IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 68

Magistrate's Appeal No 9299 of 2017

Between

Public Prosecutor

… *Appellant*

And

Goh Jun Hao Jeremy

… *Respondent*

GROUNDS OF DECISION

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Introduction

1 This was an appeal by the Public Prosecutor against the sentence of a fine in respect of a charge of affray under s 267B of the Penal Code (Cap 224, 2008 Rev Ed). The charge read as follows:

> You…are charged that you, on 27 December 2015 at or about 6.10 a.m., outside Club V at 21 Cuscaden Road, Ming Arcade, Singapore, which is a public place, disturbed the public peace by fighting with Heng Weijie Jonathan, to wit, by punching and kicking him, and have thereby committed an offence punishable under Section 267B of the Penal Code (Chapter 224, 2008 Revised Edition).

2 The respondent pleaded guilty to the charge in the proceedings below and was sentenced to a fine of $2,000, in default two weeks' imprisonment. Dissatisfied with the sentence, the Public Prosecutor appealed against the sentence.

3 After hearing submissions from the parties, I allowed the appeal. I delivered a brief oral judgment in doing so. These are the full grounds of my decision.

The facts

4 On 27 December 2015, Heng Weijie Jonathan ("Heng"), Camoeus Shaun Walter and Tan Chong Hong were standing outside Club V at 21 Cuscaden Road, Ming Arcade, Singapore with some female friends smoking and chatting. They noticed the respondent and one other person, Yap En Hao ("Yap"), staring at their female friends, and sidling up to them from behind. Heng approached the respondent and Yap to ask them to stop staring. The respondent shouted in reply.

5 Heng turned away and ushered his female friends away from the respondent and Yap. As Heng and his friends were walking away, the respondent ran up to Heng, punched his face and kicked him. Heng retaliated by punching the respondent. As a result, the parties got into an affray. The fight only stopped when bouncers from Club V intervened.

6 At or about 6.09 a.m. on the same day, the police received a complaint from a member of the public stating "15 Chinese guys beating up 3 guys". The police arrived shortly after the bouncers intervened.

7 The respondent caused Heng to sustain a nasal bone fracture and other minor injuries. The respondent himself suffered minor injuries that were most likely caused by a fall.

The proceedings below

8 The respondent was subsequently charged for an offence under s 267B of the Penal Code and pleaded guilty in the court below. As I noted above, the District Judge sentenced the appellant to a fine of $2,000. The District Judge's grounds of decision is reported at *Public Prosecutor v Jeremy Goh Jun Hao* [2017] SGMC 59 ("the GD").

9 In the court below, the prosecution submitted for a custodial sentence on the basis that the respondent was the instigator of the affray, causing Heng to sustain a nasal bone fracture, and had undergone two terms of probation previously. To support the submission that the custodial threshold had been crossed, the prosecution further pointed to the similarity between the present offence and the respondent's antecedent committed in 2012 of being a member of an unlawful assembly, where he had actively sought the victim after a disagreement and got into a physical fight. The prosecution argued that specific deterrence and retribution should be the primary sentencing considerations.

10 The respondent, on the other hand, submitted for a community-based sentence, specifically a Short Detention Order ("SDO"), to be imposed. In doing so, he highlighted a few offence-specific factors: the offence was not premeditated, no weapons were used, Heng's nasal bone fracture was a superficial or considerably minor injury that was not life-threatening and left little or no residual injuries, and the others involved in the same affray were administered stern warnings. In the alternative, he submitted for a fine of $500 to be imposed.

11 The District Judge agreed with the prosecution that specific deterrence and retribution should feature more prominently than rehabilitation as the

primary sentencing consideration (at [20] of the GD). This was because the respondent had already undergone a total of 33 months of probation, and his current offence was similar in nature to his 2012 antecedent, in that both offending acts had undermined public order and both fights were initiated by him following relatively minor disagreements. Moreover, the harm sustained by Heng was a fracture of the nasal bone, which was classified as grievous hurt under s 320(*g*) of the Penal Code. The District Judge placed little weight on the effect of the conviction on the respondent's career prospects in the banking industry and on the well-being of the respondent's wife and infant child, since these were the very interests that were disregarded by the respondent when he confronted Heng and got into the affray. The respondent's Attention Deficit Hyperactivity Disorder ("ADHD") was also given little weight as the medical assessments of his condition were dated and evidenced no causal relationship with the offence.

