rebutted by the person's absence of the knowledge. The fact that the person could not reasonably be expected to have the knowledge may lend support to his claim that he has no knowledge, but it does not, on its own, rebut the presumption.

31 In a situation where the presumption applies, it is not enough for an accused person to point out that there is no evidence of his knowledge, because he is already presumed to have the knowledge. To rebut the presumption, he has to show positively that he has no knowledge, in effect, to prove the negative. He can point to circumstances which support his lack of knowledge, and he can give evidence and call others to give evidence that he did not have the knowledge. To be effective, the circumstances put forward should be strong and the evidence should be credible.



32 What are the circumstances which led to the Accused carrying the bag? He was in dire straits with no job and no money when he asked Chiedu for help. Chiedu and Izuchukwu agreed to give him 200,000 to 300,000 nairas, a large sum to him, if he would deliver a bag to someone in Singapore for them. They did not tell him what he would be delivering, and he did not ask because, in his words, “since I asked Izuchukwu or Chiedu for help, I had to obey the instructions given by Izuchukwu to deliver the luggage to Singapore”.<sup>38</sup>

33 However, he said in his investigation statements that Izuchukwu and Chiedu were not his good friends, and he did not trust Chiedu completely, would not trust him with his girlfriend or his business and that he also did not trust Izuchukwu completely.<sup>39</sup> The Accused confirmed in court that the statements were recorded accurately, but the facts recorded were false, and he in fact trusted the two persons completely.<sup>40</sup> He did not give any intelligible explanation for making untrue statements. There was no reason to disregard the accurately-recorded statements.

34 There were other reasons for disquiet about those persons. They arranged for the trip and provided him with false calling cards to show that he was a businessman, and a vaccination certificate although he was not vaccinated.<sup>41</sup> He knew that they were providing false documents to enable him to travel and to make the delivery. The accused must have realised that they are not honest or trustworthy people. There was little basis for the Accused to trust them completely as he claimed.

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<sup>38</sup> P17 para 20.

<sup>39</sup> P 17 paras 12 & 13.

<sup>40</sup> NE Day 8 p 44.

<sup>41</sup> NE Day 8 pp 39 & 40.

35 The Accused did not call witnesses to help him to rebut the presumption, and bore the brunt of doing that himself. Consequently, the defence rested on him.

36 The defence engaged a psychologist Mr James Tan Yen to carry out an IQ test on the Accused to ascertain his intellectual functioning. Mr Tan presented an undated psychological report,<sup>42</sup> and two follow-up reports dated 28 May 2015 and 13 October 2015.<sup>43</sup> His opinion was that the Accused was performing at the Mild Mental Retardation range of cognitive ability. The reports appear to be directed at the Accused's knowledge of the nature of the drug, and not whether he came within s 33B(3)(b) MDA, namely that

he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in relation to the offence under section 5(1) or 7.

because there was no reference to the latter.

37 In the report Mr Tan was careful to point out that his conclusion that the Accused is performing at the Mild Mental Retardation range of cognitive ability was limited by the absence of information on the Accused's adaptive functioning in his hometown and his school performance, and his IQ score before the age of 18.<sup>44</sup>

38 Mr Tan was subjected to rigorous cross-examination by the prosecution. He conceded that owing to the lack of information on the

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<sup>42</sup> D1.

<sup>43</sup> D2 and D3 respectively.

<sup>44</sup> D1, penultimate paragraph.

Accused's adaptive functioning and IQ score, the finding of mild mental retardation was not based on the criteria set out in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), a seminal work on the identification of mental disorders published by the American Psychiatric Association.<sup>45</sup> He dealt with the Accused on a less stringent basis. It was not shown that the methodology he employed is used by his peers or is recognised as adequate by them. This put into question the soundness of his conclusion.

39 The Accused was also examined by members of the Institute Mental Health to determine his mental capacity. Associate Consultant Dr Charles Mak conducted a psychiatric examination and found that the Accused had a tendency to stutter in speech, but otherwise did not suffer from a mental illness and did not have intellectual disability.<sup>46</sup> Senior Clinical Psychologist Mr Goh Zhengqin conducted a psychological assessment and was of the opinion that the Accused did not have intellectual disability.<sup>47</sup> Both of them had attended to the Accused carefully before coming to the conclusion that he did not have any intellectual disability.

40 On the evidence before me, the Accused may be of below-average intelligence as he had some difficulty in answering questions and in expressing himself (which from my observation may not be entirely due to his stammering). However his cognitive functioning was not impaired because he could live his own life, engage in gainful employment, run his business, travel alone, and give an account of the circumstances which brought him to Singapore with his luggage bag. This is also supported by the findings of Dr Mak and Mr Goh.

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<sup>45</sup> NE Day 10 pp 123.

<sup>46</sup> P45 paras 18-19.

<sup>47</sup> P47 para 16.

41 However, I do not accept his evidence that he believed that the luggage bag held only clothes and shoes. His reaction when the drugs were discovered and his oblique admission of knowledge of the presence of the “substance” recovered (see paras 11 and 5) indicated that he knew that there were more than just clothes and shoes. Furthermore, his defence that he believed he was delivering only clothes and shoes is unbelievable as Chiedu had promised him substantial reward for delivering them to Singapore.

42 Consequently his defence was rejected, and I found him guilty on the charge he faced and convicted him. That left the sentencing regime to be decided. With the enactment of s 33B MDA in 2012, there is an alternative to the death penalty. S 33B allows for a person who is convicted of an offence under s 5(1) or s 7 MDA to be sentenced to life imprisonment and not less than 15 strokes of the cane instead of being sentenced to death, if his role with the drugs is limited to being a courier and he gives substantive assistance to the CNB in disrupting drugs trafficking activities, or if he is a courier and is suffering from an abnormality of mind that substantially impairs his mental responsibility for his acts and omissions.

43 On the issue of the Accused’s role, the consensus was that he was a courier. But that was as far as the availability of the alternative sentence went, because the prosecutor stated that the Accused had not rendered substantive assistance to the CNB, and abnormality of mind was not raised by the defence and no evidence on it was produced.

44 In the circumstances, I imposed the death penalty on the Accused.

Kan Ting Chiu  
Senior Judge

Hay Hung Chun and Sarah Ong (Attorney-General's Chambers) for  
the Prosecution;  
Mohamed Muzammil Bin Mohamed (Muzammil & Company) & Mr  
Lam Wai Seng (Lam W.S. & Co.) for the Accused.