Yang Suan Piau Steven *v* Public Prosecutor
[2012] SGHC 224

Case Number : Magistrate's Appeal No 119 of 2012

Decision Date : 02 November 2012

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ

Counsel Name(s) : Peter Ong Lip Cheng (Peter Ong & Raymond Tan) for the appellant; Sarah Lam (Attorney-General's Chambers) for the respondent.

Parties : Yang Suan Piau Steven — Public Prosecutor

Criminal Procedure and Sentencing

2 November 2012 Judgment reserved.

Chan Sek Keong CJ:

Introduction

1 This is an appeal against sentence by Yang Suan Piau Steven ("the Appellant"). He had pleaded guilty to one count of providing false information to a customs officer, which is an offence under s 129(1)(*c*) of the Customs Act (Cap 70, 2004 Rev Ed) ("the Customs Act"), and was sentenced to two weeks' imprisonment. In this judgment, I shall refer to this offence as the "s 129 offence".

The facts

2 The Appellant is a 48-year old male. He was charged with the following charge ("the Section 129 Charge"):

> You ... on or about the 3rd day of January 2012, at about 12.10am, at the Departure Car, Woodlands Checkpoint, Singapore, being required under Section 91 of the Customs Act, Cap 70, to give information required by SGT SURIANTO BIN SULAIMAN and CPL SITI MASZURA, did furnish as true information which you knew to be false, to wit, you falsely informed the said officer that the fuel supply tank of your car, SGG 2968A, ... had ¾ tank full of motor fuel, that the fuel gauge meter of the said car had not been tampered with, and you have thereby committed an offence under section 129(1)(c) of the Customs Act ...

3 The relevant parts of the Statement of Facts ("SOF") which the Appellant admitted to in the District Court are as follows:

> 3. On 03 January 2012, at about 12.10am, at the Departure Car, Woodlands Checkpoint, Immigration officers stopped a Singapore registered car SGG2968A, driven by the [Appellant] for a routine fuel gauge check. *When asked by SGT Surianto Bin Sulaiman whether the vehicle had at least ¾ amount of motor fuel and whether the fuel gauge was tampered with, [the Appellant] declared that the fuel indicator showing ¾ tank of motor fuel was correct and that the fuel gauge of his vehicle was not tampered with. Upon further questioning about the meter reading shown, [the Appellant] maintained that fuel indicator showing ¾ tank was correct and that the*

fuel gauge was not tampered with. Sgt Surianto Bin Sulaiman then directed [the Appellant] to park his car at the designated parking lot for further checks. *Before conducting their checks, Sgt Surianto again asked the [Appellant] whether the indicator on the fuel gauge showing ¾ was correct. The [Appellant] still maintained that the indicator was correct and was not tampered with*.

4 *Upon checking the car, Sgt Surianto found a remote control in the vehicle's coin compartment. When asked by Sgt Surianto about the purpose of the remote control, [the Appellant] then admitted that the remote control was used to tamper with the fuel gauge meter reading*. Sgt Surianto then pressed the remote control found and immediately, the fuel indicator started to move downwards, below ¼ fuel, which indicated that the fuel level was below the ¾ fuel amount required under the law when leaving Singapore. ...

5 Investigations revealed that the [Appellant] was aware of the ¾ tank ruling, where any person in charge of a Singapore registered motor vehicle, who leaves or attempts to leave Singapore in that motor vehicle, must have its fuel tank filled with more than ¾ tank of its capacity with motor fuel.

...

[emphasis added]

4 In addition to the Section 129 Charge, the Appellant was also charged with, on the same occasion (*ie*, at about 12.10am on 3 January 2012), attempting to leave Singapore in his car without the minimum amount of motor fuel in its fuel supply tank, which was an offence under s 136(1) of the Customs Act ("the Section 136 Charge"). For convenience, I will refer to the requirement for a prescribed amount of petrol under s 136(1) of the Customs Act as "the ¾ tank rule", and the related offence as the "s 136 offence".

The proceedings in the court below

5 The Appellant pleaded guilty to the Section 129 Charge and consented to the Section 136 Charge being taken into consideration for the purpose of sentencing. Counsel for the Appellant, Mr Peter Ong ("Mr Ong"), acknowledged that the sentencing norm was a custodial sentence. However, he urged the court to depart from the sentencing norm and to, instead, impose the maximum fine of $5,000. Mr Ong's plea in mitigation highlighted the following matters:

(a) The Appellant was a first offender. The conviction had tainted the Appellant's career, and a custodial sentence would destroy his career and family.

(b) The offence was committed in a moment of indiscretion. When the Appellant was confronted by Sgt Surianto, he was faced with a dilemma. In a moment of panic and confusion, he denied the offence. He was fearful and anxious about the potential consequence of the offence.

(c) The Appellant had pleaded guilty and was genuinely remorseful. He had voluntarily and fully cooperated with the authorities. At an early stage, he had confessed in his statement recorded by the investigating officer.

(d) The Appellant is of good character and has contributed significantly to the community. He is a pastor with a church and also volunteers at two homes for the elderly.

(e) There is no likelihood of recidivism.

Mr Ong's alternative submission was that even if the court was minded to impose a custodial sentence, the court should impose "the minimum custodial sentence" because the Appellant was a person of good character who had helped many people and he had committed the offence in a moment of indiscretion.

6 The prosecuting officer, Mr Mohamed Iqbal ("Mr Iqbal"), tendered a table of sentencing precedents to the court and submitted that there was nothing exceptional about the background of the Appellant or the facts which justified a departure from the norm, which was a custodial sentence of two weeks' imprisonment. Mr Iqbal urged the court to impose a custodial sentence and stated that he had "[no] objections regarding the length" thereof.

7 The Senior District Judge ("SDJ") sentenced the Appellant to two weeks' imprisonment for the Section 129 Charge. In his written grounds of decision (as reported in *Public Prosecutor v Yang Suan Piau Steven* [2012] SGDC 213 ("the GD")), the SDJ noted that the ¾ tank rule was intended *inter alia* to preserve the effectiveness of petrol taxes in restraining car usage and to reduce loss of revenue. He observed that motorists still breached the ¾ tank rule despite frequent enforcement efforts. The SDJ opined that such offences were easy to commit but were resource-intensive and difficult to detect, and the enforcement efforts caused potential delay in the clearance of vehicles at the immigration checkpoints.

8 The SDJ found that the Appellant had deliberately sought to mislead Sgt Surianto in the hope that he could evade detection, and that he confessed only when he realised that detection was inevitable after Sgt Surianto found a remote control device in the coin compartment in the car.

9 The SDJ observed that the s 129 offence, which involved furnishing false information to a law enforcement officer to evade prosecution, was a serious offence. He noted that short imprisonment terms were generally imposed for charges under s 182 of the Penal Code (Cap 224, 2008 Rev Ed) ("the current PC") which was an analogous offence, and that fines were considered only for exceptional cases where there had been particularly strong mitigating factors. The SDJ opined that public policy considerations required the sentencing benchmark to be a custodial sentence, particularly where the principal offence was serious.

10 The SDJ then turned to consider the precedents for the s 129 offence. He observed that the courts "have consistently and almost invariably imposed a custodial sentence of two weeks' imprisonment" (the GD at [12]). The SDJ pointed out that in 64 of the 67 cases in the table of sentencing precedents tendered by the Prosecution, a sentence of at least one week and mostly two weeks' imprisonment was imposed (with the sentences in 62 of the 64 cases being, consistently, two weeks' imprisonment). It would appear that a sentence of two weeks' imprisonment became the norm for s 129 offences in relation to the ¾ tank rule. In this judgment, I shall use the expressions "norm" and "benchmark" to have the same meaning.

11 The SDJ then found that there were no exceptional circumstances which justified a departure from the sentencing norm:

(a) The facts in this case were similar to those in the overwhelming majority of previous cases, an example of which was *Public Prosecutor v Wong Wen Chye (Huang Wencai)* [2010] SGDC 161 ("*Wong Wen Chye*"). The Appellant had planned to use the remote control should the need arise in order to attempt to evade any enforcement action.

(b) This was not genuinely a case where the offence was committed in a moment of indiscretion, panic or confusion, out of fear of the consequences. The Appellant had deliberately activated the remote control in the first place to move the fuel gauge to the ¾ reading. He had obviously thought or at least hoped that he could get away with it. This was a deliberate and conscious decision; there was no perceptible fear of the consequences then. Although he was given two chances to come clean, he chose to perpetuate his deception.

(c) The Appellant's good character was not a relevant mitigating factor given the nature of the s 129 offence, which arose out of his premeditated intent to deceive. Indeed, it could be said that he ought to have been more conscious than most of the need to admit to his transgressions instead of lying twice to attempt to evade the consequences.

(d) Although the Appellant was a first offender and may be unlikely to reoffend, this was not sufficient to diminish his moral culpability for an offence that essentially sought to prevent attempts to obstruct or pervert the course of justice.

(e) The Appellant's plea of guilt and cooperation with the authorities had very little mitigating weight because he had been caught red-handed and knew that the game was up.

The issues before the court

12 There are three main issues in this appeal:

(a) whether the sentence imposed on the Appellant was out of line with the sentencing precedents;

(b) whether a sentence of two weeks' imprisonment should be the norm for a s 129 offence in relation to the evasion of the ¾ tank rule; and

(c) whether the mitigating factors in this case justify a departure from the sentencing norm.

