

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 199

Criminal Case No 24 of 2016

Between

Public Prosecutor

and

Sibeko Lindiwe Mary-Jane

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] —
[Importation of controlled drugs]

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Public Prosecutor
v
Sibeko Lindiwe Mary-Jane

[2016] SGHC 199

High Court — Criminal Case No 24 of 2016
Lee Siu Kin J
11–13, 17–20 May, 4 July 2016

22 September 2016

Judgment reserved.

Lee Siu Kin J:

1 The accused is a 46-year-old woman from Johannesburg, South Africa. She was charged with an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) for importation of a controlled drug. The charge read as follows:

That you, **SIBEKO LINDIWE MARY-JANE**,

are charged that you, on 25 October 2013 at or about 8.35 pm, at the Arrival Hall of Terminal 3 Changi Airport, Singapore (“the said place”), did import into the said place a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the said Act”), *to wit*, five (5) bundles of crystalline substances weighing a total of 6,901 grams which were subsequently analysed and found to contain not less than 5,380.2 grams of methamphetamine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 punishable under

section 33 of the said Act, and further, upon your conviction under section 7 of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

2 The accused claimed trial. At the end of the prosecution’s case, I found that there was sufficient evidence to call the accused to give her defence. The accused elected to give evidence under oath. She was the sole witness for her defence. At the end of the accused’s case, I adjourned the trial for submissions, which were subsequently made on 4 July 2016. Thereafter, I reserved judgment. I now give my decision.

The evidence

The accused’s arrival in Singapore and her arrest

3 The accused arrived in Singapore on 25 October 2013 at about 7.45pm. She had departed from Cotonou, Benin the day before, and her journey to Singapore, which included transits in Addis Ababa, Ethiopia and Mumbai, India, took a total of 24 hours. On her arrival at Changi Airport, the accused passed through immigration and collected her luggage (“the Luggage”) from the luggage belt at the Terminal 3 Arrival Hall. She then walked towards the exit. It was then, at about 8.30pm, that she was stopped by a Central Narcotics Bureau (“CNB”) officer, Woman Staff Sergeant Wang Jingyi Dawn (“W/Ssgt Dawn”). W/Ssgt Dawn directed the accused to the x-ray machine for the Luggage to be checked. After the Luggage went through the x-ray machine, W/Ssgt Dawn informed the accused that she needed to do a manual search on the Luggage. As there was a layer of plastic wrapped tightly around the Luggage, the accused tried to remove the plastic wrapping with her hands. She was subsequently provided with a pair of scissors to cut it. Once the plastic wrapping was removed, the accused unlocked the lock to the Luggage using a key she had retrieved from her handbag.

4 It was around this time that another CNB officer, Staff Sergeant Muhammad Azim bin Missuan (“Ssgt Azim”), came over to assist W/Ssgt Dawn in searching the Luggage. During the search, Ssgt Azim saw a black nylon bag (which was a garment bag) underneath some of the accused’s other items. Ssgt Azim took out and opened up the black nylon bag and saw two blue bundles which were wrapped tightly with transparent tape. Ssgt Azim then informed W/Ssgt Dawn of this.

5 W/Ssgt Dawn and Ssgt Azim both testified that at this point, W/Ssgt Dawn asked the accused what was inside the two bundles. They said that the accused replied that they contained food items. W/Ssgt Dawn instructed Ssgt Azim to scan the two bundles. W/Ssgt Dawn then asked the accused what type of food items the bundles contained, and the accused replied that she was unsure but believed that it would be used to make medicine. The accused added that she was supposed to pass the bundles to her boyfriend’s brother, who was working as a doctor in a hospital in South Africa. After this, W/Ssgt Dawn instructed the accused to open the first bundle. The accused proceeded to cut an opening in the corner of this first bundle with a pair of scissors. She was not wearing gloves when she did this. When the bundle was cut, W/Ssgt Dawn and Ssgt Azim saw a crystalline substance inside the bundle. W/Ssgt Dawn then donned a pair of gloves and drew a sample of the crystalline substance for the “MMC” drug test kit. The test revealed a positive result for controlled drugs. W/Ssgt Dawn then proceeded to conduct a similar test on the second bundle (after cutting it open with a scalpel), and the results were identical. Ssgt Azim, while wearing gloves, also did a test on the crystalline substance from one of the bundles with the “Trunarc” drug test kit and the result was positive for methamphetamine. At about 9.06pm, W/Ssgt Dawn

informed the accused that the two bundles which were found in her possession were believed to be controlled drugs, and placed the accused under arrest.

6 The black nylon bag was subsequently labelled as Exhibit “A2” while the two bundles were labelled as Exhibits “A2A” and “A2B”. Exhibit “A2A” contained two packets labelled as Exhibits “A2A1” and “A2A2”, while Exhibit “A2B” contained three packets labelled as Exhibits “A2B1”, “A2B2” and “A2B3”. At trial, W/Ssgt Dawn testified that, as between Exhibits “A2A” and “A2B”, she could not remember which was the bundle that the accused had cut and which was the bundle that she herself had cut. Exhibits “A2A1”, “A2A2”, “A2B1”, “A2B2” and “A2B3” were subsequently analysed by Lim Hui Jia Stephanie, an Analyst with the Illicit Drugs Laboratory of the Health Sciences Authority (“HSA”), and found to contain a total of 6,901g of crystalline substance containing 5,380.2g of methamphetamine (“the Drug”).