12 In deciding not to impose a community-based sentence, the District Judge considered that if such a sentence was imposed, s 7DA of the Registration of Criminals Act (Cap 268, 1985 Rev Ed) would operate for his community sentence to become spent on the date on which he completed his sentence. This would have undermined the deterrent effect of the sentence on the respondent. Because specific deterrence should feature strongly in the present case, a community-based sentence was not suitable.

13 The District Judge proceeded to consider the sentencing precedents and held that the custodial threshold had not been crossed. He distinguished the precedents where custodial sentences were imposed, and found the present case to be similar to *Public Prosecutor v Ng Jing Hai, Lester* (Magistrate's Arrest Case No 910435 of 2016) ("*Lester Ng*"), *Public Prosecutor v Bu Kiah Koon Andrei* (District Arrest Case No 920159 of 2016) ("*Andrei Bu*"), and *Public*

Prosecutor v Kong Jian Yao Arron (Magistrate's Arrest Case No 902403 of 2015) ("*Arron Kong*"). In these three cases, the accused persons had each pleaded guilty to a charge of affray and been sentenced to a fine of $1,000. The brief facts of these three cases are outlined below at [24]–[26].

14 Having regard to the fines imposed on each of the offenders in *Lester Ng*, *Andrei Bu*, and *Arron Kong*, the District Judge sentenced the respondent to a $2,000 fine since he considered the facts in the present case to be more aggravated than the three precedents. In sentencing the respondent to a fine, the District Judge reiterated the fact that the respondent's criminal record would only be spent after a crime-free period of five consecutive years by virtue of s 7C(b)(ii) of the Registration of Criminals Act would have a deterrent effect on him.

The appeal

15 The Prosecution submitted that the sentence of a $2,000 fine was manifestly inadequate, and that the custodial threshold had been crossed, as both the degree of harm caused and the respondent's culpability were on the higher end of the spectrum. The harm consisted of the serious injury of a nasal bone fracture suffered by Heng and the disturbance to the public peace. The culpability of the respondent was high, as he had initiated the fight by going up to Heng, who was by then walking away, and punched and kicked him. Moreover, the respondent had already been placed on probation twice and the present offence was similar to his 2012 antecedent. This showed he had clearly failed to be rehabilitated during the probation stints. Therefore, specific deterrence and retribution were the primary sentencing considerations and little weight should be placed on rehabilitation. Community sentences were not appropriate for the respondent, as these focused on rehabilitation and required

the offender to have demonstrated potential for reform. A fine was manifestly inadequate in light of the need to specifically deter the respondent from committing similar offences. The escalation principle should also apply, given his relevant antecedent.

16 The Prosecution also submitted that the District Judge was wrong to follow the cases of *Lester Ng*, *Andrei Bu* and *Arron Kong* because the circumstances in those cases were clearly distinguishable from those of the present case.

17 The Prosecution further submitted that the District Judge was wrong to consider the operation of the Registration of Criminals Act in sentencing. The District Judge's mistaken understanding that the offence of affray was a registrable offence led him to find that the deterrent effect of a fine was greater than the short custodial sentence in the form of a SDO, since he believed that the record would only be spent after five years if the respondent remained crime-free if a fine was imposed while there would be no record if a SDO was ordered. However, s 267B of the Penal Code was not a registrable offence under the Registration of Criminals Act. Hence, there was no question of this criminal record being spent. The Prosecution also argued that on the contrary, the deterrent effect of a SDO order was stronger, given that its effect was incarceration and the deprivation of liberty.

18 In the alternative, the Prosecution submitted that even if the offence had been registrable, the District Judge was wrong to factor this into his sentencing decision. The mechanism under part IIA of the Registration of Criminals Act for a spent conviction was to provide a second chance to ex-offenders who committed less serious crimes and showed the resolve and ability to remain

crime-free. It was not a mechanism for the court to tailor a sentence carrying the appropriate deterrent effect.

19 In response, counsel for the respondent submitted that the fine imposed by the District Judge was correct in law. He submitted that the District Judge had given due effect to the sentencing principles of specific deterrence and retribution in imposing the fine of $2,000. Counsel further submitted that the respondent, who was the only person charged, was in the "minority" group in the affray, and that he did not instigate the affray as Heng himself was the one who first engaged the respondent by asking him and his friends to stop staring. Furthermore, the respondent had completed his previous term of probation successfully, and there was a de-escalation in the severity of the offence committed compared to his 2012 antecedent.