13 Apart from these three main issues, Mr Ong also raised two other unmeritorious arguments, which can be briefly dismissed, to support the Appellant's appeal. The first of these arguments is that the SDJ had placed undue weight on the Section 136 Charge which was taken into consideration because he had considered the rationale for the ¾ tank rule. This argument is misconceived because the mischief that might be caused by the false information is a relevant sentencing consideration: *CLB and another v Public Prosecutor* [1993] 1 SLR(R) 52 ("*CLB*") at [9]. If the deception had succeeded, the Appellant would have evaded prosecution for breach of the ¾ tank rule. Furthermore, there was no indication in the SDJ's grounds that he had increased the sentence merely because the Section 136 Charge had been taken into consideration. The SDJ did not impose a higher sentence than what appeared from the table of sentencing precedents to be the norm of two weeks' imprisonment.

14 The second argument is that the SDJ failed to consider adequately that he had a discretion to impose a fine instead of a custodial sentence. This argument is contrary to the facts as the SDJ's written grounds of decision (the GD at [11]–[14]) reveal that he had considered whether to exercise his discretion to impose a fine and decided that there were no exceptional circumstances which justified a departure from what he perceived to be the norm.

The statutory framework

15 Before I go on to consider the first main issue in this appeal, I will first set out the relevant

provisions of the Customs Act:

Persons bound to give information or produce documents

91.—(1) Every person required by the proper officer of customs to give information or to produce any travel document or any document on any subject into which it is the officer's duty to inquire under this Act and which it is in that person's power to give or produce shall be bound to give such information or to produce such document for inspection.

(2) The proper officer of customs may specify the customs office or station or other place at which that person is required to give information or to produce any document.

...

Penalty on refusing to answer questions or on giving false information or false document

129.—(1) *Any person who, being required by this Act to answer any question put to him by any proper officer of customs, or to give any information or produce any document which may reasonably be required of him by the officer and which it is in his power to give —*

(*a*) refuses to answer the question or does not truly answer the question;

(*b*) refuses to give such information or produce such document; or

(c) *furnishes as true information or document which he knows or has reason to believe to be false*,

shall be guilty of an offence and *shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both*.

(2) When any such answer or any such information or any such document is proved to be untrue or incorrect in whole or in part, it shall be no defence to allege that such answer or such information or such document or any part thereof was made or furnished or produced inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

(3) Nothing in this section shall oblige a person to answer any question which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

...

Motor vehicle leaving Singapore without prescribed amount of motor fuel

136.—(1) Except with the written permission of the Director-General, any person, being in charge of a motor vehicle registered under the Road Traffic Act (Cap. 276), who *leaves or attempts to leave Singapore* in that motor vehicle or with that motor vehicle in a vessel without such minimum amount of motor fuel in such of its fuel supply tanks as the Minister may by order prescribe* shall be guilty of an offence and *shall be liable on conviction to a fine not exceeding $500*.

* The minimum amount of motor spirit in the fuel supply tank of a motor vehicle referred to in section 136(1) shall be three-quarters of the total capacity of the fuel supply tank. *See* O 6,

Cap. 70 with effect from 4th February 1991.

...

[emphasis added]

16 The predecessor to the ¾ tank rule was the "half-tank rule", which was introduced in 1989. The then Minister for Finance explained the purpose of the half-tank rule as follows (*Singapore Parliamentary Debates, Official Report* (7 April 1989) vol 54 cols 60–98):

The Customs (Amendment) Bill will make it an offence for a person in charge of a motor vehicle registered in Singapore to leave or attempt to leave Singapore without more than half a tank of petrol in that vehicle. Under the Amendment Bill, Singapore motorists will be liable on conviction to a fine not exceeding $500. …

Mr Speaker, Sir, the Government has been concerned for some time now over the increasing number of Singapore motorists going across the Causeway to fill up with petrol which is cheaper in Johor. This action undermines the Government's use of petrol pricing as one of the measures to curb car usage in Singapore. *The main purpose of the Bill is therefore to ensure that the use of petrol pricing to control the usage of roads in Singapore is not bypassed. Additionally, loss of duty on petrol is estimated at around $2 million a month.*

In order to curb the rise of road congestion in Singapore, the Minister for Communications and Information is studying measures to control car usage instead of just car ownership in Singapore. The use of petrol pricing is one of the measures being considered and if petrol duty has to be revised upwards as a result, motorists can simply beat the measure by buying their petrol in Johor. ...

...

… I have said at the outset that the reason for the Bill is not revenue. Revenue is important but not the primary reason. ***The primary reason is to allow Government to control car usage through petrol pricing*** *and we cannot allow motorists to avoid this by merely nipping across to Johor.* …

...

… We accept that it is not a perfect system and we would like to suggest that Singapore motorists should accept the Bill in the spirit in which it is intended and allow it to work and see how effective it is. If it does not work, we will be forced to introduce other more stringent and more painful measures in order to ensure that the use of petrol pricing as a method of controlling car usage is not bypassed. …

[emphasis added in italics and bold italics]

17 The half-tank rule was replaced with the ¾ tank rule in 1991. The then Minister for Finance explained the change as follows (*Singapore Parliamentary Debates, Official Report* (15 January 1991) vol 56 cols 867–869):

Mr Speaker, Sir, Members would recall that the present half-tank rule was introduced on 17th April 1989 to ensure that cheaper Johor petrol would not undermine our use of petrol tax as

one of the measures to curb vehicle usage in Singapore and to reduce the loss of Government revenue on petrol purchased outside Singapore. ...

Up until August 1990, the half-tank rule has worked satisfactorily in achieving our objectives. Statistics at the Woodlands Checkpoint had shown that the introduction of the rule had curbed the trend of Singaporeans uplifting cheaper petrol in Johor without reducing the flow of Singapore motorists visiting Johor.

Following the Iraqi invasion of Kuwait, the price of premium petrol has increased from approximately $1.12 per litre to as high as $1.54 per litre in mid-October 1990, and to approximately $1.20 per litre as at present. Consequently, the difference in pump price between Singapore and Johor has now widened to 48 cents per litre. This has led to a surge in Singapore registered cars crossing to Johor to uplift the cheaper petrol there, despite the half-tank rule. The duty loss arising from this amounts to around $2 million per month, about the same level just before the introduction of the half-tank rule.

With the introduction of unleaded petrol, tax on petrol will be adjusted from 4th February 1991 such that unleaded petrol will cost 10 cents per litre less than leaded petrol, despite the fact that it costs more to produce unleaded petrol. With this, we expect the pump price to increase by 15 cents per litre in the case of leaded petrol because of the additional tax imposed to discourage its usage, and 5 cents per litre more in the case of unleaded petrol because of its higher production cost. This will cause the pump price gap between Singapore and Johor to widen further to 63 cents per litre for leaded petrol and 53 cents per litre for unleaded petrol.

The availability of substantially cheaper petrol in Johor from February will undermine the conversion to use of unleaded petrol in Singapore and make petrol taxes less effective in restraining car usage and also cause significant loss of revenue. For these reasons, once the Amendment Bill is passed, we will require Singapore registered vehicles leaving Singapore by road to carry a minimum of three-quarter tank of fuel instead of the present half a tank. ...

...

Some Members may ask why Government does not reduce the tax on petrol as an alternative means to curb Singapore motorists uplifting petrol in Johor. I must emphasize here that this option is not feasible, as tax on petrol is imposed in Singapore not only to raise revenue but to achieve other objectives, namely, to discourage vehicle usage as a means to curb traffic congestion; to encourage the conservation of energy; and to encourage motorists to convert to the use of unleaded petrol. In the event of world-wide oil shortages, the need to conserve fuel will become even more important as Singapore imports all the oil it consumes.

18 It is pertinent to note that since its inception until the present day, the *maximum* punishment prescribed for a s 136 offence has always been a fine of $500. In other words, however and in whatever manner an offender commits a s 136 offence, thereby cheating the State of petrol tax and hindering the policy of curbing car usage in Singapore, the maximum fine is still $500 if the offender is charged for a s 136 offence.

Whether the sentence imposed on the Appellant was out of line with the sentencing precedents

19 The table of 67 sentencing precedents tendered by Mr Iqbal to the SDJ shows that a custodial sentence was imposed in 64 decisions. Of these 64 decisions, a sentence of two weeks' imprisonment

was imposed in 62 of the 64 cases, while a sentence of one week's imprisonment was imposed in the remaining two cases. These 67 sentences are materially similar because they were imposed on offenders committing s 129 offences in giving false statements to customs officers in relation to their evasion of the ¾ tank rule.

20 Mr Ong argues that the SDJ failed to appreciate that the offender in *Wong Wen Chye* (see [11(a)] above) was more culpable because he (Wong) had chosen to continue the deception to a greater extent. In that case, when the officer found the remote control device and asked Wong if the reading on the fuel gauge was correct, Wong continued to lie that the remote control device was for use in his previous car and that he had not tampered with the gauge. Wong admitted the offence only after the officer had activated the remote control device. In contrast, the Appellant had immediately admitted the offence when Sgt Surianto found the remote control device and questioned him.

21 I agree with Mr Ong that the Appellant's moral culpability is slightly, but not appreciably, lower than that of the offender in *Wong Wen Chye* because of the lesser extent of the Appellant's deception. In the case of the Appellant, he had also persisted in his denials until discovery was certain: all that Sgt Surianto had to do was to activate the remote control device to reveal the breach of the ¾ tank rule.

