

Public Prosecutor v Iwuchukwu Amara Tochi and Another
[2005] SGHC 233

Case Number : CC 11/2005
Decision Date : 22 December 2005
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Amarjit Singh and Chong Li Min (Deputy Public Prosecutor) for the prosecution; Chandra Mohan s/o K Nair (Tan Rajah and Cheah) and Patrick Tan Tse Chia (Patrick Tan and Associates) for the first accused; N K Rajarh (N K Rajarh) and Thrumurgan s/o Ramapiram (Allister Lim and Thrumurgan) for the second accused
Parties : Public Prosecutor — Iwuchukwu Amara Tochi; Okeke Nelson Malachy

Criminal Law – Statutory offences – Misuse of Drugs Act – Importing controlled drugs – Presumption of knowledge of nature of drugs – Accused arrested at airport with diamorphine in bag – Requisite knowledge of contents of capsules – Wilful blindness as to contents no defence – Sections 7, 33 Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

Criminal Law – Statutory offences – Misuse of Drugs Act – Conspiracy to import controlled drugs – Abetment of importation – No presumption of knowledge raised – Whether knowledge of contents of capsules could be inferred – Sections 7, 12, 33 Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

22 December 2005

Kan Ting Chiu J:

1 There are two accused persons and two charges in this case. The first accused, Iwuchukwu Amara Tochi, was charged that he:

on the 27th day of November 2004, at Changi Airport Terminal 2 Transit Lounge, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, 100 capsules containing not less than 727.02 grams of diamorphine, without any authorisation under the said Act or the regulations made thereunder, and [he had] thereby committed an offence under section 7 of the Misuse of Drugs Act and punishable under section 33 of the said Act.

2 The second accused, Okeke Nelson Malachy, was charged that he:

on or about the 27th day of November 2004, in Singapore and elsewhere, did engage with one Iwuchukwu Amara Tochi (Nigerian Passport No: A1622328) and one "Smith" in a conspiracy to do a certain thing, to wit, to import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, namely, 100 capsules containing not less than 727.02 grams of diamorphine, and in pursuance of the said conspiracy and in order to the doing of that thing, the said Iwuchukwu Amara Tochi without any authorisation under the said Act or the regulations made thereunder imported the said drug into Singapore on the 27th day of November 2004 to be handed to [him], and [he had] thereby abetted the commission of the offence of importing the said controlled drug into Singapore by the said Iwuchukwu Amara Tochi and thereby committed an offence under section 7 read with section 12 of the Misuse of Drugs Act and punishable under section 33 of the said Act.

3 The person referred to as Smith was not apprehended. From the evidence, he was in Pakistan.

The arrests

4 On 27 November 2004, at about 1.45pm, the first accused, a Nigerian national, flew into Singapore Changi Airport from Dubai. On 28 November, he went to the Ambassador Transit Hotel ("the hotel") at Terminal 2 and asked for a room but none was available. When a room became available, the supervisor of the hotel noticed that he had been in the transit area for more than 24 hours and was due to return to Dubai on 30 November. In compliance with set procedures, she informed the airport police about the first accused. The airport police did not respond immediately but subsequently despatched three officers to interview the first accused.

5 The first accused was told that the police were coming to interview him before he could check in. When he was told that, he went away from the reception area of the hotel to the other areas of the transit area.

6 When the officers arrived about 20 minutes later, they introduced themselves and brought him back to the reception area of the hotel where they questioned him. He told them that he had come from Dubai and that he had come to Singapore to get trials with football clubs in Singapore. He admitted that no arrangements had been made with any club, and that he intended to approach the football federation for assistance. He also told the officers that he did not enter Singapore because he was told that he needed to have \$2000 to enter, and he did not have the money. He had expected his father to send him the money, but his father did not send it.

7 The officers decided to conduct a search, which was carried out at the shower counter to the rear of the reception area. The first accused brought with him to the counter area a dark blue Converse sling bag ("the blue bag") and a white "Dubai Duty Free" plastic bag ("the white plastic bag").