20 Counsel sought to convince the court that the precedents where custodial sentences were imposed were distinguishable, while the precedents where sentences of fine were imposed were similar to the present offence. Firstly, it was submitted that the circumstances of the present case were similar to those in *Lester Ng*, where a fine of $1,000 was imposed, with the present case being only slightly more aggravated. Thus, doubling the fine quantum imposed in *Lester Ng* adequately provided for the slightly more aggravating factors in the present case. Secondly, it was submitted that the present case and *Andrei Bu*, where a fine of $1,000 was imposed, were comparable. The offender in *Andrei Bu* was below 21 years old, but the injuries suffered by the co-offender were more serious than those suffered by Heng. Thirdly, counsel submitted that the case of *Tommy Koh Leng Theng v Public Prosecutor* [2016] SGMC 47 ("*Tommy Koh*"), where a fine of $5,000 was imposed for a conviction of affray, was also relevant. *Tommy Koh* had more aggravating factors than the present

case, but since the custodial threshold was not crossed in *Tommy Koh*, it should not be crossed in the present case.

21 Counsel also highlighted the respondent's personal circumstances, namely that he was a sufferer of ADHD, had a promising career and had to support his wife and son. Counsel further argued that the respondent's career achievements demonstrated his resolve to turn over a new leaf.

My decision

22 The central issue posed by the present appeal was whether the custodial threshold had been crossed in the present case. Before addressing the issue, I will first deal with the main precedent cases highlighted by the parties in the appeal and the custodial threshold for an offence of affray.

The relevant sentencing precedents

23 In submitting that the custodial threshold had not been crossed, the respondent relied on *Lester Ng*, *Andrei Bu* and *Tommy Koh*. Further, the respondent sought to distinguish the precedent cases where imprisonment sentences were imposed, namely *Public Prosecutor v Jeron Liew Wei Jie* (District Arrest Case No 902495 of 2014) ("*Jeron Liew*"); *Public Prosecutor v Rohaizat B Roza* (Magistrate's Arrest Case No 905564 of 2014) ("*Rohaizat*"); *Public Prosecutor v Ruttiran Tamilarasan* (Magistrate's Arrest Case No 900983 of 2016) ("*Ruttiran*"); and *Public Prosecutor v Qie Tao* (Magistrate's Arrest Case No 908084 of 2016) ("*Qie Tao*"). On the other hand, the prosecution sought to distinguish the three cases where only fines were imposed as well as *Arron Kong*, which was cited by the District Judge. Except for *Tommy Koh*, all the cases cited were unreported cases.

24 In *Lester Ng*, the accused fought with the co-offender outside a night club at about 5.45 a.m. on 28 November 2016. The altercation started because the co-offender had gestured at the accused and seemed to be provoking him. An argument broke out between them and the co-offender was the one who initiated the physical fight by punching the accused's face. The accused retaliated by swinging his arms at the co-offender and pushing him. Bystanders attempted to restrain them, and the police who were on scene broke up the fight. The accused and the co-offender did not suffer any injuries. The accused pleaded guilty to a charge of affray and was sentenced to a $1,000 fine. He was 20 years old at the time of incident, and had been previously sentenced to two terms of probation for offences including one charge of disorderly behaviour under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) committed in March 2015.

25 In *Andrei Bu*, the accused fought with the victim outside Ang Mo Kio Hub at about 10 p.m. by punching the victim on the left side of his face. The accused had a prior dispute with the victim, and he spotted the victim coincidentally outside Ang Mo Kio Hub on the day of the incident. The accused proceeded to call two of his friends to help him resolve this prior dispute. The accused then confronted the victim and both of them punched each other. The accused's two friends did not intervene at this juncture. The fight stopped and the victim walked away. However, the accused's two friends started to chase the victim and assault him. The accused, on the other hand, walked away and was not part of the second assault. The victim sustained a deep wound exposing bone on the left side of his face and a left side earlobe laceration involving cartilage, was likely to have a permanent scar and was given 21 days of medical leave. The accused pleaded guilty and was sentenced to a $1,000 fine. He was 20 years old at the time of the offence, and had been placed on one term of

probation previously for offences including one charge of rioting under s 147 of the Penal Code and one charge of being a member of an unlawful assembly under s 143 of the Penal Code.