22 In his petition of appeal, Mr Ong also cited three cases involving different offences of giving false statements to law enforcement officers to support his argument that the sentence of two weeks' imprisonment in this case was manifestly excessive. The first two cases which he cited, *viz*, *Kuah Geok Bee v Public Prosecutor* (Magistrate's Appeal No 171 of 1997) ("*Kuah Geok Bee*") and *Ee Chong Kiat Tommy v Public Prosecutor* (Magistrate's Appeal No 143 of 1996) ("*Tommy Ee*"), involved offences under s 182 of the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 PC"), which provided as follows:

> **False information, with intent to cause a public servant to use his lawful power to the injury of another person**
>
> **182**. Whoever gives to any public servant any information orally or in writing which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment for a term which may extend to 6 months, or with fine which may extend to $1,000, or with both.

Mr Ong points out that the maximum fine of $1,000 was imposed in *Kuah Geok Bee* and *Tommy Ee*, which were cases where the offenders had lied to shield another person from prosecution for, respectively, dangerous driving and driving while under the influence of alcohol. In my view, depending on the facts of the case, the use of an innocent party (B) to shield the offender who committed the predicate offence (A) may cause more harm to the public interest than the situation where A tries to shield himself from prosecution for the predicate offence by telling a lie, because the (false) confession of another party, B, may be more believable than a bare denial by A (depending on the evidence available to the investigators). Thus, A may be more likely to evade prosecution for the predicate offence where he procures someone to assume criminal liability on his behalf. Where, for instance, the shielded offender (A) is holding a high public office, shielding him from exposure of his criminal act will be contrary to the public interest, because it results in concealing a character flaw that makes him unfit to hold that office or less deserving of his standing in society (depending on the

nature and seriousness of the predicate offence which he committed). In any event, the mere fact that a person holding high public office procures or attempts to procure someone else to assume criminal liability on his behalf, regardless of the seriousness of the predicate offence, may be taken as evidence of such a character flaw. As the saying goes, if one is dishonest in small things, one is likely to be dishonest in big things. For this reason, where A commits an offence and procures B to falsely assume criminal liability on A's behalf, and where A is a person holding high public office, it may be justified to treat A's position in society as an aggravating factor when sentencing A for the offence of abetting the making of the false statement by B. But, generally, more harm may also be caused to the public interest by the use of B to shield A (as compared to the case where A himself tells a lie) where the predicate offence committed by A is a serious offence in that it involves harm or a significant risk of harm to others or damage to property, or otherwise engages important public policy considerations. The interest of the State in apprehending A is correspondingly greater.

23 Having perused the appeal records for these two cases, I am of the view that they were correctly treated by the authors of *Sentencing Practice in the Subordinate Courts* (LexisNexis Butterworths, 2003, 2nd Ed) ("*Sentencing Practice*") at p 599 as exceptions to the norm of a custodial sentence. In both cases, the offender was sentenced to two weeks' imprisonment by the lower court but the High Court reduced this on appeal to the maximum fine of $1,000. While the High Court did not issue written grounds explaining its reasoning for reducing the sentences, there are some facts in the appeal records for both cases which were likely to have a bearing on the High Court's sentencing decisions:

(a) In *Kuah Geok Bee*, the offender's husband, one Koh Eng Hock ("Koh"), crashed his car into a metal railing while being under the influence of alcohol at about 1.00am on 26 May 1991. When one S/Sgt Low Kwai Tuck ("S/Sgt Low") arrived at the scene, Koh (and not the offender) informed S/Sgt Low that the offender was the driver. Although S/Sgt Low suspected that Koh was the driver, he allowed Koh to get the offender to claim that she was the driver and in return Koh would send the car to S/Sgt Low's friend's workshop for repairs. At about 7.41pm on the same day, Koh accompanied the offender to a neighbourhood police post where she made a police report stating that she was the driver. One year later when questioned by the Corrupt Practices Investigation Bureau in connection with investigations against S/Sgt Low, the offender admitted that she had made a false police report. These facts indicate that there may have been substantial pressure applied on the offender by her husband, Koh, to make the false statement, particularly because S/Sgt Low was also involved in the deception.

(b) In *Tommy Ee*, the offender was under the influence of alcohol when he falsely stated that he was the driver. This statement was made about six minutes after his female companion had caused the car to collide with a retaining wall shortly after midnight. The next morning, the offender contacted the investigating officer to state that he was not the driver. While the offender's intoxication should *ordinarily* be treated as an aggravating factor, particularly where offences against the person, property, or public order are concerned (see *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 at [44]–[49]), this is not invariably the case and the facts could have been viewed as being sufficiently exceptional: (i) the offender was intoxicated when he made the false statement; (ii) the false statement was made shortly after the collision between the car (in which the offender was a passenger) and a retaining wall occurred; and (iii) the offender confessed the next morning.

I note that *Kuah Geok Bee* and *Tommy Ee* have sometimes been treated as being exceptions to the norm on the basis that the person who gave false information did so to take the blame for someone else: see *Public Prosecutor v Lim Daryl* [2003] SGMC 26 at [36], *Public Prosecutor v Ng Jiak Teng* [2007] SGDC 115 at [24] and *Public Prosecutor v Selvarajah s/o Murugaya* [2007] SGDC 283 at [28].

In my view, this factor alone cannot be sufficient to justify the imposition of a fine rather than a short custodial sentence and the better reading of these two cases is as set out above. The fact remains that the person making the false statement has hindered the administration of justice by shielding the person who committed the predicate offence.

24 The third case which Mr Ong cited in his petition of appeal is *Public Prosecutor v Tay Su Ann Evangeline* [2011] SGDC 57 ("*Evangeline Tay*"). In this case, the accused drove her friend's car without a driving licence and beat a red traffic light. She paid $1,000 to one Leung so that he would assume criminal liability on her behalf. She had previous convictions for traffic offences and claimed trial to a charge under s 204A of the current PC but pleaded guilty on the first day of trial. Although Leung was sentenced to 3 months' jail (on a charge under s 204A of the current PC), the accused was sentenced to a $2,000 fine. Section 204A of the current PC provides as follows:

> **Obstructing, preventing, perverting or defeating course of justice**
>
> **204A**. Whoever intentionally obstructs, prevents, perverts or defeats the course of justice shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

Mr Ong argues that the Appellant is even more deserving of compassion than the accused in *Evangeline Tay* because (a) the Appellant was charged for a s 129 offence which carries a lower maximum jail term of 12 months; (b) he had pleaded guilty at the earliest opportunity; (c) he did not derive any benefit at all from the deception; (d) he did not cause someone else to be implicated in the commission of an offence; and (e) he had no antecedent.

25 In response, Deputy Public Prosecutor Sarah Lam ("DPP Lam") submits that the case of *Evangeline Tay* is irrelevant because it relates to a different offence with different elements and which carries a different punishment as compared to a s 129 offence. [note: 1]

26 In my view, DPP Lam's rebuttal misses the point because the gravamen of the offence committed in *Evangeline Tay* is the same as that in the present case – intentional deception in order to evade prosecution – as a s 129 offence was committed by the Appellant in this case. The only difference was that the deception or cover up was done in different ways. In *Evangeline Tay*, the offender procured someone to assume criminal liability on her behalf. In the present case, the Appellant himself lied (*ie*, gave false statements) to Sgt Surianto. Indeed, it is very easy to give a false statement in order to conceal a breach of the ¾ tank rule. If a customs officer were to ask a motorist whether the reading on the fuel gauge meter in his car is correct, and the motorist were to answer "Yes" when the answer should be "No", he has already given a false statement to the customs officer. What the criminal law seeks to punish is the intentional deception of law enforcement authorities in order to evade prosecution for the underlying predicate offence. Nonetheless, lying or making a false statement is not the same thing as covering up one's criminal act by procuring someone else to assume criminal liability or by tampering with the fuel gauge meter. As compared to telling a lie, covering up in the latter two ways always involves a more elaborate and more deliberate process. In the present case, the Appellant lied to Sgt Surianto and he was accordingly charged with a s 129 offence. Although the Appellant did not procure anyone to assume criminal liability on his behalf, he had admitted that the remote control device was used to tamper with the reading on the fuel gauge meter (see para 4 of the SOF at [3] above). Mr Ong's reliance on *Evangeline Tay* is therefore misplaced because the circumstances of the Appellant's deception do not show that his actions were any less deliberate or elaborate than that of the offender in that case.

27 In any event, *Evangeline Tay* does not assist the Appellant because the following mitigating

factors were present in that case: (a) the offender was only 19 years' old at the time of the offence; and (b) she was diagnosed by both the Prosecution and the Defence psychiatrists as having a major depressive disorder which had contributed to the commission of the offence. It is also pertinent to note that, as the District Judge in *Evangeline Tay* recorded (at [13] of her judgment), the Prosecution had accepted that the mitigating factors justified a departure from the custodial norm for such offences.

Whether the sentencing norm should be two weeks' imprisonment for a s 129 offence relating to a breach of the ¾ tank rule

28 The 67 cases in the table of sentencing precedents tendered to the SDJ (in which sentences of two weeks' imprisonment were imposed in 62 cases) show an extraordinarily high degree of consistency in sentencing by the Subordinate Courts for a s 129 offence in relation to a breach of the ¾ tank rule, *ie*, a s 136 offence. But consistency is certainly not the sole yardstick by which the courts are guided in sentencing offenders. In theory, it is possible that the first case that set the benchmark might be too high or too low, and the benchmark has been applied to all subsequent cases based on guilty pleas. In *Meeran bin Mydin v Public Prosecutor* [1998] 1 SLR(R) 522, Yong Pung How CJ cautioned (at [14]):

> ... Time and again, I have emphasised that consistency in sentencing, while being a desirable goal, is not an overriding consideration, since the sentences in similar cases may have been either too high or too low: see *Yong Siew Soon v PP* [1992] 2 SLR(R) 261 at [11]. It was noted in that case that Grimberg JC had observed in *Goh Moh Siah v PP* [1988] 2 CLAS News 14 that he saw no reason why a court should be fettered by a sentence imposed by another court and which he rightly regarded as being inadequate for his present purposes. ...

