IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 223

Magistrate's Appeal No 9314 of 2019

Between

Ng Jia Jie

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Introduction

1 The appellant pleaded guilty to two charges of knowingly furnishing false information to a police officer, in contravention of s 182 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). This was his appeal against the sentence of 12 days' imprisonment per charge which was imposed by the District Judge ("the DJ"), who heard the matter in his *ex officio* capacity as a Magistrate. The sentences were ordered to run concurrently.

2 After hearing the parties' submissions, I dismissed the appeal. I gave brief reasons orally for my decision at the hearing on 20 August 2020, and I now set out my full grounds of decision.

Facts

3 The appellant admitted the following facts as found in the Statement of Facts tendered below. On 5 April 2017 at about 11pm, the appellant consumed alcohol together with Cheo Ming Xiang ("Cheo") and their friends at a Karaoke television ("KTV") lounge. Cheo and the appellant left the KTV lounge on 6 April 2017 at about 2am. Cheo drove the motor car SKV 502 Y (the "motor car"), while the appellant sat at the front passenger seat.

4 At about 3am, Cheo was driving the motor car along Raffles Boulevard. Cheo did not apply the brakes in time when the traffic light at the junction turned red, causing his car to collide into the rear of a motor taxi.

5 At about 3.40am, Staff Sergeant Tan Wei Siong ("SSgt Tan"), a police officer attached to the Traffic Police, attended to the scene. The appellant informed SSgt Tan that he was the driver of the motor car, and that he could not apply the brakes in time when the traffic light turned red, resulting in the collision. This false statement was the subject of the first charge against the appellant.

6 SSgt Tan then conducted a breathalyser test on the appellant, which he failed. He was then placed under arrest for drink driving and escorted to the Traffic Police Headquarters. SSgt Tan did not conduct a breathalyser test on Cheo. He also did not place Cheo under arrest or take any statement from Cheo on 6 April 2017.

7 At about 7.15am on 6 April 2017, at the Traffic Police Headquarters, Sergeant Muhammad Firdaus Bin Suleiman ("Sgt Suleiman") recorded a statement from the appellant pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "CPC"). The appellant falsely stated that he was the

driver of the motor car as he wanted to test-drive Cheo's Maserati. He again falsely stated that he was unable to apply the brakes in time when the traffic light signal changed, causing the collision. This was the subject of the second charge against the appellant.

8 On each occasion, the appellant knowingly gave false information to SSgt Tan and Sgt Suleiman respectively, with the intention to cause the police officers to omit to conduct investigations against Cheo for a potential offence of drink driving under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2008 Rev Ed) ("RTA"), which they ought not to omit if they knew the true state of facts.

9 At about 7.45am on the same day, Sgt Suleiman recorded two cautioned statements from the appellant pursuant to s 23 of the CPC for the potential offences of drink driving under s 67(1)(*b*) of the RTA and inconsiderate driving under s 65(*a*) of the RTA. The appellant maintained the falsehood that Cheo was not the driver of the motor car.

10 On 10 April 2017, at about 3pm, the appellant informed Sgt Suleiman that Cheo was in fact the driver of the motor car at the time of the incident. Cheo also informed Sgt Suleiman of the same at about 4.50pm on the same day.

The decision below

11 The DJ's Grounds of Decision ("GD") are reported as *Public Prosecutor v Ng Jia Jie* [2020] SGMC 18. In the proceedings below, the prosecution sought an aggregate sentence of at least two weeks' imprisonment, while the defence submitted that the maximum fine of $5,000 should be imposed for each charge.

12 The DJ applied the sentencing considerations in *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 ("*Koh Yong Chiah*") and determined that

the custodial threshold was crossed as appreciable harm had been caused by the appellant's offence.

