Wilful Blindness in the Possession of Drugs:
***Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38**

I. Executive Summary

In *Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38, the Court of Appeal (**"CA"**) clarified the operation of the doctrine of wilful blindness and its interplay with the presumption of possession under section 18(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (**"MDA"**).[1]

In this case, Adili Chibuike Ejike (**"Adili"**) had travelled to Singapore from Nigeria with a small suitcase, the lining of which was later found to contain drugs. Adili had accepted the suitcase from some Nigerian acquaintances, who did not inform him that the suitcase contained drugs. Adili was charged with importing drugs under section 7 of the MDA. The High Court ("**HC**") convicted Adili of the charge, and sentenced him to the death penalty. However, the CA allowed Adili's appeal and acquitted him of the charge.

Section 7 requires, among other things, that the accused has *possession* of the drugs and *knowledge* of the nature of the drugs. At trial, both parties accepted that Adili was presumed to possess the drugs under the section 18(1) presumption[2] of possession, which in turn triggered the section 18(2) presumption of knowledge, i.e. that Adili knew the nature of the drugs that he possessed. The Prosecution then argued that Adili had failed to rebut the section 18(2) presumption of knowledge because he had been wilfully blind to the presence of the drugs in the suitcase. Thus the trial focused on whether Adili had rebutted the section 18(2) presumption.

The CA disagreed, stating that the central issue was whether Adili was in "possession" of the drugs. "Possession" under section 18(1) entails not just physical possession of the drugs, but also that the accused knows of the existence of thing in question that turns out to be a controlled drug. Here, the Prosecution's case was that Adili had been wilfully blind to the existence of the drugs in his suitcase. As the Prosecution itself explained, this meant that Adili *did not actually know* of the existence of the drugs in the suitcase. The CA held that since the section 18(1) presumption of possession was a presumption that the accused in fact knew that the item in question was in his custody, the Prosecution could not, as a matter of principle, be allowed to invoke the presumption to presume the existence of a fact *which it had accepted did not exist*.

The Prosecution also failed to establish beyond reasonable doubt that Adili was wilfully blind to the presence of the drugs. Among other things, it had to prove that there were reasonable means of inquiry available, which, if taken, would have led Adili to discover the truth. Here, a person opening the suitcase and checking through its contents would not have been able to discover the bundles. They were only found after an X-ray screening revealed images of darker density in the lining, which led officers to cut the lining open. As to the contention that Adili could have asked his acquaintances about the suitcase contents, it seemed obvious that they were intent on keeping the truth of the matter from him, and would not have told him about the bundles even if he had asked.

II. Material Facts

Adili is a Nigerian citizen. Unemployed, he contacted an acquaintance, Chiedu Onwuku (**"Chiedu"**) for financial assistance in August 2011. Chiedu agreed to give Adili a sum of between 200,000 and 300,000 naira (approximately US$1,324 to US$1,986). Subsequently, Chiedu

[1] Section 18(1) states that anyone who is proved to have possessed anything containing a controlled drug is presumed to have possessed that drug. Section 18(2) states that anyone who is proved or presumed to have in his possession a controlled drug shall be presumed to have known the nature of that drug.

[2] In general, a fact is *proven* when, based on the evidence, the court believes that the fact exists. *Presumptions*, on the other hand, allow the court to presume the existence of a given fact, until it is otherwise disproved.

requested Adili's passport "to do something with," but did not tell him what that was. Adili later travelled to Lagos, Nigeria, as instructed by Chiedu, where he met another acquaintance, Izuchukwu Ibekwe (**"Izuchukwu"**). Izuchukwu instructed him to travel to Singapore with a piece of luggage, which he was to hand over to a contact in Singapore. Izuchukwu later handed Adili the suitcase, Adili's passport, a set of travel and other documents, and US$4,900 in cash.

On arrival in Singapore with the above items, Adili was stopped at Customs as he was about to exit the Arrival Hall. His case was put through an X-ray machine, and an image of darker density was observed on one side of the case. Nothing incriminating was found after a physical search. The bag was then brought to the Immigration and Checkpoints Authority Baggage Office, where the inner lining of the bag was cut, revealing the two packets. One packet was cut, and was found to contain a white crystalline substance. Adili was subsequently arrested and charged with importing two packets containing not less than 1,961g of methamphetamine.