In order to determine whether a sentence of two weeks' imprisonment should have been imposed in the first case, it is necessary to examine the facts and reasoning of the court in that case.

29 The earliest case in the table of sentencing precedents tendered to the SDJ was *Public Prosecutor v Chan Keen Think* (District Arrest Cases Nos 006039 and 006040 of 2009) ("*Chan Keen Think*"). In *Chan Keen Think*, the offender stated when questioned by a customs officer that his fuel tank was ¾ full and that he had not tampered with the fuel gauge meter. The customs officer inspected the car and found a device hidden near the accelerator pedal. The offender then admitted that the device was used to tamper with the fuel gauge meter. He pleaded guilty to one charge under s 129(1)(*c*) of the Customs Act and to one charge under s 136(1) of the Customs Act. On 21 January 2009, the offender was sentenced to two weeks' imprisonment by a District Judge for the s 129 offence, and to the maximum fine of $500 for the s 136 offence. No written grounds of decision were issued by the District Judge.

30 Unfortunately, all but two of the 67 cases in the table of sentencing precedents were unreported decisions in which no written judgment or grounds were given. The accused persons in the two reported decisions filed appeals but did not proceed with them. Hence, none of these sentences has been considered by the High Court. Accordingly, none of these sentences is a useful precedent for the purpose of determining the appropriate sentence in the present case. The courts have often cautioned against indiscriminate reliance on unreported decisions: see *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 at [10]; *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21]; and *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [33]. Such caution is particularly important where a series of unreported decisions is relied upon as establishing a sentencing benchmark. In *Public Prosecutor v UI* [2008] 4 SLR(R) 500, the Court of Appeal stated (at [18]):

18 In the local context, sentencing precedents (*ie*, both benchmarks and guidelines) have been used and applied by the courts for the purposes of achieving consistency in sentencing. In *Abu Syeed Chowdhury v PP* [2002] 1 SLR(R) 182, Yong CJ said (at [15]):

> A "benchmark" is a sentencing norm prevailing on the mind of every judge, ensuring consistency and therefore fairness in a criminal justice system. ... It ... provides the *focal point against which sentences in subsequent cases, with differing degrees of criminal culpability, can be accurately determined*. ***A good "benchmark" decision therefore lays down carefully the parameters of its reasoning in order to allow future judges to determine what falls within the scope of the 'norm', and what exceptional situations justify departure from it.***

In *Dinesh Singh Bhatia s/o Amarjeet Singh v PP* [2005] 3 SLR(R) 1 ..., Rajah J likewise declared (at [24]):

> Benchmarks and/or tariffs (these terms are used interchangeably in this judgment) have significance, standing and value as judicial tools so as to help achieve a certain degree of *consistency* ***and rationality*** *in our sentencing practices. They provide the vital frame of reference upon which* ***rational*** *and consistent sentencing decisions can be based.*

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

31 While I accept that consistency in sentencing is desirable and necessary for the equal treatment of offenders for similar offences in similar circumstances, a custodial sentence should not be lightly or readily imposed as a norm or a default punishment unless the nature of the offence justifies its imposition retributively or as a general or specific deterrent, where deterrence is called for. I recognise that the practice of the courts has been to rely heavily on the principle of deterrence in the punishment of offenders, and that deterrence is usually effectuated by a prison sentence. In *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*"), V K Rajah J observed (at [18]–[19]):

> 18 It has been a recurrent theme in our sentencing jurisprudence that "the dominant choice of sentence in advancing the public interest is the deterrent sentence" (see *Sentencing Practice in the Subordinate Courts* (Butterworths, 2nd Ed, 2003) ("*Sentencing Practice*") at p 73). Yong CJ observed with his customary clarity and acuity in *PP v Tan Fook Sum* [1999] 1 SLR(R) 1022 ("*Tan Fook Sum*") at [18]:
>
> > ... The foremost significance of the role of deterrence, both specific and general, in crime control in recent years, not least because of the established correlation between the sentences imposed by the courts and crime rates, need hardly be mentioned.
>
> 19 This approach has been the cornerstone of our sentencing jurisprudence though it has not always been universally acclaimed by academics as invariably effective (see, for example, Andrew von Hirsch, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Hart Publishing, 1999) ("Andrew von Hirsch, 1999")). *Ultimately however, the judicial philosophy and approach to crime control in each jurisdiction is a policy decision based on the balancing of communitarian values and concerns against individual interests.* It is pointless to attempt to distil from the various strands of foreign criminal legal jurisprudence a universal consensus that could or should be applied in Singapore. *The present crime control model premised on a* ***judicious and focussed application of deterrence*** *coupled with the effective apprehension of offenders has worked well for Singapore. There is neither any need nor basis to tamper with the*

present judicial policy of broadly applying deterrence as a vital sentencing consideration to a variety of different crimes. To pointlessly eclipse this approach would be to ignore the melancholic wisdom in the refrain of an old song: "You don't know what you have got until it is gone".

[emphasis added in italics and bold italics]

32 However, as Rajah J said in the same case (at [30]):

30 It is pertinent to highlight at this juncture that *whilst local case law adopts a strongly deterrent sentencing philosophy*, ***such an approach is nevertheless circumscribed by the idea of proportionality*** . In *Tan Kay Beng* ([26] *supra*), I stated at [31]:

Deterrence must always be tempered by proportionality in relation to ***the severity of the offence committed*** as well as by the moral and legal culpability of the offender. ...

In a similar vein, Yong CJ in *Xia Qin Lai v PP* [1999] 3 SLR(R) 257 at [29] stated:

[T]he principle of deterrence (especially general deterrence) dictated that the length of the custodial sentence awarded had to be a not insubstantial one, in order to drive home the message to other like-minded persons that such offences will not be tolerated,but ***not so much as to be unjust in the circumstances of*** *the case*.

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

33 A sentence that is purposively inflicted to deter re-offending or other offending is invariably more severe than a retributive sentence. But, while a deterrent sentence is justifiably used as a means to check or to reduce the prevalence of a particular kind of offence, it should not be so excessive as to be "crushing". The other point to bear in mind is that a custodial sentence is not necessarily the only or even the best form of deterrence against offending. Different kinds and levels of punishment may be needed to produce a deterrent effect on different types of offending. Criminal justice does not require that offenders should be punished more than is necessary to achieve the objective of the law. Hence, there should be a balance between two principles of sentencing: (a) proportionality; and (b) effective deterrence. For example, where a particular kind or level of punishment can have the same deterrent effect as a more severe kind or level of punishment, it would be disproportionate to impose the latter instead of the former. But, admittedly, it is easier to police the outer limits of the range of sentences which are not wholly inefficacious or disproportionate than otherwise. As one expert commentator observes, "it might be possible to argue that there is such a thing as utter disproportionality, even if there is no such thing as absolute proportionality" (see Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 2010, 5th Ed) at p 113). If the applicable principle in the present case is deterrence, the question is whether a sentence of a substantial fine is adequate as a deterrent rather than the harsher punishment of a prison sentence of two weeks, having regard to the nature of the predicate offence and the nature of the substantive offence. In the course of argument before me, I posited to the DPP the case of an offender returning from Batam who, on being asked by a customs officer whether he had on him any cigarettes on which customs duty was payable, replied "No" knowing that this was a false statement. I asked whether in such a case a sentence of two weeks' imprisonment would be appropriate. I received no response from the DPP to this question.

34 In my view, a prison sentence is not the only effective deterrent for certain kinds of offences and against certain types of offenders. In certain cases, a heavy fine, as an alternative to a custodial

sentence, may equally have the desired deterrent effect in reducing the incidence of an offence. Economic offences which are not serious in nature would be one example of such an offence. Mr Ong refers to the observations of Yong CJ in *Public Prosecutor v Cheong Hock Lai and other appeals* [2004] 3 SLR(R) 203 as follows (at [42]):

> ... It is clear that a deterrent sentence need not always take the form of a custodial term. ... [A] deterrent sentence may take the form of a fine if it is high enough to have a deterrent effect on the offender himself ("specific deterrence"), as well as others ("general deterrence").