13 First, the DJ considered that the appellant's admission did not constitute an early admission. On the appellant's highest case, it came slightly more than two days after the incident. According to the appellant, he had called Sgt Suleiman on 8 April 2017, a Saturday, to recant his false statement. Sgt Suleiman told the appellant to contact him on Monday, 10 April 2017 for this purpose. By the time the appellant came forward with his admission, Cheo's breath or blood could no longer be tested for alcohol concentration to prove the potential charge of drink driving, which the appellant sought to shield Cheo from. Second, the appellant's admission was not made at the "earliest opportunity", as he could have done so the moment he was released on bail. Third, the DJ did not accept the appellant's submission that a drink driving offence was at the lower end of the scale of road traffic offences. Fourth, the DJ also did not accept the appellant's submission that the police had only spent a short amount of time looking into the case. Investigations would have continued after the appellant was released on bail, and the police would have had to expend resources to determine which version of events was true following the appellant's admission. The appellant had perverted the course of justice by shielding Cheo from prosecution. Accordingly, the custodial threshold was crossed.

14 The DJ was of the view that the sentencing precedents showed that the sentencing range was between one to two weeks' imprisonment. The DJ observed that the facts were more aggravated in the cases where imprisonment terms of longer than two weeks were imposed. The appellant had given false information to two different officers at two different timings. The DJ stated that even if he were to accept that the appellant's lie to SSgt Tan was spontaneous,

his second lie three and a half hours later to Sgt Suleiman could not be said to be so. The appellant had also put in some thought to make his statement to Sgt Suleiman more believable, explaining that he was driving the motor car as he wanted to test-drive Cheo's Maserati. Therefore, the DJ considered that the indicative starting sentence was at the high end of the sentencing range, such that the sentence of two weeks' imprisonment would be the appropriate starting point.

15 The DJ then calibrated the sentence downwards slightly, taking into account the fact that the appellant was a first-time offender, that he had pleaded guilty at an early stage and that he had made contributions to the poor and needy. The DJ placed no weight on the appellant's close relationship with Cheo. The DJ therefore held that a sentence of 12 days' imprisonment per charge was appropriate, with the sentences to run concurrently.

The appeal

Appellant's case

16 The appellant's key submission was that the DJ had erred in his application of the sentencing guidelines set out in *Koh Yong Chiah*. This led to the incorrect conclusion that the appropriate sentence in this case was a custodial term. If the *Koh Yong Chiah* test had been correctly applied, the court would have found that no appreciable harm had been caused, and the starting point for sentencing would accordingly have been a fine. The other relevant sentencing factors, rightly considered, would also have pointed to a fine as the indicative starting sentence.

17 According to the appellant, the DJ had conflated the first and second steps of the analysis set out in *Koh Yong Chiah* by taking into account other

relevant sentencing factors in determining the indicative starting sentence. In particular, the DJ had erred by considering the gravity of the predicate offence (*ie*, the drink driving offence which the appellant sought to help Cheo avoid) in determining that a custodial sentence was the appropriate starting point, as this factor should only have been considered at the second step of the test.

18 In respect of whether appreciable harm had been caused, the appellant submitted that the relevant harm caused or likely to be caused must be causally connected to the provision of the false information, based on [51(a)] of *Koh Yong Chiah*. As the appellant's provision of false information did not cause the drink driving offence to be committed, the DJ should not have taken into account the seriousness of Cheo's potential drink driving offence when determining the indicative starting sentence. Whether drink driving was a serious offence on the scale of road traffic offences was irrelevant at the first step of the test. Instead, the only relevant harm that should be considered was the wastage of public investigative resources, and there was no evidence that significant resources had been expended. On the appellant's reading of *Koh Yong Chiah*, where an offender provides false information to shield another from prosecution, a custodial sentence may not be appropriate where no significant wastage of investigative resources was caused and no hurt was caused to a third party.

19 According to the appellant, minimal resources would have been spent as he had recanted his false statement about two days after making it. The DJ had erred in finding that the authorities would have continued investigations after the appellant was released on bail. No such evidence was placed before the court. Further, the resources spent *after* the false statement had been recanted to investigate which version of events was true should not be considered, as this was not harm causally connected to the making of the false statement. The

appellant submitted that if the consideration of resources expended was not limited to the time prior to the recanting of the falsehood, every case involving a s 182 offence would result in the custodial threshold being crossed as the authorities would always have to look into which version of events was true.

