Public Prosecutor *v* Lim Boon Hiong and another
[2010] SGHC 205

Case Number	: Criminal Case No 3 of 2010
Decision Date	: 21 July 2010
Tribunal/Court	: High Court
Coram	: Steven Chong J
Counsel Name(s)	: Ng Cheng Thiam, Sharmila Sripathy-Shanaz and Davyd Chong (Attorney-General's Chambers) for the Prosecution; Ramesh Tiwary (M/s Ramesh Tiwary) for the first defendant; Shashidran Nathan and Tania Chin (M/s Inca Law LLC) and Satwant Singh (Sim Mong Teck & Partners) for the second defendant.
Parties	: Public Prosecutor — Lim Boon Hiong and another

Criminal Law

21 July 2010 Judgment reserved.

Steven Chong J:

Background Facts

The accused persons

1 The accused persons are two Malaysian Chinese from Penang, Malaysia. The first accused is Lim Boon Hiong ("Lim"), 29 years old, and the second accused is Koay Teen Chew ("Koay"), 30 years old.

The charge

2 The Prosecution proceeded against Lim and Koay on one joint charge of drug trafficking ("the Charge"), *viz*:

> [That you both] on the 28th day of May 2008 at or about 7.40pm in a Malaysian registered motor car JKR 7393 along Dunearn Road approaching Newton Circus in Singapore, in furtherance of the common intention of you both, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession inside the said car for the purpose of trafficking two hundred and nineteen (219) packets of substance containing not less than 120.96 grams of diamorphine without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act and section 34 of the Penal Code, Chapter 224 and punishable under section 33 of the Misuse of Drug Act.

Surveillance operation leading to Lim and Koay's arrest

3 The Prosecution led evidence to show that on 28 May 2008, at about 4.30pm, a party of officers from the Central Narcotics Bureau (the "CNB officers") was tasked to conduct surveillance on a Malaysian registered car JKR 7393 ("the car") at the Woodlands Checkpoint.

4 At about 6.10pm on 28 May 2008, the CNB officers observed Lim and Koay entering Singapore from Johor Bahru at the Woodlands Checkpoint in the car. The car made its way into the heartlands, stopping first at Causeway Point in Woodlands where a male Chinese (subsequently ascertained to be Koay) alighted from the car and boarded a taxi. Thereafter the taxi and the car left together and proceeded to Bukit Timah Shopping Centre where Koay alighted from the taxi and reboarded the car. The car then travelled to, and stopped at, a Shell petrol kiosk along Upper Bukit Timah Road. The CNB officers took up various positions nearby in order to continue the surveillance.

5 At the petrol kiosk, both Lim and Koay were observed by the CNB officers to have alighted from the car to use a restroom and visit a convenience store, respectively. When they returned, Koay went to the rear passenger seat of the car while Lim returned to the driver's seat. Subsequently, Koay moved to the front passenger seat.

6 At about 7pm, the CNB officers observed a male Chinese, later ascertained to be PW21, Goh Kong Seng ("Goh"), walking up to the front passenger window of the car (there is some dispute as to whether Goh walked up to the front passenger window or the driver's window but nothing turns on this), reaching in through the window and collecting a black bundle from one of the accused persons. Koay testified in court that he was the one who handed over the black bundle to Goh who then placed the black bundle in his left trouser pocket before leaving in another car. Goh was arrested later the same day (28 May 2008) and the black bundle that Goh had collected at the petrol kiosk was seized. It was found to be labelled "B". Analysis of the contents of the black bundle by the Health Sciences Authority ("HSA") revealed that the bundle contained diamorphine, which is the scientific name for heroin.

7 Lim and Koay then left the petrol kiosk, and were travelling along Dunearn Road towards Newton Circus when they were intercepted and arrested by the CNB officers, and their identities ascertained.

Questioning of Lim and Koay at Dunearn Road

8 Lim and Koay were then questioned at the scene by a number of CNB officers. None of the following sets of questions and answers were reduced to writing:

(a) Senior Staff Sergeant Ng Yeong Kok ("SSSgt Ng") (PW11) asked Koay, in Mandarin, whether he had anything illegal in the car to surrender, and Koay said "no". He then asked Koay what he was doing in Singapore, and Koay replied that he had come to shop with his friend, but was unable to furnish details as to where he had gone shopping or intended to shop. The same set of questions was posed to Lim in Mandarin, and Lim claimed that he did not know if there was anything illegal in the car to surrender, nor did he know why he had come to Singapore.

(b) Staff Sergeant Malvern Wong ("SSgt Wong") (PW14) also questioned Lim in Mandarin at the scene. He asked Lim whether there was anything illegal in the car, and Lim replied that there were "things" in the loudspeaker in the car. When asked by SSgt Wong what these "things" were, Lim replied that he did not know.

(c) Senior Station Inspector Sea Hoon Cheng ("SSI Sea") (PW12) asked Koay five questions in Hokkien:

(i) SSI Sea asked Koay whether he had anything illegal to surrender, to which Koay replied "no";

(ii) SSI Sea asked Koay whether there was anything illegal in the car, to which Koay replied "not mine";

(iii) SSI Sea asked Koay what that was, and Koay replied that he did not know;

(iv) SSI Sea repeated the question, to which Koay replied that it was in the car speaker but that it did not belong to him;

(v) SSI Sea asked Koay how he knew about it, and Koay indicated that Lim was the one who told him that there were illegal "things" in the car speaker.

(d) Station Inspector David Ng ("SI David Ng") (PW13) asked Lim in Mandarin whether there was anything inside the car, to which Lim replied "yes". When asked by SI David Ng where the things were, Lim replied that they were "behind the car boot". SI David Ng then asked Lim "how many behind the car boot", and Lim replied "5" or "about 5".

Search of the car at Dunearn Road

9 The car was searched by the CNB officers at the scene, and a loudspeaker was found in the boot of the car. SSI Sea was informed by SI David Ng that Lim had said that there were things inside the car boot, but SSI Sea could not find any opening in the loudspeaker, and decided, in view of the poor lighting and traffic conditions, to continue the search at the headquarters of the CNB ("CNB HQ").

Arrival at CNB HQ and initial statements recorded from Lim and Koay

10 Shortly after arriving at CNB HQ on the same day (28 May 2008), at about 9.15pm, SSI Sea questioned Koay in a mixture of Hokkien and Cantonese, and obtained a statement (P35) from Koay, which SSI Sea reduced to writing in his pocketbook as follows:

Q1 What do you call the person who was arrested together with you?

A1 I call him Ah Lim (Recorder's note: Ah Lim is one Lim Boon Hiong, IC: 801214075033).

Q2 Were you arrested together with Ah Lim in the car JKR 7393?

A2 Yes.

Q3 Who is the driver of the car JKR 7393?

A3 Ah Lim.

Q4 Is there anything illegal in the car JKR 7393?

A4 Yes. In the speaker. (Recorder's note: The accused answer me in the Cantonese)

Q5 How do you know that the speaker of the car JKR 7393 has things? (Asked in Cantonese)

A5 Ah Lim told me. (In Cantonese)

Q6 When did Ah Lim told you.

A6 I do not remember.

Q7 What things is there inside the speaker?

A7 Ah Lim just told me got things.

11 Shortly thereafter, at about 9.25pm, SSSgt Ng questioned Lim in Mandarin and obtained a statement (P32) from Lim, which SSSgt Ng reduced to writing in his pocketbook as follows:

Q1 Why did you come into Singapore today?

A1 My friend "Banana" asked me to send him to Singapore?

Q2 For what?

A2 Take something for people.

Q3 What thing?

A3 He said "medicine".

Q4 For what, do you send him in for?

A4 He pays me a few hundred dollars between RM$500 to RM$800.

Q5 How many did he bring today?

A5 About 5 to 6 packets.

Q6 Who is the person who ask you to drive in? (Recorder's note: B1 [Lim] pointed to Koay Teen Chew A17767491)

A6 "Banana" or "Zhen Xing".

Search of the car at CNB HQ

12 At about 9.45pm, the car was searched by SSI Sea in the presence of Lim and Koay. When the boot of the car was opened, a loudspeaker was found just behind the rear seat (as shown in photographs P3 and P4). SSI Sea was unable to find any opening in the loudspeaker.