In *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 ("*Chia Kah Boon*"), the appellant pleaded guilty to nine charges of being concerned in importing uncustomed goods into Singapore. The unpaid goods and services tax ("GST") amounted to $310,198.65. The appellant was liable to a minimum fine of 10 times the amount of GST payable or $5,000 whichever was lesser, and to a maximum fine of 20 times the amount of GST payable or $5,000 whichever was greater. The District Judge imposed a fine of about 15 times the amount of GST payable. On appeal, Yong CJ reduced the fine to five times the amount of GST payable for the following reasons (*Chia Kah Boon* at [15]):

> Turning then to the question of what the appropriate sentence would be in the circumstances of the present case, in determining the fines to be imposed on the appellant, I took into account two competing considerations. On one hand, the fines had to be of an amount which the appellant could reasonably pay given his financial means. *On the other hand, the fines had to be fixed at a level which would be sufficiently high to achieve the dual objectives of deterrence, in terms of deterring both the appellant and other importers from evading GST on imported goods in future, and retribution, in the sense of reflecting society's abhorrence of the offence under s 130(1)(*a*) of the Customs Act.* In particular, importers and other persons who might be tempted to commit the same offence should not be given the impression that they may be let off lightly for their misdeeds if they are detected simply because they lack the financial ability to pay the fines which may be imposed under s 130(1)(*i*) of the Act. *Bearing these considerations in mind, I concluded that a fine of five times the amount of GST payable in respect of each charge would be just and appropriate* in light of the appellant's limited financial means, the totality principle of sentencing, the aggravated nature of the offences in question, and the deterrent and retributive aspects of the penalty under s 130(1)(*i*) of the Customs Act. …
>
> [emphasis added]

35 Having set out these general principles, I now turn to the sentencing precedents for a s 129 offence, the large majority of which indicate that the sentencing norm is two weeks' imprisonment when committed in relation to a breach of the ¾ tank rule. It is necessary to bear in mind that a s 129 offence (a) may be committed in relation to the whole spectrum of predicate offences under the Customs Act, and (b) may involve different degrees of culpability in the manner of offending. In the present case, the s 129 offence was committed as a result of verbal denials by the Appellant that the fuel gauge meter of his car had been tampered with. The question therefore is whether a s 129 offence committed in these circumstances must be punished with a benchmark sentence of two weeks' imprisonment, when the prescribed punishment is that of a fine of up to $5,000 or a term of imprisonment of up to 12 months, or both.

36 There are only two reported cases in the table of sentencing precedents. The first case provides no assistance as it was an appeal against conviction.

3 7 *Wong Wen Chye* (cited at [11(a)] above) is the second reported case in the table of sentencing precedents. The facts in this case were similar to the facts in the present appeal, except

that there the offender (Wong) had continued to lie even after the customs officer had found a remote control in his car. Wong was charged with one s 129 offence and one s 136 offence. The District Judge sentenced Wong to two weeks' imprisonment for the s 129 offence and a $500 fine for the s 136 offence. He reasoned as follows:

> (a) The furnishing of false information to a law enforcement officer in order to induce the officer not to investigate an offence has generally attracted a custodial sentence. In *Public Prosecutor v Yap Khim Huat* (Magistrate's Appeal No 121 of 1993) ("*Yap Khim Huat*"), the offender pleaded guilty to four traffic offences, namely: driving without a licence; driving while under the influence of drink; dangerous driving; and making a false statement that he was not the driver but the passenger. He was fined and sentenced to four weeks' imprisonment.
>
> (b) Where false information is given by a suspect or accused to evade prosecution, the norm is to impose a custodial sentence especially where there are strong public policy considerations. In *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 ("*Jenny Lai*"), the offender had pleaded guilty to making a false statement that she had lost her Singapore passport. She had in fact sold her passport for $500 while in need of money. She was sentenced to two months' imprisonment.
>
> (c) The courts have consistently imposed a short custodial sentence of two weeks' imprisonment for making false statements to evade prosecution for breach of the ¾ tank rule: see, for example, *Public Prosecutor v Ng Chee Kien* (District Arrest Case No 4 of 2009), *Public Prosecutor v Ang Kok Tiong* (District Arrest Cases Nos 1967 and 1968 of 2010), and *Public Prosecutor v Ng Gim Eng* (District Arrest Cases Nos 7932 and 7933 of 2010).
>
> (d) On the facts, there were no exceptional circumstances because the case was similar to the other cases. Wong had been given two chances to confirm if his fuel gauge meter was tampered with and on both occasions he denied tampering with it.

Wong filed an appeal against sentence but did not pursue it.

38 In my view, the District Judge in *Wong Wen Chye* did not sufficiently appreciate the factual differences between *Wong Wen Chye* and the two cases which he had referred to, *viz*, *Yap Khim Huat* and *Jenny Lai*. In *Yap Khim Huat*, the offender pleaded guilty to four charges: (a) driving without a licence; (b) driving while under the influence of drink; (c) dangerous driving; and (d) giving a false statement to a police officer that he was not the driver but merely the passenger ("the Fourth Charge"). The Magistrate imposed the maximum fine of $1,000 for the Fourth Charge. Having perused the appeal record, I note that the Magistrate had accepted in his grounds of decision that this sentence was manifestly inadequate. The Magistrate admitted that he would have imposed a custodial sentence if he had sufficiently considered all the circumstances at the time of sentencing. The High Court allowed the Prosecution's appeal against sentence and enhanced the sentence for the Fourth Charge to one month's imprisonment, without issuing written grounds of decision. The three predicate offences, *viz*, driving without a licence, driving while under the influence of drink, and dangerous driving, were serious offences in the sense that a significant risk of harm to other persons or to property was inherent in the commission of these offences. The appeal record shows that the offender's actions had in fact caused serious injuries to his passenger (hospitalised for five days), a motorcyclist (treated as an outpatient), a van driver (hospitalised for five days) and himself (hospitalised for two days). The offender had also shown a complete lack of remorse by making the false statement two weeks after the accident in an attempt to evade prosecution for the three predicate offences.

39 In *Jenny Lai*, the offender made a false police report stating that she had lost her Singapore passport when she in fact sold it for $500 while in need of money. She pleaded guilty to a charge under s 182 of the 1985 PC of giving false information to a public servant and was sentenced to two months' imprisonment. Her appeal against sentence was dismissed by the High Court. *Jenny Lai* clearly involved cogent and compelling public policy considerations which militated in favour of a custodial sentence because the sale of Singapore passports to persons who would use the passports for dishonest purposes would: (a) undermine the security of Singapore's borders and our immigration controls; (b) undermine the trust and confidence which other nations have in the security and sanctity of Singapore passports; and (c) cause inconvenience to Singapore citizens travelling abroad if further checks were carried out by other countries. The fact that the offender sold her passport would have been, in itself, an aggravating factor as it amounted to misappropriation of property belonging to the State: see, *eg*, s 57 of the Passports Act (Cap 220, 2008 Rev Ed). Some of these public policy considerations were at the forefront of the District Judge's mind: see *Jenny Lai* at [4].

4 0 *CLB* (cited at [13] above) was another case where public policy considerations justified a custodial sentence. The appellants pleaded guilty to a charge of giving false information to a public servant, an offence under s 182 of the 1985 PC, in their blood donor registration forms. The first appellant answered "No" to the question, "Have you had unprotected sex (*ie* sex without using a condom) with a prostitute or a sexual partner *other than* your usual sexual partner during the last six (6) months?" The second appellant answered "No" to the question, "If male, have you engaged in any sexual activity with another male since 1978?" These answers were untrue. It was later discovered that the appellants' blood was HIV-positive, but fortunately before their blood was transfused into other persons. Nevertheless, the false statements could have potentially very serious consequences for the recipients of the appellants' blood, but for the early discovery of the false statements before the donors' blood was transfused into other persons. The appellants were each sentenced to one week's imprisonment and a fine of $800. They appealed against sentence and the High Court enhanced their sentence to one month's imprisonment. Yong CJ agreed (*CLB* at [9]) that it was important to maintain the integrity of the blood bank and to safeguard the public's trust in it.

41 In contrast, the facts of *Wong Wen Chye* and the present case do not involve predicate offences which carry a significant risk of harm to other persons or to property, or which raise serious public policy considerations. The predicate offence in this case is a breach of the ¾ tank rule, *ie*, a s 136 offence which carries a maximum fine of $500. As the High Court stated in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [84], "when Parliament sets a statutory maximum, it signals the gravity with which the public ... views that particular offence". All other things being equal, it is reasonable for the court to adopt a sentencing approach which calibrates the punishment to the seriousness of the predicate offence. For this purpose, the maximum penalty for the s 136 offence can be compared to the maximum penalties prescribed for various other predicate offences which commonly arise in the context of false statements being made to law enforcement authorities:

(a) driving under disqualification (s 43(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA")): a fine not exceeding $10,000, imprisonment for a term not exceeding 3 years, or both;

(b) reckless or dangerous driving (s 64(1) of the RTA): a fine not exceeding $3,000, imprisonment for a term not exceeding 12 months, or both;

(c) driving while under the influence of drink or drugs (s 67(1) of the RTA): a fine not less than $1,000 and not more than $5,000, or imprisonment for a term not exceeding six months;

(d) speeding (s 63(4) read with s 131(2)(*a*) of the RTA): a fine not exceeding $1,000, or imprisonment for a term not exceeding three months; and

(e) driving without a licence (s 35(3) read with s 131(2)(*a*) of the RTA): a fine not exceeding $1,000, or imprisonment for a term not exceeding three months.

All these offences are serious to the extent that they are likely to result in injury to other road users or damage to property.

42 It should also be noted that the scope of the s 129 offence is very wide. It covers making false statements in relation to every kind of offence prescribed by the Customs Act, from not declaring or under-declaring a few sticks of uncustomed cigarettes to smuggling huge quantities of uncustomed or prohibited goods. To paraphrase the rationale of what I recently said in *Madhavan Peter v Public Prosecutor and other appeals* [2012] SGHC 153 at [170], while I agree that the making of false statements to customs officers may hinder an investigation and cause a waste of investigative resources, or even derail an investigation, not all s 129 offences call for custodial sentences for they may be committed in many ways, for different ends, and with different consequences. In *CLB* (cited at [13] above), Yong CJ remarked as follows in relation to a charge under s 182 of the 1985 PC (at [9]):

> ... [Section 182 of the 1985 PC] covers an extensive array of misinformation of greatly varying degrees of iniquity and the norm must be varied according to the circumstances of each case, in particular, the mischief that might be caused by the false information. ...