26 In *Arron Kong*, the accused fought with the co-offender outside a night club at about 3.45 a.m.. They were fighting inside the night club before the bouncers chased them out. Once outside, the accused saw the co-offender gesturing at him, so he threw a punch at the co-offender but was blocked by the latter. The two of them started punching and kicking each other until the police separated them. The co-offender sustained tenderness over the left side of his face and over his left elbow, as well as two abrasions over the frontal and right temporal scalp. The accused pleaded guilty to the charge of affray. As he was 19 years old and was untraced, a probation suitability report was called for but the accused was found to be unsuitable for probation because both the accused and his mother did not want him to be placed on probation. The accused was sentenced to a $1,000 fine.

27 In *Tommy Koh*, the accused fought with the victim on a street after chancing upon him, because the accused had suspected that his wife was having an affair with the victim. The accused asked the victim to get out of his car and a dispute broke out between them. The accused tried to punch the victim, who swung a plastic chair at the accused in response. They started throwing punches at each other. The accused continued punching the victim even after the latter had fallen to the ground. The victim sustained laceration over the left eyelid (requiring five stitches), bruising over the forehead, bruising over the right maxilla and abrasion over the left parietal region. He was given six days of medical leave. The accused pleaded guilty to the charge of affray and consented for another charge of affray to be taken into consideration. The accused had a string of antecedents dating back to 10 years ago, and the relevant antecedent

was one offence of assault or use of criminal force to deter a public servant from the discharge of his duty under s 353 of the Penal Code committed in 1996, for which he was placed on probation. The District Judge found that the fight was spontaneous, the accused was possessed by his resentment and anger towards the victim, no weapons were used, the physical altercation was short (about 35 seconds), and there was no extensive disturbance to public order. Little weight was placed on the relevant antecedent as it was dated. On the other hand, the accused was the aggressor and he continued punching the victim after the latter had fallen to the ground. The laceration suffered by the victim was not minor and there was another affray charge taken into consideration for the purposes of sentencing. The District Judge concluded that the custodial sentence had not been crossed and sentenced the accused to a fine of $5,000, which was the maximum amount of fine permitted.

28 The precedent cases cited where imprisonment sentences were imposed for the offence of affray were *Jeron Liew*, *Rohaizat*, *Ruttiran*, and *Qie Tao*. In *Jeron Liew*, the accused's friend and co-offender's friend were having an argument, which led to a scuffle. The accused and co-offender started punching each other. The latter sustained right-eye subconjunctival haemorrhage, and several abrasions. Though only 17 years old at the time of the offence, the accused had relevant criminal antecedents, including an offence of unlawful assembly (for which he was placed on probation), an offence of possession of an offensive weapon (which was taken into consideration in the court order of a stay at the juvenile home), and an offence of voluntarily causing hurt (for which he was sentenced to six weeks' imprisonment). The offence of voluntarily causing hurt was committed just two months before committing the offence of affray. The accused pleaded guilty to the charge of affray. By the time the accused was sentenced for the offence of affray, he had been in remand

for three months and nine days, and the accused had submitted for a short custodial sentence. The District Judge imposed a sentence of one week's imprisonment.

29 In both *Rohaizat* and *Ruttiran*, the affray occurred in the context of road rage and a weapon, a helmet, was used in both cases. The co-offender in *Rohaizat* suffered superficial cuts and a bruise, while the one of the co-offenders in *Ruttiran* suffered a fracture on his right little finger. The accused in *Rohaizat* had a relevant antecedent of unlawful assembly that was committed more than ten years before the commission of the affray while the accused in *Ruttiran* was untraced. The accused in both cases claimed trial. The accused in *Rohaizat* was sentenced to two weeks' imprisonment, and the accused in *Ruttiran* was sentenced to three weeks' imprisonment.

30 Lastly, in *Qie Tao*, the dispute between the accused and the co-offender started when the accused accidentally kicked the heel of the co-offender who was walking in front of him. The co-offender retaliated by kicking the accused's laptop bag. Shortly after, the accused felt provoked by the co-offender staring at him while they were walking outside an NTUC supermarket, so he used a piece of wood which was about the size of a mobile phone to hit the co-offender's head. The co-offender retaliated by punching the accused. Both parties exchanged punches and kicks. The scuffle took place inside and outside the supermarket. The co-offender suffered an open fracture of his right calf bone, a 2 cm scalp laceration and an abrasion on his right elbow. The accused was untraced and pleaded guilty. He was sentenced to three days' imprisonment.