13 During the search, SI David Ng asked Koay how to open the loudspeaker, and Koay replied that there was an opening behind the loudspeaker. With this information, SSI Sea located a concealed opening at the back of the loudspeaker (as shown in photograph P5) which, when opened, revealed a compartment, within which SSI Sea found 8 bundles each secured with black masking tape. The 8 bundles were already labelled "A", "C", "D", "E1", "E2", "E3", "E4" and "E5" when they were found, and contained small packets of granular/powdered substance. As stated in [6] above, the bundle labelled "B" was earlier delivered to Goh at the Shell petrol kiosk prior to the arrest of Lim and Koay.

Further statements recorded from Lim and Koay

14 At about 10.08pm on the same day (28 May 2008), SSSgt Ng questioned Lim in Mandarin, and obtained a further statement from Lim in Mandarin (P33) which SSSgt Ng reduced to writing in his

pocketbook as follows:

Q7 What is this? (Recorder's note: I pointed to drug seized)

A7 I don't know.

Q8 Belongs to who?

A8 I don't know.

Q9 What do you intend to do with it?

A9 I don't know where.

Q10 The vehicle JKR 7393 belong to who?

A10 A friend name "AJ".

Q11 Who approach you to bring the "thing" to Singapore?

A11 "AJ".

Q12 How many times?

A12 Two to three times.

Q13 How much did he pay you to bring in the "thing" into Singapore?

A13 RM$700-RM$800.

15 At about 10.13pm on 28 May 2008, SSI Sea questioned Koay in Hokkien and Cantonese, and obtained a further statement (P36) from Koay which SSI Sea reduced to writing in his pocketbook as follows:

Q1 There were a total of 8 black bundles of powdery substance found in the back of the car in the speaker. Who are those?

A1 I don't know.

Q2 Have you seen Ah Lim took anything from the back of the car of JKR 7393?

A2 Yes. Today in Singapore at a petrol kiosk. Ah Lim took a black bundle like the ones recovered from the rear of the passenger (left side of the car).

Q3 When did you come to Singapore and at what time?

A3 Today at about 5pm plus.

Q4 Beside Ah Lim and you, who else sat in the car JKR 7393?

A4 Only Ah Lim and I were in the car until we were arrested.

Q5 What were you and Ah Lim come to Singapore for what?

A5 Ah Lim says he want to bring me to shop in Singapore.

Police report lodged against Lim and Koay

16 On 28 May 2008, at about 11.20pm, SSSgt Ng lodged a police report (P34) pertaining to the arrest of Lim and Koay as well as the exhibits recovered from the car.

17 SSSgt Ng initially classified the case as both consumption and trafficking of controlled drugs under s 8(b)(ii) and s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"). Lim and Koay were also sent for instant urine tests ("IUT") in order to determine whether they had, in fact, consumed controlled drugs.

18 The IUT results revealed that Lim tested negative for controlled drugs, while Koay tested positive for benzodiazepines. Their urine samples were subsequently sent to the HSA for proper analysis, and certificates from the HSA revealed that they tested negative for all controlled drugs.

HSA analysis of the exhibits

19 The 8 bundles recovered from the boot of the car contained a total of 219 small packets of granular/powdered substance. There was initially some dispute as to the number of packets that were sent to the HSA for analysis. Exhibit B1A-Photograph P11 showed a total number of 29 packets while ASP Richard Soh (PW15) stated at para 29 of his witness statement (PS34) that it was only 28 packets. Exhibit B2A-Photograph P13 showed a total number of 30 packets while para 29 of ASP Richard Soh's witness statement referred to 31 packets. ASP Richard Soh explained in cross-examination that it was possible that he may have accidentally moved a packet from Exhibit B1A to Exhibit B2A but that the total number of packets remained the same. ASP Richard Soh's explanation was accepted by Counsel for Lim and Koay. The bundles were then sent to the HSA for analysis, the result of which indicated that they contained not less than 120.96 grams of diamorphine. Lim and Koay did not challenge the analysis by the HSA or the weight of the seized diamorphine.

Koay's statements

20 A total of five long statements were subsequently recorded from Koay, in Mandarin but interpreted in English, as follows:

(a) First long statement (P40) recorded under s 121(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") on 30 May 2008 at 9.41am by ASP Richard Soh, interpreted by Mr Wu Nan Yong ("Mr Wu");

(b) Second long statement (P41) recorded under s 121(1) of the CPC on 30 May 2008 at 4.28pm by ASP Richard Soh, interpreted by Mr Wu;

(c) Third long statement (P43) recorded under s 121(1) of the CPC on 1 June 2008 at 10.17am by ASP Richard Soh, interpreted by Mr Wu;

(d) Fourth long statement (P50) recorded under s 121(1) of the CPC on 2 June 2008 at 2.44pm by ASP Gary Chan (PW18), interpreted by Mr Wong Png Leong ("Mr Wong");

(e) Fifth long statement (P46) recorded under s 121(1) of the CPC on 3 June 2008 at 1.05pm

by ASP Richard Soh, interpreted by Mr Wu.

Lim's statements

21 On 29 May 2008 at about 2.40am, ASP Richard Soh recorded a cautioned statement (D1) under s 122(6) of the CPC from Lim, in Mandarin, but interpreted in English by Mr Wu.

22 A total of four long statements were also recorded from Lim, in Mandarin but interpreted in English, as follows:

(a) First long statement (P39) recorded under s 121(1) of the CPC on 29 May 2008 at 6.17pm by ASP Richard Soh, interpreted by Mr Wu;

(b) Second long statement (P42) recorded under s 121(1) of the CPC on 31 May 2008 at 10.10am by ASP Richard Soh, interpreted by Mr Wu;

(c) Third long statement (P44) recorded under s 121(1) of the CPC on 2 June 2008 at 12.50pm by ASP Richard Soh, interpreted by Mr Wu;

(d) Fourth long statement (P51) recorded under s 121(1) of the CPC on 3 June 2008 at 9.50am by ASP Gary Chan (PW18), interpreted by Mr Wong.

23 At the trial, Lim challenged the admissibility of these four long statements (but not the cautioned statement) under s 24 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"), and consequently, a *voir dire* was held to determine the admissibility of these four statements.

Voir Dire

Section 24 of the Evidence Act

24 For convenience, s 24 of the EA reads:

> **Confession caused by inducement, threat or promise when irrelevant in criminal proceeding**
>
> **24**. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Parties' submissions

25 Lim claimed that the four long statements were inadmissible under s 24 of the EA on account of an inducement or promise that was allegedly proffered to him by Mr Wu on 29 May 2008, sometime between 6.09pm and 6.16pm.

26 It was Lim's case that, on that date and at that time, just prior to the recording of the first long statement (P39), while he was having his dinner in Room B0312A of CNB HQ, he had pleaded with Mr Wu in Cantonese to spare his life, and asked him for the minimum sentence in respect of the offence of drug-trafficking with which he was charged, *viz* 5 years' imprisonment and 5 strokes of the

cane, as he did not want to die. In response to this alleged plea, Mr Wu allegedly told Lim that he (Lim) would receive 5 years' imprisonment and 5 strokes of the cane if he made admissions in his statement. As a result of and in reliance on this alleged representation or promise by Mr Wu, Lim then gave the first long statement to ASP Richard Soh. Lim also maintained that the inducement by Mr Wu continued to operate on his mind when he gave the second (P42), third (P44) and fourth (P51) long statements. Lim explained that he asked Mr Wu for the sentence of 5 years' imprisonment and 5 strokes of the cane because he was told by ASP Richard Soh (through the interpretation of Mr Wu) that this was the minimum sentence for the charge during the recording of the cautioned statement (D1) under s 122(6) of the CPC. At the time, the purity of the diamorphine had not been scientifically determined by the HSA.

27 It was common ground that Lim was indeed informed that the minimum sentence for the charge could be 5 years' imprisonment and 5 strokes of the cane while the maximum sentence would be the death penalty. Strictly speaking this may not be correct. At the time the minimum sentence was mentioned, the purity of the seized drugs had not been ascertained and, given that a charge had to be preferred against Lim within 48 hours of his arrest, the charge would have been based on the gross weight of the drugs seized, which in Lim's case was about 1.5 kilograms. Based on the weight of the diamorphine stated in the charge when the cautioned statement was recorded from Lim, the only sentence (if Lim was convicted) would be the mandatory death sentence. This practice of informing the accused, prior to the determination of the purity of the seized drugs, that the minimum sentence could be 5 years' imprisonment and 5 strokes of the cane should perhaps be reviewed. Alternatively, if this practice should continue, it would be advisable for the CNB officers to clearly state on the cautioned statement itself that the circumstances under which the minimum sentence would apply have been fully explained to the accused. Such a practice will ensure that there is no possibility of confusion by the accused.