The Contemporaneous Statement

7 Following her arrest, the accused was escorted to the Immigrations & Checkpoints Authority (“ICA”) search room located at the Terminal 3 Arrival Hall. At about 10.30pm, W/Ssgt Dawn commenced the recording of the accused’s contemporaneous statement (“the Contemporaneous Statement”). Prior to this, W/SSgt Dawn served the accused a Notification of the Misuse of Drugs (Amendment) Act 2012 (“the MDA Notification”). The MDA Notification, which was signed by the accused, read as follows:

Your attention is hereby brought to the Misuse of Drugs (Amendment) Act 2012, which was passed by Parliament on 14 November 2012 and came into effect on 1 January 2013, and which gives the courts the discretion to sentence an accused person convicted of trafficking, importing and

exporting of controlled drugs, whose involvement in the offence is restricted:

- (a) to transporting, sending or delivering a controlled drug;
- (b) to offering to transport, send or deliver a controlled drug;
- (c) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
- (d) to any combination of the activities listed in (a), (b) and (c); and

the Public Prosecutor certifies to the court that, in his determination, the accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore, who is liable to the death penalty, to life imprisonment *with caning* instead.

This notification is purely for your information, and should not be construed as a threat, inducement or promise for you to give evidence against yourself or any other person.

[emphasis added]

It was not disputed that W/Ssgt Dawn did not tell the accused that caning did not apply to females.

Admissibility of the Contemporaneous Statement

8 The accused challenged the admissibility of the Contemporaneous Statement pursuant to s 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“the CPC”). Following an ancillary hearing under s 279 of the CPC, I ruled that the Contemporaneous Statement was admissible. I set out my reasons in this section.

9 The accused’s argument was premised on the undisputed fact that W/Ssgt Dawn, in administering the MDA Notification, did not explain to the accused that caning did not apply to her. The argument, as I understood it, was

that the threat of caning constituted a threat under s 258(3) of the CPC and rendered the Contemporaneous Statement involuntary. Explanation 2(aa) to s 258(3) of the CPC did not apply because it was not explained to the accused that caning did not apply to her. Additional reliance was also placed on the accused having been scared, tired and in a new environment. An argument was also mounted concerning the 20 allegedly unexplained minutes between the end of the MDA Notification procedure and the commencement of the recording of the Contemporaneous Statement.

10 On the other hand, the prosecution submitted that the allegations raised by the accused at best affect only the weight but not the admissibility of the Contemporaneous Statement. In any event, there was no threat, inducement or promise issued to the accused. Even if there was a threat, inducement or promise, it did not operate on the mind of the accused. Finally, there was no oppression such that the accused's free will was sapped.

11 The first issue on the admissibility of the Contemporaneous Statement turned on whether Explanation 2(aa) to s 258(3) of the CPC applied to the present case. This provides as follows:

Explanation 2 — If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:

...

(aa) where the accused is informed in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap. 185) under which life imprisonment may be imposed in lieu of death;

...

12 There is no doubt that the MDA Notification falls within Explanation 2(aa) to s 258(3) of the CPC as the provisions of s 33B of the

MDA are reproduced in it. However, W/SSgt Dawn had read the MDA Notification to the accused without explaining that caning did not apply to females. Defence counsel submitted that in doing so, the threat of caning was there and this had caused the accused to give the Contemporaneous Statement against her will.

13 I was unable to agree. I did not see how a person could construe the part in the MDA Notification relating to caning as a threat that would be carried out if that person did not provide the information. In fact, caning is a possibility if the information is provided, not withheld. Indeed, the MDA Notification is an inducement or promise, in that it holds out a possibility to an accused person that if he, being a mere courier, provides useful information to the CNB, he would escape the death penalty and be sentenced instead to life imprisonment with caning. To the extent that the MDA Notification is an inducement or promise, Explanation 2(aa) to s 258(3) of the CPC has taken it outside the scope of that subsection so that statements recorded subsequent to the MDA Notification are not inadmissible on this ground alone.

14 More importantly, in her long statement given on 5 November 2013, the accused, in describing the taking of the Contemporaneous Statement, did not mention that the fear of caning was a factor that caused her to give her answers to W/SSgt Dawn. If fear had been a factor, the memory of this would be fresh in her mind when she gave this long statement some ten days later.

15 For the reasons set out above, I found that the Contemporaneous Statement was not given by the accused on account of any threat flowing from W/SSgt Dawn. Accordingly, I admitted it in evidence.

Contents of the Contemporaneous Statement

16 In the Contemporaneous Statement, the accused stated that the two bundles did not belong to her although they were recovered from the Luggage. The accused said that she was told by her boyfriend, one Chukwu Emmeka, that he had placed something inside the Luggage and wanted her to pass it to his brother when she returned to South Africa. She said that Chukwu Emmeka had told her that they contained “some cooking items” and that she had not suspected that it could be anything else because she had trusted her boyfriend. The relevant portions of the Contemporaneous Statement are set out below:

...

Qns 4: (Recorder’s Note: Pointing to the 02 bundles wrapped with blue tape which were recovered from the accused) Do these 02 bundles belong to you?

Ans 4: No.

Qns 5: Were they recovered from your black luggage?

Ans 5: Yes.

Qns 6: What is inside these 02 bundles?

Ans 6: I do not know.

Qns 7: How did these 02 bundles ended up in your luggage?

Ans 7: I was told by my boyfriend, Chukwu Emmeka, that he placed something inside my luggage and wanted me to pass them his brother when I return to South Africa.

Qns 8: Do you know the contents inside the items your boyfriend pl in your luggage?

Ans 8: No.

Qns 9: Did you ask him what was it?

Ans 9: Yes, he said they were some cooking items.

Qns 10: Did it arouse your suspicion that they may not be cooking items?

- Ans 10: No, because I trusted my boyfriend.
- Qns 11: What were you suppose to do with the 02 bundles?
- Ans 11: I am suppose to take it back to South Africa and pass to my boyfriend's brother.
- Qns 12: Do you have any intention to pass these bundles to anyone in Singapore?
- Ans 12: No.
- ...