In his statements made during the investigation, Adili stated that he did not pack the case himself. He also did not know what the case contained or why he had to deliver it; did not think about its contents; and had never asked Chiedu or Izuchukwu any questions concerning the case or its delivery. He further claimed he did not trust them. As to the contact in Singapore, Adili said he was supposed to take a taxi to the hotel after clearing Immigration and Customs. The person who was to collect the case would meet him at his hotel, although he could not remember which hotel he was supposed to go to, and did not know the name or contact details of the person. He also claimed the US$4,900 cash was for his food, traveling, hotel and other expenses, with any unspent balance to be returned to Chiedu. He expressly denied that the money was to be passed to anybody in Singapore.

It was not disputed at trial that Adili was in physical possession of the suitcase; his lawyers accepted that he was thus presumed to have the drugs in his possession under section 18(1). Both parties then accepted that section 18(2) of the MDA applied, i.e. it was presumed Adili knew that the drugs were actually methamphetamine. The trial thus focused on whether Adili had been able to rebut the presumption of knowledge under section 18(2).

The HC found that the section 18(2) presumption of knowledge was unrebutted. Among other things, it found Adili an unreliable witness, given inconsistencies between his trial testimony and his previous statements. For example, at trial, Adili contradicted his earlier statements by saying that he trusted Chiedu and Izuchukwu, and it did not occur to him that the trip might be dangerous (whereas he had previously said he did not trust them). He also claimed that Izuchukwu had opened the case, and both showed and told him that it only contained clothes and shoes. In another departure from his earlier statements, he said at trial that he was to pass the US$4,900 cash to the person to whom he was to deliver the suitcase.

III. Issues on Appeal

The CA first noted that the Prosecution had to prove the following to establish importation under section 7: that the accused (i) possessed the drugs; (ii) knew of the nature of the drugs; and (iii) intentionally brought the drugs into Singapore without prior authorisation.

The CA noted that the approach taken by both parties at trial (that Adili was conceded to have been in possession of the drugs under section 18(1)) was incorrect. This was because his lawyers' concession of possession was inconsistent with their case that Adili did not know the bundles were in the suitcase. Possession entails awareness that the thing (which is later found to be a drug) is in one's possession, custody or control. Further, the CA found that the Prosecution had itself accepted that Adili did not in fact know that the drugs were in his physical custody, and this raised the

question of whether the Prosecution was able to rely on the section 18(1) presumption at all.

The CA decided that the focus should be on whether Adili was, in fact and law, in possession of the two drug bundles. The CA thus considered whether (a) Adili could be presumed to have had the drugs "in his possession" under section 18(1); and (b) if the Prosecution could not rely on the section 18(1) presumption, whether it had proved possession beyond reasonable doubt by showing that Adili was wilfully blind to the presence of drugs.

A) Did Adili have the drugs "in his possession"?

The CA focused on three issues:

(i) The "knowledge" that was required to prove possession;
(ii) What was wilful blindness, and whether it applied here; and
(iii) Whether the Prosecution could rely on the presumption of possession in section 18(1), when it had accepted that Adili did not actually know that the drugs were in the suitcase.

(i) Knowledge required for proving the fact of possession

The CA held that to establish possession for the offence of drug importation, the accused must have known of the existence, within his possession, control or custody, of the thing which is later found to be a controlled drug. The accused will not be found to be in *possession* of drugs (even if they were within his physical custody) if they were planted on him without his knowledge. The distinction was between "inadvertent" possession (which would not amount to possession in the legal sense) and "knowing" possession (which would amount to possession in the legal sense).

Moreover, the issue of "knowledge", i.e. whether the accused knew that the thing that turns out to be a controlled drug was in fact the specific drug in question, was a separate inquiry.

(ii) Wilful blindness and its applicability to section 18(1)

The CA then turned to the meaning of "knowing" possession. This requirement would be satisfied either where the accused had actual knowledge of the fact in question (the ordinary meaning of "knowledge"), or where the accused had been wilfully blind to that fact. This was because wilful blindness is the *legal equivalent* of actual knowledge.