28 In the present case, it should be made clear that it was not Lim's case that the *mere fact* that he had been informed, whether by ASP Richard Soh or by Mr Wu, that the minimum sentence was 5 years' imprisonment and 5 strokes of the cane, instead of the more likely sentence of death (based on the weight of the drugs seized from the car), constituted an inducement or promise. Nor is it alleged that ASP Richard Soh had deliberately misled Lim in so informing him. Instead, the inducement or promise which Lim alleged was based entirely on the representation or promise that Mr Wu was said to have made.

29 The Prosecution's case was that Lim made the first to fourth long statements voluntarily, and its main submission was that the alleged conversation in Cantonese between Lim and Mr Wu never took place, *ie* that Lim's contention that Mr Wu induced him into making the long statements was a lie.

30 For the *voir dire*, the following witnesses testified:

(a) ASP Richard Soh (1T-PW 1);

(b) ASP Gary Chan (1T-PW 2);

(c) Mr Wong Png Leong (1T-PW 3);

(d) Lim Boon Hiong (1T-DW 1).

Mr Wu did not testify as he had passed away in February 2009.

Elements of s 24 of the EA

31 The law relating to the application of s 24 of the EA is well settled. In *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Kelvin Chai*"), Yong Pung How CJ stated at [53] that:

> The test for determining admissibility under s 24 is, first, whether the confession was made as a consequence of any inducement, threat or promise, and second, whether in making that confession, the accused did so in circumstances which, in the opinion of the court, would have led him reasonably to suppose that he would gain some advantage for himself or would avoid some evil of a temporal nature to himself. Both are questions of fact and are matters of judicial evaluation: see *Seow Choon Meng v PP* [1994] 2 SLR(R) 338 and *Tan Boon Tat v PP* [1992] 1 SLR(R) 698, following *DPP v Ping Lin* [1976] AC 574. The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge: *Dato Mokhtar bin Hashim v PP* [1983] 2 MLJ 232 and *Md Desa bin Hashim v PP* [1995] 3 MLJ 350

32 The only question in this case was the objective one of whether there had been an inducement or promise by Mr Wu, for Lim testified that it was because of Mr Wu's alleged representation or promise that he gave his long statements.

33 In this respect, the Prosecution and defence counsel disagreed on the appropriate test as regards the burden of proof.

Burden of proof under s 24 of the EA

34 Mr Tiwary, for Lim, submitted that it was for the Prosecution to prove beyond a reasonable doubt that Lim's four long statements had been voluntarily made, and that it was therefore sufficient for Lim to raise a reasonable doubt as to whether or not there had been any inducement or promise. Mr Ng, for the Prosecution, while accepting that it had the burden of proving beyond a reasonable doubt that the long statements had been made by Lim voluntarily, nonetheless contended that the court first had to find, as a fact, that there had been inducement, in order to conclude that a reasonable doubt had been raised as to the voluntariness of Lim's statements. In other words, it was not enough, according to the Prosecution, for doubts to be entertained as to whether or not there had been inducement: inducement had to be found as a matter of fact, and this the accused bore the burden of proving on a balance of probabilities.

35 The Prosecution's submissions were however not borne out by the authorities. Yong CJ at [53] of *Kelvin Chai*, in a passage immediately following the one quoted above at [31], stated:

> It is also established that where voluntariness is challenged, the burden is on the Prosecution to prove beyond a reasonable doubt that the confession was made voluntarily and not for the Defence to prove on a balance of probabilities that the confession was not made voluntarily: *Koh Aik Siew v PP* [1993] 1 SLR(R) 885. However, the accused need only raise a reasonable doubt or, in other words, it is only necessary for the Prosecution to remove a reasonable doubt of the existence of the threat, inducement or promise, and not every lurking shadow of influence or

remnants of fear: *Panya Martmontree v PP* [1995] 2 SLR(R) 806.

[Emphasis added]

36 It is clear, therefore, that, in order for a confession to be rendered inadmissible under s 24 of the EA, a trial judge need *not* find, as a matter of fact on a balance of probabilities, that there had been inducement. It is sufficient if there is a reasonable doubt as to the existence of an inducement and/or promise.

37 It should be stressed, however, that what is required is a *reasonable* doubt, and not merely speculative or conjectural doubts arising from the slightest suspicion of an inducement: *Panya Martmontree v Public Prosecutor* [1995] 2 SLR(R) 806 at [32].

Findings

38 After examining the evidence of Lim together with the evidence of ASP Richard Soh, I was not satisfied that a reasonable doubt existed as to the voluntariness of Lim's long statements for the following reasons:

(a) I found it difficult to believe that Lim would have pleaded with Mr Wu, a man he had just met, and further, a man he had been introduced to as an *interpreter*, for his life;

(b) I found it equally unbelievable that Mr Wu would, of his own accord, make the alleged representation or promise to Lim, for no apparent reason, especially when ASP Richard Soh was present and seated next to him;

(c) Further, given Mr Wu's experience as an interpreter with the CNB for a number of years and his limited and specific role as an interpreter during the statement recording process, I found it improbable that Mr Wu would have volunteered the alleged inducement or promise;

(d) ASP Richard Soh, who gave cogent and convincing evidence, testified that Lim could not have said anything to Mr Wu without him hearing it, as both Mr Wu and ASP Richard Soh were seated next to each other and almost equidistant from Lim;

(e) ASP Richard Soh testified forthrightly that he would have recorded the alleged conversation between Mr Wu and Lim in his investigation diary, if such a conversation had transpired, and it was not in dispute that no such record was made in ASP Richard Soh's investigation diary;

(f) It was highly implausible that ASP Richard Soh missed the alleged conversation, as Mr Tiwary suggested, because he was preoccupied with some other activity, given that Lim was in the room for the specific purpose of being interrogated;

(g) It was also extremely unlikely that ASP Richard Soh had heard the conversation but either chose not to or forgot to record it, given that it occurred so abruptly and was on such an important matter;

(h) I found it deeply improbable that Lim would have spoken to Mr Wu in Cantonese as, by his own testimony, he did not even know at that time if Mr Wu was conversant in Cantonese (the earlier s 122(6) statement had been recorded in Mandarin).

39 Mr Tiwary placed emphasis on the fact that ASP Richard Soh did not record in either his investigation diary or his witness statement that he had explained the punishment for the intermediate category of trafficking between 10 to 14.99 grams of diamorphine to Lim when the cautioned statement (D1) was recorded. In my view, the omission by ASP Richard Soh did not give rise to a reasonable doubt as to whether Mr Wu had proffered the alleged inducement or promise to Lim on a separate and subsequent occasion on 29 May 2008 between 6.09pm to 6.17pm.

40 Based on my observations of the behaviour and demeanour of Lim as well as ASP Richard Soh during their respective testimonies in the *voir dire*, I was satisfied that the Prosecution had discharged its burden in establishing, beyond a reasonable doubt, the voluntariness of Lim's long statements.

"Proceeding from a person in authority"

41 Even assuming that Mr Wu had made the alleged representation or promise to Lim, there was an additional difficulty facing Lim in his attempt to rely on s 24 of the EA: the confession must have been caused by an inducement or promise "proceeding from a *person in authority*" [emphasis added].

42 Mr Tiwary submitted, and Mr Ng accepted, during the course of oral arguments, that an interpreter could "constructively" be a person in authority, if he proffered an inducement or promise in the presence and to the knowledge of a person in authority, unless the latter took steps to dissociate himself from the inducement or promise. Mr Tiwary suggested that the interpreter in such circumstances could be deemed to be a person in authority.

43 The basis for these submissions appeared to be *Halsbury's Laws of Singapore* vol 10 (LexisNexis: Singapore, 2006 Reissue, 2006) ("*Halsbury's*") at para [120.121]:

> A person may also be constructively in authority. Thus, an interpreter acting in the course of police investigations as an interpreter… is a person in authority.

44 *Public Prosecutor v Syed Abdul Aziz bin Syed Mohd Noor* [1992] 5 CLAS 10 ("*Syed Abdul Aziz*") at 14 and *R v Cleary* (1963) 48 Cr App R 116 at 119 were cited by *Halbury's* as authorities for this proposition.