8 The officers said that many items were discovered when they searched the blue bag. The most significant of the items were a red bucket-shaped "Maltesers" container, a pair of gloves and a pair of shoes. The 100 capsules which are the subject matter of the charges were found in the blue bag and in the Maltesers container, the gloves and the shoes. The capsules were securely wrapped in layers of aluminium foil, adhesive tape and plastic covering the core of powdery substance containing diamorphine.

9 When the first accused was asked if the capsules were chocolate he confirmed they were. When he was asked again if they were chocolate, he said they were actually herbs from Africa which tasted like chocolate, which gave strength when eaten, and he swallowed one capsule on his own. (He was later warded in hospital and induced to purge the capsule intact.)

10 The officers decided to cut open a capsule. When they suspected that the contents were drugs, they stopped the search and the Central Narcotics Bureau ("CNB") was notified. At the same time, the first accused and his bags were moved from the shower counter to Room 302 ("the hotel room") of the hotel.

11 While he was at the hotel room, another police officer, Sergeant Tan Chun Siong ("Sgt Tan") came to see him to investigate him for overstaying. The first accused told him that he hoped to play football for a team in Singapore. He also told Sgt Tan that he was in the transit area to wait for an African national by the name of Marshal, and that he was to deliver the African herbs to Marshal at

about 8.00pm in the transit area that day, and Marshal, who would be arriving from Indonesia, would hand US\$2000 to him. He explained to Sgt Tan that this was arranged by his soccer manager whom he knew as Smith. Sgt Tan made contemporaneous jottings of the interview, including the words "Smith", "Marshal" and "2000 US".

12 Subsequently, when officers from the CNB arrived at the hotel room they opened one capsule which contents tested positive for controlled drugs.

13 Assistant Superintendent of Police Gary Chan Gin Choong ("ASP Chan") of the CNB went to the hotel room. He questioned the first accused about the capsules, and was told that they were herbs from Africa for stomach problems. This was recorded in writing, and signed by the first accused.

14 Another CNB officer, Assistant Superintendent of Police Goh Boon Pin ("ASP Goh") arrived at about 9.55pm and recorded a statement from the first accused in which he again stated that he would receive US\$2000 for delivering the capsules. Another officer, Staff Sergeant Alan Yap Keng Chuan ("SSgt Yap") also stated that the first accused had referred to the US\$2000 payment, although he did not make any note of it at that time.

15 The first accused told the officers that someone known as Smith had arranged for him to bring the capsules into Singapore, and he was to deliver them to another person known as Marshal, who would pay him US\$2000. He was instructed to telephone Smith with the telephone in the hotel room. Three calls were made. The first was made at about 8.42pm. After speaking in a language the officers did not understand (which was Igbo according to the first accused), he told the officers he had asked Smith about the delivery and collection and Smith told him that Marshal's flight was delayed and told him to call back later. At about 10.16pm, the first accused called Smith again. After the call, he informed the officers that Smith had instructed him to meet Marshal at a café near the hotel. The first accused also said that Marshal was a black man of big build, and that he could recognise him by his appearance and voice. At about 10.47pm, a third call was made by the first accused to Smith, and the first accused was informed that Marshal was at the Coffee Bean outlet near the hotel.

16 The Prosecution produced the call records from the hotel's telephone system, which showed that three calls were made from the hotel room on 28 November 2004 to Smith's telephone number 005923335216217 disclosed by the first accused, which was established to be a telephone number in Pakistan.

17 After he was arrested, the first accused's mobile phone was examined by Assistant Superintendent of Police Stanley Seah ("ASP Seah") and was found to have Smith's telephone number on its "dialled numbers" registry and "received numbers" registry.

18 Officers were deployed to look for Marshal, and they spotted a man fitting his description moving about in the transit area. Staff Sergeant Aaron Ler Puay Soon ("SSgt Ler") used his own initiative to take two video clips with his mobile telephone of the person who eventually made his way to The Coffee Bean & Tea Leaf café in the transit area.

19 Another officer, Staff Sergeant Francis Heng Kia Chye ("SSgt Heng") was instructed by ASP Chan to take photographs of the person. SSgt Heng took three shots of him with a digital camera. The first accused was shown the shots, and confirmed that the person in the shots was Marshal. Subsequently when the second accused was brought into the hotel room, the first accused was asked whether that was Marshal and he nodded in affirmation.