With regard to "wilful blindness", the CA observed that the term has been used in two senses: in the *evidential* sense, and in the *extended* sense. Both of these rested on the premise that the accused person *subjectively* suspects something, and then deliberately chooses not to make further inquiries that would prove what was suspected. However, there are important differences.

When wilful blindness is spoken of in the *evidential* sense, the accused's suspicion and deliberate refusal to inquire are treated as evidence which might sustain a factual finding or inference that the accused person had *actual knowledge* of the fact in question. This means that the circumstances will have been so suspicious that it would have been natural for any innocent person in the accused's position to investigate the true position. The failure to do so here might persuade a court that the accused actually did know the truth, and deliberately avoided investigating in order to maintain a façade of ignorance.

In contrast, when referred to in the *extended* sense, wilful blindness describes a mental state which falls short of actual knowledge, but still satisfies the requirement of knowledge as it is the *legal equivalent* of actual knowledge. Thus, an accused who does not in fact know the true situation, but sufficiently suspects what it is and deliberately refuses to investigate in order to avoid confirmation of his suspicions, will in certain circumstances be treated as though he knew. For instance, an accused may be said to be wilfully blind in this extended sense to the existence (in his possession,

control or custody) of the thing later discovered to be a drug if he harboured a suspicion that he did have the thing in his physical possession, and yet deliberately refused to inquire because he did not want to have his suspicions confirmed. The distinction between the evidential and extended conceptions of wilful blindness is that in the former, the court is satisfied that on the whole, the accused person *did in fact know*; whereas in the latter, the court considers that "*it can almost be said*" that the accused person actually knew the fact in question.

The CA held that going forward, the term "wilful blindness" should be used only in the latter, *extended* sense. This was because the former, evidential conception was more accurately described as a finding of actual knowledge of the truth (rather than a finding that the accused had been *blind* to the truth).

The CA laid down the elements (or requirements) that had to be satisfied to prove wilful blindness:

(i) the accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind;
(ii) there must have been reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the truth, at least in the context of the fact of possession; and
(iii) the accused person must have deliberately refused to pursue the reasonable means of inquiry available, so as to avoid such negative legal consequences as might arise in connection with his knowing that fact.

For the first element, the CA emphasised that the accused person must have *personally* suspected the fact in question; it was not merely a question of whether a reasonable person would have found the circumstances suspicious. Furthermore, the suspicion must be "firmly grounded and targeted on specific facts" and not merely "untargeted or speculative suspicion." In other words, the level of suspicion must have been such as to lead the accused to investigate further; this requires that the facts in question be facts in whose existence the accused had good reason to believe.

For the second element, this required both that (a) there were means of inquiry *reasonably* available to the accused, and that (b) if taken, those means of inquiry would have led him to the truth he sought to avoid. Whether a particular means of inquiry was reasonably available to the accused was a fact-sensitive question. Such means should generally be reliable, appropriate in the circumstances, and capable of leading him to the truth within a reasonable period of time. Furthermore, since the doctrine of wilful blindness is based on the notion that the accused did not end up with the actual knowledge of the facts only because he *chose* to look away, the true facts must have been readily available to anyone who was disposed to discover them; i.e. had the accused chosen to look, he would have uncovered those facts.

For the third element, the accused person's refusal to inquire must have been motivated by a desire to deliberately avoid the legal liability which might arise from knowledge of the fact involved, and not out of, e.g., indolence, negligence or embarrassment. Given the difficulty of proving a person's mental state, the inquiry into whether he deliberately refused to inquire so as to avoid knowledge will often be a matter of inference. In some cases, an accused may have taken some steps to investigate the nature of the item in question. Whether he may still be said to be wilfully blind depends on the reasonableness and adequacy of the steps taken. For instance, where the accused is given a wrapped package and is told that it contains counterfeit currency, he should at least ask to view the contents of the package.

The CA further stated that in practice, the doctrine might apply differently depending on whether one was dealing with the fact of possession, or the fact of knowledge of the nature of the drugs.

However, it left this question open for future analysis.