The decisions in road traffic cases should not be applied unthinkingly to other contexts, particularly where the predicate offence in issue is comparatively less serious from the Legislature's perspective. The observation by the authors of *Sentencing Practice* (at p 599) that "[w]here false information is given by a suspect or accused to evade prosecution, the norm is ... to impose a custodial sentence" must be read in the context of the cases which the authors go on to cite. All the cases cited by the authors on the giving of false information to evade prosecution (except for one case) concerned road traffic offences, such as speeding, driving under disqualification, driving without a licence, reckless or dangerous driving, and driving while under the influence of drink or drugs. These offences are viewed as being more serious offences by the Legislature and are also inherently more serious because they involve a significant risk of harm to people or damage to property. The outlier, *ie*, *Public Prosecutor v Muhammad Baharuddin bin Amat* (Magistrate's Appeal No 20 of 1999), concerned a false claim of theft by an unknown person. The offender made this false claim because he feared the consequences of lending his motorcycle to a friend who did not have a motorcycle licence. He was sentenced to a fine of $1,000, but this was enhanced to one month's imprisonment and a $1,000 fine on the Prosecution's appeal. Three public policy considerations were at play in this case: (a) the implication of an innocent person in the alleged crime; (b) the potential risk of harm to innocent victims of any accident (if there was no insurance cover); and (c) the waste of investigative resources.

43 It is also useful to note another sentencing precedent relating to an offence of a similar nature under s 177 of the 1985 PC. Section 177 of the 1985 PC provides as follows:

> **Furnishing false information**
>
> **177**. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with imprisonment for a term which may extend to 6 months, or with fine which may extend to $1,000, or with both; or, if the information which he is legally bound to furnish respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment for a term which may extend to 2 years, or with fine, or with both.

In *Ng Hoon Hong v Public Prosecutor* (Magistrate's Appeal No 199 of 1996) ("*Ng Hoon Hong*"), the offender pleaded guilty to a charge of furnishing false information to a Commissioner of Oaths with the Housing and Development Board ("HDB"). In her application for a HDB flat with her husband, she had declared that she was unemployed and had no sources of income. She was actually earning $3,100 per month. As her husband was earning $6,500 per month, the offender and her husband did not qualify for the HDB flat because their combined gross income exceeded $7,000. The offender was sentenced to two weeks' imprisonment. On appeal by the offender, the High Court reduced the sentence to the maximum fine of $1,000 without issuing written grounds of decision. *Ng Hoon Hong* indicates that the courts do take into account whether the consequences of the false information or the mischief that might be caused were serious, as the authors of *Sentencing Practice* note (at p 597). It can reasonably be inferred that the offender was not granted the opportunity to purchase the HDB flat because the HDB had found out that she did not qualify. Thus, although *Ng Hoon Hong* was decided before the Penal Code (Amendment) Act 2007 (No 51 of 2007) which increased the maximum penalties for s 177 in the current PC, it is a relevant precedent because the offence is of the same genre as the s 129 offence in the present case. In *Ng Hoon Hong*, the consequences of making the false statement, if it had succeeded, would have benefited the offender at the expense of the public to a far greater degree than the offence of the Appellant in the present case.

44 A comparative survey of the case law in some Commonwealth jurisdictions reveals that the seriousness of the predicate offence has consistently been treated as a relevant sentencing consideration. In *R v Reynolds Thomas Tunney* [2007] 1 Cr App R (S) 91 ("*Tunney*"), the English Court of Appeal stated (at [10]):

> In our judgment the sentence which is appropriate for offences of this nature depends effectively on three matters. Two of those were referred to by the judgment of this Court in *Rayworth* [2004] 1 Cr. App. R. (S.) 75 (p.440) in which two-and-a-half years were upheld on a plea for perverting the course of justice. The particular factors which the court must have regard to are, first, *the seriousness of the substantive offence to which the perverting of the course of justice relates*. *Here the offence in question, murder/manslaughter, was at the most serious end of the spectrum*. The second matter which the court must have regard to is the degree of persistence in the conduct in question by the offender. Here there was a degree of persistence, although ultimately the appellant ceased to persist in his lies. Thirdly, one must consider the effect of the attempt to pervert the course of justice on the course of justice itself. Here it was unsuccessful. Nonetheless, the substantive offence of murder or manslaughter could scarcely have been more serious.[emphasis added]

Tunney has been consistently followed and applied in England: see *Attorney General's Reference No 35 of 2009 (Michael Binstead)* [2010] 1 Cr App R 61 (S) at [12]; *R v Declan Gerald Killeen* [2010] EWCA Crim 3341 at [10]; *R v David Peter Matthews* [2010] 1 Cr App R (S) 59 at [18]; *R v Janette Mercer* [2010] 1 Cr App R (S) 104 at [13]; *Attorney-General's Reference No 109 of 2010* [2010] EWCA Crim 2382 at [10]; *R v Ricky Francis Brown* [2009] EWCA Crim 277 at [6]; and *R v O'Leary (John Geza)* [2007] EWCA Crim 1543 at [12].

45 Similarly, the Court of Appeal of Western Australia stated in *Ranford v Western Australia (No 2)* [2006] WASCA 243 ("*Ranford*") as follows:

> 11 The appellant submits the sentencing Judge categorised the offences committed by these appellants as being "among the most serious instances" of the offence of attempting to pervert the course of justice.
>
> 1 2 *It is true to say that any offence of that kind is serious, but clearly circumstances vary*

and it is always necessary to make an assessment of the criminality of the circumstances of the offending in the particular case, when imposing sentence. The ways in which offences of this kind may be committed can take many forms and can strike at any point of the administration of justice (*R v Rogerson* (1992) 174 CLR 268 at 280; 60 A Crim R 429 at 434 per Brennan and Toohey JJ).

...

36 Without being at all exhaustive, the following considerations may be discerned from the authorities as affording guidance to sentencing in cases involving the giving of a false name to avoid the consequences of traffic offences:

(1) Offences of attempting to pervert the course of justice strike at the heart of the justice system and there is a need for general deterrence in such cases.

(2) There is no tariff for such offences.

(3) A term of imprisonment will ordinarily be imposed, although other dispositions are not excluded in an appropriate case, particularly for a youthful first offender. A fine would normally not be appropriate.

...

In addition to all those circumstances relating to the particular case and the particular offender which must be taken into account, some of the factors which bear upon the *assessment of the seriousness of offences of this kind* include:

(a) *the nature and seriousness of the consequences sought to be avoided* (as for example, whether to avoid demerit points, or to avoid conviction);

(b) the period of time over which the deception occurred and whether it was merely allowed to continue or was repeated or persisted in and what else was done to maintain it;

(c) whether the deception involved some other person, either as an accomplice or a victim;

(d) whether there was any threat or violence involved;

(e) whether the deception caused diversion of investigative, police or court resources;

(f) whether the offence was a "spur of the moment" response or was premeditated, and if so, the degree of premeditation, planning and persistence;

(g) *whether the deception was carried through to the extent of deceiving a court, or the creation of false public records, and if so, the extent and consequences of that.*

[emphasis added]

Ranford was followed in *Michelle Wendy Norton v The State of Western Australia* [2007] WASCA 75 at [9] *per* Wheeler JA, *The Queen v Ryan Buscema* [2011] VSC 206 at [6], and *Daniel Joseph Dillon v The State of Western Australia* [2010] WASCA 135 at [30] *per* Mazza J.

46 Finally, there are also some Hong Kong cases which indicate that the seriousness of the predicate offence is a relevant sentencing factor. In *HKSAR v Yuen Sun Wing* [2010] 3 HKLRD 145, the Hong Kong Court of Appeal stated (at [23]):

> The offences committed by the applicants are without doubt serious. *They helped offending drivers evade justice, thus allowing drivers who jumped red lights and drove at excessive speed to continue to drive on the roads of Hong Kong*. Their offences systematically allowed drivers to avoid the sanction of the law after committing offences. The offences in this case spanned over eight months and involved as many as twenty offending drivers.[emphasis added]

Similarly, in *HKSAR v Liu King Chuk* [2001] HKLRD (Yrbk) 339, the Hong Kong Court of First Instance observed:

> ... Counsel for the appellant submitted that the learned magistrate had overemphasised the seriousness of this offence. It is also submitted, while the nature of the charge is very serious, the appellant, however, committed the offence out of ignorance and thoughtlessness. *Mr Dinan submitted that this case is to be distinguished from the type of cases where a defendant had attempted to frame an innocent person with a serious crime.* ***The substantive offence involved here is obstruction of public place which attracts only a small fine by way of penalty*** **.** Counsel also emphasised that in the course of achieving the illegal objective, the parties had not resorted to bribery, nor was there any false statement given on oath. The parties in this case never resorted to any form of violence or threats in order to achieve their illegal objective. *I find that there is some attraction in this line of argument.*
>
> [emphasis added in italics and bold italics]