20 Further, the DJ had erred in finding that the appellant did not recant his falsehood in a short space of time. The DJ had made this finding on the basis that Cheo's blood or breath alcohol content could no longer be tested after a lapse of two days. However, the DJ's finding was unfounded. The investigative authorities had failed to carry out the blood or breath test on Cheo, and such failure should not be attributed to the appellant. Moreover, the authorities could have relied on other evidence to prove Cheo's drink driving offence.

21 In addition, the DJ had erred in finding that the appellant did not recant his false statement at the earliest opportunity. Two days was objectively a short period of time. The appellant had fallen asleep from exhaustion when he returned home on 6 April 2017, having been awake for more than 28 hours by the time he was released. As he had to go to work on 7 April 2017, he was only able to go to the police station within working hours on 8 April 2017.

22 Finally, the DJ had also erred in considering that the appellant had perverted the course of justice by shielding Cheo from prosecution. This factor was inherent in cases where an offender gives a false statement to shield another from a drink driving charge and should not have been considered by the DJ as a separate factor to determine whether appreciable harm had been caused.

23 Taking into account all of the above, the appellant submitted that appreciable harm had not been caused and the appropriate starting sentence was a fine.

24 In relation to the next step of the test in *Koh Yong Chiah*, the DJ also erred in his consideration of other relevant sentencing factors by placing undue weight on aggravating factors and insufficient weight on mitigating factors. The appellant argued that the DJ had failed to accord mitigating weight to the appellant's "full and valuable cooperation" with the authorities. In particular, the appellant had contacted Cheo to go to the police station for the recording of his statement. The appellant had voluntarily recanted his statement after a short duration of time, and his voluntary admission evidenced genuine remorse. Further, the DJ had erred in finding that the appellant had put in some thought into embellishing his second statement, as his additional explanation that he wanted to test-drive the motor car was merely a "brief, simple remark". The DJ had also erred by placing no mitigating weight on the close relationship that the appellant shared with Cheo, which showed that the appellant had acted out of "altruistic intention".

25 Finally, the appellant submitted that the DJ had failed to adequately consider the sentencing precedents. The DJ did not consider three of the precedents cited by the respondent, as well as the two precedents cited by the appellant, namely that of *Ee Chong Kiat Tommy v Public Prosecutor* Magistrate's Appeal No 143 of 1996 ("*Tommy Ee*") and *Kuah Geok Bee v Public Prosecutor* Magistrate's Appeal No 171 of 1997 ("*Kuah Geok Bee*"). In particular, the present case bears the most similarity to *Tommy Ee*. Both the offender in *Tommy Ee* and the appellant were intoxicated, attempted to shield their friend from prosecution, and both cases involved accidents. The offender in *Tommy Ee* had claimed trial, but notwithstanding that, he was sentenced on appeal only to the then-maximum fine of $1000. As such, the maximum fine of $5,000 for each charge would be appropriate in the present case.

Respondent's case

26 The respondent submitted that the DJ had correctly found that appreciable harm had been caused by the appellant's provision of false information. In this case, significant potential harm could have been caused to the public. The respondent submitted that some measure of actual harm had also been caused but acknowledged that it was within the lower end of seriousness.

27 In respect of potential harm, the gravity of the predicate offence which the appellant had sought to help Cheo avoid was a relevant factor in assessing whether appreciable harm had been caused. The respondent submitted that drink driving falls into the category of one of the most serious road traffic offences. By the time the appellant recanted his false statement, any breath or blood sample obtained from Cheo would no longer reflect the alcohol concentration that was present at the material time. The respondent submitted that the investigation officer at the scene had no reason to take a blood or breath alcohol test from Cheo, as there would have been no reasonable cause for him to do so. Securing a blood or breath alcohol test result was crucial to proving the offence of drink driving, as an offender could easily retract any confession if there was no objective evidence of the offence. Thus, as a result of the appellant's false statement, Cheo escaped the prospect of being convicted of a drink driving offence.

28 Citing *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 at [13], the respondent argued that the mandatory disqualification order was the "principal punitive element" of the sentence for a drink driving offence. The imposition of a fine on the appellant would be tantamount to enabling offenders to defeat the system, as neither the appellant nor Cheo could be charged with an offence under s 67(1) RTA, and they thus could avoid facing a disqualification

order, instead only having to pay a fine which they could split between themselves.