45 In my view, however, neither of these two cases, properly understood, stands for the proposition for which they are cited. In *Syed Abdul Aziz* the statement by the accused to the interpreter was set aside, not because of any inducement found by the court to have been proffered by the interpreter, but because certain procedural requirements had not been followed. In *R v Cleary*, remarks to the accused by the accused's father, *in the presence and hearing of the investigating police officers*, were held by the English Court of Criminal Appeal to be capable of amounting to an inducement (see, to similar effect, *R v Moore* (1972) 56 Cr App R 373).

46 When can an interpreter be considered to be a person in authority, constructively or otherwise? If the inducement or promise is made by the interpreter in a *one-on-one conversation* with the accused (when the accused is aware that he is merely an interpreter), there can be no doubt that admissions made by the accused following the inducement emanating *solely* from the interpreter would still be admissible. This is because such an interpreter would not be regarded as a "person in authority", *ie* "anyone who has authority or control over the accused or over the proceedings or the prosecution against him" (*Deokinanan v The Queen* [1969] 1 AC 20 at 33). Such an inducement would effectively be made by an interpreter or any other person not in authority "on a frolic of his own", and would not in law exclude a confession thereby obtained: J H Buzzard, R May and M N Howard, *Phipson*

on Evidence (London: Sweet & Maxwell, 13th Ed, 1982), at para 22–30.

47 Would the position be different if the inducement or promise is made by the interpreter in the presence of an investigating officer who has *actual* authority over the accused? The position here is more complicated, as a number of elements must be considered and balanced, *eg* the actions of the person in actual authority, the viewpoint of an objective observer and the subjective perspective of the accused. Four situations may be distinguished:

(a) Where the person in actual authority *hears* the inducement or promise, and the accused subjectively knows or believes the former heard the inducement or promise;

(b) Where the person in actual authority does *not* hear the inducement or promise, but could reasonably have been expected to hear it, and the accused subjectively believes the former heard the inducement or promise;

(c) Where the person in actual authority does *not* hear the inducement or promise, and could *not* reasonably have been expected to hear it, but the accused subjectively believes the former heard it;

(d) Regardless of whether the person in actual authority heard the inducement, the accused neither knows nor believes that the former heard it, or is indifferent as to whether the former heard it or not.

An interpreter, in my view, could in principle be regarded as a person in *constructive* authority if his inducement or promise to the accused was made in the presence of a person in *actual* authority *provided* the accused subjectively believed, on reasonable grounds, that the person in actual authority heard the inducement or promise made by the interpreter and took no step to dissociate himself from it (*ie* situations (a) and (b) above). Where the accused has no reasonable grounds to believe, or does not even believe, that the person in actual authority heard the inducement or promise (*ie* situations (c) and (d) above), then the interpreter cannot be clothed with constructive authority, for the accused is not relying on any actual authority at all, but is relying instead on his own subjective viewpoint and beliefs.

48 Here, Lim stopped short of saying that he believed ASP Richard Soh heard the inducement or promise from Mr Wu and, by his silence adopted it. Instead, Lim testified that he was *not sure* whether ASP Richard Soh heard the alleged representation. There is simply no evidence that Lim made the admissions in his long statements because he believed that ASP Richard Soh had adopted the alleged inducement through his silence. As far as Lim was concerned, the inducement came from Mr Wu and he (Lim) was indifferent as to whether ASP Richard Soh had heard it. In such circumstances, Mr Wu cannot be clothed with constructive authority.

Conclusion for the voir dire

49 For all the reasons set out in [38]–[40], I found that Lim's four long statements were voluntarily made and therefore admissible. After the outcome of the *voir dire* was delivered, both Lim and Koay applied for all the evidence adduced in the *voir dire* to be admitted in the main trial. Mr Ng on behalf of the Prosecution confirmed that he had no objection to their application.

The Prosecution's Case

Material sections of the Act

50 For convenience, I will set out the material sections of the Act on which the Prosecution relies to convict Lim and Koay on the Charge, or which are otherwise material to this case:

Interpretation

2. In this Act, unless the context otherwise requires —

…

"traffic" means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (*a*),

otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning;

…

Trafficking in controlled drugs

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

(a) to traffic in a controlled drug;

(b) to offer to traffic in a controlled drug; or

(c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

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

Presumption concerning trafficking

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

…

(c) 2 grammes of diamorphine;

…

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

Presumption of possession and knowledge of controlled drugs

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

—

(a) anything containing a controlled drug;

(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.

The law

51 In order to convict Lim and Koay on the Charge, the Prosecution has to prove beyond a reasonable doubt that (*Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550 at [35]):

(a) Lim and Koay were in physical custody or control of the 219 packets of substances (packed in 8 bundles – see [13] above) containing not less than 120.96 grams of diamorphine found in the car;

(b) Lim and Koay knew that the bundles contained diamorphine;

(c) Lim and Koay were in possession of the diamorphine for the purpose of trafficking.

Only elements (b) and (c) are in controversy, as it is not disputed that Lim and Koay were jointly in physical custody of the bundles of diamorphine found in the car. However, as the element of "possession" in s 5(2) of the Act consists of both physical control and knowledge of the thing possessed (see *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*"); *Tan Ah Tee v Public Prosecutor* [1979–1980] SLR(R) 311), the Prosecution must also prove that Lim and Koay knew that they had the bundles of diamorphine in their custody, in order to prove that Lim and Koay were in "possession" of the diamorphine within the meaning of s 5(2). The Prosecution must then go on to prove that Lim and Koay were in possession of the diamorphine for the purpose of trafficking, either by direct proof or by reliance on the presumption of trafficking in s 17 of the Act, or both. As will be seen, Lim and Koay's principal defence is that they did not know of the existence of the bundles in the car, and/or that the bundles contained diamorphine.

Knowledge that the bundles contained diamorphine

52 The Prosecution sought to prove that both Lim and Koay knew that the bundles they had in their joint possession contained diamorphine, although Mr Ng submitted that different types of knowledge were to be ascribed to Koay and Lim respectively.

53 With regard to Koay, the Prosecution pointed to specific portions of his various long statements where Koay had made a number of incriminating admissions (paras 6–7 of P40; paras 9, 12 and 17 of P41 as well as paras 39 and 44 of P46) as establishing that Koay had, on the basis of direct evidence, actual knowledge *simpliciter* (see *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*"), as well as [65]–[75] below, for the distinction between actual knowledge *simpliciter* and wilful blindness) that the bundles contained diamorphine. It is apparent that insofar as Koay is concerned, if he cannot successfully distance himself from his long statements by satisfying me that they should be given no weight at all, the admissions contained therein would prove the Prosecution's case that Koay had actual knowledge that the bundles contained diamorphine.

54 With regard to Lim, the position is not quite the same. Unlike Koay, there is no express admission by Lim in any of his four long statements that he actually knew that the bundles contained diamorphine. Instead, in his long statements, Lim merely admitted that he was aware that the bundles contained drugs and that he suspected that the drugs were heroin. Accordingly, with regard to Lim, his long statements do not *ipso facto* prove that Lim knew that the bundles contained diamorphine. In these circumstances, the Prosecution, quite rightly, chose not to rely on actual knowledge *simpliciter*. Instead, the Prosecution submitted that, given the manner in which the bundles were wrapped and concealed, as well as the surreptitious nature of the delivery to Goh at the petrol kiosk, Lim must have known that the bundles contained diamorphine, on the basis that he was *wilfully blind* as to the nature of the contents of the bundles, which wilful blindness was, on the authority of *Tan Kiam Peng*, to be treated as the legal equivalent of actual knowledge.

Whether it is necessary for the Prosecution to prove that Lim and Koay knew that the controlled drug was diamorphine

55 I have, in the course of this judgment, proceeded on the basis that the knowledge which the Prosecution is required to prove, in order to make out the element of possession, and hence the Charge, is that Lim and Koay knew the *specific nature* of the drugs they were found with, *ie* that the Prosecution had to prove, beyond a reasonable doubt, that Lim and Koay knew that the bundles contained *diamorphine*, and not just a *controlled drug* ("the narrow approach").

56 This is a matter of some controversy, and was left unresolved by the Court of Appeal in *Tan Kiam Peng*. The approach I have adopted was assumed (but not decided) to be the correct approach under s 18(2) of the Act in *Tan Kiam Peng* itself, where the Court of Appeal contrasted the narrow approach with a broader approach, *viz* that the accused need only know that the drug in his possession is a controlled drug ("the broad approach"). The broad approach was strongly endorsed by the House of Lords in *Warner*, and is consistent with the general policy underlying the Act, as well as some of the language employed by the Act itself (see generally *Tan Kiam Peng* at [88]–[89]). Nonetheless, in the absence of detailed argument by counsel, and in fairness to the appellant, the Court of Appeal proceeded on the basis that the narrow approach applied (see *Tan Kiam Peng* at [92], [93] and [95]).