The accused's cautioned statement

17 Three days later, on 28 October 2013 at about 2.00pm, the accused gave a cautioned statement under s 23 of the CPC. In this statement, she said that the Drug in the Luggage did not belong to her but was put into the Luggage by her friend, one Bros, at the airport in Cotonou without her knowledge. At trial, the accused clarified that Bros was the same person as Chukwu Emmeka. The substantive part of the accused's cautioned statement is set out below:

The drugs in the luggage does not belongs to me. It was put into my luggage by my friend 'Bros' in Cotonou Airport without my knowledge. After I packed my luggage at the hotel, Bros and I took a taxi to Cotonou Airport. For about half an hour Bros was with my luggage while I was inside the shops at the airport. After that, Bros bought a lock and helped me locked my luggage. Bros also helped to wrapped my luggage in plastic then we went to check in my luggage. It was only until I reached Singapore airport when the luggage was open and checked by the police that I saw the drugs were put into my bag. I am being framed by Bros. I will do all things to help the authorities to find Bros. That is all.

The accused's long statements

18 The accused then gave a series of long statements under s 22 of the CPC. Five of these statements, recorded between 28 October 2013 and 7 November 2013, were admitted into evidence.

The accused's long statement given on 28 October 2013 at about 2.50pm

19 In her first long statement given on 28 October 2013 at about 2.50pm, the accused stated that she was framed by Bros who had been a close friend of hers back in 2002. They met in the church that they were both attending in South Africa, but she subsequently lost touch with him when he went to Benin. The accused got back in touch with Bros in 2010 and would talk to Bros over the phone at least once or twice a week. The accused told Bros that she wanted to go for a holiday in Italy, but Bros told her to go to Singapore instead. Bros told the accused that no visa was needed for travel to Singapore. He further told the accused that he had wanted to go to Singapore to buy electronic goods and import them back to Benin, but that he could sponsor her trip to Singapore if she could go to Singapore and buy the goods on his behalf. Bros would send the money to the accused by “Moneygram” or “Western Union” when she arrived in Singapore. The accused agreed to do so.

20 She thus flew from Johannesburg to Benin to meet Bros. She arrived in Benin on 20 October 2013, and Bros met her the following day. Bros told the accused that he wanted her to send “some materials for making medicine” to his brother in South Africa, and showed the accused the “medicine”, which looked like “crystals”, in a container. The accused was angry at this and told Bros that she would only go back to South Africa after her trip to Singapore. Bros eventually agreed. He told the accused to stay at Tai Hoe Hotel in

Singapore, and to call him when she reached the hotel. The accused stated that the Drug looked like this “medicine”.

21 On the morning of 24 October 2013, the accused and Bros headed to the airport on a taxi for the accused’s flight to Singapore. The accused had personally packed the Luggage in the hotel and there were no drugs in it. At the airport, Bros took the Luggage and held it for her. Bros told the accused that it was not time to check in yet. Thus, the accused looked around a few shops at the airport. The accused did not pay attention to Bros and the Luggage. The accused guessed that this was the only time when Bros could have placed the Drug into the Luggage.

22 About half an hour later, Bros told the accused to check in. He showed the accused a lock which he had bought for the Luggage. Bros then locked the Luggage and brought it to be wrapped in “plastic tape”. Bros then handed the accused the key to the lock and they checked in the Luggage. The accused did not see the Luggage until she was arrested in Singapore.

23 When the Luggage was opened and checked at Changi Airport, the accused realised that “there was additional stuff placed inside [the Luggage] at the top by Bros in the black bag”. She initially thought that the bundles were medication, food, toys or money as they were very big. The accused thought that they could be toys as there were a lot of toys in the taxi which she and Bros had taken to the airport.

The accused’s long statement given on 30 October 2013 at about 11.00am

24 In a subsequent long statement given on 30 October 2013 at about 11.00am, the accused provided information on her background. Among other

things, she stated that she was currently staying in a one-storey house with two big bedrooms, three spare rooms and a garage. The house was fully paid for by her parents and is in an “average income neighbourhood”. The accused lived there with her parents and two of her siblings. The accused also has a rented apartment and stayed there sometimes to take care of her nephew. The accused has two sons born out of wedlock.

25 The accused was at the time running a business which dealt with sourcing for products and services such as stationery, catering, maintenance, grocery and transportation for government departments. The accused did not have a monthly income, but earned about 500 to 1,000 Euros per business deal. She described her income as “average as compared with other South Africans”. She also had a receptionist working for her. The accused stated that “[her] finance is comfortable”.

26 In this statement, the accused also stated that she is a Christian who spent most of her free time at church or at church activities. She has been attending her current church since 2003.

The accused’s long statement given on 2 November 2013 at about 12.45pm

27 In a further long statement given on 2 November 2013 at about 12.45pm, the accused stated that she was chatting with Bros over the phone a few weeks before she came to Singapore. He was in Cotonou and she was in South Africa. The two of them were never in a formal relationship, but were “just like having a fling back then in 2002”. The accused told Bros that she wanted to take a holiday. She was thinking of going to Italy but the visa application process was troublesome. Bros then suggested that the accused go to Singapore instead as no visa was required. The accused was concerned

about the air ticket being expensive, but Bros told her not to worry about it. Bros had wanted to buy some electronic goods from Singapore to sell in Benin and would sponsor her two-way flight if she agreed to help him buy the electronic goods on her trip. The accused was tempted by this offer. Moreover, Bros also told her that he would pay for her flight from South Africa to Cotonou so that she could meet him. The accused was happy as she had not been to Cotonou before and had not met Bros for about ten years.

28 The accused flew to Cotonou on 20 October 2013. On her arrival, she took a shuttle bus to a hotel. The next day, the accused moved to a service apartment. She called Bros and he came to meet her at the apartment. Bros drove the accused for dinner and slept over at her apartment that night.

29 The following day, Bros brought a transparent container containing “some white crystals substance” up to the accused’s apartment. The accused stated that these looked like the Drug, the only difference being that they were “a bit wet”. The accused reached out to open the container but Bros slapped away her hand and told her not to open it. Bros was talking on the phone and the accused “could see he was becoming serious as he talked”. Bros then put down the phone and asked if the accused was okay going back to South Africa. He explained that he needed her to bring the “stuff in the container” back to South Africa. Bros told the accused that it was “raw ingredients for making medicine” and that it was for his brother who was a doctor. The two then argued over this. The accused told Bros that she wanted to go to Singapore as he had promised her and she had spent a lot of money to buy the air ticket to Cotonou.