29 In response to the appellant's reading of [51(a)] of *Koh Yong Chiah*, the respondent submitted that the specific facts of each case had to be considered in determining the harm that would be occasioned by an offender's falsehood. In this case, it had become impossible for the true perpetrator to be brought to justice, which in itself was significant potential harm.

30 Actual harm was also caused due to the wastage of public investigative resources caused by the appellant's provision of false information. The DJ rightly found that investigations would have continued after the appellant's release on 6 April 2017; in fact, follow-up investigations could only be done at that point.

31 The respondent further submitted that the DJ had given the appropriate weight to the relevant aggravating and mitigating factors. First, the appellant had lied repeatedly to Sgt Suleiman and even gave an embellished version of events to lend credibility to his statement, which was an aggravating factor. The appellant had lied to "two different police officers in two different places on at least four discrete occasions". Taking the appellant's case at its highest, the absence of an aggravating factor was not mitigating.

32 As for the mitigating factors, the DJ had already given weight to the relevant factors, and the other factors cited by the appellant were not mitigating. Even if his first false statement could be said to have been spontaneously given, the subsequent statements were not. That he was motivated by his close relationship with Cheo to give false information was a neutral factor at best. The

appellant also did not render "full and valuable cooperation with the authorities". Accordingly, there was no basis to disturb the DJ's assessment.

33 The respondent submitted that the DJ had correctly considered the cases of *Public Prosecutor v Yeo Fang Yi* [2015] SGMC 9 ("*Yeo Fang Yi*"), *Lim Seng Keong & anor v Public Prosecutor* [2001] SGMC 13 ("*Lim Seng Keong*") and *Public Prosecutor v Poh Chee Hwee* [2008] SGDC 241 ("*Poh Chee Hwee*") in coming to his indicative sentencing range of one to two weeks' imprisonment. The DJ did not err by not relying on the cases of *Tommy Ee* and *Kuah Geok Bee* which were cited by the appellant at the hearing below. The High Court in *Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 ("*Yang Suan Piau Steven*") had considered these two cases to be "exceptions to the norm" (at [23]) for which the offenders were sentenced to fines due to the unique circumstances present in those cases. The respondent argued that such unique circumstances did not feature in this case.

Issues to be determined

34 The following issues arose for my determination:

(a) whether the DJ had erred in concluding that appreciable harm had been caused, by:

(i) conflating the steps of analysis in the sentencing guidelines set out in *Koh Yong Chiah* and;

(ii) making incorrect findings in the assessment of harm caused or likely to be caused by the offence;

(b) whether the DJ had erred in his consideration of the other relevant sentencing factors; and

(c) whether the DJ had failed to consider relevant precedent cases in coming to his decision on sentence.

My decision

Sentencing guidelines for an offence under s 182 of the Penal Code

35 The decision of the 3-Judge Panel of the High Court in *Koh Yong Chiah* has laid down sentencing guidance for s 182 offences. Prior to *Koh Yong Chiah*, such guidance had not been fully set out. This may account in part for some perceived disparities in certain more dated s 182 sentencing precedents.

36 I emphasise at the outset, as Chao Hick Tin JA did in *Koh Yong Chiah* at [3] and [34], that s 182 of the Penal Code can encompass a "myriad of factual situations" and a "wide range of misconduct in different circumstances". Much turns on the facts in each case.

37 In *Koh Yong Chiah,* the court held that whether the custodial threshold is crossed should be determined based on the degree of harm caused or likely to be caused by the s 182 offence. If appreciable harm may be caused, the starting point should be a custodial term (at [50]). The court qualified that the harm must be causally connected to the provision of false information, the harm caused or likely to be caused must be more than *de minimis*, and that harm refers to both actual and potential harm ([51(a)–(c)]). The court further considered that the duration for which the falsehood was maintained would almost always be a relevant factor in assessing the potential harm caused by the offence, and that the sentencing court is to exercise its discretion in applying the "appreciable harm" test. This test could not be applied with scientific precision, and there will be many cases on the borderline (at [51(d)–(e)]). The determination of the appropriate starting point may be referred to as the first step of the test.