57 In *Tan Kiam Peng*, the appellant appealed against his conviction in the High Court of the offence of importing heroin under s 7 of the Act, on the basis that, while he knew that he was importing illegal drugs, he did not know the precise nature of the drugs he was carrying, *ie* he did not know that the drugs contained heroin. As the Court of Appeal noted at [20] of *Tan Kiam Peng*, the appellant in that case had to rebut the presumption contained in s 18(2) of the Act in order for his

defence to succeed.

58 In this case, however, the Prosecution is not relying on s 18(2) because it is established that the presumptions of trafficking and possession in ss 17 and 18, respectively, of the Act cannot be utilised in conjunction (see *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 and *Low Kok Wai v Public Prosecutor* [1994] 1 SLR(R) 64). The Prosecution opted instead to rely on the presumption of trafficking in s 17 of the Act in preference to the presumption of possession in s 18. This raises the question ("the first question") of whether the Court of Appeal's remarks in *Tan Kiam Peng* are applicable, given that, in *Tan Kiam Peng*, the issue of whether the broad or narrow approach was more appropriate was considered by the Court of Appeal in the context of s 18(2) of the Act, whereas here that issue is presented in the context of a different provision, *viz* s 5(2).

59 In addition, there is the question ("the second question") of whether I should regard myself as being bound by the Court of Appeal's observations in *Tan Kiam Peng*, which were technically *obiter*, given the Court of Appeal's holding (at [171]) that, on the evidence, the appellant had had *actual knowledge* that the drugs he was carrying consisted of heroin.

60 With regard to the first question, I am of the opinion that *Tan Kiam Peng* cannot be distinguished on the basis that this case involves a consideration of s 5(2) rather than s 18(2) of the Act, as there is no indication in *Tan Kiam Peng*, or in the Act itself, that s 18(2) requires a court to adopt a narrower approach to knowledge than is required for the purpose of proving the element of possession in s 5(2) of the Act. Indeed, in *Tan Kiam Peng* itself, the Court of Appeal observed (at [171]) that, since the appellant had actual knowledge that the drugs he was carrying consisted of heroin (and not merely a controlled drug), there was in fact no need to rely on the presumption under s 18(2), which indicates that the narrow approach is applicable more generally throughout the Act wherever knowledge is required to be proven, regardless of whether s 18(2) is in issue.

61 As for the second question, although the Court of Appeal's comments in *Tan Kiam Peng* were strictly *obiter*, having regard to the Court of Appeal's exhaustive review of the applicable authorities and the comprehensive consideration of the relevant issues, I regard *Tan Kiam Peng* as highly persuasive, if not actually binding, authority.

62 Consequently, on the issue of the correct approach to adopt under s 5(2) of the Act, I can do no better than to follow the narrow approach adopted in *Tan Kiam Peng*, for much the same reasons (see above at [56]): there was likewise no detailed argument by counsel in this case on this point, and the ambiguity should, in fairness, be construed in favour of Lim and Koay. In any event, Mr Ng submitted that the Prosecution was content to proceed on the basis of the narrow approach.

63 I should add, however, that I do not think it would have mattered which approach I adopted, as the Court of Appeal's comments regarding the *secondary* issue of the *nature of the knowledge* an accused person must be proven to have had arguably renders any difference between the narrow and broad approaches moot.

64 In *Tan Kiam Peng*, the Court of Appeal scrutinised the question of knowledge (technically in the context of s 18(2) of the Act, but as I have pointed out above at [60], the question is of general application to the elements of knowledge and possession under the Act), which involved consideration of two separate issues:

(a) the *primary* issue of the *scope* of knowledge: here, as I have stated, the Court of Appeal took the narrow approach and assumed, without deciding, that an accused person not only has

to be shown to know that he was in possession of a controlled drug, but also that he knew that he was in possession of the *specific* drug;

(b) the *secondary* issue of the *nature* of the knowledge: here the Court of Appeal explained that "knowledge" refers not only to *actual knowledge* (what I have termed "actual knowledge *simpliciter*"), but also to *wilful blindness*, which is the legal equivalent of actual knowledge *simpliciter* (see *Tan Kiam Peng* at [104], [121], [123]–[125], [129] and [130]).

65 In relation to this secondary issue, the Court of Appeal made a number of observations regarding the doctrine of wilful blindness, which are worth quoting extensively:

> 125 *[S]uspicion is* legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye. *However*, that suspicion must, as Lord Scott perceptively points out in [*Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469], "be firmly grounded and targeted on specific facts". Mere "untargeted or speculative suspicion" is insufficient… [A] *low level* of suspicion premised on a factual matrix that would *not* lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries… [I]n order for wilful blindness to be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge"…
>
> 126 That having been said, the requirement of *suspicion* is nevertheless a vital (and, indeed, threshold) one. So, for example, if the accused makes merely token inquiries because he suspects that making more substantive inquiries might lead him to the truth which he does not want to know, that is wilful blindness. If the factual matrix was such that the accused ought to have been suspicious, the court must then consider the accused's reasons for not making further inquiries. … [A] court would be well justified in thinking that the reason why an accused refused to make further inquiries may be because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed. In such a situation, the level of suspicion is… one where a person in the accused's shoes ought to make further inquiries and the failure to do so would therefore constitute wilful blindness.
>
> …
>
> 129 [I]n the context of the doctrine of wilful blindness, while some illustrations may be helpful, it is nevertheless imperative to note that, owing to the intensely factual nature of the inquiry, they cannot be representative, let alone comprehensive. Generally speaking, if an accused has had his or her suspicions aroused in the manner set out at [125] above, the accused can still rebut the relevant presumption under s 18 of the Act by demonstrating that he or she took reasonable steps to investigate by making further inquiries that were appropriate to the circumstances. What these circumstances will be will obviously vary from case to case, thus underscoring (once again) the intensely factual nature of the entire process. Nevertheless, one obvious situation is where the accused takes no steps whatsoever to investigate his or her suspicions. The court would naturally find that there was wilful blindness in such a situation. ***Where, for example, an accused is given a wrapped package and is told that it contains counterfeit currency when it actually contains controlled drugs, we would have thought that, absent unusual circumstances, the accused should at least ask to*** *actually view* ***what is in the package. Even a query by the accused coupled with a false assurance would, in our view, be generally insufficient to obviate a finding of wilful blindness on the part of the***

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

130 Situations such as that which exists on the facts of the present appeal underscore this point since ***the accused already knows that he or she is carrying controlled drugs and surely cannot rely*** *merely* ***on the fact that he or she had asked for assurances that the controlled drugs concerned were not of a nature which carried the death penalty. If the accused chooses to take an enormous (indeed, deadly) risk and proceed without establishing the true nature of the drugs he or she is carrying, that constitutes, in our view, wilful blindness*** ….

[Original emphasis in italics, emphasis added in bold italics]

66 It seems to me, if I may respectfully say so, that these passages, taken to their logical conclusion, effectively eliminate the distinction between the broad and narrow approaches. Taking the Court of Appeal's example at [129] of *Tan Kiam Peng*:

> Where… an accused is given a wrapped package and is told that it contains counterfeit currency when it actually contains controlled drugs, … absent unusual circumstances, the accused should at least ask to *actually view* what is in the package. Even a query by the accused coupled with a false assurance would … be generally insufficient to obviate a finding of wilful blindness on the part of the accused under such circumstances.

The wilful blindness here is presumably wilful blindness that the package contains *a controlled drug*, *ie* the broad approach. Since, however, wilful blindness is the legal equivalent of actual knowledge *simpliciter*, the situation is legally no different from one where the accused *actually knew* that a wrapped package he has been given contains controlled drugs (*ie* the situation referred to in [130] of *Tan Kiam Peng*). Consequently, *in both situations*, since the accused *knows* (whether by actual knowledge *simpliciter* or by wilful blindness) that the package contains controlled drugs, if he does not take sufficient steps (and it is clear from the Court of Appeal's observations above that merely asking for, and receiving, assurances is not sufficient), he is *wilfully blind* as to the *specific nature* of the drug, *ie* the narrow approach. The result, therefore, is that once an accused person has a firm or specific suspicion that he is in possession of a controlled drug, and then deliberately refrains from confirming that suspicion, he will not only be held to know, via wilful blindness, that he is in possession of a controlled drug (the broad approach) – he will, ineluctably, also be held to know, via wilful blindness, that he is in possession of the specific drug in question (the narrow approach), since wilful blindness is the legal equivalent of actual knowledge *simpliciter*.