The items seized from the second accused

20 After the second accused was placed under arrest, his personal property was examined and seized. He was found to be travelling on a forged South African passport. Amongst the property, the following were relied on by the Prosecution as evidence in support of its case against him:

- (a) one Subscriber Identity Module ("SIM") card recovered from mobile phone number 98657833 the second accused was carrying;
- (b) an application form for the purchase of that SIM card;
- (c) five other SIM cards recovered from his wallet;
- (d) a small telephone booklet recovered from the wallet; and
- (e) a laundry receipt recovered from the wallet.

21 The SIM card in the mobile phone was sent to the Technology Crime Forensic Branch, Criminal Investigation Department, and was examined by Staff Sergeant Kelvin Yuen Khoong Wai ("SSgt Yuen") who found amongst the deleted messages two identical messages received on 28 November 2004 at 7:27:24pm and 7:27:44pm, both sent from telephone number 923335216217 (Smith's telephone number): "I have been expecting ur call since what happen".

22 In the call tracing records of the mobile phone number 98657833 of 28 November 2004 the Prosecution obtained and produced, there was a record of an incoming call from telephone number 923335216217 at 10:58:43pm, and outgoing call to the same number at 11:14:19pm and an incoming call from the same number at 11:17:37pm.

23 From amongst the five SIM cards recovered from the wallet, SSgt Yuen retrieved the abbreviated dialling numbers including an entry, "Dogo +923335216217". (According to the first accused, "Dogo" means tall, and was Smith's nickname.)

24 The small telephone booklet (intended for recording names and telephone numbers) had on its first page next to the word "Name" the entry "M.N." and next to the word "Tel:" the numbers "012585312".

25 The laundry receipt from The Landmark Hotel, Bangkok, dated 10 September 2004 had "Marshal" and "01-2585312" entered against "Name" and "Tel:" respectively.

The first accused's investigation statements

26 Four investigation statements were recorded from the first accused in the course of investigations which were admitted in evidence without objection from him. These four statements can be placed into two categories, the first two recorded on 1 and 2 December 2004 and the second two recorded on 7 and 17 February 2005. The division is made because the first accused stated in the third statement of 7 February 2005 that he wanted to tell the truth on the advice of members of the Nigeria High Commission who visited him. The implication was that where the contents of the first two statements and the contents of the last two statements differed, the versions in the last two statements were the truth.

27 In the first statement the first accused stated that he came into Singapore from Dubai with

the blue bag and the white plastic bag, and that he had bought a container of Maltesers chocolates that he had put into the white plastic bag. However, he claimed that the police officers who interviewed him brought with them another white plastic bag, and that the capsules were contained in that bag, and that he swallowed one of the capsules at the insistence of the police officers. In the second statement, he said that he was instructed to call Smith when he was in the hotel room, and he called Smith and told him that he was with the police, and that he made another call to Smith when the police brought a black man into the hotel room whom he had not seen before.

28 When he declared that he was going to tell the truth in his third statement of 7 February 2005, he said that he went to Pakistan with the intention of travelling on to Dubai to play football there. After he arrived at Karachi he found that he could not get to Dubai from Pakistan. He remained in Karachi, where he subsequently met Smith. He told Smith of his intention to go to Dubai, and Smith agreed to help him. He travelled with Smith from Karachi to Kabul, Afghanistan and then to Dubai airport, but was unable to enter Dubai. At the airport, Smith asked him to deliver something in a bag to his friend, Marshal, in Singapore, who was sick. Smith showed him a photograph of Marshal and told him that Marshal would give him money to enter Singapore. Smith also gave him a plastic bag containing chocolates and sweets.

29 When he went to Changi Airport Terminal 2 as instructed by Smith, he did not see Marshal. He called Smith at telephone number 03335216217, and Smith told him to wait. While he was at the terminal, he opened his bag and the capsules spilled out, and he placed them in his gloves, socks, and the chocolate box where the police found them later. When the police questioned him about the capsules he swallowed one of them.