38 After reaching the starting point by applying the test of appreciable harm, the court would then take into account other relevant sentencing factors to determine whether the starting point should be departed from and what the appropriate sentence should be (at [56]). This may be referred to as the second step of the test. The second step takes into account the level of culpability of the offender, as well as the level of harm caused. The court set out a non-exhaustive list of other relevant sentencing factors applicable to s 182 offences at [43] and [44].

39 The other sentencing factors applicable to assessing the level of culpability of the offender are outlined at [43]:

> (a) whether the offender knew or merely believed that the statement given was false;
>
> (b) whether the offender intended or merely knew it to be likely that the harm would arise;
>
> (c) whether the giving of false information was pre-meditated or planned, or whether it was simply spontaneous;
>
> (d) whether active, deliberate or sophisticated steps were taken by the offender to bolster the deception and boost the chances of hoodwinking the public authorities;
>
> (e) the motive of the offender in giving the false information (malicious, revenge, innocuous, or altruistic intention);
>
> (f) whether the deception was perpetrated despite or in active defiance of a warning not to lie;
>
> (g) the number of times the lie was actively said;
>
> (h) the number of people instigated or involved in the deception, and the specific role played by the offender;
>
> (i) whether the offender had exploited or exerted pressure on others in the commission of the offence; and
>
> (j) whether the offence is committed due to threat or pressure or fear of another person, which is a mitigating factor.

40 The other relevant sentencing factors applicable to assessing the level of harm caused are outlined at [44]:

> (a) whether the false statement was recanted, and if so, after how long;
>
> (b) the gravity of the predicate offence which the offender seeks to avoid or help another avoid;
>
> (c) the investigative resources unnecessarily expended;
>
> (d) the extent to which the innocent victims were affected, how many victims were affected, and the seriousness of the falsely-alleged crime; and
>
> (e) whether the offender obtained a financial advantage from the commission of the offence.

Whether the DJ had erred in concluding that appreciable harm had been caused

Conflating the steps of analysis in Koh Yong Chiah

41 A central feature of the appellant's submissions is that the DJ had misapprehended the application of the *Koh Yong Chiah* guidelines in determining that appreciable harm had been caused by the false information given by the appellant. On this premise, it was contended that the DJ adopted the wrong starting point by conflating the consideration of the appreciable harm caused by the false information as the first step of the analysis, with other sentencing factors relevant to the appellant's culpability and assessment of the level of harm caused, which should be considered at the second step.

42 Having perused the DJ's GD, I accept that the DJ arguably did not distinguish between the two stages of the *Koh Yong Chiah* test although he was clearly conscious of the test (see [21]–[24] of the GD). Notwithstanding this, I do not see how this had incontrovertibly tainted his reasoning to the extent that

the appellant was unfairly prejudiced as a result. In any event, the DJ had addressed his mind to the relevant sentencing considerations. There is also significant overlap in the material factual considerations pertaining to the assessment of harm (at step one) and culpability (at step two), *eg*, in terms of the time lapse of two days before the appellant recanted. The appellant recognised this overlap in his own submissions.

43 The other sentencing factors outlined at [44] of *Koh Yong Chiah* to assess the harm caused at step two also significantly overlap with the considerations that the court would have taken into account in assessing whether appreciable harm had resulted at step one of the test. Insofar as the appellant's submission was that the DJ was not entitled to consider the gravity of the predicate offence at step one, I am of the view that the DJ was in a position to do so, as it is a factor that necessarily goes toward whether appreciable harm had been caused by the appellant's s 182 offence. I do not think that the court in *Koh Yong Chiah*, in setting out a list of non-exhaustive factors to take into account at step two, had strictly demarcated these factors such that they could not be taken into consideration in the court's determination of whether appreciable harm had been caused at step one.

Assessment of whether appreciable harm had been caused

44 The appellant faced two charges involving the same false statement which was given to police officers on two occasions on 6 April 2017. It was only after two days that he informed the investigation officer that he wished to recant his false statements.

45 Two days is objectively a relatively short span of time. Nonetheless, I agreed with the DJ that in the present context, the lapse of two days was

substantial. Investigative resources were needlessly tied up investigating the appellant for an offence which he did not commit. Those investigations ought to have been properly directed at Cheo instead, since it was not seriously disputed that Cheo had drunk, driven and caused the accident with the taxi. As a direct consequence of the appellant's false statements, Cheo's breath or blood alcohol level was not tested.