67 It is true that Yong Pung How CJ, in *Public Prosecutor v Koo Pui Fong* [1996] 1 SLR(R) 734 ("*Koo Pui Fong*"), while acknowledging (at [14]) that wilful blindness is "simply a reformulation of actual knowledge", said (at [15]) that "[b]ut this is different from saying that wilful blindness should be automatically equated with knowledge." It is clear from [127] of *Tan Kiam Peng*, however, that all Yong CJ was saying is that actual knowledge *simpliciter* and wilful blindness are *conceptually* not

identical. Indeed, Yong CJ confirmed at [15] of *Koo Pui Fong* that:

> *Despite the distinction, the practical effect it seems, would usually be the same* but the difference should be borne in mind so as not to confuse the concept of wilful blindness as being a separate state of mind which is sufficient to form an alternative to the requirement of knowledge.
>
> [Emphasis added]

The *practical effect*, therefore, of a finding that an accused was wilfully blind to the fact that a package he had been given contained controlled drugs, is *the same* as a finding that he *actually knew* that the package contained controlled drugs – in either case he is then wilfully blind as to the specific nature of the drugs if he does not make sufficient inquiries.

68 This raises the crucial question of what would count as "sufficient" inquiries, if the accused is to prevent a finding of wilful blindness. The authorities on wilful blindness have traditionally referred to the accused "abstain[ing] from making further inquiry" (*The English and Scottish Mercantile Investment Company, Limited v Brunton* [1892] 2 QB 700 at 707), "refrain[ing] from inquiry" (*Compania Maritima San Basilo S A v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1977] QB 49 at 68) or "refus[ing] to investigate" (*Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469 at [3]). In the context of drug offences, the Court of Appeal in *Iwuchukwu Amara Tochi and another v Public Prosecutor* [2006] 2 SLR(R) 503 at [6] referred to the accused's "failure to inspect" suspicious articles as an example of wilful blindness.

69 These statements seem to suggest that as long as the accused makes *some* inquiry or inspection into the nature of the articles or package in his possession, that may be sufficient to displace a finding of wilful blindness.

70 In *Tan Kiam Peng*, however, the Court of Appeal commented (at [126]) that merely making "token inquiries" would not be sufficient, and suggested (at [129]) that the accused should at least ask to *actually view* the contents of the package, for even a query by the accused coupled with a false assurance would be "generally insufficient to obviate a finding of wilful blindness on the part of the accused under such circumstances" (see above at [65]).

71 Even if the accused asks to view the contents of the package, it is not entirely clear whether, on the Court of Appeal's view, that would be sufficient to prevent a finding of wilful blindness, for the Court of Appeal stated (at [130] (see above at [65])) that if the accused chooses to proceed with his criminal adventure "without establishing the *true nature* of the drugs he… is carrying, that constitutes… wilful blindness" [emphasis added]. It may be argued that, in the Court of Appeal's view, the accused must make such inquiries as would be sufficient to enable him to ascertain the specific kind of drug he is in possession of.

72 If this is what the Court of Appeal meant, I must respectfully observe that such a standard is, in the absence of rigorous scientific analysis, impossible to attain. It is simply not physically possible, on a purely visual inspection, to distinguish with accuracy or certainty between (for instance) powdered heroin and powdered ketamine, or between methamphetamine pills and *bona fide* pharmacological capsules. This is so where the accused has previously abused the drugs in question, and *a fortiori* where the accused has had no contact with that type of drug. Assuming, however, that an accused does indeed inspect the contents of a package, and incorrectly satisfies himself as to their nature (*eg* that the package contains powdered ketamine rather than powdered heroin). Would that be sufficient to avoid a finding of wilful blindness? Adopting the logic in *Tan Kiam Peng*, it is somewhat difficult to see how, if a query by the accused coupled with a false assurance is

insufficient to obviate a finding of wilful blindness, the accused's false supposition (after visually inspecting the contents of the package) that he is in possession of some other type of controlled drug or *bona fide* medication would be sufficient. In both cases, after all, the accused has incorrectly satisfied himself that the articles in his possession are not what they truly are.

73 Indeed, this was the conclusion reached by Tay Yong Kwang J in *Public Prosecutor v Khor Soon Lee* [2009] SGHC 291 ("*Khor Soon Lee*"), where Tay J convicted the accused of importing 27.86 grams of diamorphine under s 7 of the Act. The accused had been given the diamorphine by one "Tony" in Johor Bahru, but although the accused knew that he had been given drugs, he claimed that he did not know he had been given heroin. Tay J rejected this contention (at [29]), ruling that the accused was wilfully blind as to the nature of the drugs in his possession, on the basis that he was conscious of the fact that he was in possession of controlled drugs, and that there had been ample opportunity for him to inspect the contents of the bag of drugs Tony had given him. At [30], however, Tay J commented:

> *It might be argued that even if he did open the bundle containing diamorphine that day, he would not have recognized the drug as he claimed that he had not consumed such drug before and did not know what it looked like... Let us assume further that he asked Tony about it and was given a false answer. That would still not rebut the presumption of knowledge* because it would rest basically on him trusting Tony's word. In an illegal transaction such as this, the courier bears the risk that any answer given to him might turn out to be false or wrong. This is quite unlike a legitimate situation which calls for no reason to be suspicious whatsoever. *It would tantamount to being wilfully blind* (see *Tan Kiam Peng v PP* at [130]).
>
> [Emphasis added]

Here, Tay J's judgment indicates that an inspection by the accused of the drugs in question *and* the seeking of assurances would still not be sufficient to avoid a finding of wilful blindness. What, then, would or could be sufficient?

74 In the circumstances, therefore, I am inclined to think that the Court of Appeal in *Tan Kiam Peng* did not intend to suggest that the accused must literally ascertain, with scientific accuracy, the true nature of the articles in his possession. Instead, what is required, if the accused is to obviate a finding of wilful blindness, is a demonstration that he "took *reasonable* steps to investigate by making further inquiries that were appropriate to the circumstances" [emphasis added], and what is reasonable in the circumstances will vary from case to case (see *Tan Kiam Peng* at [129]). In some cases, it may be sufficient for the accused to inspect the contents of a suspicious package, even if he incorrectly satisfies himself as to the nature of those contents, while in other cases, more may be required. It would be futile and impracticable to lay down a general rule.

75 In summary, even though the Court of Appeal in *Tan Kiam Peng* clearly desired to distinguish the narrow approach from the broad approach in order to be fair to the accused (see [94] and [95] of *Tan Kiam Peng*), ultimately, in my respectful view, I do not think it matters greatly which approach I chose to adopt in this case, although, as I mentioned at [62] above, consistently with the Prosecution's submissions, I did eventually adopt the narrow approach when determining whether the Prosecution had proven its case against Lim. In addition, whether an accused will be able to obviate a finding of wilful blindness depends on his level of suspicion and whether he took reasonable steps to investigate by making further inquiries that were appropriate to the circumstances.

76 Having assumed (without deciding) that the narrow approach is to be adopted in this case, it remains for me to consider Lim and Koay's defences, in order to determine whether the Prosecution

has met its burden in relation to both of them.

Lim's Defence

77 Lim's defence at the trial was essentially that, when he entered Singapore, he had no idea that the car contained the bundles eventually found by the CNB officers within the loudspeaker in the boot of the car, and that he was merely Koay's driver with no knowledge that the purpose of Koay's visits was anything other than to meet various people.

78 Lim's evidence was that, although he had agreed to drive Koay into Singapore, he thought Koay was coming to Singapore to collect money for one "AJ" (whom Koay had previously mentioned doing work for). Lim had driven Koay into Singapore previously, and on none of those occasions had Lim seen Koay hand anything over to anyone in Singapore, and there was no reason to suspect otherwise on 28 May 2008.

79 Lim said that the first time he realised that the loudspeaker had a compartment built into it was on 28 May 2008 at the Shell petrol kiosk. He had just returned from using the toilet when he saw Koay remove a bundle from the area of the rear passenger seat. When he asked Koay what it was, Koay replied "*yao*", which Lim understood to mean common medicine. He said he believed Koay because he and Koay were good friends.