30 After he was brought to the hotel room, he called Smith to make arrangements to meet Marshal so that the officers could arrest Marshal. The officers showed him a digital photograph which he recognised to be Marshal from the photograph that he had seen previously, and Marshal was brought into the room.

31 In the fourth statement given on 17 February 2005, the first accused added that Smith had told him that he had intended to go to Indonesia to hand the capsules to Marshal, but as the first accused was going to Singapore, he could get Marshal to go to Singapore to collect the capsules as well as a book on herbs from him instead. Smith showed him two photographs of Marshal, one of him alone, and the other of him with Smith.

32 The first accused also elaborated that Smith had instructed him to go to Terminal 2. When he did not see Marshal there, he called Smith and Smith told him that Marshal had missed his flight and instructed him to check into the transit hotel. Smith also gave him Marshal's telephone number. He called Marshal, and Marshal told him that he had missed his flight, but he should be arriving in the evening.

33 The first accused added that after he was brought to the hotel room, he made three telephone calls to Smith and was told by Smith to wait for Marshal at the Coffee Bean café.

The case against the first accused

34 The Prosecution relied on the first accused's admissions that he knew he had the capsules in his possession; and that he had agreed with Smith to deliver the capsules to Marshal for a promised payment of US\$2000.

35 The Prosecution relied on the presumption in s 18(2) of the Misuse of Drugs Act (Cap 185,

2001 Rev Ed) that he knew that the capsules contained diamorphine and the fact that wilful ignorance is not a defence.

The case against the second accused

36 The Prosecution's case against him rested on the first accused's evidence on the arrangement for the capsules to be delivered to him. In addition to the first accused's evidence, the Prosecution also relied on the information from the SIM cards as evidence, of the relationship between Smith and the second accused, as well as the laundry receipt as evidence that the second accused was known as Marshal.

The first accused's defence

37 At the trial, a considerable amount of time was spent on many matters, for example, the bag from which the capsules were recovered from, and the first accused's travels after leaving Nigeria up to his arrival in Singapore. When all the evidence was in, and the disputes were aired, the material facts and the disputed issues emerged.

38 It was not disputed that the first accused knew that he had the capsules with him when he entered Singapore. He admitted that he was in contact with Smith and the second accused and that there was an arrangement for him to deliver the capsules to the second accused. His defence was that he did not know that the capsules contained diamorphine and that he believed Smith that the capsules were herbs intended for Marshal who was sick.

39 His counsel laid stress on the fact that he was an 18-year-old from a rural village from Nigeria who had wanted to further his football career. He came to know Smith in Pakistan and Smith offered to help him go to Dubai and when that failed, to go to Singapore, to play football. Throughout the investigations, the first accused had maintained that he thought the capsules contained herbs, and had even swallowed one capsule which contained a potentially lethal quantity of diamorphine.

40 Counsel also emphasised that although the first accused had about 20 minutes from the time he was told that the police were coming to interview him to the time they came, and he had the opportunity to dispose of the capsules, he did not do it, nor did he make any serious attempt at concealing them.

41 All this, it was submitted, was consistent only with the first accused's belief that the capsules were herbs, and there was no fear of detection or need to resort to concealment.

Evaluation of the case against the first accused

42 There was no direct evidence that he knew the capsules contained diamorphine. There was nothing to suggest that Smith had told him they contained diamorphine, or that he had found that out on his own.

43 On the other hand, the first accused did not have a consistent belief in the contents of the capsules. When he was first asked if the capsules were chocolate he affirmed that they were, and then said that they were herbs which tasted like chocolate, and then that they were African herbs for stomach problems, when by his own evidence Smith had not informed him of the origin of the herbs, their taste or use.

44 His position on the payment he was to receive for making the delivery was also

unsatisfactory. When Sgt Tan interviewed him, Sgt Tan made a contemporaneous note of the promised US\$2000. In his signed statement taken by ASP Goh, express reference was made to the US\$2000. SSgt Yap also gave evidence that the sum of US\$2000 was mentioned although SSgt Yap did not make a record of it in writing.