30 It seems that Bros eventually relented as the accused was contacted the next day by a travel agency and asked to collect her flight tickets. Later that

evening, Bros met the accused and passed her her flight itinerary. He came up to her room with a “young African boy” and they told the accused that Tai Hoe Hotel would be cheaper and closer to where she was supposed to buy the electronic goods in Singapore.

31 Bros came to the accused’s apartment early the next morning on 24 October 2013. He told the accused that he would hold her return ticket to South Africa as she was coming back to meet him. The Luggage was full and Bros told the accused to take some things out as she was going shopping. He also told her that some of her toiletries had too much liquid and could not be brought onto the plane. The accused therefore took some items out of the Luggage. Bros told the accused that she was supposed to help him bring the “medicine” to South Africa on her return. He also told her that he did not have enough money to pass her for the electronic goods. However, he asked her to call him when she arrived in Singapore and he would wire her the money by “Moneygram” and email her the list of items to buy. Bros’ friend then fetched the accused and Bros to the airport. There were a lot of toys and a green colour sports bag in the car.

32 As it was still too early to check in at the airport, the accused went to look around some stalls selling handicraft and earrings for about half an hour. Bros was holding on to the Luggage since they reached the airport and his friend also followed them. Bros was carrying the green colour sports bag. The accused did not pay attention to Bros and the Luggage.

33 When it was time to check in, Bros showed the accused a lock which he said he had bought for her. He locked the Luggage and passed her the key. The Luggage was then wrapped with plastic and subsequently checked in. The accused did not see the Luggage again until her arrival in Singapore.

The accused's long statement given on 5 November 2013 at about 10.30am

34 The accused's next long statement was given on 5 November 2013 at about 10.30am. In this statement, the accused described the three flights and two transits before her arrival in Singapore on 25 October 2013 at about 7.45pm. On her arrival at Singapore, the accused cleared immigration and proceeded to the belt from which she was supposed to collect the Luggage. After the accused had picked up the Luggage, she pushed it on its wheels towards the exit and it was then that she was stopped by W/Ssgt Dawn.

35 W/Ssgt Dawn proceeded to ask the accused some questions. The accused was feeling slightly frustrated as she was feeling tired after the long flight and "just wanted to get rid of the lady" so that she could go to the hotel and rest. W/Ssgt Dawn then directed the accused to the x-ray machine for the Luggage to be checked. As the accused lifted up the Luggage to place it into the x-ray machine, she noticed that it was especially heavy. The accused was subsequently asked to open up the Luggage for a check. The accused wanted to tear open the plastic wrapping as she "just wanted to get the check over with fast". She wanted to "quickly finish the check and go to [her] hotel to rest". The accused was given a pair of scissors to cut the plastic. She then unlocked and unzipped the Luggage.

36 After unzipping the Luggage and laying it opened, the accused saw a "piece of black color fabric at the top of the [L]uggage". The accused was surprised as it was not hers. She touched and pressed it and could feel that there was something inside. There was also a crunching sound. The accused was nervous as she did not know what it was and what it contained.

37 W/Ssgt Dawn, who was now wearing gloves, then took out the smaller bundle. The bundle was blue in colour and wrapped in “shiny transparent tape”. The accused “felt calmer” after seeing the tape. She thought that the bundle was food parcels or money. She thought it was food initially as she had seen passengers wrapping their luggage and parcels in clear tape before checking them in at Cotonou Airport, and Bros had told her that they were wrapping “stuff such as food”.

38 W/Ssgt Dawn asked the accused what the bundle was and the accused replied that it was food. W/Ssgt Dawn then asked the accused to cut open the bundles. The accused, who was not wearing any gloves, then used a scissors to cut open a corner and could see that there were “white salt-like crystals” inside. The accused was “more comforted now” as she recognised this as the “medicine” in the container which Bros wanted her to bring back to South Africa for his brother. Thus, the accused told W/Ssgt Dawn that the bundle contained “medicine which [her] husband wanted [her] to bring back to South Africa”. The accused told W/Ssgt Dawn that Bros was her husband as she did not want to explain too much. W/Ssgt Dawn then proceeded to do some test on the crystals and told the accused that “this type of medicine” was not allowed in Singapore.

39 W/Ssgt Dawn then did a further search and found a similar but bigger bundle “from inside the black colour fabric”. The accused was shocked as “even for medicine the amount is far too much”. The accused’s mind was “blank” after the second bundle was taken out as she “could sense there was something wrong”. More officers were coming and she could tell from their expressions that “something was very wrong”. The accused was very scared and could not pay proper attention. She vaguely remembered the officers

putting the two bundles back through the x-ray machine, but could not remember whether they had cut open the second bundle to do a test. She could remember being asked a lot of questions but could not remember the exact questions.

40 The accused was then handcuffed and told that the bundles contained drugs. She was then brought to an office and “there were many questions posed to [her] by different officers”. The accused remembered W/Ssgt Dawn posing some questions and writing them down. She could not remember the exact questions. The accused did not say that she did not know how the bundles ended up in the Luggage and that Bros may have put them in the Luggage. She still could not believe they were drugs. The accused only told the officers that “[her] husband passed the medicine to [her] to bring it to South Africa”. Thinking back now, she was in a state of shock at that time. Otherwise, she would have told the officers that the Drug was placed into the Luggage by Bros without her knowledge.

41 In response to a question posed by the recording officer, the accused stated that her answer to Question 7 in the Contemporaneous Statement (see [16] above) was “not accurate”. The accused was still confused and in shock then and may have communicated the wrong idea. The accused’s mind was fixed on Bros telling her to “bring the medicine to South Africa”.