80 Mr Tiwary submitted that Lim's statements at the scene, as well as at CNB HQ, had to be seen in this context: Lim's statements, in response to being asked whether there was anything illegal in the car, that there were "things" in the car, referred to Lim's belief that the bundles contained medicine, in reliance on what Koay had told him.

Admissions by Lim in his long statements

81 Lim's defence is completely contradicted, however, by his long statements, in which he made, *inter alia*, the following admissions:

(a) Lim admitted in his first long statement (P39) that he had agreed to act as driver for Koay to deliver drugs in Singapore though he claimed that he was not sure what the specific drugs were. Lim had previously worked in Singapore and was therefore familiar with the roads.

(b) Lim also admitted in his third long statement (P44) that he knew that there were drugs hidden in a compartment concealed within the loudspeaker of the car. Although he claimed that Koay did not specifically inform him that the drugs were heroin, he "suspected the things were heroin because [he] was paid RM 800 for each packet" (at para 40).

(c) Lim further admitted in P44 that after delivering a bundle to Goh at the Shell petrol kiosk, AJ instructed Koay and him to make another delivery at Jalan Sultan. En route to Jalan Sultan to make the delivery, they were arrested by CNB officers.

(d) Finally, Lim also admitted in his fourth long statement (P51) that he knew that on 28 May 2008 Koay had collected drugs from someone in a red car at the Holiday Plaza in Johor Bahru on the instructions of AJ for delivery to Singapore. The drugs were then concealed in the compartment inside the loudspeaker in the car.

82 Mr Tiwary submitted that Lim's admissions in his long statements were brought about because of the alleged inducement proffered by Mr Wu. Lim also retracted the contents of his long

statements, claiming that they were lies he had concocted. Essentially, Lim maintained the position he had adopted during the *voir dire*. Mr Tiwary further submitted that although the long statements had been admitted in evidence following the *voir dire*, it was still necessary to determine the weight to be given to them. In this regard, Mr Tiwary submitted that Lim's initial statements at the scene of the arrest and at CNB HQ when he denied knowledge of the drugs should be preferred over the long statements. However, Lim did not provide any explanation for the admissions in his long statements other than his allegation that they were lies concocted by him by reason of the inducement by Mr Wu. In view of my earlier findings in the *voir dire* that there was no such inducement and that therefore the four long statements were voluntarily given, I reject Mr Tiwary's submission that the admissions in Lim's long statements should be disregarded in preference to his initial denials at the scene of the arrest or at CNB HQ. It follows that the Prosecution has proven through Lim's admissions in his long statements that he knew that the bundles that he and Koay were delivering at the time of their arrest contained *drugs*.

83 In his Closing Oral Submissions, Mr Tiwary initially accepted that Lim had admitted in his first long statement (P39) that the bundles contained heroin. It was, however, pointed out to Mr Tiwary that there was in fact no such express admission and that P39 merely referred to *drugs* and not specifically to *heroin*. For this reason, the Prosecution submitted that Lim was at least wilfully blind as to the specific nature of the drugs that were seized from the car. It should be made clear that the doctrine of wilful blindness is relied upon against Lim to prove that he knew that the drugs were *heroin*.

84 Applying the law as explained in *Tan Kiam Peng*, it is clear to me that by reason of the doctrine of wilful blindness, Lim is taken to have known that the drugs in the car were heroin. As emphasised in [125] of *Tan Kiam Peng*, "suspicion is a central as well as integral part of the entire doctrine of wilful blindness", as long as the suspicion is well-founded. By his own evidence, Lim *suspected* that the drugs were heroin. Here the suspicion by Lim was well grounded. In P44, Lim states that he suspected the drugs were heroin because of the amount he was paid for delivering each packet. This is consistent with the high street value of heroin. Since Lim already knew that he was carrying controlled drugs, he ought to have taken reasonable steps to investigate by making further inquiries, *eg* by opening the packets and satisfying himself (even if erroneously) that they did not contain heroin. Since Lim took no such steps, and deliberately refrained from confirming his suspicions, I am satisfied that the Prosecution has proven beyond a reasonable doubt that Lim was wilfully blind that the drugs in his physical custody were diamorphine, *ie* that the Prosecution has proven that Lim was in possession of not less than 120.96 grams of diamorphine for the purposes of s 5(2) of the Act.

Koay's Defence

85 Koay's defence at the trial was that he had no knowledge of the bundles concealed in the loudspeaker of the car until he was informed of their existence by AJ *after* Lim and Koay had entered Singapore. Further he alleged that he had no knowledge that the bundles contained diamorphine. Although Koay did not challenge the admissibility of his long statements, the effect of his evidence at the trial was that no weight should be ascribed to the statements because of his poor understanding of the language he was interviewed in, as well as his mental state at the time. I shall now consider whether Koay's explanations compromise the veracity of his long statements.

Koay's reasons for coming to Singapore

86 In support of Koay's defence that he had no intention to traffic diamorphine on 28 May 2008, and did not know that he was delivering diamorphine, Mr Nathan, for Koay, submitted that Koay had come to Singapore on 28 May 2008 to collect money on behalf of AJ, for AJ was a known

moneylender. Koay stated that on all the previous occasions he had come to Singapore, he had never handed anything over to anyone at the behest of AJ, and that, on 28 May 2008, it was only after Lim and Koay had left the Woodlands Checkpoint that Koay received a telephone call from AJ who instructed him to pass something to AJ's friends on AJ's behalf.

87 Koay's case was that, during the telephone call, AJ had informed him that the "thing" he was to pass to AJ's friends was common medicine. Koay also testified that AJ had told him that the medicine was to be found in the loudspeaker in the boot of the car.

88 Consequently, Mr Nathan submitted, Koay did not have knowledge that he was delivering diamorphine, nor did he have knowledge of the true nature of the contents of the bundles: Koay always thought that the bundles contained common medicine, and only discovered that the bundles contained heroin when he was so informed by the CNB officers at the scene.

89 In these circumstances, Mr Nathan submitted, there was insufficient evidence to show that Koay had actual knowledge that the bundles contained diamorphine, nor could Koay be said to have knowledge by virtue of being wilfully blind as to the contents of the bundles, since the possibility that the bundles might contain illegal substances never dawned on Koay, and that it was reasonable for Koay to believe that his task in Singapore was merely to collect money for AJ.

Admissions by Koay in his long statements

90 Altogether Koay gave five long statements in which he made the following critical admissions:

(a) Koay admitted in his first long statement (P40) that he was approached by AJ in February 2008 to deliver heroin in Singapore and that he (Koay) asked Lim to assist him as the driver to effect the delivery. Koay further said that he told Lim that his assistance was required specifically to deliver heroin in Singapore.

(b) Koay admitted in his fifth long statement (P46) that he made several previous deliveries of heroin in Singapore together with Lim on 3 March, 6, 8 15, and 26 May 2008.

(c) As regards the drugs that were seized from the car on 28 May 2008, Koay admitted in P46 that he knew that he was delivering heroin to different customers in Singapore on AJ's instructions according to the different labels on the bundles.

(d) Koay further admitted in his fourth long statement (P50) that on 28 May 2008, he had collected the heroin from an "old man" at the Holiday Plaza in Johor Bahru on AJ's instructions for delivery in Singapore. Koay recognised the "old man" as the same person from whom he had collected heroin on previous occasions for delivery in Singapore.

(e) Koay also admitted in P50 that after collecting the heroin from the "old man", he placed them inside the compartment in the car's loudspeaker.

91 Although Koay claimed in P40 that he had informed Lim that the "things" which they were instructed to deliver in Singapore were heroin, the Prosecution clarified during Closing Submissions that it was not relying on Koay's admission against Lim.

Poor understanding of language

92 Mr Nathan submitted that little weight should be given to Koay's incriminatory statements

because most of the long statements were recorded in interviews where questions in English were translated to Koay in Mandarin, a language that Koay claimed, at the trial, he was not completely comfortable with. Mr Nathan attached significance to the fact that when SSI Sea recorded a statement from Koay (P35), Koay said that he wished to speak in Hokkien and that the statement was in fact recorded in a mixture of Hokkien and Cantonese.

93 As the interviews of Koay by ASP Richard Soh on 29 May 2008 (P38), 30 May 2008 (P41) and 3 June 2008 (P47), as well as by ASP Gary Chan on 2 June 2008 (P50), were all conducted, via interpreters, in Mandarin, Mr Nathan submitted that Koay was not able to properly appreciate the questions posed to him, and his answers should therefore not be seen as representative of his knowledge at the time.