45 The first accused, however, denied in his defence that he had mentioned the figure and maintained that although he was promised a payment, no amount was mentioned. He had no plausible explanations for Sgt Tan's note and his own signed statement which made specific reference to US\$2000. On the evidence before me, I accepted the Prosecution's assertion that the first accused was promised US\$2000.

46 Why was the US\$2000 an issue? It was because the large sum promised should have raised suspicion. The first accused's evidence was that Smith was not a rich man. He did not have enough money to buy an air ticket for himself to go from Dubai to Indonesia to visit his sick friend. There must be a reason for Smith to offer him the large sum of US\$2000 to deliver the capsules of herbs when he was already funding his passages to Dubai and to Singapore. The first accused knew that Smith was a man who would break the law as Smith had arranged for false visas and endorsements to be entered into the first accused's passport to facilitate his travels. He must have realised that Smith was offering him much more than was reasonable for putting him through the minor inconvenience of meeting up with Marshal at the airport terminal and handing the capsules to him. He should have asked to be shown and be assured of the contents before agreeing to deliver them, and he could have used the ample opportunities he had when he was in possession of the capsules to check them himself, but he did nothing.

47 Counsel made much of the first accused's youth. The first accused was 18 years old at that time of arrest, but he was not a simple sheltered boy fresh out of his village. He had left school at the age of 14, and played football for a living in Nigeria and in Senegal. After returning home from Senegal, he was confident enough to go abroad again, and decided that he would not go back to Senegal, but would seek better prospects in Dubai instead. He was able to fend for himself when he was stranded in Pakistan and unable to travel on to Dubai. He was rich in life experiences for someone of 18 years.

48 I found that he had wilfully turned a blind eye on the contents of the capsules because he was tempted by the US\$2000, which was a large sum to him. When Smith, who had befriended him and had appeared to help him get out of Pakistan, also offered him the US\$2000, he did not want to ask any questions or check the capsules himself. Consequently, even if he may not have actual knowledge that he was carrying diamorphine, his ignorance did not exculpate him because it is well established that:

[I]gnorance is a defence only when there is no reason for suspicion and no right and opportunity of examination ...

– *Yeo Choon Huat v PP* [1998] 1 SLR 217 at [22] and his defence cannot stand. He was therefore found guilty and convicted on the charge he faced.

The second accused's defence

49 The second accused denied knowledge of Smith or the first accused, or that he was in communication with either of them and arranged with them to collect the drugs, and he also denied that he was known as Marshal. His defence was that he had come to Singapore to buy a used car to ship back to South Africa for his use. He offered explanations for the information extracted from his

mobile phone, the SIM card, the laundry receipt and the telephone booklet, which I shall deal with.

50 It was difficult to follow and understand him at some parts of his defence. He would mumble and ramble, and would not focus on the questions put to him. It also did not help that his evidence-in-chief and his evidence during cross-examination went into many areas of little or no relevance to the issues before the court. By the end of the case, however, the issues and evidence were narrowed down and clarified.

The evaluation of the second accused's defence

51 The first accused's evidence was that he was shown photographs of Marshal and that he had spoken with him. The first accused had told the officers that Marshal was a black man of big build, and that description fitted the second accused. The first accused claimed that Marshal was coming from Indonesia to meet him, and the second accused did come from Indonesia. The first accused said Marshal told him that he missed his flight, and the evidence showed that the second accused had been booked to fly to Singapore in the morning but had come on the evening flight.

52 The first accused would have been hard put to concoct these facts on his own. In the event, his evidence was corroborated by the records of the calls made between the second accused's mobile phone and Smith's telephone number on 28 November 2005 and the entry of "Dogo" and Smith's number in one of the SIM cards he was carrying, and the laundry receipt with the name "Marshal" he had with him.

53 The second accused put up explanations for the evidence against him. He said that he was stopped by the police at 10.58pm and was brought into the room at three or four minutes after 11.00pm, and the call from Smith came while he was watching a football game played in England and telecast live on television, and the time was shown on the television screen. Much time and energy was expended on this, although the mere fact that the call was received was significant on its own. If he did not know Smith, why was there a call from Smith of 38 seconds?