Analysis of the sentencing precedents

31 The Prosecution observed that from the available sentencing statistics on affray from 22 July 2005 to 13 November 2017 in the State Courts' Sentencing Information and Research Repository ("SIR"), sentences of two weeks' imprisonment or below were ordered in 32 out of 46 cases extracted in which imprisonment was ordered. The SIR also reveals that in the overwhelming majority of affray cases, fines have generally been imposed.

32 Sentences for affray have tended to cluster mainly at the lower end, comprising mainly fines and short custodial sentences. The full sentencing spectrum was not often used but this should not be surprising. It accorded generally with what would be warranted given the typical factual scenarios for affray, involving minor altercations that escalated spontaneously into fisticuffs and scuffles. More often than not, the injuries caused were not very serious. Higher sentences would plausibly be merited for cases involving more extensive harm and greater culpability, and particularly where the offender has similar or related previous convictions. That said, such cases may conceivably involve a more nuanced and deliberately calibrated approach in the exercise of prosecutorial discretion and more serious charges of a different nature altogether may well be preferred to reflect the aggravated nature of the offending conduct in question.

33 As for the cases cited where fines were imposed, there were comparatively less aggravating features. I turn to highlight the key distinguishing features. In *Lester Ng*, the accused had also undergone two previous terms of probation. However, he did not initiate the fight, and both parties did not suffer any injuries although the accused was punched in the face. They were involved in a one-on-one fight, unlike the present case which had a

group element with a higher potential for public disturbance and escalation. In *Andrei Bu*, the injuries suffered by the victim might not have been caused by the accused's punch, since there was a second assault on the victim not involving the accused but his two friends who had joined him in confronting the victim. The offender in *Arron Kong* was untraced and the injuries sustained by the victim in the one-on-one fight were not serious. Like *Lester Ng*, this was unlike the present case which involved a group element with a higher potential for public disturbance and escalation. Furthermore, the offenders in all three cases were below 21 years of age, unlike the respondent who was over 22 years old at the time of the offence.

34 In *Tommy Koh*, although the court was cognisant of the relatively serious injuries caused by the accused to the victim, which included a laceration requiring five stitches, substantial weight was placed on the mitigating factor that the accused had an emotional response upon seeing the victim whom he perceived was responsible for the breakdown of his marriage and upon hearing the victim's insolent replies. Moreover, the accused's relevant antecedent was dated.

35 In comparison, all the cases cited where custodial sentences were imposed had discernible aggravating features. The aggravating factors of road rage and the use of a weapon were present in *Rohaizat* and *Ruttiran*. The accused in *Qie Tao* initiated the fight, used a piece of wood to hit the co-offender and caused him to sustain a fracture. The accused in *Jeron Liew* had committed similar offences shortly before committing affray.

Custodial threshold for the offence of affray

36 As I have noted in *Lim Ying Ying Luciana v Public Prosecutor* [2016] 4 SLR 1220 (at [28]) and *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 (at [41]), the two principal parameters which a sentencing court would generally have regard to in evaluating the seriousness of a crime are: (a) the harm caused by the offence; and (b) the accused's culpability. "Harm" is a measure of the injury which has been caused to society by the commission of the offence, whereas "culpability" is a measure of the degree of relative blameworthiness disclosed by an offender's actions and is measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act. In the context of affray, the primary factors relating to the harm caused would be the extent of injury caused to the co-offender and the extent of disruption caused to public order. Factors affecting the accused's culpability would include the manner of attack, the extent of injury that could be attributed to the accused where there were multiple accused persons inflicting injuries on the same co-offender, whether the accused was the instigator and whether weapons were used.

37 Aside from the principal parameters of harm and culpability, the court should also have regard to other mitigating and aggravating factors that do not relate to the commission of the offence *per se*. These include the accused's relevant antecedents, and remorse or lack thereof. A fine would suffice where there is a low level of harm caused and a low level of culpability. On the other hand, a custodial sentence would be warranted where there is a higher level of harm and culpability.

Whether the custodial threshold has been crossed in the present case

38 In determining whether the custodial threshold had been crossed in the present case, the analysis of the level of harm and culpability, as well as the applicable mitigating and aggravating factors are set out below.