42 The accused identified Exhibit “A2A” in a photograph as the first bundle that was found in the Luggage and which she was asked to cut.

The accused's long statement given on 7 November 2013 at about 6.30pm

43 The accused's final long statement was given on 7 November 2013 at about 6.30pm. This statement took a question-and-answer format. The accused stated that she did verbally promise Bros that when she returned to Cotonou, she would help him "bring the medicine for him to South Africa". The accused guessed that Bros was keeping her return ticket from Cotonou to South Africa as a "guarantee" so that she would not "run away" with his money when he wired it to her in Singapore or with his electronic goods after she bought them in Singapore. Moreover, Bros might also have kept her ticket since he had wanted her to go back to Cotonou to help "bring the medicine back to South Africa" as she had promised.

44 The accused also stated that she had travelled to Cotonou to meet Bros (instead of flying directly from South Africa to Singapore) as Bros had told her to do so and help him go to Singapore. Bros also told her that he would sponsor her air ticket from South Africa to Cotonou, and the accused saw this as a free opportunity to travel to a part of Africa that she had not been to before. She thought that Bros would also show her the electronic goods and pass her the money to buy them in Cotonou. It was only in Cotonou that Bros told her that he would email her the list and wire her the money when she reached Singapore. The accused also wanted to go to Cotonou to visit Bros as she had not seen him for many years and would like to "see him face to face again and see the place where he is working and living".

The accused's evidence at trial

45 To the extent that she maintained her position that she did not know that the Drug was in the Luggage, the accused's evidence at trial was *broadly* consistent with the accounts in her cautioned statement and long statements. I

do not propose to set out the entirety of the accused's oral evidence, but will highlight, in this section, some of its more material aspects, especially those which involved deviations from the accused's earlier accounts.

46 First, with regard to the accused's prior relationship with Bros, the accused's evidence at trial was that she had first met Bros sometime in 1998/1999 in Johannesburg in church. They had lost touch after 1999 and next spoke to each other in 2010. Thereafter, they would speak once every two to three months or once every six months. The accused did not have Bros' number saved on her handphone prior to her arrival in Cotonou in October 2013. Rather, Bros' number was recorded in a small pocketbook. The accused said that she and Bros were "not that close". However, at another juncture, she said that she and Bros had been in a romantic relationship although it only went to the extent of kissing but not sexual intercourse.

47 Second, as to the accused's trip to Cotonou in October 2013, the accused gave evidence that Bros had told her that he would give her the money to buy the electronic goods and also show her what to buy when she was in Cotonou. The accused also wanted to see where Bros stayed. Notably, the accused also said that what Bros had shown her in Cotonou was *not* the same as Exhibits "A2B1", "A2B2" and "A2B3":

Q: So, basically, what you saw is some white salt-like substance and you were told that this is medicine. So, again, would you agree with me that you can't be sure that what you were shown are the same item shown in P38, look---referring to the three bundles of A2B1, A2B2, A2B3.

A: No, they are not the same.

Court: Not the same.

Witness: Yes.

Court: The stuff you saw in the container is not the same as---would you---

Witness: In the container it was---it had liquid.

48 Third, as regards the accused's departure from Cotonou, the accused gave evidence that she had packed the Luggage herself and that no one had helped her to pack it. The black nylon bag and Exhibits "A2A" and "A2B" were not inside the Luggage when she packed it. On the day of the accused's departure from Cotonou (*ie*, 24 October 2013), Bros had met the accused that morning with a cab driver. At this juncture, I pause to note that shortly after, the accused made reference to Bros' friend being at the airport with them. It seems to me that this friend is the same person as the cab driver. Apart from the fact that the introduction of this friend would otherwise be completely out of the blue, the accused had stated subsequently that she had thought that she had previously met the cab driver while she was with Bros.

49 Returning to the accused's evidence concerning the events on 24 October 2013, the accused said that she could not remember whether it was Bros or his friend who had physical possession of the Luggage as they entered the airport. The accused had only gone to one small shop. The Luggage was at a place "where the bags were put in" about five to six metres from the shop. Bros and his friend were somewhere around the area but not right next to the Luggage. The accused was only in the shop for around 15 minutes. When she had come out of the shop, Bros told her that he had bought her a lock and the Luggage was already locked by then. The accused agreed that Bros had pointed the lock to her.

50 Fourth, in relation to her arrival in Singapore, the accused's evidence was that as she was opening the Luggage at Changi Airport, she saw a small part of the black nylon bag. The rest of the black nylon bag was blocked by

her clothes which were on top. Notwithstanding what she had said in her long statement given on 5 November 2013, the black nylon bag was not on top. Moreover, the accused had only touched the black nylon bag but did not press it.

51 In her examination-in-chief, the accused stated that when she saw the first bundle, she “had so many questions on [her] mind”. She asked herself whether it was food, toys or money. With regard to the toys, this was because there were toys in Bros’ car or the taxi. The accused continued her explanation of what was going on through her mind as follows:

A Because it was found in my luggage. Then I thought maybe I should protect it by---maybe--- I must protect, maybe thinking it is food, or maybe Bros is surprising me with the money that I was supposed to buy the appliances with.

...

Court: Protect?

Witness: When I looked at it, I---I---I was shocked. But when the officer looked at me, I acted as if I knew it---it were---who---what it was.

...

Q “As if I knew what it was.” Why you want to do that?

A Because it was in my bag.

Q Any other reason?

A Just because it was my bag. I was tired; I just wanted to answer so that I can go and sleep.

Q Yes.

A I didn’t want to act as it was not mine because it was found in my luggage.