46 No doubt there may not have been very significant wastage of investigative resources. On the facts in this case, the primary time period in which resources could be said to be unnecessarily expended related to the two days prior to the offender's recanting of the statement. There was also no inconvenience caused to any innocent third parties. However, the appellant's false statements had caused appreciable harm primarily because he had perverted the course of justice by shielding Cheo from possible prosecution for drink driving and potential conviction and mandatory disqualification from driving. The potential harm arose from Cheo possibly escaping liability for an offence as a result of the appellant's intervention which prevented the evidence-gathering necessary for prosecution. As stated at [52] of *Koh Yong Chiah*, s 182 of the Penal Code "ultimately seeks to protect the public against the *potential harm* that may result from a public officer misusing his/her powers, or failing to perform his/her duties" [emphasis in original]. The public and road users in particular would face the potential harm of a drink driver remaining on the roads and jeopardising the safety of others, instead of being convicted and kept off the roads for a period of time under a disqualification order.

47 As noted at [51(c)] of *Koh Yong Chiah*, harm refers to both actual and potential harm. The potential harm that could result from the appellant's falsehoods was a direct consequence of the police's inability to follow up with full and proper investigations into the predicate offence (of Cheo's drink

driving). The harm was not *de minimis*. It was speculative to suggest that Cheo would only have faced a fine (as opposed to an imprisonment term) if he had been convicted, on the assumption that he was a first-time offender. It is also clear that he would have faced a mandatory term of disqualification. In this connection, the gravity of the predicate drink driving offence should not be trivialised. In *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [38], Sundaresh Menon CJ characterised the offence as "a serious menace to the safety of the community". Menon CJ further noted that the relevant legislation mandating outright prohibition against driving with an excessive alcohol level has been in place since 1996 to ensure the physical safety of road users.

48 In addition, the appellant had perhaps misapprehended the implications of Chao JA's observations in *Koh Yong Chiah* (at [51] and [53]). In particular, Chao JA expressly recognised at [27] that offenders who give false information to shield others from prosecution "have not necessarily been treated less severely than offenders who provide false information to shield *themselves*" [emphasis in original], where no other aggravating factors are present. I return to this point at [60] to [66] below.

49 The appellant placed reliance upon [51(a)] of *Koh Yong Chiah* in reiterating that the false statements he gave did not *cause* the potential drink driving offence (by Cheo) to be committed. This proposition is of course self-evident, but with respect, the submission misses the key point entirely. The appreciable harm in question is not merely the wastage of investigative resources but the potential harm caused in deliberately shielding Cheo and deflecting the course of police investigations. In the present circumstances, the predicate offence involved Cheo's drink driving. The false statements did not merely make it "more difficult to bring the true perpetrator to justice", in Chao JA's words. They worked to frustrate the investigative and evidence-gathering

process where Cheo was concerned, unless the appellant was prepared to recant quickly enough within a matter of one or two hours (which he did not). I shall say more in due course about his failure to recant at the earliest opportunity.

50 Specifically, at [51(e)] of *Koh Yong Chiah*, Chao JA had also acknowledged that "appreciable harm" is not a test capable of being applied with scientific precision and there will be "many cases on the borderline, especially when the court is required to assess the potential consequences which *could have* ensued from the provision of false information, but did not on the facts" [emphasis in original]. In my view, the facts in the instant case are illustrative of a clear case, and not simply one among possibly "many cases on the borderline", where the DJ had correctly undertaken the task of assessing the potential harm that could have ensued.

51 Adopting the assessment of appreciable harm as the "first step", in line with [52] of *Koh Yong Chiah*, the custodial threshold was presumptively crossed. To my mind, this remains consistent with the DJ's reasoning in the present case, though he also appeared to take into account other sentencing factors at the same time. I failed to see how conflating the "two-step" test would amount to a fundamental error or misdirection such that an indicative starting sentence of a fine would have been reached. It is apparent that the DJ would have reached the same conclusion even if he had adopted a strictly demarcated "two-step" approach.