94 However, the issue is not whether Koay was more comfortable with Mandarin, Hokkien or Cantonese. Instead, the inquiry is whether Koay's long statements should be discounted given that the interviews were conducted in Mandarin through interpreters. In order for me to disregard the long statements, I must be satisfied that Koay did not fully understand the questions posed by ASP Richard Soh or ASP Gary Chan during the interviews, or the answers which he gave through the interpreters. The mere fact that Koay preferred Hokkien to Mandarin does not necessarily lead to the conclusion that the contents of his long statements may therefore not be reliable. It is not unusual for a person to be sufficiently conversant in more than one language or dialect. I pause to highlight that Koay's challenge to the long statements was selective. Not surprisingly he only challenged those paragraphs that were adverse to his interests. If, as he claimed, he was not proficient or comfortable with Mandarin, his challenge should be directed at the long statements in their entirety.

95 From the evidence adduced at the trial, I am satisfied that Koay was able to understand the interview process even though the interviews were conducted in Mandarin, for the following reasons:

(a) In P40 (Koay's first long statement), he confirmed to ASP Gary Chan that he was able to understand and speak Mandarin, Hokkien, Cantonese and Malay.

(b) At the commencement of each of the subsequent long statements (P41, P42, P43 and P46) Koay confirmed to ASP Richard Soh that he chose to speak in Mandarin which was interpreted in English by Mr Wu.

(c) When Koay was separately interviewed by ASP Gary Chan, he again stated his wish to record his long statement (P50) in Mandarin.

(d) During his testimony in court, Koay initially elected to give his evidence in the Cantonese dialect. I specifically took note that on at least two occasions, Koay explained his evidence to the Cantonese interpreter by writing the words to be translated in Mandarin. Clearly, Koay was sufficiently conversant in Mandarin for him to have explained his evidence to the interpreter in Mandarin. I should add for completeness that Koay elected to testify in Hokkien on his second day on the witness stand. The mere fact that Koay subsequently felt more comfortable to testify in Hokkien instead of Cantonese does not mean that his earlier answers in Cantonese were unreliable. In fact, during the Closing Oral Submissions, Mr Nathan accepted that there is evidence before the court that Koay understands some Mandarin and consequently it is not his case that he did not understand the interviews.

> Court: Now, let's deal with the first point. Is there any evidence in this Court that he did not understand Mandarin?

Nathan: No, your Honour. In fact, there is some evidence, he stated in evidence he understands some Mandarin.

Court: So, you see, the fact that a person is more comfortable with Hokkien or Cantonese doesn't lead to the conclusion that therefore he cannot understand Mandarin.

Nathan: Yes, Your Honour, it's not the----it's not the accused's position that he didn't understand the interview---

(e) I accept the evidence of ASP Richard Soh and ASP Gary Chan that Koay provided his answers in Mandarin during their recording of his long statements. This was corroborated by the interpreter, Mr Wong, when ASP Gary Chan recorded P50 from Koay. Mr Wong testified that Koay used Mandarin during the interview though he accepted that Koay could have used a few dialect phrases.

Koay's state of mind

96 Mr Nathan further submitted that Koay's admissions in his long statements should carry little weight as he was suffering from the effects of having consumed sleeping pills which contained benzodiazepines, *viz* feeling dazed and groggy, and as a result his speech was not fully coherent. Koay claimed that he took mild sleeping pills at about 4.00pm on 28 May 2008. This was compounded, Mr Nathan argued, by the fact that Koay had not been able to sleep for 2 nights prior to the recording of the long statements. Consequently, Mr Nathan submitted, Koay's oral testimony in court – that he was in Singapore to collect money for AJ, and received new instructions only after crossing the Woodlands Checkpoint – should be preferred to his long statements. Mr Nathan also relied on the fact that in the initial police report filed by SSSgt Ng (P34), Koay and Lim were suspected of having consumed controlled drugs. It was submitted that there must have been something in Koay's demeanour or appearance to cause SSSgt Ng to classify the offence as one of consumption. This point was only raised by Koay although it is apparent from the police report (P34) that both Lim and Koay were initially suspected of consuming controlled drugs.

97 Koay called Ms Moey Hooi Yan (DW3) from the HSA to testify on his behalf. Ms Moey confirmed that although Koay's urine sample initially tested positive for benzodiazepines under the IUT conducted on 28 May 2008, the subsequent confirmatory tests conducted on 29 May 2008 found that Koay's two urine samples were negative for all controlled drugs including benzodiazepines. Ms Moey explained that the IUT could have provided a false positive result. Ms Moey's evidence therefore effectively eliminated any scientific basis for Koay's alleged dazed state of mind at the time when the long statements were recorded. In any event, by Koay's own evidence, the sleeping pills that he allegedly took on 28 May 2008 had a negative effect (if at all) on him for at best six hours. However his long statements were recorded over five days from 30 May to 3 June 2008. Koay, despite his claim that he was not in the proper state of mind, was nonetheless able to make pointed amendments to paras 4 and 6 of P40 when it was read back to him before he signed it.

98 Koay was referred to Dr Ebreo Eleazar Sarmiento (PW22) for pre-statement examination on 29 May 2008 at about 2.03am. Dr Sarmiento testified that Koay appeared clinically well and alert to him. His evidence was not seriously challenged by Koay in cross-examination.

99 In the final analysis, there is simply no scientific or medical evidence that Koay was suffering from the effects of the sleeping pills that he allegedly took on 28 May 2008 when the long statements

were recorded from him. The mere fact that the offence was initially incorrectly classified as one of consumption of controlled drugs does not, in my view, prove that Koay was not in a proper state of mind to understand the interview process which resulted in the five long statements.

100 In the circumstances, given that Koay has not satisfied me that the admissions contained in his long statements should not be given weight and in the absence of any objective evidence to contradict his admissions, I find that the Prosecution has proven that Koay knew prior to entering Singapore that the bundles found in the loudspeaker in the car contained diamorphine.

Possession for the purpose of trafficking

101 Having found that Lim and Koay were in possession of not less than 120.96 grams of diamorphine for the purposes of s 5(2) of the Act, the next issue for determination is whether the Prosecution has proven that the diamorphine was in Lim's and Koay's possession for the purpose of trafficking.

102 In this regard, Lim's and Koay's defence ultimately hinged on their ability to challenge their respective long statements. Once the challenge failed, the long statements proved beyond a reasonable doubt that both Lim and Koay not only knew that the bundles concealed in the loudpseaker of the car contained diamorphine, but also that they were intended for delivery to various customers in Singapore. This much is clear from the admissions set out in [81] and [90] above. Further, in P43, Koay admitted that he had handed over one bundle labelled "B" to one Peter, *ie* Goh, at the Shell petrol kiosk. This was consistent with the entry in Koay's notebook (P118) – "Bukit Tiga 1, B". It was accepted by Koay that the reference to "Bukit Tiga" should read "Bukit Timah" instead. It was no coincidence that the bundle labelled "B" was delivered to Goh at the Shell petrol kiosk along Bukit Timah Road. Further, Lim also admitted that at the time of the arrest, they were on their way to Jalan Sultan to make another delivery. Once again, this was corroborated by Koay's notebook (P118) with the entry – "Jalan Sutan 1A". It was not disputed by Koay that his reference to "Jalan Sutan" meant "Jalan Sultan". In my view, their admissions in their respective long statements together with Koay's notebook proved beyond a reasonable doubt that Lim and Koay were in Singapore to make deliveries of the bundles of diamorphine found in the car, and that they were consequently jointly in possession of the diamorphine for the purpose of trafficking.

103 The Prosecution also relied on the statutory presumption of trafficking in s 17 of the Act, and submitted that it remained unrebutted by Lim and Koay. In any event, no attempt was made by Lim or Koay to rebut the presumption other than their unsuccessful challenge of their long statements. As such, I find that the presumption in s 17 of the Act remains unrebutted by Lim and Koay.

Conclusion

104 By reason of my findings, I am satisfied that the Prosecution has proven the ingredients of the Charge against both Lim and Koay beyond a reasonable doubt. In the premises, I find Lim and Koay guilty of the Charge and hereby convict them under s 5(1) read with s 5(2) of the Act. The mandatory death sentence prescribed under s 33 read with the Second Schedule of the Act is pronounced accordingly.