52 However, the accused was not entirely clear as to what she had told W/Ssgt Dawn the first bundle was. In her examination-in-chief, the accused

stated that she said it was food. Although she initially said that she was not sure if she had said that it was medication, she subsequently seemed to have said (at least on one reading of the transcript) that she remembered telling W/Ssgt Dawn about medication also. In cross-examination, the accused stated that, with respect to the first bundle, she had said that “it could be food, it could be toys”. Shortly after giving this evidence, the accused then said that she could not remember what she had told W/Ssgt Dawn as she had “said so many things”. The accused even said that she had said that it could be African food. In addition, she agreed that when W/SSgt Dawn asked her what type of food it was, she may have said that it could be medicine.

53 When the accused *saw* the contents of the first bundle, she thought back to the container that Bros had showed her in Cotonou, and “just said it was medication”. She told W/Ssgt Dawn that she was taking the medication to South Africa (although I note that this part of the accused’s evidence is not entirely clear as to whether she was referring to the first or second bundle, or both). The accused appeared to have no recollection of the second bundle.

54 A number of points are worth noting. For one, the accused agreed under cross-examination that at this stage (*ie*, before she was brought to the ICA search room), she had told W/Ssgt Dawn that she was supposed to bring something back to South Africa and pass it to her husband’s brother. By “husband”, the accused had Bros in mind. Pertinently, however, it was not clear whether the accused had said this after or before she had seen the contents of the bundles (or at least the first bundle). The accused also gave evidence that she did not know whether Exhibit “A2A” or “A2B” was the first bundle that was taken out. She explained that she had identified Exhibit “A2A” as the first bundle in the photograph (see [42] above) based on a hole

that was visible at the top of Exhibit “A2A” in the photograph. Lastly, the accused also agreed that when she had arrived in Singapore, she only had US\$844 on her (although I note that she also had some South African currency and cards) and did not have a hotel reservation.

55 Fifth, in regard to the recording of the Contemporaneous Statement, the accused said that upon being served the MDA Notification, she was, variously, tired, shocked, confused and had lost hope and “gave up hope in everything”. She was also scared at the thought of being caned. She was confused and wanted to tell W/Ssgt Dawn that she did not know how the bundles got into the Luggage and that she thought it was medication. The accused wanted to tell the truth but W/Ssgt Dawn did not want to listen to her. In her examination-in-chief, the accused said that she did not remember providing the answers to Questions 7, 9, 10 and 11 of the Contemporaneous Statement. In cross-examination, the accused appeared to take issue with Questions and Answers 6 to 11.

56 In addition, the accused said that she had told W/Ssgt Dawn that she did not know how the bundles ended up in the Luggage in the “room” (presumably referring to the ICA search room).

57 Finally, the accused also testified, for the first time in these proceedings, that she had taken a medication by the name of Duromine, which was prescribed to her by a doctor from South Africa. A box of Duromine was found among the accused’s personal effects when she was arrested. The accused had started consuming this medication around July 2013 and had taken it continually. She had last consumed this medication the “last day when [she] departed from Cotonou”. She stated that the side effects she suffered as a result of the consumption of this medication were feeling depressed, tired and

sleepy or drowsy. These side effects were doubled the day she arrived in Singapore, as she was tired from travelling. The accused estimated that these side effects kicked in “[m]aybe after 3 hours” after taking the medication. She had told the Investigating Officer previously that she had taken this medication. A Ministry of Health advisory on the use of phentermine (supposedly the active ingredient in Duromine) was admitted into evidence. This advisory states, *inter alia*:

Members of the public are known to seek phentermine for its ability to help one achieve rapid and short-term weight loss. Many patients (some suffering from anorexia nervosa) may have, in their attempts to maintain ongoing weight loss, disregarded the potential risks of taking phentermine where there is no clinical need. Such risks include adverse effects such as palpitations, blood pressure elevation, insomnia, dry mouth, restlessness, tremors, hallucinations and panic states. In addition, they may experience health complications such as a compromised immune system, osteoporosis and gastrointestinal disorders, all related to being underweight. ...

...

... As an amphetamine-like stimulant, the risk of both physical and psychological dependence can occur with long-term use of phentermine. This risk of dependence appears to be related to phentermine’s stimulant effects. Withdrawal symptoms such as depression, drowsiness and prolonged sleep have been observed in patients following the prolonged use of phentermine.

DNA evidence

58 Dr Chuah Siew Yeam (“Dr Chuah”), an Analyst with the DNA Profiling Laboratory of the HSA, gave evidence that the accused’s DNA was found on (a) the exterior surfaces and the handles, zip tab and buttons of the black nylon bag; and (b) the non-adhesives sides of the tape of Exhibit “A2B”. At trial, Dr Chuah stated that, with respect to (a), it was possible that there had been a transfer of DNA from the accused’s personal effects in the Luggage to the black nylon bag. As regards (b), Dr Chuah testified that it was possible for

someone to have his or her saliva drops getting in touch with Exhibit “A2B” when he or she talked while standing in front of it. It was also possible for a person’s DNA to be found on the non-adhesive sides of the tape of Exhibit “A2B” if that person handled a pair of scissors and the same pair of scissors was given to someone else to cut a portion of the tape of Exhibit “A2B”. Dr Chuah also gave evidence that the tape of Exhibit “A2B” comprised 79 individual pieces in many layers and her DNA’s analysis did not indicate whether the accused’s DNA was found at the outer or inner layers of tape.

59 Given the range of possibilities for the presence of the accused’s DNA on the black nylon bag and Exhibit “A2B”, I do not find that there is any conclusive proof from the DNA evidence that the accused had handled the black nylon bag or Exhibit “A2B”.

The presumptions under s 18 of the MDA

60 As the prosecution had proved that the Luggage that the accused had with her contained 5,380.2g of methamphetamine (*ie*, the Drug), which is a controlled drug, the presumption in s 18(1) of the MDA that she had the Drug in her possession is invoked. Under s 18(2) of the MDA, the accused is also presumed to have known the nature of the Drug. These presumptions are rebuttable, but the burden rests upon the accused to prove the contrary.