(iii) Whether the Prosecution could rely on section 18(1)

The CA first noted that what was presumed under section 18(1) was the fact that the accused was knowingly in possession of the thing that turned out to be the drug. In this regard, it would be inappropriate to speak of a presumption that the accused had been wilfully blind. This is because wilful blindness was not a state of mind that can be proved or disproved as a matter of fact. Rather (as discussed above), wilful blindness was a legal concept which existed as a limited extension of the legal requirement of actual knowledge. Hence, whether or not an accused was wilfully blind involved an intensely fact-sensitive inquiry, which could not be the subject of an evidential presumption. Further, wilful blindness was a state falling a little short of actual knowledge, while the presumption was concerned with actual knowledge. As such, the presumption could not, logically, be invoked to establish a fact which has been accepted *not* to be true. The CA therefore held that the knowledge presumed under section 18(1) referred exclusively to actual knowledge, and did not include knowledge to which the accused was wilfully blind.

As to how this related to possession: the CA held that the Prosecution could either rely on the section 18(1) presumption or seek to prove that the accused had actual knowledge that the thing which turned out to be a controlled drug was within his possession, custody or control. Alternatively, it could prove that the accused was wilfully blind to this fact and so should be taken to have had actual knowledge of it. All this had to be proved beyond reasonable doubt.

However, the Prosecution could not rely on the section 18(1) presumption to presume that the accused person was wilfully blind to the presence of the drug within his possession, custody or control. Wilful blindness was also not relevant in analysing whether the section 18(1) presumption was rebutted. Rather, what would be required to rebut the section 18(1) presumption was showing that the accused *did not actually know* that the drug was in his possession. For instance, he could argue that the drugs were slipped into his bag or planted in his house without his knowledge.

B) Could the Prosecution prove possession beyond reasonable doubt through wilful blindness?

The only option left to the Prosecution was to prove, beyond reasonable doubt, that Adili had been wilfully blind to the existence of the drugs in the suitcase. However, the CA held that this was also not established.

This was because the second element of wilful blindness required that there be reasonably available means of inquiry which, if taken, would have led Adili to discover the truth – meaning that had he checked, he would have discovered that the suitcase contained the drug bundles. However, even a person who opened the case and checked its contents would not have been able to discover the drug bundles, as they were hidden within its inner lining. Indeed, even after all of the items in the case had been removed by the Customs officers, and it had once again been physically examined, nothing incriminating was found. The bundles were only found after an X-ray screening revealed images of darker density, which Customs officers then investigated by cutting open the inner lining of the case. Further, Adili would not have been able to find out about the hidden drug bundles from Chiedu and Izuchukwu even if he had asked them.

Finally, because the Prosecution's position was that Adili did not have actual knowledge of the drugs, the CA could not consider whether, on the evidence and considering other admittedly suspicious circumstances, Adili should have been found to have actually known of the drugs.

IV. Legal Implications

First, the CA has established that wilful blindness operates as a very narrow qualification to the requirement of actual knowledge. This is a qualification "necessitated by the need to deal with accused persons who attempt to avoid liability by carefully skirting actual knowledge." Further,

the term "wilful blindness" should be used only in the *extended* sense; that is, to mean a state of knowledge falling *short* of actual knowledge. The CA also reminded prosecutors, defence counsel and the courts not to use the term "wilful blindness" unless they meant it in that sense.

Second, the CA has established that the section 18(1) presumption cannot be used to establish wilful blindness, and the doctrine of wilful blindness is also not relevant in considering whether the presumption has been rebutted. This is because the doctrine properly describes situations where an accused person does not actually know, but is "blind" to the truth. Conversely, section 18(1) is a presumption of *actual* knowledge. The CA additionally left open the question of whether the doctrine of wilful blindness remained relevant in rebutting the section 18(2) presumption of knowledge.

Lastly, the case has highlighted the importance of parties remaining alert to the precise effect of their concessions – here, regarding what the accused did or did not know. In this case, as the Prosecution had proceeded solely on the basis that the accused had been wilfully blind (and hence did not actually know of the existence of the drugs), it had foreclosed to itself the possibility of relying on the section 18(1) presumption.

Written by: Rennie Whang Yixuan, 3rd-Year JD Student, Singapore Management University School of Law.
Edited by: Ong Ee Ing (Senior Lecturer), Singapore Management University School of Law.