47 In my view, the precedents in the road traffic cases are not appropriate as sentencing precedents for s 129 offences committed in relation to s 136 offences. They were uncritically applied in *Wong Wen Chye* to the present context, where the public policy considerations in relation to the predicate offence are not the same. Where a s 129 offence is committed in relation to a s 136 offence, the s 129 offence does not cause a wastage of investigative resources because: (a) the customs officer has already chosen to stop the offender's car for an inspection and thus resources have already been spent independently of the lie(s); and (b) it would take very little effort for the customs officer to go further to inspect the car and, if need be, to check the fuel level in the car's fuel tank. Further, the predicate s 136 offence does not involve any risk of harm to other persons or damage to property, and does not raise any serious public policy considerations such as those in *Jenny Lai* or *CLB*. A s 129 offence committed in relation to a s 136 offence thus falls within the less serious range of s 129 offences. Although the SDJ in this case did not cite any cases when he commented (at [11]) that "short imprisonment terms have generally been imposed" for charges under s 182 of the PC, it may reasonably be inferred that he was referring to the cases which were discussed in *Sentencing Practice* and in *Wong Wen Chye*. I would endorse the District Judge's remarks in *Public Prosecutor v Poh Chee Hwee* [2008] SGDC 241 ("*Poh Chee Hwee*") that (at [13]):

> *All other things being equal, the seriousness of the false information offence is proportionate to the underlying offence that the offender seeks to evade (or help another evade).* For example, false information to shield an offender from murder should be treated more seriously than false information to shield an offender from voluntarily causing hurt. *In part, this is due to the fact that the more serious the offence, the greater the public interest there is in bringing offenders who commit such offences to justice (all other things being equal).* The offence of driving under disqualification is a serious traffic offence and a custodial sentence together with a further disqualification order is the usual sentence for such an offence. [emphasis added]

48 For these reasons, the cases cited by DPP Lam in her submissions can be distinguished for the following reasons:

(a) The cases of *Public Prosecutor v Sivaprakash s/o Narayansamy* [2004] SGMC 7, *Poh Chee Hwee* (cited at [47] above), *Public Prosecutor v Zeng Jianzhong* [2011] SGDC 300, *Public Prosecutor v Teu Han Yong* [2011] SGDC 301, *Public Prosecutor v Yogeswaran s/o Rajagopal* [2011] SGDC 439 and *Public Prosecutor v Harcharan Singh s/o Jarnal Singh* [2011] SGDC 439 concerned false statements being made to evade or to assist in the evasion of prosecution of offenders who committed various road traffic offences.

(b) The cases of *Public Prosecutor v Mohdnizam bin Othman* [2007] SGDC 41, *Public Prosecutor v Ashraf Johaib* [2010] SGDC 265 and *Public Prosecutor v Colin Yap Kim Cheong* [2011] SGDC 233 concerned false allegations that someone else had committed a crime. Such false allegations implicate innocent persons and lead to a waste of investigative resources which could have otherwise been spent on genuine reports of crime.

49 I note that fines were imposed in two of the cases cited by DPP Lam. She argues that these cases were the exceptions to the sentencing norm of one to two weeks' imprisonment. In *Public Prosecutor v Alvin Chan Siw Hong* [2010] SGDC 411 ("*Alvin Chan*"), the offender made a false police report stating that his motorcycle was stolen in Yishun. The motorcycle was in fact stolen in Malaysia and the offender believed that he would not obtain compensation from his insurance company if he reported the truth. He was fined $4,000 which was close to the maximum fine of $5,000. He made the false statement with a view to cheating his insurance company, which was an aggravating factor. The facts in the second case, *Public Prosecutor v Tow Qiu Yi* [2010] SGDC 409 ("*Tow Qiu Yi*"), were materially identical and the offender was also fined $4,000. The Prosecution initially appealed against sentence in both cases but subsequently withdrew its appeals. In my view, *Alvin Chan* and *Tow Qiu Yi* are good examples of a calibrated approach to sentencing to take into account the culpability of the offender and the proportionality of the punishment *vis-à-vis* the seriousness of the offence. The District Judge who decided both cases explained his reasoning as follows (see *Alvin Chan* at [7]–[9]):

> 7 A perusal of the case-law on s.182 [of the current PC] showed that the sentencing norm is a custodial sentence ranging from 1 to 2 weeks up to a few months imprisonment depending on the "greatly varying degrees of iniquity..." of the false statements[.] CJ Yong had also observed [in *CLB*] that *this norm must be varied according to the circumstances of each case, in particular, the mischief that might be caused by the false information*. Again, this was reflected in a few of the decided cases where the courts had imposed fines of $1000 instead.
>
> 8 It must also be noted that the case-law were all decided before the Penal Code amendment in February 2008. ... The maximum fine has been increased to $5000 and the maximum imprisonment term has been increased from six months to one year. The five-fold increase in the maximum fine is, in my opinion, in line with the intent to give the courts greater flexibility to impose heavier fines in lieu of an imprisonment term if the facts warrant it.
>
> 9 Applying all these considerations in mind, I found that the present case is devoid of any aggravating factor. *The misinformation was with regard to the place where his motorcycle had been stolen. The motivation for making the false report was the fear that the accused would not get his insurance pay-out if he had stated the truth. The accused was not attempting to evade prosecution or to shield someone from prosecution. He did not make a false allegation of a crime made deliberately to exact revenge or to injure reputation*. The statement of facts did not disclose any factor which could be considered to be aggravating. On these bases and the fact that the accused had no similar record other than the drug consumption conviction ... I am

of the view that a high fine would serve the ends of justice for this offence.

[emphasis added]

50 The law punishes offenders to achieve certain social goals. Criminal justice requires the courts to take into account the purpose of punishment in relation to a particular offence. The fundamental factor to take into account is the harm to society which is, or which can be, caused by the commission of that offence. In the context of the giving of false information to the authorities, the mischief that can be caused by the false information to the maintenance of law and order and the legislative objective is a relevant sentencing consideration: see *CLB* at [9]. In the present case, if the deception had succeeded, the Appellant would have saved a small sum of money, and at the same time deprive the State of revenue and also hinder the legislative policy of curbing the usage of motor vehicles (see [16]–[17] above). Mr Ong suggested that the cost of a full tank of petrol to the Appellant was somewhere between $100 and $120. Assuming that 50% of this amount was made up of petrol duty and that the fuel tank of the Appellant's car was almost empty when he left Singapore, this would mean that the loss is about $50 to $60 of petrol tax. To put the size of the loss in perspective, a s 136 offence carries a maximum fine of only $500, which is about eight to ten times the loss of petrol duty. Furthermore, a fine of, say, $3,000, would be 50 to 60 times the amount of money an offender would save in breaching the ¾ tank rule. None of the cases in the table of sentencing precedents appears to have considered whether a fine of that magnitude would have been sufficient to deter would-be offenders from lying about the s 136 offence.

51 Whilst I agree with the Prosecution that deterrence is an important sentencing consideration with respect to a s 129 offence, the question is whether only a custodial sentence of not less than two weeks is an effective deterrent for such an offence. Psychologically, the higher the punishment, the more effective it is as a deterrent to future specific or general offending. Where, as here, the offender's purpose is to save money in using his car, and to avoid paying a fine of up to $500 by lying to a law enforcement officer, an appropriate deterrent sentence may well be to punish him where it hurts, *ie*, his pocket. What the existing sentencing precedents for this kind of offence do not tell us is whether and why a heavy fine would not have been a sufficient deterrent to an offender whose only motive was to reduce his petrol tax bill, and who was prepared to lie to the customs officers when questioned by them as to whether he had breached the ¾ tank rule. No sentencing considerations were articulated in the first case in the table, *viz*, *Chan Keen Think* (see [29] above). Did the Public Prosecutor seek the punishment? Was that offender a first offender? Did he have other antecedents? How was the false information given to the customs officer? Did the court consider whether a fine in the magnitude of 50 to 60 times the amount of money that the offender had tried to save was a sufficient deterrent against lying to a customs officer when caught out on a s 136 offence? Did the policy considerations call for a custodial sentence of two weeks for a first offender with no antecedents? Parliament has not evinced such a policy as the punishment for a s 129 offence may be a mere fine of up to $5,000, imprisonment of up to 12 months, or both. As one learned commentator has commented, "[g]enerally speaking, only the public interest should affect the type of sentence to be imposed while only aggravating or mitigating circumstances affect the duration or severity of the sentence imposed" (see Tan Yock Lin, *Criminal Procedure Vol 3* (LexisNexis, 2010) at XVIII[852]). Where a s 129 offence relating to a s 136 offence is concerned, it should, in my view, be the exception rather than the rule for the courts to sentence a first offender to imprisonment rather than a fine, given that the predicate offence is not serious. For the courts to set a custodial sentence of two weeks as a norm for a s 129 offence with respect to a s 136 offence for a first offender comes very close to legislating a mandatory minimum sentence for the s 129 offence. While there is nothing inherently wrong with the court setting sentencing benchmarks for the sake of consistency in sentencing, it must take into account all relevant sentencing factors, bearing in mind that a custodial sentence has consequences beyond the loss of liberty and civil rights. None of the lower court cases

cited to me has addressed these issues in the light of the considerations I have mentioned earlier.

52 It is necessary to add that the moral culpability of a first offender is, in general, lower than that of a second offender or one with other antecedents showing a propensity to break or defy any law, especially with respect to an offence of the same nature, *eg*, a s 129 offence or an offence under s 182 or s 204A of the current PC. The gravamen of such offences – the intentional deception of law enforcement authorities by various means and with different degrees of complexity – remains the same regardless of which offence-creating provision the Prosecution chooses to rely upon. Where there is evidence of recalcitrance or wilful repeated contempt for law enforcement officers by lying to them, the imposition of a custodial sentence may well be justified. But, the evidence in the present case does not show recalcitrance but simply an attempt to cheat the State of a small amount of revenue.