54 In any event, his reason for asserting that he was arrested before 10.58pm, which was based on the time shown on the screen was riddled with inconsistencies and contradictions. On the other hand, ASP Goh had recorded in his field book that the second accused was brought into the room at 11.33pm and the two video clips taken by SSgt Ler were recorded to be shot at 11.24pm and 11.25pm which SSgt Ler had not edited or transmitted from his mobile phone, and the times were confirmed by SSgt Yuen after he examined SSgt Ler's mobile phone.

55 The second accused claimed that the mobile phone did not belong to him, but to his friend, Joseph Marshal, who had lent it on 12 September 2004. However, he admitted that the SIM card in the mobile phone was his, and he had bought it on 23 July 2004 on a previous visit to Singapore. He could only venture that the messages from Smith's telephone number could have been there because he had lent the SIM card to three or four people.

56 As for the other SIM card found on him containing Smith's number and the name "Dogo", he said that it did not belong to him, even though he had confirmed in a written statement he made on 2 December 2004 that the five loose SIM cards recovered from his wallet belonged to him. (He changed that in a subsequent statement on 7 February 2005 when he was told of the "Dogo" entry, and said that the card belonged to someone known as Emma.) This card belonged to his friend, Emma, who had taken a loan from him and had not repaid him as promised. He therefore took Emma's mobile phone and SIM card as security, but subsequently returned the mobile phone, but held on to the SIM card. Emma was not called as a defence witness.

57 He claimed Joseph Marshal was the person referred to in the laundry receipt as "Marshal". Joseph Marshal had sent his laundry for cleaning and had handed him the laundry receipt with telephone number 01-2585312 written on it to collect the laundry for him. He gave contradictory accounts on the telephone number. In an investigation statement he said, "'Joseph Marshal' wrote my telephone number 01-2585312 on the receipt" and that "(t)he number 01-25385312 belonged to me", but in his defence in court he asserted that Joseph Marshal had written down Joseph Marshal's own number on the receipt.

58 The second accused claimed that the same telephone number recorded in the telephone booklet was Joseph Marshal's number. When the prosecutor suggested to him that the "M.N." in the telephone booklet stood for his name, "Malachy Nelson", he said for the first time that Joseph Marshal's full name was "Joseph Marshal Njuko" and "M.N." stood for "Marshal Njuko". He had up to that point referred to him only as "Joseph Marshal" in his investigations statements and his evidence-in-chief in court. It was not established that there is such a person by the name of Joseph Marshal or Joseph Marshal Njuko, as no one by either name was called as a defence witness.

59 The second accused was obviously anxious to distance himself from Smith and the first accused, and he was prepared to change and add to his evidence when he thought it suited him. When his evidence was examined it often lacked logic and consistency, and contradicted established facts as well as his own signed statements. He was not an unfortunate who just happened to be at the wrong place at the wrong time as his counsel described him. He was someone trying to think up ways to explain away the evidence against him, and doing a poor job of it.

60 The fact that he did not have the US\$2000 that the first accused had been promised and had only US\$952 on him when he was arrested, was of no exceptional significance. Throughout his dealings with Smith and the second accused, there were changes and disappointments, *eg*, Smith's broken promise to get him into Dubai, and the second accused's delayed arrival at Singapore. The first accused may be faced with a reduced payment or a deferred payment if he made the delivery.

61 I found that the Prosecution had proved beyond a reasonable doubt that there was an arrangement between Smith and the two accused persons for the second accused to come to Singapore to collect the capsules from the first accused.

62 Although there was no direct evidence that the second accused knew that the capsules contained drugs, and there is no presumption of such knowledge raised against him, the knowledge can be inferred against him for several reasons.

63 He was the intended recipient of the capsules in the arrangement. *Prima facie*, they were intended for him, and he must know what they were. By his own evidence, he was his own man. He was 33 years old. He said he ran a garment retailing business in South Africa. He travelled far from South Africa and had come to South-East Asia to buy garments from Thailand and Indonesia to ship back to South Africa. If he was an unwitting participant in the scheme, it was for him to explain how he became caught up in that, but he did not do that. Instead, he lied, and denied that he had anything to do with Smith and the first accused.

64 In the circumstances, he was found guilty and was convicted on the charge he faced.

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