Consideration of other sentencing factors

52 As I have noted earlier, there was significant overlap in the assessment of harm (at step one) and the consideration of other sentencing factors involving harm and culpability (at step two) in the present case. As such, it would be artificial to insist on a rigidly demarcated "two-step" approach, particularly

when considering the lapse of two days before the appellant recanted. I turn to address this aspect again.

53 I agreed with the DJ that the appellant's culpability was heightened as he did not recant at the earliest opportunity, having only done so two days later. The lapse of two days not only exacerbated the appreciable harm but was also relevant in assessing the appellant's culpability.

54 The DJ rightly rejected the appellant's claims that exhaustion and inebriation and his steadfast desire to help Cheo led to him purportedly repeating his false statements on impulse. The appellant could have chosen to come clean when his second statement was being recorded at 7.15 am on 6 April 2017, some 3.5 hours after he made his initial false oral statement. He had another opportunity when two cautioned statements were recorded shortly after at 7.45 am. He had yet another opportunity, as noted by the DJ, to do so after being released on bail that day. The appellant could easily have availed himself of these early opportunities to recant but he chose not to do so.

55 The DJ opined that the lapse of two days before the appellant recanted his false statements would mean that Cheo's breath or blood could no longer be tested for alcohol content. The prosecution had not put forward positive evidence in the proceedings below as to why a lapse of two days would inevitably preclude such tests from being carried out. That said, it is reasonable to accept that the longer the lapse of time after Cheo and the appellant had been drinking, the lesser the likelihood of being able to obtain a reliable or accurate test of Cheo's breath or blood alcohol level. Clearly, a delayed test would also not correctly reflect the actual alcohol level at the relevant time of the accident.

56 In addition, it was erroneous for the appellant to maintain that the failure to carry out a breath or blood alcohol test on Cheo ought to be "attributed" to the investigative authorities. This suggests that the police ought to bear some responsibility for their own lapse or omission. I saw no merit in this argument. The appellant had claimed sole responsibility as the driver when the police arrived at the accident scene and had been administered the breathalyser test. Cheo himself played along with this charade. There was no reason for the police to suspect that Cheo was in fact the driver and consequently no reasonable basis to administer a similar breathalyser test to him.

57 It was also somewhat fanciful to suggest that despite not having undergone any breath or blood alcohol test, Cheo could have been prosecuted subsequently for drink driving if he had made an admission. Cheo evidently never volunteered any admission when the police arrived at the scene of the accident. To my mind, by permitting the appellant to shoulder the blame for him, Cheo was arguably equally complicit in the appellant's offence.

58 The main mitigating factors were the appellant's lack of previous convictions and his early plea of guilt. On the facts, I failed to see how his professed altruistic intent to assist Cheo was mitigating. The DJ had given due weight to the mitigating factors in deciding to allow a slight reduction from the indicative sentence of two weeks' imprisonment.

Sentencing precedents

59 The appellant appeared to have misinterpreted the DJ's GD in his submission that the DJ had only considered two of the five precedents tendered by the respondent. As explained by the respondent (see [33] above), the DJ had considered the cases of *Yeo Fang Yi*, *Lim Seng Keong* and *Poh Chee Hwee* in

coming to his indicative sentencing range of one to two weeks' imprisonment. As for the other two precedents cited by the respondent, namely *Public Prosecutor v Perabu Perev* (unreported) and *Public Prosecutor v Sivaprakash s/o Narayansamy* [2004] SGMC 7, the DJ had considered that the facts in these two cases were more aggravated, resulting in sentences above two weeks' imprisonment, and thus did not account for them in the indicative sentencing range. The DJ then situated the present case at the high end of the indicative sentencing range on the basis of the harm caused and the appellant's culpability.

60 The appellant also submitted that the DJ had failed to consider the cases of *Tommy Ee* and *Kuah Geok Bee* in reaching his decision on the appropriate sentence to be imposed, and that these cases supported his position that a fine would have been an appropriate sentence. However, these two cases turn on their own unique facts and are distinguishable from the present case. I did not think that the DJ had erred in not relying on these cases in coming to his conclusion on the appropriate sentence.