53 In the circumstances, and for the above reasons, I am of the view that the custodial sentence of two weeks imposed on the Appellant is inappropriate and disproportionate to the gravity of the s 129 offence committed by him in relation to the s 136 offence. I do not think that a custodial sentence should be the norm for a first offender of such an offence. I consider a fine of $3,000, which is 50 to 60 times the amount of revenue that could have been lost or six times the maximum fine for the predicate offence, to be sufficient punishment for a first offender or one without any other antecedents who commits a s 129 offence in relation to a s 136 offence. In the present case, I impose a fine of $4,000, to take into account the aggravation of the Appellant lying three times to the customs officer.

54 At the hearing of the appeal, Mr Ong relied on a press release issued by the Attorney-General's Chambers dated 17 June 2012 ("the Press Release") and a letter from Mr Aedit Abdullah SC on behalf of the Attorney-General dated 6 July 2012 to one Au Waipang ("the Letter") to argue that the custodial sentence imposed on the Appellant was manifestly excessive. The Press Release and the Letter were issued in connection with the case of one Wu Tze Liang Woffles ("WW") who was charged with abetting an offence under s 81(3) of the RTA, which carries a maximum punishment of a fine of up to $1,000, imprisonment of up to six months, or both. WW was fined the maximum fine of $1,000 for abetting his elderly employee to give false information to the police about the commission of speeding offences in 2005 and 2006.

55 In view of my decision at [53] above, it is not necessary for me to deal with this argument except to observe that the punishment of a fine in that case was in line with a number of sentencing precedents for that offence.

56 Before I consider the third main issue in this case, I should point out that there was another possible predicate offence which the Prosecution could have charged the Appellant with. Section 6A of the RTA provides as follows:

> **Alteration of fuel-measuring equipment**
>
> **6A.**—(1) No person shall *alter the fuel-measuring equipment* of a motor vehicle *for the purpose of preventing the fuel-measuring equipment from duly measuring or indicating the quantity of motor fuel in any fuel supply tank* of the motor vehicle.
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and *shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 3 months.*

(3) Where there is found any artificial or mechanical means which, either alone or in conjunction with additional artificial or mechanical means not found, could be used for altering or facilitating the alteration of the index of the fuel-measuring equipment, or which would make the fuel-measuring equipment false or unjust in measuring or indicating the quantity of motor fuel in any fuel supply tank of that motor vehicle, the person having custody or control of the motor vehicle at the time such artificial or mechanical means are found shall be presumed, until the contrary is proved, to have abetted the alteration of the fuel-measuring equipment in contravention of subsection (1).

(4) In this section, "fuel-measuring equipment", in relation to a motor vehicle, means any instrument or appliance, or a combination of instruments or appliances, capable of or constructed for measuring or indicating or measuring and indicating the quantity of motor fuel in any fuel supply tank of the motor vehicle and includes in particular any fuel gauge or fuel sensoring device.

[emphasis added]

Section 6A of the RTA was introduced in 1989 at the same time as the half-tank rule in order to enhance the effectiveness of the half-tank rule (see *Singapore Parliamentary Debates, Official Report* (7 April 1989) vol 54 cols 99–100). The Appellant was not charged with an offence under s 6A of the RTA ("a s 6A offence"), which carries a higher maximum punishment as compared to the s 136 offence, and neither was he charged with lying (a s 129 offence) to conceal the commission of a s 6A offence. The charge against him (see [2] above) was that he gave a false statement (a) that the fuel tank was ¾ full, and (b) *that the fuel gauge meter had not been tampered with*. The charge did not specify who tampered with the fuel gauge meter or why that person did it. Nonetheless, even if the Appellant had been charged with a s 129 offence to conceal the commission of a s 6A offence, the harm to the public interest by the commission of the predicate offence, *viz*, the s 6A offence, mirrors the harm caused by the s 136 offence (see [50]–[51] above), at least where a first offender is concerned. This is not surprising because the s 6A offence was intended to complement the s 136 offence. If, therefore, the Appellant had been charged with committing a s 129 offence to conceal the commission of a s 6A offence, the imposition of a custodial sentence might well be inappropriate and disproportionate in the circumstances, if a suitable fine has the same deterrent effect.

Whether the mitigating factors in this case justify a departure from the sentencing benchmark

57 Mr Ong submits that the following mitigating factors should be taken into consideration in the Appellant's favour:

(a) the Appellant's good character and contributions to society;

(b) the fact that the offence was committed in a brief moment of folly; and

(c) the Appellant's genuine remorse.

58 Mr Ong advanced these arguments in support of his contention that the sentence of two weeks' imprisonment imposed on the Appellant was manifestly excessive and should be reduced to either the maximum fine of $5,000 or a shorter term of imprisonment. As I have found that the benchmark in offences of this sort should be a fine of $3,000, this finding is sufficient to justify setting aside the sentence imposed on the Appellant and substituting it with a fine, albeit of $4,000 as the Appellant had lied three times. Nonetheless, given that Mr Ong has raised arguments which

will, if successful, reduce further the quantum of the fine to be imposed on the Appellant, I will consider whether they are made out on the facts.

Good character and contributions to society

59 Mr Ong made two submissions on this mitigating factor. First, he submits that the SDJ had failed to give sufficient weight to the fact that the Appellant was of good character and had contributed substantially to society. The Appellant has been a volunteer at an old folks' home since 1999, and he is currently a pastor with the Eternal Life Baptist Church. He has been married for 20 years with one son.

60 As the Court of Appeal stated in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*") at [13]–[16], sentencing is very much a matter of discretion and the scope of appellate intervention in matters of sentencing is limited. The Appellant lied not once but three times (twice before he was asked to park at the designated parking spot and once thereafter) and he only owned up when Sgt Surianto found the remote control device and the Appellant realised that discovery was inevitable (see [3] above). In fact, it could be said that as a man of God, the Appellant should have known better than to fail to render to Caesar what is Caesar's. In my view, there is no basis for me to disturb the SDJ's exercise of his discretion to place no weight on the Appellant's good character and contributions to society (see [11(c)] above).

61 Mr Ong's second submission is that the "clang of the prison gates" principle applies to the Appellant and therefore the length of the imprisonment sentence should be reduced. In *Tan Sai Tiang v Public Prosecutor* [2000] 1 SLR(R) 33, Yong CJ explained this principle as follows (at [39]–[40]):

> 39 The "clang of the prison gates" principle that was articulated by L P Thean J (as he then was) in *Siah Ooi Choe v PP* was adopted from the English decision of *R v Jones* (1980) 2 Cr App R (S) 134. This principle states that when an older person in his or her 40s or 50s is convicted for the first time, the mere fact that he goes to prison at all is a very grave punishment indeed. The closing of the prison gates behind him or her, for whatever length of time, is grave punishment by itself. In conjunction with the fact that the convicted party is of good character and there are comparatively small sums of money involved, a short prison term would suffice. ...
>
> 40 Now, the underlying premise of the "clang of the prison gates" principle is not that where first-time offenders are concerned, the mere fact that a jail sentence has been imposed is punishment enough. The actual basis for the application of this principle is that the shame of going to prison is sufficient punishment for that particular person convicted. As such, in order for the principle to be applicable, the convicted person must have been a person of eminence who had previously held an important position or was of high standing in society. In other words, it would hardly ever apply in most cases dealing with members of society who had never held an important post or were persons of sufficient standing in the eyes of society. ...

62 This submission is no longer relevant in view of my decision that the Appellant be fined $4,000, and therefore nothing more needs to be said.

The fact that the offence was committed in a brief moment of folly

63 Mr Ong submits that the SDJ was wrong to reject the argument that the offence was committed in a brief moment of folly. When the Appellant was confronted by Sgt Surianto, he was faced with a dilemma. In a moment of panic and confusion, he denied the offence because he was fearful and anxious about the potential consequence of the offence.

64 I am unable to accept this argument. If the Appellant had immediately admitted to Sgt Surianto that the reading in the fuel gauge meter was incorrect, he would not have made a false statement. He would then have committed the s 136 offence, but not the s 129 offence. Indeed, if he had refused to answer Sgt Surianto's questions on the ground that his answers would incriminate him in the predicate offence, he could not have been charged for refusing to give an answer to the customs officer's questions: see s 129(3) of the Customs Act. His denials were made deliberately because, having committed the first act of using the remote control device to falsify the fuel gauge reading, he was prepared to go through with the deception. The SDJ's finding of fact was one that was open for him to make on the facts before him, and there is no evidence that he had erred in appreciating those facts: see *Kwong Kok Hing* (cited at [60] above) at [13]–[16].

Remorse

65 Mr Ong submits that the Appellant was ashamed of his mistake and was truly remorseful. He had admitted to the offence in his statement to the investigating officer.

66 In response, DPP Lam argues that it is clear from the SOF that the Prosecution would have had little difficulty in proving the charges against the Appellant. He could hardly be given credit for being cooperative only after being confronted with objective evidence against him. DPP Lam cites *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 at [6]–[9] where the High Court observed that a plea of guilt and cooperation with the authorities had no mitigating effect where the offender knew that arrest was inevitable, and that in some cases the need for a deterrent sentence would heavily or completely outweigh the mitigating effect (if any) of a guilty plea.

67 On the facts of this case there is insufficient basis to hold that the SDJ had incorrectly exercised his discretion to accord little or no weight to this sentencing consideration (see [11(e)] above). The Appellant had intentionally lied to Sgt Surianto in the hope of avoiding discovery and evading prosecution for breach of the ¾ tank rule.

Conclusion

68 For the reasons above, I allow the appeal, set aside the sentence of two weeks' imprisonment, and substitute a fine of $4,000, in default two weeks' imprisonment.

[note: 1] Respondent's submissions, para 48.