Analysis of the defence

61 The accused’s defence is that she had no knowledge of the Drug in the Luggage. She did not know how it got into the Luggage or who had put it there. However, she speculated that it could have been Bros and that this must have been done in Cotonou between the time she packed the Luggage in the hotel room and the time it was checked in at the airport, during the periods

when she did not have sight of the Luggage. Under such circumstances, there is no doubt that the accused is put in the difficult position of proving a negative. If she were truly innocent, there was nothing she could do to rebut the presumption under s 18(1) of the MDA other than to relate her side of the story. The court would have to consider whether she was telling the truth in the circumstances of the case and in the light of the entirety of the evidence. I was fully cognisant of the difficult situation she was in and took this into account when I evaluated the evidence.

62 I first consider the accused's response when the Drug was first discovered. To understand this, it is important to consider the accused's background. At the time of arrest, she was 43 years old. According to the accused, she is the mother of two grown sons. She had attended school up to Grade 12 although it seems that she did not pass the final year. She had worked in a number of jobs not only in South Africa but also in the United States of America. She was running her own trading business in South Africa sufficiently successfully for her to be able to describe her finances as comfortable. She helped her parents support her younger brother and sister. She was also helping to take care of her nephew who had a mental disease. She was well travelled; apart from the United States of America and neighbouring countries in Africa, she had been to Italy, Ireland, Holland, Belgium, Hong Kong, China and Thailand for business and pleasure. The manner in which she gave her answers in the witness box reinforced this picture of a person of normal intelligence who was capable of looking after herself in South Africa and outside. The accused was also aware of the perils of narcotic drugs. She said that the only popular narcotic drug she was aware of was "Nyaope", which was made from "ARV" tablets for treating acquired immune deficiency syndrome ("AIDS"). She suspected that the mental disease

of her nephew was caused by his abuse of “Nyaope”. In the course of her social work in orphanages, she came across ex-addicts of “Nyaope”.

63 It is against this background that I examine the events at Changi Airport on the night of 25 October 2013. The accused arrived in Singapore after three flights and two transits spanning 24 hours. She retrieved the Luggage from the conveyor belt and was confronted by an enforcement officer. Complying with instructions, she brought the Luggage to be x-rayed. After that, she was asked to open the Luggage. When it was opened, she saw for the first time, the black nylon bag. From this black nylon bag, another officer retrieved two blue bundles that she had also never seen before. She was asked what the bundles contain.

64 Any person would be shocked by this discovery in those circumstances, and indeed the accused said she was surprised. An ordinary person with the background of the accused would not only react with surprise but also immediately deny knowledge of the bundles. This is because to claim knowledge of what they contain would be self-incriminating should they contain an illicit substance. But instead of reacting with surprise to this discovery and denying knowledge of the bundles, the accused told the officers that they contained food. When asked what type of food, she said she was not sure, but added a further detail by saying that she believed it was to be used to make medicine. She added that she was to pass the bundles to her boyfriend’s brother who was working as a doctor in South Africa.

65 In her long statement given on 5 November 2013, the accused gave this explanation for stating that the first bundle contained food (it seems that for the most part of the accused’s accounts, her responses only pertained to the first bundle rather than both bundles, but this difference is immaterial). Firstly,

she was tired after a long flight and anxious to get to the hotel and rest. She therefore wanted to get the process over with quickly. The accused said that at the airport in Cotonou, she had seen passengers wrapping luggage and parcels in clear tape before checking them in. She asked Bros about this and he told her that they were wrapping “stuff such as food”. The accused figured that this was to protect the parcels against dust and damage. Thus, when she saw that the first bundle retrieved from the Luggage was wrapped in similar clear plastic tape, she associated it with food and gave that in reply to the question from W/Ssgt Dawn.

66 During the trial, the accused gave an explanation in which her observation at Cotonou airport of parcels being wrapped with similar clear tape did not feature as prominently. She said that when she was asked what the first bundle contained:

| | |
|---|---|
| A | I had so many questions on my mind. I was asking myself what it was or maybe Bros was, surprisingly, putting on food. Or maybe it was toys because ... in his car, it was full of toys or money. I was asking myself, why did he put on this ... what was it? |
|---|---|

The accused also said that she acted as if she knew what it was because the bundle was found in the Luggage and she felt that she had to “protect” it. She added that she was tired and wanted to give an answer so that she could go to sleep. This explanation does not quite gel with common sense as she would realise the danger of protecting something of which she knew nothing about and which had turned up under suspicious circumstances.

67 Going back to the events at Changi Airport, when W/Ssgt Dawn asked what type of food it was, the accused modified her answer from food to medicine. In her long statement given on 2 November 2013, she stated that in

Cotonou, Bros had requested her to bring some medicinal substance for the treatment of AIDS to South Africa to pass to his brother who was a doctor there. She had seen Bros handle the substance in Cotonou. In her long statement given on 5 November 2013, she stated that when the first bundle was cut and she saw white crystals inside, she thought that it was that same substance that she had seen in Cotonou and therefore told W/Sgt Dawn that the first bundle contained medicine.

68 The accused had a further explanation at the trial, which was that she was also under the effects of Duromine. I note that this was not mentioned in her long statements. More importantly, those side effects did not seem to have affected her presence of mind; she was able to overcome the surprise at seeing the bundles (or at least the first bundle) in her Luggage for the first time and form the connection with what she had seen and what Bros had told her in Cotonou to manufacture an answer on the spot.

69 I turn to the next significant event, which is the recording of the Contemporaneous Statement. In the Contemporaneous Statement (see [16] above), the accused stated that she was told by Bros that he had placed something inside the Luggage and wanted her to pass it to his brother when she returned to South Africa. Bros told her that they contained “some cooking items” and that she had not suspected that it could be anything else because she trusted Bros, who was her boyfriend. However, when her cautioned statement was recorded on 28 October 2013, some three days later, she said that she had no knowledge of the Drug in the Luggage and that it was Bros who had placed it there without her knowledge. She maintained this position throughout the recording of her long statements and in the trial.