61 Both *Tommy Ee* and *Kuah Geok Bee* were considered in *Koh Yong Chiah*. As mentioned at [48] above, upon considering the sentencing precedents, it was observed thus in *Koh Yong Chiah* (at [27]):

> [I]t appears that offenders who provide false information to shield another person from investigation or prosecution have *not necessarily* been treated less severely than offenders who provide false information to shield themselves.
>
> [original emphasis omitted; emphasis added in italics]

The court also stated that on some occasions, where no other aggravating factors were present, offenders who made false statements to shield another have been treated more lightly, such as in the two cases cited by the appellant. In some

situations, the "absence of personal gain could play a role in reducing the seriousness of the offence".

62 It is noteworthy that in *Yang Suan Piau Steven, Tommy Ee* and *Kuah Geok Bee* were considered as "exceptions to the norm" due to their unique circumstances (at [23]). The court considered that in these two cases, the offenders took the blame for another, but that "this factor alone cannot be sufficient to justify the imposition of a fine rather than a short custodial sentence". It remains true that the offenders giving false information had "hindered the administration of justice by shielding the person who committed the predicate offence" (at [23]).

63 The court also opined that even though these two cases should be viewed as "exceptions to the norm of a custodial sentence", several specific facts in these cases likely had a bearing on the court's decision to impose a fine. In *Tommy Ee,* the false statement was made about six minutes after the collision at around midnight, and the offender admitted to having given false information the very next morning. The offender was also intoxicated when giving his false statement (as described in *Yang Suan Piau Steven* at [23(b)]). In *Kuah Geok Bee*, it was the offender's husband who falsely informed the police officer attending at the scene that the offender drove the car. The officer suspected that the offender's husband was in fact the driver but allowed him to make the offender claim that she was the driver, if he sent the car to a workshop of the officer's friend for repairs. The offender admitted to giving false information a year later when she was questioned by the Corrupt Practices Investigation Bureau in connection with investigations against the police officer. The court observed that the offender could have faced substantial pressure from her husband to make the false statement, especially since the police officer was

involved in allowing the deception to occur (as described in *Yang Suan Piau Steven* at [23(a)]).

64 The appellant's actions were significantly more aggravated than those of the offenders in both *Tommy Ee and Kuah Geok Bee*, such that the custodial threshold was clearly crossed in the present case. Compared to the offender in *Tommy Ee*, the appellant had lied on multiple occasions over a duration of several hours and had only recanted two days after the fact. The appellant was also not under any pressure from Cheo and there was no third party involved in the deception, unlike in the case of *Kuah Geok Bee.*

65 As made clear by the court in *Yang Suan Piau Steven* (see [62] above), the fact that an offender had acted in an attempt to shield another rather than to obtain personal benefit would not, in and of itself, justify imposing a fine over a custodial term. It remains the case that the act of shielding another from prosecution is an obstruction to the course of justice. The court in *Koh Yong Chiah* drew on precedent cases and also observed, based on the cases canvassed before it, that it was not necessarily the case that offenders who lie to shield others from prosecution would receive a lighter sentence. In some cases, offenders have gotten lighter sentences where there were unique circumstances involved or factors that persuaded the court to view the offending as less serious. It is clear from both *Koh Yong Chiah* and *Yang Suan Piau Steven* that each case has to be treated on its own facts.

66 While not irrelevant, most of the precedent cases cited by parties, including *Tommy Ee* and *Kuah Geok Bee*, may also need to be viewed with some care and circumspection given that they were decided prior to *Koh Yong Chiah*. In light of the observations made in *Yang Suan Piau Steven* and

particularly the guidelines elucidated in *Koh Yong Chiah*, custodial sentences would now be more likely to be imposed in cases concerning similar facts.

Conclusion

67 In the overall analysis, I was not persuaded that the sentence imposed by the DJ was wrong in principle or manifestly excessive. Accordingly, I dismissed the appeal.

See Kee Oon
Judge

Yusfiyanto Bin Yatiman and Michelle Lee (Rajah & Tann LLP) for the appellant;
Lee Zu Zhao and Emily Koh (Attorney-General's Chambers) for the respondent.