The harm caused by the offence

39 There was at least a moderate to high degree of harm caused. Heng suffered a nasal bone fracture, which is classified as grievous hurt under s 320(*g*) of the Penal Code, along with other minor injuries. With regard to the extent of disruption caused to public order, it was plausible that there were not that many people present at the location of the affray at about 6 a.m., though I did note that a member of the public called the police, and the incident occurred on 27 December 2015, which was a Christmas holiday weekend. Nevertheless, there was no specific evidence on the extent of the impact on public order.

The respondent's culpability

40 The circumstances of the offence indicated significant culpability on the respondent's part. He took needless offence to a perceived provocation by Heng who had told the respondent and his friends to stop staring at his female friends. After doing so, Heng turned away and began to leave with his friends. The respondent, on the other hand, ran up to Heng and threw the first punch at his face and kicked him. Heng retaliated by punching the respondent.

41 It was submitted on behalf of the respondent that although he threw the first punch, it was Heng who approached him first. However, it was hardly mitigating to point to Heng having approached his group to ask why they were staring. The respondent accepted that he threw the first punch when Heng was

walking away from the scene. He could and should have similarly walked away himself just as Heng did. In the circumstances, it was not open to the respondent to say that he was not the instigator. There was also no evidence that he was in the "minority" group, contrary to counsel's submission.

Aggravating factors

42 The respondent had undergone two previous probation terms, both of which were imposed when he was below 21 years old. Despite the opportunities afforded to him to reform himself, he reoffended not long after completing his last term of 15 months' probation for an unlawful assembly offence which was committed in very similar circumstances in 2012. For this earlier offence, the respondent, together with his friends, had actively sought the victim and his friends after being displeased at hearing background laughter in an earlier phone call with the victim. The respondent's group initiated the physical fight, and the accused had punched and kicked the victim. Despite having completed two stints of probation, and in particular a recent stint in relation to an unlawful assembly offence, the respondent reoffended in similar circumstances again. He remained unable or unwilling to restrain himself and keep his temper in check even as a 22-year-old father of a young child at the time of the offence. These did little to persuade me that he had been rehabilitated or would be easily deterred from reoffending. For the same reasons, a community-based sentence was unsuitable in the present case because the respondent did not show real potential for reform and rehabilitation.

Mitigating factors

43 In the respondent's favour, he had pleaded guilty and expressed remorse and was voluntarily undergoing counselling. While he had a known ADHD condition, there was no evidence of any causal link to his offence.

44 The respondent's counsel had suggested that leniency was warranted because the respondent was the only one involved in the affray who was charged. I failed to see how any mitigating weight was to be attributed to this fact at all. Charging decisions are a part of prosecutorial discretion, and as the Prosecution had rightly pointed out in oral submissions, the very fact that the respondent was the only one charged may mean that he was the most culpable in the group.

The application of the Registration of Criminals Act

45 I did not follow the District Judge's reasoning in concluding that a SDO would not serve to deter as much as a fine. This appeared to stem from his erroneous assumption that the offence of affray was registrable and thus the respondent might stand to benefit from being fined no higher than $2,000 and having his criminal record removed after five years should he manage to remain crime-free. On this premise, the District Judge appeared to have thought that a SDO would serve as less of a deterrent compared to a fine of $2,000, since the respondent's record would become spent under the Registration of Criminals Act immediately on completion of the SDO. The offence was however not registrable under the First or Second Schedule of the Act and hence none of these considerations ought to have featured at all in the present case.

Conclusion

46 In the present case, the level of culpability was high, the level of harm was moderate to high, and the offence was committed in similar circumstances to the respondent's previous offence. The severity of the present offence was considerably greater than that in the cases of *Lester Ng*, *Andrei Bu* and *Arron Kong*, which had exhibited comparatively less aggravating circumstances, as explained at [33] above.

47 I agreed with the Prosecution that even a high fine was an insufficient deterrent. Specific deterrence was necessary here and the custodial threshold was clearly crossed. The appeal was allowed and the respondent was sentenced to two weeks' imprisonment. The fine would be refunded.

See Kee Oon
Judge

Sarah Shi (Attorney-General's Chambers) for the appellant;
Josephus Tan and Cory Wong Guo Yean (Invictus Law Corporation)
for the respondent.