70 In her long statement given on 5 November 2013, the accused gave the following explanation for the Contemporaneous Statement:

... I remembered the lady officer posing some questions and writing them down. I could not remember the exact questions but I was asked many times who passed the bundles to me and I kept answering it was my husband. I did not say I did not know how the parcels ended up in my luggage and Bros may have put it in my luggage. I still cannot believe it was drugs and it may be medicine. I just tell the officers my husband passed the medicine to me to bring it to South Africa. ... Thinking back, I was in a state of shock at that time. If not I would have clearly told the officers that the drugs were put into my bag by Bros without me knowing. ...

71 The accused's explanation for the way she reacted when she first saw the bundles (or the first bundle) does not make much sense. Even if some allowance is to be given as she was caught by surprise and had reacted irrationally, the accused continued to spin this story some two hours later when she gave the Contemporaneous Statement. By this time, she knew that the Drug was believed to be a narcotic substance and that she was in serious trouble. If she was not capable of reacting rationally to the situation when she first saw the bundles (or the first bundle), by the time of the Contemporaneous Statement, she had some time to reflect over it. Yet, she continued not only with a wholly untruthful story, but one in which she had some degree of involvement compared to what she eventually claimed was the truth, *ie*, that the Drug was placed in the Luggage without her knowledge.

72 These two events (*ie*, the accused's response when the Drug was first discovered and the recording of the Contemporaneous Statement) must be analysed alongside the other background facts. One such fact is that the accused's story of this being a profitable shopping trip for electronic goods is not well corroborated by objective evidence. Firstly, she did not have a list of goods or any cash to purchase the electronic goods, although she explained

that Bros would send her the list and wire her the money. The accused had said in her long statement given on 2 November 2013 that Bros would send her the list and wire her the money in Singapore. However, this does not gel with the necessity of her making the trip to Cotonou. It is quite illogical that a trip that was supposed to profit from the difference in prices of electronic goods purchased in Singapore and sold in South Africa should entail the additional expenses of her flight to Cotonou and hotel expenses there. When asked about this in cross-examination, the accused said that one of the reasons she went to Cotonou was to get the list and money from Bros. The accused also said in court that another reason for going to Cotonou was to see where Bros lived. She did not quite explain the necessity for this latter reason and in any event she never saw where Bros lived when she got to Cotonou. There is therefore a question mark in relation to the purpose of the trip to Cotonou in the context of the stated purpose of the trip to Singapore.

73 Another relevant background fact is that the financial proposition from Bros' point of view does not look particularly attractive. Bros had to finance the accused's return air tickets from Johannesburg to Cotonou as well as from Cotonou to Singapore. He also had to pay for her travel expenses for ten days in Singapore. There was no evidence to show how importing one passenger's baggage entitlement in the form of electronic goods could turn a profit. Indeed, according to the accused, Bros had to borrow money to finance this. The only possible explanation aside from profit is that Bros had a romantic or sexual motive behind this. But according to the accused, this was not the case.

74 The final background fact pertains to the motive of the person who put the Drug in the Luggage. The accused believed that Bros was the culprit. Indeed, based on her story (which is the only one available), Bros was

logically the only one who could have done it. He was the main person the accused had dealt with prior to her journey to Singapore and subsequent to her packing of the Luggage. Bros was to be the only person that she would be in contact with during her stay in Singapore and whom she would meet upon her return to Cotonou. The Drug contained more than 5kg of pure methamphetamine. Although no evidence was given of its value, this was more than 200 times the quantity required for the presumption of trafficking under s 17(h) of the MDA, which is 25g. I can safely assume that the value of the Drug is a sufficiently high sum. It is therefore not likely, although not impossible, that Bros would take the risk of entrusting such a large investment on an unsuspecting person, particularly somebody whom he had been with for only a short period (albeit in a romantic relationship), had lost touch with for about a decade and had only just been reacquainted with in 2010. I appreciate that there are any number of possibilities. Bros might have considered that it might be easier for the accused to escape detection if she had no knowledge of the Drug. But he would have to consider the possibility that she might discover it upon unpacking and might, upon opening it and sensing that it was an illicit substance, throw it away or surrender it to the authorities. The only way that Bros could have ensured that this would not happen would be to get to her before she opened the Luggage in Singapore. However, the accused's narrative did not indicate that Bros had instructed her to contact him immediately upon her arrival in Singapore or that she would be met by anybody here. This aspect of the accused's narrative forms another question mark.

Conclusion

75 The most significant part of the evidence was the accused's reaction when the Drug was retrieved from the Luggage. She gave the impression that

she knew about the presence of the bundles (or at least the first bundle). Some two hours later, when the Contemporaneous Statement was taken, she continued giving this impression with some modifications. She changed her position three days later in her cautioned statement and subsequently in her long statements. However, the reasons she gave for not telling the truth on the night of 25 October 2013 are not quite logical. Further, her narrative on the purpose of her trip to Cotonou as well as of the events there, as noted in [72]–[74] above, contains too many inconsistencies and does not paint a convincing picture. I do not find, on a balance of probabilities, that the accused was not aware of the presence of the Drug in the Luggage. Accordingly, I find that the accused has failed to rebut the presumption of possession under s 18(1) of the MDA.

76 By operation of s 18(2) of the MDA, the accused is presumed to have known the nature of the Drug. There is no evidence advanced by the accused to rebut this; indeed, based on her defence that she had no knowledge of the Drug at all, she would be unable to advance any such evidence without contradicting that defence. Therefore, the presumption in s 18(2) of the MDA has also not been rebutted.

77 In view of the foregoing, I find the accused guilty of the charge for which she is tried before me and convict her accordingly.

Lee Seiu Kin
Judge

Ma Hanfeng and Kenny Yang (Attorney-General's Chambers) for the
prosecution;
N K Rajarh (Straits Law Practice LLC) and Sankar s/o Kailasa
Thevar Saminathan (Sterling Law Corporation) for the accused.
